THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS
Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

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

vs.

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

Of whom South Carolina Coastal Conservation League is the Respondent,

---

RECORD ON APPEAL
VOLUME I OF III

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INDEX

Orders

Order Denying Defendant SCCCL's Motion to Dismiss Plaintiffs' Claim Under South Carolina Unfair Trade Practices Act filed July 20, 2011.....1

Order Denying in Part and Granting in Part the Defendants Motion for Summary Judgment filed December 18, 2012.....3

Order of the Honorable Roger M. Young, Sr. Denying Motions to Alter Or Amend the Order of December 18, 2012 filed March 4, 2013.....7

Order-Form 4, Dismissing Defendant's Abuse of Process Claim filed June 18, 2013.....8

Order Denying Motion to Reconsider filed January 17, 2014.....9

Pleadings

Summons and Complaint filed May 20, 2010.....16

Answer and Counterclaim filed July 19, 2010.....28

Reply to Counterclaim filed July 27, 2010.....37

Other Materials:

Defendants' Notice of Motion and Motion for Partial Summary Judgment filed May 26, 2011.....41

Defendants' Memorandum in Support of its Motion for Partial Summary Judgment filed June 20, 2011.....43

Affidavit of Edward Dana Beach in Support of its Motion for Partial Summary Judgment filed June 16, 2011.....50

Plaintiffs Memorandum in Opposition to Motion for Partial Summary Judgment and in Support of Motion to Compel filed June 20, 2011.....53

Plaintiffs' Materials in Opposition to Defendants' Motion for Partial Summary Judgment filed June 15, 2011.....64

Deposition of Richard Chinnis.....65
Deposition of Nancy Vinson.....78

Final Order and Decision.....117

Defendants' Notice of Motion and Motion for Summary Judgment filed July 30, 2012.....168

Memorandum of Law in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment filed November 13, 2012.....171

Plaintiffs' Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment filed November 13, 2012 with Attached Exhibits.....209

Exhibit 1: Deposition of Hamilton Davis 230
Exhibit 2: Pages from Mitchell Flannery Deposition.....250
Exhibit 4: Pages from Joshua Hulen Deposition 254
Exhibit 6: Pages from Thomas Hartnett Deposition.....280
Exhibit 7: Pages from Megan Derosiers Deposition.....290
Exhibit 8: Pages from Dana Beach Deposition.....303
Exhibit 9: Coastal Conservation League Contributor List.....394
Exhibit 10: Pages from Charles Lane Deposition.....405
Exhibit 11: Pages from Robert DeMoura Deposition.....433
Exhibit 12: Pages from Marshall Sandford Deposition.....469
Exhibit 13: Pages from Daniel Young Deposition.....478
Exhibit 14: Pages from Nancy Vinson Deposition.....486
Exhibit 15: Pages from Steve Nichols Deposition.....510
Exhibit 17: Board of Trustees Minutes dated February 21, 2006.....560
Exhibit 18: Conservation Easement and Acceptance.....572
Exhibit 19: Pages from Gary Morris Deposition.....592
Exhibit 22: Pages from Christopher Donato Deposition.....693

Defendants' Notice of Motion and Motion to Alter or Amend Judgment filed January 7, 2013.....740

Memorandum of Law in Opposition to Plaintiffs' Motion to Alter or Amend and in Support of Defendants' Motion to Alter or Amend filed January 21, 2013.....744

Plaintiff's Motion to Alter or Amend (Rule 59) filed December 18, 2013....752

Transcript of Record of the Hearing held before the Honorable Roger M. Young, Sr. December 9-11, 2013.....762

Plaintiffs' Deposition Designations.....1016

Defendants' Counter-Deposition Designations.....1022

Defendants' Deposition Designations.....1024

Deposition of Daniel Burns dated April 13, 2012.....1027

Deposition of Flannery Mitchell dated May 30, 2012.....1046

Deposition of Megan Derosiers dated August 27, 2012.....1055

Deposition of Robert M. Pittenger September 13, 2011.....1080

Plaintiffs' Exhibits:

Exh. 2 Exclusive Right to Sell Agreement.....1155
Exh. 4 Letter to Michael Bennett from Daniel Burns dated May 11, 2007.....1160
Exh. 5 Hamilton Davis Voice Mail.....1161
Exh. 13 Community Cook Out and Bar-B-Que Flyer.....1162
Exh. 27 Letter of Intent to Dan Burns from North Pleasant, LLC dated March 1, 2007.....1163
Exh. 32 Email from Josh Hulen to Daniel Fogarty dated March 15, 2007.....1205

Defendants' Exhibits:

Exh. 1 Email from George Bullwinkle to Hamilton Davis dated October 8, 2007 attaching the Keystone Tract Development Agreement between North Pleasant, LLC, Vintage Land, LLC and Berkeley County.....1206
Exh. 4 Letter to Mercer Reynolds from John Frampton dated December 12, 2005.....1246
Exh. 5 Appraisal of North Pleasant, Vintage Land Keystone Tract in Berkeley County dated October 17, 2005.....1247
Exh. 10 Email from Josh Hulen to Daniel Fogarty dated February 20, 2007.....1340
Exh. 12 Email from Paul Smith to Josh Hulen dated April 17, 2007.....1343

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Case No.: 2010-CP-08-1771
NORTH PLEASANT LLC et al Plaintiffs, v. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE et al Defendants.	)	**ORDER DENYING DEFENDANT SCCCL'S MOTION TO DISMISS PLAINTIFFS' CLAIMS UNDER SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

2011 JUL 20 PM 2:3

This matter is before this Court upon Defendant SCCCL's Motion to Dismiss Plaintiffs' Claims under S.C. Unfair Trade Practices Act (UPTA). A hearing was held on June 20, 2011.

Standards of Review

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Flateu v. Harrelson, 355 S.C. 197, 201-02, 584 S.E.2d 413, 415-16 (Ct. App. 2003). In reviewing a motion to dismiss, the trial court must base its ruling "solely upon the allegations set forth on the face of the complaint." Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the compliant and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Chewning v. Ford Motor Co., 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001).

I have carefully considered the arguments presented by counsel, as well as supporting memoranda. Viewing the evidence as a whole and in the light most favorable to the plaintiff, I find that the plaintiff has stated facts sufficient to constitute a cause of action in the pleadings filed with this court.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Defendant SCCCL's Motion to Dismiss Plaintiff's Claims under UPTA is DENIED.

IT IS SO ORDERED.

Roger M. Young, Circuit Judge

7/18, 2011
Moncks Corner, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO. 2010-CP-~~10~~-1771 08
NORTH PLEASANT, LLC, AND VANGUARD DEVELOPMENT GROUP, LLC., Plaintiffs vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)))))))))))))	ORDER DENYING IN PART AND GRANTING IN PART THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT

2012 DEC 18 PM 1:12
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

The Defendants filed summary judgment motions on the causes of action of intentional interference with a contractual relationship, intentional interference with prospective contractual relations, and violation of the South Carolina Unfair Trade Practices Act (UTPA).

To establish intentional interference with a contractual relationship the plaintiff must prove: (1) a contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) the damage resulting therefrom. Kinard v. Crosby, 315S.C.237, 433 S.E. 2d 835 (1993).

To establish a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) that the interference caused injury to the plaintiff. Id. While it is not necessary that the interfering party intend harm, it is necessary that he

intend to interfere with a prospective contract. Eldeco, Inc. v. Charleston County Sch. District, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

I have reviewed the filings submitted in support and opposition to these motions, and find the Plaintiffs have provided the Court with the mere scintilla of evidence sufficient to withstand a motion for summary judgment on the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations against the Defendant South Carolina Coastal Conservation League. However, viewed in the light most favorable to the Plaintiffs, the record is devoid of any evidence that the Defendant Beach's actions give rise to him having personal liability for either of these causes of action. Under proper evidence, agents of principals can incur liability for their own tortious conduct for which their principal may incur vicarious liability. As the Court understands it, the Plaintiffs' theory of liability against the Defendant SCCCL rests on the premise that one of the Defendant's employees, Hamilton Davis, was the person who communicated false statements to a company with which the Plaintiffs had contractual relations, either actual or prospective. The evidence which the Plaintiff argues gives rise to Beach's liability consists of him being the head of the SCCCL and a deposition excerpt that shows Beach directed Davis to contact the contracting party. A close reading of that deposition excerpt shows that Beach did not recall conversing with Davis prior to Davis's contact with the contracting party, but he admits that he likely did talk to Davis prior to Davis's conversation with a representative of the contracting party. However, there is no evidence that shows Beach directed Davis to do anything other than contact another party to discuss their potential opposition to a project in their usual course of business, nor,

more importantly, is there any evidence that shows he directed Davis to make the alleged false statements which caused the contracting party to back out of the deal. Therefore, I find the Defendant Beach is entitled to summary judgment on the causes of intentional interference with a contractual relationship and intentional interference with prospective contractual relations.

As to the Plaintiffs' cause of action for a violation of the South Carolina Unfair Trade Practice Act, I find the Defendant SCCCL is a public advocacy group that is not engaged in trade or commerce as defined by S.C. Code Ann. § 39-5-10 (b). That section provides "*"Trade"* and *"commerce"* shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." Nothing in the now completed discovery shows that the activities of the SCCCL as shown in the record make its activities as a public advocacy group fall within this definition in subsection (b). The activities of the SCCCL do not provide its immunity from suit for tortious conduct; however, even the most nefarious acts of the League complained of in this lawsuit, which is essentially that the League extorts money from businesses and developers on behalf of its members and contributors, does not cause a public advocacy group to fall within the definition above. Whether or not they give rise to punitive damages for the remaining causes of actions is not before this Court at this time.

Therefore, IT IS ORDERED

1. That the Defendant South Carolina Coastal Conservation League's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is DENIED; and
2. That the Defendant Edward D. Beach's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is GRANTED; and
3. That both Defendants' motion for summary judgment as to the cause of action for a violation of the South Carolina Unfair Trade Practices Act is GRANTED.

Judge Roger M. Young, Sr.
Circuit Court Judge

12/18, 2012
Myrtle Beach, SC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2010-CP-08-1771
NORTH PLEASANT, LLC, AND VANGUARD DEVELOPMENT GROUP, LLC., Plaintiffs vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	ORDER

2013 MAR -4 PM 3:08

FILED

Both parties filed Motions to Alter or Amend this Court's Order of December 18, 2012, granting in part and denying in part earlier Motions for Summary Judgment.

This Court's Order of December 18, 2012 overlooked ruling on the injurious falsehood cause of action.

The Court meant to deny the Motion for Summary Judgment on the injurious falsehood cause of action as to the Defendant South Carolina Coastal Conservation League and to grant it as to the Defendant Edward D. Beach for the reasoning stated in the Order of December 18, 2012.

All other Motions to Alter and Amend the Order of December 18, 2012 are DENIED.

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

3/8/13 email SEB GTW JAK

2/26, 2013
Charleston, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1771

North Pleasant, LLC and Vanguard Development Group, LLC

PLAINTIFF(S)

S.C. Coastal Conservation League and Edward D. Beach

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Defendant's Abuse of Process claim is dismissed without prejudice. Case is set for trial beginning December 9, 2013.

2013 JUN 18 PM 3:13
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

6/24/13 Emailed SEB GTW JAK CEE WAG

Circuit Court Judge — Judge Code 2173 — Date 6/14/13

SCRCP Form 4C (03/2013)

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No.: **2010-CP-08-1771**
North Pleasant, LLC, Plaintiff, vs. SC Coastal Conesrvation League, Defendant.	)	**ORDER DENYING MOTION TO RECONSIDER**

2014 JAN 17 PM 3:58
MARY A. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

This matter originally came before this Court as a jury trial that was held the week of December 9, 2013 in the Berkeley County Court of Common Pleas. At the close of Plaintiff's case in chief, this Court directed a verdict for the Defendant as to all causes of action. Now comes the Plaintiff's Motion to Reconsider this Court's Order.

STANDARD OF REVIEW

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

Relief from an order or judgment is granted for good cause shown under Rule 60(b) of the South Carolina Rules of Civil Procedure. Grounds for relief include mistake, inadvertence,

1/21/14 Email JAT EB ETW CEK WAS COS JRD

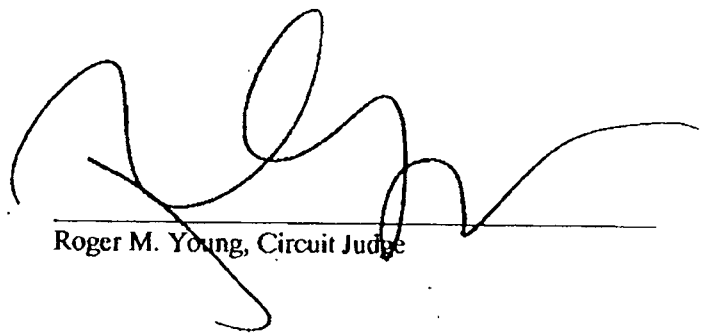
9

surprise, or excusable neglect; misrepresentation or other misconduct of the plaintiff; or void judgment. In determining whether relief should be granted, the court considers the promptness with which relief is sought, reasonable explanations for failing to act promptly, the existence of a meritorious defense, and prejudice to the other parties if relief is granted. S.C. R. Civ. P. 60(b); Mictronics, Inc. v. S.C. Dep't of Revenue. 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).

I have thoroughly considered Plaintiff's motion, supporting material, evidence produced at trial, and arguments and based on the same deny Plaintiff's Motion to Reconsider.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider this Court's December 12, 2013 Order is DENIED.

IT IS SO ORDERED!



January 14, 2014
Berkeley, South Carolina

Roger M. Young, Circuit Judge

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2010-CP-08-1771
NORTH PLEASANT, LLC, AND VANGUARD DEVELOPMENT GROUP, LLC., Plaintiffs vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	ORDER

2013 MAR -4 PM 3:08
FILED
COUNTY PLEAS & COURT
CLERK OF COURT
BERKELEY COUNTY, SC

Both parties filed Motions to Alter or Amend this Court's Order of December 18, 2012, granting in part and denying in part earlier Motions for Summary Judgment.

This Court's Order of December 18, 2012 overlooked ruling on the injurious falsehood cause of action.

The Court meant to deny the Motion for Summary Judgment on the injurious falsehood cause of action as to the Defendant South Carolina Coastal Conservation League and to grant it as to the Defendant Edward D. Beach for the reasoning stated in the Order of December 18, 2012.

All other Motions to Alter and Amend the Order of December 18, 2012 are DENIED.

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

3/8/13 email: SEB GTW JAK

2/26, 2013
Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE 9TH JUDICIAL CIRCUIT CASE NO. 2010-CP-~~10~~-1771 08
NORTH PLEASANT, LLC, AND VANGUARD DEVELOPMENT GROUP, LLC., Plaintiffs vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)))))))))))))	ORDER DENYING IN PART AND GRANTING IN PART THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT

2012 DEC 18 PM 1:12
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

The Defendants filed summary judgment motions on the causes of action of intentional interference with a contractual relationship, intentional interference with prospective contractual relations, and violation of the South Carolina Unfair Trade Practices Act (UTPA).

To establish intentional interference with a contractual relationship the plaintiff must prove: (1) a contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) the damage resulting therefrom. Kinard v. Crosby, 315S.C.237, 433 S.E. 2d 835 (1993).

To establish a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) that the interference caused injury to the plaintiff. Id. While it is not necessary that the interfering party intend harm, it is necessary that he

intend to interfere with a prospective contract. Eldeco, Inc. v. Charleston County Sch. District, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

I have reviewed the filings submitted in support and opposition to these motions, and find the Plaintiffs have provided the Court with the mere scintilla of evidence sufficient to withstand a motion for summary judgment on the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations against the Defendant South Carolina Coastal Conservation League. However, viewed in the light most favorable to the Plaintiffs, the record is devoid of any evidence that the Defendant Beach's actions give rise to him having personal liability for either of these causes of action. Under proper evidence, agents of principals can incur liability for their own tortious conduct for which their principal may incur vicarious liability. As the Court understands it, the Plaintiffs' theory of liability against the Defendant SCCCL rests on the premise that one of the Defendant's employees, Hamilton Davis, was the person who communicated false statements to a company with which the Plaintiffs had contractual relations, either actual or prospective. The evidence which the Plaintiff argues gives rise to Beach's liability consists of him being the head of the SCCCL and a deposition excerpt that shows Beach directed Davis to contact the contracting party. A close reading of that deposition excerpt shows that Beach did not recall conversing with Davis prior to Davis's contact with the contracting party, but he admits that he likely did talk to Davis prior to Davis's conversation with a representative of the contracting party. However, there is no evidence that shows Beach directed Davis to do anything other than contact another party to discuss their potential opposition to a project in their usual course of business, nor,

more importantly, is there any evidence that shows he directed Davis to make the alleged false statements which caused the contracting party to back out of the deal. Therefore, I find the Defendant Beach is entitled to summary judgment on the causes of intentional interference with a contractual relationship and intentional interference with prospective contractual relations.

As to the Plaintiffs' cause of action for a violation of the South Carolina Unfair Trade Practice Act, I find the Defendant SCCCL is a public advocacy group that is not engaged in trade or commerce as defined by S.C. Code Ann. § 39-5-10 (b). That section provides "*"Trade"* and *"commerce"* shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." Nothing in the now completed discovery shows that the activities of the SCCCL as shown in the record make its activities as a public advocacy group fall within this definition in subsection (b). The activities of the SCCCL do not provide its immunity from suit for tortious conduct; however, even the most nefarious acts of the League complained of in this lawsuit, which is essentially that the League extorts money from businesses and developers on behalf of its members and contributors, does not cause a public advocacy group to fall within the definition above. Whether or not they give rise to punitive damages for the remaining causes of actions is not before this Court at this time.

Therefore, IT IS ORDERED

1. That the Defendant South Carolina Coastal Conservation League's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is DENIED; and
2. That the Defendant Edward D. Beach's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is GRANTED; and
3. That both Defendants' motion for summary judgment as to the cause of action for a violation of the South Carolina Unfair Trade Practices Act is GRANTED.

Judge Roger M. Young, Sr.
Circuit Court Judge

12/18, 2012
Summerville, SC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC, Plaintiffs, v. South Carolina Coastal Conservation League and Edward D. Beach, Defendants.	)	Case No.: 2010-CP-08-1771 **SUMMONS** (Jury Trial Demanded)

FILED
2010 MAY 20 AM 9:03
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint upon the subscriber, Stan Barnett, of Smith, Bundy, Bybee & Barnett, P.C., Post Office Box 1542, Mt. Pleasant, South Carolina 29465-1542, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the complaint.

Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Plaintiffs

Mount Pleasant, South Carolina
May 19, 2010

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC, Plaintiffs, v. South Carolina Coastal Conservation League and Edward D. Beach, Defendants.	)	Case No.: 2010-CP-08-1771 **COMPLAINT** (Jury Trial Demanded)

FILED
2010 MAY 20 AM 9:03
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

NOW COMES the Plaintiffs, North Pleasant, LLC and Vanguard Development Group, LLC, who for their Complaint allege as follows:

1. Plaintiff, North Pleasant, LLC ("North Pleasant") is a corporation organized and existing under the laws of the State of Ohio and engaged in the business of real estate purchase, sale and development.

2. Plaintiff Vanguard Development Group, LLC ("Vanguard") is a corporation organized and existing under the laws of the State of South Carolina and engaged in the business of real estate brokerage.

3. Defendant South Carolina Coastal Conservation League ("CCL") is a corporation organized and existing under the laws of the State of South Carolina and engaged in the business of preventing changes in the use of land which are opposed by its clients, those persons and entities who fund the CCL, essentially employing said corporation to stop development projects of which they disapprove, regardless of the legality of such projects.

4. Defendant Edward D. Beach ("Beach") is a citizen and resident of Charleston County and is the chief operating officer and/or chief executive officer and/or the principal of

the CCL and in such capacity is in direct control of all activities of the CCL and its employees and agents.

5. All parties engage in their respective businesses in Berkeley County, S.C.

6. Prior to March 1, 2007, North Pleasant purchased a tract of some 2,600 acres of land in Berkeley County, S.C. located adjacent to Highway 41 and a portion of Tax Map Parcel 240-00-00-001 ("the property").

7. On March 20, 2007, North Pleasant entered into a contract to sell the property to Vanguard Properties of the Carolinas, LLC, a North Carolina corporation for the price of $9,200.00 per acre, a total purchase price of $23,920,000.00.

8. The contract provided an inspection period during which the buyer might review specified materials related to the property and to inspect the property and during which time should the buyer was "not satisfied with any of the matters inspected or reviewed by it", the buyer had the option of terminating the contract.

9. During the inspection period, the buyer, Vanguard Properties, inspected the property and reviewed all materials listed in the contract's inspection period provisions at paragraphs 5 a-d of the contract, and found nothing causing the buyer's principals and representatives to become dissatisfied with the property.

10. Near the end of the inspection period provided by the contract, the buyer, Vanguard Properties, was contacted by a representative and/ or employee of the CCL upon information and belief at the direction of and with the knowledge of Beach who in a series of messages and conversations informed the buyer, upon information and belief, that the CCL would oppose the development of the property planned by the buyer and would aggressively pursue: 1) efforts with adjacent property owners, near-by residents

and its clients to coerce Berkeley County into changing the existing zoning to prohibit the development; and 2) by appealing any and all land use and environmental permits required for the development so as to keep the buyer tied up in court for years.

11. Upon information and belief, the employee/representative of the CCL at the direction of and with the knowledge of Beach also informed the buyer, Vanguard Properties, that they had been successful in coercing another buyer into abandoning a similar development in Berkeley County.

12. Upon information and belief, employees and/or representatives of the CCL at the direction of and with the knowledge of Beach solicited opposition to the development planned by the buyer, Vanguard Properties, by falsely claiming to residents of the area along Highway 41 that the quality of their life would be destroyed by the development and that property taxes on their land would rise to the point that they might not be able to afford to continue to own their homes and their land; said statements being known to have been false when they were made by the CCL employees and/or representatives and made purely for the purpose of frightening and manipulating said residents.

13. Upon information and belief, employees and/or representatives of the CCL at the direction of and with the knowledge of Beach coerced Berkeley County into participating in a meeting with the buyer, Vanguard Properties, in which the County representatives threatened the buyer that together they would never "allow" the buyer to build the development which they planned for the property despite the fact that at that time the development was entirely consistent with all then existing zoning and land use regulations of the County.

14. All of the above described actions by the CCL's employees and/or representatives were taken with the approval of the management of the CCL and of Beach and were actions of the CCL and of Beach.

15. The above described actions by the CCL and Beach were taken as part of a pattern of similar actions taken by the CCL and of Beach with the purpose of coercing prospective buyers intending to pursue development plans of which its clients disapprove to abandon said plans out of a fear of defending lengthy and expensive litigation and of facing improper government opposition engendered by the CCL through threats and the spreading of false and frightening allegations among residents living near said proposed developments. Said similar actions by the CCL and of Beach include, but are not limited to, those directed at a prospective purchaser of land from the White Family in Awendaw, S.C., prospective purchasers of land from the Rawl Family on Johns Island in Charleston County and prospective developers of land in the Plantersville Section of Georgetown County, S.C. Said actions are part of a consistent policy of direct intimidation and threat pursued repeatedly by the CCL and by Beach.

16. As the direct result of the above described actions by the CCL and its employees and/or representatives, all at the direction of and with the knowledge of Beach, the buyer, Vanguard Properties, refused to consummate purchase of the property from North Pleasant and notified North Pleasant of its refusal in a letter from its counsel dated May 25, 2007.

FOR A FIRST CAUSE OF ACTION
(Tortious Interference With Contractual Relations – by North Pleasant)

17. Paragraphs 1-15 are realleged herein.

18. A contract existed between North Pleasant and Vanguard Properties which was valid and enforceable at the conclusion of the inspection period when Vanguard Properties did not discover any fact listed in the contract which caused them to be dissatisfied with the property.

19. The CCL and Beach were aware of the existence of the contract.

20. The CCL and Beach intentionally procured a breach of the contract by Vanguard Properties by the above described threats and intimidation directed at Vanguard Properties, such threats and intimidation being the sole and proximate cause of Vanguard Properties' decision to breach the contract with North Pleasant by refusing to purchase the property.

21. The actions of the CC Land Beach described above were without justification and were taken solely for the purpose of intimidating Vanguard Properties into abandoning plans for a development which was legal, consistent with all existing zoning requirements and other land use regulations, and a lawful use of property. Such actions were taken by the CCL for the wrongful purpose of preventing through the use of threats and intimidation a development of land which was opposed by the clients of CCL

22. The actions of the CCL and Beach were wrongful and constitute tortuous interference with contract for which North Pleasant is entitled to recover its damages consisting of: 1) the sale price of the property, $23,920,000.00 less the current value of the property, which shall be established at trial; 2) transactional costs associated with the contract including, but not limited to, consultant fees, attorneys fees, and the like; and 3) the costs and fees incurred in the pursuit of this matter.

FOR A SECOND CAUSE OF ACTION

(Tortious Interference with Contractual Relations – by Vanguard Development, LLC)

23. Paragraphs 1-21 are realleged herein.

24. A contract existed between North Pleasant and Vanguard Properties which was valid and enforceable at the conclusion of the inspection period when Vanguard Properties did not discover any fact listed in the contract which caused them to be dissatisfied with the property, and such contract included a requirement that Vanguard Development, LLC as the real estate broker for the sale and entitling Vanguard Development to payment of a commission of 3% of the sales price.

25. The CCL and Beach were aware of the existence of the contract and of the broker's commission entitlement.

26. The CCL and Beach intentionally procured a breach of the contract by Vanguard Properties and of the contract with Vanguard Development by the above described threats and intimidation directed at Vanguard Properties, such threats and intimidation being the sole and proximate cause of Vanguard Properties' decision to breach the contract with North Pleasant by refusing to purchase the property.

27. The actions of the CCL and Beach described above were without justification and were taken solely for the purpose of intimidating Vanguard Properties into abandoning plans for a development which was legal, consistent with all existing zoning requirements and other land use regulations, and a lawful use of property. Such actions were taken by the CCL for the wrongful purpose of preventing through the use of threats and intimidation a development of land which was opposed by the clients of CCL

28. The actions of the CCL and Beach were wrongful and constitute tortuous interference with contract for which Vanguard Development is entitled to recover its damages consisting of: 1) the brokerage commission of $717,600.00; 2) transactional costs

associated with the contract including, but not limited to consultant fees, attorneys fees, and the like; and 3) the costs and fees incurred in the pursuit of this matter.

FOR A THIRD CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations – by North Pleasant)

29. Paragraphs 1-27 are realleged herein.

30. In the alternative, North Pleasant and Vanguard Properties would have entered into a valid and binding contract at the conclusion of the inspection period above described but for the above described improper and wrongful actions of the CCL and of Beach.

31. CCL and Beach were aware that such valid and binding contract would have been entered into and that sale of the property pursuant to such contract would have occurred and engaged in the above improper and wrongful conduct specifically for the purpose of threatening and intimidating Vanguard Properties into not consummating the contract with North Pleasant.

32. The actions of the CCL and Beach described above were without justification and were taken solely for the purpose of intimidating Vanguard Properties into abandoning plans for a development which was legal, consistent with all existing zoning requirements and other land use regulations, and a lawful use of property. Such actions were taken by the CCL and Beach for the wrongful purpose of preventing through the use of threats and intimidation a development of land which was opposed by the clients of CCL.

33. The actions of the CCL and Beach were wrongful and constitute tortuous interference with prospective contractual relations for which North Pleasant is entitled to recover its damages consisting of: 1) the sale price of the property, $23,920,000.00 less the current value of the property, which shall be established at trial; 2) transactional costs

associated with the contract including, but not limited to consultant fees, attorneys fees, and the like; and 3) the costs and fees incurred in the pursuit of this matter.

FOR A FOURTH CAUSE OF ACTION
(Tortious Interference With Prospective Contractual Relations – by Vanguard Development, LLC)

34. Paragraphs 1-32 are realleged herein.

35. In the alternative, North Pleasant and Vanguard Properties would have entered into a valid and binding contract at the conclusion of the inspection period above described which would have entitled Vanguard Development, LLC to the above described commission but for the above described improper and wrongful actions of the CCL and Beach.

36. CCL and Beach were aware that such valid and binding contract would have been entered into and that sale of the property pursuant to such contract would have occurred and engaged in the above improper and wrongful conduct specifically for the purpose of threatening and intimidating Vanguard Properties into not consummating the contract with North Pleasant, all with the knowledge that Vanguard Development, LLC would lose its commission as a direct result.

37. The actions of the CCL and Beach described above were without justification and were taken solely for the purpose of intimidating Vanguard Properties into abandoning plans for a development which was legal, consistent with all existing zoning requirements and other land use regulations, and a lawful use of property. Such actions were taken by the CCL and Beach for the wrongful purpose of preventing through the use of threats and intimidation a development of land which was opposed by the clients of CCL and Beach.

38. The actions of the CCL and Beach were wrongful and constitute tortuous interference with prospective contractual relations for which Vanguard Development is entitled to recover its damages consisting of: 1) the brokerage commission of $717,600.00; 2) transactional costs associated with the contract including, but not limited to consultant fees, attorneys fees, and the like; and 3) the costs and fees incurred in the pursuit of this matter.

FOR A FIFTH CAUSE OF ACTION
(Violation of the S.C. Unfair Trade Practices Act)

39. Paragraphs 1-37 are realleged herein.

40. Soliciting and receiving payment for attempting to interfere with or prevent a change in use of real property is a trade or practice within the definition of S.C. Code § 39-5-10, et seq. The CCL and Beach engaged in a trade or practice within the meaning of S.C. Code § 39-5-10, et seq. by accepting payment from its clients as pay for attempting to prevent the development by planned by Vanguard Properties on the property.

41. The CCL's acts and Beach's acts as described above constitute an unfair and deceptive trade practice within the meaning of S.C. Code § 39-5-10, et seq.

42. The CCL's actions and Beach's actions have the capacity for repetition and upon information and belief have been repeated, will be repeated again unless the CCL and Beach are deterred by being held accountable for such actions and have an adverse impact on the public interest of the people of South Carolina by injecting threats, intimidation and deliberate misrepresentations into the realm of commercial real estate transactions.

43. The CCL' actions and Beach's actions have damaged Plaintiffs as described above and entitle Plaintiffs to recover damages from the CCL and Beach for their actual damages, as described above, in an amount to be determined, to have those damages trebled as the CCL's actions and Beach's actions were willful and deliberate, and for the attorneys fees and costs incurred in pursuing this action.

FOR A SIXTH CAUSE OF ACTION
(Injurious Falsehood)

44. Paragraphs 1-42 are realleged herein.

45. The CCL, as described above, and at the direction and with the knowledge of Beach published false statements to residents and landowners and to the county concerning the development planned for the property by Vanguard Properties and such statements were harmful to Plaintiffs as such false statements engendered and aroused opposition to said development and caused Vanguard Properties to abandon their plans for the development and refuse to purchase the property.

46. The purpose of the CCL and its employees and/or representative and of Beach in publishing such false statements was to injure Plaintiffs by causing Vanguard Properties to refuse to purchase the property.

47. The CCL, its employees and/or its representatives and Beach who made said statements knew they were false when they were made.

48. The CCL' actions and Beach's actions have damaged Plaintiffs as described above and entitle Plaintiffs to recover: 1) damages from the CCL and Beach for their actual damages, as described above, in an amount to be determined; 2) an amount of punitive damages sufficient to deter such actions by the CCL and Beach in future, and 3) for the attorneys fees and costs incurred in pursuing this action.

WHEREFORE, Plaintiffs respectfully request that this Court inquire into the matters set forth herein and award them judgment jointly and severally from Defendants:

1. For North Pleasant in the amount of the sales price of the contract, $23,920,000.00 less the present value of the land;

2. For Vanguard Development in the amount of its commission lost by reason of the actions of CCL and Beach in the amount of $717,600.00;

3. Judgment for both Plaintiffs pursuant to the S.C. Unfair Trade Practices Act for the above damages and for treble the amount of each and for their attorneys fees and costs incurred in the pursuit of this matter;

4. Award for both Plaintiffs of an amount of punitive damages sufficient to deter such action by the CCL and Beach in future;

5. Award for both Plaintiffs of their attorneys fees and costs of pursuing this action; and

6. Such other and further relief as this Court may deem just and proper.

Stan Barnett
Ellison D. Smith, IV
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ATTORNEYS FOR PLAINTIFF

May 19, 2010
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771
North Pleasant, LLC and Vanguard Development Group, LLC Plaintiff, vs. South Carolina Coastal Conservation League and Edward D. Beach, Defendants.	))))))))))))	**ANSWER AND COUNTERCLAIM** **(Jury Trial Demanded)**

Defendant South Carolina Coastal Conservation League ("SCCCL") and Defendant Edward D. Beach ("Beach") (collectively "Defendants") hereby answer the Complaint filed by the Plaintiffs by denying each and every allegation of the Complaint not specifically and expressly admitted herein and further respond as follows:

FOR A FIRST DEFENSE

1. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1 and therefore deny the allegations.

2. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2 and therefore deny the allegations.

3. Defendants only admit the portion of paragraph 3 which alleges that SCCCL is a corporation organized and existing under the laws of the State of South Carolina, further alleging it is a not-for-profit corporation qualified

as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code, and deny all remaining allegations.

4. Defendants admit only that portion of paragraph 4 which alleges, or can be construed to allege, that Defendant Beach is a citizen and resident of Charleston County and is the Executive Director of SCCCL, and deny all remaining allegations.

5. As to the allegations of paragraph 5, Defendants admit that their geographic area of concern includes matters in Berkeley County but deny that they conduct for-profit business activities in Berkeley County.

6. Upon information and belief Defendants admit that North Pleasant purchased the property but lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 6 and therefore deny those allegations and demand strict proof thereof.

7. As to the allegations of Paragraph 7, upon information and belief, Defendants admit that North Pleasant was in negotiations with a third party for the sale of all or a portion of the property and may have entered a contract with a third party but lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 7 and therefore deny the allegations and demand strict proof thereof.

8. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 8 and therefore deny the allegations and demand strict proof thereof.

9. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 9 and therefore deny the allegations and demand strict proof thereof.

10. Defendants admit only that portion of paragraph 10 which alleges or can be construed to allege that a representative of SCCCL contacted a representative of Plaintiff Vanguard Development Group, LLC ("Vanguard") to alert Vanguard of the potential change of zoning for the property at issue and deny all remaining allegations.

11. Defendants deny the allegations of paragraph 11.

12. Defendants deny the allegations of paragraph 12.

13. Defendants deny the allegations of paragraph 13.

14. Defendants deny the allegations of paragraph 14.

15. Defendants deny the allegations of paragraph 15.

16. Defendants deny the allegations of paragraph 16.

17. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 17.

18. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 18 and therefore deny the allegations.

19. Defendants deny the allegations of paragraph 19.

20. Defendants deny the allegations of paragraph 20.

21. Defendants deny the allegations of paragraph 21.

22. Defendants deny the allegations of paragraph 22.

23. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 23.

24. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 24 and therefore deny the allegations.

25. Defendants deny the allegations of paragraph 25.

26. Defendants deny the allegations of paragraph 26.

27. Defendants deny the allegations of paragraph 27.

28. Defendants deny the allegations of paragraph 28.

29. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 29.

30. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 30 and therefore deny the allegations.

31. Defendants deny the allegations of paragraph 31.

32. Defendants deny the allegations of paragraph 32.

33. Defendants deny the allegations of paragraph 33.

34. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 34.

35. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 35 and therefore deny the allegations

36. Defendants deny the allegations of paragraph 36.

37. Defendants deny the allegations of paragraph 37.

38. Defendants deny the allegations of paragraph 38.

39. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 39.

40. Defendants deny the allegations of paragraph 40.

41. Defendants deny the allegations of paragraph 41.

42. Defendants deny the allegations of paragraph 42.

43. Defendants deny the allegations of paragraph 43.

44. Defendants repeat and reallege their previous responses to the paragraphs repeated in paragraph 44.

45. Defendants deny the allegations of paragraph 45.

46. Defendants deny the allegations of paragraph 46.

47. Defendants deny the allegations of paragraph 47.

48. Defendants deny the allegations of paragraph 48.

49. Defendants deny the allegations of the unnumbered paragraph which follows paragraph 48 including all numbered subparts.

FOR A SECOND DEFENSE

50. The Plaintiffs' claims are barred under the doctrines of absolute and qualified immunity.

FOR A THIRD DEFENSE

51. The Plaintiffs' claims are barred under the doctrines of absolute and qualified privilege.

FOR A FOURTH DEFENSE

52. The Plaintiffs' claims against the Defendants are barred and or limited under the common law and statutory doctrine of charitable immunity including, but not limited to, S.C. Code Ann. § 33-56-180.

FOR A FIFTH DEFENSE

53. One or more of the Plaintiffs' claims are barred by the defenses of truth and justification.

FOR A SIXTH DEFENSE

54. The actions of the Defendants constitute protected speech under the First Amendment to the United States Constitution and under any parallel provisions of the Constitution of the State of South Carolina.

FOR A SEVENTH DEFENSE

55. The alleged damages to Plaintiffs, if any, were proximately caused by the intervening acts and superseding conduct of other persons.

FOR AN EIGHTH DEFENSE

56. The Plaintiffs claims are barred by the applicable statute of limitations and under the doctrine of laches.

FOR A NINTH DEFENSE

57. The Plaintiffs have failed to mitigate their damages.

FOR A TENTH DEFENSE

58. Upon information and belief the Plaintiff North Pleasant has sold portions of the property. Defendants are entitled to a setoff or credit for the full amount of any sales of portions of the property.

FOR AN ELEVENTH DEFENSE

59. The Plaintiffs' claims are barred under the doctrine of unclean hands.

FOR A TWELFTH DEFENSE

60. If the acts of the Defendants had anything to do with the failure of the Plaintiffs to sell the property to Vanguard Properties, which is expressly denied, such acts combined and concurred with the acts of the Plaintiffs, which were more significant than those of the Defendants, and the Plaintiffs' claims are barred by their comparative conduct including but not limited to comparative negligence.

FOR A THIRTEENTH DEFENSE

61. Plaintiffs' claims are barred under the doctrines of waiver and estoppel.

FOR A FOURTEENTHTH DEFENSE

62. One or more of the Plaintiffs' claims are barred because the complained-of acts have no impact on the public interest.

FOR A FIFTEENTH DEFENSE

63. One or more of the Plaintiffs' claims are barred because Defendants had no intent to harm the Plaintiffs.

FOR A SIXTEENTH DEFENSE

64. One or more of the Plaintiff's claims are barred because, upon information and belief, there was no breach of the contract by the contract purchaser or prospective contract purchaser.

FOR A SEVENTEENTH DEFENSE

65. The claims against Defendant Beach fail as Defendant Beach did not direct, control or authorize any tortious activity.

FOR AN EIGHTEENTH DEFENSE

66. One or more of the claims against Beach fail to state facts sufficient to constitute a cause of action against Beach.

FOR A NINETEENTH DEFENSE

67. The actions of the Defendants were lawful, conducted in good faith, and without malice.

FOR A TWENTIETH DEFENSE AND FIRST COUNTERCLAIM

68. Defendants reallege their previous allegations.

69. Defendant SCCCL is a non-profit, member, environmental advocacy organization whose activities include, but are not limited to, evaluating, commenting upon, and sometimes challenging projects.

70. This lawsuit is known as a SLAPP suit that is brought for the purpose of stifling and chilling legally valid actions of non-profit groups.

71. This suit is without legal and factual basis and is being brought for the ulterior purpose of harming and intimidating the Defendants by subjecting them to litigation for their lawful activities in an effort to intimidate them and wear them down in an effort to force them to cease their public advocacy.

72. The Defendants have suffered damages as a direct and proximate result of the Plaintiffs' abuse of process, and Defendants are entitled to

judgment against Plaintiffs for an appropriate amount of actual and punitive damages.

FOR A TWENTY-FIRST DEFENSE AND SECOND COUNTERCLAIM

73. The Defendants reallege their previous allegations.

74. There is no reasonable basis for Plaintiffs' claims which are frivolous.

75. Defendants are entitled to judgment against the Plaintiffs for their attorneys' fees, costs, and expenses in defending this suit under the South Carolina Frivolous Proceedings Act.

WHEREFORE, Defendants pray that the Complaint and all causes of action therein be dismissed with prejudice, that they be awarded judgment on their counterclaims, and that the Court award them such further and other relief as is just and proper.

BY: _____

G. Trenholm Walker
Jamie A. Khan
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2200
ATTORNEYS FOR DEFENDANTS

July 19, 2010

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 19th day of July, 2010, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC, Plaintiffs, v. South Carolina Coastal Conservation League and Edward D. Beach, Defendants.	)	Case No.: 2010-CP-08-1771 **REPLY TO COUNTERCLAIM**

FILED
2010 JUL 27 AM 11:30
MARY B. WOOD
CLERK OF COURT
BERKELEY COUNTY, S.C.

NOW COMES the Plaintiffs, North Pleasant, LLC and Vanguard Development Group, LLC, who for their reply to Defendants' counterclaim allege as follows:

1. All allegations not specifically admitted or denied are hereby denied.
2. Paragraphs 1-67 are responsive and do not require a response.
3. Paragraphs 68 and 73 do not require a response.
4. Paragraphs 69 -70 are denied.
5. Paragraphs 74 and 75 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

6. Paragraphs 1-5 are realleged herein.
7. Defendants have failed to set forth allegations sufficient to establish any cause of action including those asserted in their first and second counterclaims.
8. Defendants' counterclaims should be dismissed pursuant to S.C.R.C.P. 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE

9. Paragraphs 1-8 are realleged herein.

10. The causes of action asserted by Defendants, which although unnamed, appear to be for abuse of process and frivolous proceedings, can not arise unless and until Defendants prevail as to the claims brought against them by Plaintiffs.

11. Defendants have not prevailed as to the claims brought against them by Plaintiffs, and, therefore, do not have claims for either cause of action asserted by them in their first and second counterclaims.

FOR A THIRD AFFIRMATIVE DEFENSE

12. Paragraphs 1-11 are realleged herein.

13. The claims asserted by Plaintiffs are meritorious, are supported by facts giving rise to probable cause to believe that Defendants are liable as to each such claim, and were asserted in good faith and on the advice or counsel.

NOW THEREFORE, having responded to the counterclaims of the Defendants, Plaintiffs request this Court to inquire into the matters set forth herein and dismiss the counterclaims of the Defendants and award them their costs incurred in the defense of such counterclaims and such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Boulevard
Suite 100, Building F
Mount Pleasant, South Carolina 29464
(843)881-1623
(843)881-4406 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

July 26, 2010
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Cindy Glover, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that a true and correct copy of the Reply to Counterclaim was served on the undersigned party by depositing a copy of same in the United States Mail, postage prepaid, first class, this 27th day of July, 2010, addressed as follows:

FILED
2010 JUL 27 AM 11:30
CLERK OF COURT
BERKELEY COUNTY, SC

G. Trenholm Walker, Esquire
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413

Cindy Glover

Cindy Glover

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771
NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC, Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: SMITH BUNDY BYBEE & BARNETT, ATTORNEYS FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned attorneys, will move, ten days after the service of this motion or as soon thereafter as counsel may be heard, before the presiding judge for the Court of Common Pleas for Berkeley County for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendants South Carolina Coastal Conservation League ("SCCCL") and Edward D. Beach ("Beach") (collectively "Defendants") summary judgment on Plaintiffs' cause of action under the South Carolina Unfair Trade Practices Act (the "Act") on the grounds that Plaintiffs' claim under the Act fails as a matter of law. The Plaintiffs cannot establish the essential elements for recovery under the Act including, but not limited to, establishing that the Defendants sell goods or are otherwise engaged in commerce or trade. SCCCL is a non-profit organization. Beach is the executive director. Further Beach cannot be held liable as an individual under the Act.

This motion is based on the pleadings, the discovery, and the applicable law.

BY: _____

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ATTORNEYS FOR DEFENDANTS

May 26, 2011

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 26th day of May, 2011, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO : 2010-CP-08-1771
NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC, Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)))))))))))	**DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: SMITH BUNDY BYBEE & BARNETT, ATTORNEYS FOR PLAINTIFFS:

The Defendants South Carolina Coastal Conservation League ("SCCCL") and Edward D. Beach ("Beach"), through their undersigned attorneys, hereby file and serve this Memorandum in Support of its Motion for Partial Summary Judgment.

For the reasons set forth in this Memorandum as well as the arguments to be presented by counsel, there are no genuine issues of material fact and SCCCL is entitled to judgment in its favor as a matter of law on Plaintiffs' cause of action for a violation of the S.C. Unfair Trade Practices Act. In support of their motion SCCCL and Beach have submitted the Affidavit of Beach.

Background Facts

Defendant SCCCL is a non-profit environmental advocacy organization which does not engage in any trade, sale, or commerce. Defendant Beach is SCCCL's executive director and has been since 1989. SCCCL is an environmental advocacy organization comprised of thousands of members. Among other things, SCCCL evaluates, comments on, and at times may challenge development in the coastal area

of South Carolina for any number of reasons including perceived violations of federal, state or local law or perceived adverse effects on the natural resources and communities of South Carolina.

The Plaintiffs sued SCCCL and Beach for allegedly interfering with a contract of Plaintiff North Pleasant to sell a large tract in Berkeley County in the middle of the Francis Marion National Forest known as the "Keystone Tract." The prospective contract purchaser decided to exercise its right to terminate the purchase contract and did not close. Plaintiffs sued SCCCL and Beach one day short of three years after the prospective purchaser terminated the contract.

Plaintiffs allege that an employee of SCCCL called the prospective purchaser while the land was under contract and told it that SCCCL did not support the development plan and that SCCCL would oppose this development plan.

SCCCL and Beach seek summary judgment only as to the cause of action for violation of the S.C. Unfair Trade Practices Act ("UTPA"). The UTPA cause of action fails as a matter of law against SCCCL and Beach because 1) SCCCL does not engage in trade or commerce as defined in the UTPA, which is a prerequisite for liability under the UTPA; 2) the alleged actions of SCCCL are lawful, not unfair and not deceptive, and 3) the alleged actions are a single isolated occurrence between the parties (an alleged private wrong) which is not actionable under the UTPA.

I. DEFENDANT SCCCL DOES NOT ENGAGE IN "TRADE" OR "COMMERCE" AND, THEREFORE, CAN NOT BE LIABLE UNDER THE UTPA.

A prerequisite for liability under the UTPA is that the defendant engages in "unfair methods of competition or unfair or deceptive acts or practices *in the conduct of any*

trade or commerce," as defined in the UTPA. S.C. Code Ann. §39-5-20(emphasis added). The intent of the UTPA is to control and eliminate the large scale use of unfair and deceptive trade practices within the State of South Carolina for those engaged in trade or commerce as defined in the UTPA. Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 477, 351 S.E.2d 347, 349 (1986). If one does not engage in trade or commerce, as defined in the UTPA, the UTPA is inapplicable to the conduct, even if such conduct is unfair or deceptive.

The UTPA is set forth in S.C. Code Ann. §39-5-10 et seq. Under S.C. Code Ann. §39-5-20(a), "unfair or deceptive acts or practices in the conduct of any trade or commerce are...declared unlawful." The terms "trade" and "commerce" are defined by Section 39-5-10(b) as:

> **the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate and shall include any trade or commerce directly or indirectly affecting the people of this State.**

S.C. Code Ann. §39-5-10(b)(emphasis added), Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 476-477, 351 S.E.2d 347, 348 (1986).

Actions not taken in the conduct of trade or commerce as defined by S.C. Code Ann. §39-5-10(b) are beyond the reach of the UTPA. Foggie v. CSX Transportation, Inc., 315 S.C. 17, 24, 431 S.E2d 587, 591 (S.C. 1993), Moore v. Williamsburg Regional Hosp., 560 F.3rd 166, 178, (4th Cir. 2009). In Moore, the Court held that Williamsburg Regional Hospital's actions against the plaintiff with respect to a peer review action based on allegations that he sexually assaulted a child "did not occur in the conduct of advertising, offering for sale, sale or distribution of any services and any property...and

other...thing of value" and therefore, the claim based on the UTPA failed against the hospital. Moore at 178.

In CSX, the Court held that the action of CSX in removing a railroad crossing that gave the plaintiff access to both sides of his property, and the failure of CSX to re-install the crossing was not "in the conduct of trade or commerce" within the meaning of the UTPA. CSX at 591. The Court determined that the action of CSX was not within the meaning of "advertising, offering for sale, sale or distribution of any services and any property...and any other...thing of value." Id.

SCCCL does not advertise, offer, sell or distribute any services or property or any other thing of value or commodity. See Affidavit of Beach. Furthermore, there is no genuine issue of material fact as to whether SCCCL advertised, offered, sold or distributed services or property or any other thing of value to the Plaintiffs or any other third-party with respect to the facts of this case. A telephone call to the prospective purchaser, as alleged by Plaintiffs, is not "trade" or "commerce" as defined in the UTPA. For these reasons, the UTPA is inapplicable to SCCCL and to the alleged actions of SCCCL in this case. SCCCL and Beach are entitled to judgment as a matter of law on this cause of action.

II. SCCCL AND BEACH DID NOT ENGAGE IN ANY UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS AND THE ALLEGED ACTS ARE LAWFUL PERMITTED ACTS.

Another prerequisite to liability under the UTPA is that the defendant engage in "*unfair methods of competition or unfair or deceptive acts or practices* in the conduct of any trade or commerce. S.C. Code Ann. §39-5-20(emphasis added). First, SCCCL is not in competition with either of the Plaintiffs. Nor do Plaintiffs allege that anything

unfair or deceptive occurred in the telephone conversation. To the contrary, the telephone message, even if it occurred, was accurate. This telephone call even if it occurred is not, as a matter of law, deceptive or unfair.

Furthermore, the UTPA exempts an entity from liability under the Act if the alleged conduct is *lawful* or action permitted under the laws administered by a regulatory body. S.C. Code Ann. §39-5-40; Dema v. Tenet Physician Services-Hilton Head, Inc. 383 S.C. 115, 678 S.E.2d 430, 435 n. 6 (2009)(emphasis added). There is nothing unlawful about opposing the approval of a development through lawful means or by the means permitted by a regulatory body such as the South Carolina Department of Health and Environmental Control ("DHEC") or a local zoning body such as Berkeley County. These regulatory bodies allow and provide for such action under the laws administered by them. See S.C. Code Ann. §44-1-20 et seq.; S.C. Code Ann. §44-1-60 with respect to DHEC; Article XII of Land Development and Subdivision Regulations for Berkeley County.

For these additional reasons, summary judgment should be granted in favor of SCCCL and Beach.

III. THE ACTIONS ALLEGED AGAINST SCCCL AND BEACH ONLY AFFECT THE PARTIES TO THE TRANSACTION AND IS THEREFORE A PRIVATE WRONG NOT ADDRESSABLE BY THE UTPA.

Matters affecting only the parties to a particular transaction are beyond the scope of the UTPA. The actions alleged to have taken place in this case affect only the Plaintiffs and nobody else. For this reason, SCCCL and Beach are entitled to judgment as a matter of law on the UTPA cause of action.

Activity that affects only the parties to a single transaction is beyond the reach of the UTPA. "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace and we so hold." Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 479-480, 351 S.E.2d 347, 349-350 (1986). The UTPA is not available to redress a private wrong where the public interest is unaffected. Id. at 350.

Conduct which only affects the parties to the transaction provides no basis for a UTPA claim. Jefferies v. Phillips, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994). In Jefferies, the Court held:

> Without proof of specific facts disclosing that...members of the public were adversely affected by [the unfair conduct] or that they were likely to be, all we are left with is a 'speculative [claim] of adverse public impact' and that will not suffice for recovery under the UTPA.

Jefferies at 23(internal citations omitted).

In this case, there is no evidence that anyone beyond the parties to this particular transaction were affected by the telephone call or other actions of the Defendants involving this tract of land. Therefore, the alleged action is plainly an alleged private wrong to which there can be no recovery under the UTPA. For this additional reason, SCCCL and Beach are entitled to judgment as a matter of law on the Plaintiffs' cause of action for a UTPA violation.

CONCLUSION

For the above reasons, SCCCL and Beach are entitled to judgment as a matter of law on the Plaintiffs' claims against them for violations of the S.C. Unfair Trade Practices Act.

BY: _____

G. Trenholm Walker
Jamie A. Khan
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
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ATTORNEYS FOR DEFENDANTS

June 20th, 2011

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 20th day of June, 2011, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771
NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC. Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D BEACH, Defendants.	)	**EDWARD D. BEACH'S AFFIDAVIT IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Personally appearing before me, Edward D. Beach, first being duly sworn, deposes and says:

1. My name is Edward D. Beach and I am over the age of eighteen (18) years of age and competent to make this Affidavit.
2. The items set forth in this Affidavit are made from my personal knowledge.
3. I am the Executive Director of the South Carolina Coastal Conservation League ("SCCCL") and have been since I founded the organization in 1989.
4. SCCCL is a non-profit public interest environmental organization which is dedicated to promoting appropriate development in the coastal plain of the State of South Carolina and protecting the cultural and natural resources of the State of South Carolina.
5. SCCCL evaluates, comments on and promotes projects which are consistent with state and federal law and regulations and which advance

and protect the cultural and natural resources of the State of South Carolina

6. At times, SCCCL publically opposes development and projects not consistent with these same principals.
7. SCCCL and its mission are funded by donations of its members and donors.
8. SCCCL is not engaged in any trade or commerce in the State of South Carolina SCCCL is a non-profit organization which does not advertise, sell, offer to sell, nor distribute <u>any</u> services or property, tangible or intangible nor any other commodity or thing of value.
9. SCCCL did not advertise, solicit or otherwise collect funds for the opposition of the development at issue in this case.

FURTHER AFFIANT SAYETH NAUGHT

Edward D. Beach

Edward D. Beach

SWORN to before me this [illegible] day

of [illegible]

[illegible]

Notary Public for South Carolina
My Commission Expires: [illegible]

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s) in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this ____ day of _____, 2011 in Charleston, South Carolina

_____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC Plaintiffs, v. South Carolina Conservation League and Edward D. Beach, Defendants.	)))))))))))	CASE NO.: 2010-CP-08-1771 **MEMORANDUM IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN SUPPORT OF MOTION TO COMPEL**

FILED
2011 JUN 20 PM 1:22
CLERK OF COURT
BERKELEY COUNTY, S.C.

INTRODUCTION

This case arises out of the effort of Plaintiffs, the owner of property and the owners' realtor, to sell a large tract of property in Berkeley County along Highway 41, the Keystone Tract, to a buyer intending to develop the property for residential purposes consistent with existing county zoning requirements. Prior to closing on the sale, Defendants communicated threats to the buyer, specifically that they would initiate and continue legal challenges to any residential development, thereby reducing the buyer's chances of realizing a profit on the proposed project. As a result, the buyer did not close on the sale in breach of the contract of sale.

Plaintiffs allege in their complaint that Defendants tortuously interfered with the contract of sale, or in the alternative, with a prospective contract of sale for the property. Plaintiffs also allege that Defendants injured them by publishing and spreading injurious falsehoods concerning the affects the proposed development would have on neighboring property owners. Finally, and most significant for the pending motions to compel and for partial summary judgment, Plaintiffs allege that Defendants actions constitute an unfair trade practice in violation of S.C. Code 39-5-10, et seq. ("UTPA"). Specifically,

Plaintiffs allege that Defendants are engaged in providing a service for pay. It is alleged in the complaint that large payments are made to the S.C. Coastal Conservation League for the purpose of securing the League's services in opposing development projects the contributors oppose (or in some cases for the League's services in assisting the contributor in securing regulatory approval of a project of the contributor). Further, it is alleged that the League provides this service in many instances through the use of unfair and deceptive practices as defined by the statute and that these practices have an adverse impact on the public interest. The complaint specifically pleads punitive damages for violation of the UTPA and for the intentional torts.

In an effort to develop the facts related to these allegations, Plaintiffs served Defendants with interrogatories and requests to produce on September 9, 2010. On February 7, 2011, Defendants responded to this discovery with some information and some documents but refusing to provide any information concerning contributors to the League, their finances, or any project other than the Keystone Tract and the contract for its sale by Plaintiffs. Defendants maintain in their objections that this information is not subject to discovery and is unduly burdensome and intrusive.

After failing to resolve the discovery issue with Defendants, Plaintiff moved to compel full responses to all discovery requests on May 9, 2011. Defendants moved for a partial summary judgment as to the claim in the UTPA, maintaining that the League does not engage in trade or commerce and that Dana Beach can not be liable individually under the Act as he is the managing director of the League.

SUMMARY JUDGMENT IS NOT PROPER AS DISCOVERY IS NOT FINISHED

Discovery in this case is far from complete. Indeed, in large part, Defendants have simply refused to comply with proper discovery requests. They have refused to answer any discovery request that might lead to evidence revealing their violation of the UTPA and have moved to quash any subpoena to third parties that might reveal such evidence. Our courts have adopted the common sense rule that until discovery is complete in a given case, summary judgment is not proper. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct.App. 2005), "Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery." As Plaintiff have not had the opportunity to complete discovery, summary judgment is not proper.

BEACH CAN BE INDIVIDUALLY LIABLE FOR HIS ACTIONS

In BPS, a case involving a claim under the UTPA, the Court of Appeals held that corporate officers are individually liable for unfair competition in which they participate. 608 S.E.2d at 328. Therefore, Beach can be liable for a violation of the Act if he personally participated in the acts which constitute the violation. As noted above, discovery must be allowed to develop the nature and extent of his actions.

THE LEAGUE CAN BE LIABLE UNDER THE UTPA

Defendants' motion seems to be based on the erroneous notion that the League is somehow immune from liability under the UTPA. If the League is engaged in providing a service and it performs that service through the use of unfair or deceptive practices, it is liable under the Act regardless of its non-profit status or its self proclaimed status as a "public interest" organization.

The UTPA has been held to extend to the provision of services and not just to the sale of merchandise. Taylor v. Mdenica, 324 S.C. 200, 429 S.E. 2d 35 (1996). There is no exception in the statute for non-profit status of a defendant otherwise in violation of its prohibitions. S.C. Code 39-5-40.

THERE ARE FACTS INDICATING THE LEAGUE PROVIDES THE SERVICES ALLEGED

Despite the refusal of the League to engage in proper discovery, there is a factual record giving rise to a genuine issue of material fact – the requisite "scintilla of evidence" – which makes summary judgment as to the UTPA improper. Howle v. Woods, 231 S.C. 75, 97 S.E. 2d 205 (1957). The materials provided in opposition to the motion for partial summary judgment reveal more than the required scintilla of evidence, particularly at this stage of the proceeding in which the League has failed to properly respond to discovery.

The affidavits of Christopher Donato and Bradley Schrum show that the League routinely employs threats and litigation to drive up costs of proposed development to the point that developers abandon the plans opposed by the League's contributors. The testimony of Nancy Vinson and the ALC order in S.C.C.C.L. v. D.H.E.C. show that the League provides support for projects it would otherwise oppose when those projects are being carried out by a large contributor, in that case also a League Board member. Mr. Beach's deposition testimony in the case of Spectre v. DHEC, shows that, as of the year it was taken – 2007 – the League received nearly half of its funding from large contributors and most of the rest from grants. It is not, therefore, an organization responding to the "public" but to a small groups of wealthy contributors for whom it provides services related either to the support or opposition of specific projects of interest to those contributors. In this way, it is little different from a consulting firm. The issues

the League pursues with respect to land development are essentially related to competing goals for land use. In its case, the competition is for regulatory support and ultimately for control of the use of land – either through successfully lobbying for the denial of needed government approvals or through protracted litigation designed to drive up the costs of a project to unprofitable levels, thereby killing a project by other means.

The letter from Governor Sanford to the Plaintiff seller of the property at issue shows that the League and a number of its large contributors were preparing to inflict the same type of harm as described by Donato and Schrum in their affidavits. By directly threatening the buyer with financial harm, the Defendants committed an act little different from many violations of the UTPA. Just as the law forbids destroying a competitors' service vehicle, it also forbids procurement of the breach of a contract by threats and intimidation. Both are unfair and immoral acts which, when undertaken with respect to commerce, constitute a violation of the UTPA.

PLAINTIFFS' DISCOVERY REQUESTS ARE PROPER

Plaintiffs' causes of action include a request for punitive damages. To establish entitlement to any particular level of punitive damages, a plaintiff must establish the net worth of a defendant so as to allow the trier of fact to determine his ability to pay. Gamble v. Stevenson, 406 S.E.2d 350 (1991). The questions concerning Defendants' finances are, therefore, proper and essentially the only way to develop proof of the ability to pay a verdict for punitive damages.

The remaining categories of objections raised by Defendants is to any request directed at: 1) the actions of the Defendants generally as reflected in disputes other than the sale of Plaintiff's land which gave rise to this case; and 2) the relationship between

Defendants and the Leagues' large contributors. These categories of information go directly to the heart of the UTPA cause of action. The capacity for repletion is one way to establish the public affect element of a UTPA cause of action. Similar actions is the most frequently employed means of proof of the capacity of repetition. If the Defendants are allowed simply to proclaim that their actions are purely in the public interest and Plaintiffs are not to be permitted to inquire into the very basis of the allegations against them, Plaintiffs will quite simply have been denied full and fair access to the court for redress of the grievance visited on them by Defendants. That is precisely what Defendants seek in their refusal to engage in discovery as well as in their claim that "as a matter of law" they are immune from liability for their actions under the law of this State.

Plaintiffs respectfully request that Defendants be ordered to provide full responses to all discovery requests served on them by Plaintiffs within a reasonable time and that the Defendants' motion to quash the subpoenas by Plaintiffs be denied as well so that discovery can be conducted fully and fairly in this case.

CONCLUSION

Plaintiffs respectfully request that the Defendants' motion for partial summary judgment be denied as well as their motion to quash subpoenas served by Plaintiffs and that Plaintiffs' motion to compel full discovery by Defendants be granted.

Respectfully submitted,

Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Boulevard
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(843)881-1623
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ATTORNEYS FOR PLAINTIFFS

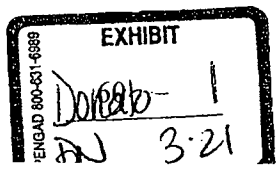
June 20, 2011
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC Plaintiffs, v. South Carolina Conservation League and Edward D. Beach, Defendants.	))))))))))))	CASE NO.: 2010-CP-08-1771

AFFIDAVIT OF CHRISTOPHER DONATO

Having been sworn, the Affiant, Christopher Donato, testified as follows:

1. I am Christopher Donato a resident of Charleston County.
2. For 37 years I have been engaged in the business of real estate appraisal. In addition, I have participated as an investor and partner in development and sale of real estate in the Charleston Metropolitan Area.
3. In 2006, I entered into a partnership with Mike Tawes and others for the purpose of purchasing and developing a tract of approximately 60 acres in Awendaw, S.C. on the Atlantic Intracoastal Waterway. At the time, the property was zoned by the Town of Awendaw for development with a density of one residence per acre.
4. My partners and I engaged various consultants to prepare studies needed to secure permitting from state and federal agencies and applied for those permits and for approval from the Town of Awendaw.
5. The Town approved our development. The OCRM Division of S.C.D.H.E.C. was required to issue a storm water permit pursuant to State law and required considerable information as part of the review of our permit application related to impacts to wetlands



and to archeological resources. We complied with all of their requests and agreed to expensive and significant mitigation as a condition for that agency's approval, including various limitations on the development to insure protection of a Native American shell ring on an island across a tributary of the Intracoastal Waterway from our development.

