(5)

21943

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellant Case No. 2014-000847

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

vs.

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

RECORD ON APPEAL
VOLUME III OF VII

J. Blanding Holman IV
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
Fax: (843) 414-7039

Jefferson Leath
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401
Telephone: (843) 513-1076

Amy E. Armstrong
Jessie White
South Carolina Environmental Law Project
430 Highmarket Street
Georgetown, SC 29440
Telephone: (843) 527-0078
Fax: (843) 527-0540
Attorneys for the Appellants

Bradley D. Churdar
South Carolina Department of Health & Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405
Attorney for Respondent DHEC

Randolph R. Lowell
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, SC 29202
Philip L. Lawrence
General Counsel
South Carolina State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287
Attorneys for Respondent SPA

Chad Nicholas Johnston
PO Box 8416
Columbia SC 29202

Michael Gary Corley
1312 Augusta Street
Greenville, SC 29605
864-232-5870
Attorney for Appellant

Tracey Colton Green
PO Box 8416
Columbia, SC 29202-8416
803-252-3300
Attorneys for the Respondent SPA

SC Court of Appeals
APR 14 2015

Accordingly, the Order erred in finding Cruise Opponents have met their burden in alleging a concrete and particularized injury-in-fact, and the Ports Authority respectfully requests the Court reconsider its holding in that regard.

V. The Order erred as a matter of law and fact in ruling that Cruise Opponents' conjectural allegations of injury-in-fact are traceable to the permitted activity.

Respectfully, the Order erred in finding Cruise Opponents have met their burden in showing a causal connection between their alleged injuries and the Ports Authority's permit. The Order held:

> Petitioners allege the new pilings are necessary for the relocation and expansion of the cruise terminal, which will result in the alleged injuries of increased emissions, increased traffic congestion and noise, and adverse health impacts. Petitioners, therefore, allege that without the permitted pilings to provide necessary structural support for the cruise terminal, the Ports Authority will not be able to expand cruise services or serve larger cruise ships. Petitioners have alleged sufficient facts to show a causal connection at this point.

Order at 14. Here again, allegations that are merely conclusory and not supported by facts contained in the supporting pleading need not be considered. *See, e.g., Orman v. Cullman*, 794 A.2d 5, 15 (Del. Ch. 2002) ("Conclusory allegations unsupported by facts contained in a complaint ... will not be accepted as true.").

The Cruise Opponents allege that the pilings permitted for the UPT Project will result in injuries of increased traffic, noise, emissions, etc. However, there is no evidence or facts asserted in the contested case request to support a conclusion that the installation of five piling clusters as permitted by DHEC will cause any of the injuries alleged by Cruise Opponents. In direct contrast to Cruise Opponents' unsupported allegations, the Voluntary Cruise Management Plan (attached to the Permit and part of the Cruise Opponents' "pleadings" through its request for a contested case) imposes **limitations** on cruise activity, including, among other things, a voluntary limit on

the number of cruise ships calling on Charleston, a voluntary limitation that the UPT will not host more than one ship at a time (except in emergency situations), a limit on the design of the new terminal to accommodate only ships of the same size and profile that called on Charleston previously, and a commitment to manage the traffic. Ex. 4, Management Plan at 2. In other words, the Management Plan addresses Cruise Opponents' allegations of injury.[17]

Because the net effect of the UPT Project will be beneficial to the areas represented by Cruise Opponents vis-à-vis the *status quo*, it is impossible for the relocation of the cruise facility as contemplated in the Permit to be the cause of the alleged injuries. As previously stated in the Ports Authority's Amended Prehearing Statement, relocating the current cruise facility to Building #322 will actually result in the **reduction** of emissions in Petitioners' neighborhoods, because existing berth facilities that were used for cargo operations for upwards of 200 vessel calls a year will be relocated to another terminal facility. *See* Ports Auth. Am. Preh'g Statement at 5-8. In addition, further air emission reductions will result from cessation of the truck and rail traffic necessary to service the current cargo operations. *Id.* at 6-7.

Similarly, Cruise Opponents' allegations of increased traffic are simply baseless. Due to the elimination of the truck and rail traffic needed for cargo operations and the implementation of the traffic management plan (upon which the Permit is conditioned), relocation of the cruise facility as contemplated in the Permit would result (at worst) in a net neutral traffic impact on the UPT and surrounding areas. *See* Ports Auth. Am. Preh'g Statement at 6. Cruise Opponents' remaining allegations of increased noise and health effects suffer from the same fatal flaw and

[17] It does, however, continue to allow cruise ships to call on Charleston, which is the real complaint of Cruise Opponents and the real reason they continue to delay the implementation of the UPT Project plan—Cruise Opponents desire to stop cruise operations at the UPT altogether, because, in their opinion, it attracts the wrong type of tourists to Charleston. David Slade, *City's Cruise Plan Steams Ahead*, Charleston Post & Courier, Posted Sept. 15, 2010.

each is without factual support. Common sense would suggest that a reduction of use in the facility by ships, trains, and trucks would result in a concomitant reduction of noise and any possible health effects.

In reality, Cruise Opponents' allegations are nothing more than a "list of grievances" surrounding **any** presence of the cruise industry in Charleston. None of their "injuries" is causally related to the work allowed by the Permit. The Cruise Opponents' Prehearing Statement (along with making up "facts" out of whole cloth[18]) complains more about **continuing** existing cruise operations. For instance, the Cruise Opponents admit that their problem with the Permit is that a new terminal "would enable cruise ship home-basing operations to **continue**...." Cruise Opponents' Prehearing Statement at 4. Of course, it follows that if the complained of "injuries" were occurring prior to issuance of the Permit, there could be no causal relationship between the Permit and the alleged injuries.

The ALC and the Court of Appeals have recognized and rejected a claim under similar circumstances in *Bailey v. S.C. Department of Health & Environmental Control*, 388 S.C. 1, 693 S.E.2d 426 (Ct. App. 2010).[19] Notwithstanding, the Order failed to address this clear precedential value offered by *Bailey* in evaluating a petitioner's constitutional standing. In *Bailey*, a landowner challenged a modification permit issued by DHEC to a neighbor's dock on the grounds that the permit facilitated the continued and expanded use of the dock by boats, thereby prejudicially impacting the neighbor's use and enjoyment of the creek and his own property and dock. The ALC

[18] For instance, Cruise Opponents' Prehearing Statement suggests that the new facility would serve larger ships than those currently calling on Charleston. This suggestion intentionally ignores the voluntarily imposed limitation on ship size upon which issuance of the Permit is conditioned.

[19] *Bailey* also calls into question whether Cruise Opponents' claims are redressable through an order of the Court, as discussed more thoroughly below.

dismissed the case for lack of standing, finding no causal connection between the alleged injury and the permitted conversion of the dock "because the boats [that are the subject of the neighbor's challenge] had been docked there for years, and they would continue to be docked there regardless of the permitting decision." *Id.*, 388 S.C. at 7, 693 S.E.2d at 429. On appeal, the Court of Appeals affirmed the ALC's decision.

This case is analogous to *Bailey* and instructive to the Court in its analysis of Cruise Opponents' standing. Cruise ships have called on UPT continuously since 1973 (and passenger vessels for over 100 years), they do so today, and will continue to call on UPT and the Charleston peninsula in the future regardless of whether the Ports Authority shifts operations less than 600 yards north. *See* Ports Auth. Am. Preh'g Statement, Ex. 11, Affidavit of Peter Lehman (Lehman Aff.). In fact, based on the longevity of use of UPT as a port of call for cruise ships, Cruise Opponents' claims of injuries related to the permitted conduct challenged in this action is even more attenuated than those confronted by this Court and the Court of Appeals in *Bailey*, especially since this case involves a publicly operated marine terminal not immediately adjacent to any property of the Cruise Opponents and the use of which for a marine terminal predates the existence of every Petitioner. *See also Arcadia Lakes*, 404 S.C. 515, 745 S.E.2d 385 (in holding that Kaminer Station petitioners did not establish causation, Court noted that "Jackson [one of the Kaminer Station Appellants] also conceded that much of her dissatisfaction with prior construction in the area was due to violations of the applicable permits rather than the permits themselves"); *see also Beaufort Realty*, 346 S.C. at 303, 551 S.E.2d 590 (affirming dismissal for lack of standing on grounds that the League had failed to establish a causal connection between the alleged injuries and the challenged conduct of filing of plats subdividing certain parcels).

As the allegations are conclusory and unsupported by facts, they are insufficient to establish causation between the alleged injuries and the granting of the subject Permit.[20] In addition, because the injuries complained of were present prior to the issuance of the subject Permit, they could not be causally related to issuance of the Permit. Therefore, the Order erred in holding that the Cruise Opponents properly alleged and established causation.

VI. The Order erred as a matter of law and fact in finding the Court can redress the injuries alleged by Cruise Opponents.

In addressing redressability, the Order held that "[w]hile the existing injuries allegedly suffered by Petitioners will not be altered by the denial of the permit in this case, Petitioners allege that the exacerbation of those injuries will be redressed." Order at 14. Initially, it is worth noting that Cruise Opponents are not requesting the Court maintain the *status quo* of cruise operations at UPT. Quite to the contrary, Cruise Opponents' singular goal by this and other pending litigation is to impose new regulation and limits on current operations and prevent, forever, the increase of cruise operations on the Charleston peninsula. However, cruise operations will continue with the renovations found in the Permit or under current conditions (*i.e.*, alongside and in addition to cargo operations) with a renovated terminal in the existing location.

---

[20] Moreover, in ruling on the motion, the Order fails altogether to reach the Ports Authority's arguments and applicable case law demonstrating Cruise Opponents' injuries are caused, not by governmental action, but directly by—or at the very least superseded by—the actions of third parties not before the Court. *See, e.g.*, Ports Auth. Reply in Support of Motion to Dismiss at 10-15 (citing *Lujan, Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Allen v. Wright*, 468 U.S. 737 (1984), *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996), and *Doe v. Obama*, 631 F.3d 157 (2011)). The Order's failure to consider or rule on this pertinent issue reflects an error of law in the Court's analysis, and the Ports Authority respectfully requests the Court revisit its decision in light of these applicable precedents.

Further, as described above, the Order overlooks and fails to address the clear applicability of *Bailey*, 388 S.C. 1, 693 S.E.2d 426.[21] In *Bailey*, the petitioner's challenge to the neighbor's modification permit was based on the assertion that it would facilitate the ***continued and expanded*** use of the dock by boats, thereby prejudicially impacting the petitioner's use and enjoyment of the creek and his own property and dock. *Id.*; *see also Bailey v. S.C. Dep't of Health & Envtl. Control*, Docket No. 07-ALJ-07-0583-CC (July 23, 2008) (J. Geathers) (hereinafter *ALC Bailey*).

In *Bailey*, redressability was found lacking because "the boats [giving rise to the petitioner's concerns] had been docked there for years, and they would continue to be docked there regardless of the permitting decision." *Bailey*, 388 S.C. at 7, 693 S.E.2d at 429. More specifically, "the ***potential*** of having boats mooring at the dock would still exist" regardless of the permitting decision. *Bailey*, 388 S.C. at 7, 693 S.E.2d at 430 (emphasis added); *see also ALC Bailey* ("An adverse decision might make the permitting process more onerous and cost-prohibitive for [respondent], but it would not affect [respondent's] letting friends use her dock nor alter the dock's footprint or impact"). In other words, redressability was tied to whether denial of the permit would foreclose a pre-existing use, *i.e.*, letting friends moor at a dock, and not necessarily the specific boats mooring at the dock that were the subject of the petitioner's ire. At bottom, redressability failed in *Bailey* because the property owner's ability to allow friends to moor at her dock would not be precluded by an adverse permitting decision.

The ALC did not find it necessary to analyze whether petitioner's concerns over future commercial growth accompanying the dock modification would be redressed by a favorable decision. Instead, the ALC reasoned that concerns over commercial development associated with

[21] *Bailey* is the only opinion on record with analogous facts to the case at bar and therefore offers the Court precedential value in applying Cruise Opponents' allegations to the rigorous standard set forth in *Lujan*.

the dock "[were] best addressed through the enforcement of local zoning ordinances" and enforcement of the permit terms, not a contested case challenging issuance of the permit. *ALC Bailey*. Moreover, concerns related to whether the permit was facilitating the expansion of the dock into a marina were deemed to be "conjectural and speculative." *Id.*

The facts of this case provide an even stronger argument in favor of dismissal for lack of standing than those in *Bailey*. Here, Cruise Opponents' challenge a pilings permit on grounds that the permit will enable the Ports Authority to enlarge the cruise passenger terminal, resulting in expanded cruise services and larger cruise vessels at the UPT. This development, Cruise Opponents aver, will exacerbate existing injuries allegedly suffered by members as a result of existing cruise operations. Therefore, Cruise Opponents allege, should the permit be denied, the Ports Authority will be unable to grow cruise operations thereby redressing allegations of exacerbated injury.[22]

However, the UPT is a fully functioning marine container terminal that currently accommodates both cruise vessels and operations, and cargo vessels and operations and is located in a populated maritime and commercial district. The alleged harms, such as increased pollution, traffic, and noise, are common features of urban living and the byproduct of the acts and omissions of numerous third-parties, including Carnival Cruise Lines, who the Cruise Opponents sued in a separate civil action for precisely the same actions that they now accuse the Ports Authority of enabling.[23] Thus, from the outset, the issue of redressability in this case is vastly more opaque and speculative than *Bailey* where redressability was found to be lacking. *See also Lujan*, 504 U.S. at

[22] This principle has been acknowledged by the Court. *See* Order at 14 ("While the existing injuries allegedly suffered by [Cruise Opponents] will not be altered by the denial of the permit in this case, [Cruise Opponents] allege that the exacerbation of those injuries will be redressed").

[23] Indeed, the Cruise Opponents cannot point to any shred of evidence linking the permitted Project to their supposed infirmities. *See also* discussion, *supra*, regarding injury-in-fact.

561 ("[I]t must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.") (internal quotations omitted) (internal citations omitted).

The most significant finding in *Bailey* demonstrating lack of redressability was that "the potential of having boats mooring at the dock would still exist" regardless of the permitting decision.[24] *Bailey*, 388 S.C. at 7, 693 S.E.2d at 430. This contested case is no different. Here, the *potential* of continuing and growing cruise operations at the UPT stills exist regardless of the permitting decision. *See* Lehman Aff. at ¶9-11. As the applicant, the Ports Authority reserves the right to simply "walk away" from the permitting process, including should the Permit be remanded to DHEC by this Court. At any time, the Ports Authority is free to recruit and host larger cruise vessels at the existing terminal on UPT, beyond the *status quo*.[25] However, the Ports Authority has proposed to limit the growth of cruise operations at UPT in a good faith effort to be a good citizen of Charleston. Meanwhile, Cruise Opponents, seeking cessation of all cruise operations on the Charleston peninsula, make—and the Order purports to accept—the overly simplistic and incorrect allegation "that if the permit is denied, the Ports Authority will not be able to expand cruise services or serve large cruise ships." Order at 14. This is, of course, mere argument of counsel proffered

---

[24] In *Bailey*, the petitioner feared the dock modification permit would facilitate a change of use from a private dock into a commercial marina. This Court concluded that the marina argument proffered by the petitioner was without evidentiary support and thus, "conjectural and speculative." *ALC Bailey*. In this case, Cruise Opponents do not suffer from a change of use of the UPT. Notably, the ALC found that the use of the respondent's "dock as modified [would] remain [] virtually the same...." *Id.* Contrary to the petitioner's assertions, the ALC reasoned that the modifications to the respondent's dock "benefit[ed] everyone" by making it "safer and easier" to moor boats. *Id.* Here, the use of the UPT, as modified by the relocated cruise terminal, will likewise remain virtually the same. However equally beneficial, cargo and associated rail operations will be relocated off the UPT and the overall footprint of the terminal will be reduced. This reduces emissions, reduces traffic, and reduces the entire environmental footprint while opening up green space. Thus, like *Bailey*, the proposed modifications will benefit everyone relative to the *status quo*.

[25] Note that the Management Plan applies to the existing cruise terminal for future operations as well as the renovated terminal.

for the purpose of avoiding dismissal and prolonging litigation. *See Beaufort Realty*, 346 S.C. at 302, 551 S.E.2d at 590 ("[A]rguments of counsel are not evidence"). While it lacks any specific factual support on the record or basis in reality, the Order accepts it as true and thereby errs in law and fact.

Despite the factual similarity to and precedential value of *Bailey*, the Order dismissed its applicability to this contested case because the "[n]either the ALC's decision nor the Court of Appeals' decision mentioned or discussed whether *Bailey* had standing under a state statute or the public importance exception." Order at n.3. This dismissal, however, as discussed above, was error.[26] Indeed, after dismissing *Bailey* because it analyzed standing exclusively through the lens of *Lujan*, the Order later circles back to *Lujan*, declaring that in the absence of a definition for an "affected person" under S.C. Code Ann. § 44-1-60, "the [*Lujan*] test provides a sufficient framework to determine whether [Cruise Opponents] have ... standing...." Order at 12. Curiously, despite later employing the *Lujan* test, the Order failed to apply *Bailey*. As the foregoing application of *Bailey* to this contested case clearly shows, the Order erred in finding Cruise Opponents properly alleged and established their attenuated claims of injury-in-fact can be redressed by a favorable decision of this Court. Accordingly, the Ports Authority respectfully requests the Court reconsider its Order and find that the injuries alleged by Cruise Opponents are incapable of being redressed by an order of the Court.

[26] As previously noted, the law at issue in *ATC South* specifically conferred standing on landowners, whereas in this case the law specifically requires a demonstration of standing under the traditional *Lujan/Sea Pines* analysis, rendering *ATC South's* discussion of statutory standing irrelevant and inapplicable to this proceeding and necessitating a reconsideration of *Bailey's* precedential value in this case.

VII. The Order errs in finding Cruise Opponents satisfy the additional elements of associational standing to bring this action on behalf of its individual members.

Finally, the Ports Authority respectfully submits that the Order erred in finding Cruise Opponents have met their additional burden of bringing this action on behalf of their respective memberships. While the Order cites to the controlling law on associational standing, *see Hunt*, 432 U.S. 333, it makes no attempt to apply the *Hunt* factors to the facts and allegations of Cruise Opponents. *Compare Smith Land Co.*, 393 S.C. at 360, 713 S.E.2d at 293 (2011) (Hearn, J., dissenting) (recognizing that injury to one member of an organization does not extend to the rest of the organization). The allegations of Cruise Opponents are far from personal or particularized, instead describing a natural by-product of living in the congested urban environment of the Charleston peninsula. To the extent the allegations are even cognizable, they are unique to the individual asserting them, thus negating the ability of an association to bring the claims in a representative capacity. *See, e.g., Taubman Realty Group*, 198 F.Supp.2d at 755 (stating that courts "do not sit to entertain generalized grievances that are shared by the public at large") (citing *Lujan*, 504 U.S. at 573-74).

Moreover, under the Order's holding that the individuals of the organizations would have standing to bring these claims, the Court implicitly recognizes that the asserted claims inure only to the benefit of the individuals, rather than the representative associations. This is, in essence, the analysis required under the third prong of the *Hunt* test. *See Hunt*, 432 U.S. 343. Notwithstanding, the Order errs as a matter of law in its application, as the third prong of the *Hunt* test, which provides that "neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit," *see Hunt*, 432 U.S. at 343, requires a showing that the interest at stake in the litigation must derive from the individual's membership in the organization. Cruise Opponents have failed to make this showing, and the Order errs as a matter of law in sanctioning

Cruise Opponents' failure to meet its high burden of bringing this action in a representative capacity.

CONCLUSION

The Order erred on issues of law and fact that warrant reconsideration and correction. The Order erred in failing to consider the jurisdictional nature of the inquiry on standing, an inquiry which allows the consideration of the extra-pleading evidence. As the question presented is one of whether the Court may properly exercise its subject matter jurisdiction and authority to render a determination in this matter, it is appropriate for the Court to consider extra-pleading evidence. Further, even considering the threadbare allegations made by the Cruise Opponents on a bare minimum standard, the allegations fall short and fail to satisfy the standing requirements for injury-in-fact, causation, redressability, and require individual participation precluding organizational standing.