6. Shortly before OCRM issued our permit in 2007, I received a call from Jane Lareau on behalf of the S.C. Coastal Conservation League who asked to meet with myself and Mr. Tawes at the offices of our engineers, Seamon and Whitesides in Mount Pleasant. We met with her soon thereafter at which time she informed us that the League was very concerned with our development because the density was too great. She said the League and its members believed that the proper density should be no more than on residence per 10 acres and that the Town of Awendaw was simply wrong in allowing a greater density. We informed her that the development would not be profitable at that density. Ms Lareau suggested we talk to Noel Thorn and Mike Prevost whom she said had experience in making less dense developments profitable.

7. My partner and I met with Mr. Thorm and Mr. Prevost soon after our discussion with Ms Lareau. As I recall, both men were associated with the Nature Conservancy. At no time during our meeting did either gentleman mention making a less dense development profitable. The sole thing they told us was that the League and its members were opposed to our development and that they intended to sue us over it. They hammered this message – that if we did not make the changes they wanted, the League would take

us to court to increase our costs so much, to "get into our pockets", that we would never make any money on the development.

8. When we asked Mr. Thorn and Mr. Prevost why the League would do this, they answered that "this is what they do", referring to the League. They said they use the court system to drive people broke who do not do as they demand. There was no question in my mind after this meeting that Mr. Thorn and Mr. Prevost were speaking for the League and were communicating a direct threat to us from the League.

9. Soon after our meeting with Mr. Thorn and Mr. Prevost, we received our storm water permit from OCRM. The League appealed issuance of the permit to the S.C. Administrative Law Court not based on density of the development, but claiming that there would be harm to atmosphere for those visiting the shell ring across the Waterway. Attached to their appeal was a letter from a gentleman claiming to be an expert comparing the shell ring to the Great Pyramids of Ancient Egypt.

10. Despite what we believed to be a lack of any merit in the League's challenge to our permit, after pursuing the case through discovery, the costs of carrying the loan for the development for such a long period beyond the time we had expected to complete the project grew too large. Just as Mr. Thorn and Mr. Prevost said they would do, the League drove us "broke" as far as the project was concerned. When we were approached by the Charleston County Parks and Recreation Department, we agreed to a sale of the

property for a payoff of the mortgage. We lost our entire equity in the project of $200,000. My personal loss was $40,000.

FURTHER AFFIANT SAYETH NOT.

CHRISTOPHER DONATO

SWORN TO before me this
13th day of June 2011

Cindy M. Bloser
Notary Public for South Carolina
My Commission expires 10/10/13

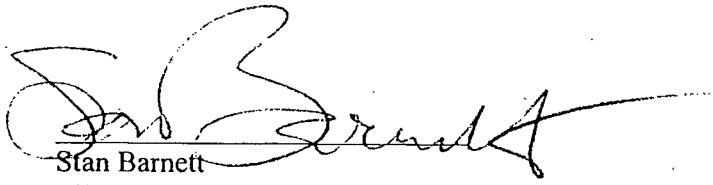
STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC Plaintiffs, v. South Carolina Conservation League and Edward D. Beach, Defendants.	)	CASE NO.: 2010-CP-08-1771

FILED
2011 JUN 15 AM 9:57
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

PLAINTIFFS' MATERIALS IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Attached are materials in opposition to the Motion for Partial Summary Judgment filed by Defendants.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFFS

June 15, 2011
Mount Pleasant, South Carolina

1 STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
2

3 DEPOSITION OF RICHARD CHINNIS

4

5 SPECTRE, LLC,

6 Petitioner,
vs. DOCKET NO. 06-ALJ-07-0711-CC
7

8 SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL, LEAGUE OF WOMEN VOTERS OF GEORGETOWN COUNTY,
9 SOUTH CAROLINA WILDLIFE FEDERATION, LEAGUE OF WOMEN
VOTERS OF SOUTH CAROLINA, SOUTH CAROLINA COASTAL
10 CONSERVATION LEAGUE, and LEAGUE OF WOMEN VOTERS OF THE
CHARLESTON AREA,
11
Respondents.
12

---

13 DEPONENT: RICHARD CHINNIS

14 COPY

15 DATE: JANUARY 22, 2007

16

17 TIME: 11:00 A.M.

18

19 LOCATION: SMITH, BUNDY, BYBEE & BARNETT
1037 Chuck Dawley Boulevard
20 Building F, Suite 100
Mount Pleasant, South Carolina 29465
21

22

23 REPORTED BY: DENISE MCCAULEY, RPR, IA-CSR, GA-CCR
CLARK & ASSOCIATES
24 P.O. Box 73129
North Charleston, South Carolina 29422
25 (843)762-6294

1 (The deposition commenced without Mr. Holmes
2 present.)
3 RICHARD CHINNIS,
4 having been duly sworn, was examined and testified as
5 follows:
6 EXAMINATION
7 BY MR. SMITH, at 11:15 a.m.:
8 Q. Richard, I'm obligated to give you a certain
9 amount of information before we start. This is a
10 deposition being taken pursuant to the ALC court rules
11 and the rules of South Carolina Rules of Civil
12 Procedure.
13 If you don't understand a question that I
14 ask -- and I'm capable of asking questions that are
15 non-sensical -- you need to let me know, and I'll
16 rephrase it, because the purpose of this is for us to
17 communicate and for me to get the facts that I'm
18 interested in trying to develop.
19 A. I understand.
20 Q. You've had your deposition taken before?
21 A. Yes.
22 Q. You've testified in court before under oath?
23 A. Yes.
24 Q. How many times roughly?
25 A. A hundred or so.

1 Q. Your full name is?

2 A. Richard Albert Chinnis, C-H-I-N-N-I-S.

3 Q. Your address is?

4 A. 3165 Stanyarne S-T-A-N-Y-A-R-N-E Drive,

5 Charleston, 29414.

6 Q. And your educational background briefly?

7 A. I have a B.A. in history.

8 Q. You're appearing here under subpoena; is

9 that correct?

10 A. Yes.

11 Q. Until 2005, December of 2005, you were the

12 permit administrator of the OCRM, or was there another

13 title which I need to use?

14 A. I was director of regulatory programs was

15 the formal title.

16 Q. And prior to that you were the permitter of

17 critical area permits?

18 A. Yes.

19 Q. Did that have a different title as well?

20 A. Director of permitting.

21 Q. Okay. And you assumed that position in

22 1996?

23 A. That's correct.

24 Q. And you assumed the position of director of

25 regulatory programs in 1998; is that correct?

1 A. Yes.
2 Q. And as director of regulatory programs, your
3 responsibilities included the final say-so on critical
4 area permits --
5 A. Yes.
6 Q. -- is that accurate? On certifications that
7 the OCRM issued?
8 A. Yes.
9 Q. And you had direct involvement in the
10 issuance and the review of stormwater management
11 permits; is that also correct?
12 A. Yes.
13 Q. How many critical area permits would you
14 have been involved in from 1998 until 2005 roughly?
15 A. Roughly, the three offices did about seven
16 to 800 a year times five years or so.
17 Q. 3,500?
18 A. 3,500, 4,000.
19 Q. And that would embrace not only critical
20 area permits, storm water management permits, and
21 certifications?
22 A. No. That's just critical area permits.
23 Q. How about stormwater management permits and
24 certifications?
25 A. Storm water permits, including the less-

1 than-two-acres, that kind of thing, were probably two to
2 3,000 a year. Certifications were probably 300 a year.
3 Q. Okay. Times the seven years that you held
4 that position as director of regulatory programs?
5 A. Yes.
6 Q. Is that accurate?
7 A. Yes.
8 Q. Now, your duties and responsibilities of
9 director of regulatory programs embraced what,
10 Mr. Chinnis? I'm going to call you Richard, because
11 Mr. Chinnis I'm not particularly comfortable with.
12 A. That's fine. It was basically directing the
13 critical area programs, the certification stormwater
14 programs, and also enforcement and compliance,
15 supervising 27, 28 staff.
16 Q. And when there was a question about a
17 critical area permit or a certification or a stormwater
18 management permit, the buck stopped on your desk, is
19 that an accurate description?
20 A. Yes.
21 Q. So the final decision making at least at the
22 staff level was yours?
23 A. Pretty much.
24 Q. Now, you started with the original Coastal
25 Council, which became OCRM, in 1986?

1 A. That's correct.
2 Q. And you were continuously employed by the
3 Coastal Council/OCRM until December of 2005?
4 A. Well, technically January, '06.
5 Q. And during that period of time from 1986
6 until -- and I'm going to stop this question -- as of
7 December of 2005, did you receive performance
8 evaluations?
9 A. Yes.
10 Q. And the purpose of the performance
11 evaluations within the Coastal Council itself and later
12 within DHEC were designed to do what?
13 A. Is provide feedback from the supervisors,
14 talk about strong points, weak points. Later on they
15 were also tied to merit salary increases.
16 Q. And do you have an independent recollection
17 of what kind of performance evaluations you got from
18 1986 until 2005?
19 A. Yes.
20 Q. And what were they?
21 A. I generally got the highest ranking given, a
22 couple of times the second highest ranking, but nothing
23 ever --
24 Q. Never unsatisfactory in any of these fields?
25 A. No. No.

1 application to expand the Johns Island waterline --
2 A. Yeah.
3 Q. -- onto Johns Island?
4 A. Yeah. It was installed, a new waterline.
5 Q. What was your involvement? Was that a
6 critical area permit?
7 A. Yes. This new line was crossing a couple of
8 pieces of tidal marsh.
9 Q. And the South Carolina Coastal Conservation
10 League opposed that permit application?
11 A. Yes. I think they wrote a letter of
12 objection.
13 Q. And they also filed a lawsuit, are you aware
14 of that?
15 A. Yeah. That was not, I don't -- they did not
16 appeal the issuance of the permit, but there was a
17 lawsuit, yes.
18 Q. How about the chairman of the board of DHEC,
19 Ms. Hagood, was she involved in this?
20 A. I met with her in my office one time, yes.
21 Q. And the purpose of the meeting was what?
22 A. To go over the permit to discuss, you know,
23 what the staff was going to do with it, that kind of
24 thing.
25 Q. Was she opposed to?

1 A. My impression was yes.

2 Q. Didn't want it to issue?

3 A. Right.

4 Q. But, nonetheless, you issued the Johns

5 Island waterline permit; is that correct?

6 A. Yes. It was issued by OCRM.

7 Q. Okay. Now, were you involved in discussions

8 about a bridge to an island behind Seabrook Island

9 called Horse Island?

10 A. Yes.

11 Q. And it is my understanding at the time your

12 discussion took place, and maybe earlier, Horse Island

13 was owned by a fellow named Bradham?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes. OCRM had processed two previous

17 applications to build a bridge for Mr. Bradham to Horse

18 Island.

19 Q. And in both instances you had denied the

20 permit applications?

21 A. Yes.

22 Q. Did you have an occasion to meet with

23 Ms. Hagood, Mr. Chandler, Ms. Armstrong, Nancy Vinson,

24 and maybe others concerning another proposal to build

25 bridges to Horse Island?

1 A. Yes.
2 Q. And am I correct in understanding that they
3 were in favor of building bridges to Horse Island?
4 A. Yes.
5 Q. Who else was at that meeting?
6 A. I think Chris Brooks was there, Steve Moore,
7 and Debra Hernandez and myself from the OCRM staff.
8 Q. Okay. And do you have an independent
9 recollection of what was discussed at that meeting?
10 A. Yeah. It was basically constructing an
11 access bridge to Horse Island with a public interest
12 component of restricting development on the island to, I
13 think, six houses and some type of deed of surrounding
14 marsh to the state.
15 Q. And am I correct in understanding that at
16 that meeting the South Carolina Coastal Conservation
17 League was in favor of issuance of this bridge permit
18 which had been twice denied?
19 A. That was my impression, yes.
20 Q. The chairman of the board of DHEC was in
21 favor of the issuance of this permit which had been
22 twice denied?
23 A. That was my impression, yes.
24 Q. And you and the other staff members took the
25 position that it was not consummate with the then

1 existing rules and regulations governing bridges to
2 islands?
3 A. Yes. It had been denied twice before.
4 Q. And that was made clear to the people
5 present in that room?
6 A. Yes.
7 Q. Now, I'm going to shift gears with you. In
8 2001, the United States Supreme Court came down with a
9 case that we all of us used the shorthand version of
10 called SWAANC. Are you familiar with that decision?
11 A. Yes.
12 Q. And the SWAANC decision -- and this is my
13 paraphrase legally, and I'm not asking you to accept
14 this as gospel -- basically removed a substantial amount
15 of wetlands from federal jurisdiction. Is that your
16 understanding as well?
17 A. Yeah. That's the -- yes.
18 Q. So it basically changed how the federal
19 government could regulate wetlands, and I'm going to use
20 the term isolated, which were not adjacent to navigable
21 water. Is that an accurate description of your
22 understanding?
23 A. Yes.
24 Q. Now, prior to that, isn't it correct that
25 the OCRM Division of DHEC issued certifications of

1 Q. Horse Island, is that that little island
2 behind Seabrook that somebody named Bradham?
3 A. Right. That has the shell ring on it.
4 Q. Now, you talked about a meeting, and you
5 said that I was there and Ms. Armstrong was there and a
6 whole bunch of other people was there. And I remember
7 having a meeting about that, but what I remember -- you
8 tell me whether I'm wrong about this -- my recollection
9 of the meeting is that it was me and you and Chris
10 Brooks and Dana Beach and Nancy Vinson. You might have
11 had other meetings, but the meeting I went to there were
12 five people there; am I wrong?
13 A. About Horse Island?
14 Q. Yeah.
15 A. The one I remember there was, well, what I
16 said, the staff from OCRM, and, I mean, that's the
17 meeting I remember. That's the only one I remember.
18 Q. Okay. Who called the meeting?
19 A. I think Chris Brooks told me to be there.
20 Q. Okay. And what were you told about the
21 purpose of the meeting?
22 A. I don't, I don't remember being told a
23 purpose, except it was about building a bridge to Horse
24 Island.
25 Q. Okay. And who pitched this idea of building

1 a bridge to Horse Island at this meeting?

2 A. I think Dana talked about it.

3 Q. Okay. And what did Dana say?

4 A. I think he talked about the public benefit

5 from limiting development, somehow it was zoned by the

6 town of Seabrook for X amount of houses, and there was

7 only going to be six houses on it, and that the deed of

8 the public, I mean, the deed of the marsh around the

9 island was public benefit, and that the town of

10 Rockville would not object to it.

11 Q. Okay. Did he submit a permit application or

12 anything?

13 A. No. Not while I was there.

14 Q. Okay. And did he explain why he was talking

15 about a bridge?

16 A. I think the purpose would be to access the

17 island.

18 Q. And wasn't he brainstorming about whether it

19 would be less environmental impact to build a bridge

20 with development limits than to have a lot of houses

21 accessed by a lot of docks?

22 A. Well, I think that was part of the

23 component, but he was, you know, advocating building the

24 bridge over there.

25 Q. He was advocating it, that's what you took

1 it?

2 A. Yeah.

3 Q. Okay. So you didn't take it as a

4 brainstorming session at all?

5 A. No. I did not.

6 Q. What did he ask you to do?

7 A. I think the tenor was would this be

8 something staff was receptive to, consideration of the

9 public interest component.

10 Q. Okay. Did any application ever get

11 submitted?

12 A. Not while I was there, no.

13 Q. All right. You told him that the staff

14 wasn't interested in that; didn't you?

15 A. I think we probably told him it had been

16 denied twice before, why would we consider it for a

17 third time.

18 Q. And was there -- did anything else happen?

19 A. Not that I know of.

20 Q. So they came in, explored this idea, you all

21 said no, and that was the end of it; wasn't it?

22 A. That was the end of it as far as my

23 involvement, yeah.

24 Q. Okay. The SWAANC case in 2001, prior to the

25 SWAANC case coming down in 2001, was it OCRM's normal

1 MR. WALKER: Petitioner calls Nancy
2 Vinson.
3 NANCY VINSON
4 being first duly sworn, testified as follows:
5 DIRECT EXAMINATION
6 BY MR. WALKER:
7 Q. Ms. Vinson, where do you live?
8 A. I live on James Island, 114 Blue Island
9 Drive.
10 Q. Where are you employed?
11 A. I'm the water quality program director
12 for the South Carolina Coastal Conservation League.
13 Q. What is the South Carolina Coastal
14 Conservation League?
15 A. It's a nonprofit public interest
16 organization dedicated to protecting cultural and
17 natural resources in South Carolina, to promote
18 appropriate development and prevent projects which
19 would excessively damage our natural resources.
20 Q. When was the South Carolina Coastal
21 Conservation League formed?
22 A. In 1989.
23 Q. Approximately how many members does it
24 have now?
25 A. Between 3,000 and 4,000.

1 Q. When did you come to work for the South
2 Carolina Coastal Conservation League?
3 A. April 4, 1994.
4 Q. What do you do there as the water quality
5 control director?
6 A. I review all permit applications that are
7 issued in the critical area, all of the OCRM permits
8 that go out on public notice. I get involved
9 actually at the state level in some legislative
10 issues that pass laws to protect our coastal areas
11 and also regulations and policies on behalf of it.
12 Q. Does the South Carolina Coastal League
13 support or oppose the bridge application and dock
14 master plan of LandTech Charleston, LLC for this
15 site?
16 A. We strongly oppose it.
17 Q. Before we get into those reasons, I want
18 to give His Honor a little bit more personal
19 background.
20 Where did you grow up?
21 A. I grew up in Columbia, South Carolina.
22 Q. Where did you go to high school?
23 A. Eau Claire.
24 Q. Did you go to college?
25 A. I did. I graduated from the University

1 of South Carolina in 1984 with a degree in medical
2 research and marine science.
3 Q. Did you do any postgraduate study?
4 A. I did. In my medical research for
5 several years after graduating from the University, I
6 did some graduate courses in my degree in
7 managing analysis courses.
8 Q. Did you begin to get back involved in
9 marine science issues in the late 1980s, early 1990s?
10 A. I did. In 1991 I was a research
11 specialist at University. I had always been very
12 interested in protecting the environmental issues.
13 That's what I studied in college. And I became the
14 first full-time director of the South Carolina
15 Chapter of Sierra Club.
16 Q. Did that involve analysis of water
17 quality issues?
18 A. Certainly. You would get involved in
19 precedent-setting permit cases and policy issues, and
20 I was very involved in the legislative policy issues.
21 Q. What have you done over the years to
22 become more knowledgeable of water quality issues and
23 marine resource issues?
24 A. Well, I attend seminars usually once or
25 twice a year. I go and attend seminars on water

1 quality issues at various groups around the country
2 here. I read literature. I try to keep abreast on
3 things.
4 If we get involved in various permit
5 decisions and things like water quality on the Cooper
6 River and water quality on the Wando, I just delve
7 in. I talk with a lot of scientists in the area on
8 issues that we've been dealing with.
9 Q. Have you been dealing with water quality
10 issues on this basis for a number of years?
11 A. Yes, since I've been on board the
12 Conservation League.
13 Q. Have you worked with marine scientists in
14 studies on particular water quality issues?
15 A. Yes. Actually, there was a large permit
16 issued by OCRM for the marina, and we were very
17 concerned about a number of aspects of that case,
18 particularly the impacts from boat race, shoreline
19 erosion from the high number of boats for additional
20 boats on that creek.
21 So I worked with a coastal geologist from
22 the College of Charleston. I did a lot of research
23 first to find out what other people have done in the
24 area of shoreline erosion, impact from boating and
25 found a good study by the Department of Natural

1 Resources in Maryland. And we decided to do a study
2 to see what happens as far as boat wakes damaging
3 that outstanding resource water on the creek.
4 And I got a coastal geologist to work
5 with me, and we actually did a study to measure the
6 damage from boat wakes on up.
7 Q. I want to go back and touch briefly on
8 something you said earlier in your position at the
9 Coastal Conservation League, that you also
10 participate in legislative issues that involve water
11 quality.
12 What would be some of those issues, if
13 you can give Judge Kittrell a few examples of those.
14 A. In 1995, the House of Representatives
15 passed a measure that sort of opened or rolled out
16 the red carpet to factory hog operations in South
17 Carolina. I think if you read the newspaper in the
18 last several years, you know the horrible
19 consequences that large factory hog operations are
20 having in Coastal North Carolina or many other areas
21 of the country where these intensive factory hog
22 farms proliferate.
23 In 1996, after a bill passed the House, I
24 got very involved and worked with senators, assisted
25 them in drafting legislation to allow research

1 looking at the water quality impacts from the hog
2 waste, large open septic waste ponds. And we came up
3 with a very strong factory health kind of law which
4 got passed in 1996 to protect the South Carolina
5 coastal environment.
6 Q. Did you personally participate in many of
7 the technical water quality issues associated with
8 that bill?
9 A. Yes, I certainly did. We had a lot more
10 information than they did.
11 Q. Have you worked with the legislature on
12 other water quality issues?
13 A. Yes. This year I was involved with a
14 water quality bill that deals with dissolved oxygen
15 in the coastal water basically. Some of our waters
16 are naturally have low dissolved oxygen. DHEC passed
17 regulation that would allow some additional
18 discharges for pump sources, for industry.
19 I worked with senators that got a bill
20 passed that would assure appropriate safeguards are
21 in place before allowing additional discharge of
22 oxygen-consuming substances into our coastal water.
23 Q. Have you testified before committees at
24 the state level, legislative committees?
25 A. Yes, many times.

1 Q. On water quality issues?
2 A. Yes.
3 Q. Are you often consulted by legislative
4 committees when they're dealing with water quality
5 issues?
6 A. Yes, I am.
7 Q. There were some discussions here today,
8 some cross-examination of, I think it was, Phil
9 Dustan about particular regulations that were adopted
10 by the Legislature dealing with storm water runoff.
11 Do you remember that examination?
12 A. Yes, I do.
13 Q. Do you have some familiarity with those
14 regulations?
15 A. Yes. In 1991 I was the lobbyist on the
16 Storm Water Sediment Erosion Control Storm Water
17 Management Act. I worked with the head of land
18 resources and lobbied that legislation.
19 That lawsuit came about because, as
20 growth and development was occurring in Lexington
21 County, particularly representative David Wright got
22 very involved, because neighborhoods in this area
23 where a lot of development was occurring, they had a
24 nice little stream in the backyard. Five years
25 later, this placed would be flooded during heavy

1 rains.

2 So primarily the legislation was drafted

3 primarily in response to managing peek storm water

4 flows, to prevent flooding.

5 THE COURT: Which legislator, David who?

6 THE WITNESS: David Wright and Senator

7 Douglas was involved in that legislation also.

8 BY MR. WALKER:

9 Q. These legislative discussions, did they

10 focus on runoff in what portion of the state?

11 A. The midlands. There was no one from the

12 coastal management agency there that I recall. I

13 think Joe Miles have been there. It was primarily

14 that was the problem that they were trying to solve.

15 Q. Were those levels that were talked about

16 earlier, an inch and a half within an hour, was that

17 the standard that was talked about earlier?

18 A. I believe so.

19 Q. Let's go back to Toomer Creek. Have you

20 been to Toomer Creek?

21 A. I have. I was there, I believe it was,

22 in June of '98.

23 Q. How did you learn about this bridge

24 application?

25 A. I reviewed all applications that are put

1 out on public notice by OCRM. And I saw it, and it
2 immediately caught my attention. It was the longest,
3 widest bridge of its type to a private island in
4 public saltwater that I noticed.
5 Q. What did you do?
6 A. Well, I got very concerned. Actually,
7 some of the neighbors contacted me. Mel Price called
8 me up and said: Would you like to come look at it?
9 We are very concerned about it, too.
10 And I went to his home and went out on a
11 boat, took a look at the area. And it's an
12 incredibly beautiful productive group. We ended up
13 appealing the permit.
14 Q. What was on the island when you went out
15 and visited? Was it developed at all?
16 A. No.
17 Q. How would you describe the vegetation on
18 the island?
19 A. It was a mature maritime forest. It was
20 very healthy. The oyster beds looked really good,
21 very productive. Actually, I ended up on the
22 shallows, on the flat. It was pretty amazing.
23 Q. Where are the oyster beds that you're
24 talking about? This is the Wando River. Those
25 white-ish areas?

1 A. Yeah, all around here. (Indicating)
2 Q. Are you familiar with the developer's
3 bridge plan?
4 A. Yes, I am.
5 Q. Are you familiar with the modified bridge
6 plan that's taking the 1,940-foot wide bridge that
7 would reduce it to 1,430-by-33-foot wide bridge?
8 A. Yes.
9 Q. Are you familiar with this so-called dock
10 master plan --
11 A. Yes.
12 Q. -- that has been approved by OCRM as part
13 of the bridge application?
14 A. Yes, I am.
15 Q. Are you familiar with, in general terms,
16 and reviewed some of the information dealing with the
17 developer's storm water management plan?
18 A. Yes.
19 Q. Have you been present here today for
20 testimony concerning that as well?
21 A. Yes.
22 Q. You're here today on behalf of the
23 Coastal Conservation League. Does the Coastal
24 Conservation League have particular concerns about
25 what will happen if this bridge is built, if the

1 island is developed per the plan, if the docks are
2 built in the corridors that have been allowed by
3 OCRM?
4 A. Yes, we are very concerned about the
5 precedent of allowing this huge bridge to be plopped
6 down on public salt marsh on this small island. We
7 are seeing more and more of these types of
8 applications. This is the worst one we have seen.
9 We have appealed a number of them.
10 As our population pressure increases,
11 waterfront property becomes more valuable. We are
12 very concerned. These are sort of last refuges for
13 birds to nest and rest and otters, the wildlife.
14 This is not just putting development near the creek.
15 It's putting intense development out in the middle of
16 the salt marsh.
17 Q. I want to stop you right there, because
18 you talked about these islands as being sanctuaries.
19 Are you opposed to any type of development on an
20 island even if it's done by boat, in an ecological
21 prudent way?
22 A. No, we are not. This island could be
23 developed in an ecologically prudent manner. Would
24 you like me to show you?
25 Q. Go ahead and continue on.

1 A. May I approach?
2 Q. Yes.
3 A. It can be done in a manner --
4 Q. I'll move this over to you.
5 A. -- that would not cause great ecological
6 harm. This island is perfectly situated to have a
7 community dock or two going out to the Wando River,
8 a larger river that wouldn't be seeing the same sort
9 of damage as the small tidal creek would with a large
10 number of boats.
11 Q. How many community docks are now planned
12 for this island?
13 A. Not any. The dock master plan is a
14 farce. They have a dock on every lot that you could
15 possibly put a dock on.
16 OCRM regulations are good. The
17 regulation calls for developers to do a dock master
18 plan and encourages community docks. That's sort of
19 a good first step, but with what we know today about
20 the damage that too many boats, too many docks can do
21 to tidal creeks, we need to go a lot further than
22 that.
23 Q. You said something about intensity. Why
24 does the league consider this development as planned
25 on Goat Island to be an intense development?

1 A. There are 30 lots on 29 or so acres.
2 That's a large number of lots to put out in the
3 marsh. All the storm water runoff, the pesticides,
4 fertilizers, bacteria from animal waste, where's it
5 going to go? It's all going to go in that area.
6 This is very intense development for an
7 island like this, it could do a lot of ecological
8 damage. You could develop it in an environmentally
9 sensitive way, cluster the development, 100-foot wide
10 buffers, have boat access and some community docks
11 and do it in a manner that would maintain the scenic
12 and natural integrity.
13 Q. Have management practices been developed
14 in the last ten years to help reduce the adverse
15 environmental consequences of urbanization,
16 residential development like we're talking about
17 here?
18 A. Yes, I have.
19 Q. Are you familiar with those? What does
20 the term sustainable development mean?
21 A. It's supposed to be development that you
22 can sustain without degrading the ecosystems
23 surrounding it.
24 Q. Are those considered to be best
25 management practices to a certain extent for

1 ecologically, friendly development?
2 A. Yes.
3 Q. And with regard to paved roads, would
4 putting an acre and a half or so of paved road be
5 considered sustainable development?
6 A. No.
7 Q. What would it be?
8 A. On some other examples in the lowcountry,
9 Selkirk Plantation on Dewees Island, they have no
10 roads; it's golf carts. It's very small.
11 Q. What difference does it make between
12 having an asphalt road with a concrete curb gutter as
13 opposed to dirt roads or gravel roads?
14 A. Well, you're actually preventing the
15 water from recharging naturally, purifying as it goes
16 through the layer of soil where it goes into the
17 creek. The pavement also kind of concentrates the
18 pollutants. It catches oil, gas, that stuff that
19 gets ground up.
20 Q. I want to switch now to the yards
21 themselves. We were looking at the storm water
22 calculations that have been submitted as an exhibit.
23 MR. SMITH: Could you move that thing so
24 we can see her when she testifies.
25 MR. WALKER: Can you see now?

1 MR. SMITH: Yes.
2 BY MR. WALKER:
3 Q. Storm water calculations that were done
4 by the developer's engineer show anywhere from seven
5 to nine acres of lawns --
6 A. Yes.
7 Q. -- would that be consistent with what is
8 today considered sustainable development, best
9 management practices for ecologically sound
10 development?
11 A. Absolutely not. That's seven to nine
12 acres of lawns plus the roadway. It ends up being
13 about half the island impervious surface and runoff.
14 Q. Does the Coastal Conservation League have
15 any concern about the potential direct impacts from
16 the shading that might be occasioned by the bridge
17 and all these docks?
18 A. Certainly do. This is a public trust
19 marsh. There's no public need to put a road across
20 the marsh. And if we keep doing that in this sort of
21 manner, we're going to have a spider web effect of
22 roads all across the public marsh. It's going to
23 destroy the scenic and natural habitat of our marsh
24 system.
25 As Dr. Dustan said, animal productivity

1 will declined and be destroyed under the bridge. And
2 the shading effects, I've seen a number of bridges
3 where you have a dead swamp.
4 Q. Some questions were asked earlier about
5 bridges. Have you looked under bridges that might
6 be, let's say, like this bridge where the top of the
7 bridge is 11 MSL? That would be probably about eight
8 feet above high tide, seven feet above high tide.
9 Have you observed bridges over spartina of that
10 elevation?
11 A. I might not be the best judge of
12 distances. I live on James Island. I go across the
13 James Island bridge. The marsh grass is dead. The
14 connector, you can certainly see the shadow that
15 killed it. The elevation is similar to the one we're
16 discussing.
17 Also, in Beaufort County, that comes to
18 mind that I can recall. I'm usually looking for
19 birds and fish when I'm crossing the bridge, not
20 looking under the bridge.
21 Q. You mentioned that you've been involved
22 in a study of the effects of boat race. Were you
23 here for Mr. Tomlin's testimony where he said there
24 might be as many as 70 or 80 additional docks on the
25 Park West side of Toomer Creek from the mainland?

1 A. Yes.

2 Q. Are you aware also and were you present

3 for Mr. Smith's cross-examination where he developed

4 testimony that there were also going to be a number

5 of docks on the Dunes West side --

6 A. Yes.

7 Q. -- an aggregation of docks.

8 Is the South Carolina Coastal

9 Conservation League concerned at all about the

10 aggregate effect of all those docks in terms of boat

11 traffic?

12 A. We're very concerned about the cumulative

13 effect of this whole project and the boat wakes from

14 the docks. That number of docks on a small tidal

15 creek -- I mean, you see it time and time again. The

16 creek gets developed, more and more docks come in,

17 the productivity of the creek goes down. We're very

18 concerned about this. This is a small, fairly narrow

19 and deep creek.

20 Q. What difference does it make that it's a

21 deep creek?

22 A. This particular creek is highly

23 susceptible to boat wake damage because the sides of

24 the creek are spartina grass and soft mud. There are

25 no bars, or I haven't observed any sand bars or bars

1 that would attenuate the waves before they crash into
2 the sides of the creek.
3 As the boat travels down this creek,
4 especially a larger boat, the boat is traveling like
5 this. (Indicating) The wakes are coming out like
6 that. They hit the side of the bank head on. If
7 people have large boats on the docks, they use them
8 with any regularity, this creek is going to see
9 damage and probably shoreline erosion from the boat
10 waves.
11 Q. I want to come back to this buffer.
12 You've heard testimony that the developer is planning
13 a 50-foot average buffer. Does that concern the
14 Conservation League at all?
15 A. Yes, it does. I served on one of the
16 advisory committees on the Charleston Harbor Project,
17 and the recommendation was to put in a 100-foot
18 buffer wherever feasible. This is certainly the most
19 sensitive out in the marsh. It should certainly
20 require 100-foot buffers.
21 Furthermore, there is almost no buffer
22 next to the road. It's dented in a bunch of other
23 places, and all along here there's not much buffer.
24 We think this is not an adequate buffer to protect
25 the marsh and water storm runoff.

1 THE COURT: Bring that over a little
2 closer to me. I want to see that again, please.
3 Y'all can come up. I want to find out. Let's do
4 this again, please. I want you to point out to me
5 where the buffer is on this, in your opinion.
6 THE WITNESS: Here is the buffer.
7 (Indicating)
8 BY MR. WALKER:
9 Q. Internal dotted line?
10 A. Internal dotted line is the buffer. You
11 can see almost no buffer. The Charleston Harbor
12 Project --
13 THE COURT: Lot 31?
14 THE WITNESS: 31.
15 MR. WALKER: 30 and 31.
16 THE COURT: 30 and 31 where they've gone
17 down?
18 THE WITNESS: Yes, before buffer.
19 MR. GOWDER: At the front.
20 THE WITNESS: Right. This is the buffer.
21 (Indicating) The continuity of the buffer is very
22 important in the Charleston Harbor Project.
23 THE COURT: What are the other lines?
24 The double lines, what is that?
25 THE WITNESS: This line, that's the

1 critical line. So here you have another place where
2 the buffer is pretty narrow. The buffer is pretty
3 narrow here.
4 BY MR. WALKER:
5 Q. What about either end on those horns?
6 A. And here it's nonexistent. Along the
7 roadway quite some distance, barely any buffer
8 there. Picks up again here. I'm not sure what that
9 is; very little buffer there and very little buffer
10 here. (Indicating)
11 THE COURT: That's fine. I can see.
12 BY MR. WALKER:
13 Q. Are you familiar with the mechanism in
14 force for buffers to make sure that people do not
15 come out, cut vegetation plants, throw fertilizer in
16 the average buffer area?
17 A. Yes, I understand the homeowners
18 association will be given that responsibility, sort
19 of the fox guarding the henhouse. The people that
20 own the homes are charged with maintaining the
21 buffer. I don't think that works very well. We know
22 that from experience. Buffering placement is a
23 problem.
24 Q. Ms. Shahid remarked in her opening
25 statement there was going to be a conservation

1 easement. Is that your understanding, that there's
2 going to be any conservation easement along this
3 buffer?
4 A. I don't know any legitimate agency that
5 would accept conservation easements on intense
6 developments on small islands. I talked to
7 Lowcountry Land Trust about conservation easements on
8 buffers. They will not accept it unless the whole
9 development plan is a good plan.
10 I'm not familiar with an organization
11 that will accept easements, conservation easements.
12 This creek is one of the smaller creeks, considered
13 very important, productive for fish, crabs, oysters.
14 These are the kind of creeks I had a
15 conversation with the head of OCRM, Chris Brooks,
16 about. Beaufort County is taking a lot of steps to
17 try and protect their creeks including limiting the
18 number of docks and those sorts of things that
19 Mr. Brooks has told me.
20 Q. Who is Chris Brooks?
21 A. Head of OCRM, deputy commissioner.
22 Q. What has he said?
23 A. He said they are going to be looking and
24 revising their regs to give these smaller type of
25 creeks better protection. They know that current

1 regulations do not adequately protect.
2 Q. In your position with the Conservation
3 League that involves water quality, do you also keep
4 abreast of developments for treating human waste in a
5 manner other than traditional or conventional waste
6 water treatment that involves pumping and treating at
7 a plant?
8 A. Yes. Over the last decade or so, some
9 onsite disposal systems -- the old term was septic
10 tanks -- onsite disposal systems have been developed.
11 South Carolina has poor septic tank regulations that
12 has been recognized by most people in this room.
13 We often have a number of septic tank
14 problems with seepage and water problems. Bacteria
15 gets out into our waters. There are new systems that
16 nationally recognized experts have promoted that will
17 work well in South Carolina. They require minimum
18 maintenance than our existing system. They would
19 work well on an island. It could be easily developed
20 with this.
21 Q. Would the Conservation League have an
22 objection simply because one of those systems were
23 being used, if it were being used, in a proper way on
24 this island?
25 A. No, it's not going to object.

1 MR. WALKER: That's all we have from this
2 witness at this time, Your Honor.
3 THE COURT: Ms. Shahid.
4 CROSS-EXAMINATION
5 BY MS. SHAHID:
6 Q. Ms. Vinson, I was not able to see the
7 areas that you were pointing to that gave you concern
8 with regard to the buffer. Can you show me once
9 again.
10 A. Yes.
11 THE COURT: You're asking about the
12 buffers zones, or what are you talking about?
13 MS. SHAHID: I think she was referencing
14 areas where she thought the buffer was not adequate.
15 THE WITNESS: In here.
16 THE COURT: Identify those for the record
17 as we go along, Ms. Vinson. Otherwise, we're not
18 developing much of a record at all here.
19 THE WITNESS: The buffer gets very narrow
20 between lots -- around lot 30 and 31, also lot 25,
21 also lots 23 and 22. Here it appears to be
22 nonexistent between lots 19 and 20 along the road.
23 It is very small along lot 19. On the
24 other side of the road between lots 16 and 17, it's
25 hard to detect. That's what I'm talking about, the

1 buffer should be continuous.

2 BY MS. SHAHID:

3 Q. Have you studied the elevations, the BMPs

4 that have been put in the storm water plan by David

5 Stevens, the applicant's engineer? That's not the

6 storm water plan that you're looking at. That's

7 something else.

8 A. I have looked through the storm water

9 plan.

10 Q. In these particular areas that have given

11 you concern, have you gone to the storm water plan to

12 see what they're doing in the storm water in those

13 areas?

14 A. No.

15 Q. If, in fact, they're choosing not to use

16 a buffer as the method of best management practice

17 but to use a combination of swales and detention

18 ponds, would that relieve some of your concerns about

19 storm water?

20 A. No. These buffers are not wide enough.

21 Q. You want 100-foot buffers?

22 A. Yes.

23 Q. I didn't hear that when you testified on

24 direct. I just heard some concern about restrictions

25 in certain areas.

1 A. I'm concerned about the restrictions in
2 certain areas. To protect water quality, those
3 buffers should be 100-foot.
4 Q. Even if we show you a storm water plan
5 that has best management practices including sizable
6 age detention ponds in certain area, grass swales,
7 slopes leading to these areas and then a buffer
8 around the majority of the lots, that's not going to
9 satisfy you because you want 100-foot buffers?
10 A. That's correct.
11 MS. SHAHID: Thank you.
12 THE COURT: Mr. Smith.
13 CROSS-EXAMINATION
14 BY MR. SMITH:
15 Q. Part of your job as a water quality
16 director for the South Carolina Coastal Conservation
17 League is to review every permit application that's
18 filed with the state of South Carolina, either with
19 the OCRM division of DHEC, with DHEC itself, or with
20 the Army Corps of Engineers; is that correct?
21 A. That is correct. I've actually
22 complained to my boss; it's sort of like I have two
23 full-time jobs.
24 Q. I don't blame you. You should complain.
25 A. During the legislative work I get real

1 scared I'm going to miss something.
2 Q. What you do as you go through these
3 things -- you don't get a chance to talk to your boss
4 often. It just happens about once a month now
5 because he's busy. As you go through these things,
6 you flag them. Some of them come to your attention
7 that you think, it's a permit that leads to
8 inappropriate development, isn't that your term of
9 art?
10 A. Yes.
11 Q. And the notion of inappropriate
12 development is not based upon any criteria of the
13 South Carolina Coastal Conservation League has but is
14 rather your only internal notion about what is
15 appropriate or what is inappropriate; isn't that
16 correct?
17 A. We look carefully at projects to consider
18 the cumulative and secondary impacts and try to
19 consider whether it's appropriate for the area.
20 Q. Listen to my question.
21 A. I don't have a checklist.
22 Q. You do not have a checklist, and your
23 organization doesn't have any criteria. What you are
24 doing is making a judgment based upon your own belief
25 as to what may or may not be appropriate insofar as

1 any given permit application is concerned?
2 A. And what the law says and what the state
3 policies and regulations say.
4 Q. We'll get to that in a second.
5 You believe that South Carolina should
6 have 100-foot buffers around all waterfront
7 developments; is that correct?
8 A. Sensitive islands in the marsh, I think
9 we should require 100-foot buffers.
10 Q. How about peninsulars that stick out into
11 the marsh with creeks on each side? 100-foot buffers
12 there or 75?
13 A. Well, it just depends. This is actually
14 an intense development out in the marsh.
15 Q. Is there really any difference,
16 Ms. Vinson, in developing a peninsular that sticks
17 out into the marsh and creeks on both sides than
18 there is in developing this island?
19 A. Sure. The storm water can be collected
20 by collection systems and go somewhere for treatment
21 or it can be channeled to other places that go
22 directly out into the water.
23 Q. Do you know how the storm water on this
24 island is going to be handled?
25 A. I understand ponds, swales, buffers and

1 storm receptors to take care of the runoff from the
2 bridge.
3 Q. Which is precisely what would happen on a
4 hypothetical peninsular, is it not?
5 A. Yes.
6 Q. Same regulations apply, same calculations
7 apply; do you agree with that?
8 A. Uh-huh, but they might -- some of it
9 might have storm drains to treat it.
10 Q. So I'm going to go back to my question to
11 you. Is it your position that South Carolina needs
12 to have 100-foot buffers around developments that you
13 consider to be an area of sensitivity?
14 A. I think that would be good. That's what
15 the Charleston Harbor Project did, that's what the
16 Beaufort Special Area Management did. The latest
17 science that we have points to a need for 100-foot
18 buffers anywhere feasible.
19 Q. In your opinion?
20 A. Anywhere feasible, not just my opinion.
21 The Charleston Harbor Project --
22 Q. Do you have a --
23 MR. WALKER: She should be allowed to
24 finish.
25 MR. SMITH: I'm sorry. I'm not trying to

1 cut you off, believe me.
2 THE COURT: Go ahead, ma'am.
3 THE WITNESS: It's not just my opinion.
4 The Beaufort Special Area Management plan in which
5 scientists from four states participated in, they did
6 state of the art on buffers. And they said we should
7 have 100-foot buffers around sensitive tidal creeks,
8 especially sensitive headwater tidal creeks like this
9 one that are productive for fish.
10 BY MR. SMITH:
11 Q. What you're really telling us, in your
12 opinion, South Carolina hadn't done a good enough job
13 in providing these kinds of buffers?
14 A. Absolutely not. The water quality from
15 storm water runoff is the number one problem.
16 Q. It really is a problem of the General
17 Assembly of the state of South Carolina, you and I
18 will both agree, will you not, since you're a
19 lobbyist, that these laws and regulations, don't
20 spring like Athena from Zeus' head from the agencies
21 themselves, they go through the South Carolina
22 General Assembly?
23 A. The agency amends the process. If they
24 see a problem with the water quality, they should
25 bring it to the attention of the General Assembly and

1 should promulgate some regulations to protect the
2 water quality under the Water Act in South Carolina.
3 Q. You're a lobbyist. How long have you
4 recognized our buffers are too narrow?
5 A. Probably the last three, four years.
6 Q. And you've been in Columbia every
7 legislative session since that recognition came to
8 you, have you not?
9 A. Just a little bit.
10 Q. But you were there?
11 A. Yes.
12 Q. What Act have y'all introduced or what
13 legislator have you talked to about increasing the
14 size of the buffers?
15 A. We have been talking to Senator Leventis,
16 the chairman of the Senate Agriculture and Natural
17 Resources Committee about introducing legislation to
18 improve regulations on rivers.
19 Q. As we stand here today, that hasn't been
20 done, has it, Ms. Vinson?
21 A. No. We've encourage them not to
22 introduce it. We need a lot more public education
23 first if we're going to be successful in getting a
24 measure like that passed with all the development
25 interest up there lobbying.

1 Q. You don't really believe that this
2 island, Park Island, which was 30 acres, is a small
3 island, do you?
4 A. Yes, sir, I do.
5 Q. Didn't you tell me in your deposition
6 that you thought a small island was something under
7 25 acres?
8 A. No, sir, I said 50 or 60. It depends on
9 the situation and the cumulative impacts. I think
10 most of the large islands have been developed;
11 Wadmalaw, James Island. Most of what we have left
12 are small islands along the coastal waterways.
13 Q. In your mind, this is a small island?
14 A. Yes, it is.
15 Q. Now, are you concerned about other
16 developments in the Wando watershed?
17 A. Yes. After I looked into this and saw
18 what a really productive and alive habitat ecosystem
19 this was -- we are concerned about the other ones.
20 We can't appeal every permit. We try to work as an
21 advocate at the policy level to get policies changed.
22 I've made presentations to the OCRM
23 appellate panel on small bridges to islands, problems
24 with them, our concerns with them. And we're
25 concerned about a number of developments. This one

1 seems to be a very precedent-setting case because of
2 the huge bridge and the impacts on small islands.
3 And, also, I don't think that cumulative effects of
4 this project were considered at all.
5 Q. What other islands in the Wando River
6 basin do you anticipate are going to be developed as
7 a result of this bridge to this island?
8 A. If this bridge is permitted to this
9 island, I can not imagine stopping any other bridge
10 to any island.
11 Q. Do you know of any other island that has
12 sewer and water?
13 A. This island doesn't have sewer and water.
14 Q. Of course it does. Are you not aware?
15 A. It would be attached to the bridge.
16 Q. Yes. Are you not aware of the fact that
17 the way water is going to get to that island, the way
18 sewer is going to be treated on that island is by
19 attachment to that bridge?
20 A. Just like any other small island that
21 would be developed in the same way.
22 Q. Did I hear you suggest that you thought
23 septic tanks would be a good idea for this island?
24 A. No. I said advanced onsite waste
25 disposal systems. They used to be called septic

1 tanks; individual treatment systems for individual
2 homes.
3 Q. These are the kind of things that have
4 been put in at Bull Point?
5 A. I believe so, yes.
6 Q. You believe that to be superior to
7 actually pumping the sewage off this island to a
8 sewage treatment facility?
9 A. If you have a few houses with onsite
10 facility systems, state of the art ones, you would
11 not have the same kind of negative environmental
12 impact as this intense development would have on the
13 island. That would be far from it.
14 Q. Do you believe that a one-acre lot is a
15 tiny little small lot?
16 A. No.
17 Q. Well, you would agree with me, would you
18 not, that most of these lots are going to approach
19 almost an acre in size?
20 A. Yes.
21 Q. And yet it's your opinion that this
22 relates to intense development?
23 A. Yes, of a small island down out on the
24 marsh.
25 Q. Well, is there a distinction in your mind

1 between intense development of a small island in the
2 marsh and intense development of, say, Dunes West
3 across the creek insofar as impacts are concerned?
4 A. Yes. You're taking all the impact and
5 putting them actually out in the marsh, out in a
6 little island out on the marsh. I think that's
7 extremely intensive development for a small island in
8 a marsh.
9 If you wanted to create a development
10 that wouldn't have negative environmental impact,
11 there would be a lot of precedents on this island.
12 Q. Has your organization appealed within the
13 last several years, three or four years, all the
14 bridge permits that have been issued in the state of
15 South Carolina?
16 A. I believe four, maybe five.
17 Q. The only one that you haven't appealed is
18 on Wadmalaw Island?
19 A. I don't know that's the only one. I'm
20 aware of that one. We did not appeal.
21 Q. That you are aware of?
22 A. Yes.
23 Q. I'm going to show you what's in evidence
24 as exhibit number 4 and ask: Are you familiar with
25 that permit?

1 A. Yes.
2 Q. Matter of fact, your organization got a
3 copy of that permit, commented on it, did not appeal
4 that; is that correct?
5 A. We did not appeal it, that's correct.
6 Q. And that is a bridge to the small island?
7 A. Yes.
8 Q. And, in fact, it's a 360-foot bridge.
9 It's 15 feet wide.
10 A. Sixteen.
11 Q. Goes across pristine spartina alternate
12 flora marsh --
13 A. That's correct.
14 Q. -- to an island of 15 acres?
15 A. Yes.
16 Q. On which there's going to be one house?
17 A. Correct.
18 Q. Y'all didn't appeal that one?
19 A. No.
20 Q. No impacts from that bridge?
21 A. We looked at the cumulative impacts from
22 the whole project. This is an 800-acre project with
23 less than 30 lots. It's a conservation-type
24 development. They have very limited impervious
25 surface. They have 100-foot buffers around all the

1 creeks on the island to protect the water quality of
2 the island.
3 We promote this type of development as
4 environmentally sensitive and the right way to
5 develop around small tidal creeks. That's why we did
6 not oppose this particular bridge.
7 Q. In fact, one of the principals in this
8 development was Charles Lane whose on your board of
9 directors?
10 A. That's correct.
11 Q. And a major contributor to your
12 organization?
13 A. Yes.
14 Q. And yet it is going to be a bridge
15 crossing pristine spartina to an island of 15 acres
16 on which there is one house, and you think that one
17 is okay?
18 A. If this was going to be two houses on
19 this island with 100-foot buffers surrounding it with
20 a bridge, that's only 306 feet long instead of 1,430
21 feet long, we probably wouldn't oppose this one
22 either.
23 Q. It's not a question of whose ox is going
24 forward?
25 A. Absolutely not. This was 800 acres. He

1 could have hundreds of houses. He could've had
2 hundreds of docks, hundreds of lots. It's a very
3 environmentally sensitive development that we
4 support.
5 Q. It's appropriate in your mind?
6 A. Yes. I didn't like it but --
7 Q. It's appropriate?
8 A. We support the entire development; much
9 less impact on this one island development.
10 Q. It's only inappropriate that y'all object
11 to?
12 THE COURT: I don't understand that
13 question either. Rephrase that question, sir.
14 BY MR. SMITH:
15 Q. This development that we were just
16 talking about, Selkirk, in your mind is appropriate?
17 A. It is very protective of the environment,
18 yes.
19 Q. And anything else which y'all deem to be
20 inappropriate, y'all oppose?
21 A. We often oppose inappropriate projects,
22 especially if they're precedential in nature as we
23 believe this one to be.
24 Q. Under what bridge have you looked,
25 Ms. Vinson, where you came to the conclusion that

1 erection of a bridge has killed all the marsh under
2 it?
3 A. I live on James Island, so I cross the
4 James Island bridge, and I notice where the connector
5 comes in. The new bridge, the marsh grass there
6 where it's approaching is dying. I haven't gone
7 around and looked. I usually look at the birds or
8 other things and not under them for dead marsh grass.
9 Q. So the only one that you have any
10 knowledge with as you sit here today is the James
11 Island Connector?
12 A. I believe there's also dead marsh grass
13 under the Harbor River bridge down in Beaufort
14 County.
15 Q. Do you know?
16 A. That's a bridge I've gone over. I recall
17 noticing. It's hard for green plants to live without
18 sun.
19 Q. When was the last time that you were at
20 Toomer Creek?
21 A. I was there in June of last year.
22 Q. Did you have an opportunity to go out on
23 some of the docks of the opponents?
24 A. I've been out on Mel Price's dock, and he
25 took me out on a boat to look around.

1 Q. How about some of the other docks?
2 A. That's the only dock I've been on.
3 Q. Were you impressed with the depth of
4 marsh grass under all those docks or concerned?
5 A. It's really close together which you
6 really don't notice. You have to move the grass. I
7 wasn't looking at that or didn't see it.
8 Q. You didn't notice these areas Dr. Dustan
9 predicted of complete desolation?
10 A. Well, the grass grows up almost to the
11 dock, and unless you part the grass to have a look,
12 you don't necessarily see.
13 Q. And did you find Toomer Creek, at least
14 on casual observation when you were there in June, to
15 be reasonably healthy?
16 A. It looked like a very healthy, productive
17 ecosystem. Fish were out there chasing shrimp
18 through the water.
19 Q. Notwithstanding that the area on Dunes
20 West side has been developed since 1991?
21 A. (Witness moves head up and down.)
22 MR. SMITH: Thank you, Ms. Vinson.
23 MR. WALKER: No further questions.
24 We have another witness who cannot be
25 available until tomorrow morning.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

S.C. Coastal Conservation League Coastal Conservation Association-South Carolina, Beth Keyserling-Kramer, Mark Kramer, James Wells, Joye Wells, Frank DeMarco, Karen DeMarco, Joseph Mueller, Mary Mueller, Vicky Snowden, John Snowden, Janice Maize, John Maize, Kerry Solomon, Cindi Solomon, Robert Stephens, Catheryn Stephens, Julie Gautreaux, Wilson Gautreaux, Gerald Hazin, and Robert Baker,	)	Docket No. 99-ALJ-07-0082-CC
Petitioners,	)	
-vs-	)	
South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, and LandTech, L.L.C.,	)	**FINAL ORDER AND DECISION**
Respondents.	)	

APPEARANCES:

For the Petitioners: G. Trenholm Walker, Esq.
W. Andrew Gouder, Jr., Esq.

For the Respondent OCRM: Mary D. Shahid, Esq.

For the Respondent LandTech, L.L.C.: Ellison D. Smith, IV, Esq.

STATEMENT OF THE CASE

This matter is before me upon Petitioner's request for a contested case hearing to challenge Respondent South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management's (OCRM) issuance of permit number OCRM-98-196-I to LandTech,

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ADMIN. LAW JUDGE DIV.

LLC (LandTech). The permit allows LandTech to construct a concrete bridge 1430 feet long and 33 feet wide, with a center height of 11.5 feet above mean sea level, from high ground owned by LandTech to a 30-acre island located at the confluence of Toomer Creek and the Wando River in Charleston County, South Carolina. The purpose of the bridge is to allow access to the island for residential development of 33 lots. The bridge would be constructed over "critical area" as defined in S.C. Code Ann. § 48-39-10(j) (1976). The permit issued by OCRM also included the approval of a Dock Master Plan (DMP) for the island. The Petitioners have appealed OCRM's approval of the DMP as well.

The Petitioners objected to the issuance of the permit and filed a request with the Administrative Law Judge Division for an adjudicatory contested case hearing. The Petitioners allege that the permit, as issued, violates the provisions of (1) S.C. Code Ann. §§ 48-39-20(d), (e) and (f); 48-39-30(a), (b) and (d); 48-39-150(a), (b) and (c); and (2) S.C. Code Ann. Regs. 30-12; Regs. 30-11(b) and (c); and various provisions of the South Carolina Coastal Management Program document.

A hearing was conducted before me in this matter on December 6, 7, and 8, 1999 at the Charleston County Courthouse in Charleston, South Carolina.

For the reasons that follow, the permit is granted.

SUMMARY OF THE EVIDENCE

A. Background Facts

(2) pll

The island which is the focus of this appeal is located in Charleston, South Carolina, at the confluence of Toomer Creek and the upper Wando River and contains 29.74 acres of highland. The island has had different names over the years but is currently called Park Island. LandTech, the owner of the island, purchased the island and 1650 acres of high ground in Mt. Pleasant, South Carolina located between Highways 17 and 41 and bounded on the northwest by Toomer Creek, Darrell Creek, and the Wando River. LandTech purchased the property in December, 1996 for $5,500,000.00 from Georgia Pacific. Georgia Pacific had, in the 1980's, begun development of a 4500-acre tract, known as Dunes West, under a planned development district concept after the annexation of the property into the Town of Mt. Pleasant. The 1650 acres purchased by LandTech

was part of the original Dunes West planned development district which included Park Island. Under the PDD zoning which was in place at the time LandTech purchased the property and at the time of trial, Park Island could have been developed with an overall density of over 200 homes.

LandTech is currently in the process of developing its property with a mixed use of commercial and residential development. In aid of the development of the overall tract called Park West, LandTech engaged in wetland master planning, dock master planning, and has conducted the necessary archaeological surveys of the 1650 acres, including Park Island, in order to get the necessary environmental and regulatory permits to develop its property. The permit application for the bridge to Park Island is a part of the overall development plan for the entire Park West tract.

The property across Toomer Creek from Park West was developed by Georgia Pacific as part of its original Dunes West development and consists of expensive single-family residential lots and homes. Downstream from Dunes West and Park Island is the Highway 41 bridge which crosses the Wando River and links Charleston County with Berkeley County. This bridge is a two-lane drawbridge which seldom, if ever, opens. Immediately downstream of the drawbridge is a commercial facility known as Detyens Shipyard. Upstream of Dunes West and Park Island the Wando River gets progressively shallower and narrower and ultimately terminates in the Francis Marion National Forest. The Wando River is a true tidal estuary with very little infusion of fresh water. Toomer Creek divides Dunes West from Park West and is a small tributary of the Wando.

B. Permit at Issue

3 μ

The permit at issue allows LandTech to build a bridge from its high ground extending some 1430 feet across critical area which consists of a large mudflat interspersed with stands of spartina marsh to connect to Park Island. The bridge will be 33 feet wide with an elevation at its center of 11.5 mean sea level (msl) tapering to 10 msl on both ends, and will be approximately 2100 feet east of the center of Toomer Creek. The bridge will have a stormwater management system on it designed to capture the first inch and a half of stormwater which will be piped to both the mainland and the island; the water from the bridge will then run through a Storm Cepter system and be deposited in stormwater management ponds. The bridge has also been designed to carry both water to the island and sewage from the island to tie into LandTech's sewer lines on the high ground. As part of the permit application, LandTech was required to submit a conceptual stormwater

management plan for the island, a dock master plan, and a development plan. The dock master plan identifies 30 dock corridors from the 33 lots. Three of the docks in the dock corridors, if individual permits are granted, will be restricted to crabbing docks and three will be restricted to joint use docks.

Park Island is undeveloped. It is covered with a mature maritime forest. The island has approximately 29 acres of high ground above the OCRM critical line. It is surrounded by marshes and mud flats to the south and east. It is bounded by Toomer Creek on the west and by the Wando River on the north.

C. Summary of the Testimony:

The petitioners presented testimony of eight witnesses: Phillip Dustan, George Nelson, Beth Keyserling-Kramer, Patrick Tomlin, Jan Maize, Joel Ford, Loren Coen, and Nancy Vincent.

Beth Keyserling-Kramer lives at 3845 Colonel Vanderhorst Circle in Dunes West and her property fronts on Toomer Creek across from the location of the proposed bridge to Park Island. She and her husband bought the property, which was improved with a house, in March of 1988 for $510,000. She has a dock from her property into Toomer Creek, approximately 600 feet long. She and her family use Toomer Creek to fish, crab and shrimp, and she kayaks in the area. According to Mrs. Keyserling-Kramer, the waters of Toomer Creek are clean and her neighbors who own houses with docks and have boats are prudent in the use of their boats in the creek and have caused no problems. She testified that she was concerned that the permitting of a bridge to Park Island would set a precedent of bridges to other islands which she did not think should be developed. She also expressed a general concern about stormwater management on the island and a concern about the destruction of marsh grass from the construction of the bridge and docks which may be built on Park Island. She further testified that marsh grass currently grew under her dock and that her lot had a very small natural buffer between the edge of her lawn and the marsh.

(4)

Jan Maize and her husband live at 3861 Colonel Vanderhorst Circle in Dunes West. They bought their lot in 1995 and in 1998 built a house and a dock and have $500,000 invested in their property. She testified that Toomer Creek is teeming with life including shrimp, crabs and fish. She and her husband fish and crab from their dock. They own a 14-foot boat. She testified that the neighbors on both sides of her have lots with docks. She also testified that she and her neighbors

were able to motor around Park Island on a high tide in a small john boat leaving from Toomer Creek, crossing the mudflat behind the island, and ultimately reaching the Wando River. She acknowledged that there was no water between Park Island and the mainland on low tide and that the area was generally a mudflat. She expressed concern that the bridge to Park Island would hurt the marsh between Park Island and the mainland and that it would be precedent-setting, aiding the development of other islands. She believes that single-family residential lots should have a good size buffer between the edge of the lawn and the critical areas. She also testified that she and her husband had taken their boat under the Highway 41 bridge and had no problem getting under the bridge, but did not know how high the Park Island bridge was going to be nor how far apart the pilings were going to be spaced.

Joel Ford is the Director of Planning and Development for the Town of Mt. Pleasant and has held that position since January of 1979. As part of his job he oversees the planning functions of the town which include zoning, planned development, impact assessment, annexations, and subdivision design regulations. He testified that the LandTech property was originally part of Dunes West, a 4500-acre planned development of Georgia Pacific which was annexed into the Town of Mt. Pleasant shortly after Hurricane Hugo. Mr. Ford testified that Park Island was part of the original planned development district and that this zoning designation was still applicable. He testified that under the planned development district the zoning classification for Dunes West, 5281 units were allowed. He testified that under the Town of Mt. Pleasant's zoning ordinance 2.25 units an acre is considered low density. Mr. Ford also testified that the Town of Mt. Pleasant assesses the size of a development by whether an impact statement is required. The town requires an impact assessment for any development over ten acres or having more than 50 dwelling units. He further testified that as part of the development of its overall tract, LandTech has donated 105 acres to the Charleston County School District for the erection of schools on its property and has donated 59 acres of its property to the town for public recreation purposes. He testified that LandTech was also providing the town with a half an acre of highland which the town would then grade down to create saltwater marsh as mitigation for a public boat ramp project which the town had undertaken on Shem Creek. Lastly, Mr. Ford testified that the Town of Mt. Pleasant had no objection to the bridge permit.

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George Nelson is a computer technician who works for Phillip Dustan in his research laboratory at the College of Charleston. His work principally involves computer analysis of aerial photographs. He is self-taught. Mr. Nelson took a copy of LandTech's approved dock master plan of Park Island and rubber-sheeted it over an aerial photograph of the island which was digitized in 1989. Mr. Nelson testified that he believed that some of the dock corridors shown on the approved dock master plan were in excess of 1000 feet, but agreed that the determination of whether a dock could be built within any of the corridors shown on the dock master plan was ultimately left up to OCRM after a survey was completed and a permit application was actually filed.

Nancy Vinson is employed by the South Carolina Coastal Conservation League (SCCL) and holds the title as water quality program director. Part of her job is to review all permit applications for critical area permits and certifications in the coastal zone of South Carolina. In her opinion, the permit will lead to inappropriate development. Ms. Vinson testified that her organization opposed the issuance of the permit because, she believed, that 33 lots on the island was too many, that the stormwater management on the island was inadequate, and that the bridge to the island and the docks which might be built would shade and kill marsh grass leading to severe environmental damage. She testified that the SCCL believed that buffers should be a minimum of 100 feet regardless of any other stormwater management practices which might be implemented. She acknowledged that requiring hundred-foot buffers in the coastal zone was a legislative function of the South Carolina General Assembly, but that her organization had not sought to have legislation introduced to achieve this end.

(67) μ

Mrs. Vinson also testified that she believed that the bridge as permitted would cause the destruction of marsh grass under the bridge based upon her belief that shading from a James Island bridge killed marsh grass under the bridge. She testified that during her one visit to Toomer Creek in June of 1998, she visited a dock on Toomer Creek which was surrounded by marsh grass and that she found Toomer Creek to be a very healthy, productive ecosystem, notwithstanding the fact that the Dunes West side of Toomer Creek had been developed since 1991. Lastly, Ms. Vinson testified that the SCCL had appealed every bridge permit in the coastal zone of South Carolina with one exception. This exception was a bridge 360 feet long, 15 feet wide, going across a pristine spartina marsh to a 15-acre island in Selkirk Plantation. The purpose of the bridge was for the development of the 15-acre island. One of the SCCL's board members and a major contributor to the organization

was a principal in the development of Selkirk Plantation. Ms. Vinson provided no testimony about the SCCL, its structure or the membership, nor how the organization or its individual members would be affected by the bridge.