For the reasons set forth herein, the Court should reconsider the Order using the framework and analysis adopted by the South Carolina Supreme Court for this jurisdictional question. As a result, and considering the specific factual assertions submitted by the Ports Authority, the Court should issue an order granting the Ports Authority's motion to dismiss for lack of standing.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

Randolph R. Lowell
Tracey C. Green
Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
rlowell@willoughbyhoefer.com
cjohnston@willoughbyhoefer.com

Philip L. Lawrence
General Counsel
S.C. STATE PORTS AUTHORITY
Post Office Box 22287
Charleston, South Carolina 29413-2287
plawrence@scspa.com

Attorneys for the Respondent
South Carolina State Ports Authority

December 19, 2013
Columbia, South Carolina

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 1	Excerpts from Hearing Transcript; *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, Docket Nos. 07-ALJ-21-0107-CC, -0108-CC (July 2, 2007)
Exhibit 2	Excerpts from Motion to Dismiss Transcript; *Preservation Society of Charleston et al. v. S.C. Dep't of Health & Envtl. Control*, Docket No. 13-ALJ-07-0056-CC (Sept. 6, 2013)
Exhibit 3	Ltr. of Lowell to Judge Anderson (Nov. 15, 2013)
Exhibit 4	Voluntary Cruise Management Plan

Exhibit 1

Transcript of the Testimony of

SC COASTAL CONSERVATION LEAGUE VS. SC DHEC ET AL.

Date: July 2, 2007

CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

1230 Richland Street
Columbia, SC 29201
Phone: (803) 252-3445 / (800) 822-0896
Fax: 803-799-5668
Email: contact@creelreporting.com

Page 1

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

South Carolina Coastal Conservation League,

Petitioner,

v.

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

Respondents.

MOTION HEARING
****

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

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

Page 2

APPEARANCES:

J. Blanding Holman, Esquire
Geoff Gisler, Esquire
Southern Environmental Law Center
200 West Franklin Street, Suite 330
Chapel Hill, North Carolina 27516
and
W. Jefferson Leath, Jr., Esquire
Leath, Bouch & Crawford, L.L.P.
134 Meeting Street, 5th Floor
Charleston, South Carolina 29402
Attorneys for Petitioner

Van Whitehead, Esquire
Sara P. Bazemore, Esquire
South Carolina Department of Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
Attorney for Respondent, South Carolina Department of Health and Environmental Control

Deborah Brooks Durden, Esquire
South Carolina Department of Transportation
955 Park Street, Suite 302
Columbia, South Carolina 29202
Attorney for the Respondent, South Carolina Department of Transportation

Randolph R. Lowell, Esquire
Mitchell M. Willoughby, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201
and
Philip L. Lawrence, Esquire
South Carolina State Ports Authority
Post Office 22287
Charleston, South Carolina 29413
Attorneys for the Respondent, South Carolina Ports Authority

Page 3

INDEX

PAGE

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

EXHIBITS

(No exhibits introduced)

STIPULATIONS

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

Page 4

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

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

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

Page 37

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

Page 38

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

Page 39

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

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

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

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

Page 40

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

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

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

THE COURT: Well, yeah.

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

THE COURT: You're not insulting me.

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

Exhibit 2

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

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

ADMINISTRATIVE HEARING

****

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

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

APPEARANCES:

Amy E. Armstrong, Esquire
South Carolina Environmental Law Project
430 Highmarket Street
Post Office Box 1380
Georgetown, South Carolina 29440
Attorney for Preservation Society of Charleston and All Petitioners

Blan Holman, Esquire
Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, South Carolina 29401
Attorney for Preservation Society of Charleston and All Petitioners

W. Jefferson Leath, Esquire
Leath, Bouch & Seekings, L.L.P.
92 Broad Street
Post Office Box 59
Charleston, South Carolina 29401
Attorney for SC Coastal Conservation League

Randolph R. Lowell, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201
Attorney for South Carolina State Ports Authority

Chad N. Johnston, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201
Attorney for South Carolina State Ports Authority

Phillip L. Lawrence, Esquire
South Carolina State Ports Authority
P.O. Box 22287
Charleston, South Carolina 29413
Attorney for South Carolina State Ports Authority

Bradley D. Churdar, Esquire
SC Department of Health and Environmental Control
1362 McMillian Avenue
Charleston, South Carolina 29405
Attorney for SCDHEC/OCRM

Also Present:
Jamie A. White

INDEX

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

EXHIBITS

(No Exhibits were Marked for this Hearing.)

STIPULATIONS

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

THE COURT: All right. This is a motions hearing for the Preservation Society of Charleston et al petitioners versus South Carolina Department of Health and Environmental Control and South Carolina Ports Authority is the respondent. The docket number is 13-ALJ-07-0056-CC. Mr. Churdar has informed us that he is on his way.

MS. LOWELL: He's here, Your Honor.

MR. CHURDAR: Your Honor, I did actually make it on time, I was just trying to be cautious.

THE COURT: Okay. I was going to say and may not make it here on time. We took care of that one. All right. Come on in.

(Off the Record from 10:05 a.m. until 10:06 a.m.)

THE COURT: I don't know who even goes first. I can tell -- let me pull up one of my files.

MS. ARMSTRONG: Your Honor, I understood from an email correspondence that you were going to hear the Motions to Strike first?

THE COURT: All right.

MR. LOWELL: That's my understanding. I think -- based on the email exchange, my understanding was the Motions to Strike first, then the Motion for Sanctions and then the Motion to Dismiss.

we can switch the computers.

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

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

THE COURT: All right. I am.

MS. ARMSTRONG: Yeah, that's fine.

MR. LOWELL: That's fair.

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

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

THE COURT: All right.

MR. HOLMAN - CROSS EXAMINATION - MOTION TO DISMISS:

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

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

MR. HOLMAN: Yes, sir, Your Honor.

THE COURT: That and then finish it out.

MR. HOLMAN: We will -- let's just say we dispute that it's obvious that if they continue cruise operations at the existing terminal, that would be environmentally worse than the new terminal. For example, if they can't host 3500 passenger ships at the existing terminal, then there's going to be the Carnival Fantasy, which, you know, given that it has significant impacts, but those are less impacts than a 3500 passenger ship. So if they stay with the existing cruise terminal and couldn't have a 3500 passenger ship, then the impacts would be less.

THE COURT: Is there anything in your response that tells me, and we're talking about standing, that a 2200 passenger ship causes less impact than a 3500 passenger ship? Is that in there?

MR. HOLMAN: Right.

THE COURT: I just don't know if I can presume that ---

MR. HOLMAN: Right.

THE COURT: --- I don't know what ---

MR. HOLMAN: Your Honor ---

Exhibit 3

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN P. MUSTIAN
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

*ALSO ADMITTED IN TX

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

November 15, 2013

VIA HAND DELIVERY

The Honorable Ralph K. Anderson, III
Chief Administrative Law Judge
S.C. Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: *Preservation Society of Charleston v. S.C. State Ports Authority*;
Docket No. 13-ALJ-07-0056-CC

Dear Judge Anderson:

The purpose of this letter is to bring to the Court's attention a document recently received by the South Carolina State Ports Authority (Ports Authority) in response to its subpoena issued to Disher, Hamrick & Myers Residential, Inc. in the above-referenced matter. A copy of the referenced document is enclosed as Attachment A for your review. It is relevant to the issue of standing before the Court.

As your Honor is aware, the Cruise Opponents instituted the above-captioned action alleging, *inter alia*, that the cruise ships that frequent the Union Pier Terminal (UPT) have had a negative impact on property values of their members. The Cruise Opponents identified Carolyn W. Agnew as a potential witness in these proceedings concerning "air pollution," a "decrease in property values" resulting from cruise operations at UPT, and "airborne pollutants intruding into

FILED
NOV 15 2013
SC ADMIN. LAW COURT

her home...."[1] Ms. Agnew is a key antagonist opposing cruise operations in Charleston, holding press conferences, maintaining a website, and attempting to collect anti-cruise forces to oppose redevelopment of UPT.

In a related action currently pending before the South Carolina Supreme Court, Ms. Agnew submitted a sworn affidavit dated January 24, 2012 (Affidavit)[2] attesting to alleged injuries she has suffered to person and property resulting from UPT cruise operations near her home located at 35-B Hasell Street, Charleston, South Carolina. Specifically, Ms. Agnew avers that she is concerned about the health risks associated with black soot, which she alleges is deposited on the exterior of her home as a result of cruise ship operations.[3] Additionally, Ms. Agnew complains about excessive volume levels of onboard music and ship announcements, alleging that the cruise operations violate noise ordinances and negatively impact the enjoyment of her residential property.[4] Of final note, Ms. Agnew asserts that "[s]everal real estate agents have told residents who want to sell homes that they must disclose that their home is adjacent to a home porting cruise operation because of the negative impacts of the cruise operation on the property."[5] The Affidavit was submitted to this Court by the Cruise Opponents for consideration in an August 19, 2013, filing and was attached to the Ports Authority's Amended Prehearing Statement dated September 18, 2013.

Following your Honor's November 8, 2013, Order denying the Cruise Opponents' Motion to Quash Subpoena, the third party produced the enclosed State of South Carolina Residential Property Condition Disclosure Statement executed by Ms. Agnew on February 5, 2013 (Statement) in connection with the June 2013 sale of her home located at 35 Hasell Street.[6] Pursuant to S.C. Code Ann. §§ 27-50-10 *et seq.*, owners of residential real estate are required to disclose to a purchaser any nuisances or environmental conditions affecting the property on or about the time of sale. Contrary to the assertions made in her Affidavit approximately one year prior, Ms. Agnew affirmatively maintained in the Statement that she had no knowledge of any

[1] Cruise Opponent CNA Resp. to First Set of Interrog., dated April 22, 2013; Cruise Opponent C4's Resp. to First Set of Interrog., dated April 22, 2013.

[2] Aff. of Carrie Agnew, Jan. 24, 2012, *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012).

[3] *Id.* at ¶6.

[4] *Id.* at ¶¶7, 10.

[5] *Id.* at ¶9.

[6] Notably, Ms. Agnew purchased the property in November 2000 for $469,000 and sold the property in June 2013 for $745,000. Clearly an adjacent location to UPT has not caused any injury to Ms. Agnew.

environmental contamination or hazards, including the presence of any hazardous or toxic materials, or of any nuisances, including noise, odor, smoke, etc., affecting the property.[7]

Ms. Agnew's assertions set forth in the Statement are relevant to the Court's consideration of its pending Motion to Dismiss for Lack of Standing and support our position that the Cruise Opponents have failed to demonstrate any element of standing. *See* Ports Authority Mot. to Dismiss for Lack of Standing. Ms. Agnew's allegations mirror the allegations of other affiants in similar locations. As the Court is assessing the credibility and viability of the claims and allegations of the Cruise Opponents in conjunction with the standing analysis, the flip-flopping of a leading Cruise Opponent witness, who executed a sworn affidavit submitted to the courts of this State claiming the existence of a nuisance to advance a position in litigation and then executed a property condition disclosure form affirmatively representing that no nuisance existed to sell her home, is particularly relevant and pertinent. This sort of duplicity has no place in the legal system and should not be countenanced by any court.

Thank you for your time and consideration of this matter.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

cc: Counsel of Record

[7] Statement, p.3, ¶¶15-16.

EXHIBIT A

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

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

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

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

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

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

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

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

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

Disher Hamrick & Myers Rea Inc 25 Cumberland Street Suite 120 Charleston, SC 29401
Phone: (843)577-4115 Fax: H Hamrick
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

35 HASELL STRE

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

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

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

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

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

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

* Explain: 2 Cisterns (?)
#13: Repaired cracked sewer line (part of Condo regime)
Recoated roof to maintain Seal-O-Flex warranty

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

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

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

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

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

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

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

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

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

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

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

#32 2 off-street parking spaces

§34/35: Available upon request

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

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

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

Owner(s) Acknowledgement

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

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

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

Owner Signature: _____ Date: _____ Time: _____

Purchaser(s) Acknowledgement

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

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

Purchaser Signature: Theodore F LaBella Date: 5/2/13 Time: 11:00

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

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

35 HASELL STRE

Exhibit 4

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

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

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

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **South Carolina Ports Authority's Motion For Reconsideration** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Amy Armstrong, Esquire
South Carolina Environmental Law Project
Post Office Box 1380
Pawley's Island, SC 29585

Jefferson Leath, Esquire
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401

Bradley D. Churdar, Esquire
South Carolina Department of

Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

J. Blanding Holman, Esquire
Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Breanna M. Karns

Columbia, South Carolina
This 19th day of December 2013.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents.	Docket No. 13-ALJ-07-0056-CC **PETITIONERS' MOTION TO EXPAND DISCOVERY**

TO: ADMINISTRATIVE LAW JUDGE RALPH KING ANDERSON, III

PLEASE TAKE NOTICE that the Petitioners Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control (collectively "Petitioners") hereby move this honorable Court for an order expanding discovery pursuant to South Carolina Administrative Law Court (SCALC) Rule 21.

The basis for this motion is two-fold. First, both Respondent South Carolina State Ports Authority's ("SPA") and the Petitioners have filed motions that could have been dispositive of this case. In particular, if SPA had prevailed on its motion to dismiss for lack of standing, that order

FILED
DEC 27 2013
ADMINISTRATIVE LAW COURT

would have been immediately appealable to the Court of Appeals, thus precluding a hearing on the merits. Thus, the motion to dismiss effectively acted to stay discovery until resolution of that motion. Moreover, it would have been impractical for the Petitioners to expend the time and expense required to proceed with depositions of the Respondents' witnesses until this Court ruled on the motion to dismiss. Since this Court has now denied the motion to dismiss, as well as the Petitioners' motion to vacate, and as this case is ready to proceed toward a hearing, the Petitioners respectfully request that this Court expand discovery to allow for the Petitioners to take up to ten (10) depositions within ninety (90) days of the Court's ruling on this motion.

Second, the production of documents component of discovery in this case has been extensive and protracted, resulting in part from SPA's delayed responses. SPA alone has produced over 8,800 pages of documents to date, the most recent of which, SPA's Eighth Supplemental Responses to Petitioners' Requests for Production of Documents, was served on December 9, 2013.[1] This most recent production contains documents that have been in existence prior to the filing of this contested case, which means that either: 1) SPA should have produced the documents within thirty (30) days of service of the discovery requests, or 2) SPA should have requested additional time for responding.[2] Petitioners served interrogatories and requests for production of documents on April 26, 2013.

As a practical matter, the Petitioners are still going through SPA's dense production of

[1] SPA served Responses to Petitioners' Interrogatories and Requests for Production of Documents on June 28, 2013. SPA then served at least eight supplemental responses, without limitation, on: August 12, 2013; August 28, 2013; September 12, 2013; September 25, 2013; October 4, 2013; October 9, 2013; October 18, 2013, SPA; and December 9, 2013.

[2] Notably, some of the documents in the December 9, 2013 production include information from 2010 regarding SPA's evaluation of an alternate site for the cruise ship terminal – an issue which is expressly raised by Petitioners. Indeed, had Petitioners conducted depositions and later received this information directly baring on a key issue in this case, this newly-received information would have necessitated re-opening the deposition(s) to question witnesses on documents that were in existence and should have been available for use during the deposition.

documents and, furthermore, remain uncertain as to when SPA will conclude supplementing its discovery responses, especially with documents that have been in existence for years and should have been produced months ago. The most logical course of action is for Petitioners (and Respondents) to take depositions once all responsive documents have been exchanged. Accordingly, the Petitioners respectfully request that this Court expand discovery to allow for the taking of up to ten (10) depositions.

In particular, due to the complex and detailed nature of this case, as well as the substantial number of both fact and expert witnesses identified to testify at the trial of this case, the Petitioners respectfully request that this Court expand discovery to allow for the Petitioners to take up to ten (10) depositions within ninety (90) days of the Court's ruling on this motion.

WHEREFORE, the Petitioners request that this Court issue an order expanding discovery to allow for the Petitioners to take up to ten (10) depositions within ninety (90) days of the Court's ruling on this motion.

Respectfully submitted,

Amy E. Armstrong
Michael G. Corley
Jessie A. White
SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585
Office address: 430 Highmarket Street
Georgetown, SC 29440
Telephone (843) 527-0078

FAX (843) 527-0540

J. Blanding Holman IV
Southern Environmental Law Center
43 Broad Street
Charleston, SC 29401
(843) 720-5270

Jefferson Leath
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401
(843) 937-881

Attorneys for the Petitioners

Georgetown, South Carolina

December 23, 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, Charleston Communities for Cruise Control, Petitioners, vs. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	Docket No. 13-ALC-07-056-CC **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served Respondents SC State Ports Authority and DHEC by placing copies of the foregoing Petitioners' Motion to Expand Discovery in the U.S. Mail addressed to:

Randolph R. Lowell, Esquire
Chad N. Johnston, Esquire
Willoughby & Hoefer, PA
Post Office Box 8416
Columbia, SC 29202

Philip L. Lawrence
General Counsel
S.C. State Ports Authority
Post Office Box 22287
Charleston, SC 29413-2287

Brad Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Jessie A. White

Georgetown, South Carolina
December 23, 2013

FILED
DEC 27 2013
COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation and Charleston Communities for Cruise Control, Petitioners, v. South Carolina Department of Health & Environmental Control and South Carolina State Ports Authority, Respondents.	)	Docket No. 13-ALJ-07-0056-CC

MOTION FOR PARTIAL SUMMARY JUDGMENT

The South Carolina Ports Authority (Ports Authority) respectfully moves this Court for an order granting partial summary judgment. Before issuing any federal permit with respect to a project that may result in a discharge into navigable waters of the United States, the United States Army Corps of Engineers (Corps) is required to obtain either a water quality certification from the state in which the discharge is to take place or waiver of such water quality certification pursuant to Section 401 of the Clean Water Act (CWA), 33 U.S.C.A. § 1341 (401 Certification). *See* S.C. Code Ann. Regs. 61-101. However, because Cruise Opponents did not articulate any challenge to the 401 Certification in their requests for final review, contested case request, or prehearing statement, the Ports Authority is entitled to judgment as a matter of law that the 401 Certification issued as a component of the critical area permit, 401 Certification, and coastal zone consistency determination (Permit No. ORCM-12-054-B) (Permit) that was issued by the

South Carolina Department of Health and Environmental Control (DHEC) is valid and binding, and the Cruise Opponents cannot now challenge it in this proceeding.

REGULATORY AND FACTUAL BACKGROUND

This is a *de novo* contested case proceeding brought by Preservation Society of Charleston (Preservation Society), Historic Charleston Foundation (HCF), Historic Ansonborough Neighborhood Association (HANA), South Carolina Coastal Conservation League (League), Charlestowne Neighborhood Association (CNA), Charleston Chapter of the Surfrider Foundation (Surfrider), and Charleston Communities for Cruise Control (Cruise Control) (collectively, Cruise Opponents) challenging a decision by DHEC to authorize and permit a portion of a capital improvement project by the Ports Authority at the Union Pier Terminal (UPT) in Charleston, South Carolina. Cruise Opponents allege that DHEC's decision violates the South Carolina Coastal Zone Management Act, S.C. Code Ann. §§ 48-39-10, *et seq.*, the South Carolina Code of Regulations 30-1, *et seq.*, and the Coastal Management Program (CMP). *See* Cruise Opponents' Req. for Contested Case, filed Feb. 11, 2013; Cruise Opponents' Prehr'g Stmt., filed May 21, 2013.

A. Project at Issue.

Union Pier Terminal (UPT) is a fully operational marine terminal located on approximately 63 acres adjacent to the Cooper River on the Charleston peninsula. It is owned and operated by the Ports Authority with, at present, approximately 2,470 linear feet of continuous pile supported wharf and berth space.[1] UPT has been used for different types of commercial shipping for more than 100 years. UPT also has accommodated passenger vessel

[1] Ex. A, OCRM-12-054-B Permit, dated Dec. 18, 2012 (Bldg. Loc. Plan UPT at Sheet 2 of 11).

calls for nearly 100 years.[2] Passenger vessels—including cruise vessels—have called on the Cruise Terminal each and every year since it was dedicated in 1973.[3]

In order to stimulate and accommodate cruise passenger ship calls at UPT, the Ports Authority initiated a capital improvement plan to upgrade the terminal facilities for serving cruise ship passengers (Project). This plan includes upgrading existing facilities to comply with required security and accessibility requirements; relocating existing cargo facilities from the northern end of UPT to other terminals; implementing a traffic management plan; restoring the southern end of UPT through the demolition of older structures; and dedicating much of the existing terminal acreage to public and private redevelopment and public green spaces, embracing a restoration of the natural waterfront. And, pertinent to this case, the capital improvement plan also involved relocating cruise passenger facilities from the present location in several buildings at the southern end of the UPT footprint to Building 322 on the northern end of the terminal.[4]

On January 27, 2012, the Ports Authority submitted a Joint Federal and State Application Form for Activities Affecting Waters of the United States or Critical Areas of South Carolina to the Corps and to OCRM for a permit to engage in activities affecting the waters of the United States and critical areas of South Carolina.[5] This application states as follows in pertinent part:

> *Authorities:* ... 33 USC 1341 .... These laws require permits for activities in, or affecting, navigable waters of the United States.... The Corps of Engineers and the State of South Carolina have

---

[2] Ex. B, Aff. of James I. Newsome, III ¶7 (Aug. 22, 2011) (Newsome Affidavit)); Ex. C, Aff. of Peter Lehman ¶6 (Aug. 2, 2013).

[3] Ex. B, Newsome Aff. ¶7.

[4] Ex. A, OCRM-12-054-B Permit (New Bldg. Loc. Plan UPT at Sheet 3 of 11)).

[5] Ex. D, Ports Authority Joint Application, dated Jan. 27, 2012.

> established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form ... to apply for both the Federal and/or State permit(s).[6]

The application sought approval for the installation of five pile clusters driven into the marl to support the construction of three elevators and two escalators in Building 322. These five pile clusters are to be installed within the existing footprint of the already developed marine terminal and directly underneath the existing footprint of Building 322.[7] The pile clusters—a mere five added to the existing 850 pilings already supporting Building 322 alone—will provide further support for Building 322 within its existing footprint as authorized under original UPT permits issued in the 1970s by the S.C. Budget and Control Board.

B. Clean Water Act provisions.

The proposed installation of pilings in a navigable water of the United States is an undertaking subject to Section 10 of the Rivers and Harbors Act (RHA), which requires the authorization of the Corps prior to the obstruction or alteration of any navigable water of the United States. *See* 33 U.S.C.A. §§ 401 *et seq.* Specifically, Section 403 prohibits, *inter alia*, the (1) construction of any structure in or over any navigable water of the United States; (2) excavation or deposition of dredge or fill material; and (3) the accomplishment of any other work affecting the course, location, condition, or capacity of a navigable water. 33 U.S.C.A. § 403; *see also* 33 C.F.R. § 320.2(b). The instrument through which obstruction or alteration of navigable waters may be approved is a Section 10 permit from the Corps. *See* 33 C.F.R. § 320.2(b).

---

[6] *Id.* at 1.This application was part of the dual-track permitting process of seeking a 401 Certification for an individual permit or a Nationwide Permit from the Corps for the insignificant activity of adding five pile clusters. The individual 401 Certification without conditions (for water quality) issued for the Project in December 2012 reinforces the decision DHEC made with regards to the general 401 Certification for NWP 3 (without conditions) issued in April 2012.

[7] Ex. E, Map of Pile Clusters.

In turn, any applicant for a federal permit or license involving the construction or operation of facilities that may result in a discharge into navigable waters must obtain a 401 Certification from the state in which the discharge will take place, certifying that the project complies with Section 401 of the Clean Water Act. *See* 33 U.S.C.A. § 1341; S.C. Code Ann. Regs. 61-101. Thus, before issuing a final permit to the Ports Authority authorizing the Cruise Terminal renovations, the Corps must either obtain a 401 Certification or a waiver from the State of South Carolina through DHEC.

For some activities, the Corps may issue Nationwide Permits (NWPs). As a federal permit, DHEC reviews the NWPs and issues, conditions, or denies 401 Certifications (as well as Coastal Zone Consistency Determinations) for each NWP. In accordance with its obligations, DHEC reviewed the 2012 NWPs issued by the Corps and issued 401 Certifications, some with and some without additional conditions, for certain of the NWPs as being consistent with the provisions of the CWA. The practical effect of these review processes by the Corps and DHEC is that, for projects which are deemed to fall under a NWP reviewed and issued by the Corps, the 401 Certification required of DHEC under the CWA has also been issued.

C. The Project Received the Appropriate Permits and Authorizations.

In this case, because the Project involves driving pilings in a navigable water of the United States, an undertaking within the Corps' jurisdiction, a 401 Certification is required from the State of South Carolina (through DHEC) to be issued, denied, or waived within one year after receiving the request for certification. In compliance with these requirements, the Project received all of the necessary permits and certifications from DHEC. An application was submitted in January 2012 for the Project, and the Permit was issued on December 18, 2012. This DHEC action, which occurred within one year of the request, serves as the critical area

permit, coastal zone consistency determination, and 401 Certification for the individual and specific Project. Ex. A, OCRM-12-054-B; *see* Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6.

STANDARD OF REVIEW

Motions for summary judgment are properly brought in the Administrative Law Court. Rule 68, RPALC provides that "[t]he South Carolina Rules of Civil Procedure ... may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the RPALC]." Pursuant to Rule 56(c), SCRCP, summary judgment shall be granted if "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *See also Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Cisson Constr., Inc. v. Reynolds & Assoc., Inc.*, 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 425 S.E.2d 23 (1992).

Although the evidence and inferences drawn therefrom must be construed against the moving party, "the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise ... must set forth specific facts creating a genuine issue for trial." Rule 56(e), SCRCP; *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988); *see also Jacobs v. S.C. Budget & Control Bd.*, No. 08-ALJ-30-0311-CC (Jan. 23, 2009) (Anderson, J.); *Environmentalists, Inc. v. S.C. Dep't of Health & Envtl. Control*, No. 96-ALJ-07-0030 (June 18, 1996) (Stevens, J.) (motion for summary judgment granted because affidavit, even when construed with all permissible inferences favorable to non-moving party, was unhelpful in establishing standing). Further, "summary judgment should be

granted 'when plain, palpable and undisputed facts exist on which reasonable minds cannot differ.'" *Lazicki-Thomas v. S.C. Budget & Control Bd.*, No. 05-ALJ-30-0510-CC (Nov. 13, 2006) (Anderson, J.).

THE CRUISE OPPONENTS HAVE WAIVED AND FOREGONE THEIR RIGHT TO CHALLENGE THE 401 CERTIFICATION ANALYSIS

As this Court correctly ruled on December 20, 2013,

> water quality issues were a part of DHEC's analysis in its critical area permit evaluation ... and the critical area permit issued by DHEC for the Project also serves as the 401 Certification. Moreover, since the critical area permit is 'project specific' and by law it 'serves as the 401 water quality certification,' it appears that the existing critical area permit document may serve as the 401 Certification as it was issued later in time and subsequent to DHEC's general certification for NWP 3.

Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6. Thus, the Permit also serves as the 401 Certification for the Project. As this Court has recognized, and as the Cruise Opponents have admitted, the critical area permit, coastal zone consistency determination, and 401 Certification are three independent regulatory licenses found within a single document. However, in the context of this case, the Cruise Opponents have only challenged the critical area permit and coastal zone consistency determinations and have failed to challenge the 401 Certification. As a result, the Cruise Opponents have waived, abandoned, and are precluded from raising any issue regarding the 401 Certification.

A. The Cruise Opponents have waived any challenge related to the 401 Certification for the Project.

Waiver is the voluntary and intentional relinquishment or abandonment of a known right. *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007); *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344 415 S.E.2d 387, 387-88 (1992). A party

waives or abandons a right when they: (1) had actual or constructive knowledge of its rights, or knew all the material facts upon which the right depended; and (2) expressly or implicitly failed to assert such right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387-88. Waiver may therefore be express or implied from circumstances indicating a party's intent to waive a known right. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

The Cruise Opponents did not raise any challenge to the 401 Certification for the Project in their requests for final review, contested case request, or their prehearing statement. They have therefore failed to make any challenge to the 401 Certification and, thus, have waived and cannot challenge issuance of the Permit on that basis.

1. The Cruise Opponents failed to challenge the 401 Certification for the NWP.

The Cruise Opponents acknowledge that DHEC issued a water quality certification for the NWP 3 on April 23, 2012—after the Cruise Opponents filed a lawsuit in the court of common pleas and were actively litigating and campaigning to stop cruise in Charleston.[8] Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 13. They also acknowledge that, by regulation, DHEC can issue "general certifications for categories of activities or for activities specified in Federal nationwide or general dredge and fill permits pursuant to Federal law or regulations." S.C. Code Ann. Regs. 61-101(A)(3); *see* Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 3 n.1 ("DHEC's regulations specifically provide for general certifications for NWP 3."). They now state that "DHEC purported to follow [the water quality] procedures in issuing the WQC for NWPs in April of 2012," suggesting that the decision to grant 401 Certification for NWP 3 projects was not properly done in substance. *Id.* at 11.

[8] The 401 Certification for NWP 3 did not impose any terms and conditions on utilization or coverage under NWP 3. Ex. F, 401 Certification for NWP 3, dated April 23, 2012.

Despite all this, and despite knowing that such 401 Certification (issued without conditions) at that time was being applied to the Project through the applicability of NWP 3, the Cruise Opponents did not challenge the 401 Certification for NWP 3 either when that certification was made or when instituting this challenge to the Permit. *Cf. Town of Arcadia Lakes v. S.C. Dep't of Health & Envtl. Control*, No. 09-ALC-07-0069-CC (Jan. 21, 2010) (McLeod, J.) (case initiated to challenge issuance of water quality certification granted pursuant to nationwide permit). In short, the Cruise Opponents failed to take action with respect to the 401 Certification at any time, thereby waiving their challenge to the water quality certification for the Project.

With full knowledge and understanding that the 401 Certification for NWP 3, which was issued by DHEC without conditions, would be applied to the Project, the Cruise Opponents did not challenge or otherwise contest the issuance of the 401 Certification for NWP 3. The Cruise Opponents thus have waived any challenge to the 401 Certification and cannot now challenge it as part of this proceeding.

2. *The Cruise Opponents failed to make any claim or challenge to any 401 Certification component of the Permit, and thus have waived and abandoned any challenge to the Project's 401 Certification.*

In challenging the Permit before DHEC and this Court, the Cruise Opponents never articulated any challenge to DHEC's issuance of the 401 Certification. They did not articulate any challenge to the 401 Certification before DHEC staff, before the DHEC Board, or before the ALC prior to filing their Motion to Vacate. Specifically, the Cruise Opponents did not articulate any challenge to the 401 Certification in their Requests for Final Review filed with the DHEC Board. *See* Ex. G, HCF Req. for Final Review, filed Jan. 2, 2013 (omitting any reference to section 401 or water quality as basis for requesting a final review by the DHEC Board); Ex. H, Preservation Society, HANA, League, CAN, Surfrider, & Cruise Control Req. for Final Review,

filed Jan. 2, 2013 (omitting any reference to section 401 or water quality as basis for requesting a final review by the DHEC Board).[9]

The Cruise Opponents also have not challenged the 401 Certification subsequent to the proceedings conducted by DHEC. In the Request for Contested Case Hearing, the Cruise Opponents requested only that this Court "conduct a Contested Case Hearing in connection with the DHEC staff decision to issue a Critical Area Permit and Coastal Zone Consistency Certification #OCRM-12-054-B." Cruise Opponents' Req. for Contested Case Hrg., filed Feb. 11, 2013, at 1. And in the issues identified in their Prehearing Statement, the Cruise Opponents list a series of challenges under the general question of "[w]hether DHEC properly applied the Critical Area Regulations, the Coastal Zone Management Act and Coastal Management Program in issuing a permit to construct a new cruise ship terminal by installing pilings in the critical area; building two covered staging areas and making structural changes to a building located over the critical area." Cruise Opponents' Prehr'g Stmt., filed May 21, 2013, at 2. The Cruise Opponents' Request for Contested Case and Prehearing Statement are devoid of any mention of

[9] In contrast, in instituting a challenge before this Court to the state permit issued by DHEC with respect to the marine container terminal at the former Charleston Navy Base, the League expressly requested "that the Court vacate the Final Agency Decision of the SC Board of Health and Environmental Control, affirming the issuance of a critical area permit, coastal zone consistency certification, **and a Sec. 401 water quality certification**." Ex. I, League Req. for Contested Case Hrg., *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-107-CC (Mar. 9, 2007) (Geathers, J.) (emphasis added). Similarly, in its prehearing statement for that case, the League stated that "DHEC approved a project that will cause violations of both air and water quality standards," cited to regulation 61-101, noted that DHEC had issued "water quality certifications" for the terminal, and stated as an issue presented for determination "whether the proposed project will cause water quality standards to be violated"). Ex. J, League Prehr'g Stmt., *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* 07-ALJ-07-0107-CC (Apr. 9, 2007) (Geathers, J.). None of that was done in this case.

or citation to the 401 Certification component of the Permit or South Carolina Regulation 61-101.

In short, the Cruise Opponents have not articulated the 401 Certification as a basis for their challenge to the Permit at any time prior to filing the motion to vacate in this case. By law, the Permit constituted a 401 Certification. *See* Order Denying Pet'rs' Mot. to Vacate, filed Dec. 20, 2013, at 6; S.C. Code Ann. Regs. 61-101.A.8 (DHEC "will not issue a separate 401 water quality certification for an activity which requires a direct permit for alteration of the critical area of the coastal zone."); S.C. Code Ann. Regs. 30-2.H. ("The direct permit will serve as the 401 water quality certification for an associated Federal permit."). The Cruise Opponents' failure to challenge that aspect of the Permit constitutes an abandonment and waiver of that issue.

Notably, the Cruise Opponents failed to challenge that 401 Certification at any level or in any pleading or filing before the motion to vacate—filed after the close of discovery.[10] The only reference to a water quality in the contested case request or the prehearing statement is a representation that the Cruise Opponents "represent diverse and broad interests, which include ... protection of air and water quality." Cruise Opponents' Prehr'g Stmt. at 3. This is hardly sufficient to articulate a challenge to the 401 Certification, especially in view of the fact that the Cruise Opponents never cite to or address any of the specific regulations referenced above providing that a critical area permit also serves as a 401 Certification.

By expressly failing to challenge the 401 Certification before DHEC and as part of this contested case even though they knew of the need to present a challenge to that certification, the Cruise Opponents have waived their right to challenge the 401 Certification in this Court. The

[10] This case was assigned on February 19, 2013; therefore, under the Rules of Procedure of the ALC, discovery closed on May 20, 2013. No party moved or requested that this Court expand discovery.

failure to challenge the 401 Certification is consistent throughout the proceedings initiated by the Cruise Opponents. As such, it was a conscious, intentional, and knowing decision by the Cruise Opponents to attack the Project on grounds other than and aside from the 401 Certification.

B. The Cruise Opponents failed to exhaust their administrative remedies to challenge the 401 Certification, as they failed to raise this issue or challenge that component of the Permit to the DHEC Board.

As noted, the Cruise Opponents never raised an issue of or challenge to the 401 Certification component of the Permit at the DHEC Board or to this Court prior to its motion to vacate. Because no issue regarding either the 401 Certification component of the Permit or compliance with regulation 61-101 was previously raised to DHEC, the Cruise Opponents are barred from raising that issue in this proceeding as a matter of law.

1. Exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies generally requires a party seeking relief from the action of an administrative agency to pursue all available remedies before seeking such relief from the courts. *See Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (holding plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge); *see also Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (stating party is "clearly [] required to exhaust its administrative remedies prior to bringing suit" challenging DHEC's denial of permit). Exhaustion is required so that the administrative agency "may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644

(2000). For these purposes, where there is a specific statutory procedure to challenge an administrative agency decision, compliance with such procedure is a condition precedent for further review. *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) ("Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief."); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) ("It was incumbent upon [the challenging party] ... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she] ... considered his decision erroneous.... Not having done so, she cannot now attack the validity of his decision.").

In the context of a challenge to a DHEC decision, the statutory prerequisite for seeking a contested case review before the ALC is to first seek review by the DHEC Board. *See* S.C. Code Ann. § 44-1-60; *Wise v. S.C. Dep't of Health & Envtl. Control,* No. 10-ALJ-07-0851 (Feb. 23, 2011) (McLeod, J.) ("A failure to timely file and participate in the DHEC Board review process forecloses a contested case action at the ALC."); *MRI at Belfair, Inc. v. S.C. Dep't of Health & Envtl. Control*, No. 07-ALJ-07-0298-CC (July 25, 2007) (Anderson, J.) ("I find a clear legislative intent that a party may seek contested case review before the ALC **only after a party first seeks review by the Board**.") (emphasis added). As this Court has previously stated in applying the doctrine, "where a party has sought relief from ... another agency *after entirely forgoing* its remedies before the initiating agency, a dismissal by the reviewing ... agency for failure to exhaust administrative remedies may completely preclude review by the ... agency because the party's opportunity to cure its failure to exhaust its remedies before the initiating agency has expired." *Williams v. Orangeburg County Assessor*, No. 04-ALJ-17-0275-CC (March 9, 2005) (McLeod, J.).

2. *The Cruise Opponents did not exhaust their remedies with respect to the 401 Certification.*

Notably, the Cruise Opponents have taken the position that this Court cannot and should not rule on any issue for which the DHEC Board has not had an opportunity to review and rule upon. *See* Cruise Opponents' Mot. for Remand, filed Feb. 27, 2013, at 2 ("The failure to conduct a review conference deprives the Agency of its right and duty to apply its specialized expertise, to correct flaws in the staff decision prior to this Court's review and to ensure that the staff decision consistently applies the applicable regulations."); Cruise Opponents' Reply in Supp. of Mot. to Vacate, filed Dec. 16, 2013, at 17 (arguing that this Court has no authority to rule on 401 Certification issues until DHEC has ruled first and that to do so would "bypass DHEC entirely, rendering the agency's statutorily recognized 'specialized knowledge'—if not its entire water quality budget—a complete nullity"). Here, the 401 Certification was a component of the Permit by law, and the Cruise Opponents failed to raise any issue of the 401 Certification to the DHEC Board. Thus, by their own admission, the Cruise Opponents are precluded from raising any issue to the 401 Certification in this contested case.

As this Court has repeatedly found, a failure to avail oneself of the DHEC board review process prevents this Court from exercising jurisdiction over the matter. *MRI at Belfair,* No. 07-ALJ-07-0298-CC ("I find a clear legislative intent that a party may seek contested case review before the ALC only after a party first seeks review by the Board."); *see also League of Women Voters of Georgetown v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-0529-CC (Dec. 15, 2008) (Anderson, J.) (failure to properly and timely request DHEC Board review deprives ALC of jurisdiction to hear case); *S.C. Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-0107-CC (Sept. 4, 2007) (Geathers, J.) (same); *Wilson v. S.C. Dep't of Health & Envtl. Control,* No. 06-ALJ-07-0799-CC (Mar. 21, 2007) (McLeod, J) (lack of review

by DHEC Board eliminates ALC jurisdiction). Here, the Cruise Opponents failure to raise the issue to the DHEC Board and challenge the Permit on 401 Certification grounds before the DHEC Board precludes this Court from reviewing or analyzing any issue or rendering any determination on the 401 Certification.

CONCLUSION

The Ports Authority is entitled to judgment as a matter of law with respect to the 401 Certification for the Project and the Cruise Opponents failure to challenge the 401 Certification for the Project at any stage or time. As a result, the Cruise Opponents cannot challenge and have waived and abandoned the right to challenge the individual 401 Certification for the Project as part of the Permit.

Respectfully submitted,

Randolph R. Lowell
Chad N. Johnston
Tracey C. Green
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
rlowell@willoughbyhoefer.com
cjohnston@willoughbyhoefer.com
tgreen@willoughbyhoefer.com

Philip L. Lawrence
General Counsel
S.C. STATE PORTS AUTHORITY
Post Office Box 22287
Charleston, South Carolina 29413-2287
plawrence@scspa.com

Attorneys for the Respondent
South Carolina State Ports Authority

December 27, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **South Carolina Ports Authority's Motion For Partial Summary Judgment** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Amy Armstrong, Esquire
South Carolina Environmental Law Project
Post Office Box 1380
Pawley's Island, SC 29585

Jefferson Leath, Esquire
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401

Bradley D. Churdar, Esquire
South Carolina Department of
Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

J. Blanding Holman, Esquire
Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Breanna M. Karns

Columbia, South Carolina
This 27th day of December 2013.

EXHIBIT I

SOUTHERN ENVIRONMENTAL LAW CENTER

200 WEST FRANKLIN STREET, SUITE 330
CHAPEL HILL, NC 27516-2520

Telephone 919-967-1450
Facsimile 919-929-9421
selcnc@selcnc.org

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

March 9, 2007

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

Re: Request for Contested Case Hearing -
South Carolina Coastal Conservation League v. SC Board of Health and Environmental Control, et al. (SCSPA P/N 2003-1T-016-P-C)

Dear Sir or Madam:

Enclosed please find an original and one copy of a Request for Contested Case Hearing, which we submit on behalf of the South Carolina Coastal Conservation League with our check for the $250.00 filing fee. Please file the original Request and return the copy stamped "filed" in the enclosed self-addressed, stamped envelope. By copy of this letter, we are serving a copy of the Request on all parties and counsel.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Very truly yours,

J. Blanding Holman IV
Senior Attorney

JBH/lap
Enclosures
cc (w/encl.): SC Board of Health & Environmental Control
Van Whitehead, Esq.
Randolph R. Lowell, Esq.
Ben A. Hagood, Jr., Esq.
Brian W. Blaesser, Esq.
W. Jefferson Leath, Jr., Esq.

RECEIVED
MAR 14 2007
Willoughby & Hoefer, P.A.