Patrick Tomlin is one of the principals in LandTech, the owner and developer of Park West. Mr. Tomlin testified that when his company took title to the property from Georgia Pacific it was zoned, and still is zoned, under a planned development district within the Town of Mt. Pleasant. He testified that Park Island is zoned R-3 by the Town of Mt. Pleasant which would allow it to be developed with five or six units to the acre. Mr. Tomlin testified that in the permit application as originally filed LandTech sought a bridge some 1900 feet long and 40 feet wide to access Park Island for the development of 66 lots. He further testified that the permit application was modified after the public hearings to attempt to satisfy the concerns raised at those public hearings as well as some concerns expressed by OCRM. He testified that his company agreed to donate a 12-acre parcel of property for a nature and science center on the headwaters of the marsh of Darrell Creek in order to help satisfy the public need requirement contained in Regs. 30-12(n). He further testified that at the time the permit application was originally submitted his company did not believe that Park Island was a small island. Lastly, Mr. Tomlin testified that the estimate to construct the bridge as presently permitted is approximately $2.8 to $3 million.

Phillip Dustan is a professor at the University of Charleston in the biology department and has a Ph.D. in ecology. His primary work in the field of marine ecology has been associated with coral reefs and their primary productivity. Dr. Dustan participated in the Charleston Harbor Project in a study to determine the impact of long-standing urbanization on water quality in tidal creeks. As part of that study he examined James Island Creek which bisects a substantial portion of James Island before entering the Charleston Harbor and Toomer Creek. The study comparing the two found that during periods of and after rainfall events there was an oxygen sag in both creeks. The study indicated that the oxygen sag in James Island Creek was greater than in Toomer Creek and he drew the conclusion that this was the result of unmanaged stormwater runoff from the highly urbanized James Island Creek area. Dr. Dustan testified that he did not believe that the stormwater management plan for Park Island was adequate. He based his opinion largely on his contention that lawns are impervious surfaces similar to paved streets and roof tops and that the stormwater

7

management calculations submitted by LandTech to OCRM failed to take this into account. Dr. Dustan also was of the opinion that the bridge and any docks which are built from Park Island will cause complete and utter destruction of all the marsh grass under the bridge and the docks causing fragmentation harmful to the environment. Dr. Dustan was of the opinion that north-south orientation of the proposed bridge to Park Island would decrease the amount and intensity of sunlight which was able to reach under the bridge reducing the amount of available sunlight by 95-97% and, in addition, the bridge would cast a shadow both from the east and the west which would kill marsh grass on both sides of the bridge. Dr. Dustan was of the opinion that building docks on Park Island would lead to increased predation of shrimp, crabs and fish in Toomer Creek and the Wando because it would give predators, such as birds, platforms to hunt from. He was also concerned that building docks on Park Island would lead to increased human predation of resources as well. Lastly, Dr. Dustan was of the opinion that the development of Park Island would disturb the ecological balance of Toomer Creek because lawn clippings from mowed lawns would find their way into the creek and alter the ecosystem.

Dr. Dustan acknowledged that he had not been to Toomer Creek in five or six years and had no idea of the extent of the development which had taken place on the Dunes West side. He had no idea of whether the biology of the creek had changed at all from his original study of Toomer Creek as part of the Charleston Harbor Project. Dr. Dustan was unaware of the size of the buffers, if any, which were on the lots on the Dunes West side of Toomer Creek or whether any of the marsh grass under the docks in Dunes West on Toomer Creek had been destroyed. He acknowledged that his opinion as to the shading effect from docks was based upon a student study of one dock at Dixie Plantation, but was unaware of the height of the dock or its width. Dr. Dustan is not aware of any marsh problems associated from stormwater management or docks in other subdivisions in Mt. Pleasant including Molasses Creek, Hobcaw Creek, the Old Town of Mt. Pleasant, Darrell Creek, or Paradise Island in the Wando River. Dr. Dustan was also unaware of any creek in Charleston, in Beaufort, Colleton, Jasper or Horry Counties, where lawn clippings had resulted in ecological damage to water quality.

Lastly, Dr. Dustan testified that he had never prepared a stormwater management submittal, had never reviewed the regulations dealing with stormwater management in South Carolina, had no

familiarity with computer models which are used in stormwater management calculations, nor with any regulatory stormwater management requirements of the State of South Carolina.

Loren Coen is employed by the South Carolina Department of Natural Resources (SCDNR) as a biologist in the Marine Resource Research Institute. Dr. Coen has a Ph.D. in marine ecology and marine biology and his work with SCDNR is primarily devoted to shellfish, including oysters. Dr. Coen testified that SCDNR does field surveys of oyster resources in the state and that these surveys are part of SCDNR's resource management of oysters. Dr. Coen testified that the oyster resources in the Wando River in front of Park Island are important from an ecological and habitat standpoint, but have no commercial or recreational significance because this area of the Wando River has been restricted by DHEC so that the oysters cannot be directly harvested for human consumption. Dr. Coen also acknowledged that he was aware that the stormwater management plan for Park Island met the South Carolina requirements for shellfish harvesting and those were the only standards that the State of South Carolina currently has. Dr. Coen acknowledged that the bridge would have no impact on the oyster resources in the Wando River.

OCRM presented three witnesses: Richard Chinnis, Joe Fersner, and Steven Brooks.

Richard Chinnis is the OCRM's director of permitting and certification and at the time of his review of the Park Island bridge permit application was the director of permitting in the critical area of the state's coastal zone. Mr. Chinnis testified that LandTech's bridge permit application was reviewed by himself as well as members of his staff, including Mark Caldwell, Curtis Joyner and Steve Brooks. Mr. Chinnis testified that OCRM made the decision to process LandTech's Park Island permit application under the requirements of R. 30-12N regulating access to small islands instead of R. 30-12F which deals with transportation projects, both public and private. Mr. Chinnis testified that the requirements of R. 30-12N, outside of marina specific projects standards, are the most restrictive standards in OCRM's critical area permitting regulations. Mr. Chinnis testified that under R. 30-12F, it would not have been necessary for LandTech to have demonstrated public need because the regulation has no requirement that public need be shown. Additionally, Mr. Chinnis testified that LandTech would not have been required to submit a dock master plan nor a full-blown conceptual stormwater management plan with engineering calculations and, accordingly, LandTech was required to meet a higher regulatory standard.

Mr. Chinnis testified that none of the state and federal resource agencies, namely, the Environmental Protection Agency, the National Marine Fishery Service, the United States Fish and Wildlife Service, nor the South Carolina DNR, had any objection to the proposed bridge. Mr. Chinnis further testified that none of the recommendations contained in the Charleston Harbor Project had been formulated into either rules or regulations of either OCRM or the State of South Carolina and that the recommendations were still being studied.

Mr. Chinnis acknowledged that OCRM had no definition for "small island" and that only one other permit involving an island the size of Park Island had been processed using standards set forth in R. 30-12N. Mr. Chinnis also testified that OCRM, and before that the South Carolina Coastal Council, had encouraged bridging as a means of access through critical areas, having found that filling of the marsh for causeways created a lot of environmental problems. Mr. Chinnis testified that following submittal of the original permit application and the public hearings, he and his staff had meetings with LandTech representatives in an attempt to address public criticism of the original application. These meetings culminated in a revised permit application which reduced the size and the length of the bridge and added additional environmental safeguards to the bridge and to the island itself. Specifically, the bridge was moved some 500 feet to the east putting it approximately 2100 feet from the middle of Toomer Creek. The length of the bridge was shortened from 1900 feet to 1430 feet, it was raised by a foot and a half in the middle, it was narrowed to 33 feet, stormwater management was added to the bridge, and LandTech agreed to provide intensive stormwater management for Park Island which included an average 50-foot buffer around the entire island. The number of lots on the island was reduced from 66 to 33. A dock master plan was approved for the island creating 30 dock corridors, three of which are limited to crabbing docks in the rear of the island, and three of which require joint-use docks. The stormwater management added to the bridge is designed to capture the first inch and a half of rainfall, pipe it from the bridge through a Storm Cepter system which separate oil and grease from the water before it is deposited in retention ponds; such a system exceeds any regulatory requirement currently in existence. Mr. Chinnis testified that under OCRM policies stormwater management is not required unless there are 30,000 vehicle trips a day across a bridge.

10

Mr. Chinnis testified that insofar as the buffers on the island were concerned, neither the OCRM nor the State of South Carolina has any regulatory requirement to require or enforce buffers around critical area. The OCRM has in the past looked upon creation of buffers around a critical area as an element of public need in small island access. Mr. Chinnis testified that the height of the bridge exceeded OCRM's regulatory requirement by a foot and that neither he nor any member of his staff envisioned any problems as a result of shading. Mr. Chinnis further testified that in his judgment the bridge would not impose any impediment to navigation since the area behind the island is largely an unvegetated mudflat that is only inundated at high tide. Additionally, because the bridge will be some six feet above mean high water, he determined that it would have more than sufficient clearance for kayaks, john boats, and other small type of water craft which might be navigating in the area on a high tide. Mr. Chinnis testified that the conceptual stormwater management plan for the island exceeded the current South Carolina regulations dealing with stormwater management.

Mr. Chinnis also testified that he and his staff concluded that there was no other feasible alternative access to the island. Because of the restrictions imposed by the Highway 41 bridge downstream and the shallowness of the river upstream, bringing in construction materials by barge was not feasible. Mr. Chinnis was aware Daufuskie Island and Dewees Island have been developed without bridges, but he testified that these two islands were fundamentally different. First, both are true barrier islands and building a bridge to either Dewees Island of Daufuskie Island would have been impractical in the first instance. Secondly, both Dewees Island and Daufuskie Island have commercial docks and deep water access which allow offloading of construction materials for residential construction and both have their own marina and ferry service, none of which is available to Park Island. Accordingly, Chinnis and his staff concluded that access by water for the development of the island was simply not feasible.

With regard to public need, Mr. Chinnis testified that OCRM had no definition for "public need". In his consideration of public need he took into consideration the voluntary buffer around Park Island, and took into account the 12-acre parcel on the mainland which LandTech was donating for a public educational type facility, the tract on the mainland that had been set aside for public recreational usage and schools, and the half acre of high ground which LandTech was providing the

Town of Mt. Pleasant as mitigation. Taken together, Chinnis testified that LandTech had gone to greater lengths than any other bridge applicant in attempting to satisfy OCRM's public need requirement. Additionally, Chinnis testified that in the Selkirk Plantation bridge permit, which the South Carolina Coastal Conservation League found to be appropriate and satisfactory, public need was satisfied because of pre-existing conservation easements on the property and there was no additional demonstration of public need for that bridge permit application. In summary, Mr. Chinnis testified that the bridge permit application met and surpassed all of the criteria required under R. 30-12N.

Joseph Fersner is employed by the OCRM as a licensed professional engineer, with a Ph.D. in water resources civil engineering. He is responsible for reviewing and issuing stormwater management permits in the coastal zone of South Carolina. Dr. Fersner reviewed the conceptual stormwater management plan for the bridge as well as Park Island and concluded, based upon the submittals, that LandTech would meet all the stormwater management regulatory requirements of the Stormwater Management Sediment Reduction Act and its attendant regulations. Specifically, Dr. Fersner testified that the stormwater management retention ponds proposed for the island were adequate, would retain all the stormwater generated by the proposed roads on the island as well as the stormwater which will reach the island from the bridge, and further that the retention ponds in conjunction with an average 50-foot buffer should capture and treat the first inch and a half of rain from the island which contains the vast majority of any pollutant which may exist. Additionally, Dr. Fersner testified that treatment of the stormwater from the bridge exceeds any current regulatory requirement of the State of South Carolina. Dr. Fersner also testified that lawns are not considered to be impervious surfaces in stormwater management calculations. Lastly, Dr. Fersner testified that while South Carolina has absolutely no regulatory requirement for buffers around critical areas, he and his staff have been attempting to get permit applicants to agree to establish buffers anywhere from 10 to 30 feet since research with which he is familiar found a 30-foot buffer adequate for water quality purposes.

12

Steven Brooks is a biologist employed by OCRM and has inspected critical area resources around Park Island along Toomer Creek and the Wando River. Mr. Brooks testified that the area behind Park Island over which the bridge is designed to cross is a mudflat area with some spartina

alternifiora in the lower portions transitioning into a high marsh area of black needle rush. Mr. Brooks testified that he is of the opinion that the area behind Park Island is a portion of the overall upper Wando estuarine system rather than a complete system within itself and that the system in this area comprises hundreds of acres. Mr. Brooks further testified that while some productivity of the mudflat and the adjacent marsh area will be lost as a result of the driving of 200 pilings to support the bridge, most of the pilings will be driven in the mudflat area and the impact will be negligible. Mr. Brooks testified that the shading from the bridge will be negligible and that he has not found any shading problem under a bridge that has adequate clearance. He testified that the Park Island bridge is going to be built a foot higher than OCRM regulations require, that the area under the bridge will get adequate sunlight and that the bridge will have no effect on the productivity of the mudflat. Mr. Brooks further testified that in his opinion the buffer around Park Island is above and beyond what is necessary to protect the adjacent marsh from stormwater runoff and actually provides more protection than is needed. Lastly, Mr. Brooks testified that, based upon his experience, he does not anticipate there will be any adverse affects from additional boat traffic in Toomer Creek resulting from docks being placed within the approved dock corridors on Park Island.

LandTech, L.L.C. presented five witnesses: David Stevens, John Manzi, Philippe Ross, Ivan Chou, and Heyward Robinson.

David Stevens is a licensed professional engineer in the State of South Carolina who owns CSE Engineering, a general civil engineering company which concentrates on infrastructure work. Stevens has provided engineering services to LandTech. Mr. Stevens testified that the bridge was redesigned after the public hearing and the review of public comments and the redesign involved moving the bridge 500 feet to the east, shortening its length and reducing the width of the bridge from 40 feet to 33 feet. Stevens testified that 33 feet was the minimum width that could safely accommodate two lanes of traffic, a bike path, and pedestrian access. Stevens further testified that the bridge is designed to carry water and sewer to and from Park Island and that it was redesigned to handle stormwater management. The stormwater redesign involved elevating the bridge in its center to 11.5 feet and crowning the bridge in the middle so that a 12-inch pipe would be able to carry the first inch and a half of stormwater from the bridge to a Storm Ceptor system on both the

(13)

mainland and the island where the water will be discharged into retention ponds. The Storm Ceptor system is designed to separate oil and grease from water and has a proven track record.

Mr. Stevens also testified that the stormwater retention ponds on the island are designed to handle all the impervious runoff from the roads. He calculated that after development the amount of impervious surface on the island will be 17.8%, which includes roads, driveways, patios, decks and roofs on 33 houses. This calculation excludes lawns which are considered, insofar as stormwater management is concerned, to be pervious. Mr. Stevens also testified that the stormwater management for Park Island exceeded the stormwater management that was required for the balance of LandTech's 1650 acres. On the upland portion of Park West which borders either Toomer Creek or Darrell Creek, the buffers along the critical area vary in width between 10 and 30 feet. This was required by OCRM as part of its stormwater management plan for the mainland.

Mr. Stevens further testified that he performed a mathematical calculation to determine the amount of sunlight that would be available under the bridge after its construction. While a portion of the area under the bridge will be shaded during various times of the day, sunlight will get under the entire bridge everyday.

Heyward Robinson is a private environmental consultant who has been working with LandTech since 1998 and has been involved with the various environmental and regulatory permits which LandTech has sought to develop its property. Robinson has been primarily responsible for the bridge permit to Park Island. LandTech agreed to pay Mr. Robinson a bonus of $30,000 if he succeeded in obtaining a permit from OCRM for the bridge. Mr. Robinson has been paid $20,000 of this bonus. Mr. Robinson's understanding is that he will be paid the remaining $10,000 once LandTech has "a permit it can use."

(14)

Prior to setting up his own consulting firm, Robinson, who has a degree in biology, worked for the South Carolina Coastal Council as its staff biologist. He started with the South Carolina Coastal Council in 1977 and was responsible for reviewing all critical area permits in the coastal zone from 1977 until 1991, when he became the director of the Charleston Harbor Project for OCRM. The Charleston Harbor Project was funded by the National Oceanographic and Atmospheric Administration and was designed to study the Charleston Harbor to assess the ecological health of the Charleston Harbor and to try to predict what effects increased

industrialization and urbanization might have on the harbor and to make recommendations to various local units of government with a view toward protecting water quality in the harbor. The Charleston Harbor Project employed a number of scientists to study various aspects of the harbor and to assist in making recommendations for long-range planning. Initially, it was necessary, according to Robinson, to get some baseline information concerning the health of the harbor, and nutrient loading was the area of focus. The indicator which was used was inorganic nitrogen. Based upon the study of the Charleston Harbor area including the harbor itself and the Wando, Ashley and Cooper Rivers, it was found that 78% of the nitrogen entering the Charleston Harbor watershed came from point source discharges. Thirteen percent of the nitrogen came from air disposition, and 9% came from non-point source discharges such as stormwater runoff.

Robinson testified that the buffer study done as part of the Charleston Harbor Project by Dr. McCutcheon, used grass strips as stormwater buffers as opposed to natural vegetation. It was the use of the grass strips that led to the recommendation that a 30 to 50-foot buffer was adequate for stormwater management control purposes around critical areas.

The Charleston Harbor Project resulted in a number of reports and studies, but none so far have been the basis of new regulations or local ordinances.

Mr. Robinson testified that at the time he submitted the bridge permit application to OCRM, it was his belief that the permit application was going to be considered under R. 30-12F. He did not believe at the time Park Island was a small island within the meaning of R. 30-12N. Following the comments generated at the public hearing and the concerns expressed by both the public and members of OCRM, Robinson was involved in making the modifications to the bridge permit application.

15

Mr. Robinson testified he did not believe that shading from the bridge was going to have any significant environmental impact. He testified that shading will have some effect on the grass so that it might not be quite as tall as unshaded grass but that the effect would be minimal. His opinion was based upon his experience with the South Carolina Coastal Council and the OCRM as well as visual observation of a number of bridges in and around the Charleston area.

Ivan Chou is employed by Applied Technology and Management, a coastal engineering and environmental consulting firm. Mr. Chou has a Master's Degree in coastal and oceanographic

engineering. He is a licensed civil engineer in the States of Florida, Georgia, North Carolina and South Carolina. Mr. Chou performed a limited hydrological analysis of Toomer Creek and the upper Wando near Park Island. As part of his analysis Chou took depth readings in Toomer Creek and the Wando River, dissolved oxygen and salinity levels in both areas and temperature readings. Based upon his study he found the dissolved oxygen level in Toomer Creek from its confluence with the Wando to a point where the creek became very narrow and shallow was high, ranging from 6.2 parts per million (ppm) to 5.7 ppm. He testified that the state water quality standard is 5 ppm. Mr. Chou also testified that the tidal range in Toomer Creek is 6.4 feet. Mr. Chou calculated the tidal prism for Toomer Creek and found it to be approximately 600 acres. Mr. Chou testified that on a daily tidal cycle 400 million gallons of water flow in and out of Toomer Creek. He found that the water quality in Toomer Creek was good. Mr. Chou also concluded that the bridge to Park Island would have insignificant effect on the hydrologics and hydrology of the Toomer Creek area.

John Manzi lives on Folly Island, South Carolina and has a Ph.D. in biological oceanography. In 1976 Dr. Manzi took a position with the South Carolina Wildlife and Marine Resources Department and worked there for 15 years as the senior marine scientist in charge of shellfish research. During that time he spent part of every week in the shellfish ground marshes along the entire coast of South Carolina. While he was employed with the Wildlife Department, Dr. Manzi was involved in a study which attempted to determine how the various activities of man impacted marine environments. Those activities included road construction, dock building, boat activity, marina development and commercial and recreational fishing. Dr. Manzi's primary responsibility while he worked for the Wildlife Department was with the state shellfish resources; later, he became involved in aquaculture research for the state. Dr. Manzi left the Wildlife Department in 1990 and became involved in a commercial aquaculture operation in South Carolina. This operation involved raising clams for the commercial market. Dr. Manzi testified that the company built a hatchery for the propagation of small clams in Sol Legare Creek adjacent to Highway 171 which is the road leading to Folly Beach. The hatchery operation was immediately adjacent to the bridge which crossed the creek. Dr. Manzi testified that water quality was of primary importance to the hatchery and nursery project since juvenile clams are very fragile and they were being raised in growing pens attached to a dock at the hatchery. Dr. Manzi testified that there were no stormwater management

16

controls on the bridge over Sol Legare Creek and that direct stormwater runoff from the bridge and the adjacent roadway found its way into Sol Legare Creek. At no time while he was involved in the nursery operation did his company ever discover any water quality problems associated with the runoff from the road or the bridge, although they did extensive water quality testing. Dr. Manzi testified that Sol Legare Creek has a tidal prism similar to Toomer Creek. Dr. Manzi testified that the traffic across the bridge was from 11,000 to 13,000 cars a day.

Dr. Manzi also looked at the oyster resources in the Wando River adjacent to Park Island and found that the majority of the oysters that he found on the beds were dead and that this same condition was prevalent across the Wando River in a bed he examined. Dr. Manzi testified that his opinion was that the death of the oysters might be attributable to a disease called dermo although he could not be sure of that. He further testified that the upper Wando River near Park Island was about the limit of where you would expect to find oyster resources because of the tremendous swings in salinity and high summer temperatures. Dr. Manzi was of the opinion that the oyster resources in the Wando River in the vicinity of Park Island had little if any commercial or recreational utility, and he testified that the oyster beds in that area have been closed for as long as he could remember to either commercial or recreational harvesting.

Dr. Manzi testified that based upon his experience, docks, if properly constructed, have little if any impact on the growth of spartina alterniflora. Properly constructed, according to Dr. Manzi, meant that the dock needed to be at least a meter above the height of the marsh grass and be of a reasonable width. Dr. Manzi also testified that in his experience shading from bridges did not lead to the death or destruction of marsh grass under the bridges and that while initial bridge construction severely impacted the grass under a bridge, it recovered quickly. Dr. Manzi watched this process occur while the James Island Connector linking downtown Charleston and James Island was being constructed.

(17)

Lastly, Dr. Manzi performed a statistical analysis of the size of islands within the Wando watershed. The analysis was designed to show the relationship in a size frequency distribution of Park Island to the rest of the islands in the Wando River basin. Dr. Manzi found 141 islands within the Wando River basin, the smallest of which was .11 acres and the largest was 633 acres. Based upon his statistical analysis Dr. Manzi found that 80% of the islands in the Wando River basin were

smaller than Park Island, which is 30 acres in size, and only 20% were the same size or larger.

Philippe Ross is currently the director of the Division of Environmental Science and Engineering for the Colorado School of Mines. In addition to his administrative duties he teaches courses in environmental design, data management and aquatic toxicology. Dr. Ross has a doctorate in biology which was primarily focused on aquatic biology. Dr. Ross testified that he worked for seven years for the State of Illinois as an aquatic toxicologist and from 1991 until 1997 was the head of the biology department at The Citadel. During that period of time he was involved with the OCRM in both the Charleston Harbor Project and a separate study to determine the impact of the newly constructed Isle of Palms Connector on the underlying and surrounding marsh and creek system.

The purpose of the Isle of Palms Connector study was to determine if chemical runoff from the roadway as a result of traffic on the bridge introduced toxicity into the sediments in the area below and on either side of the bridge. The Isle of Palms Connector study lasted for five years, and at the time the Isle of Palms Connector had been retrofitted with a stormwater management system consisting of a series of collection pans which captured the first half inch of runoff from the bridge. Dr. Ross testified that when the Isle of Palms Connector was first opened the average daily traffic count was in the neighborhood of 5,000 to 6,000 cars a day but had increased to 15,400 cars a day by 1997. Based upon the Connector study, Dr. Ross testified that there was no scientifically statistical significant different toxicity loading under and around the bridge when compared to the marsh not influenced by the bridge.

(18) μ

Dr. Ross was of the opinion that the stormwater management plan proposed for the Park Island bridge was superior to that which was currently in place on the Isle of Palms Connector and that it would be extremely unlikely that the bridge would cause any biological toxicity to the surrounding marsh or mudflat.

Dr. Ross was of the opinion that the stormwater management plan proposed for Park Island, particularly the 50-foot average natural buffer from the critical area, makes it unlikely that stormwater runoff from the island will have any effect on the adjacent marsh. His opinion was based on the amount of impervious surface on the island after the construction of 33 houses, paved roadways, driveways, patio and deck coverage, and parking apron. He opined that Park Island, after

buildout, would have an impervious surface of 17.8%. Dr. Ross did not include lawns in his calculation because he stated that the Environmental Protection Agency does not consider a grass lawn as an impervious surface.

FINDINGS OF FACT

Having observed the witnesses and having closely passed upon their credibility, and having reviewed the exhibits presented at the hearing and having taken into consideration the burden of proof required of the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and nature of the hearing and notice of the respondent's bridge application was timely and promptly given to all parties.

2. Park Island, 29.74 acres located at the confluence of Toomer Creek and the Wando River, is separated from the mainland by a mudflat containing isolated stands of spartina alterniflora in the lower areas and black needle rush marsh close to the island and the mainland. The area behind the island goes dry at low tide and while it is possible to navigate behind the island on a high tide in a small john boat or kayak, there are no definable creeks behind the island which are navigable.

3. Park Island is a portion of a 1650-acre tract which LandTech acquired from Georgia Pacific in 1996. Georgia Pacific had developed a significant portion of its 4550 acres into a planned development district approved by the Town of Mt. Pleasant. This development is known as Dunes West. Park Island was included in the original planned development district, and was zoned, and is presently zoned, R-3 which would allow residential density on the island of approximately 210 units. The property purchased by LandTech fronts upon both Highway 17 North and Highway 41, and is bounded by Toomer Creek, the Wando River and Darrell Creek. The Dunes West side of Toomer Creek has been substantially developed with single-family residential homes and docks. Most of the individual petitioners live along Toomer Creek in Dunes West. Toomer Creek is a healthy, productive saltwater creek which has not suffered any environmental problems from the Dunes West development.

19 ML

4. LandTech is currently in the process of developing its 1650-acre tract consonant with the planned development district zoning which allows it flexibility in a mixed-use development

including commercial, residential, and multi-family. The bridge to and the development of Park Island is simply a portion of the overall development of the property which is known as "Park West."

5. In developing Park West, LandTech has received stormwater management permits from the OCRM, has engaged in wetland master planning, performed full archaeological surveys, and submitted dock master plans for the high ground portions of its property which border Toomer Creek.

6. As part of the overall development of Park West, LandTech applied to the OCRM Division of DHEC for a permit to construct a bridge to Park Island. The original permit application sought the construction of a concrete bridge 1900 feet long, 40 feet wide, and 10 feet high.

7. OCRM wrote a letter to LandTech on May 29, 1998, requiring it to submit its DMP and stormwater management plan for the island before it could take action on the request.

8. The bridge permit application generated significant public participation, and a public hearing was conducted on the application on July 7, 1998 and a continuation of that public hearing was held on July 9, 1998. A number of public comments were received by OCRM prior to, during and after the public hearing and concerns were expressed: (1) over the length, height and width of the bridge; (2) over the rapid growth occurring in that portion of Mt. Pleasant and the impact that growth would have on surrounding areas; (3) about the potential adverse environmental impacts from the bridge itself as well as the high ground development, *e.g.*, effects on water quality, fin fish, shellfish, the marsh, etc., and (4) about aesthetic impacts resulting from the size and orientation of the bridge. There were also concerns from members of the public about the density of the development both at Park West itself and on Park Island. The original submittal to OCRM indicated that LandTech planned 66 lots for Park Island.

20

9. The parties have stipulated that notice of the bridge permit application was published in accord with statutory and regulatory requirements and that appropriate notice was given to adjoining property owners.

10. OCRM received a letter from the South Carolina Department of Natural Resources (SCDNR) withholding objection to the construction of the bridge if measures suggested by it were taken in its construction to minimize its effect on the critical area. SCDNR recommended the use of top-down construction methods. SCDNR did not assess or comment on the impacts from

potential development of the island on "surrounding estuarine resources" although it has done so on other bridge applications.

11. The marshes, creeks, and other tidelands around Park Island are highly productive marine plant and animal habitat. These estuarine waters provide critical nursery habitat for finfish, shellfish, and micro-organisms. The marshes and tidal creeks furnish protection from predators for larval and young fish. The creeks, mud flats, and marsh grass (*spartina alterniflora*) provide critical food for these animals. The vegetative productivity of this area is not limited to spartina. Microalgae, phytoplankton, and other minute plants abound and contribute as much or more than the spartina. The Wando River is more pristine and has less "flushing" than the Ashley or Cooper Rivers.

12. Following the public hearing and in order to respond to public concerns as well as concerns expressed by OCRM, LandTech substantially modified its permit application. These modifications included moving the bridge 500 feet further away from Toomer Creek so that its present location is 2100 feet east of the middle of Toomer Creek; reducing the length of the bridge to 1430 feet; reducing the width of the bridge to 33 feet; increasing the height of the bridge to 11.5 feet at the center of the bridge; reducing the number of lots on Park Island to 33; adding a 50-foot average width buffer around Park Island; and submitting an amended dock master plan reflecting the reduction in lot density. The bridge would cross approximately 253 linear feet of freshwater wetlands and approximately 1154 linear feet of marshlands. Also, the bridge design was revised to add a "stormceptor" rainwater collection system for capturing and "treating" the first inch of rainwater.

21 ML

13. At the time of the public hearing, LandTech had yet to submit the DMP or stormwater management plan previously requested by OCRM. Instead, LandTech obtained extensions of time from OCRM to fulfill OCRM's requirements. LandTech later submitted a revised DMP that was approved by OCRM on December 21, 1998. The DMP shows dock corridors for 33 lots. The 3 joint use docks are shared by adjoining lots in areas adjacent to the no-dock zones established by OCRM. All 33 lots would have a dock except for six lots which would be served by these three joint-use docks. The DMP for Park Island contains no community docks.

14. If individual docks were constructed in all the dock corridors in the DMP approved by OCRM, the total length of the docks would exceed 3 miles. Approximately 5 of the dock corridors would require docks in excess of 1,000 feet.

15. The proposed new location of the bridge would cross an area adjacent to the mainland that was designated as a protected buffer area by the United States Army Corps of Engineers under the freshwater wetland permit issued to Dunes West Joint Venture. OCRM assented to the modification of this fresh water wetland permit to allow the construction of the bridge.

16. OCRM issued its permit for the bridge on February 2, 1999, based on the revised application. It permits a bridge of a total length of approximately 1,430 feet and a width of 33 feet. One of the permit's special conditions is that the development plan have a maximum of 33 lots on the island (Special Condition 3).

17. The Petitioners timely appealed the permit and requested a contested case hearing. The Petitioner South Carolina Coastal Conservation League is a non-profit organization of approximately 4000 members dedicated to protecting cultural and natural resources in South Carolina. Petitioner Coastal Conservation Association - South Carolina is a non-profit organization that promotes the protection of marine animal and plant life and other resources on the coast. Most of the individual Petitioners own property in Dunes West on Toomer Creek near the island.

18. During the permit application process no objections to the permit were lodged by the Town of Mt. Pleasant, the Environmental Protection Agency, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or the South Carolina Department of Natural Resources. All of these agencies received copies of the permit application.

22 ML

19. The bridge had always been designed to carry both water and sewer to and from the island, and the requirement that LandTech submit a DMP, a stormwater management plan, and make a demonstration of public need stemmed from OCRM's decision to treat the bridge permit application as one involving access to a small island under R. 30-12N instead of treating the permit application as a transportation project under R. 30-12F. The review requirements and criteria for a bridge permit under R. 30-12N are the second most stringent in coastal zone permitting being surpassed only by the requirements imposed by regulation on the permitting of an open water marina. Had OCRM considered the permit application under R. 30-12F, which it could have done, LandTech

would not have been required to address either public need, provide engineered stormwater management calculations, or provide a dock master plan.

20. There is no definition in OCRM's regulations of "small island". Thus, decisions are made on a case-by-case basis. A previous permit application involving an island roughly the same size as Park Island known as Charlotte Island in Beaufort County had been evaluated by OCRM under the small island criteria but this was the first and only time OCRM had imposed those criteria on an island of 30 acres.[1] A statistical analysis of islands in the Wando River basin places Park Island in the large island category since 80% of the islands in the basin are smaller than 30 acres. Mt. Pleasant requires an impact assessment for any development within its jurisdiction in excess of ten acres. Obviously, the town does not consider Park Island as a "small" development.

21. S.C. Code Ann. Regs. 30-12F is related to transportation projects in the coastal zone and recognizes there is often a strong public need for such projects. Subsection (2)(B) of the regulation provides: "The location and design of public and private transportation projects must avoid the critical areas to the maximum extent feasible. Where coastal waters and tidelands cannot be avoided, bridging rather than filling these areas will be required to the maximum extent feasible;" Subsection (D) provides: "To the maximum extent feasible, transportation structures must be designed so as not to alter the natural waterflow and circulation regimes or create excessive shoaling or erosion. Where applicable, adequate clearance for commercial and pleasure craft must be provided;" Subsection (E) provides: "Where feasible, maximum care should be taken to prevent the direct drainage of runoff water from transportation routes and associated facilities from entering adjacent water bodies;" and subsection (I) provides: "The department will require applicants for transportation project permits to consider the accommodation of other public utilities and facilities design, thus avoiding unnecessary future alterations such as that caused by the laying of cables or transmission lines in wetlands adjacent to the existing roadway." LandTech's bridge permit application clearly meets all of the specific criteria applicable to that permit under R. 30-12F. There

23

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[1] See Bill & Karen Peyton, et al. v. SCDHEC-OCRM & Ausburn, Docket No. 98-ALJ-07-0249-CC.. In that contested case appeal before the Hon. Ralph King Anderson, III, the court found that Charlotte Island, which contained 33 acres of high ground, was appropriately considered a "small" island.

is simply no credible evidence to the contrary.

22. The requirements of R. 30-12N are far more comprehensive and stringent than those of R. 30-12F. In relevant parts, R. 30-12N provides:

> To prevent inappropriate access to small islands, permanent filling for access is prohibited, except for the expansion of existing usable causeways. Bridging will be considered upon:
>
> (1) Distance of bridging required;
> (2) Type of bridging and dimensions of bridging requested;
> (3) Configuration of shoreline;
> (4) Size of the island, including highland and critical area;
> (5) Existence of feasible alternatives;
> (6) Public need;
> (7) Impact on protected resources;
> (8) The ability of owner to tie into existing sewer or meet SCDHEC's standards for septic tanks;
> (9) Impact upon value set forth in 48-39-20(e);
> (10) The island is subject to stormwater and management policies set forth in the program document;
> (11) The owner must provide a dock master plan, and a development plan. Mitigation will be required for any filled place in the critical area for widening of causeways."

13. Length, Type, and Dimensions of the Bridge. [30-12(N)(1), (2)] In order to access Park Island it is necessary to build a bridge to it. Originally the bridge was going to be 1900 feet long, but LandTech reduced the length of the bridge to 1430 feet, which is the shortest distance between the mainland and the island. There have been several applications for bridges of similar length for which OCRM has granted a permit. In Burgess & S.C. Coastal Conservation League v. SCDHEC-OCRM & Dominion Trust, LLC, Docket No. 99-ALJ-07-0167-CC, OCRM granted a permit for a bridge of over 1,000 feet.[2] In another situation, OCRM granted a permit for a bridge to a much smaller island than Park Island, with a bridge length of approximately 900 feet. That issuance was affirmed by this court. Pamela Bartenfield et al. v. SCDHEC-OCRM & Michael T.

24

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[2] However, the Hon. John D. Geathers denied the bridge application on appeal for various reasons, *e.g.*, feasibility of other alternatives to avoid the wetlands, bridging at other locations, the failure of OCRM to address the long-range cumulative effects of the project since no stormwater management plan for the bridge had been performed, and failure of OCRM to obtain a permit from the U. S. Army Corps of Engineers for the filling of wetlands.

Casa, Docket No. 98-ALJ-07-0689-CC. I find that the distance of bridging required was appropriately considered by OCRM.

24. The proposed bridge has always been a concrete structure and concrete itself has little or no environmental impact. The evidence indicates that concrete is no less environmentally safe than wood, and concrete is more durable, requiring less maintenance than wood. Originally the bridge would have spanned 1900 feet, would have been 40 feet wide, and ten feet above mean sea level (MSL). During the permitting process the dimensions of the bridge were changed so that as permitted the bridge will be 1430 feet long, resulting in less pile bents, the width of the bridge has been reduced from 40 feet to 33 feet, the minimum needed for access and safety, [3] and the height of the bridge has been raised to 11.5 feet, MSL, in the middle of the bridge and is ten feet, MSL, on each end. The elevation of the bridge will be at least five feet above mean high water. This height is within OCRM guidelines, which require that level in order to reduce impacts such as shading. OCRM gave appropriate consideration to the type of bridging and dimensions of bridging requested and the changes made will lessen impacts on the environment.

25. Configuration and Size of the Island.[30-12(N)(3),(4)] Viewed from above the shoreline of Park Island as it faces the mainland, its configuration is roughly in the shape of a boomerang; its center is the narrowest and it widens out to the east and the west. On the Wando River side of the island the marsh is predominantly spartina alterniflora before it ends in water, and on the mainland side of the island there is black needle rush close to the mainland and to the island itself, with a mudflat with limited spartina alterniflora between the two. The orientation of the bridge will be north to south, but west of the existing Dunes West development. This places the bridge parallel to Dunes West, shortens the length of the bridge and moves it farther from the residents of Dunes West. Even though the bridge will be parallel to the Dunes West development on the other side of Toomer Creek, it will be located approximately 2100 feet away from the center of Toomer Creek and should pose little or no visual impact or aesthetic problem to the residents of Dunes West. In fact, none of the witnesses from Dunes West complained about visual impacts in

257

[3] Width of bridges is dictated by local government requirements, giving consideration to traffic volumes and safety issues. Charleston County requires a minimum bridge width of 32 feet.

their testimony. OCRM correctly reviewed the configuration of shoreline as required in R. 30-12N.

26. Regs. 30-12(4) requires a consideration of the size of the island. OCRM has interpreted this requirement to require consideration of the amount of high ground in proportion to the amount of critical area. The island contains 29.74 acres of high ground with no freshwater wetlands. There were no isolated areas of critical area or freshwater wetlands. The bridge to the island will span 1430 feet of critical area, however, environmental impact from the bridge will be negligible. The bridge will facilitate the development of 33 lots on the island. The fact that the island is predominantly high ground and suitable for development supports the issuance of a bridge. OCRM gave the size of the island just consideration.

27. Feasible Alternative Access [30-12(N)(5)]. The terms "feasible" and "feasible alternative" are defined in OCRM Regulation 30-1(C)(6) (Supp. 1998) as follows:

> The Department with respect to individual project proposals determines feasibility. Feasibility in each case is based on the best available information, including, but not limited to, technical input from relevant agencies with expertise in the subject area, and consideration of factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose. "Feasible alternatives" applies both to locations or sites and to methods of design or construction, and includes a "no action" alternative.

There is no feasible alternative access to the island which would allow it to be developed. While there was some general testimony concerning the development of Daufuskie Island and Dewees Island which do not have bridges, it is clear that these two islands are fundamentally different from Park Island. First, both islands are true barrier islands which are substantially larger than Park Island and it would be difficult, if not impossible, to build bridges to the two islands. Secondly, and equally importantly, both Daufuskie and Dewees have deep water access which allowed for the construction of commercial-type pier facilities on both islands so that construction equipment can be offloaded, and both islands have their own ferry service and their own marinas. However, the Wando River in the vicinity of Park Island is reasonably shallow, the Highway 41 bridge downstream effectively blocks the river upstream from large boats, such as barges, which would be necessary to bring construction material to the island, and it is simply not feasible to attempt to access this island for the construction of single-family residential houses by any means

26

other than a bridge. There was no credible evidence as to how sewage from the island or water to the island would be handled without a bridge.

OCRM concluded that it would not be feasible to access Park Island in another way.[4] It would be possible to access the island by a dock; however, given the density of development and the number of homes to be built, it would not be a feasible alternative. OCRM correctly concluded that there was no feasible alternative access.

28. Public Need [30-12(N)(6)]. Neither OCRM's critical area permitting regulations nor the Coastal Zone Management Act define "public need." [5] This omission has created a certain amount of confusion in addressing this issue in the consideration of bridge permits to small islands. The issue of public need was addressed during the permitting process and in the permit itself. LandTech has agreed to set aside 12 acres of high ground adjacent to Darrell Creek for the creation of a passive public recreation and educational center. While the 12 acres is not on the island itself, the bridge permit at issue is simply part of the development of LandTech's 1650 acres and should not be viewed in isolation from the overall development of Park West. [6] Additionally, LandTech has

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[4] There is precedence in the area for island developments without bridges. "Goat Island," behind the Isle of Palms, can only be accessed by water. Any bridge to Goat Island would be over the Atlantic Intracoastal Waterway, and would pose a navigational hazard to intracoastal navigation. Dewees Island, located just north of the Isle of Palms, is a development with multiple homesites. However, access to Dewees Island was restricted by agreement through recorded restrictive covenants. In addition, vehicle access would be by way of a bridge over Dewees Inlet. Such construction would be extremely difficult, if not impossible, given the dynamic nature of Dewees Inlet and the potential for navigational impacts.

27

[5] There is a definition of "public interest" and the Administrative Law Judge Division has used this definition to clarify what constitutes a public need. See Sierra Club et al. v. SCDHEC-OCRM & Debordieu Colony Comm. Ass'n., Docket No. 96-ALJ-07-0516-CC (Admin. Law Judge Div. 1998); Bill & Karen Peyton, et al. v. SCDHEC-OCRM & Ausburn, Docket No. 98-ALJ-07-0249-CC (Admin. Law Judge Div. 2000).

[6] It must be noted that 12 acres of undeveloped, undisturbed land would be extremely expensive if public funds were used in its acquisition. Here, LandTech acquired the acreage with its own funds and has donated it to the public.

donated 0.5 acres of waterfront high ground which the Town of Mt. Pleasant will use to create [7] marsh as mitigation for a town project involving the rehabilitation of a public boat ramp. This has saved money for the taxpayers of Mt. Pleasant. Furthermore, LandTech has agreed to establish an average minimum 50-foot buffer around Park Island which will remain in an undisturbed natural vegetated state. It is undisputed that the State of South Carolina has no regulatory mechanism for requiring such buffers as part of its critical area or stormwater management permitting process. The experts for both the Petitioners and the Respondents agreed that such buffers are the most effective method of ameliorating or mitigating the water quality impacts of residential development next to sensitive waters. In its natural, vegetative state, the buffer functions as a filter of storm water pollutants and absorbs water as it flows off-site.

Lastly, while not directly associated with the bridge permit, LandTech has donated 105 acres of its property to the Charleston County School District for the erection of public schools and 59 acres have been given to the Town of Mt. Pleasant for public recreational purposes. The OCRM, in another permit for a bridge to a small island, OCRM P/N 99-195-E, which is in a development known as Selkirk Plantation, concluded that the public need requirement was satisfied by a preexisting conservation easement held by the Lowcountry Open Land Trust on a portion of the 800-acre tract. The South Carolina Coastal Conservation League apparently found this demonstration of public need to be satisfactory and supported the issuance of that bridge permit. The OCRM correctly found that the public need requirement had been satisfied.

29. Impact on Protected Resources [30-12(N)(7)]. While there will be some impacts on existing critical area resources from the construction of the bridge, these impacts will be negligible and will not lead to degradation of water quality or cause any significant lasting impact to critical area resources. There will be temporary impacts associated with actual construction of the bridge to the marsh and mudflat which the bridge spans, however, the resources under the bridge will quickly recover. Further, impacts will be minimized during the construction since LandTech must

28

[7] A buffer is a dedicated strip of high ground, which is restricted from any alteration. Buffers are used as best management practices identified by regulators and conservation groups as the most effective method of ameliorating or mitigating the water quality impacts of residential development next to sensitive waters. In its natural, vegetative state, the buffer functions as a filter of storm water pollutants and absorbs water as it flows off-site.

utilize "top-down" construction of the bridge, elevated work trusses or construction from floating barge mats.

30. The north-south orientation of the bridge, as well as its height, will allow sunlight under the bridge so that any shading from the bridge will have a minimal impact on the critical area habitat under the bridge. The bridge, at the proposed location, stretches out over land that is mostly dry at low tide, but inundated at high tide, with vegetation on the fringes of the area. In addition, the impact to productivity of the marsh area under the bridge will have no measurable effect on the marsh system in this area. Based upon the evidence presented at the hearing, it is manifest that the impact on protected resources from the shadow cast by this bridge, once constructed as permitted, will be insignificant.

31. The bridge will not interfere with current navigation in the area nor will it cause erosion, shoaling of channels, or the creation of stagnant water. The bridge will not adversely affect the production of fish, shrimp, oysters, crabs, or clams or any other marine life, wildlife, or other natural resources in the area, nor will it degrade the water quality in the area. Further, there are no areas of particular geographical significance or any outstanding cultural resources on Park Island.

32. Sewer Utilities [30-12(N)(8)]. It is uncontroverted that the bridge will carry both water and sewer to and from the island alleviating the need for either wells or septic tanks on the island. The development of small islands with septic tanks has in the past been a concern along the coast of South Carolina but is not an issue in this case. LandTech will utilize public water and public sewer systems.

29

33. Values in § 48-39-20 (E)(N)(9). S.C. Code Ann. §48-39-20(E)(Supp. 1997) sets forth the following:

> Important ecological, cultural, natural, geological and scenic characteristics, industrial, economic and historic values are being irretrievable damaged or lost by ill-planned developments that threaten to destroy these values.

The bridge will not threaten, much less destroy, any important ecological, cultural, natural, geological scenic characteristics, nor will economic nor historical values be threatened by the bridge.

This is not an ill-planned development. In fact, this application is comprehensive is nature, and OCRM and the applicant have attempted to address all potential negative environmental impacts

of both the bridge construction and the subdivision and development of the island.

34. Storm Water Management [30-12(N)(10)]. The bridge will be equipped with a state of the art stormwater management system which is designed to transfer the first inch and a half of stormwater runoff from the bridge to both the island and the mainland. This water will pass through Storm Ceptor systems which separate grease and oil from the stormwater before it is discharged into the designed retention ponds on both ends of the bridge. No other applicant for a bridge to a small island has designed a bridge in such a manner. The only other bridge in this state with a storm water system is the Isle of Palms connector bridge in Charleston County. The system incorporated into the design of the Isle of Palms connector is a much less sophisticated system than the one that LandTech has proposed. Given the fact that the average daily traffic count on the bridge is projected to be 300 vehicles, and further given the fact that OCRM does not require stormwater management on any bridge until the average daily traffic count is 30,000 vehicles a day, the compelling evidence is that there will be no problems associated with stormwater runoff from the bridge.

35. Park Island itself meets all of the requirements of OCRM with regard to stormwater management. In fact, the evidence demonstrates that it exceeds any and all requirements imposed by the state's stormwater management regulations. The only credible evidence is that the size and location of the proposed stormwater retention ponds on the island coupled with an average 50-foot wide naturally vegetated buffer, meets and exceeds the state's regulatory requirements for managing stormwater for the 33 houses and the roads which are proposed to be built on the island, and the total impervious surface of the island at build-out will be approximately 17.8%.

30

36. Dock Master Plan and a Development Plan with Mitigation for filling in critical areas [30-12(N)(11)]. Initially LandTech proposed as part of its submitted development plan the creation of 66 lots on the island. This number was reduced by half following the public hearing and public comment period, and the proposed development plan reviewed by OCRM in conjunction with the bridge permits shows a total of 33 lots. Under the Town of Mt. Pleasant's zoning ordinances which are applicable to Park Island, this is considered to be a low density development.

37. LandTech also submitted a dock master plan for the island which identified 30 dock corridors from the 33 lots. Virtually all lots are waterfront lots. Each lot has more than the minimum amount of water frontage required by OCRM regulations and is less than 1,000 feet from

either the Wando River or Toomer Creek. The approved plan meets OCRM's criteria. Of the 30 dock corridors, three of the dock corridors in the rear of the island will be restricted to crabbing docks, and three of the dock corridors restricted to joint-use docks between the adjoining lot owners. However, there is no guarantee that a dock corridor on an approved dock master plan will result in the issuance of a dock permit for any of the lots from OCRM. Each dock permit application will be judged on its individual merits and must meet the specific criteria for single-family residential docks specified in R. 30-12A. By regulation OCRM looks favorably on community docks and joint-use docks as does this court. The Dock Master Plan is a planning tool used to aid OCRM in thoroughly reviewing all proposed impacts of a project .

38. The OCRM gave appropriate consideration to the 11 specific requirements under R. 30-12N in issuing the bridge permit under consideration and the permit satisfies all 11 requirements.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and upon a careful study of the applicable statutes and regulations, I conclude the following as a matter of law:

1. The Administrative Law Judge Division has subject matter jurisdiction in this proceeding pursuant to S.C. Code Ann. §§ 1-23-600(B) and 1-23-310 et seq. (Rev. 1986 & Supp. 1998). Section 48-39-150 specifically authorizes the Administrative Law Judge Division to hear contested cases arising under Chapter 39 of Title 48 of the Code. S.C. Code Ann. § 48-39-150 (Supp. 1998).

2. As a state-wide administrative tribunal authorized to hear evidence and adjudicate contested case hearings, the Administrative Law Judge Division is the fact finder in this matter for purposes of administrative and judicial review. See Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990).

3. In weighing the evidence and deciding a contested case on the merits, the Administrative Law Judge must make findings of fact and conclusions of law by a preponderance of the evidence. Anonymous (M-156-90) v. State Bd. of Medical Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See South Carolina Cable Television Ass'n v. Southern Bell Telephone and Telegraph Co., 308 S.C. 216, 417 S.E.2d 586 (1992). Furthermore, a trial judge who observes a witness is in the better position to judge the witness's demeanor and veracity and to evaluate his testimony. See McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982); Peay v. Peay, 260 S.C. 108, 194 S.E.2d 392 (1973); Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct. App. 1985); Marshall v. Marshall, 282 S.C. 534, 320 S.E.2d 44 (Ct. App. 1984).

5. OCRM is the subdivision within DHEC charged with implementing the State of South Carolina's coastal zone policies and issuing permits in coastal zone areas.

6. S.C. Code Ann. § 48-39-30 (Supp. 1998) sets out the policies governing the management, development and protection of the coastal zone areas. Additionally, S.C. Code Ann. § 48–39-50 (Supp. 1998) provides DHEC with the authority to promulgate regulations to carry out the provisions of Chapter 39 of Title 48 of the 1976 Code.

7. S.C. Code Ann. Regs. 30-1 et seq. (1976 & Supp. 1998) govern the management, development, and protection of the critical areas of the state coastal zone. The critical areas of the state include coastal waters, tidelands, beaches and the beach/dune system. S.C. Code Ann. § 48-39-10(J) (Supp. 1998). "Tidelands" mean "all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters. . . .Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters. . . ." ; S.C. Code Ann. Regs. 30-1(C)(12).

32

8. S.C. Code Ann. §48-39-50 sets forth the general considerations and standards applying to all requests for construction activity in the critical area. These considerations and standards are repeated in S.C. Code Ann. Regs. 30-11(A) and (B). S.C. Code Ann. Regs. 30-11(C)(1) requires OCRM to consider the cumulative impacts of a project, not just the impact of the project itself:

> C. Further Guidelines: In the fulfilling of its responsibility under Section 15(A) of the Act, the Department must in part base its decisions regarding permit applications on the policies specified in Sections 1 and 2 of the Act, and thus, be guided by the following:
>
> (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.

9. S.C. Code Ann. § 48-39-130(c) (Supp. 1998) requires a person or entity to obtain a permit for any alteration of the "critical area" of the coastal zone. In determining whether an application is approved or denied, OCRM bases its determination on the individual merits of each case, the policies specified in §§ 48-39-20 and 48-39-30, and the ten general guidelines contained in §48-39-150(A).

10. S.C. Code Ann. Regs. 30-12 sets forth project-specific criteria for proposed activity or construction in the critical area. These include docks (subsection A), transportation projects (subsection F), and access to small island (subsection N).

11. The State owns the property below the high water mark in public trust for its use, recreation, and preservation by and for all people in South Carolina. State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972); Hobonny Club, Inc. vs. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979). The State holds a significant interest in coastal zone management which may outweigh the interests of private landowners. See, e.g., McQueen v. South Carolina Coastal Council, 329 S.C.588, 496 S.E.2d 643 (Ct. App. 1998); Carter v. South Carolina Coastal Council, 281 S.C. 201, 314 S.E.2d 327(1984).

12. Other than a passing reference to a bridge permit in Beaufort County for Charlotte Island by an OCRM witness, the only evidence before this court with regard to the size of Park Island strongly indicates it is not a "small" island. A statistical analysis done by Dr. Manzi of the islands in the Wando River demonstrates that Park Island can only be classified as a large island. It is also noteworthy that the Town of Mt. Pleasant does not require an impact statement for any development less than ten acres. Since there is no definition in OCRM's regulations of "small island," there needs to be some standard to guide the OCRM in its application of its regulation dealing with bridges to islands. While the matter is not free from doubt, the evidence presented at the hearing strongly indicates that Park Island does not fall in the "small" island category. The appropriate regulations governing the bridge to this island are contained in R. 30-12F. Unquestionably, the LandTech application and submittals met all of the regulatory criteria of bridge access pursuant to R. 30-12F.

13. The permit application was processed by the OCRM under the regulatory requirements of R. 30-12N, and, accordingly, the court determines that it is advisable to consider whether the bridge permit meets these criteria. R. 30-12N states in pertinent part that, "[i]nappropriate development can affect the value set forth in Section 48-39-20(e) and the policies the department is required to implement pursuant Section 48-39-30. To prevent inappropriate access to small islands, permanent filling for access is prohibited...." It is the Petitioners' theory that the development of Park Island with 33 lots and 30 dock corridors is somehow inappropriate. During the hearing in this matter they attempted to justify this notion by trying to prove that the bridge and the development of the island would lead to environmental degradation of the surrounding marsh and would adversely effect Toomer Creek and the Wando River. The Petitioners failed to prove that either of these conditions were going to occur.

14. This island is in the Town of Mt. Pleasant which had no objection to the bridge or the development of the island. In fact, the Town of Mt. Pleasant has zoned the entire Park West tract, including Park Island, as PDD which would allow the development of Park Island with a density far greater than that which it has restricted itself to in its bridge permit. Clearly, the development of this island is not inappropriate under the current land use regulations and ordinances of the town. Likewise, the OCRM, in part, guided by the town's determination of appropriateness, concluded correctly that development of the island was appropriate.

15. Even though the Town of Mt. Pleasant and the OCRM consider development of the island appropriate, because the way R. 30-12N has been written it is necessary to review the other criteria under this regulation in light of the evidence produced at the trial. Under R. 30-12N, bridging will be considered based upon:

34

(1) Distance of bridging required;

(2) Type of bridging and dimensions of bridging requested;

(3) Configuration of shoreline;

(4) Size of the island, including high land and critical area;

(5) Existence of feasible alternatives;

(6) Public need;

(7) Impact on protected resources;

(8) The ability of owner to tie into existing sewer or meet SCDHEC's standards for septic tanks;

(9) Impact upon value set forth in § 48-39-20(e);

(10) The island is subject to stormwater and management policies set forth in the program document;

(11) The owner must provide a dock master plan, and a development plan. Mitigation will be required for any fill placed in the critical area for widening of causeways.

16. Petitioners claim that OCRM did not follow the criteria of R. 30-12N in making a decision to issue the bridge permit in question. This court, however, is persuaded that OCRM did in fact consider each and every element of the regulation and that the bridge permit at issue satisfied each element. There was no credible evidence that the bridge was too long, that the type of the bridging and the dimensions of the bridging were inappropriate or that the bridge accessed the shoreline on the island in the wrong place. Petitioners claim that Regs. 30-12(A)(2)(l), limiting dock length to 1,000 feet, is relevant to their argument that this bridge is too long. I conclude that the legislature did not intend for this restriction to apply to bridges. There is no restriction on bridge length anywhere in OCRM's regulatory scheme. To the contrary, all the credible evidence proved that each of these requirements had been met.

Moreover, there was no evidence that the size of the island, including high land and critical area, prohibited building a bridge to the island, or that LandTech could not tie into existing sewer utilities. Likewise, there was no credible evidence that building a bridge to Park Island would have a negative impact upon the value set forth in § 48-39-20(e) which include ecological, cultural, natural, geological and scenic characteristics.

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17. This court is also of the opinion and concludes that there is no feasible alternative access to this island which would warrant the denial of this bridge permit. Reliance is placed upon the position taken in Finding of Fact # 27.

18. While the petitioners presented some evidence that the bridge would have an impact on protective resources, I find and conclude that such impact will be negligible and of no greater significance than impacts which are normally associated with any critical area permit issued by the OCRM. I am, therefore, of the opinion and so conclude that the OCRM appropriately reviewed this

provision and that the bridge permit as issued completely complies with this requirement.

19. While there was a great deal of testimony during the trial about stormwater management on Park Island and on the bridge itself, I am persuaded and conclude that the petitioners failed to present credible evidence that the stormwater management proposed for the island or the bridge is contrary to the state stormwater management regulations or the policies set forth in the OCRM program document. To the contrary, the respondents proved by clear and convincing evidence that South Carolina Stormwater Management Regulations and the policies of the OCRM program document had been met and in most instances exceeded.

20. I find and so conclude that the dock master plan and the development plan submitted to OCRM with this permit application met all of the current regulatory and technical criteria of OCRM as required by Regs. 30-12 N. However, this court further finds and concludes that the Dock Master Plan submitted by LandTech to OCRM was nothing more than a planning tool used to aid OCRM in thoroughly reviewing all the proposed impacts of the bridge project. It serves as no guarantee that any of the lots will be permitted for an individual dock.

The walkways for the planned docks from this small island would total over three miles in combined length. There are no community docks. There was no evidence that any community docks had been considered by LandTech, despite the policy of this State which encourages developers of subdivisions to use community docks. S.C. Code Ann. Regs. 30-12A(2)(h). From a thorough review of the drawings and maps of the developments and of the extended lot lines, it appears that every effort was made to maximize the number of docks including the manipulation of some lot lines near the OCRM critical line to adjust "dock corridors" (Pet. Exh. 30; Tr. 237-9). These lots would otherwise not be qualified for a dock if the lot boundary extending to the marsh had been continued in a straight line. Instead, the boundaries were slanted at an odd angle at the marsh edge to alter the corridor, which is an extension of the property line, so that those lots could have a dock. Regs. 30-12A.(2)(h) reads as follows: "Developers of subdivisions and multiple family dwellings are encouraged to develop joint-use or community docks when their plans are in the developmental stage." This court hopes that OCRM will revisit the dock master plan and consider the increase of volume of boat traffic this large number of docks would create. OCRM recognizes that high traffic of boats in small tidal creeks increases the turbidity of the water, causes erosion, and adversely

affects fish. Boat traffic also causes erosion of marsh adjacent to the creek This court is concerned that more consideration was not given to these issues both by the developer and OCRM in this initial planning of this subdivision.

21. This court is of the opinion and concludes that the bridge permit application and the bridge permit issued by OCRM satisfied the public need criteria specified in R. 30-12N(6). There is no definition of "public need" in OCRM's critical area permitting regulations. This court is aware that this issue has arisen in other cases decided by the Administrative Law Judge Division involving the application of R. 30-12N. Judges of the Division have previously concluded that in assessing public need that we are to be guided by the concept that if a private interest is sufficiently combined with an activity that provides "benefit to the public," public need is satisfied.

The Court of Appeals has recognized that there is not a definition of "public need" in the regulations. Concord Street Neighborhood Assoc. v. Campsen, 309 S.C. 514, 424 S.E.2d. 538 (Ct. App. 1992). In evaluating whether a project satisfies the public need criterion, there must be evidence of a public need in light of the substantial evidence in the record. The Court explained: "Under the substantial evidence test, the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's decision from being supported by substantial evidence." An administrative agency must be allowed to exercise discretion in granting or denying a permit. The Court stated that an economic benefit alone is not a sufficient showing of public need; however, a public need was present in that case because there were educational and recreational benefits associated with the project, as well as economic ones. Id.; see also Pamela Bartenfield, Margaret-Mary Madeux, and Seabrook Island POA v. SCDHEC (OCRM), and Michael T. Casa, 98-ALJ-07-0689-CC (7/22/99).

37

In Bill and Karen Peyton, et al. v. S.C. Dept. of Health and Environmental Control, Bureau of Ocean and Coastal Resource Management, and Charles Ausburn, 98-ALJ.-07-0249-CC (2/17/2000), this Division addressed the public need requirement in the context of a private development: "Need is a relative term which varies, within reasonable limits, according to the circumstances to which it is applied." Id. at 8. The Final Order in that case emphasizes the fact that the Charlotte Island bridge did not require any public funds. "[I]f this project involved the expenditure of public funds, the determination of whether to issue this permit would be subject to

greater scrutiny." It would be difficult to imagine a scenario in which there would be a public need for a project, if this Court accepts the definition of public need proposed by the Petitioners. Under their theory, only projects utilizing public funds that serve the public at large would meet the public need requirement. Since most bridges to small islands are private developments, this definition would lead to a ridiculous interpretation of Reg. 30-12 (N)(6).

In the instant case, "benefits to the public" are substantial. LandTech has agreed to donate 12 acres of high ground property fronting Darrell Creek for use as a passive recreation and educational facility for the general public at large. Additionally, it has provided a half an acre of valuable waterfront property to the Town of Mt. Pleasant to use as mitigation for a town project involving the rehabilitation of a public boat ramp.

Moreover, LandTech set aside 164 acres for the use of Charleston County to build public schools and for the Town of Mt. Pleasant to construct recreational facilities. In the past OCRM has taken the position that this sort of activity meets its public need requirements. (See, OCRM P/N 99-195E, respondent's exhibit 4.) Lastly, LandTech has voluntarily agreed to establish substantial buffers around Park Island to additionally protect the island from possible problems caused by stormwater runoff from the island after development which obviously inures to the public benefit. Given all of these donations by LandTech it is manifest that they have met the public need requirement contained in R. 30-12N.

38

Standing

22. After the close of the evidence, LandTech moved for dismissal of the South Carolina Coastal Conservation League ("SCCCL"), one of the Petitioners, for lack of standing. It is the contention of LandTech that the SCCCL failed to introduce any evidence of a direct or particularized injury of an imminent nature which threatened the organization as a result of the bridge permit at issue. LandTech asserts that the interest of the SCCCL is nothing more or less than a general concern over "inappropriate development" that was and is shared by members of the general public at large. This, LandTech asserts, is not sufficient to confer standing. Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641, 645 (1992); Energy Research Foundation v. Waddell, 295 S.C. 100, 367 S.E.2d 419 (1998). LandTech did not raise this issue in its Prehearing Statement, nor at any time prior to the conclusion of the hearing. Consequently, the Petitioners were not given prior

notice that this question would be raised and did not put up proof specifically directed to this issue. However, after full review of the record, LandTech's motion is denied based on the following findings and conclusions which are supported by the evidence and the applicable law:

(1) The SCCCL is a nonprofit public organization dedicated to protecting cultural and natural resources in South Carolina, promoting appropriate development, and preventing projects which would excessively damage South Carolina's natural resources. The SCCCL has between 3,000 and 4,000 members. The SCCCL's water quality program director, Nancy Vinson, testified on behalf of the SCCCL at the hearing.