100% recycled paper

ALJ Form #116
9/04

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Coastal Conservation League, (Your name) v. SC Board of Health & Environmental Control; SC Dept. of Health & Environmental Control; SC State Ports Authority (The name of the agency you are appealing)

NOTICE OF REQUEST FOR CONTESTED CASE HEARING

DATE: March 9, 2007

DOCKET NO. ___-ALJ-__-_____-__ (to be assigned by ALC)

Notice is hereby given that SC Coastal Cons. League (your name) does hereby appeal the decision issued by the above named agency and received on Feb. 12, 2007 (date), a copy of which is attached. **(YOU MUST ATTACH A COPY OF THE DECISION OR DOCUMENT DESCRIBING THE AGENCY ACTION YOU ARE APPEALING IN ORDER TO HAVE YOUR CASE PROCESSED).** Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested:

Petitioner requests that the Court vacate the Final Agency Decision of the SC Board of Health and Environmental Control, affirming the issuance of a critical area permit, coastal zone consistency certification, and a Sec. 401 water quality certification to the SC State Ports Authority (SCSPA), authorizing construction of a Marine Container Terminal on the south end of the former Charleston Navy Base in North Charleston, Charleston County (SCSPA Permit No. 2003-1T-016-P-C).

Enclosed is a XX check ____ money order ____ cash in the amount of $ 250.00 for the applicable filing fee in this matter.

SC Coastal Conservation League
Print your name
P.O. Box 1765
Mailing Address
(843) 723-8035
Telephone Number

Sign your name J. Blanding Holman IV
Attorney for SC Coastal Conserv. League
City, State, Zip Code
Charleston, SC 29402-1765
County of residence or of permit/license at issue
Charleston Co.

Are you represented by an attorney? XX Yes ____ No
J. Blanding Holman IV
Attorney's name
200 W. Franklin St., Suite 330
Mailing Address
Chapel Hill, NC 27516
City, State, Zip code
(919) 967-1450
Telephone Number

Are you represented by a CPA? ____ Yes XX No
CPA's name
Mailing Address
City, State, Zip Code
Telephone Number

See attached Addendum for additional counsel.

J. Blanding

CERTIFICATE OF SERVICE

I hereby certify that I, Holman IV (your name), on the 9th day of March, 2007, in Charleston (city), South Carolina, served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: SC Board of Health & Environmental Control
Address: 2600 Bull St.
City, State, Zip Code: Columbia, SC 29201

Name of person/Agency served: Van Whitehead, Esq.
SC DHEC - Office of General Counsel
Address: 1362 McMillan Ave., Suite 400
City, State, Zip Code: Charleston, SC 29405

See attached Addendum for additional parties and counsel served.

ALJ Form #116
9/04

Print your name James Blanding Holman IV **Sign your name** J. Blanding Holman

1) You must complete the **Request for Contested Case Hearing** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address with the appropriate filing fee or Request for Waiver Form:

Clerk's Office
South Carolina Administrative
Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

A copy of the Request must also be served on the agency from which you are appealing. If you do not know, you should contact the agency to determine the name of the person to be served with this document.

2) **In order for your case to be processed by the ALC, a copy of the decision or document that you are appealing must be attached to the Request for Contested Case Hearing.**

CERTIFICATE OF DATE OF MAILING

I, James Blanding Holman IV, as attorney for the South Carolina Coastal Conservation League, certify that on this 9th day of March, 2007, I deposited this Request for Contested Case Hearing in the United States Mail, first-class postage prepaid, addressed to

Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, SC 29201

J. Blanding Holman
James Blanding Holman IV

ADDENDUM TO NOTICE OF REQUEST FOR CONTESTED CASE HEARING
(SC SPA Permit No. 2003-1T-016-P-C))

Local counsel for South Carolina Coastal Conservation League:

W. Jefferson Leath, Jr., Esq.
Leath, Bouch & Crawford, L.L.P.
92 Broad Street
P.O. Box 59
Charleston, SC 29402-0059
(843) 513-1071

Additional counsel and parties for Certificate of Service:

For SC State Ports Authority:

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202
(803) 771-2123

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

In Re: South Carolina State Ports Authority, P/N 2003-1T-016-P-C

Appearances: Randolph R. Lowell, Esquire, for South Carolina State Ports Authority

J. Blanding Holman, IV, Esquire, for South Carolina Costal Conservation League

Evander Whitehead, Esquire, for South Carolina Department of Health and Environmental Control staff

This matter comes before the South Carolina Board of Health and Environmental Control (Board) for final review pursuant to the provisions of S.C. Code Ann. § 44-1-60. A final review conference was held before the Board on January 11, 2007.

On October 30, 2006, the Department issued a critical area permit, coastal zone consistency certification, and a Section 401 water quality certification (Permit) to the South Carolina State Ports Authority (SCSPA), authorizing the construction of a Marine Container Terminal on the south end of the former Charleston Navy Base located in North Charleston, Charleston County, South Carolina. The purpose of the proposed activity is to expand the throughput capacity for containerized cargo in South Carolina. On November 13, 2006, SCSPA filed a request for review of its Permit. Subsequently, on November 20, 2006, the South Carolina Coastal Conservation League (SCCCL) filed a request for review of the Permit. SCCCL also filed a motion to intervene on December 6, 2006.

At the outset of the final review conference, SCSPA and Department staff notified the Board that they had discussed the issues raised in SCSPA's request for review, and they presented the Board with a proposed modified permit resolving SCSPA's concerns in terms acceptable to Department staff. As SCSPA and Department staff had satisfactorily resolved the

issues in SCSPA's petition for review, the question arose regarding the status of SCCCL. SCSPA asserted that SCCCL was not a party to the matter because it had failed to timely file a request for review and that if SCCCL is not a party, the matter has effectively been settled.

SCSPA's challenge to the timeliness of SCCCL's request for review relies upon S.C. Code Ann. § 44-1-60(E), which provides, "[t]he department decision becomes the final agency decision fifteen days after notice of the department decision has been mailed to the applicant, unless a written request for final review is filed with the department." The Permit was mailed to the applicant, SCSPA, on October 30, 2006, and SCSPA filed a request for review on November 13, 2006. It is undisputed that SCCCL's request for review was filed on November 20, 2006, which was more than fifteen days after the Permit was mailed to the applicant. SCSPA argues that because SCCCL filed its request more than fifteen days after the date of mailing to the applicant, SCCCL's request for review was untimely filed. In response, SCCCL asserts that its request for review was filed within fifteen days after its receipt of notice of the Department's decision.

In this case, the Board accepts SCCCL's assertion that it filed its request for review within fifteen days of its receipt of notice of the Department's decision on the Permit. Based on the Administrative Law Court's reasoning in MRI at Belfair v. SCDHEC, et al., Docket No. 06-ALJ-07-0714-CC, 2006 WL 3232043 (Oct. 18, 2006), the Board finds that SCCCL's request for review was timely filed.

The parties discussed numerous concerns raised by SCCCL as to procedural and substantive aspects of the Department staff's decision. The allegations raised by SCCCL include: 1) the Department should have considered the roadway improvements authorized in the permit issued to the S.C. Department of Transportation (SCDOT) as part of SCSPA's port expansion permit, and 2) Department staff should not have made a decision on the application

prior to issuance of a Final Environmental Impact Statement (FEIS) for the SCSPA project by the federal government. See Notice of Appeal of SCDHEC Permit # 2003-1I-016-P-C granted to SCSPA, record, pp. 65-67.

With respect to the FEIS, SCSPA and Department staff asserted that the requirements of the federal National Environmental Policy Act do not apply to the Department or prevent the Department from making a permit decision prior to finalization of an environmental impact statement. Department staff explained that the draft EIS was reviewed, along with additional information in the permit file. The Board finds it was proper for Department staff to issue the Permit prior to issuance of the federal FEIS.

As to SCCCL's argument of piecemeal consideration, SCSPA and Department staff explained that the distinct nature of the projects and the separate applicants made distinct applications and permit decisions appropriate. The Department staff noted that both applications were reviewed at the same time and were reviewed primarily by the same people. The Board finds Department staff properly reviewed the SCSPA and SCDOT applications and issued the permits as separate documents.

With respect to the other arguments raised by SCCCL, the Board finds no error in the Department staff decision that warrants correction.

Having reviewed the administrative record and having heard from all parties in this matter, the Board unanimously concludes that the Permit modifications proposed by SCSPA and Department staff are proper and comply with the regulations and applicable law, and that Department staff conducted a thorough review of the relevant issues. Therefore, the Board adopts and approves the modified Permit as submitted by SCSPA and Department staff, which is attached as Exhibit A and incorporated herein by reference.

Edwin H. Cooper, III
Interim Chairman
Board of Health and Environmental Control
For the Board

February 8, 2007

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code §44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the following address:

Lisa L. Lucas
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

EXHIBIT A

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT/COASTAL ZONE CONSISTENCY/WATER QUALITY CERTIFICATION

Permittee(s):	**South Carolina State Ports Authority**
Permit Number(s):	**2003-1T-016-P-C**
Date of Issuance:	**October 30, 2006**
Expiration Date:	**October 30, 2011**
Location:	**On and adjacent to the Cooper River and located at the south end of the former Charleston Navy Base, North Charleston, Charleston County, South Carolina.**

This permit is issued under the provisions of S.C. Code Ann. Sections 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs, 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

This permit has been issued authorizing the requested work, with conditions. Specifically, this permit authorizes the construction of a Marine Container Terminal on the south end of the former Naval Base. The facility will consist of container processing and support facility, a wharf with crane structures, dredging for navigational improvements, utilities, and road & rail lines. The container processing and support facilities will consist of office buildings, a truck interchange facility, maintenance buildings, a container freight station, an inspection station, and a security gatehouse. Additionally, installation of a sediment suspension system is also proposed. In particular, the marine container terminal will include:

- Creating approximately 286.5 acres of terminal development on highground and wetland areas that will also include an 11.6-acre, 3,510' long wharf.
- Approximately 77.9 acres of dredged turning basin and berthing areas.
- Disposal of dredged materials in the existing upland dredge disposal area on the south end of Daniel Island.

Impacts from the construction of this Marine Container Terminal will consist of the dredging and filling of 56.6 acres of sub-tidal open water areas. Secondly, the proposed project will involve dredging and then filling 9.6 acres of tidal marsh areas to construct the wharf structure, and 2.4 acres of freshwater wetlands. Additionally, development of the turning basin and berthing area would result in excavation of 77.9 acres of sub-tidal open water areas to a depth of –49 feet mean low water. The total amount of dredging for the turning basin and wharf area will be approximately 6.5 million cubic yards of material. The marine container terminal will be located at the south end of the former Charleston Navy Base, North Charleston, Charleston County, South Carolina. The purpose of the proposed activity is to expand the of throughput capacity for containerized cargo in South Carolina.

To offset these impacts and in the interest of the general public, the DHEC-OCRM recognizes the mitigation program for impacts resulting from the construction of the terminal. To meet OCRM mitigation requirements for wetland impacts, the SCSPA has offered to restore 22 acres of marsh mosaic habitat on the southern end of Drum Island to directly offset the loss of 9.6 acres of saltwater wetland vegetation impacts at a 2.291 ratio to wetland impacts/wetland creation, restoration or enhancement. This ratio exceeds OCRM's requirement of 1:1 for public interest projects.

As part of the consideration of dredging and filling wetland resources, OCRM is required to consider overriding public need and interest. OCRM, through its permitting staff, has determined that the construction of the terminal is in the public's interest and is needed for the region to remain competitive in the global economy however; the facility will also have impacts on the public. To offset these impacts, OCRM fully recognizes the following additional mitigation efforts offered by SCSPA, though not directly required by regulation or law: provide $1,000,000 to SCDNR for restoring and enhancing 8 acres of oyster reefs in waters designated for shellfish harvesting, providing $1,000,000 to The Trust for Public Lands for the purchase of the private held section of Morris Island, providing $1,000,000 to the Nature Conservancy to assist in the preservation of target lands in the Cooper River Initiative Focus Area, providing $1,000,000 towards affordable housing within the affected area, providing $100,000 for monitoring purposes while the terminal is under construction, providing $250,000 towards educational attainment in the affected area, providing $600,000 for the establishment of a career center relative maritime training, providing $350,000 to foster local economic development in the affected area, providing $500,000 towards a health care facility in the affected area, providing $300,000 for a community center, and providing $300,000 for beautification and enhancements of the affected area, providing buffers as defined in section 4.85 of the Memorandum of Understanding and Agreement between the SCSPA and the City of North Charleston dated October 25, 2002, providing appropriate sound barriers along roadways constructed adjacent to residences, and the donation of a three acre parcel to Clemson University for that institution's restoration Institute Campus, appraised at $975,000.

The phrase "prior to any work commencing" or similar language shall mean that the referenced condition must be performed before any work authorized by this permit is undertaken. This permit should not be construed to prohibit construction or demolition activities that are not otherwise governed by this permit. By way of example but not limitation, this permit would not restrict or limit the demolition of a building and the activities related thereto if such demolition would be permissible in the absence of this permit.

CRITICAL AREA PERMIT SPECIAL CONDITIONS

1. Provided the Mitigation Program, dated May 1, 2006, revised on July 19, 2006, and further revised on August 18, 2006 is approved by OCRM with the following exception: OCRM has concerns for successful regeneration of *Spartina alterniflora* plant stock on the site due to the exposure of Drum Island to high energy wave action associated with heavy boat and ship traffic. OCRM will agree to the planting of *Spartina alterniflora* plant stock on 3' centers but requires an assessment of the success of the plants after 1-Year (1-Growing Season). If the assessment reveals that the plants are not successfully regenerating, the SCSPA agrees to replant the area on 1.5' centers. Successful regeneration will be considered to have occurred when a minimum of 75% survival of planted *Spartina alterniflora* plants at the end of 12 months following planting. Section 2.2 and appendix B of the program document must be revised and submitted to all permitting agencies prior to any work commencing under this permit.

2. Provided the federally required EIS is accepted by OCRM as the controlling document for anticipating environmental impacts of the marine terminal. To that end, the EIS has shown substantial evidence that the facility will cause minimal obstruction to natural water flow of navigable water, will not affect the production of marine, natural wildlife or other natural resources, will cause minimal erosion and shoaling of channels (except for the berthing areas, which will be maintained) for the following reasons: a) the navigation channel currently shoals in the absence of a terminal, b) it is estimated that there will minimal shoaling of 1' to 4' in certain reach sections of the Cooper River and is negligible in terms of the overall cubic yardage of material removed by the Corps of Engineers during maintenance dredging events.

Additionally, the project will not create a stagnant water condition. Further, the facility will not cause lethal fish entrapments or deposit sumps.

3. Provided a monitoring and contingency plan must be submitted to SCDHEC-BOW, SCDHEC-OCRM and SCDNR for review and approval concerning the Sediment Suspension System prior to system installation. Monitoring sites must be established in front of the Federal Law Enforcement Training Center (FLETC) piers and the Cooper River Marina to measure sediment accumulation resulting from the wharf construction and the operation of the sediment suspension system. The monitoring and contingency plan must state how frequently SC State Ports Authority will submit data reports to the above-mentioned agencies. Contingency plans must be implemented if shoaling occurs and leads to a negative effect to the navigable waters in these and other nearby areas (despite the existence of the suspension system). This plan must be submitted to OCRM for approval, which may include a performance bond.

4. Provided best management practices are implemented during construction to minimize migration of disturbed or backfilled material from the authorized construction site. These best management practices must consist of devices that are capable of containing material on site (either the highground or backfilled areas) in coordination with the construction of the container yard wall.

5. Provided the 3,510-foot long berth be fully dredged prior to installation of the sediment suspension system.

6. Provided a final dredging plan is submitted to and approved, in writing, by OCRM staff prior to dredging. The dredging plan must include a dredging schedule, the production of a dredging log, the amount of dredge material removed each working day, and procedures to handle emergency situations such as an unanticipated release of dredged materials.

7. Provided that hydraulic dredging is the preferred method for dredging and disposal. The SCSPA and its dredging contractor must make every effort in avoiding the crossing of marsh with spoil pipes on Clouter Island. If such an impact is unavoidable and marsh and wetlands are disturbed, the marsh must be restored to its original contours and conditions, which may involve revegetation similar to the Drum Island mitigation requirements. The pipeline must be clearly marked with navigational lights and reflectors so that it is clearly visible at night.

8. Provided that if clamshell dredging should prove necessary, all measures must be taken to contain any fallout from the clamshell dredge to limit turbidity and prevent re-suspension of sediments as much as possible during dredging operations.

9. Provided signs must be posted on the wharf and areas adjacent to the facility stating the following: "It is against both Federal and State Laws to discharge raw, untreated sewage from any description of watercraft into the waters of South Carolina." Signs should be at least 14" by 18" in size so they can be read clearly.

10. Provided that an as-built survey of the terminal must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the terminal, and be accomplished using the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

11. Provided that a submerged cultural resource survey be undertaken before any site work occurs. This survey must be sent to both OCRM and the State Historic Preservation Officer, State Historic Preservation Office.

12. Provided that the SCSPA continue to reimburse Charleston County Mosquito Control Program for the treatment and inspection of the disposal sites.

13. Provided that in the event that archaeological or paleontological remains are found during the course of work, the applicant should notify the State Archaeologist, South Carolina Institute of Archaeology and Anthropology pursuant to South Carolina Underwater Antiquities Act of 1991, (Article 5 Chapter 7, Title

54, Code of Laws of South Carolina, 1976). Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (ie, older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent vessel remains. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

COASTAL ZONE CONSISTENCY CONDITIONS

1. Certification staff has reviewed the freshwater wetlands impacts and mitigation proposal associated with the above referenced project and finds them consistent with the State's Coastal Zone Management Program. Mitigation will be provided through the purchase of 33.1 mitigation credits from an approved mitigation bank. Proof of the purchase of the 33.1 mitigation credits must be submitted to the Office of OCRM prior to any work commencing under this permit.

WATER QUALITY SPECIAL CONDITIONS

1. The applicant must implement BMPs during construction to minimize erosion and migration of sediments off site, as proposed. These practices may include use of mulches, hay bales, silt fences, or other devices capable of preventing erosion and migration of sediments. All disturbed land surfaces must be stabilized upon project completion. All disturbed land surfaces and sloped areas must be stabilized and sloped with a minimum 3/1 slope upon project completion.

2. In areas where silt barriers cannot be effectively employed, mulching, burlap or other suitable materials should be applied and maintained on all disturbed land surfaces to control erosion until the area is permanently stabilized upon project completion.

3. If sediment basins are used, they must be cleaned out when they lose their effectiveness; and all materials removed from the basins must be hauled off site or placed on high land and properly contained and stabilized.

4. Upon completion of construction activities, all disturbed areas, including filled areas, which are not paved, must be permanently stabilized with a vegetative cover. This may include sprigging, trees, shrubs, vines or ground cover.

5. Only clean earthen material free of all potential sources of pollution must be used as backfill.

6. Construction activities must avoid to the greatest extent practicable, encroachment into any wetland/river bank areas not designated as impact areas.

7. Any equipment used within the wetland must be equipped with high floatation tires to minimize rutting and compaction.

8. All necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.

9. The applicant must develop a spill prevention and clean up plan for this project. The plan should contain the names of appropriate officials to contact in case of a reportable spill and outline measures to be taken. Clean up materials, such as absorbent pads and booms, must be kept at the project site for small spills. This plan must be submitted to the SCDHEC for review and approval prior to initiation of the project.

10. A Permanent Stormwater System Maintenance and Responsibility Agreement must be signed by the SCSPA and sent to SCDHEC. The approved stormwater plan must ensure that outfalls discharging to Shipyard Creek will be located near the mouth of the creek.

11. Dredged material that has been determined acceptable for use as construction fill may be deposited on the terminal site. All other dredged material will be deposited in the SCSPA Daniel Island Confined Disposal Facility.

12. The excavated area must be sloped such that the rear is no deeper than the front and the front is no deeper than the adjacent portion of the Charleston Harbor to maintain circulation.

13. The SCSPA must continue to reimburse the Charleston County Mosquito Control Program for mosquito control efforts including inspection and product application associated with the Daniel Island CDF until it is closed.

14. The applicant must compensate for impacts to vegetated marsh habitat by creating at least 22 acres of marsh mosaic habitat at the southern end of Drum Island. A detailed restoration plan including performance standards, monitoring requirements, and remediation actions must be submitted to USFWS, NMFS, & SCDNR for review and to SCDHEC's Division of Water Quality and OCRM for review and approval prior to any work commencing under this permit. The SCSPA must monitor the mitigation site and provide the SCDHEC's Division of Water Quality and OCRM with monitoring reports. The monitoring, and the monitoring reports, will be completed in accordance with the Corps of Engineers Regulatory Guidance Letter (RGL-06-03) dated August 3, 2006. The reports must be submitted upon completion of the plantings, six months after planting, one year after planting, and at yearly intervals for a total of five years. The restoration will be considered complete when the following success criteria are met: 1) a minimum of 75% survival of planted *Spartina alterniflora* plants at the end of 12 months following planting, and 2) mean stem densities of *S. alterniflora* in the restored marsh > 75% of the mean stem density in the adjacent undisturbed salt marsh at the end of 36 months (3 years) following planting.