(2). The SCCCL opposes the bridge application, development plan, and DMP of LandTech for this island because of their perceived negative effects on the surrounding natural resources.

(3). LandTech's Exhibit 9 is the newsletter of the SCCCL for Winter-Spring 1999, Vol. 9. A review of the newsletter discloses that the following individual Petitioners are members: Beth Keyserling-Kramer, James Wells, Joyce Wells, and Gerald Hazin.

(4). Ms. Keyserling-Kramer testified at the hearing that her property is on the Dunes West side of Toomer Creek near the island. She and the members of her family kayak and crab around the island in Toomer Creek, the Wando River, and the marsh. She testified to the peaceful nature of Toomer Creek and the abundance of shrimp, crabs, fish, and birds in these public trust tidelands next to the island where she kayaks and crabs. She stated that she observes fishermen and crabbers in the area. She testified that the water in Toomer Creek is clean and that she swims there. She opposes LandTech's bridge application, development plan, and DMP because of the detrimental effects she perceives will occur from the storm water runoff, the shading from the bridge and docks, the destruction of natural habitat, the increase in boat traffic on Toomer Creek, and the dangerous precedent in allowing a bridge and development of this magnitude on a small island.

(5). The Petitioners put forth evidence to support their contention that the bridge, DMP, and development of the island as planned by LandTech will most probably have a

detrimental impact on the natural resources surrounding the island as feared by Ms. Keyserling-Kramer.

(6). S.C. Constitution, Art. 1, Sec. 22 specifies that "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard...and he shall have in all such instances the right to judicial review." This right includes the right to present evidence and cross-examine witnesses. Stono River Environmental Protection Association v. South Carolina Department of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991).

(7). The General Assembly has established this contested case hearing as the due process hearing for "any person adversely affected" by OCRM's initial permitting decision. S. C. Reg. 30-6B.

(8). For purposes of an environmental organization's standing in this type of appeal, the Supreme Court of South Carolina has held that the "adverse effect of a specific decision of the Coastal Council [n/k/a OCRM] on their members' use and enjoyment of the fish and wildlife of the wetlands" is an injury-in-fact sufficient to confer standing. South Carolina Wildlife Federation v. South Carolina Coastal Council, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988). See also Lennon v. South Carolina Coastal Council, 330 S.C. 414,416, 498 S.E.2d 906, 907 (Ct. App. 1998); Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 565, 505 S.E.2d 598, 605 (Ct. App. 1998) (stating that the effect of an agency decision on an individual's "use and enjoyment of the wetland...[is] sufficient to provide standing"). All these cases involved a challenge to activities for which permits were sought but had yet to actually occur. The necessary injury-in-fact can be threatened immediate harm and need not have actually been inflicted for purposes of determining standing. See Carolina Alliance for Fair Employment v. SCDLLR, Opinion No. 3061 (Ct. App. Filed October 25, 1999) ("An organization has standing only if it alleges that it or its members *will* suffer an individualized injury; a mere interest in a problem is not enough").

(9). The record demonstrates that the cumulative effects of the proposed activities permitted by OCRM pose an immediate danger of direct injury-in-fact to Ms. Keyserling-Kramer, one of the members of SCCCL. This immediate threatened injury to a member satisfies the test for standing of a public interest group in an environmental case such as this under the standard adopted by our Supreme Court.

(10). LandTech argues that the SCCCL is not the object of governmental action or inaction, but seeks to challenge a permitting decision of the OCRM Division of DHEC as it applies to LandTech. It posits further that since the SCCCL is not the object of governmental action or inaction, it is required to make a far stronger showing that it has standing to challenge the governmental action in question. See, Lujan v. Defenders of Wildlife, 504 U.S. 555, 561-562 (1992). It argues that the concerns of the SCCCL are nothing more or less than the concerns shared by general members of the public who commented on the permit application. However, the federal decisions relied upon by LandTech are based on the requirements for standing under Art. III of the United States Constitution, not the requirements under the South Carolina Constitution. Even so, the test for standing is essentially the same: it requires an assertion of direct adverse effect on the person challenging the conduct in question. After this matter was heard by the court, the Supreme Court of the United States decided Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., No. 98-822 (U.S. Sup. Ct. January 12, 2000). [8] In Friends of the Earth, the Court held that an environmental association has standing if its members would have standing to sue in their own right and the interests at stake are germane to the organization's purposes. The necessary injury-in-fact may be demonstrated by proof that an environmental group's members "use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be

41

[8] This court notes its decision in Friends of the Earth, Inc. and Citizens Local Environmental Action Network, Inc. v. Laidlaw Environmental Services (TOC), Inc. and SCDHEC, Docket No. 94-ALJ-07-0157-CC, which involved earlier disputes between the parties to the U.S. Supreme Court case.

lessened' by the challenged activity." Id. (quoting Sierra Club v. Morton, 405 U.S. 727, 735 (1972) and citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 562-63 (1992) for the principle that "the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing"). In this case the testimony of Ms. Keyserling-Kramer combined with that of Dr. Dustan would also satisfy the federal standard for bestowing standing on an organization.

23. This court finds and concludes that Petitioner SCCCL has standing.

24. Any issues raised in the proceeding or hearing of this case, but not addressed in this Order are deemed denied. ALJD Rule 29(B). Further, the filing for a motion of reconsideration is not a requisite to any party filing a notice of appeal of this Order pursuant to SC Code Ann. § 1-23-600(A) and (D) (Supp. 1995). ALJD Rule 29(C).

ORDER

Based upon the above findings of fact and conclusions of law it is hereby:

ORDERED that the OCRM grant P/N OCRM-98-196-1 to LandTech, L.L.C. without modification, and it is further

ORDERED that the South Carolina Coastal Conservation League is a party to this action, **AND IT IS SO ORDERED.**

(42)

ML

Marvin F. Kittrell
Chief Judge

May 1, 2000
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).
This 1st day of May, 2000
BY: Nancy B. Riley
~~Judicial Assistant~~
Senior Staff Counsel

42

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
North Pleasant, LLC and Vanguard Development Group, LLC Plaintiffs, v. South Carolina Conservation League and Edward D. Beach, Defendants.	))))))))))))	CASE NO.: 2010-CP-08-1771

AFFIDAVIT OF CHRISTOPHER DONATO

Having been sworn, the Affiant, Christopher Donato, testified as follows:

1. I am Christopher Donato a resident of Charleston County.
2. For 37 years I have been engaged in the business of real estate appraisal. In addition, I have participated as an investor and partner in development and sale of real estate in the Charleston Metropolitan Area.
3. In 2006, I entered into a partnership with Mike Tawes and others for the purpose of purchasing and developing a tract of approximately 60 acres in Awendaw, S.C. on the Atlantic Intracoastal Waterway. At the time, the property was zoned by the Town of Awendaw for development with a density of one residence per acre.
4. My partners and I engaged various consultants to prepare studies needed to secure permitting from state and federal agencies and applied for those permits and for approval from the Town of Awendaw.
5. The Town approved our development. The OCRM Division of S.C.D.H.E.C. was required to issue a storm water permit pursuant to State law and required considerable information as part of the review of our permit application related to impacts to wetlands

and to archeological resources. We complied with all of their requests and agreed to expensive and significant mitigation as a condition for that agency's approval, including various limitations on the development to insure protection of a Native American shell ring on an island across a tributary of the Intracoastal Waterway from our development.

6. Shortly before OCRM issued our permit in 2007, I received a call from Jane Lareau on behalf of the S.C. Coastal Conservation League who asked to meet with myself and Mr. Tawes at the offices of our engineers, Seamon and Whitesides in Mount Pleasant. We met with her soon thereafter at which time she informed us that the League was very concerned with our development because the density was too great. She said the League and its members believed that the proper density should be no more than on residence per 10 acres and that the Town of Awendaw was simply wrong in allowing a greater density. We informed her that the development would not be profitable at that density. Ms Lareau suggested we talk to Noel Thorn and Mike Prevost whom she said had experience in making less dense developments profitable.
7. My partner and I met with Mr. Thorm and Mr. Prevost soon after our discussion with Ms Lareau. As I recall, both men were associated with the Nature Conservancy. At no time during our meeting did either gentleman mention making a less dense development profitable. The sole thing they told us was that the League and its members were opposed to our development and that they intended to sue us over it. They hammered this message – that if we did not make the changes they wanted, the League would take

us to court to increase our costs so much, to "get into our pockets", that we would never make any money on the development.

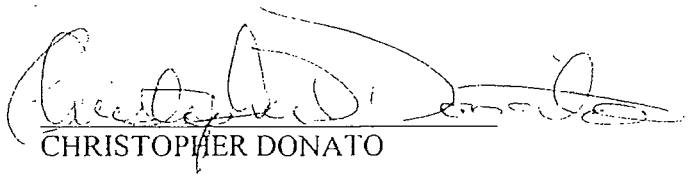
8. When we asked Mr. Thorn and Mr. Prevost why the League would do this, they answered that "this is what they do", referring to the League. They said they use the court system to drive people broke who do not do as they demand. There was no question in my mind after this meeting that Mr. Thorn and Mr. Prevost were speaking for the League and were communicating a direct threat to us from the League.

9. Soon after our meeting with Mr. Thorn and Mr. Prevost, we received our storm water permit from OCRM. The League appealed issuance of the permit to the S.C. Administrative Law Court not based on density of the development, but claiming that there would be harm to atmosphere for those visiting the shell ring across the Waterway. Attached to their appeal was a letter from a gentleman claiming to be an expert comparing the shell ring to the Great Pyramids of Ancient Egypt.

10. Despite what we believed to be a lack of any merit in the League's challenge to our permit, after pursuing the case through discovery, the costs of carrying the loan for the development for such a long period beyond the time we had expected to complete the project grew too large. Just as Mr. Thorn and Mr. Prevost said they would do, the League drove us "broke" as far as the project was concerned. When we were approached by the Charleston County Parks and Recreation Department, we agreed to a sale of the

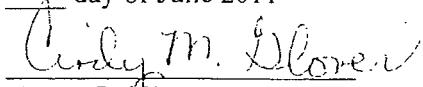
property for a payoff of the mortgage. We lost our entire equity in the project of $200,000. My personal loss was $40,000.

FURTHER AFFIANT SAYETH NOT.



CHRISTOPHER DONATO

SWORN TO before me this
13th day of June 2011



Notary Public for South Carolina
My Commission expires 10/10/13

1 STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
2 DOCKET NO: 06-ALJ-07-0711-CC

3

4 DEPOSITION OF DANA BEACH

5

6 SPECTRE, LLC,

7 PETITIONER,

8 vs.

9 SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL, LEAGUE OF WOMEN VOTERS OF
10 GEORGETOWN COUNTY, SOUTH CAROLINA WILDLIFE
FEDERATION, LEAGUE OF WOMEN VOTERS OF SOUTH
11 CAROLINA, SOUTH CAROLINA COASTAL CONSERVATION LEAGUE
AND LEAGUE OF WOMEN VOTERS OF THE CHARLESTON AREA,
12 RESPONDENTS.

13 ----------

14 DEPONENT: DANA BEACH

15 DATE: APRIL 25, 2007

16 TIME: 10:20 A.M.

COPY

17 LOCATION: SMITH, BUNDY, BYBEE & BARNETT
1037 Chuck Dawley Blvd., Ste. 100, Bldg. F
18 Mt. Pleasant, SC 29465-1542

19 ----------

20

REPORTED BY:
21 WANDA S. BUCKNER
NCRA Registered Professional Reporter
22 NCRA Certified Realtime Reporter
CLARK & ASSOCIATES
23 P.O. Box 73129
North Charleston, SC 29415
24 (843) 762-6294

25

1 times, I have endeavored to do that maybe once, I
2 think, but by that I mean have you been asked to
3 write editorials for the Post & Courier itself that
4 goes in the left-hand column?
5 A I don't think so. I have written many, I
6 am usually the one who asks them if I can write one
7 for them.
8 Q I call that the op-ed piece.
9 A Right.
10 Q It goes at the bottom usually or
11 sometimes --
12 A Right, right.
13 Q Let me ask you about the League's
14 organization. How is the League funded?
15 A We are a nonprofit, publicly-supported
16 charity and we receive funding from -- we describe
17 it as in four categories. One is as membership
18 support. We have about 4,000 members and those are
19 individuals who donate up to $500. We have --
20 Q You say up to. Do you cut it off for some
21 purpose at $500?
22 A Yeah. The next category we consider major
23 donors. Just for operational purposes we send them
24 a little more information than we do the regular
25 members.

1 Q Okay.

2 A Those are individuals who give $500 or

3 more.

4 We also receive foundation grants from

5 private foundations.

6 And we also have a modest endowment that

7 generates income of which we use a portion to fund

8 our annual operating expenses.

9 Q What is the average annual budget of the

10 League, total, everything, whatever y'all spend in a

11 year? Does it change so much that you can't say

12 what the average is?

13 A Well, the expenditures last year were just

14 over $2 million.

15 Q Presumably, y'all then take in that or

16 more than that in order to fund it?

17 A Right.

18 Q In other words, you don't run, unlike,

19 say, the federal government, for instance, you don't

20 run a deficit?

21 A No. We have, out of 18 years of

22 operation, I think we have, or 17, we have run a

23 modest deficit once or twice, but it is usually a

24 timing issue where somebody or some foundation check

25 comes in January 1 instead of December 31.

1 Q Where does the -- if you can, if there is
2 a way to describe this -- where does most of the
3 money come from? In other words, most of the money
4 comes from the $500 or under membership group or
5 does it come from the 500 and above or does it come
6 from the foundation? How does that sort out?
7 A The majority of it comes from major donors
8 who contribute, I think it is 40 to 50 percent of
9 the total revenue.
10 Foundations is the next largest category
11 at about 20 to 30 percent, depending on the year.
12 And then below that, membership and the
13 annual allocation of income from the endowment are
14 in the same general range.
15 Q Okay. The foundations you mentioned, how
16 many are there? Are there too many to list?
17 A No. I think there are probably 12
18 foundations who make substantial gifts, and by that
19 I mean $10,000 or more. And do you want me to list
20 them?
21 Q Yes, if you could. If you can't remember
22 them all, that is fine.
23 A Yeah, I can remember. They include the
24 Turner Foundation based in Atlanta.
25 Q Ted Turner?

CERTIFICATE OF SERVICE

I, Cindy Glover, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that a true and correct copy of Plaintiffs' Materials in Opposition to Defendants' Motion for Summary Judgment was served on the undersigned party by hand delivery, this 15th day of June 2011 to:

G. Trenholm Walker, Esquire
Pratt-Thomas Walker, P.A.
Post Office Drawer 22247
Charleston, SC 29413

Cindy Glover

Mt. Pleasant, South Carolina

FILED
2011 JUN 15 AM 9:57
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771
NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC, Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: SMITH BUNDY BYBEE & BARNETT and SANTEN & HUGHES, ATTORNEYS FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned attorneys, will move, ten days after the service of this motion or as soon thereafter as counsel may be heard, before the presiding judge for the Court of Common Pleas for Berkeley County for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendants South Carolina Coastal Conservation League ("SCCCL") and Edward D. Beach ("Beach") (collectively "Defendants") summary judgment on Plaintiffs' causes of action on the grounds that Plaintiffs' claims fail as a matter of law.

The Plaintiffs cannot establish the essential elements for recovery under the causes of action alleged.

The Plaintiffs cannot establish tortious interference with contractual relations because, among other deficiencies, there is no evidence of any intentional procurement of the contract's breach, nor is there any evidence that the contract at issue was breached. The Plaintiffs cannot establish a cause of action for intentional interference with prospective contractual relations, because a contract was in effect and terminated by the

prospective purchaser according to its terms and without breach by the prospective purchaser, and there is no evidence to support all the essential elements of this purported claim.

The proof does not support the essential elements of a cause of action under the Unfair Trade Practices Act in that there is no proof that Defendants were involved in "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and include any trade or commerce directly or indirectly affecting the people of this State; nor that any practice by the Defendants was offensive to public policy or immoral, unethical, or oppressive"; nor that the Defendants' conduct with respect to the Plaintiffs affected public interest; nor that the Plaintiffs suffered monetary or property loss as a result of the Defendant's alleged unfair or deceptive act(s).

There is no evidence of any false or defamatory statements made by the Defendants about the Plaintiffs that caused harm to the Plaintiffs. All statements were not actionable under the First Amendment to the United States Constitution and under the qualified privilege that attended them.

Defendants owed no duties to either of the Plaintiffs.

There is no proof that any conduct of the Defendants proximately caused any damages to the Plaintiffs.

There is no proof to support the individual liability of Defendant Beach who did not participate in the alleged statements or conduct involving the Plaintiffs.

This motion is based on the pleadings, the discovery, and the applicable law.

BY: _____

G. Trenholm Walker
W. Andrew Gowder, Jr.
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843-727-2208
Fax: 843-727-2231
gtw@p-tw.com
wag@p-tw.com

ATTORNEYS FOR DEFENDANTS

July 30, 2012

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 30 day of July, 2012, in Charleston, South Carolina.

_____

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771
NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC, Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants South Carolina Costal Conservation League ("the League") and Edward D. Beach ("Dana Beach"), through their counsel PRATT-THOMAS WALKER and submit this memorandum of law in support of Defendants' Motion for Summary Judgment and in opposition to Plaintiffs North Pleasant, LLC ("North Pleasant") and Vanguard Development Group, LLC's ("Vanguard") Motion for Partial Summary Judgment.

BACKGROUND:

North Pleasant, a former property owner, and its real estate agent, Vanguard, have sued the League and its executive director, Dana Beach, for allegedly causing a potential buyer, Pittenger, not to close a sales contract, even though Pittenger had no obligation to close under the terms of the contract, and it is clear its decision had nothing to do with the League.

North Pleasant owned a large undeveloped tract of land in Berkeley County adjacent to the Francis Marion National Forest commonly known as the Keystone tract. Vanguard was its

real estate broker. North Pleasant and Vanguard began discussions with Pittenger in early 2007 about Pittenger acquiring a large portion of the Keystone tract. After some negotiations and several drafts of the contract passed back and forth, the sales contract was signed by both parties on March 15, 2007. The contract provided for a 60 day Inspection Period during which Pittenger could decide whether or not to proceed to closing. In the event that Pittenger decided not to proceed to closing, the contract entitled Pittenger to a return of its $50,000 earnest money deposit. Additionally, had Pittenger decided not to purchase the property after the due diligence period expired, the contract would have only entitled North Pleasant to the $50,000 in earnest money as liquidated damages. *See* Ex. 22, Contract for Purchase of Property, at ¶18 b.[1]

During this 60 day due diligence period, Pittenger engaged in normal due diligence for a property of this type and had lingering concerns about an endangered species report, title objections and surveying issues. *See e.g.* Ex. 5, Deposition of Robert M. Pittenger p. 20, l. 2-p. 21, l. 18 (discussing standard due diligence and items investigated as part of that due diligence in this case case). However, Pittenger's most significant concerns were the potential rezoning of the area to provide a one house per 15 acre density, that running utilities to the property was not economically feasible, and that there were too many conservations easement on other properties in the area. *See* Ex. 5, Deposition of Robert M. Pittenger p. 71, l. 25-p. 72, l. 21.

Toward the end of the due diligence period, Hamilton Davis, an employee of the League learned that Pittenger was considering acquiring the Keystone tract (though he did not know

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[1] Paragraph 18 b. of the Contract for Purchase of Property states the following:

> In the event of a default or breach by Buyer of any of the covenants or conditions or obligations of Buyer under this Contract, Seller's sole and exclusive remedy shall be to give written notice thereof to Buyer, terminate the contract, and to retain the Binder as full liquidated damages, actual damages being difficult if not impossible to ascertain and the parties having made a bona fide effort to estimate Seller's damages.

whether a contract existed). Hamilton Davis called a contact number he had for Daniel Burns, a senior manager with Pittenger to begin a dialogue about what they might have in mind for the property and to tell him about conservation efforts by adjoining landowners in the area. Hamilton left the following voice mail message for Burns introducing himself and asking that he call him back:

> Hey Mr. Burns this is Hamilton Davis and I work for the Coastal Conservation League in Charleston South Carolina. I wanted to speak with you about ya'll's recent I guess not purchase but interest in the 2,600 acre parcel in Berkley County. I wanted to give you some information about what's going on in that area right now that you would probably be interested in. Call me back when you get a chance please 843-725-2061, and again, my name is Hamilton Davis and I work for the Coastal Conservation League. Thank you.

Ex. 5, Deposition of Robert Pittenger, Ex. 7.[2] Hamilton Davis has testified that he remembers Daniel Burns calling back. He said the call was fairly brief and cordial. According to Hamilton Davis, he told Daniel Burns about how the corridor was developing and offered to work with the Pittenger group to arrive at a development solution that the community, the adjoining large property owners, the League and others would support. Burns thanked Hamilton and that was the extent of the call.

If that conversation took place, it was insignificant to Daniel Burns because he does not remember talking to Hamilton Davis and thinks that he did not. Daniel Burns e-mailed his colleagues at Pittenger and explained that Hamilton Davis had contacted him. Although the e-mail does not contain Hamilton Davis' words, it appears to be Daniel Burns' impressions of what he was hearing which might or might not have been an accurate depiction of what Hamilton Davis said. In fact, again, Daniel Burns now does not remember their ever talking.

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[2] Notably, Mr. Pittenger testified that he has never listened to the voicemail. *See* Ex. 5, Deposition of Robert M. Pittenger p. 45, l. 13-16. ("Q. Have you ever listened to the voicemail message that is purportedly transcribed in this Exhibit No. 7? A. No. . . .").

Mr. Pittenger, through his counsel Neil Robinson, met with Dan Davis, the Berkeley County supervisor, and immediately after the meeting notified his employees Daniel Burns and Daniel Fogarty that they should tell North Pleasant they were not going forward. His reasons were (1) lack of access to municipal sewer and water service; (2) low density zoning requirements in that area of the county; and (3) the number of conservation easements in the area. After Pittenger notified North Pleasant, North Pleasant did not object, but promptly returned Pittenger's earnest money.

Subsequently, the League and Hamilton Davis worked with North Pleasant to rezone the property to a zoning density that was agreeable to the county and North Pleasant, through their brokers Vanguard, sold the Keystone parcels. Three years later, just before the statute of limitations would have run, North Pleasant and Vanguard filed this lawsuit.

SUMMARY JUDGMENT STANDARD

"In ruling on motions for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Johnston v. Bowen*, 313 S.C. 61,437 S.E.2d 45 (1993). "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ." *Shuler v. Tuomey Regional Medical Center, Inc.*, 313 S.C. 225, 227,437 S.E.2d 128, 130 (Ct. App. 1993). "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." *Id.* "Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits, [if any] show that there is no genuine issue of material fact." *Id.*

DISCUSSION

I. The Court should grant Defendant's Motion for Summary Judgment as to all four causes of action.

Defendants are entitled to summary judgment as to all four causes of action in the Complaint, because there is no genuine issue of material fact and Defendants are entitled to a judgment as a matter of law. Even construing all ambiguities in Plaintiff's favor, there is no question that the voice mail Hamilton Davis left for Daniel Burns and possible follow up conversation between them was not the cause of Pittenger's decision to exercise its right not proceed to closing on the purchase of the Keystone tract. In fact, the evidence is clear that the information Mr. Pittenger learned at his meeting with Dan Davis caused Mr. Pittenger to decide not purchase the property.

Additionally, even if the evidence did support that allegation, Plaintiffs cannot present evidence that Hamilton Davis intended to influence, induce, or coerce Pittenger not to purchase the Keystone tract. The undisputed evidence is that Hamilton Davis simply tried to establish a line of communication to work together in the event that Pittenger did purchase the Keystone tract. Additionally, Plaintiffs are unable to present any evidence that Hamilton Davis had any intention of getting Pittenger to decide not to purchaser the Keystone tract. The evidence shows quite the opposite; that Hamilton Davis attempted to establish a line of communication with Pittenger so they could work together if they decided to purchase the tract.

At trial, Plaintiffs' would be required to prove both causation and intent, and after more than 20 depositions and extensive written discovery, the undisputed evidence supports neither.

a. Tortious interference with a contract

"The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional

procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993). "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." *Threlkeld v. Christoph*, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (S.C. Ct. App. 1984). "Therefore, it does not protect a party to a contract from actions of the other party." *Id.* "[T]he alleged act of interference must influence, induce, or coerce one of the parties to the contract to abandon the relationship or breach the contract. *Focused Systems, Inc. v. Aerotek, Inc.*, C.A. No. 6:10–2899, 2011 WL 2162729, *2 (D.S.C. June 2, 2011) (citing *Bocook Outdoor Media, Inc. v. Summey Outdoor Adver., Inc.*, 294 S.C. 169, 363 S.E.2d 390, 394 (S.C.Ct.App.1987), *overruled on other grounds by, O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (S.C. 1993)).

i. <u>There is no genuine issue of material fact as to whether Hamilton Davis's voicemail for Burns and possible follow up phone conversation could be a but-for cause of Pittenger's decision not to purchase the Keystone tract or the proximate cause of Plaintiff's alleged damages.</u>

Plaintiffs have alleged that Pittenger decided, during the due diligence period, not to purchase the Keystone tract because of Hamilton Davis' communication with Daniel Burns. However, the evidence supports only one conclusion—the information that Mr. Pittenger learned at his meeting with Dan Davis caused him to decide not to purchase the property.

"In order to maintain a cause of action for interference with a contract that is terminable at will, the plaintiff must show that, but for the interference, the contractual relationship would have continued." *Focused Systems, Inc. v. Aerotek, Inc.*, C.A. No. 6:10–2899, 2011 WL 2162729, *2 (D.S.C. June 2, 2011) (citations and internal quotation marks omitted). Additionally, "in order to constitute actionable interference with a contract, it must appear that the act complained of was the proximate cause of the injury or damage." *Smith v. Citizens and*

Southern Nat. Bank of South Carolina, 241 S.C. 285, — , 128 S.E.2d 112, 114 (S.C. 1962) (citations omitted). Hamilton's voicemail and possible follow up conversation was not a but-for cause, much less the proximate cause, of Pittenger decision not to purchase the Keystone tract.

Pittenger's testimony is clear that Dan Davis and the other individuals from Berkeley County informed him of the major issues that caused his decision. Ex. 5, Deposition of Robert M. Pittenger p. 69 l. 17- p 70, l. 19 (stating that the county officials at the lunch informed him of a proposal to change the zoning of that area to allow only one house per 15 acres, that running utilities to the Keystone tract would be cost prohibitive, and that there were a large number of conservation easements in the area). After the meeting with Dan Davis, Mr. Pittenger e-mailed Daniel Fogarty multiple times explaining that he thought they would only be able to have zoning for one lot per 15 acres and that it would be cost prohibitive to run sewer to the property because there were too many conservation easements on property between the Keystone tract and the river. Ex. 5, Deposition of Robert M. Pittenger p. 71, l. 1- p. 72, l. 21. Additionally, in one of the e-mails right after meeting with Dan Davis, Mr. Pittenger instructed Fogarty that he had decided not to purchase the property based on the information he learned from the county:

> Q. . . . There is another e-mail within the hour, this one from you to Daniel Fogarty at 2:38 p.m. on Friday May 25th, and in this you say tell Neil Robinson we will terminate the contract following the discussion with Dan Davis, who said there is a significant number of conservation easements between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/15 acres. Is that what you instructed Mr. Fogarty to do?
>
> A. Yes
>
> Q. And in your estimation, was that the primary reason why you terminated?
>
> A. Those two reasons.
>
> Q. Are those the primary reasons you terminated, correct?

A. Correct.

Q. And the only two reasons that you stated in your e-mail, correct?

A. Well, that was enough.

Ex. 5, Deposition of Robert M. Pittenger p. 71, l. 25-p. 72, l. 21. As is made clear by Mr. Pittenger's deposition testimony, the information Mr. Pittenger learned at his meeting with Dan Davis convinced him not to purchase the property.

Daniel Burns and Daniel Fogarty both testified that Mr. Pittenger and Mr. Pittenger alone made the decision. *See* Ex. 23, Deposition of Daniel Burns, p. 19, l. 24- p. 20, l. 1-6; Ex. 24, Deposition of Daniel Fogarty, p. 20, l. 9-21 (both stating that Mr. Pittenger acted alone in making the decision not to purchase the Keystone tract). Therefore, only Mr. Pittenger has first-hand knowledge of the causes of his decision; even Jamie Reynolds agreed that Mr. Pittenger was the best source of information regarding the reason for the decision. *See* Ex. 25, Deposition of Jamie Reynolds, p. 33, l. 7-10 (Q. Would anyone know better about what Mr. Pittenger's reasons were for not going forward than Mr. Pittenger? A. I would suppose not."). As Mr. Pittenger has testified that the meeting with the county was the cause of his decision and no witness with any first-hand knowledge can contradict his testimony. In fact, Hamilton Davis never spoke to Pittenger; if he spoke to anyone he only spoke to Daniel Burns. It would be speculation to claim that Hamilton Davis caused the decision and mere speculation by the Plaintiffs is insufficient at the summary judgment stage to create a genuine issue of material fact. *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382,390, 701 S.E.2d 776, 780 (S.C. Ct. App. 2010) (stating that an "inferential leap does not create a genuine issue of material fact") (citing *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 389–390, 684 S.E.2d 566, 570–71 (S.C. Ct. App.

2009) (holding a non-moving party may not rely on speculation to defeat a motion for summary judgment).

Additionally, Fogarty's testimony is consistent with the notion that the information Mr. Pittenger learned at the meeting caused him to not purchase the property. *See* Ex. 24, Deposition of Daniel Fogarty, p. 49, l. 21-24 (describing the result of Mr. Pittenger's meeting with Dan Davis and his perception of the reasons Mr. Pittenger sent him the e-mail instructing him exercise their right to terminate the contract: "As I've said before, there was a pool of issues. And you pile them all together, and it breaks the camel's back. But I mean, you know, *that meeting was one and done*.") (emphasis added).

According to Plaintiffs, Hamilton Davis's voice mail and possible follow up conversation with Burns was the red flag that sparked the buyer's interest in investigating the details relating to zoning and sewer that ultimately caused Mr. Pittenger to decide not to purchase the Keystone tract. Such a claim is pure speculation. Pittenger's standard due diligence performed as part of a property acquisition includes obtaining information regarding, among other things, zoning and utilities. Ex. 5, Deposition of Robert M. Pittenger p. 20, l. 8-14 ("Q. What is the typical due diligence that your firm would perform for an acquisition of property like this? A. We want to see Phase I, environmental. We look for archeological, endangered species, wetlands. We want to know about zoning. We want to know about utilities."). Therefore, because Pittenger's standard process during the due diligence period would have included investigating whether there were any zoning issues, a single voicemail from Hamilton Davis and a possible follow up conversation between Hamilton Davis and David Burns cannot, under any version of the facts, have been the cause of Mr. Pittenger's decision not to purchase the Keystone tract.

Furthermore, even if such a minor event—Hamilton Davis' voicemail and possible follow up conversation with Daniel Burns—could somehow be considered to have played a role in the causal chain of events that led to Mr. Pittenger's decision, it is abundantly clear that it was not the proximate cause of the damages claimed by the Plaintiffs as required to recover for a claim of tortious interference with a contract. *See Smith v. Citizens and Southern Nat. Bank of South Carolina*, 241 S.C. 285, — , 128 S.E.2d 112, 114 (S.C. 1962) ("in order to constitute actionable interference with a contract, it must appear that the act complained of was the proximate cause of the injury or damage") (citations omitted). Summary judgment for a defendant is appropriate on the issue of proximate cause when a plaintiff cannot produce any evidence contradicting a witness' testimony showing that the plaintiff's alleged injuries were not proximately caused by the defendant's alleged acts. *See e.g. Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (S.C. 2010) (affirming a trial court's granting summary judgment the evidence did not established a question of fact regarding the element of proximate cause because "[a] plaintiff cannot create a genuine issue of material fact with the argument that the jury does not have to believe a witness").

Therefore, based upon the discussion above, the Court should grant the League's Motion for Summary Judgment because there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law as to causation and proximate cause.

ii. <u>There is no genuine issue of material fact as to whether Hamilton Davis intentionally procured a breach of any contract.</u>

The evidence is clear that Hamilton Davis did not seek or procure Pittenger's decision not to purchase the Keystone tract and there is no genuine issue of material fact as to whether he had any such intention. The facts are clear that he simply attempted to open a line of communication in hopes of working together in the event that Pittenger did purchase the Keystone tract. Simply

put, Hamilton Davis did not, and had no intention to, influence, induce, or coerce Pittenger to decide not to purchase the Keystone tract. One of the elements of a cause of action for tortious interference with a contract is that the defendant intentionally procures the breach of the contract. *See Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993) (stating the elements of tortious interference with a contract). Plaintiff cannot present any admissible evidence that tends to show any intent on the part of Hamilton Davis to procure any breach in this case. In fact, the two people involved in the communication, Hamilton Davis and Daniel Burns, both describe the message in a way that is contrary to Plaintiffs' speculation that Hamilton Davis attempted to convince or procure Pittenger not to purchase the property.

Hamilton Davis testified that he left a brief message and that Daniel Burns returned the call and they had a "fairly brief, fairly cordial" conversation in which Davis "talked to him a bit about what was going on in terms of concern about how that corridor was developing, offered to work with them in any way on coming up with a development solution that the community and the property owners and the League and others would be supportive of." Ex. 1, Deposition of Hamilton Davis p. 52, l 15-p. 53, l. 1. Daniel Burns described the message as follows: "It was a very general message from a Gentleman from the Coastal Conservation League making the introduction that he was aware of our interest in the 2,600-acre tract in Berkeley and requested that I return his call regarding some information and some knowledge that he had on the area." Ex. 23, Deposition of Daniel Burns p. 15, l. 11-17. If the subsequent call took place, Burns must not have considered it significant because he doesn't even remember it. Ex. 23, Deposition of Daniel Burns p. 15, l. 21-23 ("Q. . . . And did you then call him back? Do you remember? A. I did not"); p. 17 l. 4-12 (" . . . I didn't remember calling him and having a conversation with him. I had remembered that he left a voice mail message with me. In reading this e-mail, it appears

that - - it doesn't seem clear whether we actually had a two-way conversation on the phone or whether he had - - I had returned a call potentially, and then he had called me back leaving this information"). The undisputed evidence shows no intent on the part of Hamilton Davis to procure any breach in this case.

Therefore, in addition to the issue of causation discussed above, the Court should grant the League's Motion for Summary Judgment as to Plaintiffs' tortious interference with a contract because there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of as to the element of intent.

b. Intentional interference with prospective contractual relations

Plaintiffs have alleged, as an alternative theory that Defendants intentionally interfered with prospective contractual relations. The complete dearth of evidence as to causation and intent as discussed above is equally as fatal to Plaintiff's intentional interference with prospective contractual relations cause of action. Additionally, the Court should grant summary judgment as to this cause of action because there is no evidence of any prospective contractual relations.

"To establish a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) that the interference caused injury to the plaintiff. South Carolina. *South Carolina. D.R Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 537, 730 S.E.2d 340, 355 (S.C. Ct. App. 2012) (citing *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 266 395 S.E.2d 179, 180 (1990)). "While it is not necessary that the interfering party intend harm, it is necessary that he intend to interfere with a prospective contract." *Id.* (citing *Eldeco, Inc. v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007)). "If a defendant acts for more than

one purpose, his improper purpose must predominate in order to create liability." *Crandall Corp. v. Navistar Intern. Transp. Corp.*, 302 S.C. 265, 267, 395 S.E.2d 179, 180 (S.C. 1990) (citations omitted).

All of the arguments above relating to causation and intent are equally applicable Plaintiffs' claims for Intentional interference with contractual relations. Additionally, the court should grant summary judgment as to this claim because there is no genuine issue of material fact as to whether there was a prospective contract in this case. Pittenger had already signed the contract but during the due diligence period Mr. Pittenger decided not to purchase the property. There was no additional contract or prospect of any additional contractual relationship. Pittenger exercised its right not to close under an existing contract, it did not decide not to enter into a new contract or contractual relationship. Therefore, in addition to the reasons discussed above relating to Plaintiffs' tortious interference with a contract claim, the Court should grant Defendants' Motion for Summary Judgment as to this claim because Plaintiffs' cannot identify any admissible evidence that there was any prospective contract in this case.

c. Violation of Unfair Trade Practices Act

An action for damages may be brought under SCUTPA for "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE §§ 39-5-20(a); and *see* 39-5-140(a). The action complained of must be "unfair" or "deceptive" and the defendant's conduct must be in the conduct of trade or commerce. *See Springs Mortgage Corp.*, 310 S.C. 514, ___, 426 S.E.2d 304, ___ (S.C. 1993) (dismissing a claim for violation of SCUTPA because the act complained of was neither unfair or deceptive, nor in the conduct of business or commerce).

i. <u>There is no genuine issue of material fact as to whether Hamilton Davis's actions were unfair or deceptive.</u>

"An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (S.C. Ct. App. 2000)(citing *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 396 S.E.2d 105 (S.C. Ct. App.1989), *aff'd in part, rev'd in part on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992). "A deceptive practice is one which has a tendency to deceive." *Id.* "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." *Id.* (citing *Young* at 326, 396 S.E.2d at 108). The undisputed facts in this case are clear that Mr. Pittenger's decision was based upon correct information he obtained during his meeting with Dan Davis. Any of the other allegations regarding an unfair or deceptive practice on the part of the League do not relate to the transaction and thus are not relevant to this lawsuit. Even so the evidence is clear that Hamilton Davis, and the League. did not engage in any unfair or deceptive practice at any time. Therefore, the Court should grant Defendant's Motion for Summary Judgment as to this cause of action because no evidence suggests that the League engaged in any practice that was deceptive or unfair.

ii. No evidence suggests that Hamilton Davis's actions were in the conduct of trade or commerce.

Hamilton Davis's single voicemail for Daniel Burns and possible follow up conversation is not an action in trade or commerce, an important prerequisite to any unfair trade practices claim. *See* S.C. CODE §§ 39-5-20(a) (prohibiting "[u]nfair methods of competition and unfair or deceptive acts or practices *in the conduct of any trade or commerce*") (emphasis added). Actions not taken in the conduct of trade or commerce are beyond the reach of the SCUTPA. *Foggie v. CSX Transportation, Inc.*, 315 S.C. 17,24, 431 S.E2d 587, 591 (S .C. 1993), *Moore v. Williamsburg Regional Hosp.*, 560 F. 3rd 166, 178, (4th Cir. 2009). The language "in the conduct of any trade or commerce" "include[s] the advertising, offering for sale, sale or

distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. CODE § 39-5-10. By the plain language of the statutory definition it is clear that the actions complained of by Plaintiffs were not in the conduct of trade or commerce.

Environmental advocacy is not the advertising, selling, or distribution of services, property, or article, commodity, or thing of value. While courts recognize that the legislature did not intend to limit "trade" and "commerce" to only the listed transactions, those transactions covered by the statute but falling outside the list are of a similar type of transaction. *See e.g. Baker v. Chavis*, 306 S.C. 203,208-09, 410 S.E.2d 600, 603-04 (S.C. Ct. App. 1991)(". . . the acquisition of a lease, when, as here, it is done by purchasing a club's "equity," constitutes "trade" and "commerce" within the meaning of the UTPA."). Here, Hamilton Davis did not engage in trade or commerce—he did not offer for advertise, offer for sale or distribution, or even purchase or consider purchasing anything. He simply made a phone call on behalf of a nonprofit organization. Therefore, the Court should grant Defendant's Motion for Summary Judgment as to this cause of action because no evidence suggests that the League engaged in any practice in the conduct of any trade or commerce.

d. Injurious falsehood[3]

The Restatement of Torts provides the following definition of injurious falsehood: "One who publishes a false statement harmful to the interests of another is subject to liability for

[3] South Carolina Courts have rarely had any opportunity to address this cause of action. The most recent cases mentioning injurious falsehood concern the elements for an action for slander of title and are completely distinguishable from this case. *See e.g. Solley v. Navy Federal Credit Union, Inc.*, 397 S.C. 192, 206-07, 723 S.E.2d 597, 604-05 (S.C. Ct. App. 2012); *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 19, 567 S.E.2d 881, 890 (S.C. Ct. App. 2002) ("Slander of title is grounded in the tort of injurious falsehood") (citation omitted).

pecuniary loss resulting to the other if (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and (b) he knows that the statement is false or acts in reckless disregard of its truth or falsity." Rest. 2d Torts § 623A.

Plaintiffs have alleged that the League made false statements to residents and landowners and to the county concerning the development of the property's and such statements were harmful to Plaintiffs as such false statements engendered and aroused opposition to development of the property and that these statements caused Pittenger to abandon plans to purchase the property. Plaintiffs' have indicated that the statements they are referring to have to do with alleged statements by Hamilton Davis to residences that property taxes tend to increase on surrounding properties when high density development is allowed in the area.[4] There is no evidence, showing the publication of any false statements. However, the Court need not reach that issue because there is no evidence that Hamilton Davis knew any statements to be false or that he acted in reckless disregard of truth or falsity. Additionally, Plaintiffs' cannot present any evidence showing that any intention by Hamilton Davis or the League that any statements would incite opposition to development such that Pittenger would decide not to purchase the property.

Furthermore, as is the case with all of Plaintiffs' causes of action, there is no evidence tending to show any causal link between the conduct they allege and the damages they claim. The evidence is clear that the information Mr. Pittenger learned at the meeting with Dan Davis, and not any concern over local opposition to development caused by any statements made by the League or others, caused Pittenger to decide not to purchase the property.

[4] Obviously there are different opinions as whether such a stamen would be true or false.

Therefore, the Court should grant Defendant's Motion for Summary Judgment as to this cause of action.

II. Even if the Court does not grant Defendant's Motion for Summary Judgment as to all four causes of action, the Court should grant summary judgment as to any liability on the part of Dana Beach.

There is no evidence in the case implicating Dana Beach in any activity that would make him susceptible to personal liability. As has been discussed extensively above, Plaintiffs have failed to present sufficient evidence to survive Summary Judgment on any of their four causes of action. In addition to those arguments, the Court should grant Summary Judgment as to Dana Beach's liability because there is simply no evidence tending to show he played any role that could potentially expose him to any liability in the case.

III. The Court should deny Plaintiffs' Motion for Partial Summary Judgment as to Defendants' Counterclaims.

a. A genuine issue of material fact exist as to whether Plaintiffs' are liable to Defendants for abuse of process.

Plaintiffs' rely on the affidavits of James Reynolds and David Grubbs stating that no ulterior motive exists for their commencing this litigation for their argument that this counterclaim should be dismissed. However, in his deposition Jamie Reynolds stated that at the time of the filing of the Complaint he was not aware of any false statements made by the Defendants, and Plaintiffs' claims depend, at least in part, upon the existence of a false statement. *See* Ex. 25, Deposition of Jamie Reynolds, p. 47, l. 21- p. 48, l. 1. (stating that he was not aware of any false statements at the time the complaint was filed). "The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. American Med. Int'l*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (S.C. 1997) (citing *See Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153

S.E.2d 693 (1967)). Because Jamie Reynolds testimony shows that he was unaware of any false statement, the basis of their claims, when they filed the action, there is a genuine issue of material fact as to whether they filed it for an ulterior purpose. Additionally, Plaintiffs filed this suit seeking more than $20,000,000 in damages in response to what Plaintiffs apparently perceive as overly aggressive environmental advocacy. Affidavits from the Plaintiffs stating they had no other purpose than to pursue a damages award is insufficient in the face of the fact that they filed this lawsuit seeking damages they are not entitled to in response to the League's exercise of its right to free speech and advocacy.

Simply put, this lawsuit seeks to stop the League and anyone who might stand in the way of development from speaking up, the ulterior purpose of chilling speech and the willful act of filing a meritless lawsuit seeking damages in excess of what the Plaintiffs could possibly be entitled to under any legal theory and putting the League through the grueling process of litigation are the willful acts in the use of process.

Therefore, because there is a genuine issue of material fact as to whether Plaintiffs are liable to Defendants for abuse of process, the Court should deny Plaintiffs' Motion for Partial Summary Judgment.

b. A genuine issue of material fact exist as to whether Plaintiffs' are liable to Defendants under the South Carolina Frivolous Civil Proceedings Act.

Plaintiffs have also moved for summary judgment as to Defendant's counterclaim for sanctions under the South Carolina Frivolous Civil Proceedings Act. Plaintiffs' sole argument in support of that motion is that it cannot be subject to sanctions under the act because the court denied Defendant's previous motion for summary judgment Plaintiffs' unfair trade practices claim. Plaintiffs cite to the *Hanahan v. Simpson* for the proposition that "where a party survives a summary judgment motion, it is not subject to sanctions after a trial on the merits of the

surviving claims." 326 S.C. 140, 157-158 (S.C. 1997). However, Plaintiffs' argument suffers from a major deficiency. The Order in this case only dealt with one cause of action, *see* Ex. 26, Order Deny Defendants' Motion to Dismiss the SCUTPA Claims, and *Hanahan* does not address the situation where only part of a plaintiff's case has survived summary judgment. In other words, having one claim survive a motion for partial summary judgment should not immunize a plaintiff from sanctions under the act as to his remaining claims if those claims are frivolous and violate the act. The reasoning of the *Hanahan* Court supports this rule. In *Hanahan*, the court reasoned that "[i]t is simply untenable to suggest that, notwithstanding the trial court was convinced the issue was one for the jury, Hanahan [the nonprevailing party at trial] did not reasonably believe in the existence of her claim." In this case, the Court has not determined that all of Plaintiffs' causes of action are appropriate for trial; it has merely denied summary judgment as to one claim. Therefore, the Court should deny Plaintiffs' Motion for Partial Summary Judgment to the extent it relates to the frivolousness of Plaintiffs' other claims.

Additionally, the Court treated Defendant's Motion for Summary as a Motion to Dismiss, holing ". . . that the plaintiff has stated facts sufficient to constitute a cause of action in the pleadings filed with this court." Ex. 26, Order Deny Defendants' Motion to Dismiss the SCUTPA Claims, at 1. Therefore, Plaintiffs argument fails because no claim has survived a motion under the applicable Summary Judgment standard.

CONCLUSION

For the reasons stated above, the Court should grant the League's Motion for Summary Judgment and deny Plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted,

BY: _____

G. Trenholm Walker
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ATTORNEYS FOR DEFENDANTS

November 13, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 13th day of November, 2012, in Charleston, South Carolina.

_____
Amanda B. Brodish
Paralegal to W. Andrew Gowder, Jr.

Highlighted Deposition of Daniel Burns

1 does that sound like the voice mail message that
2 you were left?
3 A. It does sound very similar to the voice mail
4 that I did receive.
5 Q. Okay. Is there anything else that you can
6 remember that was on the voice mail message that is
7 not reflected in this transcript at all?
8 A. Not that I recall. That sounds fairly
9 close -- again, this is going back four or five
10 years, but that sounds very close to what I
11 remember the voice mail message being. It was a
12 very general message from a gentleman from the
13 Coastal Conservation League making the introduction
14 that he was aware of our interest in the 2,600-acre
15 tract in Berkeley and requested that I return his
16 phone call regarding some information and some
17 knowledge that he had on the area.
18 Q. Okay.
19 A. That's what I recall. So that does sound
20 fairly accurate.
21 Q. All right. And did you then call him back?
22 Do you remember?
23 A. I did not.
24 Q. Okay. Let me ask you to go to page 304.
25 A. I'm sorry. Which tab?

1 well -- so I'll ask you the question, I mean, did
2 you then -- did you call Mr. Davis back at the
3 Coastal Conservation League?
4 A. I don't -- from what I remembered, I didn't
5 remember calling him and having a conversation with
6 him. I had remembered that he had left a voice
7 mail message with me. In reading this e-mail, it
8 appears that -- it doesn't seem clear whether we
9 actually had a two-way conversation on the phone or
10 whether he had -- I had returned a call
11 potentially, and then he had called me back leaving
12 this information.
13 Q. Oh, I see.
14 A. It mentions I've forwarded his voice mail.
15 And my guess is I had forwarded that to
16 Mr. Pittenger and Mr. Fogarty. I just don't recall
17 if we had actually spoken or if we'd exchanged
18 voice mails, if he'd just left me a detailed voice
19 mail.
20 Q. Well, let me ask you this -- not to be
21 annoying, but lawyers do this occasionally. Do you
22 just not remember, or do you think that you didn't
23 actually speak to him directly?
24 A. I just don't remember.
25 Q. Okay. But does this -- so far as you can

1 mind, you think?
2 A. I think that would have stuck out in my
3 mind, yeah. But, again, this is going back four
4 years now, so it's hard to remember one phone call
5 four years ago.
6 Q. All right. You say here in this -- I guess
7 it's the -- well, it's a paragraph beginning, the
8 scariest thing, in your e-mail to Dan Fogarty and
9 to Robert Pittenger. You copied Robert Pittenger.
10 The scariest thing mentioned was that
11 they are working with the County to get rezoning
12 for the Keystone tract for a conservation easement,
13 so it can't be developed -- can't be development.
14 And said they were getting close with joint efforts
15 from the plantation owners. Tell me why, as you
16 can recall, that was the scariest thing, as you
17 characterize it.
18 A. If I could read that one more time, just to
19 make sure I'm looking at the right part. Yeah. To
20 answer the question, I would say after reading this
21 paragraph that if this was true, then it would
22 certainly impact the future development and value
23 of the property.
24 Q. And is it true that ultimately Mr. Pittenger
25 made a decision not to buy the Keystone tract?

1 A. Yes.
2 Q. And did you have any role in that decision
3 at all?
4 A. I did not.
5 Q. Okay. It was purely his own decision?
6 A. Yes.
7 Q. Okay. After having this communication,
8 whether it was a conversation or receipt of a
9 longer voice mail message from Hamilton Davis, did
10 you have any further involvement with your
11 company's interest in the Keystone tract?
12 A. I did not.
13 MR. BARNETT: Okay. That is all the
14 questions I have for you. Andy probably has a few.
15 EXAMINATION
16 BY MR. GOWDER:
17 Q. I do have a few, Mr. Burns. How are you?
18 A. Good. Thank you.
19 Q. As I understand it, you really had no
20 communications with either Josh Hulen or anybody
21 from the Reynolds folks who owned that property
22 during due diligence. That was all Mr. Fogarty.
23 Is that right?
24 A. That's correct.
25 Q. Okay. I want to direct you to -- it's page

Highlighted Deposition of Daniel Fogarty

1 report the good, but you highlight the bad in what
2 we did.
3 Q. Okay.
4 A. So any time there was something negative,
5 that was number one on presentation list to keep
6 from ending up purchasing a poor piece of property.
7 So, you know, if there was any potential red flags
8 anywhere, we would report those.
9 Q. Okay. In what form would you report those?
10 Would it be by e-mail? A memo? What? How would
11 you do that?
12 A. Walk into his office and say, hey, you've
13 got a problem.
14 Q. Okay.
15 A. I mean, it literally was a small company,
16 so -- and he was -- always had an open door to all
17 of us, so, I mean, it was very free flow of
18 information.
19 Q. Okay. Do you recall any aspects of this
20 property that you had that kind of discussion with
21 him about?
22 A. Yeah. I mean, we had problems with the
23 delineation, had problems with all of the -- what
24 are the species, different --
25 MR. GOWDER: Endangered species.

1 should not purchase this property?
2 A. I never spoke with Mr. Davis -- or Hamilton,
3 keep our Davises straight.
4 Q. Yeah, let's do. Okay. If you'll go over to
5 page 381, tell Neil Robinson we will -- this is the
6 same Friday a couple of minutes later after the
7 last e-mail. Tell Neil Robinson we will terminate
8 the contract following our discussion with Dan
9 Davis who said that there is a significant number
10 of conservation easements between the river and our
11 property that would preclude cost effect of sewer
12 lines. And also that the maximum density that he
13 saw from the tract was one lot to 15 acres. Again,
14 is that consistent with what you remember?
15 A. Uh-huh.
16 Q. And were those the main reasons that
17 Mr. Pittenger had for not going forward?
18 A. Yeah. I mean, it was -- there was a --
19 MR. BARNETT: Object to the form. Go
20 ahead and answer, if you can.
21 A. As I've said before, there was a pool of
22 issues. And you pile them all together, and it
23 breaks the camel's back. But, I mean, you know,
24 that meeting was one and done.
25 Q. After that meeting --

Highlighted Deposition of Jamie Reynolds

1 prior to --
2 Q. Are you aware that Mr. Pittenger made his
3 decision after he met with Mr. Davis at Berkeley
4 County?
5 A. I am now.
6 Q. Were you at the time?
7 A. I suppose -- I wasn't aware of Mr. Davis's
8 name, but I would have been aware that there was a
9 meeting.
10 Q. And in fact Mr. Pittenger made the decision
11 not to go forward immediately after that. Is that
12 your understanding?
13 A. That's my understanding.
14 Q. And his decision was made based on what Mr.
15 Davis told him about the availability of water; is
16 that right?
17 A. You know, that issue never come up during
18 the due diligence period. I would say that that
19 would have become an issue to him once, according
20 to the conversation, that there was a threat to
21 rezone the property to a lower density that water
22 and sewer didn't make sense anymore.
23 But that would have -- I mean, it would have
24 made sense according to -- you know, like I said,
25 it wasn't his first rodeo. He thought it made

1 property. Do you know anything about anybody
2 paying the Conservation League?
3 A. No, sir. I know they have contributors.
4 Q. Right.
5 A. I guess that's what they're alluding to
6 here.
7 Q. Do you know whether anybody or any
8 information about anybody paying the League to
9 interfere with this transaction?
10 A. No, sir.
11 Q. On paragraph 45 -- can you turn over to
12 that?
13 A. Okay.
14 Q. It talks about the CCL at the direction with
15 the knowledge of Beach publishing false statements
16 to residents and landowners. Do you recall -- do
17 you know -- are you aware of any such false
18 statements?
19 A. Only because I read the deposition of
20 Hamilton Davis.
21 Q. Are you aware of any false statements?
22 A. Only because of the depositions that he
23 made.
24 Q. So at the time that the Complaint was filed,
25 you were not aware of any such statements?

1 A. That's correct.
2 MR. GOWDER: Those are all of the
3 questions I have for you. Thank you very much.
4 MR. SMITH: I have none.
5 MR. CHARLES REYNOLDS: Nothing from me.
6 (The deposition was concluded at
7 3:02 p.m.)
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9
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18
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20
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24
25

1 this before, but that's a good first question.
2 Tell me if you've ever seen this document before.
3 A. I have.
4 Q. Okay. In what context have you seen this
5 document?
6 A. My attorney showed it to me.
7 Q. All right. Don't talk to me about that.
8 All right. It has in the middle of it what
9 purports to be a transcript.
10 A. Uh-huh.
11 Q. Says -- it begins, Hey, Mr. Burns, this is
12 Hamilton Davis. Does that accurately, so far as
13 you can recall, reflect what you told Mr. Burns?
14 A. Yeah, I believe it does.
15 Q. Okay. Did you subsequently actually speak
16 to Mr. Burns? Did Dan Burns call you?
17 A. He called me back, and I spoke with him.
18 Q. Okay. Tell me about that conversation, if
19 you would, in as much detail as you can recall.
20 A. I remember it was fairly brief, fairly
21 cordial. I talked to him a bit about what was
22 going on in terms of concern about how that
23 corridor was developing, offered to work with them
24 in any way on coming up with a development solution
25 that the community and the property owners and the

1 League and others would be supportive of.
2 Q. Say what now?
3 A. That we would be -- collectively would be
4 supportive of.
5 Q. Of what?
6 A. A development solution that the community,
7 the property owners, the League, and others would
8 collectively be supportive of.
9 Q. Okay. By the property owners, what do you
10 mean?
11 A. Property owners in that area, the plantation
12 owners.
13 Q. Okay. And then by the community, what do
14 you mean by that?
15 A. The folks we were working with in Cainhoy
16 and Wando and other places.
17 Q. Some of the --
18 A. We were communicating -- the communities we
19 were communicating with.
20 Q. Some of those folks --
21 A. Community members we were communicating
22 with.
23 Q. Some of those folks actually own their
24 property too, right? When you refer to -- some of
25 those people actually do own their property. 204

Highlighted Deposition of Robert M. Pittengar

Page 17

A. We notify them of the opportunity and we give a general description of the property we are buying, and they can tell us whether they would like to review the summary.

Q And typically do you get those responses before a contract goes hard?

A. No.

Q. You will do it after the contract goes hard?

A. Correct. We don't do anything until we go hard, and then we proceed ahead with collecting all the due diligence that we have found because that goes in the summary.

Q. I think I mis-spoke then Do you typically have your information as to the investor interest before the contract -- before the expiration of the inspection period before the termination of your ability to get out without consequences?

A. No, if I put something under contract and then we go hard, then I have to go ahead and raise the capital, and I'm just assuming that my investor base is going to like my property.

Q. The assumption is they will look at it the way you look at it?

Page 18

A. That's right.

Q. Did you have any direct communications with the seller in this case that you can remember?

A. People from Georgia?

Q. Right, or Cincinnati, or wherever they were, the Reynolds?.

A. No, not about the property. I only met him during the George Bush campaign. He chaired his finance committee.

Q. And he probably has handouts at some point there?

A. I was on the finance committee

Q. So you knew him from that?

A. Yeah, but we never had a discussion directly about the property.

Q. Had you ever done any transactions with any entities owned or controlled by the Reynolds?

A. No.

Q. This would have been a first?

A. Correct.

Q. Who are the main people with Robert Pittenger Company that were in charge of this?

A. Daniel Fogarty.

Q. And who is Daniel Burns?

Page 19

A. Well, Daniel Burns is a vice president of the company, and he had some contact because he worked on contracts.

Fogarty worked under him, but Fogarty did all the due diligence, and then gave all the data to Burns and Burns worked with our attorneys to develop the contracts.

Q. Do you know of any due diligence that was performed before the contract was signed with the seller?

A. I don't recall, I just don't.

Q If you would go to the notebook in front of you marked as Exhibit No 3, you will see those page numbers in the upper right-hand corner. Do you see those?

A. Uh-huh

Q. Would you go to 112.

A. Okay.

Q. If we were to follow that through to page 123, which is the signature page, you will see that this appears to be a signed contract.

To the best of your knowledge, is this an accurate copy of the executed contract for purchase of property?

A. Well, it looks like it. It appears to

Page 20

be.

Q. Is your understanding of the structure the deal as set forth in this contract, that certain monies were to be put down and that those monies were fully refundable up to the end of the inspection period?

A. Correct.

Q. What is the typical due diligence that your firm would perform for an acquisition of property like this?

A. We want to see Phase I, environmental. We look for archeological, endangered species, wetlands. We want to know about zoning. We want to know about utilities.

Q. When you acquired this property, did you consider that its entire use would be single family residential?

A. Correct.

Q. At any time, did you consider that there would be commercial uses on this property?

A. We didn't see that. There is a major commercial corridor three or four miles away or two, whatever it is. That was never in the game plan.

Q. At the time you entered this contract,

Page 17

1 A We notify them of the opportunity and we
2 give a general description of the property we are
3 buying, and they can tell us whether they would
4 like to review the summary.
5 Q And typically do you get those responses
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25 the way you look at it?

Page 18

1 A. That's right
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3 with the seller in this case that you can
4 remember?
5 A. People from Georgia?
6 Q. Right, or Cincinnati, or wherever they
7 were, the Reynolds?
8 A. No, not about the property I only met
9 him during the George Bush campaign. He chaired
10 his finance committee.
11 Q. And he probably has handouts at some
12 point there?
13 A. I was on the finance committee
14 Q So you knew him from that?
15 A. Yeah, but we never had a discussion
16 directly about the property.
17 Q. Had you ever done any transactions with
18 any entities owned or controlled by the Reynolds?
19 A. No.
20 Q This would have been a first?
21 A Correct.
22 Q. Who are the main people with Robert
23 Pittenger Company that were in charge of this?
24 A. Daniel Fogarty
25 Q. And who is Daniel Burns?

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1 A. Well, Daniel Burns is a vice president
2 of the company, and he had some contracts he used to
3 worked on contracts.
4 Fogarty worked under him, but Fogarty
5 did a the due diligence, and then gave all the
6 data to Burns and Burns worked with our attorneys
7 to develop the contracts.
8 Q. Do you know of any due diligence that
9 was performed before the contract was signed with
10 the seller?
11 A I don't recall, I don't think.
12 Q. If you would go to the notebook in front
13 of you marked as Exhibit No. 3, you will see these
14 page numbers in the upper right-hand corner. Do
15 you see those?
16 A. Uh-huh.
17 Q. Would you go to 112.
18 A. Okay.
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20 page 123, which is the signature page, you will
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22 To the best of your knowledge, is this
23 an accurate copy of the executed contract for
24 purchase of property?
25 A. Well, it looks like it. It appears to

Page 20

1 be.
2 Q. Is your understanding of the structure
3 the deal as set forth in this contract, that
4 certain monies were to be put down and that those
5 monies were fully refundable up to the end of the
6 inspection period?
7 A. Correct.
8 Q. What is the typical due diligence that
9 your firm would perform for an acquisition of
10 property like this?
11 A. We want to see Phase I, environmental.
12 We look for archeological, endangered species,
13 wetlands. We want to know about zoning. We want
14 to know about utilities.
15 Q. When you acquired this property, did you
16 consider that its entire use would be single
17 family residential?
18 A. Correct.
19 Q. At any time, did you consider that there
20 would be commercial uses on this property?
21 A. We didn't see that. There is a major
22 commercial corridor three or four miles away or
23 two, whatever it is. That was never in the game
24 plan
25 Q. At the time you entered this contract,

Page 69

A If there is a Mr. Barnett involved, yes.
Q Mr. Robinson's e-mail that we were just talking about was a little after 4:00 on Thursday, May 24th. The next day, Friday, was the day you had your lunch at Kiawah with the county officials, correct?
A Yes, sir.
Q. And nothing that Mr. Robinson had indicated in his communication suggested to you that you should call the deal off without meeting with the county folks?
A. I think he probably advised me to. I think he was leading me in that direction. He may have helped to arrange the meeting, I don't know, but I think he wanted me to hear from the horse's mouth.
Q Do you have any recollection of what was specifically said to you at that lunch?
A. I can't tell you specifics. I can tell you the general tone.
Q. Were the county people cordial?
A. Of course.
Q. What was the gist of what they said?
A. That you have got a tiger by the tail. You have a major issue, major problem here, a lot

Page 70

of resistance toward getting the kind of density that you are going to want, and as a result of this, it's going to be cost prohibitive to bring utilities to it.
Q. Did they mention to you also that the county staff was looking at rezoning to one unit for 15 acres?
A. Well, they said that was the proposal that was out there. I don't recall them citing the county staff. They might have, but they said that was the general interest by a large group of people who wanted that. It was more outside than internal.
Q. What was more outside than internal?
A. The interest to change the zoning to one lot for 15 acres. They were saying there are external forces that are going to be major resistance and grave difficulty in achieving your objective.
Q. Immediately after that lunch, did you send an e-mail to Daniel Fogarty?
A. Either Fogarty or Burns, one, e-mail or phone call. I said it's done. It's over.
Q. Please turn to 374
A. There you go.