15. The applicant must compensate for freshwater wetland impacts by withdrawing credits from an approved mitigation bank (no more than 50% of credits can be from preservation; at least 25% of credits must be from restoration and/or non-buffer enhancement). Credit withdrawal documentation from the mitigation bank must be submitted to SCDHEC's Division of Water Quality and OCRM prior to any work commencing under this permit.

16. The applicant must compensate for adverse impacts that may result from the filling or excavation of intertidal and subtidal habitats by providing $1,000,000 to the SCDNR for the purpose of restoring, enhancing, and monitoring approximately 5.28 miles (8 acres) of oyster reefs at suitable locations in and around Charleston. Priority must be given to designated shellfish harvesting waters with an approved harvesting status as restoration activities in these areas are most likely to result in the production of oyster beds that can be utilized by the public. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A), demonstrating that SCDNR has been provided the noted amount only for the purpose of restoring, enhancing, and monitoring approximately 5.28 miles (8 acres) of oyster reefs at suitable locations in and around Charleston.

17. The applicant must compensate for indirect environmental impacts of the proposed project by contributing $1,000,000 to The Trust for Public Lands for purchasing Morris Island. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A),

demonstrating that The Trust for Public Lands has been provided the noted amount only for the purpose of purchasing Morris Island.

18. The applicant must compensate for indirect environmental impacts of the proposed project by contributing $1,000,000 to The Nature Conservancy for the purchase of real property interests (in fee or lesser interest) for conservation purposes, restoration, or enhancement of target lands within the Cooper River Initiative focus area. SCSPA must provide to the Division of Water Quality and OCRM, prior to any work commencing under this permit, (1) documentation of the deposit of funds into an escrow account or other acceptable security, and an irrevocable letter of credit for the noted amount and (2) documentation, utilizing the model transmittal letter (Attachment A), demonstrating that The Nature Conservancy has been provided the noted amount only for the purchase of real property interests (in fee or lesser interest) for conservation purposes, restoration, or enhancement of target lands within the Cooper River Initiative focus area.

19. A declaration of restrictive covenants or other preservation documentation addressing the Drum Island mitigation site must be submitted to SCDHEC's Division of Water Quality and OCRM for review and approval prior to recording. A copy of the stamped recorded plat and the stamped restrictive covenants must be submitted to the Division of Water Quality and OCRM prior to any work commencing under this permit.

20. The intake structure of the water jet sedimentation control system must be screened and operated in such a way as to minimize, to the maximum extent practicable, entrainment of aquatic species.

21. The SCSPA must instruct all personnel associated with the project construction and operation of the potential presence of the manatees and the need to avoid collisions with manatees.

22. All SCSPA personnel and contractors will be advised that there are civil and criminal penalties for harming, harassing or killing manatees which are protected under the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 (ESA). The contractor may be held responsible for any manatee harmed, harassed or killed as a result of port activities.2

23. Siltation barriers that may be utilized during the port's construction activities must be made of materials and placed in a manner in which manatees cannot become entangled. The barriers may not block manatee movements and are to be regularly monitored to avoid manatee entrapment.

24. All vessels associated with the project will operate at idle speeds at all times while in shallow waters.

25. If manatees are sighted within 100 yards of the project, all appropriate precautions shall be implemented to ensure protection of the manatees. These precautions shall include operating all equipment in such a manner that moving equipment does not come any closer than 50 feet of any manatee.

26. Any collision with any manatee must be reported immediately to the SC Department of Natural Resources, Heritage Trust Section, (843) 953-9015.

27. The SCSPA will maintain a log detailing manatee sightings, collisions or injuries should they occur during construction. Following construction completion a report summarizing incidents and sightings must be submitted to Endangered Species Biologist, US Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, SC, 29407.

28. The SCSPA must obtain the necessary permits, including dig permits, from the U.S. Navy prior to construction and will comply with the notification provisions of those permits and other requirements.

29. The SCSPA will require ships at their berths to appropriately manage their crew and cargo to ensure that non-indigenous species will not be released into the environment at the proposed project site, as required by the SC State Ports Authority's Tariff Rule 34-165.

30. Should the refinement of the TMDL for the Cooper River find the dredging and backfilling impacts and stormwater impacts impacts to be inconsistent with State water quality standards when considered with the other point and nonpoint sources, the SCSPA and SCDHEC will enter into an agreed-upon MOA after consulting/coordinating with appropriate resource agencies and conservation groups, to outline the goals and objectives and to mitigate appropriately for its impact.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: 2003-1T-016-P-C

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S)) (DATE)

South Carolina State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

(MANAGER, CRITICAL AREA PERMITTING) (DATE)

Curtis M. Joyner
Or his Designee
Other Authorized State Official

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

ATTACHMENT A

[DATE]

[RECEIVING PARTY]

Enclosed herewith please find documentation evidencing the deposit of [AMOUNT] in an escrow fund for the benefit of [RECEIVING PARTY]. The provision of these funds by the South Carolina State Ports Authority constitutes SPA's compliance with certain terms and conditions of its Permit No. 2003-1T-016-P-C. As required by the permit, the use of these funds is restricted and limited to the [PURPOSE].

Your acceptance of these funds for your benefit constitutes your acknowledgement that the terms and conditions set forth in this transmittal letter are binding upon you, and that you are contractually bound to utilize the stated funds only for the purposes set forth herein. You further understand that the South Carolina Department of Health and Environmental Control is a third party beneficiary of these funds.

Please provide the SPA and DHEC with periodic reports of the utilization and expenditure of these funds. SPA and/or DHEC has the right to review records related to the utilization and expenditure of these funds.

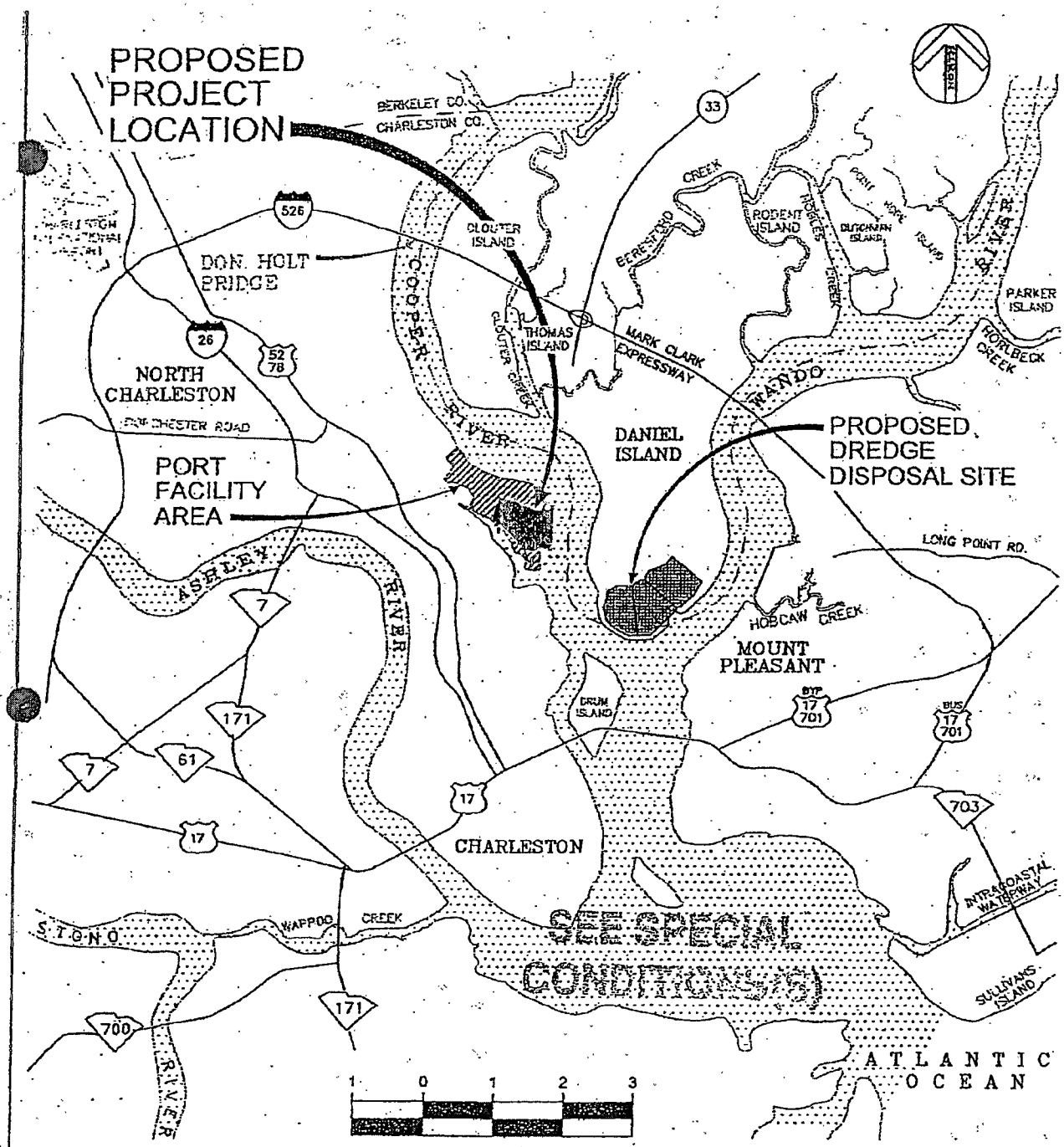
Please sign this letter where indicated below and return an executed copy to me. Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

[STATE PORTS AUTHORITY]

On Behalf of the [RECEIVING PARTY],
I acknowledge and agree to the terms
stated above:

_____
[AUTHORIZED REPRESENTATIVE]
[RECEIVING PARTY]

Enclosures



PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PROJECT NO.: MSC02E028
FILE NAME: CNBPA1A5

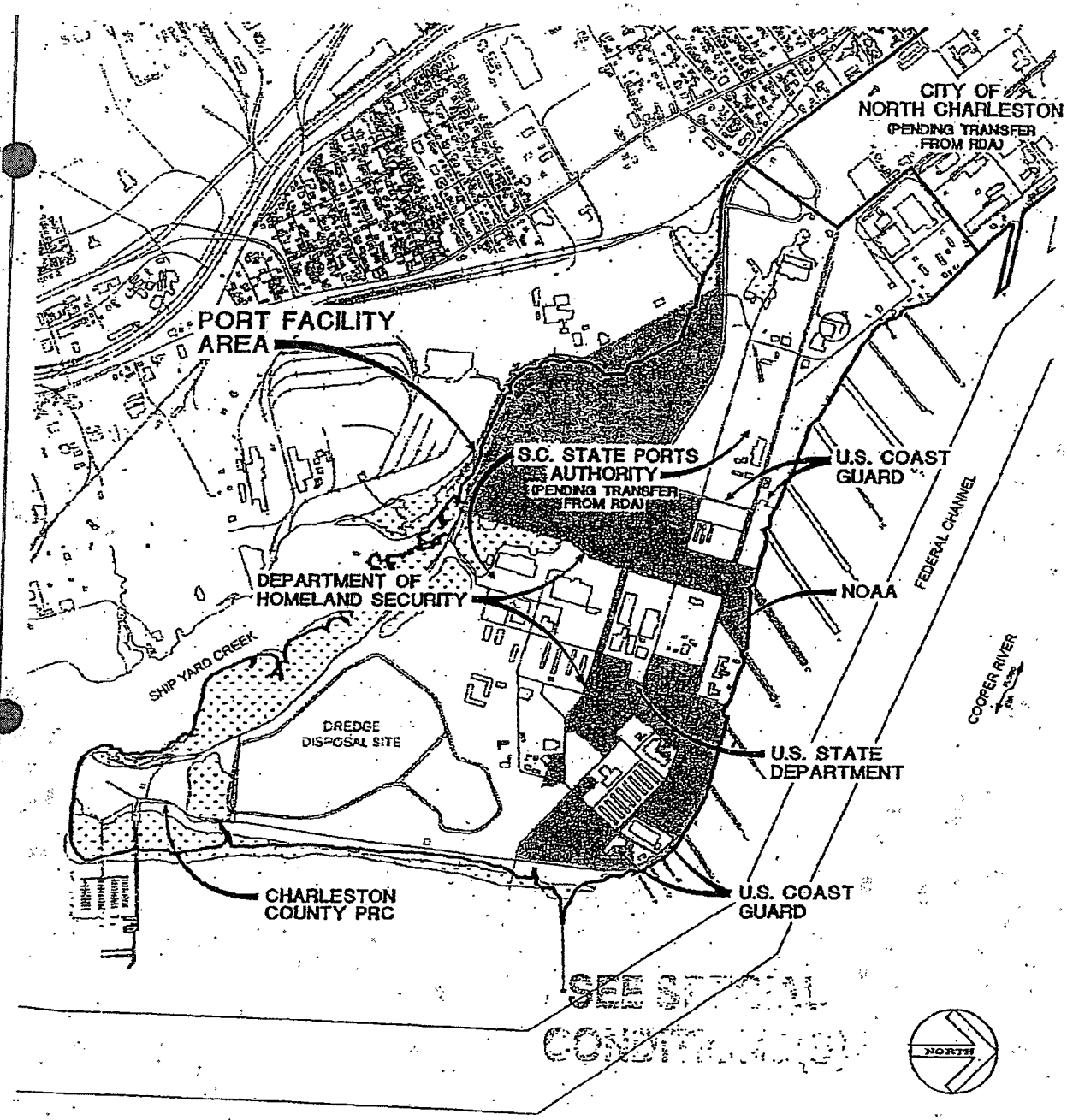
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

PROJECT LOCATION

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

PROPOSED: NEW CONTAINER TERMINAL
IN: NORTH CHARLESTON, SOUTH CAROLINA
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 1 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA2A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/05

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO PLAN

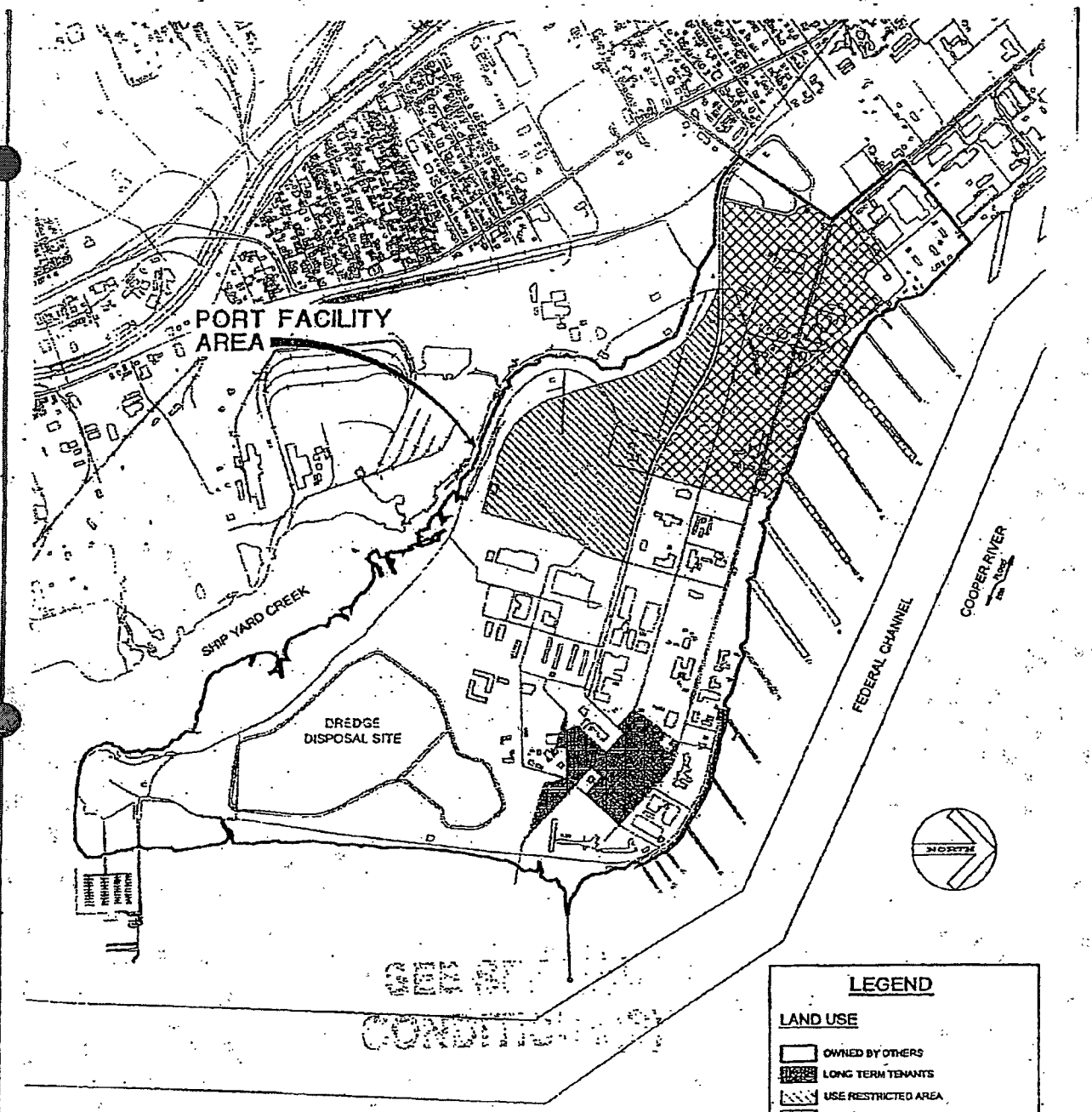
P/N # 2003-1T-016-PC

PROPERTY OWNERS

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 2 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA3A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

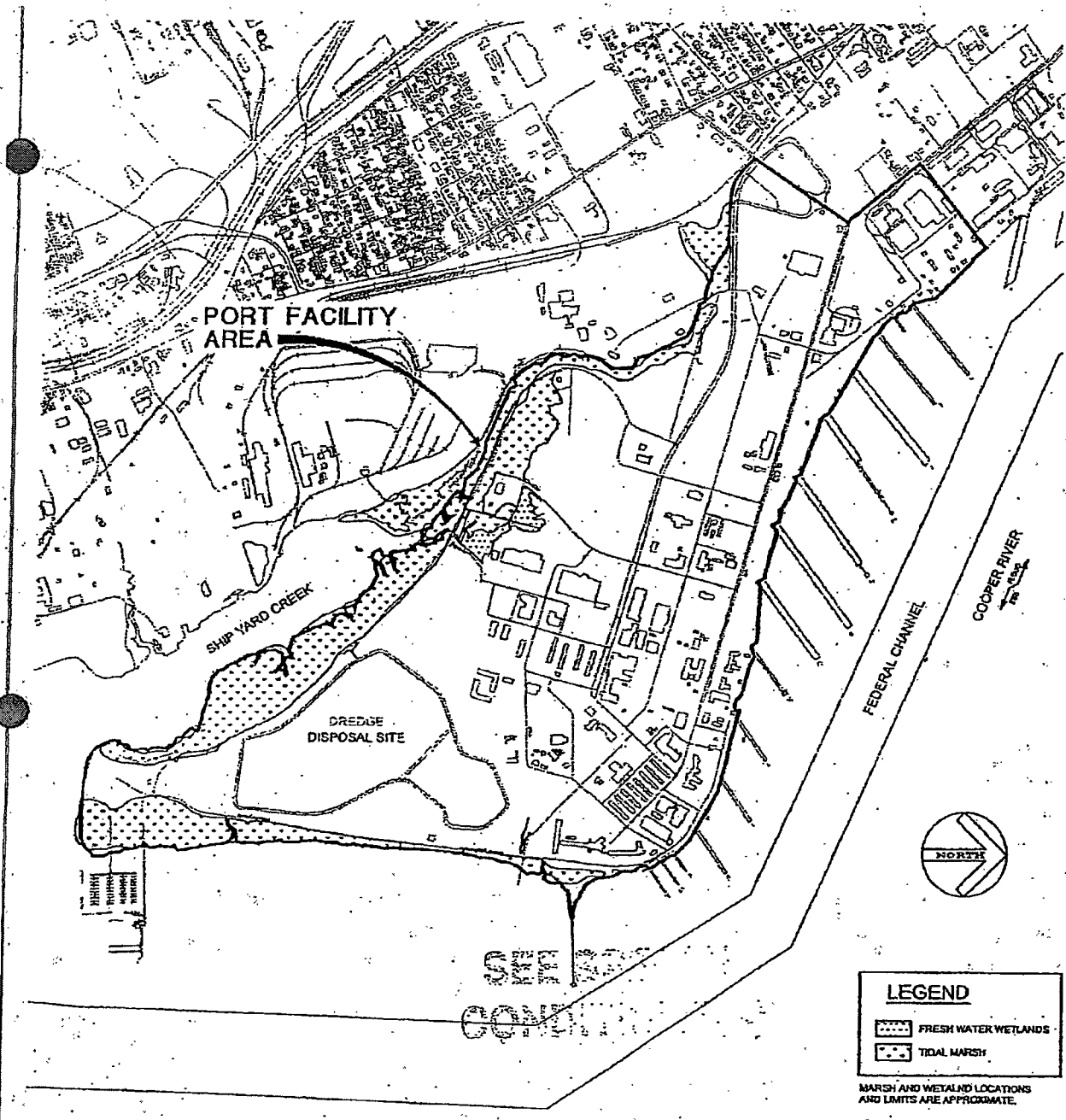
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