Page 71

Q On page 374 is a printout of e-mail from you to Daniel Fogarty at 1:38 p.m., Friday, May 25th. What did you tell Mr. Fogarty?
A. Per the e-mail, said we can only get one lot per 15 acres, get our money back and cancel the contract.
Q Then on the next page two minutes later you sent another e-mail, a follow-up to Mr. Fogarty, did you not, at 1:40? Do you see that?
A Yes
Q. In that follow-up e-mail you said it's over?
A. Yeah.
Q. Too many conservation easements between us and the river, cost prohibitive to run sewer, look for land out 176, correct?
A. Uh-huh.
Q. Is that an accurate statement of your views at the time?
A Yes. I mean there was a combination of those two e-mails, very low density and the fact of not having other properties that could be developed that would make sewer cost effective as well.
Q. Then if we go to page 381. There is

Page 72

another e-mail within the hour, and this one is from you to Daniel Fogarty at 2:38 p.m. on Friday May 25th, and in this you say tell Neil Robinson we will terminate the contract following the discussion with Dan Davis, who said that there is a significant number of conservation easements between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/15 acres. Is that what you instructed Mr Fogarty to do?
A. Yes.
Q. And in your estimation, was that the primary reason why you terminated?
A. Those two reasons.
Q. Are the primary reasons you terminated, correct?
A. Correct.
Q. And the only two reasons that you stated in your e-mail, correct?
A. Well, that was enough.
Q. I would like to go back and ask you about a couple other e-mails where apparently text was deleted. If you go back to page [illegible]
There is an e-mail that starts on the

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY NORTH PLEASANT, LLC and VANGUARD DEVELOPMENT GROUP, LLC, Plaintiffs, vs. SOUTH CAROLINA COASTAL CONSERVATION LEAGUE and EDWARD D. BEACH, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-08-1771 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

2010 NOV 13 AM 9:09
HARRY P. BRUNSON
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiffs, North Pleasant, LLC ("North Pleasant") and Vanguard Development Group, LLC ("Vanguard") hereby submit this Memorandum in Opposition to Defendants' Motion for Summary Judgment.

As an initial matter, Plaintiffs' Motion should be denied because it is not supported by Affidavits or any other form of evidence allowed pursuant to Rule 56(e). SCRP 56(e) states that "[w]hen a motion for summary judgment is made and supported as provided in this rule.." the non-moving party must respond with affidavits or other Rule 56-type evidence showing that there is a material fact in dispute. Defendants' Motion for Summary Judgment is made without any supporting affidavits, deposition testimony, or other factual information that would place any issues in controversy. Since their Motion is not "supported as provided in this rule" it must be dismissed on its face, even without Plaintiffs' response.

The standard for deciding Motions for Summary Judgment pursuant to Rule 56(c) is well established. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Fleming, 350 S.C. at 493, 567 S.E.2d at 860 (citing Peterson v.West Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). In order to withstand a motion for summary judgment " the non-moving party is only required to submit a **mere scintilla** of evidence." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803(2009). (emphasis added.). As demonstrated in greater detail below, Plaintiffs have far surpassed this very low threshold.

More detailed pertinent facts are set forth related to the specific issues raised by Defendant's motion, but a general statement of the basic facts may be helpful as an introduction. Briefly stated, the facts are as follows. On or about March 15, 2007, North Pleasant entered into a contract with the Pittenger Group to sell 2,600 acres to them. (See J. Reynolds affidavit, ¶ 7, Exhibit A to Plaintiffs' Motion for Summary Judgment.) The contract called for the Pittenger Group to post a $500,000 earnest money deposit and provided a 60 day due diligence period, which ended on Monday, May 21, 2007. Id. at ¶ 7. (Exh. 5 Pittinger Depo, pages from Exh. 3 to Depo.). On Friday, May 18, 2007, the last business day before the end of the due diligence period, Hamilton Davis, an employee of the League, acting within the course and scope of his employment, contacted a representative of the Pittenger Group, left a voicemail message and had a subsequent telephone conversation with this representative. Id. at ¶ 8. The substance of these communications can be found at Exhibits B and C. Mr. Davis made inflammatory, threatening and false statements in order to cause the Pittenger Group to terminate its contract with North Pleasant.

The points raised in the Motion will be addressed in the order they were presented. Reference will be made to affidavits and deposition testimony attached to Plaintiffs' Motion for Partial Summary Judgment, and Exhibits thereto are hereby incorporated by reference.

1. **Evidence of Intentional Procurement.**

Defendants claim, without any supporting evidence, that there is no evidence of an intentional procurement of a contract breach. It is uncontroverted that Hamilton Davis, acting as a League employee, intentionally called a representative of the Pittenger Group on the last business day before the due diligence period in the contract expired. The substance of his voicemail and the subsequent conversation are attached as Exhibits C and D to Plaintiffs' Motion for Partial Summary Judgment. In both the voicemail and subsequent call, Mr. Davis makes false statements of the sort that would necessarily cause a potential purchaser to choose not to close. Mr. Davis has admitted that he called Dan Burns at the Pittenger Group and left the message set forth in Exhibit C to Plaintiffs' Motion for Summary Judgment. The only contemporaneous summary of the conversation between Burns and Davis was prepared by Burns in the form an email only a few days later is accurate. (Exh. 1, H. Davis Depo, p. 51-52; Exh. D to Plaintiffs' Motion for Summary Judgment). [1] Mr. Davis told Burns at the Pittenger Group that the League had "targeted the Keystone Property," that a concerted effort was being made to "stop development" and that the League had "fought" the D. R. Horton project and as a result it had been "halted." See affidavit of James M. Reynolds, attached as Exhibit A to Plaintiffs' Motion for Partial Summary Judgment, paragraph 6. Mr. Davis' statement that the League fought D.R. Horton and caused that company to abandon a development on nearby land was a

[1] Full copies of depositions and all other exhibits submitted as exhibits are filed in the Clerk's office. Attached hereto are selected pages from those depositions as well as other individual exhibits

fabrication. The Horton representative who dealt with Davis at the time, Mitchell Flannery, has testified that the League did not fight with Horton and that the development was not abandoned as the result of any opposition by the League. Specifically, he stated testified at pages 9 and 10 of his deposition, as follows:

> Q. From your recollection, was it a true statement to say that the Coastal Conservation League fought the D. R. Horton project? A. No.
> Q. Was it a true statement to say that the Coastal Conservation League halted D. R. Horton A. No.

(Exh. 2, Flannery Depo, p. 9-10)

Not only did Davis make flamboyant and damaging misrepresentations about the Horton project to Pittenger, he knowingly spread falsehoods among residents of the Highway 41 community designed to frighten them and incite them into opposing any development of the Keystone property. At a series of barbecue meetings he set up on behalf of the League, he told residents of the community that if Keystone was developed, their property taxes would go up, threatening their ability to keep their land, and that they could be required to pay for infrastructure improvements for water and sewer to service such a development. (Exh. 1, H. Davis Depo, p. 43-45, 47). Davis admitted he did not check with Berkeley County or any authority before making these false and frightening representations to the residents. (Exh. 1, H. Davis Depo, p. 48-49). Berkeley County's Administrator, Dan Davis, has testified that it is not true that a nearby development would cause residents' real property taxes to go up. (Exh. 3, D. Davis Depo., p. 15).

Understandably, the residents of the Highway 41 community became alarmed at what Hamilton Davis told them. The League was, therefore, able to direct their alarm at the County in the form of opposition to any development of the Keystone property. Davis made certain, in his conversation with Dan Burns at the Pittinger Group, to tell him about these concerns of the

residents...concerns he had deliberately and knowingly manufactured by spreading falsehoods. (Exh. 1, H. Davis Depo, p. 54-55). Josh Hulen, the realtor representing North Pleasant in the contract with Pittenger, testified that the misrepresentations by Davis and the League were significantly damaging to North Pleasant's ability to sell the property. (Exh. 4, Hulen Depo, p. 74-75).

Hulen also testified that there was no hint of any problem from Pittenger prior to the Davis call. Despite the fact that extensive due diligence had been undertaken by Pittenger, no problems had been identified by Pittenger's staff. (Exh. 4, Hulen Depo., p. 45-49). He testified that the Davis call was the reason for Pittenger's refusal to go forward with the purchase of the property. (Exh. 4, Hulen Depo, p. 96-97).

Indeed, the testimony by Robert Pittenger, the principal of the company which had contracted to purchase the Keystone property, leaves no doubt about the sole reason he chose not to consummate his contract to purchase the property. After Davis' call to his assistant, Burns, he commenced an investigation into the League and whether it had the wherewithal to force Berkeley County to rezone the Keystone property to a lower density than that which he believed was necessary to make the purchase economically profitable. He concluded that the residents of the area had become sufficiently inflamed in opposition to development at the one unit per acre density he felt was needed to make running water and sewer to the property viable, that he had a "tiger by the tail" and would be in for a fight he did not want to undertake. (Exh. 5, Pittinger Depo, p. 48-52, 57, 59-60, 69-72, 89, 94-95). Just as Josh Hulen testified, Pittinger did not find any environmental or physical properties at the property during the due diligence period that prompted him to abandon the purchase. It was purely the threat by the League of a fight to down zone the property's density, the community opposition inflamed by the spreading of false

information by the League and the possibility that rezoning might deprive him of the density he required to economically run water and sewer to the property.

Thomas F. Hartnett, Jr., an expert in commercial real estate transactions in the South Carolina Lowcountry, has testified that the communication of such false statements as those by Hamilton Davis is wrongful and outside the "rules of the game" surrounding sales of raw land in this area. From this evidence a jury could easily find the requisite intent making Summary Judgment inappropriate. (Exh. 6, Hartnett Depo., p. 28-30). In addition, Megan Derosiers, the chief assistant to Dana Beach at the League, testified that threatening or bullying persons to achieve the League's goals, including deterring development, is wrong and should never be done. (Exh. 7, Derosiers Depo., p. 71-73). Nancy Vinson, a former senior League staff member, acknowledged that if the League made representations to community residents such as those made by Hamilton Davis, it would be wrong to do so if there was nothing to back them up. (Exh. 14, Vinson Depo., p. 50). These are the kind of acts recognized as improper in the context of an action for tortuous interference with contract. Restatement (Second) of Torts, § 767, Comment on Clause (g), at j.

The Pittenger/North Pleasant Contract was Breached.

Defendants also allege that the contract between the Pittenger Group and North Pleasant was not breached. This issue is the subject of Plaintiffs' Motion for Partial Summary Judgment, wherein Plaintiffs assert that the "breach" element of their Tortious Interference claims be deemed satisfied as a matter of law. While Plaintiffs will not repeat their argument from their Motion for Partial Summary Judgment in its entirety, suffice it to say that in the context of a tortious interference with contract claim there need be no wrongful element to breach. In this context, it is only necessary to show that "[t]he alleged act of interference must influence,

induce, or coerce one of the parties to the contract to abandon the relationship or breach the contract." Focused Systems, Inc. v. Aeroted, 2011 U.S. Dist. Lexis 58979. Any abandonment of the contract constitutes a breach for purposes of satisfying this element. Id. See also, Bocook Outdoor Media, Inc. v. Summer Outdoor Adver., Inc., 294 S.C. 169, 363 S.E.2d 390, 394 (S.C. Ct. App. 1987). For example, at-will contracts, which can by definition be terminated without penalty, are often the subject of tortious interference with contract claims. Restatement (Second) of Torts§ 766, Comments f and g.

The Record Contains Evidence Sufficient to Give Rise to a Genuine Issue of Material Fact as to Tortious Interference with Contract.

The elements of Tortious Interference with Contract are satisfied by the evidence in the record as set forth above. Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008).

1) a valid contract exists – there is no contention that a binding contract did not exist between North Pleasant and Robert Pittinger's company, Vanguard of the Caroolinas;
2) the defendant has knowledge of the contract – this too is undisputed;
   the defendant's intentionally procuring its breach – as noted above the actions of the League were intentional and had the result of causing Pittinger to breach his contract to purchase the Keystone property, a result which fulfilled the League's goal of preventing development of the property;
3) the defendant acted without justification – the evidence supports the conclusion that the League both threatened the buyer in the Keytone contract and communicated falsehoods to the buyer and inflamed community residents by spreading other

frightening falsehoods among them, all for the purpose and with the result of causing the buyer to abandon the purchase; and

4) the plaintiff has suffered prejudice – the evidence is uncontested that North Pleasant lost the benefit of the sale of the property to Pittenger.

2. **Intentional Interference with Prospective Contracts Claim.**

Defendants argue that the presence of a contract between North Pleasant and the Pittenger Group should cause this claim to fail. While the parties agree that a contract was in effect, a jury might consider the "closing" of that contract to be a separate matter. If viewed in this manner, different damage calculations may come into play. Indeed, Defendants argue that there has been no breach, which would leave Plaintiffs with only this claim. In addition, Plaintiff Vanguard had no contract with the Pittenger Group, and must rely on its Intentional Interference with Prospective Contractual Relations claim for recovery. Accordingly, these claims should not be dismissed.

Defendants also claim that lack of a breach defeats this claim. Plaintiffs repeat their arguments stated above, and add that breach of a contract is not an element of intentional interference with prospective contractual relations. Those elements are: 1) the defendant intentionally interfered with plaintiff's prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) the interference caused plaintiff injury. Crandall Corp. v. Naistar Int'l Tranp. Corp., 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990). There is no question but that the actions of the Defendants through Dana Beach and Hamilton Davis were intentional. The evidence is that, if there was no breach of contract by Pittenger based on a finding that he had the right to abandon the contract under the due diligence provision of his contract, his actions constitute an interference in a prospective contract with North Pleasant. Had

the due diligence period, as extended by North Pleasant, lapsed, Pittenger would have been unalterably obliged to purchase the Keystone property. The evidence also supports a finding that the actions of the Defendants – threatening, making false statements to the prospective buyer and spreading falsehoods among community residents so as to inflame them in opposition to development of the property – were improper.

3. **Unfair Trade Practices Act Arguments.**

This Court has already denied Defendants' Motion for Summary Judgment on the claim for violation of the S.C. Unfair Trade Practices Act. (Attachment I, Order of July 20, 2011 attached). [2] Specifically, the Court held that, "viewing the evidence as a whole and in the light most favorable to the plaintiff, I find that plaintiff has stated facts sufficient to constitute a cause of action in the pleadings filed with the court." Defendants argued in the earlier motion for summary judgment that as a "public interest" organization, they could not be capable of violating the Unfair Trade Practices Act. The Court squarely rejected that contention and the evidence developed during discovery provides ample evidence that the Defendants were engaged in committing an unfair trade practice when they set out by unfair and deceptive means to prevent North Pleasant from making profitable use of its property by selling it for development purposes.

The record shows that the League is engaged in providing a service and it performs that service through the use of unfair or deceptive practices, it is liable under the Act regardless of its non-profit status or its self-proclaimed status as a "public interest" organization. The UTPA has been held to extend to the provision of services and not just to the sale of

[2] Although Defendants' motion was filed as one for summary judgment and it was briefed and argued as such by both parties, the Court's order is denominated as one denying a motion to dismiss. No motion to dismiss was filed by Defendants. The holding of the order, however, regardless of how denominated is applicable to Defendants' current renewal of their summary judgment motion as the Court found last year that the allegations in the complaint make out sufficient elements of an Unfair Trade Practice.

merchandise. Taylor v. Medenica, 324 S.C. 200, 429 S.E. 2d 35 (1996). There is no exception in the statute for non-profit status of a defendant otherwise in violation of its prohibitions. S.C. Code 39-5-40. The Defendants previously argued in their first motion for summary judgment that they were not engaged in providing a trade or service. Plaintiffs have alleged that they are providing a service in the form of either support or opposition to development projects in return for financial contributions from its supporters. This Court held that that this allegation and the record previously submitted was sufficient to make out a proper allegation of a violation of the Act and that the proof previously submitted was sufficient to avoid a motion for summary judgment. The record now is significantly stronger.

With respect to the Keystone property, the evidence in the form of testimony by Defendants' own representatives and the League's list of contributors leaves no doubt that the League was doing the bidding of some of its large contributors in seeking to prevent, by any means, development of the Keystone property. Hamilton Davis and Dana Beach testified that development of that property was opposed for various reasons by the owners of plantations along the East Branch of the Cooper River. These owners included several large contributors to the League, Mr. and Mrs. Richard Coen and Michael Bennett. Both Beach and Davis admit discussing opposition of development of Keystone with these individuals. (Exh. 1, H. Davis Depo, p. 37-42; Exh. 8, Beach Depo, p. 87-95; Exh.7, Derosier Depo, p. 55; Exh. 9, Contributor Lists of the SCCCL for 2006 and 2007). Nancy Vinson, formerly a senior staff member of the League testified that the Keystone property was "targeted" by the League and affiliated organizations. (Exh. 14, Vinson Depo., p. 21-22). In addition, Charles Lane, another large contributor to the League, along with Edwin Cooper and the brokerage firm where he held a position, Holcomb and Fair, were actively engaged for years in trying to effect either acquisition

of the property by a public agency or of a conservation easement. (Exh. 15, Nichols Depo., p. 26; Exh. 10, Lane Depo, p. 28-29, 47, 59-60; Exh. 4, Hulen Depo., p. 28-31). The League's contributor lists show that Lane, Fair, Cooper and the Donnelly Foundation, with whom Lane works very closely are routine large contributors. (Exh. 9, Contributor Lists of the SCCCL for 2006 and 2007; Exh. 10, Lane Depo, p. 13, 28-29).

In addition, there is evidence that with respect to other projects, the League specifically responds to the desires of its large contributors. With respect to the Angel Oak project discussed in more detail below, the evidence is that the League completely reversed its position in support of that project, after extracting substantial concessions from the developer in return for its support, when the Maybanks, routine large contributors, voiced their disapproval. (Exh. 11, Demoura Depo., p. 19-36, 38-51,and Exhibits to Demorua Depo.).

When defendants, acting through Beach and Davis, set out, first, to coerce North Pleasant to either part with title completely in favor of a public agency, or to agree to give up the right to make profitable development use of the property, and, second, to cause Pittenger not to purchase the property, they did so by spreading falsehoods among the Highway 41 community and among local government and landowning interests and lying to Pittenger. Specifically, 1) they inflamed the residents by telling them what they knew or should have known to be false that their taxes would go up and they would be required to pay for infrastructure improvements if the Keystone property was developed; 2) they falsely claimed to landowners and local government leaders that North Pleasant only planned to develop 35 home sites; and 3) they deliberately lied to Pittenger claiming falsely that they had stopped D.R. Horton from developing a nearby site. (See citations to record on p. 2 and 3 above). These actions are precisely the kind of deceptive and unfair practices recognized to fall under the Act's prohibition. Gentry v. Younce, 337 S.C.

1, 12, 522 S.E.2d 137, 143 (1999), "an act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." The evidence, including the admissions of the League's own representatives, is conclusive that bullying, threatening and spreading falsehoods are "unfair acts" as defined by our courts.

To constitute an unfair trade practice, an act must affect the public interest, which has been interpreted as an act capable of repetition. Our courts have recognized that actual repletion establishes the capacity of repetition sufficient to prove an effect on public policy. Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996). The record in this case establishes that the Defendants have repeatedly employed the same unfair and deceptive practices as those they employed against the Plaintiffs with respect to the Keystone property. In Awendaw, the League repeatedly made the same false claims to residents that development would increase their property taxes as was made by Hamilton Davis with respect to the Keystone Property. (Exh. 10, Lane Depo, Exhs. 1 and 2). In addition, the record of three other projects confirms that the League routinely employs unfair and deceptive practices to advance the goals of its client contributors.

The Angel Oak Project

The record in this case includes the testimony of Robert Demoura that after supporting his Angel Oak project for a year, the League informed him that as important supporters and contributors of the League were opposed to the project, the League would reverse its position and fight the project. (Exh. 11, Demoura Depo, p. 19-36, 38-51 and Exhibits to the Depo.). That opposition has continued for nearly three years. Id. The actions by the League and by Mr. Beach personally in the form of extracting concessions, attempting to extract more and

69-71, 85-86 and Exh. 15 to Depo; Exh. 19, Morris Depo., p. 37-44 and Exhibits 2-8 and 13 to the Depo; Exh. 15, Nichols Depo, p. 33-34, 39-42; Exh. 10, Lane Depo, p. 41-42, 47-51).

Nancy Vinson, a former senior staff member of the League, served as the Secretary of the ACRET trust and testified that, while Dana Beach was the Treasurer of the Trust, she performed all the functions of treasurer. She explained that had Vaught and the State only offered wetland mitigation sufficient to meet government requirements, the League would have considered this insufficient and would have seriously considered appealing the environmental permits required to prepare the North Charleston site for the airplane assembly plant Vaught proposed to place there. She compared the situation to that of the Daimler Chrysler plant proposed in the 1990s near North Charleston, explaining that when the State refused to provide the League what it demanded in the form of "mitigation" dollars, the League appealed the permit for that facility causing Daimler Chrysler to locate in another state. It is undisputed that had the permits for the Vaught/Boeing facility been appealed, Vaught would likely not have located the plant in South Carolina, thereby costing this State perhaps the largest job creation in history. (Exh. 14, Vinson Depo.,p. 52-73; Exh. 12 Sanford Depo., p. 31, 47). Ms Vinson's testimony confirms that of Daniel Young of the Department of Commerce that the agreement with the League to fund ACRET was for the purpose of "keeping the conservation groups on board" and of former Governor Sandford on the effort to avoid fighting with the League. (Exh. 13, Young Depo., p. 8-13 and Exh. 1 to Depo.; Exh. 12, Sanford Depo, p.33; Exh. 8, Beach Depo., Exh. 2 to the Depo.).

This evidence is sufficient to form the basis for the conclusion that the League is in the business of using its influence, including litigation and the threat of litigation, to benefit its contributors, including through outright financial gain. It also confirms the use by Defendants of

making direct threats against the developer are similar to the actions of the League with respect to the Keystone property.

The Vaught/Boeing Plant

The evidence associated with the Vaught/Boeing Plant permitting reveals that the League: a) extracted an agreement from the State of South Carolina, under the threat of filing challenges to permits required for the project, to contribute $5 million of State money to acquire "conservation easements" to mitigate for wetland loss (Exh. 12, Sanford Depo., p. 30-33; Exh. 13, Young Depo. p. 9-13 and Exh. 1 to Depo); b) along with Charles Lane, controlled the decisions as to where these funds were spent by the trust set up pursuant to an agreement between the League and the S.C. Department of Commerce, the Ashley Cooper River Environmental Trust (ACRET) (Exh. 10, Lane Depo., p. 37; Exh. 8, Beach Depo, p. 65-72 and Exhs.14, 15, 16 to Depo.); c) directed nearly all of the money into the purchase of easements which do not qualify as conservation easements, but which placed much of the $5 million of State money into the hands of major League supporters and contributors, including Edwin Cooper and T. Heyward Carter, Jr. and T. Heyward Carter, III, and in all cases were in pursuit of goals of those contributors like Lane. (Exh. 6, Hartnett Depo, p.31-35; Exh. 10, Lane Depo., p. 37-51; Exh. 17, Minutes of ACRET Board Meeting, Feb. 21, 2006; Exh. 9, Contribution Lists for SCCCL for 2006 and 2007; and Exh. 18, Conservation Easement for Millbrook Plantation Acquired by ACRET); and d) violated the limitations of the development bond which generated the $5 million by spending, without any audit or effort to insure these State funds were spent in accord with the bond issue or the agreement with the Department of Commerce, $4 million more than was required to satisfy the purpose of the bond – which it is undisputed was only to meet wetland mitigation requirements of the federal and State governments. (Exh. 8, Beach Depo., p.

threats of litigation which would derail development as a means to extract demands, in this case in the form of millions of dollars of State money.

The Bulls Bay Village Project

In 2006, a partnership of Christopher Donato and several associates purchased a tract of land in the Town of Awendaw and planned a residential development consistent with Town zoning. After securing necessary Town approvals and preparing application for the necessary storm water permit, Donato was approached by the League in the person of Jane Lareau who asked to meet and discuss the project with Donato. Donato met with Ms Lareau who explained that the League had serious concerns with the planned development and suggested that Donato meet with two men who worked closely with the League, Noel Thorn and Mike Prevost. When Donato met with these gentlemen, they stated clearly that Donato was "not going to be able to get away with this," and that the League was "going to get into your pockets" and "not going to let you develop." They explained that he League would drag out the project through legal challenges and "break you." The League demanded that Donato so limit the density of the development that it would be unprofitable. Donato and his partners refused the League's demands and proceeded with the project. When DHEC issued the storm water permit for the development, the League appealed the permit to the SC Administrative Law Court. The League's basis for appeal was the alleged affect the residences would have on a nearby Native American shell midden, not through direct contact but by diminishing the experience of persons visiting the shell midden, which they compared to the Great Pyramids of Egypt. The delay posed such financial strain on the partnership due to debt service, that Donato and his partners abandoned the project and sold the property to Charleston County Parks and Recreation. (Exh.

21, Affidavit of Christopher Donato filed in response to Defendants' first motion for summary judgment; Exh. 22, Donato Depo.)

The actions of the League with respect to the Bulls Bay Village project are similar to those undertaken with respect to the Keystone property. The League first threatened legal action to force agreement to its demands and, when agreement was denied, pursued legal action so as to delay the project and cause financial harm to the developers, thereby coercing abandonment of the project.

The League's Actions at Issue Constitute Unfair Trade Practices

The evidence noted above concerning the false statements made by the League to the Pittenger organization can give rise to the conclusion that Defendants were directly threatening the buyer with financial harm. These statements were untrue and were damaging to North Pleasant by further threatening their ability to make use of the property without a prolonged controversy, one spawned in large part by the falsehoods spread by the League. Just as the law forbids destroying a competitors' service vehicle, as in Daisey Outdoor Advertising Co. v. Abbott, supra, it also forbids wrongful procurement of the breach of a contract (or of a decision not to enter into a contract) by threats and intimidation. Both are unfair and immoral acts which, when undertaken with respect to commerce, constitute a violation of the UTPA.

Defendants may seek to argue that Vanguard Development Group, LLC, the real estate broker which handled the contract for sale for North Pleasant is not entitled to damages on the theory that a broker is entitled to a commission only if a sale is consummated. While that rule may apply in disputes between a broker and those in contract with him, it does not exclude the broker from the definition of "person" in the Act, which provides relief for any person who suffers injury from an unfair trade practice. Attached hereto is a decision by the Fourth Circuit

Court of Appeals upholding a verdict for a broker under the Act against a lender alleged to have wrongfully caused the sale of an expensive machine tool to fail, thereby costing the broker his commission. That court upheld an award of damages and the award of attorneys fees to the broker, Carolina Tooling Concepts, under the Act. (See Attachment II, Fanczi Screw Co. and Carolina Tooling Concepts v. Orix Financial Services, Inc., Fourth Circuit, July 26, 2005).

4. **Evidence of False Statements for Purposes of the Claim of Injurious Falsehood.**

While there are numerous sources which support the proposition that what Mr. Davis admittedly conveyed to Dan Burns at the Pittenger Group, as summarized in the Burns email (attached to Exh 1, H. Davis Depo) was false, the following deposition testimony is perhaps the clearest. Mitchell Flannery, the D. R. Horton representative Davis called, testified at pages 9 and 10 of his deposition, as follows:

> Q. From your recollection, was it a true statement to say that the Coastal Conservation League fought the D. R. Horton project? A. No.
> Q. Was it a true statement to say that the Coastal Conservation League halted D. R. Horton A. No.

(Exh. 2, Flannery Depo, p. 9-10).

As noted above, the League also spread complete falsehoods to residents in the area concerning an increase in property taxes and a mandate to share in water and sewer line costs. There is ample evidence that Davis's comments were false. (Exh. 1, H. Davis Depo, p. 43-45, 47-49; Exh. 3, D. Davis Depo., p.15). In addition, the League spread the false story in quarters where they clearly believed this would benefit their goal of public or quasi public acquisition of the Keystone property, that North Pleasant intended only to develop the property for 35 homesites. (Exh. 4, Hulen Depo, p. 13-25). The testimony of Josh Hulen and of Dan Davis confirms that these falsehoods were significantly damaging to the Plaintiffs. They are, therefore, actionable in their own right under the doctrine adopted by South Carolina of injurious

falsehood. State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986); Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (2003).

The damage to North Pleasant and to Vanguard Development from the spreading of falsehoods by the League continued after abandonment of the contract by Pittenger. Opposition to any development by the community residents engendered by the League's false and frightening claims that their taxes would go up and that they would be required to bear the costs of infrastructure improvements forced North Pleasant to agree to a substantial reduction in density for the property which significantly reduced its value. (Exh. 4, Hulen Depo, p. 81-84).

As with the Unfair Trade Practices Act claim, Vanguard Development is entitled to seek relief for the damages it suffered in the form of lost and lower commissions on sales of the Keystone property tracts. Defendants had a duty not to spread falsehoods they knew would damage various parties, including Vanguard, the real estate broker handling the sale. The combination of this duty and the foreseeability of damage to Vanguard renders the Defendants liable to Vanguard. State Ports Authority v. Booz-Allen & Hamilton, Inc., supra.; Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597, 604 (Ct. App. 2012), "The pecuniary loss for which a publisher of injurious falsehood is subject to liability is restricted to (a) the pecuniary loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement...", citing Restatement (Second) of Torts § 633.

5. **Proximate Causation.**

Likewise, there is ample evidence that Mr. Davis's call proximately caused the Pittenger Group to terminate the agreement. South Carolina courts have adopted a "but for" test in these cases and, as such, North Pleasant must be able to prove that but for the interference of

CCL, the parties would have entered into the contract. United Educ. Distrib., LLC. V. Educ. Testing Serv., 564 S.E.2d 324, 328-30 (S.C. Ct. App. 2002). The timing alone indicates proximate causation. Mr. Davis called the last business day before the Pittenger Group's deposit "went hard" and the contract was terminated within the week. See Reynolds affidavit, paragraph 7 filed with Plaintiffs' Motion for Summary Judgment. Had the deposit gone hard, the Pittenger Group would not have terminated the agreement. Id. Plaintiffs have provided ample evidence that "but for" the Davis call the contract would have closed.

Nor can the amount of damage be disputed. North Pleasant purchased the property for about $4,200 per acre, and contracted with the Pittenger Group to sell it for $9,200 per acre. Id. It is public record that the property was ultimately sold for about $3,100 per acre, resulting in damages of approximately $6,100 per acre. Aside from extra interest and taxes, which also proximately resulted from the League's interference, straight, arithmetic damages are almost $16,000,000. (Exh. 5, Pittenger Depo. and pages from Exh. 3 to the Depo.).

Accordingly, ample evidence exists that the Plaintiffs were damaged, and that this damage was caused by the League's conduct.

6. **Dismissal of Dana Beach.**

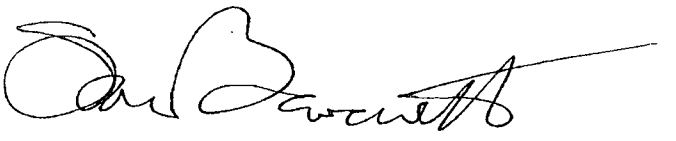
In BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct.App. 2005), a case involving a claim under the UTPA, the Court of Appeals held that corporate officers are individually liable for unfair competition in which they participate. 608 S.E.2d at 328. Indeed, as the Court made clear in that case, corporate officers are liable for any tortuous or other wrongful conduct in which they personally participate. Therefore, Beach can be liable for a violation of the Act if he personally participated in the acts which constitute the violation.

The evidence is that Beach was well aware of the efforts of the League to "target" the Keytsone property for the purpose of stopping any use of the property of which it or its supporters disapproved. (Exh. 13, Young Depo, p. 8-13; Exh. 8, Beach Depo.p. 12-13, 87-88, 95-96; Exh. 15, Nichols Depo., p. 20, 26, 31 and Exh.16, Plat illustrating Keystone Tract as "Targeted Property"). The evidence is uncontroverted that Beach is in charge of the League in all of its activities and "runs" the organization with respect to all of its actions. (Exh. 10, Lane Depo., p. 10-11, Exh. 7, Derosier Deop., p. 41-44, 70-71; Exh.8, Beach Depo, p. 12-13; Exh. 11, Demoura Depo., p. ~~27~~ 38, 51; Exh. 1 H. Davis Depo., p 59). Perhaps most importantly, Mr. Beach testified that he thought it likely that he knew of and, therefore approved of, Hamilton Davis' call to the Pittenger Group. (Exh. 8, Beach Depo., p. 95-96). This evidence is sufficient to form the basis of a finding that Beach engaged in the wrongful actions by the League and shares liability for their consequences.

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that Defendants' Motion for Partial Summary Judgment be denied.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFFS

November 12, 2012
Mount Pleasant, South Carolina

EXHIBIT 1

1 expect.
2 A. I think it was a back and forth. I mean,
3 they were also informing me about their concerns of
4 the impact a large dense development would have on
5 their quality of life.
6 Q. All right. Well, let's take it in turn.
7 The large landowners, we'll call them the
8 plantation owners, people that own those tracts
9 that have nice names east -- or west of Highway 41.
10 What concerns did they express to you, as you can
11 recall?
12 A. Things like being able to do controlled
13 burns on their property with suburban land uses
14 close by, and those activities then being
15 considered a nuisance or liability issues
16 associated with that.
17 So primarily maintaining their property
18 in its current state and having invested in things
19 like conservation easements with the expectation
20 that they were in a rural part of the county and
21 not one which would ultimately be developed in a
22 suburban nature.
23 Q. Do you know whether those conservation
24 easements by the plantation owners, we'll call
25 them, were put in place by those landowners as part

1 of an arrangement with the League and others to
2 prevent unacceptable development at the Keystone
3 tract?
4 A. Those -- all those conservation easements
5 were done before I worked with the League, so --
6 Q. So they were already there?
7 A. Yeah.
8 Q. Got you. Did they have -- did they have any
9 other concerns, the plantation owners, about the
10 impact of a suburban development of whatever
11 density?
12 A. I mean, I think it was typical concerns,
13 water quality, traffic. Again, the ability to use
14 their property in the way that they intended when
15 they protected it, hunting, fishing, controlled
16 burns, issues that aren't necessarily compatible
17 with suburban style development.
18 Q. A suburban development on the Keystone tract
19 on the east side of Highway 41, how would that
20 affect plantation owners' ability to hunt on their
21 property?
22 A. I think the concern is that those uses are
23 incompatible in suburban areas where you can't --
24 there are large patches of property in, say, Mount
25 Pleasant that you could hunt on, but it's illegal.

1 Q. Well, I grant you there's apparently deer
2 that live in a cul-de-sac at the end of my street,
3 and if -- I don't hunt. I don't even have a gun.
4 But, I mean, it would be incompatible with where I
5 live in Mount Pleasant to go over there on the edge
6 of I'On and blast away at some deer. But that's
7 not what we're talking about here, is it? We're
8 talking about a suburban development on the east
9 side of Highway 41 versus plantation owners on the
10 west side of Highway 41.
11 A. It's a two-lane road.
12 Q. Some distance away. How would houses set
13 back on the east side of 41 affect hunting uses on
14 the west side of Highway 41? I just don't get it.
15 You're going to have to explain it to me.
16 A. Are you asking me to tell you what the
17 concerns were?
18 Q. Yeah.
19 A. Or justify the concerns?
20 Q. No. I get the concern, that sort of broad
21 headline. I got that. I don't understand the
22 details. I don't -- I can't understand why houses
23 in that area on the east side of the highway would
24 affect what these people did on the west side.
25 A. Well, again, you're talking about a two-lane

1 highway that separates --
2 Q. Uh-huh. I'm very familiar with Highway 41.
3 A. -- those properties. And so adjacent land
4 uses that are deemed incompatible in -- for the
5 most part by local government ordinances where you
6 can't do certain things because of the impact it
7 would have on your neighbors.
8 Pig farm or a controlled burn or
9 shooting your guns, those things are typically
10 prohibited when the potential for, you know,
11 sometimes kids to get hit by a bullet, whatever. I
12 mean -- they're -- I'm not fully aware of the
13 rationalizations that go into promulgating those
14 type of regulations by local governments.
15 I think the history of -- or I think
16 the reality is that they do, in fact, happen. And
17 when you put different land uses that are
18 incompatible, they -- or when you put different
19 land uses that are -- have the potential to
20 negatively impact one another, then governments
21 make decisions about which one gets priority.
22 Q. All right. So they had a stray bullet
23 concern, basically?
24 MR. GOWDER: Object to the form of the
25 question.

1 A. No. I think they had a concern about water
2 quality, traffic, the ability to hunt, the ability
3 to do controlled burns on their property, the
4 impact to the National Forest, similarly. I mean,
5 it's a standard list of incompatible uses that come
6 along with rural landscapes versus suburban
7 landscapes.
8 Q. I know. And I'm -- I got the controlled
9 burn thing. And you mentioned an impact to the
10 National Forest. And I -- do they have any other
11 concerns other than the controlled burn business,
12 that their ability to do controlled burns would be
13 impacted if there were people living close by?
14 A. I believe the Forest Service submitted a
15 letter that articulated their concerns.
16 Q. But I'm asking you.
17 A. Yes. I believe there were other concerns
18 aside from controlled burns the Forest Service had.
19 Q. Hunting? Did they have hunting concerns?
20 A. I believe that was one of them.
21 Q. Okay. And water quality -- you mentioned
22 water quality several times. But with respect to
23 the hunting though, the hunting concern is
24 basically the stray bullet concern; is that
25 correct?

1 MR. GOWDER: Object to the form of the
2 question.
3 A. I assume that that's a component to why
4 governments don't want you shooting guns close to
5 suburban developments.
6 Q. Okay. So they were concerned that
7 government would come in and say, now that you have
8 these people living over here on the east side of
9 41, we're going to restrict you, the plantation
10 owners, hunting rights on your property. That was
11 their concern?
12 A. That's -- that was one of the concerns that
13 was articulated to me.
14 Q. Well, I'm just talking about the hunting
15 now, the hunting. That was their hunting concern,
16 that government was going to interfere with
17 their --
18 A. Yes. That it would infringe on their
19 ability to continue to hunt on their property.
20 Q. Got you. Now -- the burn, I've got that.
21 What about water quality? What water quality
22 concerns did the plantation owners have about a
23 residential area on the Keystone property?
24 A. I don't remember getting in any detailed
25 conversations about the water quality issue.

1 Q. All right. Did anyone out there in any of
2 the communities, the people that live out there,
3 express to you a water quality concern?
4 A. I believe it came up in the context of --
5 you know, I can't remember exactly. I'm not sure.
6 Q. Okay. Now, I want to ask you about the
7 other route of communication. What did you --
8 well, did you personally communicate to landowners
9 or -- and/or residents out there about what the
10 League thought would be the impacts on their
11 properties from a residential development at the
12 Keystone tract?
13 A. Yeah. I mean, we -- yes. We have opinions
14 about the impacts of that type of development.
15 Q. What do you recall informing these people
16 about with respect to likely impacts?
17 A. I think it's a similar list of concerns
18 about the general quality of life that comes in --
19 comes with the -- or the kind of quality of life
20 that you get with a rural -- in a rural area and
21 what potential impacts suburban type development at
22 that scale could have on the communities and the
23 properties.
24 And that goes back to the impacts on
25 the National Forest, controlled burns is a big one,

1 ability to maintain these ecosystems in ways that
2 support a native -- their native habitats and the
3 species that live there. The hunting issues, the
4 potential issues like traffic and just generally
5 the consequences that has -- the consequences
6 traffic has for an area that's not used to it.
7 Q. Okay. And you --
8 A. And then, additionally, I mean, there's also
9 from a -- just from a physical taxpayer perspective
10 the need to extend, improve infrastructure to
11 service these new developments.
12 So whether it's building new schools,
13 whether it's widening Highway 41, whether it's
14 running water and sewer lines, whatever, a
15 taxpayer-funded subsidy for supporting this type of
16 development is always a potential.
17 Q. Did you explain to these folks that
18 sometimes the developers themselves pay those
19 impact costs, or did you tell them that they were
20 going to have to bear that burden?
21 A. No. I don't think I told them that they
22 were going to have to bear that burden. I think I
23 articulated that it's a potential cost that comes
24 along with that type of development.
25 Q. It was a potential cost?

1 A. Right.
2 Q. Did you explain to them that sometimes that
3 cost is not borne by the taxpayers but is borne by
4 other people? Did you explain that to them?
5 A. I don't recall.
6 Q. But that's true, isn't it?
7 A. I think that in some situations, through
8 development agreements, cost impacts to the tax
9 base are attempted to be mitigated.
10 Q. Okay. The African-American community out
11 there, were they concerned that the Forest Service
12 and the plantation owners on the east branch
13 wouldn't be able to do controlled burns the way
14 they had? Was that a concern that they had?
15 A. I think they were generally concerned
16 about -- I think they were probably more concerned
17 about the rural character of that area being
18 undermined by suburban development, not necessarily
19 whether a particular plantation owner could do a
20 controlled burn.
21 Q. I mean, they -- I'm not being facetious with
22 you, the people that lived out there, they're
23 already living out there. Those are residential
24 areas. They may not be like Park West or I'On,
25 but, I mean, there are residential areas. Those

1 African-American community, you said they were
2 concerned, I think, about preserving the rural
3 character of where they were living. Break that
4 down for me. What did they think would happen
5 that -- from a development at Keystone that would
6 impact that part of their lives?
7 A. I think it's traffic. It's -- potentially,
8 you bring in infrastructure, you bring in a higher
9 level suburban development, their property taxes
10 potentially go up because their property values go
11 up. It's -- you know, it's the difference between
12 living in a rural setting and living in a suburban
13 setting. It's the difference between, you know,
14 what used to be north of the Isle of Palms
15 Connector versus what exists there now.
16 Q. Did you tell any -- when you were talking to
17 members of the African-American community or white
18 folks that lived out there, whoever, did you tell
19 these folks that their property taxes would go up
20 if there was a residential development on the
21 Keystone tract or that they might go up?
22 A. I'm sure that that was part of the
23 conversation.
24 Q. Okay. And what did you base that on?
25 A. We've done -- we've looked at -- again, in

1 Mount Pleasant north of the Isle of Palms Connector
2 at how property values changed and taxes changed as
3 a consequence of things like Brickyard and Park
4 West. So just research. There are plenty of
5 studies that conclude the same.
6 Q. Is that -- you mentioned Charleston County.
7 Does the Charleston County assessor share that
8 view?
9 A. I don't know.
10 Q. Okay. Were you with the League at the time
11 that the -- the controversy surrounding the White
12 family, Louis White and his property?
13 A. I believe I was working for the League when
14 at least some of that.
15 Q. Maybe you were in attendance. Do you --
16 were you in attendance when there was a meeting at
17 which one of the staff members of the auditor's
18 office from Charleston County went to Awendaw to
19 allay concerns by residents there about their taxes
20 going up if there were a development nearby? Do
21 you remember that?
22 A. Huh-uh.
23 Q. Okay. Did you ever have any discussions
24 with the Berkeley County assessor or treasurer or
25 anybody in the business of fixing property taxes in

1 Berkeley County before you had these discussions
2 with these folks?
3 A. No.
4 Q. Okay. This is Bates number 0240. If you
5 would take a look at that and share that with
6 Mr. Gowder because I did not think to bring him a
7 copy.
8 A. Yep.
9 Q. Were you involved in this --
10 A. Yes.
11 Q. -- meeting?
12 MR. BARNETT: I am going to go ahead
13 and mark this. If you will remind me, we'll make a
14 copy afterwards.
15 (Exhibit No. 1 was marked for
16 identification.)
17 Q. And this is just -- Exhibit 1 talks about a
18 cookout barbecue on April 14th, 2007. Was this
19 about the Keystone property? Do you recall?
20 A. I believe it was about Keystone and
21 D.R. Horton and the rezoning to R-15.
22 Q. All right. And rezoning to R-15 would have
23 done what?
24 A. It was an overlay of -- I'm not -- I can't
25 recall how many acres, but basically, the

1 Q. And the County just didn't like, for
2 whatever reason, their plans?
3 A. I believe that they -- I wasn't around, and
4 I don't think -- I don't think that we were
5 involved in any of that.
6 Q. Okay. At this -- was this the only such
7 meeting that took place, or were there a series of
8 meetings like this one described on April 14th,
9 2007?
10 A. I think that's the only large community
11 meeting that was held.
12 Q. All right.
13 A. I believe -- there was one other meeting out
14 in that area that I can't remember the genesis for
15 that I think had to do with the comprehensive plan
16 and not the zoning.
17 Q. Okay. Do you remember having a telephone
18 conversation or leaving a voice mail message, put
19 it that way, with a Mr. Burns, Daniel Burns, with
20 the Pittenger group up in Charlotte about the
21 Keystone property?
22 A. Yes.
23 (Exhibit No. 2 was marked for
24 identification.)
25 Q. Okay. I don't suggest that you've ever seen

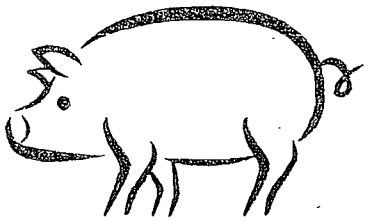
1 this before, but that's a good first question.
2 Tell me if you've ever seen this document before.
3 A. I have.
4 Q. Okay. In what context have you seen this
5 document?
6 A. My attorney showed it to me.
7 Q. All right. Don't talk to me about that.
8 All right. It has in the middle of it what
9 purports to be a transcript.
10 A. Uh-huh.
11 Q. Says -- it begins, Hey, Mr. Burns, this is
12 Hamilton Davis. Does that accurately, so far as
13 you can recall, reflect what you told Mr. Burns?
14 A. Yeah, I believe it does.
15 Q. Okay. Did you subsequently actually speak
16 to Mr. Burns? Did Dan Burns call you?
17 A. He called me back, and I spoke with him.
18 Q. Okay. Tell me about that conversation, if
19 you would, in as much detail as you can recall.
20 A. I remember it was fairly brief, fairly
21 cordial. I talked to him a bit about what was
22 going on in terms of concern about how that
23 corridor was developing, offered to work with them
24 in any way on coming up with a development solution
25 that the community and the property owners and the

1 A. I should have said large property owners,
2 not property owners.
3 Q. I'm not trying to mess with you. I'm just
4 trying to get clear what we mean by these terms.
5 All right. Did you tell Mr. Burns what
6 the concerns of the large property owners were?
7 Did you tell him that?
8 A. I don't -- it wasn't a particularly long
9 conversation, so I'm sure I didn't go into too much
10 detail. I would imagine what I -- I mean, I
11 remember telling him there was concern about, you
12 know, high density development coming to this rural
13 corridor.
14 Q. Okay. And is that as much detail as you got
15 into it with him?
16 A. Yeah. It was not very much detail. It was
17 a brief conversation, as I recollect.
18 Q. Did you mention to him concerns of the
19 community, particularly the African-American
20 community?
21 A. I mentioned to him that there were concerns.
22 I don't know that -- again, I don't think I went
23 into very great detail about the actual concerns.
24 Q. Well, that's what I mean. Did you just say,
25 the African-American community has concerns? Or

1 did you sort of name what those concerns might be
2 by topic heading, for instance?
3 A. I don't -- I don't -- I don't recall.
4 Q. Okay. It's been a while. What, five years
5 ago?
6 A. Yeah. It was a long time.
7 Q. And did you make any notes about that
8 conversation to Mr. Burns -- with Mr. Burns?
9 A. I don't believe so. Again, because it was
10 brief. And he essentially said thank you, and that
11 was it.
12 Q. He just said thank you?
13 A. I mean, I don't -- I remember it being a
14 cordial, brief conversation, and that was the end
15 of it. There was nothing to kind of report back on
16 or write down.
17 Q. All right. Did you mention to him the
18 D.R. Horton tract to the south of the Keystone
19 property, the one that you were talking to me about
20 before?
21 A. I don't remember.
22 Q. Okay. Did you ever have any conversation
23 directly with anybody -- with any of the Reynolds
24 family, put it that way, ever, about this property?
25 A. I don't think that I ever spoke with anyone

1 Q. Okay. Did you then report that you had made
2 that phone call to Mr. Beach?
3 A. It's -- I seem to remember that I had
4 conversations with folks at CCL about it. I don't
5 remember if it was Dana Beach or not. I mean, we
6 tend to talk about -- especially at that point,
7 that stage of my job, I would have most likely
8 communicated that to the other people in the
9 office.
10 Q. Okay. The Keystone tract itself, was
11 this -- where was this at the time in the sort of
12 galaxy of things that the League was involved in?
13 Was it important? Was it not important? Was it
14 the subject of regular staff meeting discussions?
15 Tell me, generally --
16 A. It was one of the bigger -- what was going
17 on in that 41 corridor of Berkeley was one of my
18 bigger focus areas at that time.
19 Q. Okay. One of your bigger focus areas?
20 A. Yeah. I don't remember what everyone else
21 at the League was working on at the same point.
22 Q. Did you make it one of your biggest focuses,
23 or were you directed to do that?
24 A. Yeah. I mean, I was directed to work on
25 those issues.

Community Cook Out and Bar-B-Q



Join Hosts Fred Lincoln, Frank Wright, Tommy Strock and Jerry Ebeling for a community cook out and get together from 1:00 pm – 3:00 pm on April 14th, 2007 at the Berkeley County Park, 3785 Highway 402, Cordesville, SC.

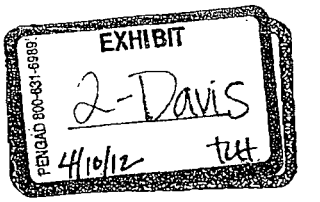
We will be cooking a pig, hot dogs and providing beverages. Please coordinate with your neighbors and bring a side dish.

There are a number of issues now threatening the local communities of Cainhoy, Huger and Green Bay. There will be a brief presentation detailing these threats. You can help by simply showing up and signing a petition.

EXHIBIT
1-Davis
4/10/12 TH

PENGAD 800-631-6989

SCCCL240240



Telephone Call

This is Daniel, I just picked up your voicemail from a guy that works with the Coastal Conservation League evidently there's a big conservation effort through Highway 41corridor Keystone Property that these guys are trying to get the county to put a conservation on the whole property at some point in the near future and evidently according to this guy he stalled they are holding property that is just south of our property that they've been working on for two and a half years and now trying to land swap because they are not getting anywhere with the development of it; so I'm not sure of how big of an issue it is, this is the first I've heard of it and wanted to pass it on to you all in case you wanted to call him directly.

"Hey Mr. Burns this is Hamilton Davis and I work for the Coastal Conservation League in Charleston South Carolina.

I wanted to speak with you about ya'll's recent I guess not purchase but interest in the 2,600 acre parcel in Berkley County. I wanted to give you some information about what's going on in that area right now that you would probably be interested in. Call me back when you get a chance please 843-725-2061, and again, my name is Hamilton Davis and I work for the Coastal Conservation League. Thank you."

396030.1

EXHIBIT 2

1 Mr. Burns says in here where Mr. Davis comments
2 about the D. R. Horton property.
3 A Right.
4 Q It starts right at the end of the last
5 paragraph. I will read the sentence above that
6 which relates to Keystone, just as it sort of puts
7 it in context. I will read it.
8 He said: They are particularly targeting
9 the Keystone property since it's such a large tract
10 and adjacent to the forest. He mentioned that D. R.
11 Horton has property just south of ours that the
12 Conservation League has fought and now D. R. Horton
13 is trying to do a land swap to get out of the 41
14 tract.
15 From your recollection, was it a true
16 statement to say that the Coastal Conservation
17 League fought the D. R. Horton project?
18 A No. I am -- they were, you know, they
19 wanted to have a better solution but they never
20 fought it. They actually worked with us to help us
21 with the development agreement and they actually had
22 review of it.
23 Q All right, sir. Was it true so far as you
24 can recall that D. R. Horton was, quote, trying to
25 do a land swap to get out of the 41 tract?

1 A Well, the only reason we would agree to a
2 land swap was that we would get -- have this
3 development agreement in place. That was the -- we
4 would not have -- we would not have jeopardized our
5 entitlement unless -- because that property was
6 already, theoretically, it was already zoned for
7 higher density. So we would not have jeopardized
8 our entitlements unless we had -- unless we had a
9 development agreement in place, if that makes sense.
10 Q Yes. All right, sir. Then in the middle
11 paragraph, the paragraph below that, the one that
12 begins: The scariest thing, the last sentence says:
13 I don't know how much of this is reality or
14 smoke-blowing, but if they, in fact, halted D. R.
15 Horton, they have accomplished something.
16 Was it a true statement to say that the
17 Coastal Conservation League halted D. R. Horton?
18 A No.
19 Q Okay. Tell me why that is so?
20 A The same thing I mentioned to you. We
21 already had entitlements to this property. We,
22 rather than fighting the Coastal Conservation
23 League, we purposely worked with them so that, you
24 know, both them and us would have a positive
25 outcome. We already had our entitlement to that

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From: Daniel Burns
Sent: Monday, May 21, 2007 9:17 AM
To: Daniel Fogarty
Cc: Robert Pittenger
Subject: RE:

Phoag/Robert-

To recap my conversation on Friday afternoon:

Received a voicemail from Hamilton Davis with the Coastal conservation League in Charleston, SC and called him back around 4pm, and then forwarded his voicemail for you to be aware of the issue. Hamilton stated that he was aware that we had the Keystone Tract under contract to purchase and that we'd probably like to know that his group, coupled with the efforts of large plantation owners, is trying to stop development in the Hwy 41 corridor because of it's proximity to the national forest. He said they are particularly targeting the Keystone property since it's such a large tract and adjacent to the forest. He mentioned that DR Horton has a property just south of ours that the Conservation League has fought, and that now DR Horton is trying to do a land swap to get out of the Hwy 41 tract.

The scariest thing mentioned, was that they are working with the county to get rezoning for the Keystone tract to a conservation easement so it can't be development, and said they were getting close with joint efforts from the plantation owners. I don't know how much of this is reality or smoke blowing, but if they've in fact halted DR Horton, they've accomplished something.

Senator- do you know if the Coastal Conservation League can get the county to rezone a property to a conservation easement without the owner's consent?

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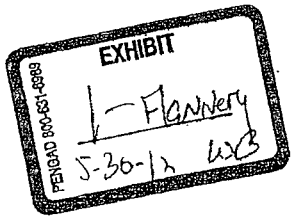

EXHIBIT 4

1 automatically there was a lot of uproar from
2 concerned citizens that some people from -- some,
3 quote-unquote, outsiders from Atlanta were going to
4 develop that into a new Daniel Island or some big
5 huge, you know, golf course, residential
6 development, thousands and thousands and thousands
7 of people that would, you know, cause traffic
8 problems and basically ruin the -- what was
9 perceived as the National Forest area. The
10 property lies around the National Forest.
11 So it -- it had been timbered -- it had been
12 used as a timber tract by International Paper for a
13 long time. How many years I'm not sure, but for a
14 long time.
15 Q. Right.
16 A. There had never been anything really done on
17 the property other than that. Surrounding the
18 property along Highway 41 were a series of large
19 and small horse farms, I guess what could be called
20 plantations. I don't know if they were ever
21 working plantations, but they were -- you know, I
22 come from Texas. It seems if everybody -- somebody
23 buys an acre of land, they like to call it a ranch.
24 So I guess out here they like to call them
25 plantations.

1 But some of the -- some of the adjacent
2 property owners had some pretty large land holdings
3 out there. I think there was the Catoe family, the
4 Cohen family, Bennett -- Mike Bennett, Bob Royall,
5 McNair. Sort of what I was -- you know, later
6 found out was sort of a Who's Who of some of the
7 more prominent people in town.
8 There was some smaller black settlements
9 around there, people who have lived there for
10 probably quite a while. How long I don't know, but
11 they had been there for quite a while.
12 So the general feeling, which I felt was
13 unsubstantiated, because my -- and I'll say my
14 clients, North Pleasant/Vintage Land, never gave
15 anybody indication that they were going to develop
16 that property. Never came out and said, we're
17 going to turn it into X, Y or Z. They just
18 basically kept their mouth shut.
19 There was a lot of speculation in the Post
20 and Courier and from some of these other people
21 that they were going to do something. I think it
22 was a scenario fearing the worst.
23 The property at the time was zoned in
24 Berkeley County Flex-1, which was agricultural
25 zoning, but it did allow -- the way it was written

1 in the books, it did allow for, I believe, one-acre
2 lots which, to the untrained eye, not knowing how
3 much of that property was wetlands, how much of it
4 was undevelopable. But if somebody just said we've
5 got a 4,500-acre tract, well, by virtue of that
6 zoning they could probably do 4,500 homes, which
7 was not possible. I mean it was not possible.
8 However, I think the important point was my
9 clients never came out and said they were going to
10 do anything. In fact, the only development they
11 did on the property was what they had to do through
12 that development agreement.
13 Now, what happened was they purchased the
14 property, all the uproar started, and then at some
15 point in time they found out from an article in the
16 Post and Courier that the property was going to be
17 rezoned by Berkeley County to some sort of a
18 conservation zoning.
19 Q. Do you know how long -- do you have a sense
20 of how long after the purchase that occurred? Was
21 it within a year --
22 A. No. It was not within a year.
23 Q. Okay.
24 A. Now, I will say that -- I don't know if
25 you're going to get to this at some point, but

1 maybe I'll start this. I will say that after they
2 purchased the property, there was a strong interest
3 from several people in trying to buy the property
4 from them or trying to, quote-unquote, work with
5 them to do the right thing with the property.
6 Q. Right. Who was showing a strong interest in
7 that?
8 A. This charge was led by Noel Thorn, who at
9 the time I believe was an employee of the Nature
10 Conservancy.
11 (Interruption.)
12 Q. Do you need to take that?
13 A. I do not. I just need to see who it is.
14 Noel showed a very strong interest in the
15 property. In fact, he showed a very strong
16 interest in the property before my clients even
17 closed on the property with International Paper.
18 Noel liked to represent himself as sort of an
19 outsider that had connections to the insiders.
20 Noel actually would call me and started
21 calling himself -- say, hey, Josh, this is your
22 Uncle Noel. How are you doing. My relationship
23 with Noel was somewhat -- I was very guarded with
24 him. I never really trusted him, but I would
25 certainly talk to him. Because he did -- you know,

1 he did represent to me that he had some people that
2 would be interested in maybe buying the property
3 from my client and as a -- you know, a duty to my
4 client, I had to listen.
5 Names -- his relationship with these people,
6 I don't know how weak or strong it was, but names
7 he would throw around would be Charles Lane, the
8 people that lived up and down 41, Cohen, Catoe,
9 Bennett, some of those folks.
10 He also said that he was -- that he was
11 trying to work on some deals with the actual State
12 of South Carolina, with Governor Sanford getting
13 involved, Henry Brown possibly being involved, the
14 Nature Conservancy itself being involved, I guess
15 the Land Bank being involved.
16 He was trying to -- I guess in a nutshell he
17 was trying to represent that if the owners of
18 Keystone would work with him, he could help stop
19 all this bad blood that was being formed between
20 them and some of the locals and maybe bring the
21 whole thing to a positive ending through some sort
22 of a land purchase --
23 Q. Okay.
24 A. -- from them.
25 Q. All right. Did that ever go anywhere? I

1 mean did he ever arrange an offer for the property?
2 A. I believe he did arrange an offer. In fact,
3 he did arrange an offer very early on that I was
4 not privy to. He met directly with, I believe,
5 Pete Bailey and Bob Rogers, made them some sort of
6 an offer. But for whatever reason, maybe it was --
7 maybe they didn't feel like it was enough
8 compensation or the terms of the offer weren't
9 realistic enough for them, but that never went
10 anywhere. It was never consummated, never went
11 under contract or anything like that.
12 Now, I will say that my clients actually did
13 make an effort to work with Noel, because at one
14 point in time -- I don't know -- I don't remember
15 who came up with the idea, but I think Noel was
16 sort of helping them with this or advising -- not
17 really advising them, but maybe giving them
18 suggestions of turning the Keystone tract into an
19 equestrian-type development, large-lot-type
20 development where it would be cut up into 100 --
21 you know, 100-acre tracts, 200-acre tracts,
22 something like that, and trying to attract a crowd
23 that wanted to buy larger tracts of lands to use
24 for, you know, horse farms and whatnot.
25 That went so far as to have several meetings

1 with Noel -- Noel actually set several meetings up
2 with some people, Holcombe Fair and Lane, some of
3 the brokers over at that place, Edward -- I forget
4 his last name.
5 Q. Cooper.
6 A. Edward -- Edwin Cooper, yes. Edwin Cooper,
7 Charles Lane, some of those guys would attend
8 several meetings about how to possibly do this on
9 the property and cut it up, do that kind of thing,
10 you know, cut it up into tracts. And my clients
11 were open to that idea, but it would -- what they
12 required of Noel and his crowd -- when I say crowd,
13 I mean everybody involved with Noel -- is that if
14 my clients were going to do something like that,
15 which would require a certain amount of
16 development, they would have to do some road
17 improvements to get access to the tracts. They
18 would have to do -- make certain modifications to
19 the property to make it appealing.
20 Their feeling was, we will do this if you
21 can bring us buyers, but we're not going to go out
22 there and develop this property or do this to the
23 property just on a whim with promises from you. We
24 would like for you to get involved and market some
25 of these tracts or at least bring some of your

1 buyers to the table.
2 They made the -- made -- maybe commitment is
3 too strong of a word, but they said, we will
4 certainly see what we can do. I think at that
5 point in time --
6 Q. You said we said. Noel said?
7 A. Noel, Edwin Cooper, those guys.
8 Q. Okay.
9 A. They -- at that point in time I believe the
10 Coastal Conservation League had gotten involved
11 with discussions, because their name was brought up
12 frequently about maybe some of their members being
13 interested in some sort of a development like that.
14 In fact --
15 Q. When you say their names were brought up,
16 who would have brought it up?
17 A. Noel Thorn, Edwin Cooper. People that
18 worked with the Coastal Conservation League.
19 Q. Okay.
20 A. I do remember conversations -- I got the
21 feeling that it was going to go one of two ways.
22 If our clients didn't -- if our clients basically
23 kept their head in the sand and didn't say a word,
24 didn't do anything, there was going to be a lot
25 of -- you know, a lot of this speculation, a lot of

1 idea whether they were even going to do anything to
2 the property or hold it?
3 A. I don't know. The only thing -- the only
4 thing that was ever discussed with me is they had
5 spoken with, I believe, Bart Sabine over at
6 Sabine & Waters -- I don't know if you're familiar
7 with his company --
8 Q. I am.
9 A. -- about a timber management program
10 after they purchased the property. I believe he
11 was going to come up with a -- I don't know if
12 you'd call it a land management program or a timber
13 management program. But, you know, there was a
14 good amount of, I believe, merchantable timber on
15 the property, as there would have been, since it
16 was an International Paper timber farm for many
17 years.
18 I don't believe he had cut the timber on
19 there for quite a while. So throughout the
20 property you had different ages of, you know,
21 trees, mostly pine, that I think were merchantable.
22 So I think they were interested in possibly, you
23 know, thinning out some of the trees and going
24 under a management program.
25 Q. At the end of the inspection period, did

1 they decide to go forward with the closing?
2 A. No.
3 Q. Do you know why they didn't?
4 A. I've got a pretty good idea.
5 Q. Okay.
6 A. They were spooked, I believe, about what
7 they might be getting themselves into if they
8 purchased the property.
9 Q. What do you mean by that?
10 A. Well, let me back up for a second and say
11 that throughout the due diligence period -- you
12 know, you have to understand this was a pretty
13 substantial transaction for my clients, but also a
14 pretty substantial commission for Vanguard if that
15 transaction were to go through.
16 So we kept a pretty close -- we monitored
17 the situation very closely. I would say that I
18 spoke with Daniel Fogarty at least once a week over
19 the phone. Sometimes he would call, sometimes I
20 would call, but we would speak quite frequently
21 about their level of satisfaction with the
22 property.
23 Throughout the whole due diligence period
24 when I would speak with him, I think at first at
25 the beginning of the -- of the period, he was a

1 little more coy with me. You know, we kind of --
2 you know, he would say, we kind -- you know, we
3 like what we see, we're still investigating, that
4 sort of thing.
5 But as far as the end of the due diligence
6 period where they had a very substantial amount of
7 money that would be a nonrefundable deposit, he
8 made it pretty clear to me that they were going to
9 move forward with the transaction. They were going
10 to let the money go hard. If you need me to
11 explain what that means, I will.
12 Q. I don't think I do, but --
13 A. The money was going to become nonrefundable.
14 Q. Sure. Which would occur after the
15 inspection period was over; is that right?
16 A. Sure. Say, for example, they had a -- they
17 had a contract with a 90-day inspection period. I
18 believe they put down -- they deposited in escrow a
19 certain amount of money that would be refundable up
20 to the end of the due diligence period. If they
21 found anything that they didn't like, they were --
22 they would terminate the contract and get a refund
23 of the money.
24 At the end of that due diligence period, if
25 they were satisfied, they would notify that they

1 were satisfied and that money would become
2 nonrefundable, and then we would move to the
3 closing period.
4 Q. Right. Did they allow that to occur?
5 A. They did not.
6 Q. So -- and you were, I think, telling me --
7 you were leading up to --
8 A. Daniel --
9 Q. -- what had occurred.
10 A. Yes, yes. Daniel, as I said, we spoke quite
11 frequently during this period. At the end of the
12 due diligence period, or very close to the end of
13 the due diligence period, I'd say several weeks
14 preceding, he made it very clear to me that they
15 were prepared to let that money go hard and they
16 were prepared to close the transaction.
17 Q. So what happened after that?
18 A. Well, it was a Sunday afternoon. Again, the
19 date I don't remember. I probably should remember,
20 but I don't remember. I got a phone call from
21 Daniel Fogarty on a Sunday afternoon. I was in my
22 driveway washing my car.
23 And it was a very concerned phone call that
24 Daniel Burns, who I believe was his superior at the
25 Pittenger Group, had received a phone call from

1 somebody at the Coastal Conservation League,
2 advising him -- I don't know what was said. I
3 don't know -- of course, I was not made -- I was
4 not made privy to the conversation that Daniel
5 Burns may have had with anybody at the Coastal
6 Conservation League, but I know that what was said
7 was enough for Daniel Fogarty to call me on a
8 Sunday afternoon, which happened to be the day
9 before the due diligence period ended. The money
10 was -- the earnest money was supposed to go hard
11 the following day, on that Monday.
12 So he called me on Sunday afternoon and
13 said, we received a phone call from the Coastal
14 Conservation League. We need to talk tomorrow
15 about what we're going to do. I immediately called
16 Bob Rogers, told him what had happened. And of
17 course, you can imagine there was some concern. I
18 believe --
19 Q. Go ahead.
20 A. He spoke with his partners, and then I think
21 they convened on Monday morning to sort of wait and
22 see what the Pittenger Group would come back to
23 them that day with what they wanted to do.
24 Q. Going back a minute, did Daniel Fogarty tell
25 you, first of all, who had called from the

1 Conservation League?
2 A. On the initial phone call, I don't believe
3 that he did. But I think on Monday after he had a
4 chance to speak with Daniel Burns again, he told me
5 that it was a guy named Hamilton Davis, I think was
6 his name.
7 Q. And Burns had provided that information?
8 A. Burns, I believe, had provided that
9 information to Fogarty, who in turn provided it to
10 me.
11 Q. And did you learn either on Sunday
12 afternoon -- I think on Sunday you said he didn't
13 tell you what the caller had said, but did you
14 subsequently learn what the caller had said?
15 A. I do know that there was a voicemail left
16 from Hamilton Davis to Daniel Burns. I believe
17 there was a subsequent conversation on the phone
18 between Daniel Burns and Hamilton Davis. I don't
19 know if it was one conversation or 10
20 conversations. I don't know.
21 I do know there was a voicemail, and I
22 believe there was a follow-up phone call. What was
23 said in those phone call -- in the phone call that
24 I'm referring to, I don't know. The reason I know
25 there was a voicemail left is because we --

1 Pittenger got a copy of it put on a tape that they
2 sent to us of that voicemail.
3 Q. And did you listen to it?
4 A. I did not listen to -- it was -- it was one
5 of those little mini tapes, mini cassettes, that I
6 guess I didn't have a tape player to play it. I
7 actually ended up sending it to Bob Rogers. I felt
8 it was -- we all -- we all felt like that was
9 something that I didn't want to be responsible for,
10 so it was put into a package and sent to Atlanta.
11 Q. Did Bob Rogers later tell you what was on
12 the tape?
13 A. Yes. I don't know if he quoted me verbatim
14 what was said, but I do know that he -- he told me
15 that it was a message from the Coastal Conservation
16 League to Pittenger about the transaction. And
17 again, I don't know what was said. I've never --
18 I've never listened to the conversation.
19 Q. The -- you said that the next day after that
20 Sunday afternoon, the -- I guess the inspection
21 period was going to end.
22 A. Correct.
23 Q. Was the inspection period extended?
24 A. Yes.
25 Q. At whose request?