EXISTING CONDITIONS
(LAND USE)

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

PROPOSED: NEW CONTAINER TERMINAL
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 3 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA4A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS:
REFER TO SHEET 2 OF 11

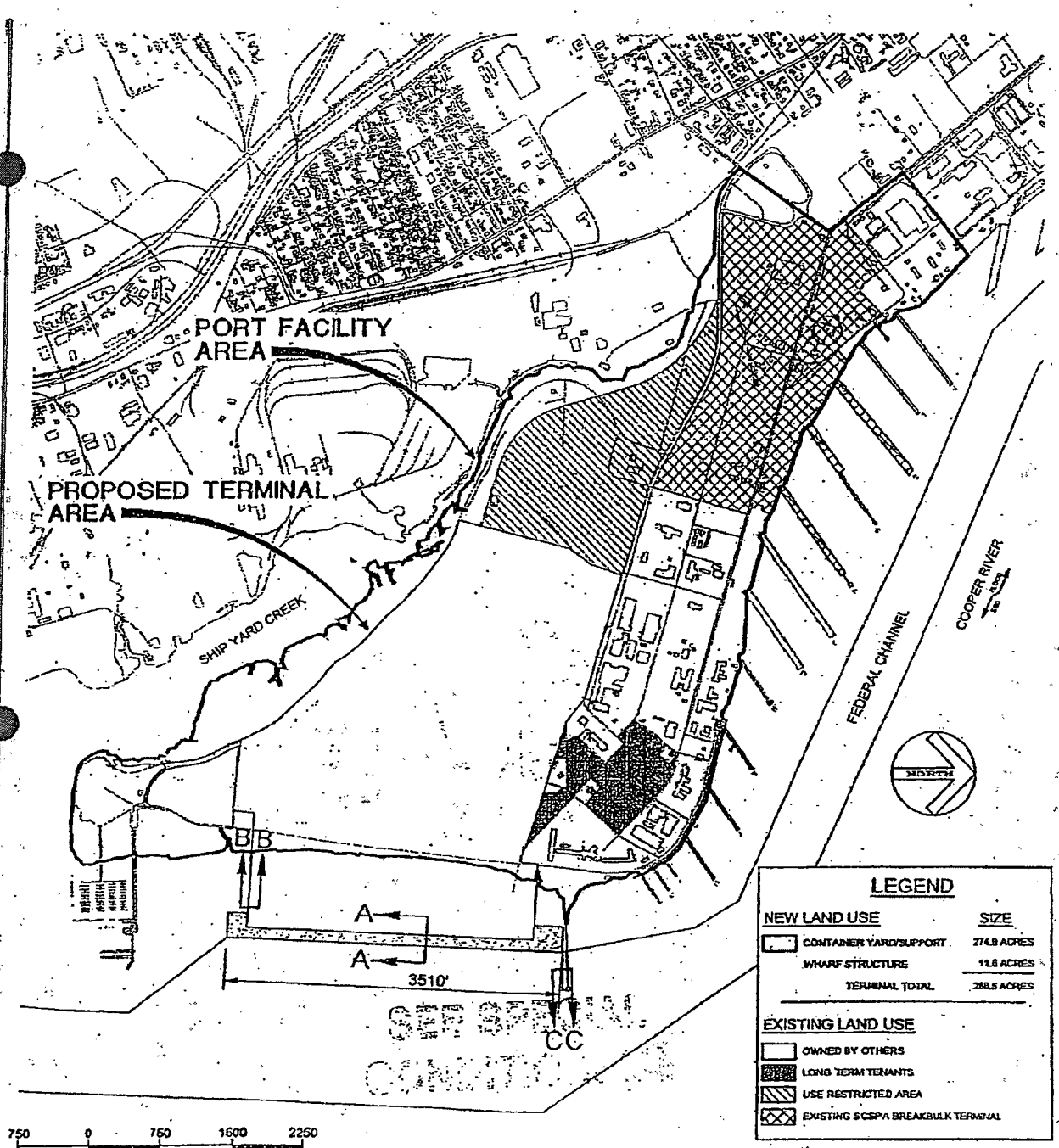
P/N # 2003-1T-016-PC

EXISTING CONDITIONS
(WETLANDS)

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 4 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA5A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/08

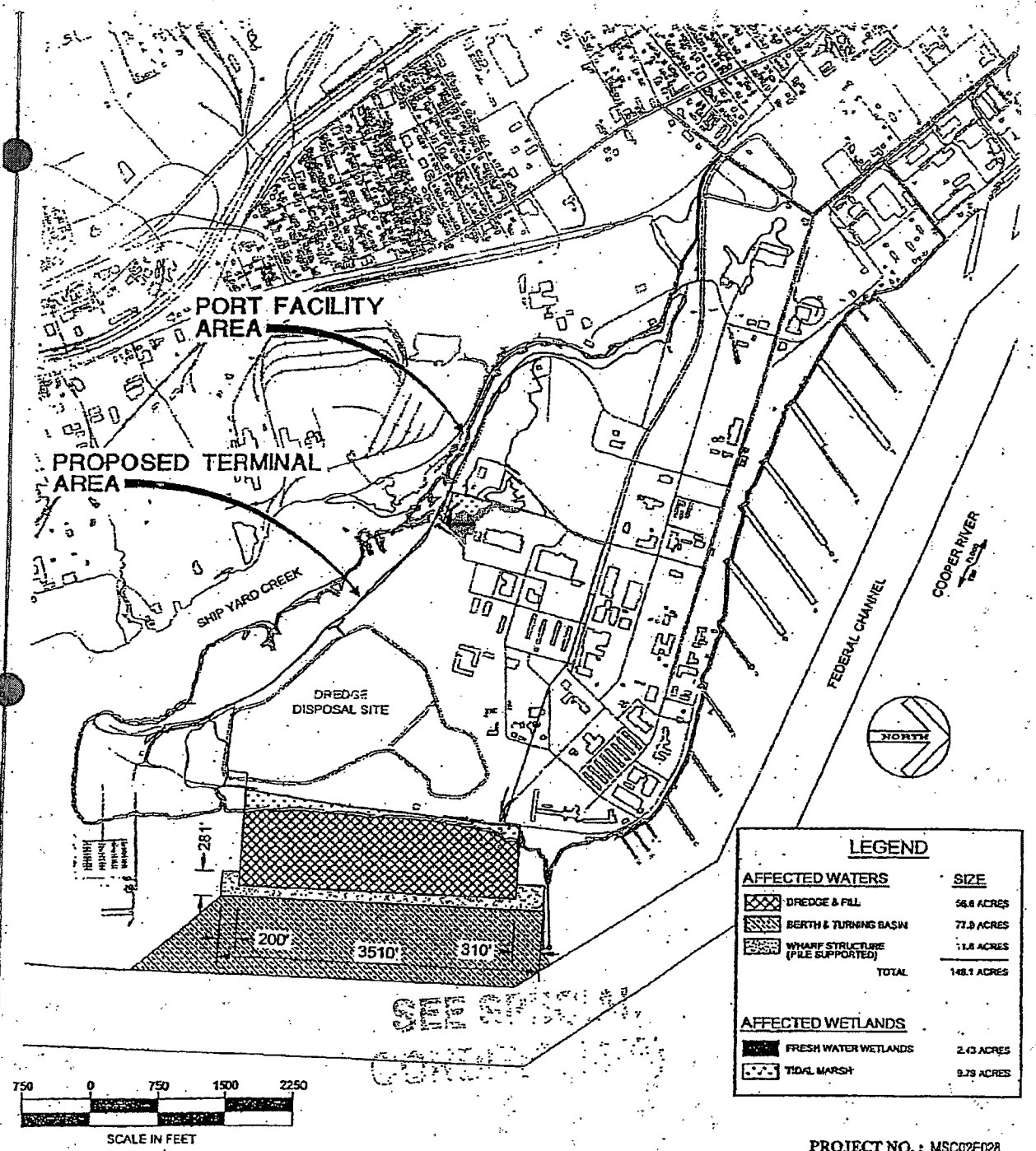
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

NEW CONDITIONS
(LAND USE)

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

PROPOSED: NEW CONTAINER TERMINAL
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 5 OF 11 DATE: JANUARY 28, 2005



PROJECT NO.: MSC02E028
FILE NAME: CNBPA6A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

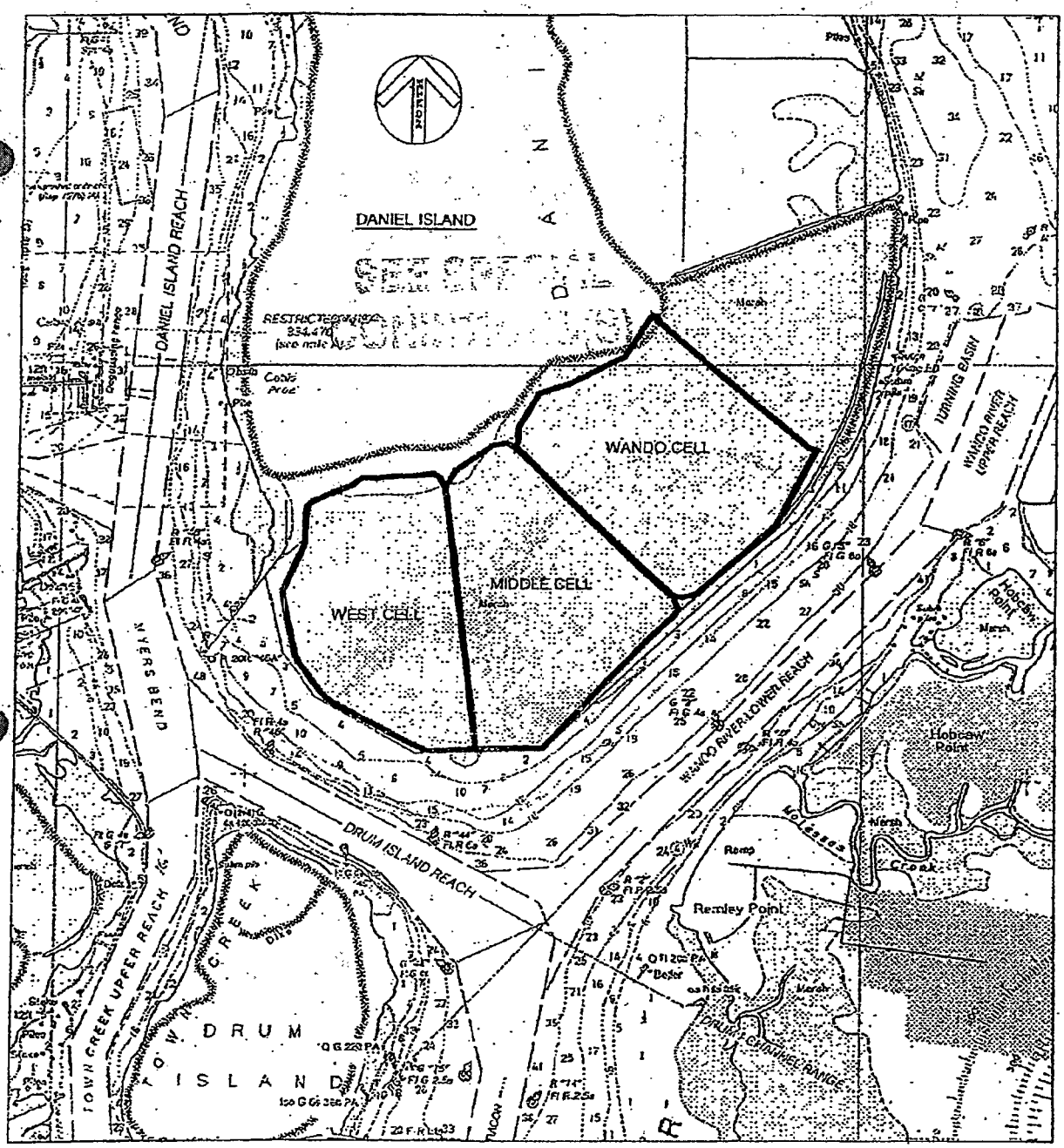
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

NEW CONDITIONS
(AFFECTED WATERS & WETLANDS)

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

PROPOSED: NEW CONTAINER TERMINAL
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 6 OF 11 DATE: JANUARY 28, 2005



2000 0 2000

SCALE IN FEET

PROJECT NO.: MSC02E028
FILE NAME: CNBPA7A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS:
REFER TO SHEET 2 OF 11

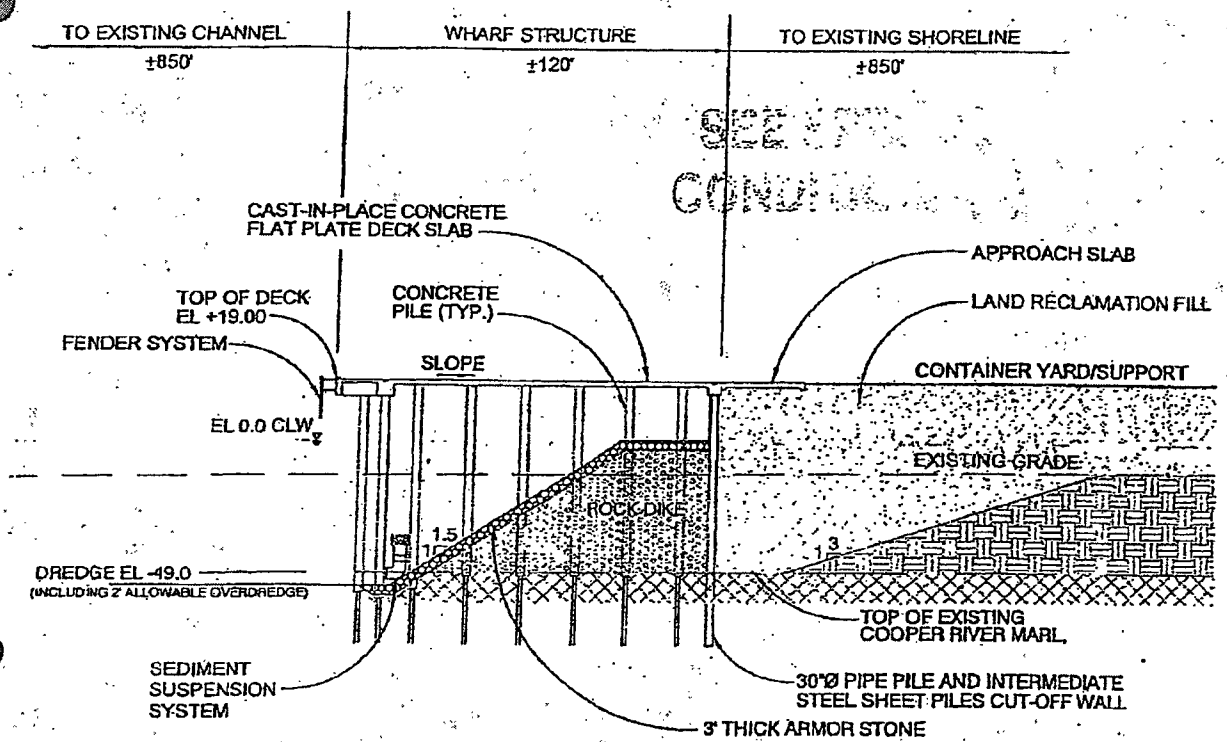
P/N # 2003-1T-016-PC

DREDGE DISPOSAL SITE

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

PROPOSED: NEW CONTAINER TERMINAL

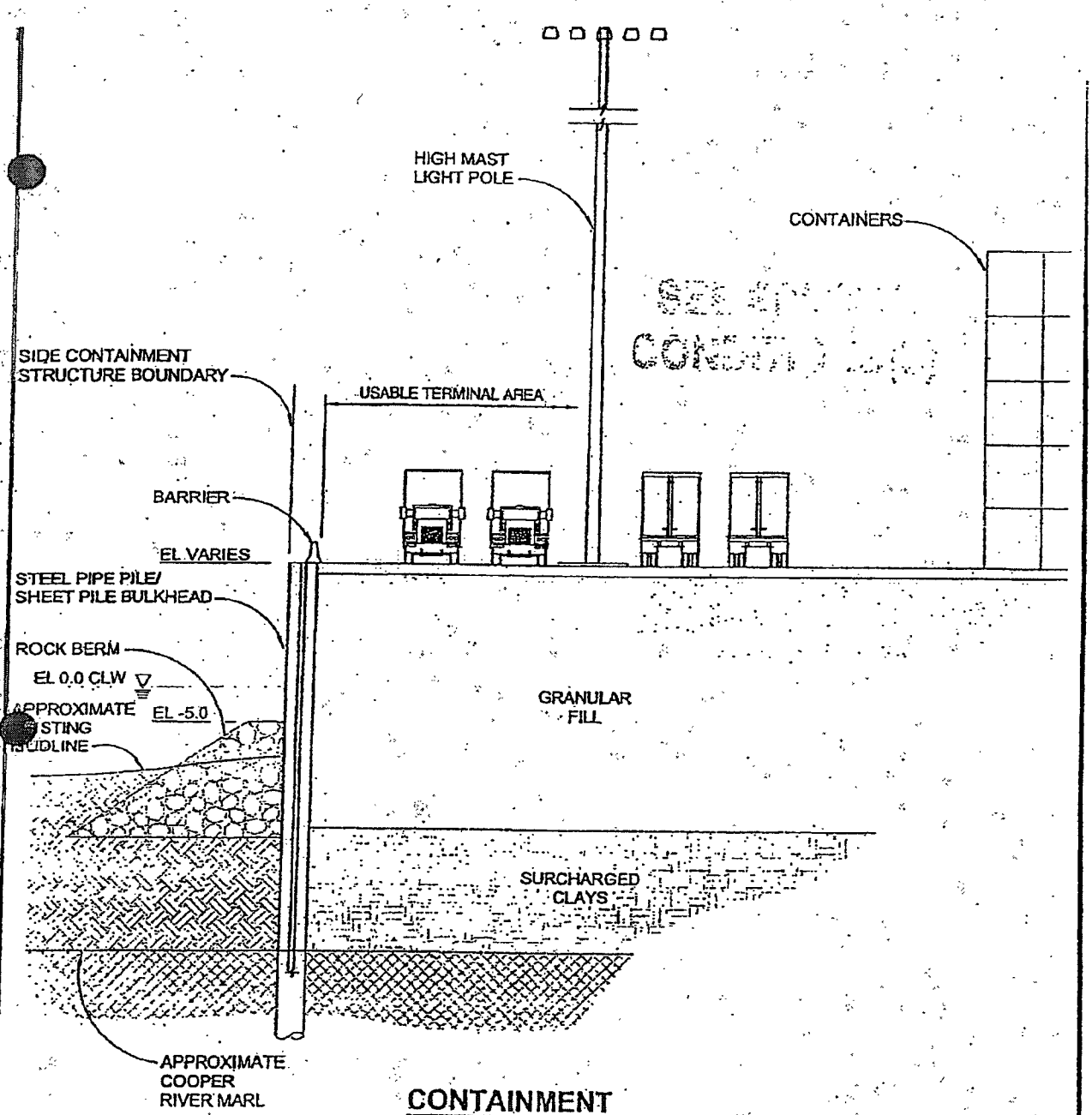
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 7 OF 11 DATE: JANUARY 28, 2005



PILE SUPPORTED DECK & BERTH

N.T.S.

PERMIT APPLICATION AMENDMENT NO. 5 | 07/25/06		PROJECT NO.: MSC02E028 FILE NAME: CNBPA8A5
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH DATUM: CHARLESTON LOW WATER (MLW) ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11 P/N # 2003-1T-016-PC	**SECTION A - A** *South Carolina State* **PORTS AUTHORITY** 176 CONCORD STREET P.O. BOX 22287 CHARLESTON, S.C. 29413-2287	PROPOSED: NEW CONTAINER TERMINAL IN: NORTH CHARLESTON AT: FORMER CHARLESTON NAVAL BASE CHARLESTON COUNTY, SOUTH CAROLINA APPLICATION BY: SC STATE PORTS AUTHORITY SHEET: 8 OF 11 DATE: JANUARY 28, 2005



CONTAINMENT STRUCTURE

N.T.S.

PROJECT NO.: MSC02E028
FILE NAME: CNBPA9A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: CHARLESTON LOW WATER (MLW)
ADJACENT PROPERTY OWNERS:
REFER TO SHEET 2 OF 11

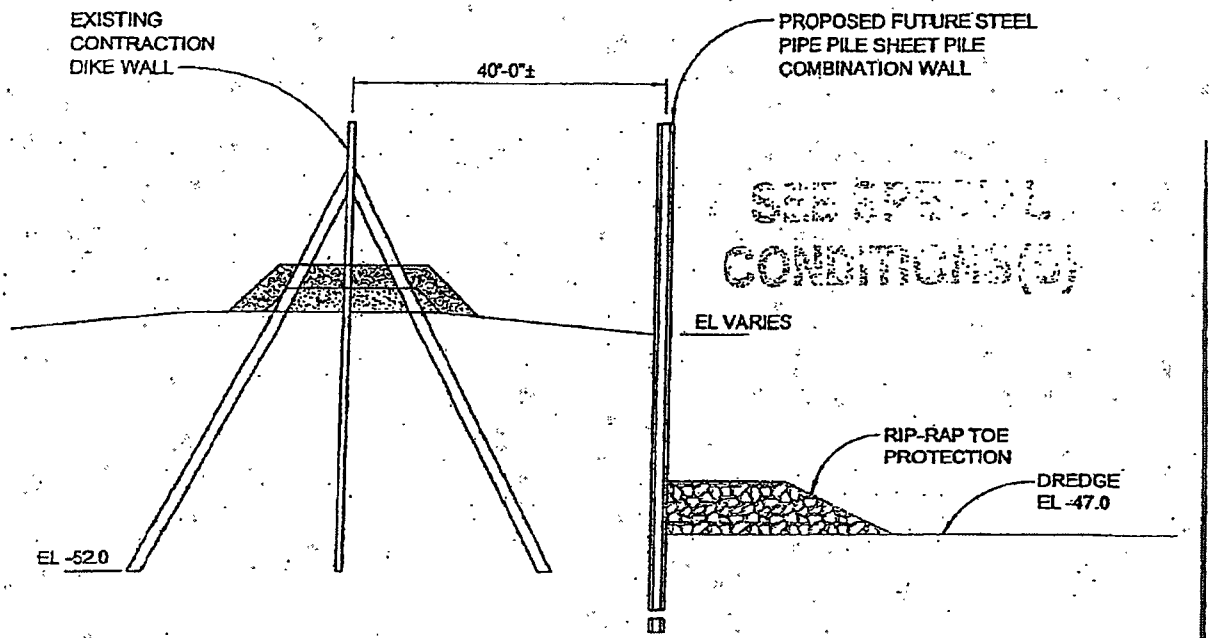
P/N # 2003-1T-016-PC

SECTION B - B

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

PROPOSED: NEW CONTAINER TERMINAL

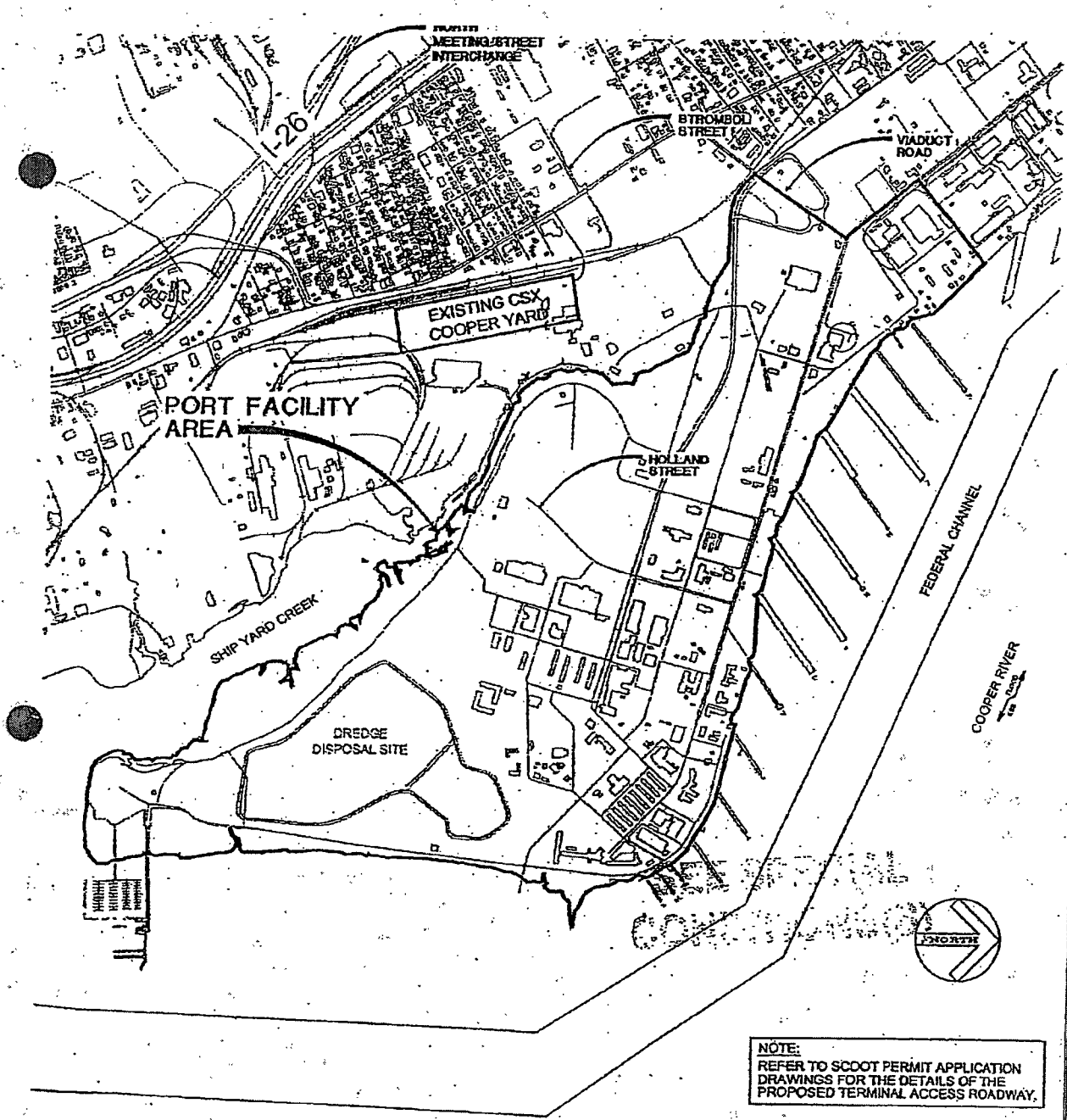
IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 9 OF 11 DATE: JANUARY 28, 2005



CONTRACTION DIKE PROTECTION WALL

N.T.S.

PERMIT APPLICATION AMENDMENT NO. 5 | 07/25/06		PROJECT NO.: MSC02E028 FILE NAME: CNBPA10A5
PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH DATUM: CHARLESTON LOW WATER (MLW) ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11 P/N # 2003-1T-016-PC	SECTION C - C South Carolina State PORTS AUTHORITY 176 CONCORD STREET P.O. BOX 22287 CHARLESTON, S.C. 29413-2287	PROPOSED: NEW CONTAINER TERMINAL IN: NORTH CHARLESTON AT: FORMER CHARLESTON NAVAL BASE CHARLESTON COUNTY, SOUTH CAROLINA APPLICATION BY: SC STATE PORTS AUTHORITY SHEET: 10 OF 11 DATE: JANUARY 28, 2005



NOTE:
REFER TO SCDOT PERMIT APPLICATION DRAWINGS FOR THE DETAILS OF THE PROPOSED TERMINAL ACCESS ROADWAY.

750 0 750 1500 2250
SCALE IN FEET

PROJECT NO.: MSC02E028
FILE NAME: CNBPA11A5

PERMIT APPLICATION AMENDMENT NO. 5	07/25/06

PURPOSE: ADDITIONAL CONTAINER HANDLING CAPACITY FOR FUTURE GROWTH
DATUM: S.C. STATE PLANE COORDINATES
ADJACENT PROPERTY OWNERS: REFER TO SHEET 2 OF 11

P/N # 2003-1T-016-PC

EXISTING ROADWAYS

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

PROPOSED: NEW CONTAINER TERMINAL

IN: NORTH CHARLESTON
AT: FORMER CHARLESTON NAVAL BASE
CHARLESTON COUNTY, SOUTH CAROLINA
APPLICATION BY: SC STATE PORTS AUTHORITY
SHEET: 11 OF 11 DATE: JANUARY 28, 2005

EXHIBIT J

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, Petitioner, v. SC BOARD OF HEALTH AND ENVIRONMENTAL CONTROL; SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; and SC STATE PORTS AUTHORITY, Respondents.	)	**Docket No. 07-ALJ-07-0107-CC** **PREHEARING STATEMENT OF SOUTH CAROLINA COASTAL CONSERVATION LEAGUE**

1. Nature of the Proceeding

In this contested case, the S.C. Coastal Conservation League ("the League") challenges the final agency decision of the Department of Health and Environmental Control ("DHEC") and its Board to issue coastal zone consistency and water quality certifications and a critical area permit to the S.C. State Ports Authority ("SPA") to construct and operate a new marine container cargo terminal at the former Charleston Naval Base (P/N 2003-1T-016-P-C). The League intends to show that DHEC approved the terminal and a connecting highway before it gathered or considered information that the law requires to be evaluated antecedent to such approval; that DHEC skewed its approval process in violation of clear procedural requirements; and finally that DHEC approved the project despite being presented with, and not refuting, information showing that the project, if constructed and operated, will violate legal standards that under South Carolina law are a prerequisite to approval. In particular, DHEC approved a project that will cause violations of both air and water quality standards, when DHEC's governing laws and regulations plainly prohibit approval where such violations will occur.

2. Statutory Provisions Conferring Subject Matter Jurisdiction to ALC

This action is appealed from a final agency decision of DHEC Board, dated February 8, 2007. The Administrative Law Court has jurisdiction over this contested case pursuant to S. C. Code Ann. § 1-23-600, 44-1-60(F)(2), and R. 61-101(G).

3. Statutory and Regulatory Provisions Giving Rise to Controversy

Below are Petitioner's claims regarding DHEC's decisions, with notation of the statutory and regulatory provisions violated:

Dissolved Oxygen Violation Allowed	R. 61-101(F) CMP[1] II(A)(7)
P.M.$_{2.5}$ "Nonattainment" Allowed	§ 48-39-150(8-9) CMP II(A)(7),(14)
Certification Despite Unknown Impacts	§ 48-39-150(B)
Terminal and Highway Piecemealed (p. 3)	R. 30-11(C)(2) R. 16-101(F)(3)
I-26 Failure Ignored	§ 48-39-150(8), (9) R. 30-11(B)(8)
Induced Channel Deepening Ignored	R. 61-101(F)(3)(c)
Endangered Species Ignored	§ 48-39-150(A)(6) R. 30-11.B(6); CMP at IV-17 R. 61-101-(F)(5)(c)
Security of Terminal In Urban Center Ignored	CMP II(A)(5)
Jasper County Alternative Ignored	R. 61-101(F)(3) § 48-39-150(8), (9) R. 30-11(B)(8)
Noise Impacts Ignored	§ 48-39-150(8), (9) R. 30-11(B)(8)

4. Issues Presented for Determination

Whether DHEC, in issuing coastal zone consistency and water quality certifications and coastal permits for a S.C. Ports Authority marine container cargo terminal at the former Charleston Naval Base, complied with applicable law governing the consideration and issuance of such certifications and permits.

Petitioners expect the following issues will be presented for determination:

[1] Coastal Management Program.

1. Whether the proposed project will cause water quality standards to be violated;

2. Whether the proposed project will cause air quality standards to be violated;

3. Whether DHEC issued certifications before it had adequate understanding of the project's complete impacts;

4. Whether DHEC adequately considered the terminal and connecting highway as a single project in evaluating alternatives;

5. Whether DHEC adequately considered the impacts of the project on I-26, the need to replace and improve I-26, and the impacts of any replacement and improvement of I-26 induced by the project;

6. Whether DHEC gave adequate consideration to channel deepening that this project will induce in Charleston Harbor, and that deepening's impacts;

7. Whether DHEC adequately considered impacts on the endangered northern right whale and all alternatives to minimizing such impacts;

8. Whether DHEC adequately considered meeting the state's container shipping needs through construction of a terminal in Jasper County;

9. Whether DHEC gave adequate consideration to noise impacts from the project on neighboring citizens.

5. Action Requested of ALC

Vacate and remand.

6. Brief Summary of Facts to Be Presented at Hearing

Evidence that project will cause violations of water and air standards; evidence that staff ignored and/or improperly discounted same; evidence staff did not consider impacts to endangered species; evidence staff disregarded cumulative, indirect and secondary impacts including further harbor deepening, failure of I-26, impacts of widening I-26; evidence staff did not consider security of new port in urban area; evidence staff ignored noise impacts; evidence staff issued approvals without first having ascertained overall project impacts and on the basis of uncertain contingencies; evidence staff piecemealed consideration of terminal and highway and did not consider Jasper County terminal alternative, which could have lesser impacts.

7. Summary of Motions to be Raised at Hearing

Plaintiff may seek to establish by motion burdens of production and persuasion and standard of review.

8. **List of Proposed Witnesses and Exhibits**

Witnesses:

Transportation Expert: Lucy Gibson
Air Expert: Ken Kaliski
Gina Kirkland, DHEC
Rheta Geddings, DHEC
Myra Reece, DHEC
Carolyn Boltin, OCRM
Curtis Joyner, OCRM

Exhibits:

- All documents in DHEC and SPA's control related to this project
- All exhibits listed by other parties
- Expert reports of Gibson and Kaliski

Petitioners anticipate identifying additional witnesses, including a water quality expert, and exhibits, and will supplement this filing as those witnesses and exhibits are identified.

9. **Statement Regarding Necessity for Discovery**

Petitioner anticipates the need to conduct discovery of DHEC, SCDOT and SPA and request 90 days from the date of this Prehearing Statement for discovery and trial preparation.

10. **Estimated Time Required for Hearing**

One week if not summarily remanded.

Dated: April 9, 2007.

J. Blanding Holman, IV
Southern Environmental Law Center
200 W. Franklin St., Suite 330
Chapel Hill, NC 27516
Tel: (919) 967-1450
Fax: (919) 929-9421
bholman@selcnc.org

W. Jefferson Leath, Jr.
Leath, Bouch & Crawford, L.L.P.
92 Broad Street
P.O. Box 59
Charleston, SC 29402-0059
jl@leathbouchlaw.com

Attorneys for South Carolina Coastal Conservation League

CERTIFICATE OF DATE OF MAILING

I hereby certify that the foregoing Prehearing Statement of South Carolina Coastal Conservation League was mailed to the Court for filing this the 9th day of April, 2007.

J. Blanding Holman, IV

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Prehearing Statement of South Carolina Coastal Conservation League on all parties by first-class mail, postage prepaid, addressed as follows:

Van Whitehead, Esq.
Staff Attorney
South Carolina Department of Health
and Environmental Control
1362 McMillan Avenue, Suite 400
North Charleston, SC 29405

Sara Bazemore, Esq.
Staff Attorney
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202

This the 9th day of April, 2007.

J. Blanding Holman, IV

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit A	OCRM-12-054-B Permit (Dec. 18, 2012)
Exhibit B	Affidavit of James I. Newsome, III (Aug. 22, 2011)
Exhibit C	Affidavit of Peter Lehman (Aug. 2, 2013)
Exhibit D	Ports Authority Joint Application (Jan. 27, 2012)
Exhibit E	Map of Pile Clusters
Exhibit F	401 Certification for NWP 3 (Apr. 23, 2012)
Exhibit G	HCF Req. for Final Review (Jan. 2, 2013)
Exhibit H	Preservation Society, HANA, League, CAN, Surfrider, & Cruise Control Req. for Final Review (Jan. 2, 2013)
Exhibit I	League Req. for Contested Case Hrg. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* No. 07-ALJ-07-107-CC (Mar. 9, 2007)
Exhibit J	League Prehr'g Stmt. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control,* 07-ALJ-07-0107-CC (Apr. 9, 2007)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina Department of Health and Environmental Control and South Carolina State Ports Authority, Respondents.	)	Docket No. 13-ALJ-07-0056-CC

PORTS AUTHORITY'S MOTION FOR SUMMARY JUDGMENT FOR LACK OF STANDING

Pursuant to Rules 19 and 68 of the Rules of Procedure of the Administrative Law Court (RPALC) and Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Ports Authority (Ports Authority) respectfully moves this Court for an order granting summary judgment against the Cruise Opponents in the above-captioned matter. The Cruise Opponents have failed to establish standing to challenge the permit issued by the South Carolina Department of Health and Environmental Control (DHEC) through its Division of Ocean and Coastal Resource Management (OCRM) (Permit No. ORCM-12-054-B) (Permit); therefore, summary judgment is appropriate.[1]

[1] The Ports Authority recognizes the length of this motion is atypical. However, as evidence and material outside the record is appropriate for consideration, the length of this motion is in large

BACKGROUND AND PROCEDURAL HISTORY

This is a *de novo*, contested case proceeding brought by Preservation Society of Charleston (Preservation Society), Charleston Communities for Cruise Control (C4), Historic Ansonborough Neighborhood Association (HANA), South Carolina Coastal Conservation League (League), Charlestowne Neighborhood Association (CNA), Charleston Chapter of the Surfrider Foundation (Surfrider), and Historic Charleston Foundation (HCF) (collectively, Cruise Opponents) challenging a decision of DHEC to authorize and permit a portion of a capital improvement project at the Union Pier Terminal (UPT) in Charleston, South Carolina by the Ports Authority.

The overall planned improvements to the UPT (Project) involve renovations to existing buildings on the terminal footprint, relocating certain port operations to other Ports Authority terminals and shifting passenger cruise operations to the northern end of UPT. *See* Ex. 1, Map of Union Pier Terminal footprint (March 2012). The purpose of the planned improvements is multi-faceted, including, but not limited to: upgrading existing cruise facilities in order to comply with both current terminal security requirements mandated by federal law under the oversight of the United States Customs and Border Protection (CBP), as well as the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§ 12101 *et seq.*; relocation of existing cargo facilities from the northern end of the UPT footprint to other Ports Authority-owned terminals, allowing the cessation of existing rail operations to UPT; relocation of existing cruise facilities from the southern end of the

---

part a product of the voluminous evidence weighing against a finding of standing. Further, although the Court determined extra-pleading evidence should not be considered at the motion to dismiss stage, this evidence is appropriate for consideration at the summary judgment stage. Much of this motion reasserts the arguments and exhibits previously presented for the Court's consideration through the Ports Authority's previously filed Motion to Dismiss for Lack of Standing and Motion for Reconsideration. Accordingly, the Ports Authority expressly incorporates and reiterates by this reference the arguments contained in its filings in support of the Motion to Dismiss and Motion for Reconsideration thereof.

UPT footprint to the newly vacated area on the northern end; implementation of an overall traffic management plan that will result in a net neutral traffic impact on the UPT; restoration of the southern end of UPT through the demolition of older structures; and the proposed subsequent redevelopment of much of the existing terminal acreage on the southern end for mixed use, green spaces, and restoration of the natural waterfront for public access.

Because the UPT Project will take place in the "critical area"[2] of the coastal zone[3] of South Carolina, the Ports Authority is obtaining a critical area permit from the DHEC prior to the utilization of the critical area. *See* S.C. Code Ann. § 48-39-130(A).[4] This permit is subject to the requirements of what is commonly referred to as the Coastal Zone Management Act, *see* S.C. Code Ann. §§ 48-39-10 to -360 (CZMA), and associated regulations that govern the management, development, and protection of the critical areas and coastal zone of the State. S.C. Code Ann. Regs. 30-1 to -21. Further, the CZMA requires DHEC to certify the UPT Project as consistent with the Coastal Management Program (CMP), commonly referred to as a Coastal Zone Consistency Determination (CZCD). *See* S.C. Code Ann. § 48-39-80(B)(11).[5]

---

[2] "Critical area" is defined as coastal waters, tidelands, beaches, and the beach/dune system. *See* S.C. Code Ann. § 48-39-10(J). "Coastal waters" are defined as "the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark." S.C. Code Ann. § 48- 39-10(F). "Tidelands" are defined to include "all areas at or below mean high tide...." S.C. Code Ann. § 48-39-10(G).

[3] The "coastal zone" is defined as all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown. *See* S.C. Code Ann. § 48-39-10(B).

[4] OCRM is charged with carrying out South Carolina's coastal zone policies and issuing permits in the critical areas of the coastal tidelands and waters. *See* S.C. Code Ann. Regs. 30-4(C); *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 74, 610 S.E.2d 482, 485 (2005).