1 A. At Pittenger's request.
2 Q. And what was the basis for -- as far as you
3 know, for the request to extend the inspection
4 period?
5 A. Well, you have to understand, on that Monday
6 it was -- I think both sides were in sort of a
7 state of confusion. I would say my client was in
8 more of a state of shell shock, just because things
9 had been going so well up into this point.
10 So you have to understand that through my
11 conversations with Daniel Fogarty, you know, I
12 said, we monitored the situation very closely. So,
13 you know, every report they looked at -- in fact, I
14 think they even commissioned a couple reports
15 themselves.
16 We felt that they were so comfortable with
17 the property, that they had done every bit of
18 investigation they needed to do to go -- to
19 consummate this transaction, and we were -- we were
20 frankly very excited that the money was going to go
21 hard on that Monday.
22 When we get a phone call on Sunday afternoon
23 that something has -- you know, that could possibly
24 affect that, the sellers were a little confused,
25 concerned. And Pittenger basically told us, hey,

1 we're -- we're still interested, but we need to
2 figure out what this is all about. We -- this is
3 something that could possibly affect what we want
4 to do.
5 So they requested an extension on their
6 inspection period. I'm not sure how long it was
7 for. I think there may have been -- their
8 attorneys may have actually drawn up something
9 formal that was signed to extend that period, but
10 my clients were willing to give them some time to
11 figure out what was going on.
12 Q. Is it your understanding that the inspection
13 period extension request was made specifically
14 based on the phone call from the League?
15 A. Yes.
16 Q. Do you think that's what the documents would
17 reflect?
18 A. I don't know. I just know that there was no
19 other reason for an extension to be asked for at
20 that point in time.
21 Q. Had all due diligence been done?
22 A. To my knowledge, yes.
23 Q. How about the title exam?
24 A. I don't know about the title exam. I don't
25 know about the title exam.

1 deposition I referred to the idea that Noel Thorn
2 and his crowd were working on with the owners to
3 limit the density to do that density -- that low
4 density development on the Keystone tract,
5 subdivide it into the smaller tracts and sell it.
6 I remember this email because even though
7 there was nothing really formal set in stone that
8 the owners had committed to do this, I found it
9 sort of comical that the Conservation League went
10 so far as to advertise that the owners were going
11 to do this, when the owners never really committed
12 to do so. I do remember that.
13 Q. If you'll flip over to the next page, 311.
14 It's a response from you.
15 A. Uh-huh. I think that probably falls in line
16 with what I just told you. This is misinformation,
17 nobody has ever planned to do only 35 homes on
18 Keystone. A year ago the sellers came up with a
19 preliminary plan to subdivide --
20 (Reporter Interruption.)
21 A. Yes, that was my response.
22 Q. Okay. And then the last line of the email
23 says, you will find that the Conservation League
24 deals in misinformation.
25 A. Yes.

1 Q. What -- tell me what you meant by that.
2 A. That was based on my experience down in
3 Beaufort.
4 Q. In Beaufort you felt like the League spread
5 misinformation about your project?
6 A. Absolutely.
7 Q. And in what way?
8 A. Well, they were very instrumental in talking
9 to local residents about what we, quote-unquote,
10 planned to do on the property, without actually
11 ever discussing that with us and knowing what we
12 were going to do.
13 I felt that they -- from having firsthand
14 experience, vested interest in a project that was
15 impacted by the Coastal Conservation League, I knew
16 exactly about the sort of scare tactics that they
17 used with those local residents, and that's why I
18 wrote that to them.
19 Q. Are you aware of anything that the
20 Conservation League said to anyone around the
21 Highway 41 area with regard to the Pittenger
22 pending sale or any proposed development there at
23 that time?
24 A. I'm not aware of any specific conversations,
25 no.

1 A. And because it sticks out in my mind pretty
2 clearly, when -- fast-forward to when all this was
3 over with. And when I mean all this was over with,
4 I mean the contract with the Pittenger Group, and
5 North Pleasant was now working on the development
6 agreement with Berkeley County.
7 Now, when you are passing something in the
8 County, you have to go in front of County Council
9 and they have to do so many readings and approve
10 that if the County's going to be party to
11 something. While we -- when I say we, while we,
12 Vanguard was never party to the actual negotiations
13 of the development agreement, we did go to the --
14 myself and Thomas Bowler did attend the open public
15 County Council meetings.
16 I do remember there being -- when Council
17 was being presented with the development agreement
18 for consideration and the public was allowed to
19 speak, I do remember there being several people
20 that got up and spoke to Council in opposition of
21 the development agreement, one of them being
22 Hamilton Davis with the Conservation League.
23 I know for a fact that he was there, and he
24 spoke against the development agreement and said --
25 and I'm sure it's in the minutes of the -- if you

1 went back and looked at the Council meeting, it's
2 probably in the minutes, that said that the
3 Conservation League and other people around there
4 were concerned about that property being developed
5 at all.
6 And I also remember Bob Royall, Ambassador
7 Bob Royall, getting up and speaking to the County
8 Council about this specific issue about the
9 development agreement and the Keystone tract.
10 Because Mr. Royall spoke for a good 30 minutes
11 about how he had lived up there for a while and he
12 was from the Lowcountry, and he had actually
13 attempted to work with -- and I think he even said
14 he went so far as to meet with somebody from the
15 Reynolds family, maybe Jamie Reynolds or Mercer
16 Reynolds, out at his property and try to convince
17 them not to do anything in a development scenario
18 with the Keystone tract, and that somebody from the
19 Reynolds family maybe had told him that they would
20 look at all their options, but certainly try to be
21 reasonable.
22 And he was very upset at the fact that he
23 felt like they weren't doing enough to work with
24 him and the other concerned people on 41 to keep
25 that property the way -- the way it was.

1 I remember that so well because Mr. Royall
2 got up and spoke and at one minute said, you know,
3 I'm just a poor old landowner that just wants to
4 see things -- but then, you know, in the next
5 sentence he would say, but I was the ambassador to
6 Tanzania and I know President Bush, and I know
7 Mercer Reynolds knows President Bush, and I would
8 think that people that have a common interest could
9 work together.
10 And I also remember that one of the Council
11 members politely listened to what Mr. Royall had to
12 say and then said that he felt like he was out of
13 line for saying those things because Mr. Royall was
14 no friend of anybody in Berkeley County but
15 himself. And that he felt like he was -- and this
16 was a council member saying he felt like he was
17 trying to protect his own interests.
18 I just remember that whole thing going down
19 at those Council meetings. So there were people --
20 so for this email to say none of the owners said
21 they'd been contacted by the CCL and only one of
22 the five said he would fight the development and he
23 is 81 years old, I think this is a
24 misrepresentation of the true feeling out on
25 Highway 41.

1 Q. A misrepresentation by Mr. Fogarty?
2 A. No. This is a misrepresentation by whoever
3 he was speaking with that said that they would not
4 fight the development. That's not consistent with
5 the actions of people that lived up in 41 up to
6 that point.
7 Q. Or after that point, as you described it?
8 A. Or after, yes.
9 Q. Because the public hearing that you were
10 describing occurred after this Pittenger agreement
11 had gone away.
12 A. Yes, yes.
13 Q. Right?
14 A. Just because the Pittenger contract went
15 away doesn't mean that any of the other controversy
16 went away. In fact, it probably got worse.
17 Q. But just to be clear, you're not aware that
18 the statement by Mr. Fogarty that none of the
19 owners had said they had been contacted by the CCL,
20 you're not aware that that's not true.
21 A. I'm not aware that's not true. No.
22 Q. Would you go forward to page 374. I want to
23 ask you to review the two emails on that page.
24 A. Okay.
25 Q. And then I'm going to ask you to look over

1 Q. So do you know whether or not the League
2 opposed the -- what the Pittenger Group planned to
3 do?
4 A. Again, I don't know. Obviously opposed
5 something, or the phone call wouldn't have been
6 made and the things that were said per this email
7 wouldn't have been said. Maybe they weren't
8 opposed, but it sure sounded like they were trying
9 to scare them.
10 Q. Do you know whether or not the League made
11 any false statements to residents or land owners or
12 the County about the plans that the Pittenger Group
13 had for the property?
14 A. I do not know that.
15 Q. Do you think but for the Conservation
16 League, that the Pittenger Group would have closed
17 this transaction?
18 A. Are you asking my opinion?
19 Q. I'm asking you if you know that to be the
20 case or not.
21 A. You know, the information that I had from
22 my -- from my talks with Daniel Fogarty to the
23 point that this phone call was made was that that
24 transaction was going to close. That the money --
25 that the earnest money was going to go hard on the

1 specified date and that that transaction would
2 close. That's what I was led to believe through
3 conversations with him.
4 The phone call was made, which unleashed a
5 whole 'nother chain of events, which ended in a
6 terminated contract. So I believe that if that
7 phone call would not have been made, none of this
8 would have happened and the transaction would have
9 closed.
10 Q. Do you know whether Mr. Pittenger instructed
11 his folks to terminate the contract based on
12 reasons other than the League?
13 A. I don't know that -- I don't know. I don't
14 know.
15 Q. You saw the email that we read earlier --
16 A. Right.
17 Q. -- that talked about zoning and access to
18 the river --
19 A. Okay.
20 Q. -- and access to sewer?
21 A. Correct.
22 Q. Do you believe those were reasons that
23 Mr. Pittenger had for not going forward?
24 A. Do I believe those were reasons for him not
25 going forward? Well, obviously that was used as a

EXHIBIT 6

1 women who serve on councils at county level and the
2 municipal level who can deal with these problems and
3 deal with the citizens.
4 The Coastal Conservation League has done
5 good things during their existence. They have also
6 done things that I certainly didn't agree with.
7 In this instance, Mr. Davis, Hamilton
8 Davis, to my knowledge, had no idea what
9 Mr. Pittinger -- I don't think Mr. Pittinger had any
10 idea what he was going to do with this property
11 other than buy it, hold it and sell it.
12 I understand from depositions, I guess it
13 was either Pittinger's deposition or -- he called in
14 and said, we will keep you in court or we will make
15 you spend a bunch of money or we will tie you up for
16 years in court like we have other groups. He met,
17 from what I understand, at a barbecue for some of
18 the local citizens and talked about, your taxes are
19 going to go up and you are not going to be able
20 to -- I think it is fine to oppose a development,
21 oppose cruise ships, or oppose whatever you want to.
22 But there is a time and a place to do that, and only
23 a time and place to do that.
24 Just to run willy-nilly and send people
25 out with threats, to me that is beyond the pale, as

1 I told you. You certainly have a right to be for or
2 against whatever you want to be. And there is a
3 process you follow to do that. When you exceed
4 that, I think it then becomes more than just
5 etiological opposition to something or environmental
6 opposition to something. It is unfair business
7 people when veiled threats are made in the event
8 they are attempting to do something. I think it is
9 unfair.
10 Q Well, Mr. Hartnett, do you know whether --
11 do you know what Mr. Davis said?
12 A Which Mr. Davis?
13 Q Mr. Hamilton Davis said to Mr. Burns.
14 A I don't. I do recollect from his
15 deposition that he did have some of the local
16 community at a cookout or at a church or something,
17 either he did admit or someone contended that he
18 said, you know, if this comes in, you know, you are
19 going to have a lot of traffic; correct, you are.
20 You are going to have a lot of people; you are. You
21 are -- probably taxes are going to go up, not
22 because of this development and their property taxes
23 at this end of Berkeley County wouldn't go up any
24 more or less than the far end of Berkeley County,
25 the taxes are countywide. The value of your

1 property would go up. That is a good thing. If
2 they want to sell their property, that is a good
3 thing.
4 But I think it was a fear that you
5 can't -- one of the big property owners wouldn't be
6 able to burn anymore. And I understand, if they
7 want, they should go to a hearing. If they win a
8 zoning change as proposed and said all of these
9 things. To get these people excited in advance of
10 any real knowledge to what was going to be done, I
11 think that is unfair.
12 Q Do you know whether or not Mr. Pittinger
13 or anybody in his organization knew anything about
14 that meeting or was contacted by anybody from that
15 meeting?
16 A No, sir, I don't.
17 Q And in the conversation between Mr. Davis
18 and -- Mr. Hamilton Davis and Mr. Burns, would the
19 two of those gentlemen know best what was said and
20 what passed between them?
21 A They should, yes.
22 Q Do you know anything about that
23 conversation other than what Mr. Davis said in his
24 deposition?
25 A No, sir, I don't.

1 Q All right. Or Mr. Burns said in his
2 deposition?
3 A Having not read Mr. Burns' deposition, I
4 don't.
5 Q All right. I think that's all I have for
6 you. Thank you very much.
7 EXAMINATION
8 BY MR. SMITH:
9 Q In the spirit of full disclosure, okay,
10 Tommy, did we provide you with appraisals that gave
11 rise to the valuation of conservation easements for
12 the Boeing mitigation?
13 A Yes, sir, you did.
14 Q Did you review not all of those appraisals
15 but some of them?
16 A Yes, sir, I did.
17 Q Having reviewed those appraisals which
18 allowed the landowner, as I understand it, to take
19 tax deductions for conservation easements that were
20 granted?
21 A Is that a form of a question? I'm sorry.
22 I didn't understand it.
23 Q The appraisals that you reviewed were
24 designed to do what? Maybe that is a better way to
25 ask the question.

1 A To value the gist of a conservation
2 easement.
3 Q And are there certain rules with regard to
4 conservation easements appraisals?
5 A Yes, sir, there are.
6 Q Imposed by the Internal Revenue Service?
7 A Yes, sir, there are.
8 Q And following your review of the -- some
9 of the appraisals, not all of them, did you have an
10 opinion as to whether or not those appraisals
11 actually met the requirements of the Internal
12 Revenue Service?
13 A I can say with certainty that they did
14 not. And I can say with further certainty that
15 after having read those appraisals, that I contacted
16 my nemesis at the IRS, a gentleman named Gary
17 McGurrin, M-C-G-U-R-R-I-N, who has challenged
18 several conservation easement appraisals which I
19 have made for properties in the lowcountry. And
20 because of the form of the appraisals which did not
21 comply with Internal Revenue Service guidelines, the
22 Service gave zero value to each and every one of
23 those conservation easements they were challenging,
24 which meant I and the property owner who I had
25 represented in the appraisal had to go back and do

1 numerous things and work hours and days to try to
2 satisfy.
3 So I, after having read those two
4 appraisals, contacted Mr. McGurrin and said, Gary,
5 look, I think I have been picked on. I see several
6 appraisals of other appraisers who have done just
7 what you said I had done incorrectly in the past and
8 they are still doing it. Why aren't you challenging
9 them?
10 He wrote back and said, well, we are. We
11 just haven't gotten around to it yet. There are so
12 many of them across the country that were done the
13 way you and others did them, that we just haven't --
14 that is to show you are not being picked on by the
15 IRS, that that form of appraisal is totally
16 unacceptable and would be turned down and the value
17 of the property would be given zero based on that
18 type of appraisal.
19 THE WITNESS: Now, let me follow up. I
20 don't know if that had anything to do with
21 this. I thought we were talking about the
22 Keystone tract; in this we are talking about
23 something entirely different. So I do have two
24 appraisals that I didn't put in this file
25 because I didn't think they would be relevant

1 to this. If they are, I will certainly send
2 them up here to you this afternoon, but I don't
3 know what they have to do with each other.
4 MR. GOWDER: I am not quite sure either,
5 but I appreciate Mr. Smith bringing this up.
6 EXAMINATION
7 BY MR. GOWDER:
8 Q This is a claim that is being asserted or
9 an issue that has been raised in this case, so what
10 exactly -- what exactly is your opinion, then, on
11 that subject, Mr. Hartnett, that the appraisals
12 underlying the ACRET conservation easements were
13 improperly done?
14 A It is not just my assertion, it is my
15 certainty.
16 Q Okay.
17 A And let me just go back a little bit.
18 See, I thought it had to do with Boeing. It was
19 Vought and then it became Boeing. I am not really
20 knowledgeable in that other than they got some State
21 money, but not really knowledgeable.
22 We, I say we, appraisers, when
23 conservation easements became a popular means of
24 conserving land and taking a tax benefit for the
25 landowner started to become popular, we were called

1 upon to do these appraisals. And there really have
2 been very few of them done. Almost no property in
3 the ACRET that had been sold with an existing
4 conservation easement on it so as to tell us how it
5 might have affected the value of that. So what we
6 did, we didn't do it collectively or in any type of
7 union, but we tried to estimate the difference in
8 what we call the bundle of rights.
9 If the highest and best use for a piece of
10 property, say, a rural piece of property, was for
11 recreation and hunting and agriculture, whatever,
12 and they were prohibiting subdivision, that didn't
13 really apply to the property because that wasn't the
14 highest and best use.
15 But in some properties we would say,
16 pursuant to this bundle of rights was given away in
17 this easement, therefore, that much is a percentage
18 of the property, let's just say 5 percent was given
19 away because he couldn't do a commercial use on the
20 property, well, we take 5 percent of the appraised
21 value off and so that was a part of that in each one
22 of the bundles of rights.
23 So that was sort of a rote way of doing
24 it. There was a percentage way of doing it. It was
25 unacceptable to the IRS. And from Columbia to

North Pleasant v. SCCCL: Players

Robert Pittinger: principal of Vanguard Properties, who had a contract to buy Keystone Tract

Mercer Reynolds and Jamie Reynolds: Principals of North Pleasant, LLC, the owner of Keystone

Josh Hulen: realtor with Vanguard Development Group, a Charleston realty company owned by David Grubbs. They represented North Pleasant in the sale of Keystone. Hulen had the day to day contact with Pittinger's people – specifically with Dan Fogarty

Dan Davis: Berkeley County Administrator

Hamilton Davis: SCCCL employee who contacted Pittinger's company and announced the CCL was opposed to any development on the Keystone Tract

Dan Burns: Pittinger's assistant who received the calls from Hamilton Davis and who memorialized them in an email to Pittinger and Fogarty in their office – EMAIL - PITTENGER

Mitch Flannery: Was with DR Horton when Hamilton Davis claims the CCL "fought" a development near Keystone causing DR Horton to abandon the project. He says this was not true at all

Nancy Vinson: Until 2011, an employee of the CCL. She was the key administrative force on the ACRET Board. Says that had the state not provided the CCL money substantially more than was required to meet Corps and DHEC wetland mitigation requirements, the CCL would have seriously considered appealing the Vaught (Boeing plant) permit, causing it to go elsewhere – like they did the Daimler Chrysler permit years before.

EXHIBIT 7

1 THE WITNESS: Is it the same thing that
2 you -- I'm reading.
3 MR. REYNOLDS: I think it's in reverse
4 order of 1 and 2.
5 (Audio recording played.)
6 Q. Were you able to follow along?
7 A. Yes, I was.
8 Q. And does Exhibit 2 accurately reflect what's
9 in the message we just listened to?
10 A. Yes.
11 Q. Let's go back to Exhibit 1 and do the same
12 thing.
13 (Audio recording played.)
14 Q. And is Exhibit 1 an accurate transcript of
15 that message?
16 A. Sure. I mean, there were -- yes, it was.
17 There were some words that were off, but yes.
18 Q. In substance?
19 A. In general, yes.
20 Q. Did that sound like Mr. Davis to you?
21 A. It did.
22 Q. Have you ever heard either one of those
23 before?
24 A. No.
25 Q. At the time in question we're talking about,

1 May 2007, did Mr. Davis report to you?
2 A. He did.
3 Q. Did he discuss calling Mr. Burns with you
4 before he called?
5 A. He did.
6 Q. Tell me about that conversation.
7 A. As I recall, he said that he thought -- he
8 wanted to know what I thought about calling this
9 gentleman, and I said that as with all land use
10 projects, it's always good to open a dialogue with
11 developers who are interested in property that
12 we're interested in looking at.
13 Q. So your goal was to open a dialogue with the
14 potential buyer; is that right?
15 A. Yes.
16 Q. Were you aware that the property was under
17 contract?
18 A. No.
19 Q. Did you have any more conversations with
20 Mr. Davis around that same time?
21 A. About the phone call?
22 Q. About the phone call, yes.
23 A. No.
24 Q. Did he report back to you after he made the
25 call?

1 A. I only remember hearing he left a voice
2 message.
3 Q. Did he tell you that in person?
4 A. Probably. I can't remember specifically.
5 Q. Did you ever discuss contacting the
6 potential buyer again?
7 A. Not that I recall.
8 Q. And that potential buyer was the Pittenger
9 Group, right?
10 A. I don't know.
11 Q. Did you discuss the potential call to the
12 potential buyer with anyone other than Mr. Davis?
13 A. Not that I recall, no.
14 Q. So your informal policy, if I remember your
15 testimony, is a communication that might be
16 sensitive should be reviewed by people within the
17 League before it's made; is that fair?
18 MR. GOWDER: Objection to the form of
19 the question.
20 A. Can you repeat it, please?
21 Q. Is this one of the communications that,
22 pursuant to the informal policy of the League,
23 should be reviewed before somebody before it is
24 made?
25 A. Well, being that it is an informal policy, I

1 will say that I think Hamilton made the right
2 decision by taking to me before he called.
3 Q. Do you know if Hamilton talked to anyone
4 else before he called?
5 A. I don't know.
6 Q. Did he indicate to you that he had talked to
7 anybody else?
8 A. I can't remember for sure. If he would have
9 spoken with anybody, it would have been Dana before
10 he called.
11 Q. Do you have any recollection of Mr. Davis
12 saying he spoke with Mr. Beach before he called?
13 A. No. I mean, it's vague, but I can't say for
14 sure that he did or that he didn't.
15 Q. So you have -- is it fair to say you have a
16 vague recollection of Mr. Davis telling you that?
17 MR. GOWDER: Objection to the form of
18 the question.
19 A. I can't say whether it did or did not happen
20 for sure.
21 Q. So let's look at Exhibit 1. A reference is
22 made to the 2600-acre parcel in Berkeley County,
23 right?
24 A. Yes.
25 Q. Do you know how Mr. Davis knew that there

1 Q. Who's it from?
2 A. It's from Daniel Burns.
3 Q. And he works for Robert Pittenger and
4 Company, it looks like?
5 A. Yes.
6 Q. Are you familiar with that name at all?
7 A. As I said, just because I've read the
8 depositions.
9 Q. Outside of the depositions, you haven't --
10 A. I have not heard it.
11 Q. To whom is it addressed?
12 A. To Mr. Michael Bennett.
13 Q. Do you know Mr. Bennett?
14 A. I have met him.
15 Q. Is a supporter of the League?
16 A. I don't know if he's a current supporter of
17 the League. He has been in the past.
18 Q. What is his relationship to this property,
19 if you know?
20 A. Just from the letter?
21 Q. Not just from the letter, but your own
22 knowledge.
23 A. I don't know.
24 Q. Do you know where he lives?
25 A. Just because it says on the letter. On

1 A. I guess you could call it that.
2 Q. Do you prepare budgets?
3 A. Yes.
4 Q. You review budgets?
5 A. Yes.
6 Q. Do you review budgets on a monthly basis?
7 A. Yes.
8 Q. And do you report the results to anyone?
9 A. I don't specifically, but I'm a part of the
10 team who does, yes.
11 Q. If you saw a budget line was out of whack,
12 would you report that to someone?
13 A. Yes.
14 Q. And that would be Mr. Beach?
15 A. Yes. He probably would see it at the same
16 time I did, but yes.
17 Q. So Mr. Beach would review the financials on
18 a monthly basis as well?
19 A. Yes.
20 Q. And if we were doing a chart of who reports
21 to whom, my understanding is that you report
22 basically to Mr. Beach and the board; is that
23 right?
24 A. Yes.
25 Q. And that everyone else directly or

1 indirectly reports to you; is that right?
2 A. Yes.
3 Q. How long has that been the case?
4 A. Maybe two -- two years, maybe a little bit
5 more.
6 Q. In advancing the League's interests -- first
7 of all, I assume you agreed with the interests,
8 right?
9 A. Right.
10 Q. And you agree with the idea of advancing
11 those interests, right?
12 A. Yes.
13 Q. Do you feel strongly about advancing those
14 interests?
15 A. Yes.
16 Q. But there is a limit as to what the League
17 can do in advancing its interests; is that fair?
18 A. Yes.
19 Q. Can you give me an example of somebody that
20 is off limits, as far as you're concerned, for the
21 League in advancing its interests?
22 A. Yes. An example would be you're not going
23 to break the law to advance our interests.
24 Q. Is there anything else that the League can't
25 do in advancing its interests?

1 A. Sure. We're not going to treat anybody with
2 disrespect.
3 Q. And you're not going to threaten anybody,
4 right?
5 A. We're not going to threaten anybody, right.
6 Q. You're not going to bully anybody, right?
7 A. Right.
8 Q. Why not? Why don't you do that if that
9 advances the League's interests?
10 A. Well, I don't necessarily think it does
11 advance the League's interests when do you that.
12 Q. In a specific case, if threatening a
13 developer advanced the League's interests, why
14 wouldn't the League threaten?
15 A. I mean, I think you have to look at
16 everything that is involved -- or that is included
17 in the League's interests.
18 Q. So in some cases it would be okay to
19 threaten a developer; is that what you're --
20 A. No. I'm saying it would never be.
21 Q. It would never be okay to threaten a
22 developer, right?
23 A. Right.
24 Q. It would never be okay to bully a developer,
25 right?

1 A. That's right.
2 Q. Is that still your answer?
3 A. Yes.
4 Q. When you discussed calling the potential
5 buyer with Hamilton Davis, did you consider the
6 potential impact that such a call could have?
7 A. As in what?
8 Q. In any way that you think maybe we shouldn't
9 do this for some reason.
10 A. I don't remember thinking that way.
11 Q. But as it happened, the potential buyer
12 walked away from the contract at hand. Is that
13 your understanding?
14 MR. GOWDER: Objection to the form of
15 the question.
16 Q. Is that your understanding?
17 A. That's my understanding.
18 Q. Did you ever give any thought or did
19 Mr. Davis give much thought to the idea that that
20 might be a result of that phone call?
21 A. That wasn't the intent of the phone call.
22 Q. We will get to that in a second. But my
23 question is slightly different. Did you give any
24 thought, you or Mr. Davis, that that might be a
25 potential result of the call?

Hamilton Davis Voice Mail

"Hey Mr. Burns this is Hamilton Davis and I work for the Coastal Conservation League in Charleston South Carolina.

I wanted to speak with you about ya'll's recent I guess not purchase but interest in the 2,600 acre parcel in Berkley County. I wanted to give you some information about what's going on in that area right now that you would probably be interested in. Call me back when you get a chance please 843-725-2061, and again, my name is Hamilton Davis and I work for the Coastal Conservation League. Thank you."

PENGAD 800-631-6989
EXHIBIT
100 Depositions
DN 8-27

Voice Mail From Burns

This is Daniel, I just picked up your voicemail from a guy that works with the Coastal Carolina League evidently there's a big conservation effort through Highway 41corridor specifically the Keystone Property that these guys are trying to get the county to put a conservation on the whole property at some point in the near future and evidently according to this guy he stalled they the D.R. Horton property that is just south of our property that they've been working on for two and a half years and now D.R. Horton is trying to do a land swap because they are not getting anywhere with the development of it; so I'm not sure of how big of an issue it is, this is the first I've heard of it and wanted to pass it on to you all in case you wanted to call him directly.

484256.1

PENGAD 800-631-6989
EXHIBIT
2 3DL Deposition
9.27

Paul Smith

From: Daniel Burns
Sent: Monday, May 21, 2007 9:17 AM
To: Daniel Fogarty
Cc: Robert Pittenger
Subject: RE:

Phoag/Robert-

To recap my conversation on Friday afternoon:

Received a voicemail from Hamilton Davis with the Coastal conservation League in Charleston, SC and called him back around 4pm, and then forwarded his voicemail for you to be aware of the issue. Hamilton stated that he was aware that we had the Keystone Tract under contract to purchase and that we'd probably like to know that his group, coupled with the efforts of large plantation owners, is trying to stop development in the Hwy 41 corridor because of it's proximity to the national forest. He said they are particularly targeting the Keystone property since it's such a large tract and adjacent to the forest. He mentioned that DR Horton has a property just south of ours that the Conservation League has fought, and that now DR Horton is trying to do a land swap to get out of the Hwy 41 tract.

The scariest thing mentioned, was that they are working with the county to get rezoning for the Keystone tract to a conservation easement so it can't be development, and said they were getting close with joint efforts from the plantation owners. I don't know how much of this is reality or smoke blowing, but if they've in fact halted DR Horton, they've accomplished something.

Senator- do you know if the Coastal Conservation League can get the county to rezone a property to a conservation easement without the owner's consent?

Daniel J. Burns | Vice President
Robert Pittenger Company | Real Estate Investments
4521 Sharon Road, Suite 370 | Charlotte, NC 28211
T 704.365.0065 | F 704.365.0910
db@pittengercompany.com | www.pittengercompany.com

From: Daniel Fogarty
Sent: Monday, May 21, 2007 8:56 AM
To: Daniel Burns
Subject:

Hey can you type up a recap of your conversation with the guy from the Costal Conservation League.

Daniel Z. Fogarty
Robert Pittenger Company | Real Estate Investments
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EXHIBIT
3 Desrosiers
BNGAID 800-631-6989

EXHIBIT 8

1 foundations in here, if you look through here.
2 You've got Butler, Mott, Mills Bee Lane Foundation,
3 Lyndhurst.
4 Q. Okay. So your grants would also be -- you
5 haven't broken them out and say, this is a grant,
6 this is a contribution; is that right?
7 A. Right.
8 Q. Okay. There are some individuals in here
9 who make some substantial contributions. I was
10 looking for the Maybanks. I think in this exhibit
11 there -- I think that's why I picked it. Yeah.
12 Mr. and Mrs. David Maybank, Jr. And I suggest to
13 you that they often appear in the 10,000 plus
14 column.
15 When -- just take the Maybanks, for
16 instance. When the Maybanks make a contribution to
17 your organization, is that accompanied with any
18 request that you do specific things?
19 A. No, not usually. I mean, we have
20 conversations -- these are people that we know and
21 see on a regular basis, so we know what their
22 interests are and what they aren't. You know, some
23 folks are more interested in land conservation than
24 energy conservation and others are maybe more
25 interested in water.

1 But we don't -- individuals don't
2 generally give programmatic grants. Every now and
3 then, though, an individual might give a
4 contribution to do a specific thing, like to do --
5 to produce visual representations of where a new
6 highway might go. But most often, that's general
7 support.
8 Q. Okay. And most of your individual
9 contributors live in the South Carolina Lowcountry.
10 Is that a fair statement?
11 A. No.
12 Q. Really? Okay.
13 A. Most of them -- many of them live here, but
14 we have -- especially in the larger categories --
15 individuals who live around the country, in New
16 York, Philadelphia, and who we have -- sometimes
17 they have places -- most often they have a place
18 that they live in here during the summer or winter.
19 Q. So they have some connection, most of them?
20 A. Right.
21 Q. Okay. Let me ask you about your role with
22 the League and specifically in how decisions are
23 made in terms of what activity or activities the
24 League is going to engage in. How would you
25 characterize your role?

1 A. I think generally about where we can be most
2 effective in the arena of -- arenas of land
3 conservation, energy, water, now agriculture,
4 sustainable agriculture.
5 And we have a very collaborative
6 process on the staff. We spend -- we meet often
7 with -- among the staff. Our assistant director,
8 Megan Desrosiers, and I are right across the hall
9 from each other. So there's really an ongoing
10 conversation about what the status of different
11 projects, threats, opportunities is.
12 And we take projects on that we feel
13 are important from the point of view of having an
14 impact in themselves. For example, when we began
15 to work on Sandy Island, we thought that particular
16 property, which was about 9,000 acres, was
17 significant in that watershed and needed to be
18 protected.
19 The -- there are other projects that we
20 work on that are -- sometimes could be precedential
21 in setting a tone for future development. For
22 example, we worked to support the I'On development
23 because we liked the pattern that it was developed
24 in and hoped that that would be a good example to
25 future developers and cities to establish zoning

1 could work something out financially with
2 Mr. DeMoura to reduce the density, add some of the
3 acreage that was in the parcel that he owned to the
4 Angel Oak Park. But I didn't -- I didn't tell him
5 that we were opposing it because our members told
6 us to oppose it.
7 Q. Okay. Did you ever tell Mr. Padgett that
8 some of your members had told you they were opposed
9 to it?
10 A. I don't remember whether I told him that or
11 not.
12 Q. Okay.
13 A. I mean, he certainly -- I think he would
14 conclude that. It seems -- there are many people
15 who are opposed to it, including our members. But
16 most of Johns Island and Wadmalaw are opposed to
17 it.
18 Q. Did Louise Maybank ever express to you that
19 she was opposed to that project?
20 A. She did tell me that she was concerned about
21 it, yeah. Again, you know, she's a very active
22 member of the Wadmalaw community, and I knew that
23 she did not like it any more than, again, most
24 people that I know out there.
25 Q. Is she the Mrs. David Maybank that's

1 Q. I got this as part of a large, ultimately,
2 number of documents I got from Mr. Morris. This is
3 called bylaws for the Ashley-Cooper Rivers
4 Environmental Trust. Did you have any role in
5 preparing these bylaws or approving them, or did
6 you have anything to do with the bylaws associated
7 with the trust?
8 A. We -- not really. We -- most of this was
9 structured by the Department of Commerce, and we
10 simply looked at it in a broad way and felt that it
11 made sense. But we didn't -- we didn't really get
12 into the details of it.
13 Q. Okay. Go with me to page 4, if you would.
14 That's the only part of this that I plan to ask you
15 anything about. It's article 6 called board of
16 trustees. And under composition, it lists who was
17 going to be on the board.
18 A. Uh-huh.
19 Q. You've got somebody from the U.S. Fish and
20 Wildlife Service, somebody from NOAA, somebody
21 from -- two persons from DHEC, one person from
22 South Carolina DNR, one person from the South
23 Carolina Conservation Bank, and three persons
24 recommended by the Coastal Conservation League.
25 Who -- do you remember who those people were that

1 were to be your agent -- your organization's
2 representatives?
3 A. I'm not sure, really. I don't remember.
4 Nancy was one of them. I'm -- I'm sure Nancy would
5 have been one. Maybe I was one. Charles Lane
6 would have been on there probably because of the
7 Conservation Bank, though he would have been a
8 logical person for us to recommend. So I don't
9 remember exactly who the -- if there was a third
10 from the Conservation League. I don't remember who
11 it was.
12 Q. Okay. When the board started meeting to
13 make decisions about how to spend this money, did
14 you go to the board meetings, or did you give your
15 proxy or whatever you want to call it, your right
16 to vote in your place, to someone else, if you
17 recall?
18 A. I went to most of them. I might have missed
19 one or two.
20 Q. All right. Now, this document says that the
21 members of the board of trustees will be appointed
22 by the Department of Commerce, by the actual
23 Commerce Department.
24 A. Right.
25 Q. And were you then appointed as a trustee of

1 this trust?
2 A. That was my understanding.
3 Q. Okay. And then supposedly then these other
4 people were also trustees.
5 A. Right.
6 Q. So we had, by my count, one from Fish and
7 Wildlife Service, one from NOAA -- two federal
8 employees, federal officials, who were appointed by
9 the State Department of Commerce as trustees of a
10 trust to spend State money. Am I right about that?
11 A. Two federal employees.
12 Q. Yes.
13 A. Yeah.
14 Q. Okay. Do you remember any discussion about
15 that, that being strange or --
16 A. I do not.
17 Q. When they were trustees -- did they, in
18 fact, serve? Were there two people from these
19 federal agencies that served as trustees? Do you
20 recall?
21 A. Yes. I'm fairly certain they did, yes.
22 Q. Okay. Do you remember any discussion about
23 what was their status while -- were they trustees
24 of some trust spending State money, or were they
25 there as federal employees?

1 A. They were trustees. And we took minutes and
2 operated by Robert's Rules of Order, and so in that
3 respect, we were fiduciaries of the trust.
4 Q. That was going to be --
5 A. As far as I -- as far as I know.
6 Q. I appreciate that. You presupposed my --
7 you snared my next question. So am I correct that
8 whatever fiduciary responsibilities you-all as
9 trustees had with respect to this trust, these
10 federal employees also had?
11 A. That is my understanding.
12 Q. Do you know whether -- I'll just ask you the
13 question. Just answer it, if you can. Do you know
14 whether they were exercising that fiduciary duty on
15 behalf of the United States, as federal officials,
16 or whether they were doing this in their
17 individual, personal capacities?
18 A. I do not know.
19 Q. Okay. Thus my question to you is whether
20 anybody ever discussed how strange it was that two
21 federal employees were exercising those kind of
22 functions.
23 A. No one discussed that with me.
24 Q. Okay.
25 A. But like I say, there was a precedent for

1 this with Sandy Island where there were a number of
2 representatives from different agencies who met to
3 decide how to best mitigate the impact of filling
4 wetlands for the Conway Bypass. And that was
5 generally, I think, thought to be a successful
6 strategy for mitigation.
7 Q. Was that State money also, if I remember
8 correctly?
9 A. That was, yes. That was State funding.
10 Q. Whatever the DOT was called then --
11 A. Right.
12 Q. -- that was their money?
13 A. Right.
14 (Exhibit No. 15 was marked for
15 identification.)
16 Q. All right. The next document I have here is
17 a memorandum of agreement, which I believe is
18 executed between the South Carolina Department of
19 Commerce by Mr. Faith, Bob Faith, and the Coastal
20 Conservation League, executed by yourself.
21 A. Uh-huh.
22 Q. Okay. Now, this document seems to say to
23 me -- I guess I'm looking at the whereas clause,
24 which for an agreement perhaps is a dangerous thing
25 to do, but -- well, I'll do that, and then I'll go

1 to paragraph 1. It says, whereas, in order to
2 develop the site, permits and certifications must
3 be obtained. As part of the permitting process,
4 off site mitigation for wetlands loss will be
5 required by the Corps and DHEC.
6 And paragraph 1 talks about, within 30
7 days, the Department of Commerce will place an
8 interest-bearing account of an existing or newly
9 created nonprofit to be identified by the League,
10 your organization, to fulfill the objectives of
11 this agreement. Mitigation trust fund shall
12 consist of a lump-sum payment of $4,750,000 to
13 satisfy compensatory mitigation required by the
14 Corps and to fulfill the terms of this agreement.
15 Is there anything I'm missing, or does
16 that accurately describe the purpose for these
17 funds having been provided by the Department of
18 Commerce?
19 A. That's an accurate description. It was -- I
20 think the only addition I would make to it is that
21 this document states that this is for compensatory
22 mitigation for the project.
23 And we had looked at the impacts. I
24 know that site. I've known it for the last 20
25 years. And the question that would first be asked

1 is whether this is a project that can go forward
2 without this wetland fill. That would be the --
3 that would be the sequence of decision making,
4 federally.
5 Q. Right.
6 A. And then, secondly, whether the wetlands
7 that are on site can be avoided and have been
8 avoided. And then the third question is
9 compensatory mitigation, which is what this
10 document addresses.
11 Q. Okay.
12 A. And we were confident that the first two
13 questions had been answered correctly, that it was
14 an acceptable project purpose, and that the plan
15 did as good a job as could reasonably be done,
16 given that there are a lot of wetlands on this
17 site, avoiding wetlands. And so that left the
18 final question of the three to be dealt with with
19 this document.
20 (Exhibit No. 16 was marked for
21 identification.)
22 Q. Okay. The next document is entitled outline
23 of proposed off-site mitigation activities
24 associated with -- that gives a public notice,
25 which I suggest to you is the Vought permit

1 application. And what I'm interested in here is it
2 talks about subject sites, and this is dated, I
3 believe, April 6th, 2005, which is, I think the
4 same day as the memorandum of agreement between the
5 League and the Department of Commerce. Page 4,
6 right. You're there.
7 A. Uh-huh.
8 Q. How were these potential sites developed?
9 This is before anything had been done, right?
10 Before the money had been provided, before --
11 A. Right.
12 Q. Did you-all have in mind certain sites at
13 the time you entered into this agreement already?
14 I mean, a couple of them are mentioned, so that's
15 the reason I ask.
16 A. Well, yeah. This particular project is
17 within roughly the Ashley-Cooper watershed, and
18 that is a preferred -- would be a preferred area
19 for mitigation to happen. So the first question
20 is, what watershed is it in? What are the
21 ecological resources that are being lost? And
22 where would be the best place to mitigate those
23 losses?
24 Q. All right. And Poplar Grove is mentioned.
25 A. Right.

1 from my standpoint to do that. So let me ask you
2 a --
3 A. Well, that's important for me to answer the
4 question you just asked me. Because if these funds
5 were in excess of the $4.5 (sic) million -- and
6 there was a considerable amount of money in excess
7 of the 4.75 million that was spent, if those funds
8 are -- go toward a public purpose, we were able to
9 leverage that funding using the Corps' funding from
10 the Department of Commerce, then the people's
11 funding really was used for not only mitigation but
12 to leverage non-people's funding.
13 Q. I've got you. But let me just ask you a
14 different question. Was any effort made by any of
15 the trustees, so far as you knew, to determine how
16 much of the $4.75 million was needed to meet
17 mitigation requirements imposed by the Corps and
18 DHEC?
19 A. That really -- that was not our charge
20 really. Our charge was to basically react to a
21 proposal by the Department of Commerce, which was
22 to create a $4.75 million fund to mitigate the
23 impacts. Our charge was to find the best way to do
24 that to meet the letter of the law, and on top of
25 that, to actually create more public value. And

1 that's what we did.
2 We -- the Department of Commerce was
3 the -- was the funding agency. And because of
4 their involvement with this, I'm assuming that they
5 didn't object to or have serious questions about
6 whether they had spent too much. But you can
7 certainly ask them that question.
8 Q. Was there any audit or anything done, so far
9 as you knew, of the trust at all for any purpose?
10 A. I don't know. There could have been.
11 Q. Since you were named as the treasurer -- I
12 know you've testified you didn't have hands-on
13 involvement as the treasurer, but since you were
14 named as the treasurer, that's why I asked you that
15 question.
16 A. I'm not aware of one, but it's possible that
17 something was audited when the State -- the State
18 typically, when it provides its financial
19 statements, has these types of things audited in a
20 sense by an external auditor.
21 Q. And does the State not also, when it does
22 that, has as one of the purposes of the audit to
23 determine that the money that was provided was
24 spent for the purpose for which it was provided?
25 A. Right.

1 Q. Okay. With respect to -- we can retire the
2 Corps' decision -- the various potential mitigation
3 sites for the ACRET trust, was the Keystone tract
4 ever considered as a possible mitigation site? Do
5 you know?
6 A. I don't remember it being considered.
7 Q. Okay.
8 A. It's out of the watershed, but so is some of
9 the Four Hole Swamp property. It could have been
10 considered. We weren't strictly sticking to the
11 watershed, but I don't recall it being considered.
12 Q. Let me move now to the Keystone tract
13 itself. Were you involved in discussions about the
14 Keystone tract and specifically whether it would be
15 a good mitigation site for the proposed State Ports
16 Authority terminal in North Charleston?
17 A. Not extensively. I may -- if I had any
18 conversations about it, it was -- they were very
19 brief and tangential to some other discussion.
20 But, no, I didn't -- we didn't go into great detail
21 on that.
22 Q. Okay. Let me ask you then more generally.
23 Did you ever discuss the Keystone tract with
24 Governor Sanford?
25 A. Yes.

1 Q. Tell me about those discussions, if you
2 would.
3 A. Well, he was one of the people who was
4 concerned about the development of the project,
5 development of that site.
6 And we had conversations with him, and
7 I don't remember precisely how they went, but the
8 gist of those conversations was that he felt that
9 he could talk to Mr. Reynolds and let him know what
10 the goals of the Cooper River focus area were and
11 the plantation owners in that area.
12 And his hope was that Mr. Reynolds
13 would modify his plans to develop it as intensely
14 and to do something that was more compatible in
15 that -- in the east branch area, which is a very
16 important area, not only because of the
17 environment, but also very important from a
18 historical point of view.
19 Q. All right. You mentioned the large
20 landowners, the -- I think you did call them the
21 plantation owners. Had you had discussions with
22 those individuals, Mr. Royall, the Coens, Mike
23 Bennett, any of -- all those people that had
24 properties?
25 A. Uh-huh, yeah.

1 Q. Tell me about those discussions.
2 A. Well, I had conversations, generally phone
3 conversations, with all of those people. And they
4 were all roughly the same, which is, this project
5 is the wrong project in this location. It's too
6 dense. It will compromise what we're trying to do
7 on the east branch of the Cooper.
8 It will create a suburban, I guess,
9 pattern of development in an area that the goal is
10 to maintain rural and open land. And we all hope
11 we can do something about it. And everybody had a
12 point of view about what they -- each of them could
13 bring to it.
14 Q. Did you engage the plantation owners in any
15 discussion about making efforts to prevent what
16 they viewed as unacceptable development of the
17 Keystone tract?
18 A. Would you ask that question again?
19 Q. Yeah. Did you engage the plantation owners
20 in any discussion about efforts by your
21 organization that you would undertake to prevent
22 unacceptable development of the Keystone tract?
23 A. Yeah. I think that's what I just said, but
24 to the first question you asked me.
25 Q. All right. And as part of that discussion,

1 did they offer to put conservation easements on
2 their properties if the Keystone tract could be
3 protected?
4 A. Not to me. There were -- this conversation
5 is important to understand it's gone on for now
6 almost 20 years. And there are some conservation
7 easements on the plantations on the Cooper River,
8 and some of the properties are still unprotected in
9 the sense that they do not have easements on them.
10 I think the feeling was generally that
11 Keystone would jeopardize the enthusiasm and the
12 willingness of all of the plantation owners who had
13 not yet protected their property from doing that.
14 So the goal was to set the stage, as has happened
15 in many other parts of South Carolina, for
16 landowners to voluntarily protect their land by
17 using conservation easements.
18 Q. Okay. What was the relationship between the
19 Conservation League and Noel Thorn with respect to
20 the Keystone tract?
21 A. Well, Noel was working for the Nature
22 Conservancy at the time, and we collaborate with
23 that organization along with Ducks Unlimited and
24 other land trusts. And we had conversations on and
25 off about this project, as we do -- as we do on

1 other land use issues that we work on.
2 Q. Okay. Just conversation?
3 A. Versus what?
4 Q. An actual cooperative agreement with
5 Mr. Thorn to achieve a common goal, for instance.
6 A. We don't ever -- you mean a signed -- like a
7 written agreement?
8 Q. No, no. Well, if there was one, sure. Did
9 you --
10 A. I think there was a common commitment to try
11 to do, again, what each group could do to make the
12 outcome of this a good one.
13 Q. Okay. And what did the Nature Conservancy
14 bring to that effort? What was it that they were
15 able to do?
16 A. They are the largest conservation group in
17 the world, and they have access to considerable
18 financial resources, their own and they know about
19 public funding for land conservation.
20 So as I mentioned earlier in this
21 deposition, what we often try to do is pair up the
22 groups that can work with a landowner to purchase
23 property from the landowner, purchase easements
24 from the landowner, and hope that we can in that
25 way achieve the outcome that we all collectively

1 would like to see.
2 But they -- in this case, their role
3 was a central one, and that was to see if there was
4 any way to marshal the financial resources to make
5 an offer to the owner to preserve the property in a
6 way that was compatible.
7 And I think you know -- you must know
8 that they -- that there was discussion earlier --
9 we had no real involvement with this because this
10 is not what we do, but the Nature Conservancy and
11 Department of Natural Resources had been in touch
12 with representatives from the Keystone group and
13 had made an attempt to purchase the property from
14 that group once they had purchased it and did not
15 apparently succeed with it.
16 So -- but we never say never. I mean,
17 we all -- I think we all felt like we just keep
18 working as hard as we could to see if we could
19 preserve the property.
20 Q. Do you recall how you -- how you came to
21 know that the Reynolds had contracted to sell the
22 Keystone tract to Mr. Pittenger?
23 A. We didn't know that he had contracted to
24 sell it. I think we -- what we had heard was there
25 was a potential buyer.

1 Q. Okay. Do you know how you learned that?
2 A. It may have been either -- it was either
3 Charles Lane or Mike Bennett. I'm not sure. One
4 of them had heard from, I think -- as I -- this is
5 a couple of steps away from the horse's mouth, so
6 I'm not going to -- I'm going to qualify it by
7 saying that.
8 But as I remember, Mike had heard from
9 one of the potential buyers and maybe being as to
10 somebody might want to invest in the property, I
11 think. Now, I'm not 100 percent sure of that, but
12 in any case, that was the avenue we heard about it.
13 Q. There has been testimony that there was a
14 proposed D.R. Horton development on this side of 41
15 from Keystone, closer in to Mount Pleasant. Do you
16 remember that proposal?
17 A. Uh-huh.
18 Q. Okay. And that proposal never went forward,
19 as I understand it.
20 A. Right.
21 Q. Okay. Did you-all, your organization oppose
22 that development?
23 A. We did, but there was not -- the opposition
24 took really more the -- in terms of work, took the
25 form of trying to work out something with

1 D.R. Horton that they could find another piece of
2 land that was closer to the developed city to
3 develop and leave this property alone.
4 Q. Okay. Who dealt with D.R. Horton's folks?
5 Did you deal with them directly?
6 A. I didn't.
7 Q. Okay. Would that have been Hamilton Davis?
8 A. Hamilton was the one who had, I guess, if
9 not all of the discussions, at least 90 percent of
10 them.
11 Q. Did Mr. Davis, Hamilton Davis, discuss with
12 you that he was going to call a representative of
13 Mr. Pittenger's company, the outfit that was -- had
14 a contract to buy the Keystone tract from the
15 Reynolds?
16 A. He -- I don't remember when we discussed it
17 and what the sequence was. It's possible that he
18 did and I'd say even likely that he mentioned it to
19 me. But, you know, as I've said earlier, as you
20 said, Mr. Thorn's description of strategy tactics,
21 I guess you said --
22 Q. That was what he said.
23 A. -- is that we try to work as closely as we
24 can with whoever the decision-makers are. And, in
25 this case, finding out there was a new -- potential

1 new decision-maker, it made sense for us to
2 communicate with that person that we wanted to be
3 involved in the discussion at least.
4 Q. So you think it's likely that Hamilton Davis
5 told you beforehand that he was going to call
6 somebody at Pittenger's place?
7 A. I -- there's a good chance of it. I don't
8 remember exactly. It was -- how many years ago was
9 that?
10 Q. 2007.
11 A. '7, so five years ago. It's possible,
12 but --
13 Q. Okay. Is that -- well, is that something
14 that Mr. Davis would have had the authority, so far
15 as you understood your organization, to do on his
16 own without checking with you first?
17 A. He would have had the authority. What he
18 probably would have wanted to do was just make
19 sure -- as I said, we confer a lot about how to
20 proceed on these projects. They're never linear.
21 And so I think there's a -- you know,
22 for that reason, I think there's a fairly good
23 chance we discussed the potential new buyer and how
24 to approach that buyer.
25 Q. Okay. And how -- what is your recollection

1 of how you thought the League should approach that
2 buyer in this particular instance with respect to
3 the Keystone property itself?
4 A. Well, I -- my understanding of how Hamilton
5 approached the buyer is the way I felt we should
6 approach the buyer, which is to just explain what
7 our point of view was and let the buyer know that
8 we were trying to work something out with the
9 owner, whoever that owner might be, to develop
10 something that everybody felt was compatible.
11 Q. Mr. Davis' discussions that he described
12 with the residents up on Highway 41 near the
13 Keystone tract, did he discuss with you what the
14 content of his communication to the residents was
15 going to be? In advance, I mean.
16 A. Not specifically. I certainly knew what the
17 issues were.
18 Q. Okay.
19 A. But he didn't -- I don't remember discussing
20 it in preparation for the meeting, if that's what
21 you mean.
22 Q. That is, yeah. That's what I meant. I am
23 trying to get a feel for how that works. Do you
24 have sort of a, for lack of a better word, a
25 standard playbook that you have sort of a standard

Project Buffalo
Overview

Project Parameters

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

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

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

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

Project Buffalo **LCF Operations**

PENGAD 800-631-6989
EXHIBIT
12-Beach
4/12/12 TLH

Site and Infrastructure Support Required

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

South Carolina Department of Commerce
Economic Development Bonds
Vought Alenia Incentive Funding Summary - Project Scope

Vought Alenia Incentive Funding Commitment - $116,000,000 Plus $5,000,000 Additional for Building

Wetlands Mitigation	This project includes funding ACRET $4,750,000 and $250,000 of legal fees associated with setting up the trust and wetlands permitting.
Training Facility	This project includes funding for the Vought Training Facilities to include site work in and around the building.
Site Preparation and Clearing	This project includes the initial site work and clearing and does not include foundation work associated with buildings.
Building and Add'l Site Work	This project includes the Vought Manufacturing Bldg, the Autoclave and all equipment foundations. It also includes the LCF Load/Unload Site.
Global Aeronautica Building	This project includes the Global Aeronautica Bldg and all equipment foundations associated with this building.
Taxiway	This project includes funds to support the building of the taxiway.

ATTACHMENT TO FORM 1023

August 5, 2005

ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

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BYLAWS

PENGAD 800-631-6989
EXHIBIT
14-Beach
4/12/12 TLH

EXHIBIT B

#642868

BYLAWS

OF

ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

Adopted Effective as of May 6, 2005

#631976

BYLAWS
OF
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

TABLE OF CONTENTS

ARTICLE PAGE

I. NAME 1

II. OFFICES 1

III. GENERAL 1

Section III(a). Organization 1
Section III(b). Fiscal Year 1
Section III(c). Terminology 1

IV. PURPOSES, POWERS AND POLICIES 2

Section IV(a). General Purpose 2
Section IV(b). Specific Purposes 2
Section IV(c). Powers 4
Section IV(d). Operating Policies, Procedures and Guidelines 4

V. MEMBERS AND MEMBERSHIP 4

VI. BOARD OF TRUSTEES 4

Section VI(a). General 4
Section VI(b). Composition 4
Section VI(c). Classes, Terms, Vacancies, Resignation, Removal and Replacement 5
Section VI(d). Chairman and Vice Chairman of the Board 6
Section VI(e). Committees 7
Section VI(f). Service Without Compensation 7
Section VI(g). Conflicts of Interest 7
Section VI(h). Bond 8
Section VI(i). Books and Records, Accounting 8

VII. MEETINGS OF BOARD AND COMMITTEES OF BOARD 9

Section VII(a). General 9
Section VII(b). Regular Meetings 9
Section VII(c). Special Meetings 9
Section VII(d). Notice, Waiver of Notice of Meetings 9
Section VII(e). Quorum, Manner of Acting, Voting 9
Section VII(f). Informal Action by Trustees 10
Section VII(g). Presence at/Participation in Meetings 10

VIII. OFFICERS 10

Section VIII(a). General 10
Section VIII(b). Number 10
Section VIII(c). Election, Terms, Removal 10
Section VIII(d). Resignation and Vacancy 11
Section VIII(e). Duties and Responsibilities 11
Section VIII(f). Compensation 12

TABLE OF CONTENTS (cont'd)

ARTICLE PAGE

IX. CONTRACTS, LOANS, CHECKS, PAYMENTS AND DEPOSITS 12

Section IX(a). General 12
Section IX(b). Contracts 12
Section IX(c). Loans 12
Section IX(d). Checks And Other Payments 12
Section IX(e). Deposits 12

X. LIABILITY, INDEMNIFICATION, INSURANCE 12

Section X(a). Liability 12
Section X(b). Indemnification 13
Section X(c). Scope of Indemnification 13
Section X(d). Insurance 13

XI. REGULATION 14

Section XI(a). General 14
Section XI(b). Governing Law 14
Section XI(c). Parliamentary Procedure 14

XII. AMENDMENTS AND CONFLICTS 14

Section XII(a). Amendments 14
Section XII(b). Conflicts 14

XIII. SEAL 14

XIV. DISSOLUTION 15

Section XIV(a). General 15
Section XIV(b). Distribution 15

BYLAWS
OF
ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

ARTICLE I
NAME

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

ARTICLE II
OFFICES

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

ARTICLE III
GENERAL

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

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

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

ARTICLE IV
PURPOSES, POWERS AND POLICIES

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

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

(i) Furthering the statutory objectives of the Department of Commerce, including: the stimulation of economic activity; the conservation, restoration and development of the natural and physical resources of the State; and the promotion of public interest in the development of the State through cooperation with public agencies, private enterprises, and charitable and social institutions;[1] and

(ii) Lessening the burdens of the Department of Commerce and other governmental entities in various ways, including but not limited to the following: by assisting in the attracting of new industry or the development of, or retention of, industry in the Ashley and Cooper Rivers basins area; by being an integral part of larger federal and state government programs responsible for developing, coordinating and/or funding programs designed to pair economic development needs with environmental needs; and by maintaining a close interrelationship with

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

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

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

1. Receiving funds from the Department of Commerce, *et al.*, and holding same in an interest-bearing account (the "Mitigation Trust Fund").

2. Identifying and selecting recipients of disbursements from the Mitigation Trust Fund, which recipients will include nonprofits which are licensed in South Carolina which have a demonstrated fiscal responsibility, which are capable of managing, or have managed, wetland and conservation properties in the South Carolina Low Country, and which have the ability to leverage grants/funds from the Corporation with matching funds. The selection of recipients and criteria for mitigation sites will be in accordance with the Governing Documents.

3. Using, distributing, disbursing amounts and/or issuing grants from the Mitigation Trust Fund solely for the purposes of acquisition of wetlands in The Ashley and Cooper Rivers basins for the purpose of perpetual preservation, enhancement or restoration of such wetlands. Receipt and retention of funds, distributions and disbursements will be made in accordance with the Governing Documents.

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

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

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

ARTICLE V
MEMBERS AND MEMBERSHIP

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

ARTICLE VI
BOARD OF TRUSTEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VII
MEETINGS OF BOARD AND COMMITTEES OF BOARD

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII
OFFICERS

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

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

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

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

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

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

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

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

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

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

ARTICLE IX
CONTRACTS, LOANS, CHECKS, PAYMENTS AND DEPOSITS

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

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

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

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

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

ARTICLE X
LIABILITY, INDEMNIFICATION, INSURANCE

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

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

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

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

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

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

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

ARTICLE XI
REGULATION

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

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

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

ARTICLE XII
AMENDMENTS AND CONFLICTS

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

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

ARTICLE XIII
SEAL

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

ARTICLE XIV
DISSOLUTION

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

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

ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

CERTIFICATION

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

ASHLEY-COOPER RIVERS
ENVIRONMENTAL TRUST

By: Nancy Elizabeth Vinson

Nancy Elizabeth Vinson
Its Secretary

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

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

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

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

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

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

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

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

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

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

IT IS AGREED as follows:

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

EXHIBIT
15-Beach
ENGAD 800-631-6989

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

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

a. Acquire or obtain protection for wetlands that are a part of an integrated ecosystem, particularly where adjacent or contiguous properties are already protected, thus consolidating the various protected parcels into larger ecological units.

b. Such acquisitions and protections would occur exclusively in watershed locations that include the Upper Cooper and Ashley River systems, including the east and west branches of the Cooper River, and the Four-Hole Swamp.

c. A preference is given to parcels adjacent to existing protected units, parcels of high ecological value, parcels with the potential to leverage other sources of conservation funding leading to matching funds and thus acquisition of larger tracts for the size of a given expenditure, and tracts that would consolidate wildlife corridors and leverage other conservation functions.

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

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

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

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

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

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

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

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

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

Dated this 6 day of April, 2005.

WITNESSES:

Jane E. Larson

Nancy E. Simon

THE COASTAL CONSERVATION LEAGUE

By: Dana Beach

Its: Executive Director

WITNESSES:

SOUTH CAROLINA DEPARTMENT
OF COMMERCE

By: _____

Its: Secretary of Commerce

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

Introduction

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

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

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

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

Summary of Plan Description

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

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

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

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

- The RFP to the nonprofits will provide the names, addresses and contact information for all parties responsible for mitigation and monitoring, and it will also require documentation of baseline conditions of the mitigation site.

- A specific description of the site conditions and appropriate location maps, and delineation maps, if available, will be requested in the RFP.

- Any existing conditions or vegetative communities affected by the proposed mitigation, as well as a narrative discussion of the key element of the proposed Mitigation Plan, will be required by the RFP and should be addressed by applicants for Mitigation Funding.

- In addition, a management plan, if necessary for maintenance of the proposed mitigation or for restoration will be contained in the RFP as a required unit.

- The Mitigation Plan does not preclude participation by any federal, state, or local agency wishing to answer the RFP, provided the agency works in conjunction with an appropriate nonprofit agency meeting all the requirements of the RFP.

- Other information that may be requested by the Board or required under a permit or certification.

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

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

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

a. Acquire or obtain protection for wetlands that are a part of an integrated ecosystem, particularly where adjacent or contiguous properties are already protected, thus consolidating the various protected parcels into larger ecological units.

b. Such acquisitions and protections would occur exclusively in watershed locations that include the Upper Cooper and Ashley River systems, including the east and west branches of the Cooper River, and the Four-Hole Swamp.

c. A preference is given to parcels adjacent to existing protected units, parcels of high ecological value, parcels with the potential to leverage other sources of conservation funding leading to matching funds and thus acquisition of larger tracts for the size of a given expenditure, and tracts that would consolidate wildlife corridors and leverage other conservation functions.

d. The intention of the parties is to distribute the Mitigation Trust funds within two to three years.

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

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

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

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

Subject Sites

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

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

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

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

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

Phased Approach

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

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

Duration

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF RESOLUTIONS
OF SOUTH CAROLINA
DEPARTMENT OF COMMERCE

I, Robert Faith, Secretary, South Carolina Department of Commerce, do hereby certify that, in accordance with powers vested in me as governing authority of the South Carolina Department of Commerce (the "Department of Commerce')[1], the following resolutions have been adopted by the Department of Commerce.

WHEREAS, the South Carolina Department of Commerce (the "Department of Commerce" or "Department") has undertaken the recruitment of a new industry group to the Ashley-Cooper Rivers basins area in Charleston County, South Carolina (the "Charleston County Site"), which group includes Vought Aircraft Industries, Inc. ("Vought") and which is expected to generate at least 645 new jobs in the Charleston County area;

WHEREAS, the development of the Charleston County Site will involve approximately 38 acres of fresh water wetlands that are not specifically tied to a riverine system and are thus isolated bogs associated with a former phosphate mining site;

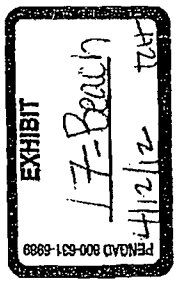
WHEREAS, in order to develop the Charleston County Site, permits and certifications and related authorizations must have been obtained from regulatory agencies, including a Clean Water Act ("CWA") Section 404 Permit (the "CWA Permit") issued by the U.S. Army Corps of Engineers (the "Corps"), and a CWA Section 401 Certification (the "CWA Certification") and Coastal Zone Management Certification (the "CZM Certification") issued by the South Carolina Department of Health and Environmental Control ("DHEC"); and as part of the permitting process, off-site mitigation for wetlands loss is required by the Corps and DHEC;

WHEREAS, the Department of Commerce has determined that mitigation is in the best interest of the State of South Carolina to preserve the aforementioned wetlands, and to satisfy the conditions required by the Corps and DHEC in order to develop the Charleston County Site;

WHEREAS, the Department of Commerce has concluded that, in order to address the aforementioned environmental and economic development needs of the State, there should be created an independent, autonomous, tax-exempt, South Carolina public benefit corporation for the purpose of assisting Vought, the Department of Commerce and other governmental and non-governmental organizations in their collaborative initiative to preserve and protect wetlands and other ecologically sensitive properties which may be impacted during development of the Charleston County Site;

NOW, THEREFORE, IT IS

RESOLVED, that, by virtue of the authority vested in me as Secretary, South Carolina Department of Commerce, I do hereby direct Legal Counsel, South Carolina Department of Commerce, or his/her designee, to take such steps as may be necessary to establish Ashley-Cooper Rivers Environmental Trust (the



[1] *See generally:* Title 1, Chapter 30, and Title 13, Chapter 1, Code of Laws of South Carolina, 1976, as amended.

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"Corporation") as an independent, autonomous, South Carolina public benefit corporation, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, the specific purpose of which Corporation will be to operate as a supporting organization exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, the South Carolina Department of Commerce. The mission of the Corporation will include but will not be limited to the following:

(i) Furthering the statutory objectives of the Department of Commerce, including: the stimulation of economic activity; the conservation, restoration and development of the natural and physical resources of the State; and the promotion of public interest in the development of the State through cooperation with public agencies, private enterprises, and charitable and social institutions;[2] and

(ii) Lessening the burdens of the Department of Commerce and other governmental entities in various ways, including but not limited to the following: by assisting in the attracting of new industry or the development or, or retention of, industry in the Ashley and Cooper Rivers basins area; by being an integral part of larger federal and state government programs responsible for developing, coordinating and/or funding programs designed to pair economic development needs with environmental needs; and by maintaining a close interrelationship with and working cooperatively with governmental units in order to carry out wetlands mitigation and related environmental programs, in compliance with federal, state and local law, regulations and oversight requirements.

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

1. Receiving funds from the Department of Commerce, *et al.*, and holding same in an interest-bearing account (the "Mitigation Trust Fund").

[2] *See generally*: Title 1, Chapter 30 and Title 13, Chapter 1, Code of Laws of South Carolina, 1976, as amended.

2. Identifying and selecting recipients of disbursements from the Mitigation Trust Fund, which recipients will include nonprofits which are licensed in South Carolina which have a demonstrated fiscal responsibility, which are capable of managing, or have managed, wetland and conservation properties in the South Carolina Low Country, and which have the ability to leverage grants/funds from the Corporation with matching funds. The selection of recipients and criteria for mitigation sites will be in accordance with the Governing Documents.

3. Using, distributing, disbursing amounts and/or issuing grants from the Mitigation Trust Fund solely for the purposes of acquisition of wetlands in The Ashley and Cooper Rivers basins for the purpose of perpetual preservation, enhancement or restoration of such wetlands. Receipt and retention of funds, distributions and disbursements will be made in accordance with the Governing Documents.

RESOLVED, FURTHER, that subject to oversight authority by its Chairman, the Board of Trustees (the "Board") shall be the governing body of the Corporation. The intent is that Vought and other members of the governing body of the Corporation have a controlling voice in the policies, programs and activities of the Corporation, including the recommendation, timing and distribution of grants from the Mitigation Trust Fund, the manner of making them, the selection of recipients, and in otherwise directing the use of the income or assets of the Corporation – all in accordance with the Governing Documents.

The Board shall consist of thirteen (13) members, all of whom shall be appointed by the Department of Commerce, as follows:

- One (1) person recommended by the U.S. Fish and Wildlife Service (the "FWS") as a representative of the Corps;
- One (1) person recommended by the national Oceanic and Atmospheric Association ("NOAA") as a representative of NOAA;
- Two (2) persons recommended by the South Carolina Department of Health and Environmental Control ("DHEC"), at least one of whom is from the Office of Ocean and Coastal Resource Management, and both of whom are representatives of DHEC;
- One (1) person recommended by the South Carolina Department of Natural Resources ("DNR") as a representative of DNR;
- One (1) person recommended by the South Carolina Conservation Bank (the "Conservation Bank") as a representative of the Conservation Bank;

- Three (3) persons recommended by the South Carolina Coastal Conservation League ("SCCL") as representatives of SCCL; and

- Four (4) persons recommended by Vought Aircraft Industries, Inc. ("Vought"), as representatives of Vought.

RESOLVED, FURTHER, that Legal Counsel of the Department of Commerce and/or his/her designee(s) shall be, and hereby are, authorized (i) to file Articles of Incorporation of the Corporation; (ii) to provide the appointees with notice of their respective appointments as Chairman and members of the Board of Trustees of the Corporation; (iii) to obtain determination(s) in connection with the federal income tax-exempt status of the Corporation; and (iv) to take such additional steps and obtain such other determinations, rulings and opinions as may be necessary and in the best interests of the Department of Commerce and the Corporation in order to complete the organization and establishment of the Corporation.

IN WITNESS WHEREOF, this Certificate of Resolutions has been executed this 6th day of May, 2005.

Witnesses:

Vicki S. Woods

SOUTH CAROLINAL DEPARTMENT OF COMMERCE

By: Robert A. Faith

Robert Faith, Secretary

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me the undersigned witness, who, being first duly sworn, states that (s)he saw the within named South Carolina Department of Commerce, by Robert Faith, its Secretary, sign, seal and as its act and deed deliver the within Certificate of Resolutions, and that (s)he, with the other witness whose name is subscribed above, witnessed the execution thereof.

Witness

SWORN TO before me this

6 day of May, 2005.

Vicki S. Woods (L.S.)
Notary Public for South Carolina

My Commission expires: April 6, 2015

ATTACHMENT TO FORM 1023

August 5, 2005

ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

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

INITIAL OFFICERS AND TRUSTEES

EXHIBIT F

#642868

EXHIBIT
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ASHLEY-COOPER RIVERS ENVIRONMENTAL TRUST

INITIAL OFFICERS AND TRUSTEES

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

Exhibit F

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

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

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

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

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

1. Applicant: Vought Aircraft Industries, Inc.

2. Location and Project Description:

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

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

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

3. Project Purpose:

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

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

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

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

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

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

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

B. Coastal Zone Management (CZM) consistency/permit: The CZM consistency determination was issued on April 8, 2005, with conditions.

C. Other authorizations: Pursuant to the S.C Storm Water Management and Sediment Reduction Act, a land disturbance permit was issued on February 28, 2005, with conditions.

7. Date of Public Notice and Summary of Comments:

A. Pre-application meeting(s): The Corps attended two pre-application meetings to discuss the proposed project.

B. Important dates: The Corps received the application on December 23, 2004. The Corps requested additional information on December 28, 2004, which was received on January 4, 2005. The Corps considered the application complete on January 4, 2005. The Corps issued a public notice on January 7, 2005, and sent this notice to all interested parties including appropriate State and Federal agencies.

C. Public notice comments: The Corps has reviewed all of the comments submitted in response to the circulation of the public notice. The Corps has summarized these comments below:

1) U.S. Environmental Protection Agency (EPA): No comments were received.

2) U.S. Fish and Wildlife Service (USFWS): USFWS stated that existing wetland resources were previously impacted by mining. However, the remaining wetlands contribute to the overall integrity of the system and their loss would facilitate the continual degradation of natural resources in the area. USFWS stated that these areas perform important water quality functions that include retention of stormwater runoff, flood water abatement and groundwater recharge. In addition, onsite wetlands and uplands provide habitat for wildlife.

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

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

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

4) S.C. Department of Natural Resources (SCDNR): SCDNR stated that the project site has been historically altered by phosphate mining, road construction, ditching, and draining. SCDNR believes that the remaining onsite wetlands will provide little mitigation value because they will be fragmented and will retain few characteristics of their current function and value. They recommended that the applicant submit a detailed mitigation plan to be reviewed and approved by the regulatory and resource agencies. SCDNR stated that it is difficult to show reasonable avoidance and minimization without specific construction proposals. They stated that a worst case scenario can be permitted provided that the permit is conditioned to address avoidance and minimization of wetland impacts from future expansion and growth. They also recommended that the proposed work be phased so that impacts associated with future activities will not occur until specific plans are known.

5) State Historic Preservation Officer (SHPO): No comments were submitted in response to the public notice. However, SHPO met with the permittee to discuss the proposed project and determined that an archeological survey is not required because the majority of the project site was previously impacted by phosphate mining in the late 19th and early 20th century. The remainder of the project site is either wetlands or areas that exhibit relatively low potential for archeological resources. SHPO asked that they be notified immediately if any archeological materials are discovered during construction.

6) Organizations: Two recognized Indian Tribes, Eastern Shawnee Tribe of Oklahoma and Catawba Indian Nation, advised this office that they have no concerns with regard to known cultural properties or sites associated with the proposed work. However, they requested to be notified if Native American archaeological sites and/or human remains are discovered during the construction of the proposed work.

7) Individuals: Ms. Jean Everett of the College of Charleston Biology Department stated that the onsite wetlands include a rare and valuable plant community that typically does not occur on the coastal plain. She stated that the clayey soil found on the project site has high levels of calcium and magnesium and supports a unique plant community, which will be difficult to mitigate offsite because of the unusual soil type. Ms. Everett strongly opposes the filling of any wetlands and volunteered to assist in identifying rare and sensitive plant communities onsite.

8) Others Including Internal Coordination: CESAC-TS-ON and CESAC-PM offered no objections to the proposed work. CESAC-TS-DH stated that onsite wetlands provide stormwater storage and conveyance of offsite stormwater through the project site. In

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) U.S. Fish and Wildlife Service (USFWS): In a letter dated, March 30, 2005, USFWS removed their objections to the revised project based on the reduction of wetland impacts and the increase in onsite wetland mitigation. In addition, USFWS stated that their concerns regarding the off-site compensatory mitigation plan have been addressed.

2) National Marine Fisheries Service (NMFS): In a letter dated, March 30, 2005, NMFS removed their objections to the revised project. NMFS stated that they support the current plan of action to offset wetland losses and they look forward to participating in the interagency committee that will oversee mitigation planning.

3) S.C. Department of Natural Resources (SCDNR): SCDNR removed their objections to the revised project based on the information that was provided in our March 18, 2005, letter. According to SCDNR, this additional information adequately addressed the issues raised in their February 4, 2005, letter.

4) Individuals: Ms. Everett continues to object to the revised project based on the loss of the rare plant community that is located on the project site. According to Ms. Everett, southern sugar maple is present on the project site and is often associated with rare and threatened plant species. Ms. Everett has attempted to get permission to survey the project site and has stated that she cannot withdraw her objections, until she can determine whether the project site supports endangered plant species.

5) Others Including Internal Coordination: CESAC-TS-DH requested that a permit condition be included in the permit that requires the permittee to implement and maintain

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

8. Project Impacts:

A. Direct (Primary) Impacts: Direct project impacts include the placement of fill material in 38.33 acres of waters of the United States and the relocation of an existing jurisdictional ditch. The first phase of development consists of the placement of fill material in 8.33 acres of jurisdictional wetlands. This phase consists of 770,000 square feet of buildings, parking areas, taxiways, and necessary utilities. Since future phases of the facility will support the construction of aircraft that are still in the design phase, there is some uncertainty regarding the overall size of future buildings. The second phase of the facility is expected to impact 9.25 acres of wetlands, and the third phase is expected to impact 20.75 acres of wetlands. Site clearing and grading will be limited to the footprint of the current phase of development.

B. Indirect (Secondary) Impacts: Indirect project impacts include the relocation of the existing rental car facilities on the project site to upland sites located on the opposite side of International Boulevard. Underground storage tanks associated with the rental car facilities onsite will be closed and removed in accordance with SCDHEC regulations. The project site is currently served by water and sewer facilities, and will not require any upgrades offsite.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Mitigative Measures and Alternatives Analysis:

A. Avoidance: The location of the proposed facility on the project site is limited because of existing airspace and radar restrictions. In addition, the logistics associated with transporting relatively large aircraft parts and the assembled aircraft fuselage require that the buildings are located close to the airport runway so that the LCF can reach the facility by taxiway. The proposed impacts to waters of the United States are not considered avoidable because of the logistics of the manufacturing process and the overall site requirements for each phase of development.

B. Minimization: Efforts to minimize impacts to aquatic resources include eliminating four buildings/warehouses that that were included in the original proposal and concentrating the overall site plan. In addition, the applicant eliminated the railroad spur because the LCF is expected to carry manufactured parts and the completed fuselage section. The

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

C. Compensatory Mitigation: Impacts to aquatic resources that could not be avoided or minimized will be mitigated by preserving 17.77 acres of jurisdictional wetlands onsite and 2.53 acres of upland buffers onsite. In addition, the permittee plans to implement an offsite mitigation plan that consists of preserving wetlands and upland buffers, implementing wetland restoration plans, and/or purchasing conservation easements that would protect wetlands from future development. The permittee plans to create a committee that will accept and review proposals to purchase land and/or conservation easements. The South Carolina Department of Commerce has agreed to establish a $4.75 million fund that will enable the permittee to meet the mitigation requirements for the project. The permittee will obtain authorization from the Corps to implement a specific proposal prior to committing any of these resources. The Corps plans to forward each of the mitigation proposals to the other regulatory and resource agencies that participated in the review of the project for comment prior to making a decision whether to approve or deny a specific mitigation proposal. The Corps' compensatory mitigation SOP suggests that approximately 450 mitigation credits will be required to offset the project impacts. According to the mitigation plan, the fund will enable the permittee to preserve and buffer more than 1,000 acres of wetlands and other aquatic resources. Therefore, the Corps believes that the mitigation plan will generate more than three times the number of mitigation credits that would typically be required for the project impacts.

D. Conclusions of Alternatives Analysis: It has been determined that there are no practicable alternatives to the discharge that would have less adverse impact on the aquatic ecosystem. The basic purpose of the discharge was considered to be non-water dependent (see Item 3A). Based on this determination, this office presumed that practicable alternatives that did not involve a discharge into a special aquatic site were available and would have less adverse impact on the aquatic ecosystem unless clearly demonstrated otherwise. As described above, the applicant has provided additional information on three alternative sites that were considered. One of the alternative sites required the placement of fill material in almost 200 acres of jurisdictional wetlands. In the event that public roads could be relocated to avoid and minimize impacts to waters of the United States, there were additional concerns that the adjacent rural community would not be capable of supporting the operation of an industrial facility or providing a suitable work force. Another alternative site required the placement of fill material in more than 50 acres of jurisdictional wetlands and estuarine waters of the United States and is located in a flood prone area that is subject to flooding. The third alternative site required the placement of fill material in more than 10 acres of jurisdictional wetlands and more than 5,000 linear feet of perennial streams. In addition, this site is not currently available because of bankruptcy proceedings associated with previous user of the site. Based on this information, the proposed site is considered the least environmentally damaging practicable alternative.

10. Public interest review:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Determinations:

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

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

1). The proposed alternative is the least environmentally damaging and practicable alternative after consideration of cost, existing technology, and logistics in light of overall project purpose.

2). The proposed alternative does not;

a. Violate any applicable State water quality standard;

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

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

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

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

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

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

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

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

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

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

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

13. Special Conditions:

a. **That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.**

b. **That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work <u>and any required mitigation</u>. The certification will include:**
    1. **A copy of this permit;**
    2. **A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;**
    3. **A statement that any required mitigation was completed in accordance with the permit conditions;**
    4. **The signature of the permittee certifying the completion of the work and mitigation.**

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

d. **That the permittee will take all appropriate action to ensure that the $4.75 million mitigation fund is established as described in the mitigation plan and Memorandum of Agreement (MOA). In accordance with the MOA, dated April 6,**

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

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

f. That all proposals submitted by the permittee must include assurances that normal, necessary, and reasonable costs associated with establishing wetland mitigation areas such as wetland surveys, land surveys, legal fees, clearing grading, vegetative planting, preparation and submittal of mitigation monitoring reports, etc. are fully funded.

g. That the permittee will participate in the mitigation committee and will facilitate the committee's efforts to evaluate proposals to preserve wetlands, enhance wetlands through the preservation of upland buffers, and restore wetlands by implementing approved wetland restoration projects, so that the mitigation plan is implemented in a timely manner. If the permittee is unable to execute the mitigation plan within three years of the date of issuance of this permit, the permittee will actively work with the Corps of Engineers to develop an alternative plan to accomplish the necessary mitigation.

h. That as compensatory mitigation for the impacts to aquatic resources, the permittee will preserve 17.77 acres of unaltered wetlands and 2.53 acres of upland buffers. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.

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

j. That the permittee must use appropriate erosion control measures to ensure that sediment does not migrate from the project site into adjacent wetlands or other aquatic resources. The permittee must routinely monitor and maintain these erosion control measures to ensure they are working properly. In the event that

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

PREPARED BY:

Nathaniel I. Ball
Project Manager
Permits Branch

REVIEWED BY:

Travis G. Hughes
Chief, Permits Branch

APPROVED BY:

April 8, 2004

Tina B. Hadden
Chief, Regulatory Division

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

A copy of the NAO was attached to the letter.

Worth
Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH
WASHINGTON, DC

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GARY W. MORRIS
DIRECT DIAL NUMBER 803.540.7961
gmorris@hsblawfirm.com

September 26, 2011

Department of the Army
Charleston District, Corps of Engineers
Attn: Nat Ball
69-A Hagood Avenue
Charleston, SC 29403-5107

Re: Department of the Army Permit 2004-1N-402 (the "Permit")
HSB File No: 30387.4

Dear Ms. Hadden:

This letter is in regard to the above-referenced Permit, with respect to which Vought Aircraft Industries, Inc. ("Vought") previously requested a transfer to Boeing Commercial Airplanes Charleston, Inc. ("Boeing") by letter dated July 31, 2009.

The Army Corps letter dated October 16, 2009 indicated that Vought was required to satisfy Special Conditions f. and g. of the Permit by identifying one or more appropriate mitigation activities and distributing the remaining mitigation funds. These funds were held by the Ashley-Cooper Rivers Environmental Trust ("ACRET"). At this time, ACRET has distributed the remaining funds in consultation with the Army Corps, and ACRET has been dissolved by its board of directors.

Enclosed for your review are (1) a letter dated August 25, 2011 (erroneously referencing August 25, 2010) from Audubon South Carolina acknowledging the receipt of $73,573.81 for the purchase of 29.815 mitigation credits from the Beidler Forest Mitigation Bank (the final distribution for mitigation purposes from ACRET), (2) minutes of the meetings of the ACRET board of directors on August 9, 2011 and September 8, 2011, (3) the plan of dissolution for ACRET that the board of directors adopted, and (4) articles of dissolution of ACRET as filed with the South Carolina Secretary of State.

In addition, following is a summary of the distributions that ACRET made for mitigation purposes:

Distributions to National Audubon Society/Audubon South Carolina:

- $1,000,000 on 9-25-2007 f/b/o Audubon Project re Mims Tract. Paid to Buist, Moore, Smyth and McGee Law Firm for closing.
- $1,000,000 on 9-25-2008 f/b/o Audubon Project re Grooms-Hoover Tract. Paid to Hagood & Kerr Law Firm for closing.
- $32,000 on 6-30-2009 f/b/o Audubon Project re Grooms -Hoover Tract. Payment of loan to cover land appreciation between initial agreement and closing.
- $70,000 on 2-10-2010 f/b/o National Audubon Society for wetlands mitigation re the Pine Haven Tract. Paid to Buist, Moore, Smyth and McGee Law Firm for closing. This distribution was from accrued interest.
- $73,573.81 on 8-25-2011 f/b/o Beidler Forest Mitigation Bank.

Distributions to Ducks Unlimited:

- $462,005 on 10-30-2007 f/b/o Ducks Unlimited re Millbrook Plantation. Paid to Barr, Unger & McIntosh Law Firm for closing.
- $2,000,000 on 11-01-2007 f/b/o Ducks Unlimited re Poplar Grove. Paid to DU account at First Tennessee Bank.
- $281,250 on 4-30-2008 f/b/o Ducks Unlimited re wetlands mitigation/restoration through Pigeon Pond Mitigation Bank.
- $80,000 on 12-30-2009 f/b/o Ducks Unlimited for wetlands mitigation RE the Swamp Tract. Paid to Dorcas M. Tuten, Esquire for closing. This distribution was from accrued interest.

TOTAL DISTRIBUTIONS FOR MITIGATION PURPOSES: $4,998,828.81

Please let me know when you have had an opportunity to review this information, and feel free to contact me with any questions. Otherwise, we respectfully request final approval of the mitigation for the wetlands and the transfer of the Permit from Vought to Boeing.

Yours truly,

Gary W. Morris

Enclosures

cc: Newt Newton (nnewton@triumphgroup.com) (w/o enclosures)
Nancy Vinson (nancyv@scccl.org) (w/o enclosures)
John Wright (jwright@triumphgroup.com) (w/o enclosures)
Kathryn Musser (kmusser@triumphgroup.com) (w/o enclosures)

EXHIBIT 9

Nature and Community in Balance

Winter 2006 • Volume 17 No.4

Coastal Conservation League

Special Report on Transportation Reform

Illustration by Lisa Hanes

Can SCDOT be tamed?

4 *Roads to Ruin*

6 *Just Say No*

9 *People Will Walk*

10 *Time for Reform*

11 *Get on Board!*

LIVE OAK SOCIETY

Contributions Received from November 1, 2005 - October 31, 2006

The Coastal Conservation League works very hard to ensure that all donor names are listed correctly; however, occasional mistakes do occur. Please contact the Development Office at (843) 723-8035, ext. 1103 with any questions or corrections.

10,000+

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COASTAL LEGACY SOCIETY

The Coastal Legacy Society honors those who have provided for the Coastal Conservation League through their wills or estate plans. By making a gift to the Coastal Legacy Society, you will join this group of extraordinary individuals in their commitment to protect the Lowcountry for generations. If you are interested in finding out more about naming the Coastal Conservation League in your will or estate plans please contact Development Director, Cathy Forrester at (843) 723-8035, ext. 1100.

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Ellen and Mayo Read
Mr. and Mrs. John J. Tecklenburg
Janis Hammett Wegman and Charles Wegman

SCCCL 0384

Nature and Community in Balance

Summer 2007 • Volume 18 No. 2

Coastal Conservation League

Great Egret *(Ardea alba)* in Breeding Plumage - 1st place winner of Conservation League digital photo contest.

3 *Action on Climate Change*

4 *Victory on the Ashley*

6 *How Will Yemassee Grow?*

10 *General Assembly Goes Green*

12 *Women Rule in Horry!*

Live Oak Society

Contributions Received from May 1, 2006 - April 30, 2007.

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SCCCL 0428

Jess Barton Wins Environmental Service Award

(L-r) Jess Barton with Conservation League Membership Director Nancy Cregg.

Recent College of Charleston graduate Jess Barton won the 2007 Dana Beach Outstanding Service Award, given each year by the Masters of Environmental Studies Students Association (MESSA) in honor of the founder and director of the Coastal Conservation League, Dana Beach.

Founder of a student League chapter at the college, Jess recruited 40 active members and more than 800 students to the League's Action Network email list. Working with Membership Director Nancy Cregg, she also enlisted students in a variety of activities – from lobbying the state legislature in Columbia to establishing a Sustainable Campus Initiative at the College. The League extends its heartfelt congratulations and thanks to Jess.

$500 - $999

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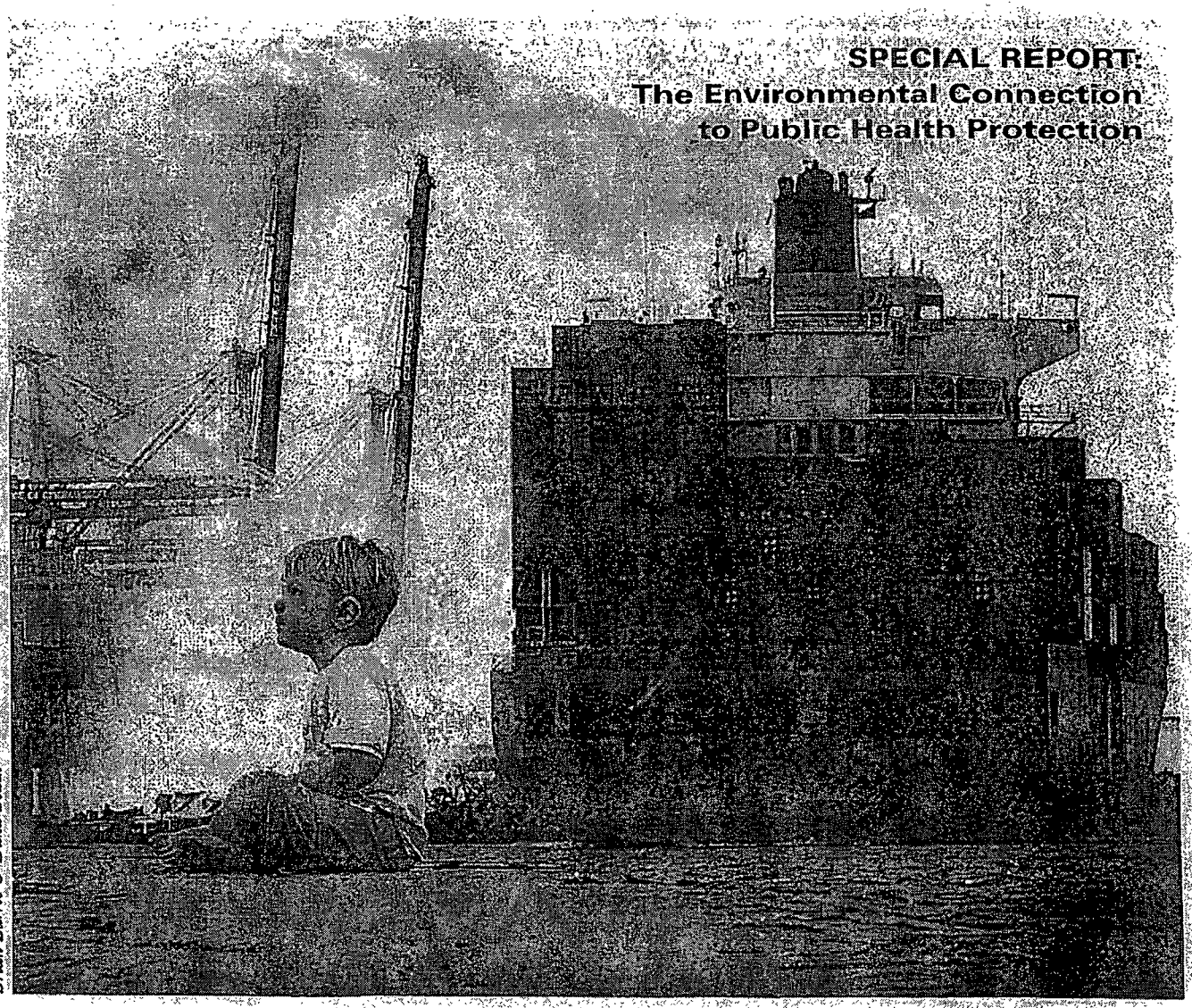
Nature and Community in Balance

Fall 2007 ▪ Volume 18 No.3

Coastal Conservation League

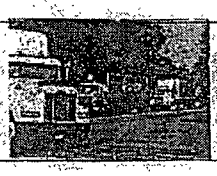
SPECIAL REPORT: The Environmental Connection to Public Health Protection



Brian Barrie & Dana Beach

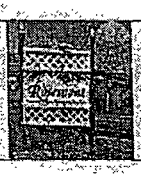
Is Our Air Safe to Breathe?

F *Charleston earns an "F" in air quality* 4



6 *Diesel Danger Zone*

Coal Mountain 8



10 *Communities Speak Out*

What You Can Do 12

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Winter 2007 ▪ Volume 18 No.4

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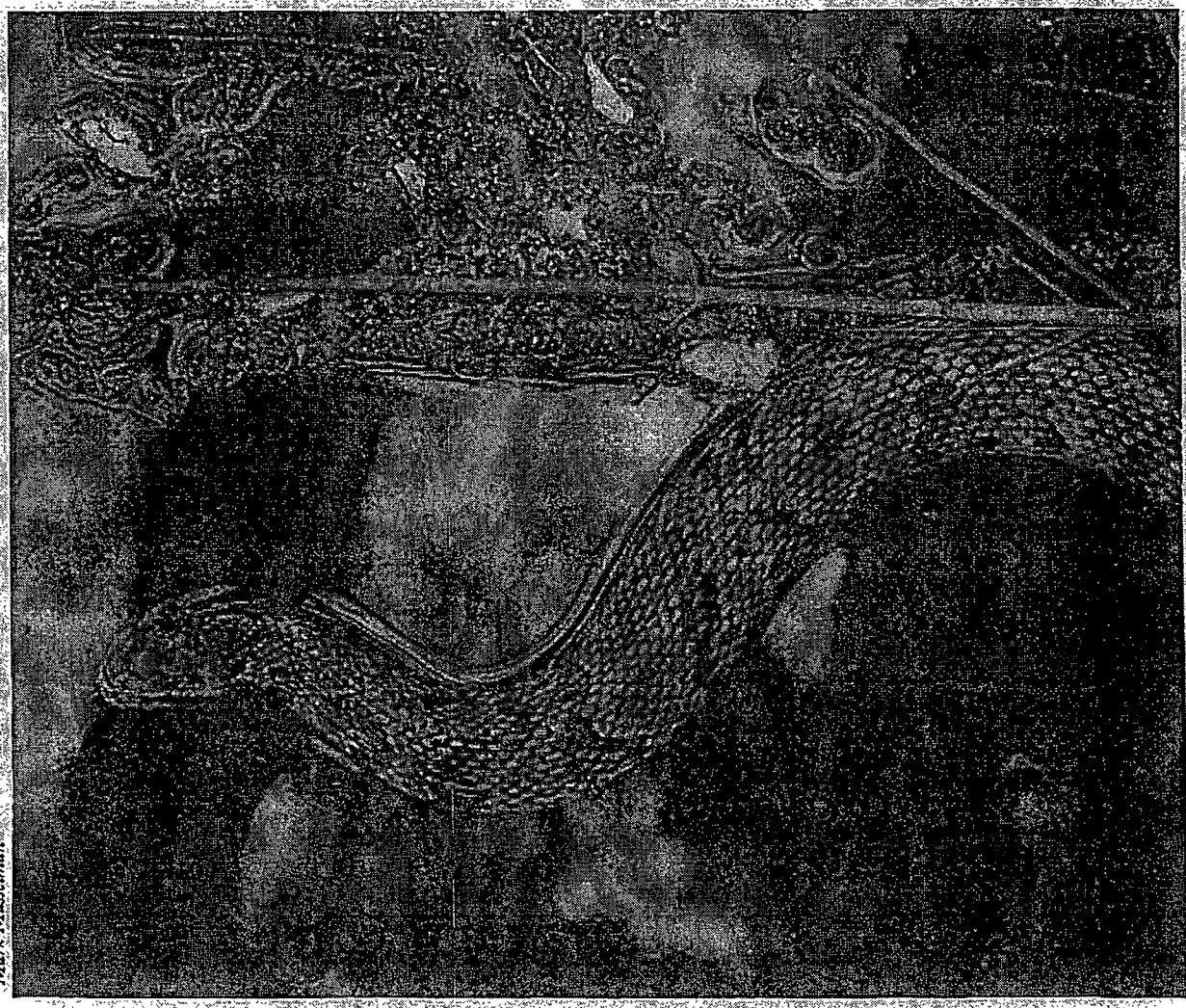

Mark Musselman

A water moccasin moves through the Francis Beidler Forest (see page 3).

Annexation Reform 4

6 A Greenbelt Grows

Saving Georgetown County 10

TAX 12 Taxpayer Protection Act

Henry Fair 14

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Live Oak Society

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Mr. William J. Hennessy, Jr.
Mr. Fred B. Herrmann
Mr. Edwin Hettinger and Ms. Beverly Diamond
Hilton Head Island Audubon Society
Mr. and Mrs. Keith Hinson
Mr. and Mrs. John Adams Hodge
Mr. and Mrs. Steve Hoffius
Mr. J. W. F. Holliday
Mr. and Mrs. Peter M. Horlbeck
Mr. and Mrs. Calvert W. Huffines
James and Page Hungerpiller
Stephanie and Noel Hunt
Mr. Leroy Hutchinson and Ms. Julia Eichelberger
Ms. Mary Pope M. Hutson
Mr. H. W. Igleheart
Mr. and Mrs. Charles R. Jackson, Sr.
Mr. and Mrs. George R. Johnson
Ms. May Jones
Dr. and Mrs. Robert M. Jones
Dr. and Mrs. Kenneth S. Kammer
Mr. and Mrs. James E. Kistler
Mrs. Dudley Knott
Mr. Ed Kozek
Melissa and Michael Ladd
Mr. and Mrs. Joseph Landing
Mr. Terrence C. Larimer
Dr. and Mrs. Richard M. Lawson
Mr. and Mrs. Wood N. Lay
Robert and Dione Leak
Mr. and Mrs. Dennis J. Lee
Mr. and Mrs. Edward P. Leland
Elizabeth C. Rivers Lewine Endowment
Mr. and Mrs. Lanneau D. Lide
Mr. David Lott
Mrs. Walden E. Lown
David Lyle and Anne Aaron-Lyle
Ms. Lee Manigault
Mrs. Patti Manigault
Dr. G. Alex Marsh
Mr. Miles H. Martschink
Dr. and Mrs. Brem Mayer
Rudolph and Beverly Mayer
Mr. and Mrs. Francis X. McCann
Mrs. Frank M. McClain
Pat F. and Suzanne C. McGarity
Mr. and Mrs. James D. McGraw
Ms. Christie McGregor
Mr. and Mrs. Harry M. McHugh
Mr. and Mrs. Earl McMillen III
Mr. and Mrs. John A. Mills III
Mr. and Mrs. John M. Mirsky
Mrs. Mary Alice Monroe and Dr. Markus Kruesi
Mr. Hugh C. Morrison
Mr. and Mrs. C. Lawrence Murphy
Dudley and Ann Myers
Mr. and Mrs. Frank W. Norvell
Norvell Real Estate Group, LLC
Dr. and Mrs. Alan I. Nussbaum
Mr. and Ms. Robert M. Ogden III
Mr. and Mrs. Robert M. Ogilvie
Dr. and Mrs. J. David Osguthorpe
Mrs. Heather R. Osterfeld
Mr. and Mrs. Coleman C. Owens
Mr. Lucas C. Padgett
Dr. and Mrs. B. Daniel Paysinger
Mr. John E. Perry
Ms. Cynthia Powell
Mr. Frank W. Rambo
Mr. and Mrs. Ernest L. Ransome III
The Honorable Arthur Ravenel, Jr.
Mr. and Mrs. Thomas R. Rensberry
Dr. and Mrs. James C. Reynolds
Dr. Georgia C. Roane
Robert L. Huffines, Jr. Foundation, Inc.
Dr. and Mrs. Mark H. Salley
Mr. Richard B. Saxon
Mr. and Mrs. M. W. Schenck
P. Gren Schoch
Dickie and Mary Schweers
Sea Biscuit Café
Mr. Grant G. Simmons, Jr.
Dr. and Mrs. William M. Simpson, Jr.
Mr. G. Dana Sinkler
Dr. Cynthia P. Smith
Mr. and Mrs. Gary Smith
Mr. and Mrs. Henry B. Smythe, Jr.
Dr. and Mrs. J. Richard Sosnowski
Dr. and Mrs. Mark C. Stamey
Col. and Mrs. Walter C. Stanton
Summit Area Public Foundation
The Surkin Family Charitable Fund of the Schwab Charitable Fund
Mr. and Mrs. Robert J. Sywolski
Mr. and Mrs. Thomas Terebus
The Barker Welfare Foundation
Mr. Landon K. Thorne III
Mr. and Mrs. F. David Trickey
Tom Uffelman and Patty Bennett
United Way of the Piedmont
Mr. and Mrs. Beekman Webb
Mr. and Mrs. Charles Webb
Sally Webb
Dr. and Mrs. James D. Wells
Ms. Sheila Wertimer and Mr. Gary Gruca
Mr. and Mrs. Frederick H. West
Dr. William Westerkam and Ms. Kirsten Lackstrom
Mr. Roger White and Dr. Deanna Jackson
Dr. Dara H. Wilber
Ms. Margaret A. Williams
Mr. B. F. Williamson
Mr. and Mrs. John Winthrop
Dr. Henry P. Worrell
Ms. Martha C. Worthy

Live Oak Society

EXHIBIT 10

1 asked by Jim Hodge to lead the effort to get the
2 legislation passed in the legislature. I assisted
3 my brother in that, and the League lobbied heavily
4 with legislature to pass that legislation.
5 After it was passed, we had an annual event
6 of trying to make sure we had funding for the
7 Conservation Bank. And I worked pretty closely
8 with the League and other conservation groups and
9 interested parties to do that. My third hat is I'm
10 in the real estate business. And if you're in the
11 real estate business, both as a broker and as a
12 developer, you're involved in lots of issues with
13 wetlands, zoning, permitting, and things like that.
14 And so, you know, I have that normal real estate
15 business relationship with the regulatory agencies
16 that Dana Beach and the Conservation League get
17 involved with it. And so those are the three areas
18 where I have involvement.
19 Q. Okay.
20 A. Well, I would say a fourth. I'm a
21 contributor, so I'm a member.
22 Q. Tell me about what your understanding of the
23 current -- by current, I mean, now and for the last
24 ten years. So what it was originally, I'm not so
25 much interested in, but just in the last decade or

1 so. What has been Mr. Beach's role in the
2 operation of the Coastal Conservation League as you
3 understand it?
4 A. He runs it.
5 Q. Does he have a board that he has to work
6 with or is it pretty much just his decision?
7 A. Oh, no. I would say that I think at one
8 time -- you know, he started it. He picked the
9 board, but now I think the board is
10 self-perpetuating, and, you know -- but I haven't
11 been on the board in a long time. I don't know. I
12 do know this, that he has a staff of people, and I
13 believe more and more as they have gotten larger
14 and larger, Dana has not been as day-to-day as he
15 once was.
16 Q. Do you know, do they have regular staff
17 meetings? Do you know anything about how they
18 operate?
19 A. I don't know how they operate.
20 Q. All right. You mentioned that you are a
21 contributor of -- do you know, does the League
22 characterize its contributors by category? Do they
23 have like large contributors?
24 A. They have large contributors and small
25 contributors.

1 than that, they -- do they involve themselves in
2 lobbying political officials for certain goals that
3 they have?
4 A. Certainly.
5 Q. Have you been involved with the League in
6 any of its activities in the Awendaw area of the
7 town -- of these actual corporate limits of
8 Awendaw, and what I would just generally call the
9 Awendaw area between Mount Pleasant and the Santee
10 River?
11 A. Not with the League. But I'm also on the
12 board of the Gaylord and Dorothy Donnelley
13 Foundation, and we have been a supporter of the
14 Sewee to Santee Initiative. And Noel Thorn is a
15 consultant to the Donnelley Foundation. To that
16 extent, but my -- no, I'm not involved in any
17 day-to-day activities and haven't participated
18 personally in any of those meetings.
19 Q. Okay. That may presuppose the answer to my
20 next questions, but not entirely, so I will go
21 through them anyway.
22 There was a White family -- Louis White, who
23 is still alive. I think he's in his mid 80s now.
24 A. Uh-huh.
25 Q. Still has property there and was attempting

1 speak to what he thought. I don't know.
2 Q. No, I'm not. I'm asking you whether --
3 A. If you're asking me was there a union of
4 opposition to the development of the Keystone
5 tract, answer is yes.
6 Q. How did you come to know that?
7 A. Because, you know, I'm in the middle of it.
8 In every aspect of it. First, I was -- I had --
9 was involved first as advising the Nature
10 Conservancy in the real estate function because the
11 Nature Conservancy was interested in buying the
12 Keystone tract.
13 Secondly, I had already been involved in two
14 transactions with International Paper Realty. You
15 know, they were constantly changing. Okay. And I
16 was representing Mike Bennett, who was interested
17 in buying a -- and was successful, through my
18 efforts, to buying a small piece that was on his
19 side of 41 with International Paper. So I was in
20 contact with International Paper in my capacity as
21 a real estate agent. And I was also working with
22 Mepkin Abbey in my capacity as a board member of
23 the Center for Humans and Nature, which was an
24 entity that was set up by Strone Donnelley, who is
25 now deceased, who was working with Francis Kline.

1 And Francis Kline was also on the board of the
2 Gaylord and Dorothy Donnelley Foundation. So those
3 are the connections I have.
4 I guess there's another connection. I grew
5 up in downtown Charleston. So I was friends with
6 the Cohens, Wayland Cato lives next door to my
7 mother, Bob Royall worked for my father for
8 40 years. I grew up with the Stoneys. I call
9 Judge Stoney Bubba even when I was on jury duty.
10 I'm from here. I know everyone. What can I say?
11 Q. Do you know Fred Lincoln by the way?
12 A. I do know Fred.
13 Q. Tell how you know Mr. Lincoln.
14 A. My father was great friends with Bill
15 Detyens. And Bill Detyens lived at Rebellion
16 Farms. And Fred Lincoln befriended Bill. And Bill
17 in turn gave Fred and that community the land where
18 they had a volunteer fire department before they
19 built the extension in the Mark Clark. And when
20 Bill was basically dying of cancer, Fred was -- he
21 was a frequent visitor to Bill. He was very
22 appreciative of Bill's gift and that's how I met
23 him.
24 Q. Fred has been described to me as a leader in
25 the community along Highway 41 in that part of

1 A. No. You know, I'm probably the only person
2 on that board who had had a lot of real estate
3 experience and knew how to do leverage
4 conservation. A lot of people deferred to my
5 judgment as to how you get things done, and what I
6 was able to do was get private dollars in, I was
7 able to get federal dollars in, I was able to get
8 foundation dollars in, I was able to get people to
9 donate easements, and to put together a larger
10 project that wouldn't have been -- you know,
11 because the way that the regulatory agencies go
12 about their business, they just write a check and
13 hand it to the guy. And that's -- and they don't
14 know how you can go and say I might write you a
15 check, but I'm not going to give you 100 percent.
16 How much are you going to put in there? And then
17 you use that as a fundraising tool. And I
18 literally went out and raised money to get these
19 dollars matched by private individuals,
20 foundations.
21 Q. So you had -- ACRET had $4.75 million of
22 state money, right?
23 A. Yes.
24 Q. And you were able to then get other money to
25 match that?

1 A. Yeah. Very complicated and complex
2 transaction.
3 Q. You are telling me something I didn't know.
4 In spite of the thousands of pages of --
5 (Exhibit No. 5 was marked for
6 identification.)
7 Q. This comes from the thousands of pages of
8 information. Something called the CERES
9 Foundation.
10 A. That is correct.
11 Q. Is this some of the money that you were
12 talking about?
13 A. Yes.
14 Q. Were you reasonable for arranging for this?
15 A. Yes.
16 Q. Who is the CERES Foundation?
17 A. It is a family originally from Connecticut
18 who owns some land in Beaufort County, and they are
19 very philanthropic.
20 Q. How much all together was raised that became
21 part of ACRET?
22 A. Well, it didn't become part of ACRET. ACRET
23 was totally separate. We simply -- you know, it's
24 not how you do the deal -- where do I start.
25 Q. Wherever you think best. It's an important

1 explanation of what happened. It's important to
2 me.
3 A. I mean, if you want to understand
4 conservation, I guess I will start at the
5 beginning. It was the -- I have a good memory, but
6 sometimes I can't remember the date exactly. My
7 brother-in-law, Weldon Shank, shot a deer on a deer
8 hunt, and we threw the deer in the back of the car,
9 and I went down to Cordray's to go get the deer
10 processed. And Michael Cordray came out there and
11 said, have you heard about what's going on in the
12 Ashley River and the Poplar Grove deal and this and
13 this and this and this and this. And Weldon said,
14 oh, yeah, you ought to get Charles involved because
15 he did the ACE Basin and everything like that.
16 Next morning, 8:00, Michael Cordray is on
17 the phone with me. And he said, what are we going
18 to do about this? I said, well, you know, I know
19 Hank and I know Mike. Let me go talk to them. So
20 Edwin Cooper and I went over there and talked to
21 them. And they go, what are you going to offer me
22 as an alternative to what I got? I got a
23 sweetheart deal. I got Dorchester County bringing
24 in water and sewer and everything like that. I
25 said, well, everybody in the neighborhood is all

1 upset.
2 As a practical matter, you know, we don't
3 want to see subdivision on the edge of the ACE
4 Basin. And so we worked out a deal where we got an
5 option to buy a conservation easement on the Poplar
6 Grove deal. And we required the adjoining
7 landowners, the Hanahans, who were agitating, oh,
8 we have to save Middleton. You have to put
9 something into the pot to do it.
10 And simultaneously with that, ACRET got
11 developed, and we realized that we would have some
12 money from ACRET, but ACRET couldn't buy the Poplar
13 Grove easement. So the conservation bank, ACRET,
14 and private dollars came up with the balance of the
15 funds to buy the easement on Poplar Grove. We got
16 donated easements on the -- a portion of the
17 Hanahan tract. We used part of the ACRET
18 mitigation dollars to buy an easement on a piece of
19 the Hanahan tract to Corps standards. And the
20 Corps -- this is part of the frustration with Nat
21 is that, you know, in conservation, the more rights
22 you take from the properties, the higher the
23 easement. We don't really care if these people
24 farm or do forestry or these kinds of things, but,
25 you know, the Corps, you know, they want to

1 sanitize a piece of property, but we -- the
2 Hanahans had an interest in doing it, so we were
3 able to do it there.
4 Then we had to buy some mitigation credits
5 out of Pigeon Bay because they have a very
6 technical interpretation on the part of the Corps.
7 You have to offset the destruction of wetlands by
8 the creation of wetlands. Then we were able to
9 bring in the North American Wetlands Conservation
10 Act, which is Department of Interior dollars to
11 make a bargain purchase on Middleton along with
12 some conservation dollars. And we were able to get
13 the Lowcountry Open Land Trust to step up and buy a
14 county park in Dorchester County. And then --
15 because Nat Ball, you know, kind of worked at his
16 pace -- and I think part of that in retrospect is
17 that this was really new for the Corps. And you
18 know regulatory agencies, they aren't going to go
19 out there and take a lot of risk. They don't get a
20 bonus by doing -- you know, the money just sat
21 there in an interest bearing account because they
22 couldn't make decisions, and we kind of agreed.
23 So at the end of the day, we had all of this
24 interest money sitting over there. And we had
25 already met all the mitigation requirements for the

1 Vought in spades. I mean, we protected 20, 30
2 times. I don't know. That's a figure of speech.
3 Q. Multiples?
4 A. Multiples of what we needed to do and what
5 anybody thought was possible. So we had all of
6 this interest money left over. So I said, heck, I
7 will double that. So we actually quadrupled it.
8 We had a landowner who was willing to donate the
9 easement on his high land provided he could do a
10 Corps type easement, which is what Nat required on
11 his wetlands. And so we bought the Corps easement,
12 which is no timbering. You can't touch it forever.
13 We used ACRET interest for half. We got it matched
14 by CERES. We bought the easement, 50 cents on the
15 dollar, then we had the person donate a
16 conservation easement on all of the high land.
17 The other half of the interest went towards
18 a project in Four Hole Swamp and that protected
19 almost 900 acres. So that's how we did the --
20 Q. I got you. And Mr. Ball -- I had asked you
21 and let me go back to that just briefly. Mr.
22 Ball's interaction with you-all, which is discussed
23 in some of these e-mails I suggested to you, was in
24 the nature of trying to be sure that the Corps'
25 very technical mitigation requirements were being

1 met?
2 A. That's correct.
3 Q. And he was concerned I take it at times that
4 they were not being met?
5 A. Well, their concern is the EPA. And
6 historically South Carolina always handled
7 mitigation a little bit differently than other
8 states, and there's a reason for it. In most
9 states, mitigation is done almost exclusively by
10 banks.
11 Q. Mitigation banks?
12 A. Yes. And the theory behind that is if
13 you're going to have no net loss of wetlands, you
14 have to make up for what you lost in the past. But
15 because South Carolina does not have a major
16 expansion of agriculture, which is to somewhat of
17 our rural economies' detriment, most of our bottom
18 land hardwoods haven't been drained. In fact if it
19 weren't for the Corps of Engineers building hydro
20 electric damns, we would have virtually all of our
21 wetlands intact. I mean, we are way up on the
22 chart in terms of intact wetlands. So there are
23 not a lot of opportunities for mitigation. And
24 then there's also the requirement on the part of --
25 to make sure that you do it in the same watershed.

1 And the way we resolved this was we went out and
2 bought mitigation credits.
3 Q. For ACRET?
4 A. For ACRET in order to -- so we could show
5 that not only -- in addition we were preserving
6 things, but we were actually, you know, creating
7 wetlands that were formally damaged areas. So that
8 was the deal.
9 Q. I'm with you. Now, you mentioned the same
10 watershed. The Vought plant, which of course has
11 become the Boeing plant was constructed, tell me if
12 I'm wrong, at the headquarters of two creeks,
13 Filbin Creek and another small creek?
14 A. Yeah, it's in the Ashley River drainage.
15 Q. So it was deemed to be in the Ashley --
16 A. Ashley River-Cooper River. That's why the
17 ACRET Trust, we had the authority to work with any
18 of those drainage systems, and you can move stuff
19 out of drainage. And what we moved out of the
20 drainage was that thing that we did in the
21 Salkehatchie, but that was interest on the money.
22 Q. Filbin Creek goes to the Cooper, I believe?
23 A. Yes.
24 Q. And then the other one, whatever the name of
25 it is, goes to the Ashley?

1 A. Yeah. But that's not how they look at it.
2 You know, when it rains and water goes to
3 Charleston Harbor, everything that goes in that
4 drainage system is part of that drainage system.
5 That's how they technically look at it.
6 Q. Because this plant sits basically on the
7 spine, if you will, of the upper peninsula. So one
8 side of the water is going to go to the east and
9 one side is going to go to the west?
10 A. You couldn't find a better mitigation than
11 the land right across the river from it. Every
12 Boeing plane that comes in flies over what we did.
13 Q. Now, am I correct in that -- in stating that
14 none of the ACRET money, the 4.75 million or any of
15 the interest, was spent doing anything to clean up
16 those two creeks where the plant is built?
17 A. No. You know where the money was spent.
18 Q. Well, exactly. I mean, I just want to be
19 sure I wasn't missing anything. But it was all
20 done elsewhere, not at the plant site. Is it true
21 that those creeks were fairly environmentally
22 degraded?
23 A. I would imagine they are.
24 Q. If you know.
25 A. I'm no expert, but anybody can look at it

1 and you would suspect that they were.
2 Q. Now, as somebody that sat on the board to
3 decide how that money was going to be spent, why
4 wasn't any of the money spent to clean up those
5 creeks?
6 A. Well, we got a proposal from the city of
7 North Charleston, but, you know, like the
8 Conservation Bank, we look at, you know, where is
9 that dollar going to go. And they had a very, very
10 poor project in which they were going to affect
11 lands that they didn't even have control over,
12 private lands. One of the pieces of property they
13 mentioned that they -- that was listed there was a
14 piece of property that was owned by my partner,
15 Henry Fair. He had never even talked to those
16 people before. So, you know, had they had a
17 developed proposal, had it gotten to the point
18 where they had actually made all of these
19 arrangements, but it was so conceptual. And at the
20 end of the day, you know, it just didn't give us a
21 lot of bang for the buck, you know. Whereas the
22 other projects -- now, we did look at some
23 properties in Francis Marion. But, again, we
24 didn't have control over the properties. So I
25 mean, there were other projects that had emerged,

1 and there were some up on the upper ends of the
2 Cooper River.
3 Q. Was the Keystone tract -- the one that we
4 were talking about earlier, the tract that my
5 clients owned, was that considered as a possible
6 mitigation option?
7 A. I think it was. I think the Nature
8 Conservancy had made a proposal that perhaps some
9 of these dollars could have gone there, but they
10 didn't have control over it. It's one thing to
11 say, wouldn't that be nice. It's a whole other
12 thing to say I have got a deal. This is what I get
13 for the dollars. And I convinced myself that
14 leveraging those dollars is absolutely essential
15 for the public to get the biggest bang for their
16 buck.
17 Q. Okay. Now, the ACRET money that was -- that
18 came from the state, the bond, I think it was by
19 bonds, the $4.75 million. That was public money?
20 A. That's correct.
21 Q. And do you know how much of that money
22 needed to be spent to meet the Corps of Engineers
23 litigation requirements? You said multiples
24 were -- of what they would required were
25 accomplished.

1 A. That's a hard thing to answer. Because the
2 way they do it is it's sort of like, you know, it's
3 a calculation. It's a -- they look at the wetlands
4 that are impacted, and they come up with, you know,
5 a calculation. So you have to do it. And then
6 there are all of these other aspects about major
7 projects and that type of stuff. And that's where
8 the Corps was concerned that even though we were
9 doing huge landscape conservation -- I mean, here
10 is the bottom line. The Corps has an easement
11 form, and when they go out and they do
12 preservation, you get so many credits for
13 preservation so much for restoration. They
14 absolutely want to sterilize a piece of property.
15 You can't do anything. You can hunt on it. You
16 can walk on it. I mean, you can't even have duck
17 blinds in your damn swamp. Well, as you know, most
18 of the landowners you go to, they don't want to
19 give up those rights. They need the timber revenue
20 over a long period of time. They want to build a
21 duck blind. So it's very difficult to get a Corps
22 quote, unquote, type easement on a piece of private
23 property.
24 And we were able to do that on the Hanahan
25 property for circumstances that were unique to that

1 ownership pattern. So to do the restoration
2 component of it, we had to go buy mitigation
3 credits on the -- I think it was Pigeon Bay
4 Mitigation Bank.
5 Q. Did the Newkirk Environmental people assist
6 in that?
7 A. They assisted us. They were hired by Ducks
8 Unlimited to help and assist in that. We had to
9 make grants to nonprofits, so DU took the
10 responsibility of doing that.
11 Q. But there was a fairly large -- is it
12 accurate to say, a fairly large amount of this
13 money, 4.75, which was spent that was doing things
14 that you believe were a laudable purpose, but that
15 were not spent in order to satisfy the Corps of
16 Engineers as mitigation requirements?
17 A. We got Corps of Engineers credit for doing
18 those things. No one looked at this as, you know,
19 breaking -- it was held together as a large
20 component all at once. The only thing that would
21 be not considered that, would be the interest on
22 the money issue.
23 Q. Right.
24 A. That was really done as an afterthought
25 because we didn't really know we had those dollars

1 to work with.
2 Q. My question, isn't it true that more
3 mitigation was done than the Corps of Engineers
4 would have required?
5 A. No question about it.
6 Q. Have you ever seen a Corps' decision
7 document with respect to the Vought permit where
8 they explain what they were doing?
9 A. No.
10 (Exhibit No. 6 was marked for
11 identification.)
12 Q. This is the document. I will suggest to you
13 that comes out of the Newkirk Environmental files
14 related to the ACRET.
15 MR. GOWDER: While he's looking at it,
16 can we take two minutes?
17 MR. BARNETT: Yes.
18 (Off-the-record discussion.)
19 Q. I have directed you finally to the language
20 in the Corps' decision document that says,
21 therefore, the Corps believes that mitigation plan
22 will generate more than three times the mitigation
23 credits that would typically be required for the
24 project impacts.
25 And I take it from what you said earlier

1 that you would not disagree with that?
2 A. No.
3 Q. In terms of what actually -- this was a
4 prespending the money document, but as the money
5 got spent, that is essentially what happened as you
6 recall?
7 A. No question.
8 Q. Let me ask you this question. If the ACRET
9 money was provided by the State to meet mitigation
10 requirements, why then would more of that money --
11 public money be spent than was necessary?
12 A. I have absolutely no idea.
13 Q. You thought spending it was a good thing to
14 do. These were good things to do?
15 A. No. It wasn't my decision. I was asked to
16 be on the board, and I was asked to take that money
17 and get the most value for the public. And to that
18 extent, yes. I had no involvement on any of the
19 front end of this thing at all.
20 Q. That was going to be my next question, if
21 you had any idea where the $4.75 million figure
22 came from?
23 A. No. Let me say one thing. I didn't put it
24 on the record. I was the first chairman of the
25 South Carolina Conservation Bank, and we got a

1 the easement. And we didn't -- the only easement
2 that we paid full fair market value on was that one
3 on Millbrook because it was a Corps easement.
4 Q. The total exclusion, no trimming of brush
5 all of that?
6 A. For example, I think the Poplar Grove
7 appraisal said that the value of the easement was
8 20 million, and we paid them 50 percent of it, and
9 ACRET paid 20 percent of that. So I mean --
10 Q. I'm throwing away things I don't need to ask
11 you about. I want to now turn our attention --
12 make sure I'm ready to do that, to the actual
13 Keystone tract property.
14 A. Before we do that, can I hit the loo?
15 (Off-the-record discussion.)
16 (Exhibit No. 8 was marked for
17 identification.)
18 Q. I'm obviously going to ask you if you had
19 any involvement in this, you can read --
20 A. No.
21 Q. Go ahead.
22 A. Tangentially. I remember people coming to
23 me saying we are going to get all of the Port
24 Authority things is something that the Conservation
25 Bank -- you know, I said, make us a proposal. And

1 I wasn't really -- no. And I don't know if they
2 ever got any money out of the damn thing.
3 Q. Well, what do you mean?
4 A. Out of the SBA.
5 Q. For the Ports Authority?
6 A. Yes.
7 Q. For Keystone?
8 A. For anything. I'm not sure it ever
9 happened.
10 Q. Well, that's what I wanted to ask you. They
11 mentioned the Keystone Property as a potential
12 property for mitigation for the Ports Authority
13 Terminal to be built in North Charleston, if you
14 had any knowledge of that?
15 A. I probably had knowledge of it. I just
16 don't -- you know, I wasn't intimately involved to
17 the extent that I remember it.
18 Q. That's fair.
19 (Exhibit No. 9 was marked for
20 identification.)
21 Q. Just take a brief look at it. It's a memo
22 from Mr. Thorn to Bob Riggs. This, of course,
23 was -- at this time he was at Newkirk
24 Environmental.
25 A. You know, everybody and his brother was

COASTAL
CONSERVATION
LEAGUE

May 6, 2007

William Alston, Mayor
Town of Awendaw
6971 Doar Road
Awendaw, SC 29429

RE: Proposed rezoning of Fenwick at Bulls Bay

Mr. Mayor and Members of Awendaw Town Council,

The Coastal Conservation League would like to state our opposition to the proposed rezoning of 189 acres of land in Awendaw known as Fenwick at Bulls Bay.

It is completely confounding to us how town leaders continue to entertain high-density developments in this rural area, which was founded to maintain its character and keep it separate from sprawl-dominated Mt. Pleasant. If this zoning is approved, it will bring a gated, 305-home subdivision along lightly traveled Doar Road. This proposed upscale suburban development is adjacent to the Francis Marion National Forest and Cape Romain National Wildlife Refuge, two of the most ecologically significant areas in the United States. This will also mark a major turn away from the promise made by Town Founding officials to preserve the rural nature of the community and protect the vast, publicly owned resources of the surrounding area.

In our opinion, the developer of this parcel will have an extremely difficult time receiving permission for a package sewer plant on this site from the Berkeley-Charleston- Dorchester (BCD) Council of Governments (COG) and from the South Carolina Department of Health and Environmental Control. By zoning the property to allow higher densities than the surrounding region, it sets up an expectation by the developer and new residents that safe, functional sewer is attainable. This is not the case. We want to be clear that the Coastal Conservation League will scrutinize every permit the developer must apply for – from sewer to wetland to land disturbance – and take whatever action necessary to protect the many irreplaceable resources in the area.

Currently there is no sewer or existing infrastructure in the area to accommodate 305 houses. As a result, the potential developer has indicated a desire to build an onsite sewage treatment or "package" plant. Typically, a package plant has to either spray its waste onto an open field, inject it into the soil or discharge it into a nearby body of water. The lands and waters adjacent to this area are very low, and the soil quality is not considered suitable for spray irrigation of waste because of the wet soils and the danger of contaminating local wells or Cape Romain Refuge. The Refuge has received the state's highest level classification for surface waters, Oustanding Resource Water (ORW), which forbids toxic discharges. Such discharges would also include runoff from new impervious surfaces brought about by dense development. The Refuge is a vital link in the Western Hemisphere Shorebird Reserve Network, and is the over-wintering area for more than 2/3 of the Eastern North America population of American Oystercatchers. The waters of surrounding Cape Romain are famous for the hundreds of thousands of shorebirds, waterfowl, herons, cranes, egrets, eagles, ospreys and more that rely on this pristine habitat for their ongoing existence.

EXHIBIT
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Package plants and stand-alone sewage treatment facilities have been used in South Carolina the past, but over the last 20 years, the state Department of Health and Environmental Control has been systematically trying to remove these from the state landscape. This is because these facilities are difficult to monitor continuously and are infamous for failing over the long term, leaving residents, nearby communities and the environment with a malfunctioning and costly septic issue long after the developer has left town.

DHEC's policy has been to remove or put these plants out of operation, and Awendaw would be turning back the clock by endorsing a high-density development in such a low-lying, highly fragile ecosystem that can only exist on one of these systems which requires careful and constant management. There is absolutely no assurance that this new technology will be managed properly by the Homeowner's Association once the developer has left the scene. The residents of Awendaw will be left with the pollution and the cost of cleanup.

In addition to its extremely clean waters, this area is also a Class One Wilderness area designated by the U.S. Fish and Wildlife Service. Wilderness designation means it must maintain pristine air quality and a low-level of onshore light pollution. A federal air quality monitoring station located nearby helps dictate levels of industrial activity as far away as Georgetown and Charleston. The smoke and dust from nearby construction equipment will significantly compromise local air quality.

As a result of an upscale development, the longtime local residents along Doar Road, and other nearby parts of Awendaw will see their property taxes and levels of traffic climb dramatically as new development comes into the area. Like residents near Hungryneck Boulevard in Mount Pleasant, Daufuskie Island and Bluffton, they will find their historic communities increasingly fragmented by development pressure. Local residents will find themselves pushed out of their own communities. It has happened in other areas and allowing such high-density will bring that same threat here.

Finally, you have received a letter from the Southern Environmental Law Center alerting you to the problems the Town may have with its actions concerning impacts on endangered species in the region. I urge you to deny this rezoning. Awendaw can develop in a manner that is good for its residents and the surrounding resources. But these high-density developments are neither and will lead this town down a path from which it cannot return.

Thank you for your consideration of our comments,

Jane Lareau,
Program Director
Coastal Conservation League

Cc: US Fish & Wildlife Service
US Forest Service
SC DNR, Robert Boyles
OCRM Director, Carolyn Bolton
DHEC, Mike Montebello
Mike Laws, Coastal Ventures Group

RECEIVED
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DHEC-OCRM
CHARLESTON OFFICE

COASTAL
CONSERVATION
LEAGUE

August 6, 2007

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ichard Geer,
:ormwater Department Division
ffice of Ocean and Coastal Resource Management
epartment of Health and Environmental Control
362 McMillan Avenue, Suite 400
harleston, SC 29405

e: ID# 10-07-05-10; Permit # SCR10G307, Villages at Bull's Bay.
MS# 388-00-00-048; 049

ear Richard,

The Coastal Conservation League would like to express its concern regarding this ed permit and its possible impacts on resources of national significance.

The Town of Awendaw was formed in 1992 to maintain the rural character of the ea and keep it separate from sprawl-dominated Mt. Pleasant. The people of Awendaw ve been quite vocal and demonstrative about keeping Awendaw rural. Unfortunately, wn officials have consistently rezoned this rural town to allow development at densities hich will be very destructive to its citizens, as well as Cape Romain National Wildlife fuge and the Francis Marion National Forest, two of the most ecologically significant eas in the United States.

This development would bring paved roads, lawns, docks, pets, urban pesticides, d runoff into Cape Romain, an Outstanding Resource Water, and introduce urban nsities immediately adjacent to the Francis Marion National Forest, putting at jeopardy Forest Service's continued ability to manage for endangered species and plants.

Currently there is no sewer or existing infrastructure in the area to accommodate new houses. As a result, the developer has indicated a desire to use multiple onsite tic systems. The developer's belief is that homeowners will be able to manage perly and maintain new, highly sophisticated treatment systems in the homes, and new hnology in septic tanks. Failing proper management, which the developer cannot sure, this high density of homes will cause irrevocable pollution in a pristine location.

The lands and waters adjacent to this area are very low, and there is high danger fe aste contaminating local wells or Cape Romain Refuge itself. The increased

EXHIBIT
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population and possible septic leaks in this location will threaten the health of the refuge, which is a vital link in the Western Hemisphere Shorebird Reserve Network, and is the over-wintering area for more than 2/3 of the Eastern North America population of American Oystercatchers. The waters of Cape Romain are famous for the hundreds of thousands of shorebirds, waterfowl, herons, cranes, egrets, eagles and ospreys that rely on this pristine habitat for their ongoing existence. These waters include threatened loggerhead sea turtles, diamond back terrapins, bottlenose dolphins and more.

Indeed, the U.S. Fish and Wildlife Service recently has expressly refused to concur with determinations for nearby developers' contractors that their projects are not likely to adversely affect any federally endangered, threatened or proposed species.

which one

By regulation, these waters are protected from degradation, including from stormwater and other non-point runoff. Intensive development would result in surface runoff from roads, buildings, driveways and parking lots, resulting in water quality impacts that would interfere with maintaining existing and classified uses "as outstanding recreational and ecological resources" as required under DHEC Water Quality Regulations § 61-68.

46 Lots

In addition to its extremely clean waters, this area is also a Class One Wilderness area designated by the U.S. Fish and Wildlife Service. Wilderness designation means it must maintain pristine air quality and a low-level of onshore light pollution. A federal air quality monitoring station located nearby helps dictate levels of industrial activity as far away as Georgetown and Charleston. The smoke and dust from nearby construction equipment will significantly compromise local air quality.

As a result of an upscale development, the longtime local residents along Doar Road, and other nearby parts of Awendaw will see their property taxes and levels of traffic climb dramatically as new development comes into the area. Like residents near Hungryneck Boulevard in Mount Pleasant, Daufuskie Island and Bluffton, they will find their historic communities increasingly fragmented by development pressure. Local residents will find themselves pushed out of their own communities. It has happened in other areas and allowing such high-density will bring that same threat here.

Likewise, we are concerned about potential development impacts to the nearby Francis Marion National Forest, including interference with proper longleaf pine forest management due to potential restrictions on burning and the need for smoke management at the wild land-urban interface. Prescribed burning is crucial to red-cockaded woodpecker survival and recovery, and development and associated traffic in and around the Forest would create a major limitation on the Francis Marion's prescribed burning program.

In addition to impacts to federally protected species on adjacent public land in the Refuge and National Forest, we are concerned about impacts to such species on private land, and the Town's potential liability for permitting development on tracts that provide nesting or foraging habitat for threatened or endangered species.

The location of this proposed development will introduce a new visual blight into viewshed of visitors coming to see the Sewee Shell Mound, an historic artifact protected and featured by the Francis Marion National Forest, with a trail leading visitors to the important Indian site.

Finally, the developer proposes individual docks and a community dock into the waters of Cape Romain, with all the attendant problems of treated lumber, visual blight, boat and motor pollutants, noise, lights and other disturbances in this remote and beautiful location.

We urge you to deny this permit for the above stated reasons.

Sincerely,

Jane Lareau, Program Director
Coastal Conservation League
P.O. Box 1765
Charleston, SC 29403
(843) 696-5255
el@scccl.org

EXHIBIT 11

1 representing me. And Cotton agreed. And he just
2 said, you know, this is really what we have to do
3 is come to an agreement with the Coastal
4 Conservation League so that -- you know, they're
5 the largest, most powerful environmental group in
6 the state of South Carolina, and, you know, they
7 have the ability to stop you.
8 And so we worked very hard with -- to
9 gain the Coastal Conservation League's support and
10 to eliminate Nancy Vinson's concerns.
11 MR. BARNETT: Okay. Mark this, please.
12 (Exhibit No. 7 was marked for
13 identification.)
14 Q. Mr. DeMoura, I'm going to show you one of
15 the documents that your lawyer, Ms. Shahid, sent to
16 me. It seems -- it's an -- it seems to be an
17 e-mail chain. Who is Allison King?
18 A. She works -- she worked for me at the time.
19 Q. Okay. And it is an e-mail from you to Nancy
20 where you say, we appreciate your support in our
21 effort to improve on our development plan. That
22 was May the 1st, 2008. And then she responds to
23 you a few minutes later on the afternoon of May the
24 1st, 2008, you guys are the best. We're delighted
25 to work with you.

1 A. Uh-huh.
2 Q. At this point in time in the spring of 2008,
3 had you reached some sort of an agreement with the
4 League?
5 A. Oh, yeah. We reached an agreement with the
6 League in December of 2006.
7 Q. Okay. What was that agreement?
8 A. That agreement was that we would reduce the
9 wetland impacts to 4.23 acres of wetlands, and we
10 would double our mitigation for the wetlands, and
11 we would give the mitigation dollars to the Coastal
12 Conservation League so that they could use it and
13 find -- or put it into a project that they were
14 working on to buy land or to buy, you know,
15 mitigation credits wherever they wanted to.
16 And that agreement was crystallized in
17 November, December of 2006. And Nancy Vinson
18 agreed to that agreement. And the agreement was
19 sent to Barbara Neale at OCRM. And we received --
20 and based on their support and based on our
21 reduction of wetland impacts from 5.6 to 4.23,
22 coastal zone consistency was issued in January of
23 2007.
24 Q. Was there a mitigation agreement that was
25 part of --

1 A. Yes.
2 Q. And that was the agreement you had with
3 Ms. Vinson on behalf of the League?
4 A. That's correct.
5 Q. How much money was -- you say this money was
6 going to go to the League for them to spend on
7 conservation efforts.
8 A. Uh-huh.
9 Q. How much money was that going to be?
10 A. You know, I think at the time our mitigation
11 was around -- one round of mitigation was about
12 $70,000, and we agreed to double that, so it was
13 about $140,000.
14 Q. Okay. How did this happen? Who first
15 raised the issue of your -- you and your partners
16 giving money to the League? Was it you, or was it
17 them?
18 A. No. It was based on a similar deal that the
19 Coastal Conservation League had done with, at the
20 time, Vought. That's what Cotton had explained to
21 me.
22 Q. What became the Boeing plant?
23 A. What became the Boeing plant. And they had
24 agreed to give the money to the environmentalists
25 and double it. In that case, I think they got a

1 factor of -- it wasn't just a factor of two.
2 Q. It was more than double?
3 A. It was more than double.
4 Q. More than double.
5 A. More than double. They were able to, you
6 know, get Boeing to commit to or at the time
7 Vought. And so it was a similar deal that they
8 worked out with the Coastal Conservation League and
9 the environmentalists. And I think there was a
10 board set up and --
11 Q. Did Cotton suggest that to you as an option?
12 A. No. I mean, Nancy and Cotton. I mean, that
13 was the -- that was the agreement, you know, to
14 double the mitigation and allow, you know, the
15 special interest groups to, you know, put that into
16 their pet projects.
17 Q. Were there limitations placed on how they
18 could spend the money?
19 A. No. But there was a time period. You know,
20 initially 90 days to designate where -- or to
21 designate where the money was going to go. We
22 weren't going to sit out there for, you know, 160
23 days or whatever till they go find something they
24 wanted to spend it on.
25 So there were some time periods

1 associated with that, and that was all crystallized
2 in a letter and a fax to Nancy Vinson and
3 subsequently sent on to the Army Corps of -- or
4 excuse me, OCRM, Barbara Neale.
5 Q. Are those documents in the documents that
6 Mary will be --
7 MR. BARNETT: These are not all the
8 documents that Mary has, for Andy's benefit. They
9 were all with her trial stuff in Columbia, so they
10 are somewhere in transit. So I'm going to get more
11 than this.
12 A. Yeah.
13 Q. But are those documents in the document that
14 Ms. Shahid is going to be giving to me?
15 A. Oh, yeah. We discussed it at great length
16 at trial.
17 Q. Was that money -- did that money change
18 hands? Did you and your partners give that money
19 ultimately to the League?
20 A. No. We wanted our permit first.
21 Q. All right. You wanted to get all your
22 permits first?
23 A. Yeah. With --
24 Q. Okay.
25 A. We got coastal zone consistency on the

1 wetlands, and then we needed to move forward and
2 get our storm water permit on phase one where all
3 the wetlands are.
4 Q. As well as the commercial permit?
5 A. That was the big box development plan, yep.
6 MR. BARNETT: Okay. Let me -- this is
7 the only copy I have of this.
8 (Exhibit No. 8 was marked for
9 identification.)
10 MR. BARNETT: Since that's the only
11 copy I have, let Andy take a look at that before I
12 hand it to you.
13 MR. GOWDER: Okay.
14 Q. All right. This is a letter dated May the
15 6th of 2008.
16 A. Uh-huh.
17 Q. A few days after Ms. Vinson's e-mail to you.
18 Just take a look at that again. You probably have
19 looked at it recently.
20 A. I've had it memorized, yeah. Looked at it
21 many times.
22 Q. She mentions there an agreement by you and
23 your partners to remove one of the planned elements
24 of your proposal; is that right?
25 A. That's correct.

1 Q. And did you indeed agree to do that?
2 A. Yes. And I agreed to -- you know, I --
3 after we got the agreement in 2006 -- or excuse
4 me -- 2007 with the Coastal Conservation League,
5 the City of Charleston started planning a number of
6 charrettes, presentations.
7 Q. What does that mean, by the way?
8 A. What's that?
9 Q. I saw that in one of these e-mails. What is
10 that, a charrette?
11 A. A charrette is a planned presentation to the
12 community where, you know, the community gets to
13 give their input on community planning efforts as
14 well as talk directly to -- talk directly to the
15 experts that the City, you know, had brought in to
16 talk about traffic and social needs, like
17 affordable housing, and, you know, where density
18 was going to go and how much density was going to
19 be allowed, so on and so forth.
20 Q. All right.
21 A. And so, you know, after I got my 2007
22 coastal zone consistency, I started to attend all
23 of the meetings associated with the Johns Island
24 community plan. And the Coastal Conservation
25 League was at those meetings in force.

1 Q. Okay.
2 A. And the -- one of the things that started to
3 make it very clear was that the Johns Island
4 community plan did discourage developers to plan
5 big boxes.
6 Q. Okay.
7 A. And so the Coastal Conservation League --
8 you know, through working with the Coastal
9 Conservation League, through working with the City
10 of Charleston, and with -- working with the
11 community as well as our planners, our experts, we
12 both identified that, you know, there could be a
13 better plan created that didn't replicate uses at
14 our site -- or excuse me -- at our gathering place.
15 And there was three gathering place
16 districts that were defined along Maybank Highway.
17 Our gathering place district was what many view as
18 the community town center of Johns Island. Johns
19 Island is a 50,000-acre island, approximately.
20 And the urban growth boundary was,
21 through a multiyear effort defined that limited the
22 urban development of the island. And so the Johns
23 Island Community Plan specifically addressed land
24 uses inside the urban growth boundary.
25 And, you know, the urban growth

1 boundary was defined in, I think, 1997, '98. And
2 the Johns Island Community Plan was an extension to
3 give the community a better flavor of what type of
4 development was going to come.
5 Q. Okay.
6 A. And so we identified and certainly the
7 Coastal Conservation League had a concern about the
8 big box development is -- and, you know, the
9 thought process was, well, you know, there's a big
10 box development across the street with the Piggly
11 Wiggly grocery store. Why are you guys going to do
12 another one.
13 Q. I see. Did you answer competition?
14 A. What's that?
15 Q. Did you suggest competition might be --
16 A. Well, that's what my partners said. And,
17 you know, they -- they were in this thing to make
18 money, as most ventures are, and they wanted to
19 sell phase one as a big box.
20 Q. Okay.
21 A. And they wanted to sell phase two as a
22 multi-family condominium deal.
23 Q. Let me get the chronology here straight in
24 my head.
25 A. Yeah.

1 Q. You reached an agreement with the League,
2 you said, in late 2006. I think you said November
3 or December.
4 A. Yeah.
5 Q. Whereby in order to -- as a condition of
6 your coastal zone certification, presumably for
7 your storm water permit from the State, you were
8 going to give the Coastal Conservation League
9 $140,000, I think you said.
10 A. Yes. Around there.
11 Q. To use for mitigation type efforts.
12 A. Uh-huh.
13 Q. All right. Did they then -- did they
14 express to you their concerns after you had agreed
15 to give them $140,000, or had they already been
16 expressing to you concerns about the big box
17 element of your plan?
18 A. No. It was later on. You know, we just
19 specifically talked about the wetlands in 2006.
20 Q. Did they know what your plans were?
21 A. Yeah. Everybody knew. Sure.
22 Q. They were drawn out on paper?
23 A. Very public, yes.
24 Q. All right. So this discussion about their
25 concerns about the big box began when, about what

1 time?
2 A. You know, there was a concern about the big
3 box previously, we just did not address it at that
4 time.
5 Q. Okay.
6 A. You know, we never really had the big box
7 approved, and so --
8 Q. Now, Ms. Vinson makes mention in here that
9 you've agreed to delete that.
10 A. I did.
11 Q. In what fashion did you -- what form did
12 that agreement take, if any?
13 A. Well, I started -- you know, I wanted to
14 create a better plan, and, you know, I thought
15 there was a better opportunity to, as we got into
16 the planning efforts, replace the big box and a
17 football field worth of parking in front of the big
18 box to smaller buildings.
19 And the smaller buildings would be able
20 to possibly reduce the wetland impacts, create more
21 pervious surface opportunities, create a better
22 hydrology plan, create a better storm water plan,
23 and create a better development.
24 And so my partners didn't -- some of my
25 partners did not in any way buy into that, and so,

1 you know, when I created my own plan, I brought it
2 to them, and they said, you know, look, if you want
3 to do this, buy control. So I contracted to buy
4 out the ones that -- that did not want to move
5 forward with, you know, my plan. And so, you know,
6 I bought 7/12 of the project in late 2006 for $7
7 million.
8 Q. Okay.
9 A. To create a plan that the City of Charleston
10 endorsed, the Coastal Conservation League, you
11 know, was jumping up and down that I was creating a
12 better plan. I mean, Nancy was, you know, so
13 ecstatic that, you know, a big box development was
14 not going to be put on this property, that a more
15 responsible plan was going to be put on this
16 property.
17 The City of Charleston, you know, was
18 ecstatic that, you know, I was -- I had taken
19 control of the development and was going to, you
20 know, build a better plan than what was approved,
21 you know, initially.
22 And so this letter is, you know, Nancy
23 Vinson commending my efforts to create a better
24 plan, acknowledging that she had -- she has seen
25 the plan. And I used this letter to, for the third

1 time, you know, rezone the property again in July
2 of 2008.
3 Q. Okay.
4 A. And that was -- that was basically a
5 year-and-a-half effort on my part throughout 2007
6 into 2008 to work with the community, work with the
7 City of Charleston, work with the Coastal
8 Conservation League, work with all my team, to
9 create a better plan. And we were successful. In
10 July of 2008, we went before City Council, and we
11 obtained an 11 to 1 vote in favor of the new plan.
12 Q. You said you got -- zoning was redone?
13 A. Completely redone to eliminate the big box.
14 Q. So as a part of the zoning, did you then
15 lose the right, the legal right, to put the big box
16 there?
17 A. Yes.
18 Q. As a matter of zoning law?
19 A. Yes.
20 Q. So you truly did give that up then?
21 A. I totally did, yeah. It was -- it was --
22 you know, it was -- and it was what we all worked
23 hand in hand on doing. And the Coastal
24 Conservation League, you know, had expressed, you
25 know, concerns about the big box. And what I

1 wanted to do was totally eliminate any concerns
2 that the Coastal Conservation League had with
3 regard to my project. And so, you know, I
4 successfully did that in 2008. What I didn't know
5 was --
6 Q. Let me stop you right there. We can pick
7 up.
8 A. Okay.
9 Q. So at this point, you have agreed as part of
10 your coastal zone conditions to give the League
11 140,000, which is you say -- your understanding is
12 that was twice the amount --
13 A. Yeah. At the time, it was like 34 or 38
14 mitigation credits.
15 Q. All right.
16 A. Whatever that -- whatever those mitigation
17 credits cost at the time.
18 Q. All right. And that was going to be in the
19 form of money actually paid over to the League for
20 their use?
21 A. Yeah. At the time mitigation credits were
22 going for about $2,000 a pop, and so that was about
23 $70,000 times two.
24 Q. All right. And sometime in 2008, you agreed
25 as part of a rezoning of the property to give away,

1 or however we want to put it, give up the ability
2 to put the big box part of the plan.
3 A. Yes.
4 MR. GOWDER: Stan, don't lead him,
5 please.
6 MR. BARNETT: What?
7 MR. GOWDER: I said don't lead him.
8 MR. BARNETT: All right. Good point,
9 because of what we're doing.
10 Q. Let me ask you this. How much of a
11 profit -- of the profit part of your original
12 proposal was reflected in the big box, the
13 anticipated profit?
14 A. We had contracts at the time of between 3
15 and $400,000 per acre for 20 acres of land.
16 Q. Okay.
17 A. Big money. We had an $8 million contract on
18 phase one.
19 Q. Did you have like an idea of your total
20 anticipated profit from the whole project, how much
21 of that was associated with the big box, if you
22 have an idea? If you don't, that's fine.
23 A. Well, no. It's very simple. We bought the
24 property for -- you know, we had about $4 million
25 in the property when we closed. We bought the

1 property from Sea Island for $3.5 million. We put
2 about a half a million dollars of soft costs into
3 it. And we had about $4 million, paid all cash.
4 And we had offers on the big box, and
5 we had offers on the multi-family from various
6 development companies. And when I -- you know, I
7 had always said, you know, look, we need to create
8 a better plan. And, you know, I wanted to go ahead
9 and buy control of the property.
10 So I -- my partners agreed to an
11 acquisition price of 12 million bucks, and I bought
12 7/12 of that for 7 million bucks. So, I mean,
13 we -- I believed we could create a better plan,
14 completely eliminate, you know, any concerns by the
15 Coastal Conservation League, any concerns by the
16 community, not replicate uses, and still make the
17 same profit on the deal. And so, you know, I
18 stepped in with my 7 million bucks and bought
19 control and moved forward with a better plan.
20 Q. Did you buy the control with the $7 million,
21 was that because your partners didn't like giving
22 up the big box?
23 A. Yeah. They wanted just to ram it through.
24 They wanted -- you know, they wanted to sell off
25 the big box development and sell off the

1 multi-family and take the profit.
2 Q. Okay. In addition to this e-mail that you
3 had from Ms. Vinson and this letter, did you have
4 discussions with her about --
5 A. Oh, yeah. Absolutely. I mean, we had
6 incredible discussions throughout that entire time
7 frame.
8 Q. Okay. I'm going to ask you --
9 A. I was looking -- I was working hand in hand
10 with the Coastal Conservation League throughout the
11 entire migration of the project from 2005 to, you
12 know, culminating in this letter.
13 Q. Okay. So I'm talking about after this
14 period, and the time period when you were getting
15 the rezoning and after that. Characterize or tell
16 me about what Ms. Vinson or others with the League
17 were telling you about their position with respect
18 to your project.
19 A. They were ecstatic. They were -- you know,
20 Josh Martin was the director of the City of
21 Charleston. He met with the Coastal Conservation
22 League numerous times on the Johns Island Community
23 Plan. He met with Dana Beach numerous times on my
24 project as well as other projects that were being
25 planned on Johns Island.

1 You know, Nancy, every -- you know,
2 every iteration of the plan, we showed her the
3 iterations. And so I really thought it was a hand
4 in hand, you know, working relationship based on
5 the fact that, you know, we had come to an
6 agreement with them previously.
7 We -- you know, she fully supported my
8 zoning modification, and, you know, she said we
9 were the best. So, you know, I mean, I couldn't --
10 I couldn't ask for, you know, at the time, you
11 know, somebody -- a community environmental group
12 that, you know, believed in smart growth, that, you
13 know, were actively involved in, you know, the
14 placement of the urban growth boundary, were
15 actively involved and had all their people at the
16 Johns Island community meetings, you know. You
17 know, I mean, that's how neighborhoods and
18 communities get planned is people working together,
19 so --
20 Q. Okay. Has the Coastal Conservation League
21 continued to support your proposal?
22 A. Today? No. In every way, they have tried
23 to crucify me.
24 Q. When did -- you've identified a change.
25 When did this change in their support to

1 And so, you know, I asked them what the
2 concerns were, and she said density. And she said
3 the height of the buildings. And so I met with
4 her, I met with Dana, and it was agreed upon that,
5 you know, Dana was going to write an op-ed
6 editorial that, you know, we've done all this,
7 we've gone above and beyond the standards.
8 We've had to -- you know, at the time
9 it was a three-year effort, it was year three, to,
10 you know, develop the plan. And that support
11 continued to the first week in November where I met
12 Dana Beach the first week of November.
13 Q. Of which year?
14 A. 2008. At the College of Charleston. He and
15 Hugh Lane had just gotten done giving a
16 presentation that I came to see on rural farming at
17 the College of Charleston.
18 Q. You said Hugh Lane. Hugh Lane or Charles
19 Lane?
20 A. Charles Lane. Yeah, excuse me, Charles
21 Lane. And Dana and I met, and Dana said, look, you
22 know, we've gotten some heat about supporting you.
23 Q. Did he tell you what that meant, what he
24 meant by that?
25 A. Well, he meant that, you know -- he asked me

1 if I knew who John Hope was. I said, no, I don't
2 know John Hope. And he said, well, I've got some
3 heat from John Hope.
4 Q. Did he tell you who John Hope is?
5 A. Yeah. He said he's a resident on Wadmalaw
6 Island. He said, but, look, you've done everything
7 you can possibly do. You need to move forward with
8 your design and get your permits and build your
9 project. And that was in November 2008. We had
10 another meeting, and I agreed to meet with John
11 Hope and the Save the Angel Oak people in December,
12 you know, and I met with John Hope.
13 Q. Of 2008?
14 A. Yeah. Samantha Siegel, their lawyer, Mike
15 Gruenloh, and they asked me to scrap my plans. I
16 said, there's no way in the world I can do that. I
17 just spent hundreds of thousands of dollars on
18 this. There's no way I can scrap my plans. This
19 is a three-year effort.
20 Q. Had you already parted with the $7 million
21 that you talked about?
22 A. Yes, yes. I had given that to the -- I
23 bought the partners out. I bought 7/12 of the
24 project, and I had total control. And they said,
25 well, you know, we're going to oppose you. I said,

1 well --
2 Q. Who was this now? Who told you this?
3 A. John Hope, Mike Gruenloh, their lawyer, and
4 Samantha Siegel, Lorna Hattler.
5 Q. Who is Lorna Hattler?
6 A. It's the other cofounder of Save the Angel
7 Oak. And they did -- you know, they showed up at
8 my -- you know, my variance meeting. And they, you
9 know, tried to sway the board on my variances at
10 the City of Charleston, but, you know, they were
11 unanimously approved or pretty close to unanimously
12 approved in October of 2008. And the Coastal
13 Conservation League didn't show up at the variance
14 board in any way. I still had their support at the
15 time.
16 Q. The meeting you mentioned with these folks,
17 Samantha Siegel and Hope and the other people, was
18 there anyone from the League there?
19 A. No. Dana said he was going to come, and we
20 talked that day. And I said, I'm going to meet
21 them. Are you going to come? And he said, no, I'm
22 not going to come.
23 Q. Did I hear you correctly that Mr. Beach told
24 you he was going to write an op-ed piece in support
25 of your project? Is that what you said?

1 A. Yes, yes. There's various e-mails from
2 Nancy Vinson and my staff going back and forth
3 working on the op-ed piece together.
4 Q. All right. But as of December of 2008, you
5 haven't told me that the League was opposed to you.
6 So at what point -- you said that at some point
7 they changed their position. When did that occur?
8 A. When I -- January 2009, I got a call from
9 Josh Martin. And Josh Martin, after working with
10 me 15 meetings over a year-and-a-half at the City
11 of Charleston left the City of Charleston, went to
12 work with the Coastal Conservation League in
13 September.
14 And I got a letter -- I got an e-mail
15 from Josh saying in September and October, the plan
16 looks great. I'm at the Coastal Conservation
17 League. I'm the land use director. Love the plan.
18 It's great.
19 Q. This is what year?
20 A. This is right after he joined the Coastal
21 Conservation League.
22 Q. That's what I mean. What year was that?
23 A. September and October 2008.
24 Q. '8, okay.
25 A. And then he calls me up in January and says,

1 Dana wants you to defer. He does not want you to
2 move forward with the CCDRB, Commercial Design
3 Review Board. I said Josh, you know, you and I
4 just worked on this plan for two years. I can't
5 defer. I've got ten people coming down here to
6 present this to the City of Charleston, coming in
7 town. And there's no way I can defer.
8 Q. Did Josh tell you why they wanted you to
9 defer?
10 A. They wanted me to redo the plan.
11 Q. In what sense?
12 A. Well, he said, Dana wants you to defer the
13 plan, defer.
14 Q. Did you --
15 A. And I said no.
16 Q. Did you try to speak to Mr. Beach at this
17 point?
18 A. I did. I asked for a meeting with Dana, and
19 Dana wouldn't meet with me.
20 Q. This was in 2009?
21 A. Yeah. This was the second week in January
22 of 2009. We -- I think our CCDRB meeting was in --
23 was the second week or third week of January.
24 Q. Were you still represented by Mr. Harness at
25 this time, by Cotton?

1 A. Cotton. And we had already gotten through
2 OCRM, so Lucas Padgett was my lawyer at the time.
3 Q. With the McNair Firm?
4 A. With McNair Law Firm, yes. Lucas
5 represented me through the rezoning -- through my
6 rezoning efforts. That's what he does,
7 entitlements and zoning.
8 Q. At any -- at some point, did you or any
9 representative of yours meet with Mr. Beach about
10 this project?
11 A. In 2008 or 2009?
12 Q. '9, '9.
13 A. No. I got a call out of the blue from Josh,
14 and he said, I'm -- he goes, look, we're going to
15 show up if you move forward with your drawings.
16 Q. Did you go forward with it?
17 A. Yes. We had just spent hundreds of
18 thousands of dollars on the plan, and I couldn't
19 wait anymore. I couldn't -- I couldn't change
20 anything at that point.
21 Q. And did someone from the League show up?
22 A. Dana showed up.
23 Q. Okay. What did Mr. Beach do or say?
24 A. He crucified me. He crucified the plan.
25 Q. Could you be more specific?

1 A. He said the buildings were way out of scale.
2 He said -- he commended me initially for rezoning
3 the property. He commended me for, you know,
4 reducing the wetland impacts. And then he just
5 blasted the plan in -- at that January 2009 plan.
6 Q. The plan as you submitted, was this in
7 January of 2009?
8 A. Uh-huh.
9 Q. Okay. And that January 2009 meeting, which
10 was with some city board?
11 A. It was a public meeting.
12 Q. Public meeting, okay.
13 A. And there was probably 50 people there.
14 Q. All right. Were the plans that you
15 presented, did they exist back in 2008 when you and
16 Ms. Vinson were having your discussion?
17 A. Absolutely, same plans, yes.
18 Q. So was Ms. Vinson aware of those plans, the
19 height and the size and everything?
20 A. Absolutely everything. I defined it all in
21 an e-mail to Josh.
22 Q. Was Mr. Beach involved? I mean, was he
23 aware of the size and height and so forth of those
24 plans?
25 A. Yes. He had told me in a -- when we met at

1 the College of Charleston that he reviewed the
2 plans with Josh who was working for him at the time
3 and said, you have done everything that you need to
4 do. You need to move forward with your permits.
5 Q. All right. At any time did Mr. Beach ever
6 explain to you personally why the change from what
7 you have described -- what you have described was
8 his position in 2008 to the position he expressed
9 at the meeting of January 2009?
10 A. Nancy Vinson just e-mailed and said, you
11 know, we're getting incredible heat. And she had
12 been on television talking about the project. She
13 got interviewed. And she was the face of the
14 Coastal Conservation League in support of the
15 project. And so, you know, she was the one getting
16 the calls.
17 Q. Okay. She was getting calls from whom?
18 A. From their -- from their supporters.
19 Q. Did they ever -- did she ever tell you who
20 they were?
21 A. John Hope.
22 Q. Okay. That was from Mr. Beach?
23 A. Uh-huh.
24 Q. He told you about Mr. Hope, okay.
25 A. And Nancy told me about John Hope.

1 Q. Okay. Did Mr. Beach ever meet with any of
2 your representatives or attorneys to explain why he
3 had changed his position?
4 A. We had -- after CCDRB basically denied my
5 plan in January of 2009 based on the comments, I
6 immediately started working to address those
7 concerns, concerns that Mr. Beach had and others
8 had about the height and about the scale and about
9 the mass.
10 And I hired Tim Keane, who was a former
11 planner at the City of Charleston. And, you know,
12 I hired him because, you know, he -- he had done so
13 much work for Dana while he was in private
14 practice. He had been hired many, many times by
15 Dana to create better plans.
16 And he had been -- he had worked at the
17 City of Charleston for many, many years. And, you
18 know, I -- and I met with him, and I said, you
19 know, what do we do here? I said, you know, I want
20 you to create a better plan that's going to win
21 back Dana's support.
22 And he says, Dana cares about design,
23 and we're going to create a better design. I said,
24 yeah, because I can't afford to do this again.
25 Q. Okay.

1 A. And so Tim worked from -- through February
2 and March to create a better plan. And we met with
3 the Coastal Conservation League in March with my
4 lawyers, Lucas Padgett, with the City of
5 Charleston, Geona Johnson, Tim Keane, Christopher
6 Morgan. All of Sea Island's representatives were
7 there. The Sea Island people were there. Big
8 meeting.
9 Q. Okay.
10 A. And then we presented Dana with the new
11 plan. And he said it was too dense, still too
12 dense. And we had reduced it significantly.
13 Q. Okay.
14 A. And there was -- we have an affordable
15 housing component that we are required to do. It
16 was a condition of my zoning. And so I need a
17 certain amount of density to be able to achieve
18 that financially.
19 And we talked about the affordable
20 housing at that meeting, and it was at that meeting
21 that -- after that -- Mike Gruenloh was there, his
22 rep -- and Mike Gruenloh turned out to represent
23 the Coastal Conservation League, and I was blown
24 away by that.
25 I mean, I had met with the Coastal

1 Conservation -- I had met with Save the Angel Oak's
2 folks. Mike Gruenloh was there representing them.
3 And then I found out that Mike Gruenloh was
4 actually representing the Coastal Conservation
5 League. So he was at the meeting as well.
6 And then I subsequently received a
7 letter from them stating that they wanted me to
8 have a community meeting, a charrette, and replan
9 the whole development. They wanted me to limit
10 phase one to 275 units and not build phase two.
11 Q. What was to happen with the land on which
12 phase two was --
13 A. I was -- that was -- I was told in the
14 letter to work with the Coastal Conservation League
15 and community groups -- or excuse me -- community
16 greenbelt groups and sell phase two to the County
17 or to a public body.
18 Q. Okay.
19 A. And so I agreed to the first -- I agreed to
20 limit the density, reduce the density, and I agreed
21 to have a community meeting.
22 Q. Did you do those things?
23 A. I absolutely did. I told him that we're
24 going to reduce the density to a certain extent,
25 that we're going to significantly reduce the retail

1 component of phase one. And I did that. And then
2 I had a community meeting at the Sea Island
3 Comprehensive Health Care Center in April. I
4 believe it was April of 2009.
5 And we went to the meeting. It was
6 highly, highly -- or very, very -- it was highly
7 advertised, and it was on the front page of the
8 paper that we were going to have this meeting, that
9 we were going to talk about the Angel Oak plan, and
10 that I was going to present my plan.
11 And I was informed that the Coastal
12 Conservation League had their plan of what they
13 wanted to see at the meeting. And I agreed to have
14 Sea Island -- it was a very big meeting. You know,
15 Senator Fielding was there, Senator McKinley
16 Washington was there, Bill Saunders was there, who
17 is against all development on Johns Island, but in
18 very much support of our project. The CEO of Sea
19 Island was there. There was a lot of community
20 people from the meeting.
21 Q. Did Sea Island --
22 A. And it was all my experts at the meeting.
23 Q. Did Sea Island express whether they were in
24 support or opposition to any --
25 A. Oh, yeah. They were in absolute support.

1 They are in absolute support and they were in
2 absolute support of the plan and the revised plan
3 that I had presented to the community. And we got
4 multiple comments to, you know, incorporate into
5 the plan. And then at the end, Dana Beach
6 presented his plan.
7 Q. Okay.
8 A. Which was preserve, preserve, preserve,
9 preserve.
10 Q. Okay.
11 A. And he gave me a little small pocket of land
12 to develop. Tiny -- it was tiny. I figured out it
13 was like 8 acres or something like that.
14 Q. All right. At this point, did you engage
15 Mr. Beach in any conversation about why he was
16 opposed -- why he had changed his position?
17 A. Well, after the meeting, the CEO of Sea
18 Island very much engaged Dana.
19 Q. Tell me about it.
20 A. Publicly.
21 Q. Tell me about that.
22 A. It was ridiculous. You know, he was --
23 there was a big confrontation at the end of the
24 meeting where the CEO of Sea Island, you know,
25 basically said, you know, why are you trying to

1 limit this development?

2 The urban growth boundary has already

3 limited the development, you know, in our area of

4 development. You know, we're trying to further

5 limit the affordable housing, further limit the

6 density. We need this development to help us move

7 forward. And it was front page of the paper the

8 next day.

9 But I walked out with Dana at the end

10 of the meeting, and I -- my wife was with me. And

11 I said, you know, Dana, that didn't need to happen.

12 And he said, I showed you my plan. You take it or

13 leave it. It's the best you're going to get. And

14 verbally threatened me in front of my wife. And

15 that was the last time that we talked for a while.

16 Q. Was the verbal threat just what you just

17 said?

18 A. It was exactly what I just said.

19 Q. So he didn't couple that with another

20 threat?

21 A. No. He basically said, you take my plan or

22 you leave it, but this is the best you're going to

23 get.

24 Q. Okay. Those were --

25 A. Those were his exact words.

Sent: Thursday, May 01, 2008 4:46 PM
To: Robert DeMoura; Allison King
Subject: RE: Angel Oak Village Letter

You guys are the best, we're delighted to work with you.

Nancy Vinson, Program Director
Coastal Conservation league
PO Box 1765
Charleston, SC 29402
843 723-8035 x 1040
843 723-8308 fax
nancyv@scccl.org

From: Robert DeMoura [mailto:rdemoura@cctre.com]
Sent: Thursday, May 01, 2008 4:26 PM
To: Allison King; Nancy Vinson
Subject: RE: Angel Oak Village Letter

Nancy,

We appreciate your support in our effort to improve on our development plan.

Thanks
Robert

L. Robert DeMoura
CC&T Real Estate Services
Ashley River Center, Riverside A
2655 Evatt Lane Suite 107
Charleston,SC 29405
Direct: 843-414-4064
Main: 843-577-6722 x111
Mobile: 843-670-0955
Email: rdemoura@cctre.com
www.cctre.com

From: Allison King
Sent: Thursday, May 01, 2008 1:50 PM
To: nancyv@scccl.org
Cc: Robert DeMoura
Subject: Angel Oak Village Letter

Ms. Vinson,
Thank you so much for your time and help in our efforts for Angel Oak Village. Attached is the letter that we discussed.
Please feel free to contact me with any questions.
Many thanks,
Allison

EXHIBIT
PENGAD 800-631-6989
7-DeMoura
4/11/12 TLH

COASTAL
CONSERVATION
LEAGUE

May 6, 2008

Mr. Robert DeMoura
Angel Oak Village – AOD, LLC
2655 Evatt Lane, Suite 107
Charleston, SC 29405

RE: Sea Island Planned Unit Development Amendment (Angel Oak Village)

Dear Robert:

This letter is to confirm that you have presented to me (as a representative of the Coastal Conservation League) the preliminary plans for Angel Oak Village and proposed amendments to the Sea Island PUD.

Upon review of the Angel Oak Village plan, I encourage your proposed PUD amendments which include replacing a large retail "big box" component with smaller multifamily building types and adding space for a small farmers market. The changes you suggested are good steps. These smaller buildings should allow for more pervious surface on the site than the current PUD. We are very interested in seeing the detailed storm water plan. This parcel drains to a creek already suffering from impaired water quality.

On behalf of the Coastal Conservation League, this letter verifies that our organization is aware of the requested PUD amendment, agrees with the proposed changes. We appreciate the extent to which you have sought to make this a more thoughtful development by meeting with neighbors and us and by including a number of green community-oriented components in plan. We do remain concerned that the amended plan still adds a lot of density in this location and adds a significant amount of impervious surface to a currently forested tract of land.

Thank you again for taking the time to meet with us and for making adjustments to improve the plan.

Sincerely,

Nancy Vinson

Nancy Vinson, Program Director

"Nature and Community In Balance"
P.O. Box 1861 • Beaufort, S.C. 29901-1861 • Telephone (843) 522-1800 • Fax (843) 525-1197
P.O. Box 1765 • Charleston, S.C. 29402-1765 • Telephone (843) 723-8075 • Fax (843) 723-8308
1207 Lincoln Street, Ste. 201-C • Columbia, S.C. 29201 • Telephone (803) 771-7102 • Fax (803) 771-7101
P.O. Box 601 • Georgetown, S.C. 29442-0601 • Telephone (843) 545-0401 • Fax (843) 545-8554
www.coastalconservationleague.org • info@scccl.org

PENGAD 800-631-6989
EXHIBIT
S-DeMoura
4/11/12 TCH

N. Pleasant

7/12/10
U.S. Army Corps of Enginners
SCDHEC/OCRM

To Whom It May Concern:
(Via fax)
Re: P/N: SAC 2008-1403-SIR
Subject: Angel Oak Village/Sea Island Heath Care Development

As a resident of John's Island for the last 15 years, I feel that I must, and indeed feel obligated, to protect not only the Angel Oak Tree but all lands surrounding it.
I first visited that tree in 1974 before there was a fence surrounding the area. I remember when Mayor Riley annexed the area into the City Of Charleston and I remember that there were comments made, even then, that he would sell it out and fail to protect it and the wetlands surrounding it. This is the legacy of Joe Riley.

As for the need for 300 apartments at that intersection, unless they are planning to cater and rent to illegal Mexicans, we don't need any more low-rent, section-8 housing and that is precisely what will be renting there. The Sea Island Center caters to Hispanic, black, low/no income persons and this is the last thing we need to promote on John's Island. It has already begun to show signs of decay because we have lost too many good taxpaying citizens due to the Housing crisis. Hundreds of homes sit, foreclosed, for sale, and empty as it is.

There is no market for 300 apartments. Not by rent paying individuals, at least.

If they decide that they will go ahead with this, it will only be a matter of time before Angel Oak becomes an endangered oak because Mexicans do not care for our heritage and things that Americans hold sacred and historic.

This developer has no idea how angry the residents of Johns Island will be if he insists on pushing ahead with this horrible idea. His theory is as sound as was BP's in drilling in the Gulf. He has no respect or regard for the habitat of the wetlands. If he bulldozes trees, fills in with cheap fill dirt after he has scraped off centuries worth of topsoil, and essentially raped the land, then the Angel Oak stands unprotected by her sister oaks that have shrouded her and softened the winds of terrible storms for centuries and allowed her to stand.

Tell this developer no and show him the hundreds of other acres of lands that he could buy and ruin instead.

A citizen.

Sue Wilkinson

EXHIBIT
9-DeMarra
4/11/12 THT
PERIGAD 800-831-6989

EXHIBIT 12

1 Q. I'm going to switch horses with you here,
2 and you mentioned actually the Boeing plant. Now,
3 originally the Boeing -- it wasn't the Boeing
4 plant, as I recall. It was the Vought Company; is
5 that --
6 A. Vought-Alenia.
7 Q. There you go. Where did this rank in terms
8 of job creation in South Carolina? The Vought
9 plant that ultimately became the Boeing plant.
10 A. Well, it was important from our standpoint,
11 from a strategic standpoint in that we knew what we
12 believed it would lead to, which would be Boeing
13 coming to South Carolina, and we were correct in
14 that assessment.
15 Q. Okay. So the Vought -- all along it was
16 anticipated that Vought would be the first entity
17 here but that Boeing would ultimately come.
18 A. Well, you know, Bob Faith, who was then my
19 Secretary of Commerce, you know, I think -- and who
20 was an adroit business guy, reasoned that if
21 they -- if they started here, if they got a
22 beachhead, if they became familiar with our
23 workforce and our way of doing business relative to
24 some of the encumbrances that they had in the upper
25 northwest that they would be predisposed to come

1 here in greater form or fashion.
2 What exactly that meant, neither of us knew,
3 but that was his hunch and it turned out he was
4 correct in that hunch.
5 Q. But it was a very large job creator.
6 A. Yes.
7 Q. Perhaps the largest in modern state history?
8 Or is that an overstatement?
9 A. Not the original Vought-Alenia, no.
10 Ultimately the Boeing, yes, but not at that time
11 with Vought-Alenia.
12 Q. I would hand you -- this came, I will tell
13 you, from a set of documents, not many, that I
14 received from the Department of Commerce recently
15 in response to a subpoena. This appears to have
16 been one document which the cover letter told me
17 had been substantially redacted and it was
18 accurate. That's why you see entire blank pages.
19 But on the third page at the bottom it --
20 this was August 28 of 2003 is the date here. It
21 says that this site is extensive -- has presumably
22 is what they meant to say -- extensive wetlands.
23 With the help of Governor Sanford, we arranged an
24 agreement with Dana Beach to support a mitigation
25 plan to purchase $5 million worth of acreage in

1 pristine wetlands and marsh.
2 Tell me what you can recall about that. You
3 don't have to agree with it. Just tell me what you
4 remember that --
5 A. I don't recall anything. I wasn't a part of
6 that conversation.
7 Q. You never discussed with Mr. Beach any
8 particular mitigation requirements?
9 A. And again, the governor's office is large,
10 is a very wide umbrella, and so in any of the deals
11 that were ironed out within commerce, my Secretary
12 of Commerce had my proxy. So whether it was Bob
13 Faith, whether it was Joe Taylor -- and they would
14 work on putting together the deal, say, you know,
15 they worked together with Santee Cooper on power
16 and they worked together with the Ports Authority
17 on ingress/egress from a port standpoint, and they
18 worked with different permitting agencies.
19 Q. Would there have been somebody on your staff
20 that may have been involved in putting the commerce
21 department together with Mr. Beach to come up with
22 this mitigation plan?
23 A. You mean I could check -- Scott English
24 would be the logical choice. He was my chief of
25 staff.

1 Q. Okay.
2 A. I do remember there being some kind of,
3 again, conversation about how Dana Beach was
4 working cooperatively as opposed to in opposition
5 on this. And I may have gotten Dana Beach in touch
6 with somebody at Commerce -- I don't know who --
7 saying let's not spend time fighting about this.
8 Let's find a way to work together on it. But
9 that's all I can recall.
10 Q. Because of your 2004 letter, which was to my
11 client's interest, I contacted the archives
12 department and went up and looked at the database
13 they have of the rather large number of documents
14 from your -- not surprisingly, from your eight
15 years in office. And it's a searchable database,
16 and there just wasn't anything in there about the
17 Boeing plant except invites to the ground breaking
18 and so forth.
19 A. Right.
20 Q. I will just tell you that. I mean I did
21 look in advance of deposing you to see what there
22 might be and there just wasn't anything.
23 A. Correct.
24 Q. I will also tell you that the archivist said
25 that in that your administration is just like all

1 permitting process. Again, I'm not an expert and I
2 don't know exactly how he does his trade, but I
3 would take it that that would be a selling feature.
4 Q. A selling feature, you're saying, to the
5 Corps of Engineers, to the federal government.
6 A. Well, to timeliness, which was of great
7 importance to Vought-Alenia because they had a
8 contract with Boeing to go ahead and produce the
9 fuselages. And the timing of their ability to do
10 so meant -- well, would directly impact their
11 ability to perform on their contract, and their
12 ability to perform on their contract was make or
13 break for them.
14 So in essence the deal hinged on us being
15 able to deliver quickly that which Boeing needed.
16 Not us, but Vought-Alenia being able to deliver
17 quickly what Boeing needed.
18 So I do remember timing being a very big
19 issue for these folks given the fact that you're
20 looking at a greenfield site.
21 Q. I was going to say they were looking at a
22 couple of other sites out there somewhere?
23 A. Right.
24 Q. I think one in Kinston, North Carolina and
25 one in -- somewhere else, but other sites?

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

September 27, 2004

Mr. Mercer Reynolds III
Reynolds DeWitt and Company
300 Main Street, 4th Floor
Cincinnati, Ohio 45202

Dear Mercer,

I just want to write and say again how much I appreciate you taking the time to have a brief conversation last week. The gentlemen down on the coast particularly appreciate you allowing them to conference in and voice their concerns over development on the Keystone tract.

I'd like to reiterate the partnership that has developed between state, local citizenry, and local landowners - and that I don't think it would be wise from an investment standpoint to be part of a group that would attempt to disrupt the thousands of hours that have gone into the collaborative process that has built this partnership.

This group has the capacity to mount sustained opposition to this project with a political union unlike any I have ever seen in South Carolina. On the one hand, long-time Republican and Ambassador Bob Royall, who I saw earlier this week, mentioned he had put a call into you and was going to fight the project in any way possible. Equally forceful from the opposition party is Fred Lincoln, who would be adroit at dragging the development process out in remarkable ways, and as we both know, time is money in the development business.

Enough musings from my end, their political will is matched by the state's $50 million commitment to this partnership. I hope you will take a strong second look. Please let me know next time you are down this way. Until then, take care.

Sincerely,

Mark Sanford

MS/kh

MELVIN
BRYANT
D. SMITH
S. NICHOLS (NEWKIRK)

OFFICE OF THE MAYOR

R. KEITH SUMMEY
MAYOR

City of
North Charleston
SOUTH CAROLINA

September 28, 2007

Mr. Noel Thorn
Cooper River Initiative
PO Box 20246
Charleston, SC 29413

Dear Mr. Thorn:

SUBJECT: SCSPA ENVIRONMENTAL MITIGATION PLAN

Nat Ball, Army Corps of Engineers Project Manager, suggested that I contact you regarding the South Carolina State Ports Authority (SCSPA) Environmental Mitigation Plan. I was disappointed that the environmental regulators approved the mitigation plan without review or comment by the City of North Charleston.

Port expansion at the former Naval Base, located in the City, will impact about 10 acres of tidal marsh, 2 acres of freshwater wetlands and 57 acres of sub-tidal bottom fill. While I feel it is admirable that the SCSPA decided to use environmental mitigation funds to protect Morris Island, I believe that the environmental mitigation plan should include projects in closest proximity to the affected environment. I expressed this desire to the SCSPA on numerous occasions. The City identified Noisette and Filbin Creeks as viable projects. The City has never waived in its commitment to restore these estuaries, having worked with environmental agencies, regulators and community groups for over ten years.

The Filbin Creek Drainage Basin is the largest and northernmost of the two basins. It is approximately 3,300 acres in size and is drained by Filbin Creek. It is an open stream which flows nearly due east to discharge into the Cooper River. Filbin Creek was channelized to address flooding problems decades ago. The Noisette Creek drainage basin is approximately 1,400 acres and drained by Noisette Creek. Noisette Creek is an open stream that also flows eastward to discharge into the Cooper River. The present fragment of remaining highly stressed Noisette Creek tidal marsh comprises about 140 acres of open water and degraded woodlands. The amount of wetland acreage encompasses by these two drainage basins is approximately 255 acres.

The Corps and Ocean and Coastal Resource Management documented the significant need to restore these two watershed areas. Filbin Creek is on the 303(d) List of Impaired Waters. Noisette Creek likely would be placed on the 303(d) list but is not currently monitored. In addition, these areas are coming under development pressure which could result in further wetland degradation

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PLAINTIFF'S EXHIBIT 14 - Sandell 476 1-18-10

These two drainage basins and the small creeks associated with them present a number of challenges and opportunities for restoration.

The area surrounding Filbin Creek is one of the few relatively undisturbed green spaces remaining in the area of North Charleston and Hanahan. The City is proposing the restoration of 90 acres of estuarine inter-tidal wetlands near the junction Filbin Creek and the Cooper River. In addition, about 20 acres of palustrine forested wetlands along Filbin Creek would be restored. Approximately 72 acres of Noisette Creek's tidal marsh was filled by the Navy. The City would also return this former filled marsh into a new 44-acre tidal marsh and a 300-foot wide riparian zone buffer along approximately 2,200 feet of stream. The Army Corps of Engineers conducted a Preliminary Restoration Plan of both creeks and estimates the cost of restoration over $2.5 million. The City is requesting $2.5 million of the SCSPA environmental mitigation funds.

There is also an educational aspect to these projects. The Academic Magnet High School, also located in the city, has partnered with EarthForce and incorporated sampling and testing the Noisette Creek into their marine biology curriculum. Other area schools will be targeted for educational experiences by working with the City of North Charleston and the Charleston County School District. Education of adjacent landowners and stakeholders is also essential to the improvement of the creeks. The Noisette Company and the Clemson University Restoration Institute have committed to working with the City on the ecological restoration of both creeks.

The City's environmental objective equals those of Cooper River Initiative which is to maintain and enhance the environmental quality of the Cooper River and its adjacent estuary systems. With your support and funding the City will be closer to achieving that goal. I would like to meet you to discuss our request in greater detail. Please contact, Ryan Johnson, 740-2501 for scheduling. Thank you for your consideration.

Sincerely,

R. Keith Summey
Mayor

cc: Byron Miller
Nat Ball

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EXHIBIT 13

1 Environmental Trust.
2 It is an e-mail from you to various
3 people, including Karen Manning and Bobby Hitt,
4 dated September 7 of 2001 (sic). I have had it
5 marked for Andy's benefit as Exhibit 1 to your
6 deposition. Do you have that before you?
7 A I have it from September 7, 2011, not
8 2001.
9 Q I'm sorry. I haven't woke up yet this
10 morning apparently. That's right. 2011, exactly.
11 Your response to Ms. Manning is fairly
12 brief, but I wanted to ask you about her somewhat
13 longer e-mail, which we don't need to read into the
14 record, but just essentially she is talking about
15 the possibility of the ACRET Trust being kept as a
16 viable entity based on some conversations she had
17 with Nancy Vincent.
18 Did you have any involvement in
19 discussions with Ms. Vincent or anybody associated
20 with the ACRET trust about keeping it alive?
21 Keeping the trust alive, I mean?
22 A No.
23 Q You probably need to say that again.
24 A No.
25 Q Your response to her, however, indicates

1 some knowledge about where the ACRET Trust came
2 from, and specifically, I want to ask you about the
3 part of the second sentence -- and I will just read
4 it -- where it says: It was a nice, quick, albeit a
5 little expensive way to get support from
6 environmental folks to mitigate the wetlands on the
7 Boeing site.
8 First, about the little expensive way,
9 that is sort of a general term, granted, but it does
10 express your statement that the ACRET approach was
11 expensive. Could you elaborate on that some for me,
12 please?
13 MR. GOWDER: I am going to object to the
14 form of the question.
15 MR. BARNETT: Okay.
16 Q Go ahead and answer, if you can,
17 Mr. Young. Ms. Manning can explain to you what just
18 happened. It is certainly appropriate if she wants.
19 MS. MANNING: He objected to the form of
20 the question because it was leading, but you
21 can answer. The record reflects he objected.
22 A Repeat the question again.
23 Q I just want to know what you meant, if you
24 can remember, about when you said a little expensive
25 way in reference to the ACRET trust, what did you

1 mean by a little expensive?
2 A That it cost a lot of money to -- to, you
3 know, get it all done.
4 Q Okay. Well, let me ask you about the next
5 clause there where it says -- you say: A little
6 expensive way to get support from environmental
7 folks. What did you mean by that?
8 A We were trying to get the site mitigated
9 quickly, and I mean, so we put a lot of money into
10 mitigating the site. And the attorneys that came up
11 with the idea got the sort of the environmental
12 folks to get it done.
13 Q Okay. Do you know who the environmental
14 folks were?
15 A There were a lot of folks that were
16 involved. Certainly Coastal Conservation League was
17 involved. There was -- the Army Corps of Engineers
18 had been involved in the formal meetings. There
19 were a lot of folks. DHEC had been involved in some
20 of those meetings.
21 Q Okay. All right. Were you involved in
22 any of those meetings?
23 A I was involved in meetings when it became
24 clear that we were going to move forward with --
25 Vought was going to come into the state of South

1 Carolina and we were going to execute the meeting,
2 so there were a series of, I guess you call them,
3 preliminary meetings that were held, but, yes, I was
4 part of those meetings, I think two of them.
5 Q Were you involved in 2003 with what was
6 called Project Buffalo on behalf of the Department
7 of Commerce?
8 A Absolutely.
9 Q Did you write a memo entitled Project
10 Buffalo Overview?
11 A I wrote a jillion memos; I don't remember
12 that. Okay. Karen has handed me a Project Buffalo
13 Overview.
14 Q Did you write that?
15 A I wrote memos like this. You need to tell
16 me -- look down at the bottom of the page and tell
17 me which date you are looking at.
18 Q August 28, 2003. What Ms. Manning sent me
19 was a redacted version. It does not have an author
20 anywhere on it. I was also provided a full version
21 in those thousands of pages of documents from
22 Haynsworth, Sinkler, Boyd, but it didn't have an
23 author. Pardon?
24 A I am pretty sure that -- I never signed it
25 or put my name on anything like this.

1 Q I understand, but do you recognize it as
2 your work product?
3 A Without question.
4 Q Okay. All right. Do you have it in front
5 of you?
6 A I do indeed, yes.
7 Q On page three at the bottom --
8 MR. BARNETT: Andy, this has been admitted
9 as an exhibit to the depositions, I think,
10 several times. It is Number 12 in Dana Beach's
11 deposition.
12 MR. GOWDER: Okay. As long as you have
13 identified it so I can pull it up.
14 MR. BARNETT: Exactly.
15 Q On page three down at the bottom it says,
16 paragraph four: Wetland mitigation. I think there
17 is probably a typo, I will just read it the way I
18 think it was intended to be written. It says: The
19 site has extensive wetlands. The second sentence it
20 says: With the help of Governor Sanford we arranged
21 an agreement with Dana Beach to support a mitigation
22 plan to purchase $5,000,000 worth of acreage in
23 pristine wetlands and marsh.
24 Did you write that sentence or approve
25 that verbiage in some way?

1 A I probably -- I'll bet I wrote the
2 sentence completely factless.
3 Q I am the worst proofreader in North
4 America.
5 A If that's the only one on this memo I'd --
6 Q I am the worst proofreader in North
7 America, so I am the last person to talk about that.
8 Were you involved in -- how did you know
9 that Governor Sanford gave help so that the "we", I
10 assume the "we" is the Department of Commerce in
11 that sentence?
12 A The Department of Commerce and allies that
13 were working on the project with us.
14 Q Okay.
15 A Haynsworth, Sinkler, Boyd was a big help
16 on the project.
17 Q Do you know what help Governor Sanford
18 provided?
19 A Somewhere in the project before Project
20 Buffalo when Project Olympus, which was -- when
21 Boeing initially looked to South Carolina to put the
22 787 manufacturing plant here, Governor Sanford, he
23 introduced Secretary of State and maybe Jack
24 Ellenberg who was one of the business development
25 directors at that time to Mr. Beach.

.aren

Young, Daniel
Wednesday, September 07, 2011 11:27 AM
Manning, Karen; Hitt, Bobby; Graham, Ford; Noel, Jennifer; Love, Amy; Turnipseed, Cyndy
Subject: Re: New Mitigation Trust

I agree with you. For those of you copied on this that have no clue what it is/was, it was a nice quick, albeit a little expensive, way to get support from environmental folks to mitigate the wetlands on the Boeing site.

Daniel Young
Executive Director
South Carolina Coordinating
Council for Economic Development

From: Manning, Karen
Sent: Wednesday, September 07, 2011 11:22 AM
To: Hitt, Bobby; Graham, Ford; Noel, Jennifer; Young, Daniel; Love, Amy; Turnipseed, Cyndy
Subject: New Mitigation Trust

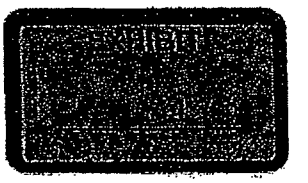
Folks—

I just got off the phone with Nancy Vinson of the Coastal Conservation League to find out whether SCDOC would support ACRET being amended to form an alternate entity that could be used for another project now that it served its purpose for the Vought (now Boeing) project. I had asked the question this spring when contacted by HSB about dissolving ACRET and followed up with Boeing to make sure that Boeing didn't object to the dissolution. Boeing didn't object, and HSB told me then that it didn't make administrative sense to keep the entity alive.

Apparently, Ted Hopkins and John Hodge have gotten involved and the advice has changed. The entity will be reformed to be available for other projects who may want to handle mitigation in a similar way. Nancy mentioned that Google might be interested. Funds could come from companies or from CCED depending on the facts.

I see this as a win/win and told Nancy as much. I asked her to make sure that when all was said and done that we were notified of the details so we were fully apprised as how we might be able to use this new tool for future projects.

If you know of any reason why SCDOC would not support this endeavor, please let me know. We are not being asked to provide funds, just support the effort to keep the entity available for other projects.

KM

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