[5] Although the CMP has neither been codified nor made part of a DHEC regulation, it has been applied and enforced by the Supreme Court of South Carolina. *See, e.g., Spectre, LLC v. S.C.*

The action implicating State permitting jurisdiction for the Project is the installation of five pile clusters driven into the marl to support the construction of three elevators and two escalators in a renovated warehouse located on the northern end of the UPT footprint, Building #322, which will house the relocated cruise passenger operations.[6] *See* Ex. 1, Map of Union Pier Terminal footprint (March 2012). The pile clusters—an additional five to the thousands of piles under the existing wharf and terminal—will provide further support for the structure of Building #322, within the existing footprint of the fully-developed marine terminal. *See* Ex. 2, Map of Pile Clusters; *see also*, Ex. 3, Ports Authority Ltr. dated Jan. 7, 2013 to DHEC Bd. at 3 (providing a perspective of the current concentration of support pilings currently under Building #322).

To that end, the Ports Authority submitted its application for the UPT Project to DHEC on or about January 27, 2013. Ex. 4 (Permit Applications, Bates Nos. SCPA 002642-50 and SCPA000002-9).[7] Public notices were issued by DHEC to receive comment on March 9, March 23, and August 3, 2012. Ex. 5 (Public Notices, Bates Nos. DHEC-SCPA 001568-93).

Dep't of Health & Envtl. Control, 386 S.C. 357, 370, 688 S.E.2d 844, 851 (2010) (holding the General Assembly meant the CMP policies to be enforceable in the consistency review of state and federal permits); *see also S.C. Wildlife Federation v. S.C. Coastal Council*, 296 S.C. 187, 371 S.E.2d 521 (1988) (reversing a coastal zone consistency certification decision due to a violation of the CMP's wetland policies).

[6] The UPT Project also includes other activities, including remodeling of the interior and exterior of Building #322, canopies over pedestrian areas, and a loading area on the existing wharf for transferring ship stores from delivery trucks to the cruise ship. The sum total of the Project is that current cruise operations will be moved to a location less than 600 yards to the north in a renovated warehouse, still within the existing boundary of the Union Pier Terminal footprint. As most of the capital improvement Project does not trigger permitting requirements, it may be undertaken without the DHEC permit. Indeed, an argument exists that no DHEC permit is needed to undertake the Project.

[7] DHEC subsequently requested, *see* Ex. 7, Feb. 10, 2012 DHEC Ltr., and the Ports Authority provided, *see* Ex. 8, Feb. 27, 2012 Ports Authority Ltr, additional information and certain administrative documents, completing the application.

A public hearing for the UPT Project was held on September 19, 2012, and DHEC issued the Permit on December 18, 2012. Ex. 6 (Bates Nos. DHEC-SCPA 000091-111). Thereafter, on January 2, 2013, Cruise Opponents filed Requests for a Final Review Conference of the OCRM Staff Decision by the DHEC Board. On January 10, 2013,[8] the DHEC Board voted unanimously to decline to hear the matter in a Final Review Conference,[9] and on February 11, 2013, Cruise Opponents filed a request for contested case hearing.[10]

On July 1, 2013, the Ports Authority filed a motion to dismiss Cruise Opponents' challenge to DHEC's permit for lack of standing. Following a hearing before the Court on September 6, 2013 on the motion to dismiss and other motions, the Court limited its consideration to the allegations contained in Cruise Opponents' prehearing statement and denied the motion to dismiss (Order of Denial) on December 2, 2013.[11] On December 19, the Ports Authority filed a motion for reconsideration of the Order of Denial.

---

[8] DHEC staff also filed responses to the requests of Cruise Opponents on January 10, 2013, recommending that the DHEC Board affirm the decision to issue the permit. *See* Ex. 9, January 10, 2013 DHEC Comments to DHEC Board.

[9] *See* Ex. 10, DHEC Board Ltr. Declining to Conduct a Final Review Conference, Jan. 11, 2013; *see also* Ex. 11, DHEC Board Record, BHEC 1-145, and Affidavit of Lisa Lucas Longshore.

[10] Notwithstanding their request for a contested case, Cruise Opponents filed a frivolous motion to remand the matter to the DHEC Board, which was summarily denied by this Court.

[11] While the Court was considering the motion to dismiss for lack of standing, Cruise Opponents filed a second motion to remand the action to DHEC, couched as a motion to vacate, in which they assigned a preclusionary effect to the federal district court's decision in a case brought by certain of the Cruise Opponents against a federal permit for the Project. (The instant challenge by Cruise Opponents represents one of three legal challenges instituted to challenge the cruise industry in Charleston. *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012); *Preservation Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, No. 2:12-cv-2942-RMG (D.S.C. filed July 2, 2012)). Cruise Opponents' motion to vacate was denied without a hearing by Order of the Court dated December 20, 2013.

STATEMENT OF FACTS

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

---

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

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

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

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

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

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

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

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

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

CRUISE OPPONENTS AND THIS CONTESTED CASE

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

---

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

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

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

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

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

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

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

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

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

solely about the existence of on-going cruise operations rather than the propriety of the permitting process, and thus lack standing.[18] While Cruise Opponents use this and other courts as fora to deliver their "anti-cruise" views and delay the Ports Authority's approved and strongly supported public project,[19] the true intentions of Cruise Opponents is seen in their own documents and statements, succinctly summed up by CCL Executive Director Dana Beach:

> ***The larger issue is not whether we should have 104 cruise ships a year ... it is nothing less than a decision of what legacy we will leave for generations of Charlestonians*** ... Union Pier is, simply put, the most important transitional urban place in South Carolina. So far, the city and the SPA have treated it as if this were a debate over a proposal for a new hotel or shopping mall.... ***Now is the time to shelve the SPA's proposal*** ... to make big plans, to chart a future great enough to be worthy of our unique and historic city.

Ex. 42, Dana Beach E-Mail, May 11, 2011, Cruise Opponents 002292-93 (emphasis added). Cruise Opponents' vision for Charleston, foisted on the many by the few in these lawsuits, is a Charleston

---

[18] *See* Cruise Opponents' Request at 6, ¶15; *see also* Ex. 43, Aff. of Katie Zimmerman at ¶11 (April 19, 2013) (Zimmerman Aff.) (Coastal Conservation League Program Director stating that "[o]going and increase **cruise ship operations** injure the CCL and its members") (emphasis added); Ex. 44, Aff. of Evan R. Thompson at ¶17 (April 19, 2013) (Thompson Aff.) (Preservation Society Executive Director stating that "**cruise operations** are widely recognized around the world...as threatening...the cities where they located") (emphasis added). Further, despite assertions to the contrary, Cruise Opponents have been unable to affirmatively link alleged soot deposition on their property to cruise operations at UPT. *See* Ex. 41, Katie Zimmerman E-Mail, Mar. 4, 2013, Cruise Opponents 09233; Ex. 45, Katie Zimmerman E-Mail, Nov. 26, 2012, Cruise Opponents 009334 ("[W]e weren't able to narrow [the soot samples] down to cruise ships...."); *see generally*, Ex. 46, Ltr. of Nancy Infinger to DHEC, DHEC-SCPA 000088-89 (questioning whether Cruise Opponents linked soot deposition to cruise or whether soot deposition was the result of frequent container ship calls).

[19] *See* Ex. 47, S.968 Concurrent Resolution, 119th Session (2011) (General Assembly's declaration of support for the cruise industry and its appreciation for the positive impact Carnival and others bring to the State of South Carolina); Ex. 48, Charleston City Council Resolution (Sept. 14, 2010) ("I, Joseph P. Riley, Jr., Mayor, City of Charleston, and Charleston City Council pledge our support to the [Ports Authority] in their vital role to our City and State's continued economic development which includes 1) plans to redevelop [UPT] including a new passenger cruise terminal...and 2) management of a cruise business.").

that must either decide to be "a destination of culture and heritage or a hub for discount travelers,"[20] but it cannot "brand [itself] to be Myrtle Beach and Northeast Harbor, Maine at the same time."[21] Ex. 49, Dana Beach E-Mail, Sep. 7, 2010, Cruise Opponents 002801. In other words, this controversy is about the Cruise Opponents' push to implement their policy views of the UPT's land use and their vision for Charleston's future. Cruise Opponents' intentions are borne out by their *own words*:

---

[20] To some, this is a socio-economic class issue. For example, Randy Pelzer, who is associated with the CNA and has been identified by Cruise Opponents as a witness in this proceeding, previously stated that "[i]t's good that people can enjoy this sort of inexpensive vacation, but we don't need to be the place for it" and that "Carnival Cruise Lines could attract 'the wrong type of tourists.'" Ex. 50, David Slade, *City's Cruise Plan Steams Ahead*, Charleston Post & Courier, Posted Sept. 15, 2010 at 1; Updated March 23, 2012. Attempting to distance himself from the obvious derisiveness of his comments, Pelzer did not deny the assertion that Charleston should not be the port for "this sort of inexpensive vacation" and in fact, embraced that assertion, acknowledging his view that Charleston should focus its cruise-ship endeavors on the "luxury segment." Ex. 51, Randy Pelzer, *Don't Put New Cruise Terminal in the City's Historic District*, Charleston Post & Courier, Posted Oct. 20, 2010 at 1; Updated March 19, 2012. The implication is clear: rather than a complaint about the merits of the UPT Project, Pelzer and the CNA simply don't like the type of people who take Carnival cruises.

[21] The contempt the Cruise Opponents have for Carnival cruise passengers is palpable. For example, when discussing the withdrawal of the Carnival cruise business from Mobile, Alabama, Cruise Opponents' Evan Thompson stated that the result would be that "a few T-shirt shops will be closing in Mobile, and there will be some vacancies in the Econolodge." Ex. 52, Evan Thompson E-Mail, Mar. 11, 2011, Cruise Opponents 003498. Cruise Opponent Randy Pelzer continued the vitriol, stating:

> [Cruise] is a very unfortunate development ... [p]articularly a budget cruise line ... [Carnival] is the lowest category of cruise line ... ***The people that come here to enjoy this ... we don't need to be the site for it***.... [T]he residents downtown do not welcome this type of thing ... ***[Cruise] will damage the brand*** ... [W]e will ***not attract the type of tourist that we're presently set up to attract***, that are drawn to our beautiful city and that was built, not on a budget, but on a luxurious scale.

Ex. 53, Remarks of J. Randolph Pelzer, Sep. 14, 2010, Charleston City Council Mtg. Minutes (emphasis added).

- "We are particularly interested in the potential for ***redeveloping the entire tract privately***, instead of simply the lower 35 acres." Ex. 54, Dana Beach E-Mail, Mar. 28, 2011, Cruise Opponents 008502 (emphasis added).
- "The only real issue—is using Union Pier, arguably the most valuable undeveloped waterfront parcel on the East Coast, for cruise ship docking/car parking the highest and best use of the land and is it a positive for the City of Charleston and the state. The answer to both is 'no.'" Ex. 29, Jay Williams E-Mail, Mar. 17, 2011, Cruise Opponents 008042.
- "We are not against the redevelopment of the 35 acres at Union Pier for non-maritime use. ***We are for developing all 65 acres for non-maritime use and moving the proposed cruise terminal to the northern end of the Columbus Street Terminal.***" Ex. 55, Margot Rose E-Mail, Apr. 28, 2011, Cruise Opponents 005685 (dual emphasis in original).
- "Bottom line, using Union Pier for a cruise terminal, keeping 27 acres off of the tax roles [sic], in surface parking, by a state agency whose core business is moving freight, not tourists, is a gross misuse of state assets and an abuse of power." Ex. 56, Dana Beach E-Mail, Apr. 11, 2011, Cruise Opponents 006848.
- "What the SPA is really trying to do is overrun the most valuable undeveloped land in Charleston for a cruise terminal and nine acres of unnecessary asphalt parking lots …." Ex. 57, Jay Williams E-Mail, Jun. 6, 2011, Cruise Opponents 003313.
- "The redevelopment of Union Pier terminal is Charleston's BIG opportunity to make a huge change for the better … The opportunity Charleston has to open up the waterfront for the public, to get private redevelopment that extends the city's fabric, is an amazing opportunity. We shouldn't squander it for a cruise terminal." Ex. 58, Katie Zimmerman E-Mail, May 5, 2011, Cruise Opponents 008026.

Because of the Cruise Opponents' efforts to do through litigation what they were unsuccessful at doing through proper means (*i.e.*, obtaining public or legislative support),[22] the UPT Project is in jeopardy, which is exactly the outcome Cruise Opponents desire.[23] *See, e.g.*, Ex. 59, Email of Jay Williams, Apr. 19, 2012, Cruise Opponents 10057-58 ("[UPT] as a location for the future is not acceptable ... ***the terminal site at [UPT] must be defeated***" with Dana Beach and J. Randolph Pelzer concurring) (emphasis added).

STANDARD

Motions for summary judgment are properly brought in the Administrative Law Court. Rule 68, RPALC provides that "[t]he South Carolina Rules of Civil Procedure ... may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the RPALC]." Pursuant to Rule 56(c), SCRCP, summary judgment shall be granted if "there is no genuine issue as to any material fact and ... the moving

---

[22] *See, e.g.*, Ex. 60, Email of Carrie Agnew, Nov. 23, 2011, Cruise Opponents 001407 (stating that "despite election set-backs," Cruise Opponents were "undeterred" and "even more determined").

[23] Moreover, for Cruise Opponents, including the League and Cruise Control, leading the opposition to the UPT project and the cruise industry in Charleston is seen by its leadership as a fundraising opportunity. *See, e.g.*, Ex. 61, League Solicitation Ltr., Dec. 31, 2012, SCPA 001074-77; Ex, 62, Cruise Control Donation Solicitation ("**We Need Your Financial Support!** As a grass roots effort, we do not have the benefit of deep corporate pockets....") (emphasis in original). The League saw its contributions and grants diminish by over a 1/3 between 2008 and 2011. *See* Ex. 63, Form 990s field by the League with the IRS, SCPA 001822-001946. In 2008, contributions and grants topped $3 million, while in 2011 contributions and grants dropped below $2 million. Seeing the opposition of the cruise industry as a way to raise money, the League solicited funds by letter dated December 31, 2012, stating that its "[cruise] strategy is ... to ultimately encourage local and state decision makers to wield the power to protect the quality of life in coastal South Carolina.... [Litigation] is a costly project.... It is our hope that you will make a special gift to CCL...." Ex. 61, League Solicitation Ltr. dated Dec. 31, 2012, SCPA 001074-77. Meanwhile the S.C. Maritime Association, a recipient of the League's solicitation, responded with an open letter to the public in the Charleston Regional Business Journal declining to contribute to the "anti-cruise campaign" due in part to the fact that "32 years[']worth of data [on] ... Charleston's dockworkers shows no trends ... indicative of airborne or chemical exposure...." *See* Ex. 64, S.C. Maritime Ass'n Ltr., Jan. 2013, SCPA 001079.

party is entitled to a judgment as a matter of law." *See also Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Cisson Constr., Inc. v. Reynolds & Assoc., Inc.*, 311 S.C. 499, 429 S.E.2d 847 (Ct. App. 1993). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 425 S.E.2d 23 (1992). The court, however, need not construe evidence favorably to the non-movant where it is "blatantly contradicted" and "utterly discredited" by the record in the case. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (reasoning that the court need not construe the facts favorable to the non-movant at summary judgment where they are "blatantly contradicted" and "utterly discredited" by the record "so that no reasonable jury could believe it").

Moreover, although the evidence and inferences drawn therefrom generally must be construed against the moving party, "the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but a response by affidavit or otherwise ... must set forth specific facts creating a genuine issue for trial." Rule 56(c), SCRCP; *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988); *see also Jacobs v. South Carolina Budget and Control Bd.*, Docket No. 08-ALJ-30-0311-CC (Jan. 23, 2009) (Anderson, J.); *Environmentalists, Inc. v. South Carolina Dep't of Health and Envtl. Control*, Docket No. 96-ALJ-07-0030 (June 18, 1996) (motion for summary judgment granted because affidavit, even when construed with all permissible inferences favorable to non-moving party, was unhelpful in establishing standing). Affidavits proffered by the non-movant must consist of more than conclusory or speculative allegations of fact or subjective beliefs to survive a summary judgment motion. *See, e.g., Blakely v. Moore*, 5:12-CV-1214-RMG, 2013 WL 980412 (D.S.C. Mar. 12, 2013); *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003); *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651,

655 (Ct. App. 1994); *Ramberan v. OSI*, No. 2000-CP-10-001331, 2000 WL 35549375 (Charleston Cnty. Ct. Com. Pl. Oct. 20, 2000) (J. Rawl); *see also*, 49 C.J.S. Judgments § 332 ("[S]tatements made in an affidavit ... in opposition to, the motion for summary judgment, must be statements of fact, and not mere conclusions or opinions."). Along these lines, a non-movant may not simply "replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit" to avoid dismissal at summary judgment. *Lujan*, 497 U.S. at 888. Nor may a party "avoid summary judgment by asserting that a [trier of fact] may disbelieve uncontradicted evidence." *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010). Stated differently, "a [party] cannot create a genuine issue of material fact with the argument that the [trier of fact] does not have to believe a witness." *Id.* Therefore, "summary judgment should be granted 'when plain, palpable and undisputed facts exist on which reasonable minds cannot differ.'" *Lazicki-Thomas v. South Carolina Budget and Control Bd.*, Docket No. 05-ALJ-30-0510-CC (Nov. 13, 2006) (Anderson, J.).

Specifically with regard to standing, "[a]t the summary judgment stage, there must be a factual showing of perceptible harm. Merely affirming an injury is not enough; standing analysis does not involve an 'ingenious academic exercise in the conceivable.'" *Tisdale v. South Carolina Dep't of Health and Envtl. Control*, Docket No. 98-ALJ-07-0079-CC (Sept. 8, 1998) (Bates, J.) (conclusory allegations unsupported by specific facts failed to sufficiently establish the existence of an essential element of standing) (citation omitted). In other words, although "general factual allegations of injury resulting from the defendant's conduct may suffice" at the pleading (and motion to dismiss) stage, "[i]n response to a summary judgment motion, however, the plaintiff can no longer rest on such 'mere allegations,'" but, instead, must provide specific facts, whether by affidavit or other evidence. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting

Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990); *see also* Rule 56(e) of the Federal Rules of Civil Procedure); *Arcadia Lakes v. South Carolina Dep't of Health and Envtl. Control*, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013) (finding that neither town nor residents had standing to challenge DHEC decision and noting that the elements of standing "'are not mere pleading requirements but rather an indispensable part of the plaintiff's case;' therefore, 'each element must be supported ... with the manner and degree of evidence required at the successive stage of the litigation'") (quoting *Lujan*, 504 U.S. at 561).[24]

ARGUMENT

In order for Cruise Opponents to properly invoke the jurisdiction[25] of this Court, a justiciable controversy must be present. *Byrd v. Irmo High School*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Sloan v. Greenville County.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) (citing, *e.g.*, *Waters v. S.C. Land Res. Conservation Comm'n.*, 321 S.C. 219, 227, 467 S.E.2d

[24] Notably, the petitioner bears the burden of establishing the elements of standing at every stage of the litigation. *See, e.g., Interstate Nuclear Services Corp. v. S.C. Dep't of Health and Envtl. Control*, Docket No. 96-ALJ-07-0558-CC (March 3, 1999) (Lee, J.).

[25] The determination of standing does not implicate the Court's subject matter jurisdiction, as the ALC clearly has jurisdiction over challenges to permitting decisions of DHEC; rather, the operative question is whether the Court's subject matter jurisdiction is properly invoked. *See, e.g., Murray v. S.C. Dep't of Health & Envtl. Control*, Docket No. 97-ALJ-07-0262-CC (Aug. 28, 1997) (Geathers, J.) ("The [Administrative Law Judge Division] does possess statutory authority to hear the class of cases to which the instant matter belongs. However, ***while the Petitioners' lack of standing does not deprive the Division of subject matter jurisdiction, it does deprive the Petitioners of the opportunity to properly invoke that jurisdiction***") (emphasis added); *see also S.C. Dep't of Motor Vehicles v. Holtzclaw*, 382 S.C. 344, 675 S.E.2d 756 (Ct. App. 2009) (holding that, even where subject matter jurisdiction over a matter is clear, the Court may err in the exercise of its jurisdiction) (quoting *Piana v. Piana*, 239 S.C. 367, 372, 123 S.E.2d 297, 299 (1961) ("[W]hen there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction.")).

913, 917–18 (1996)). Cruise Opponents' satisfaction of the standing requirements, and thus proof of a justiciable controversy, is a prerequisite to this Court's exercise of its jurisdiction. *See Lennon v. S.C. Coastal Council*, 330 S.C. 414, 417-18, 498 S.E.2d 906, 908 (Ct. App. 1998) (reasoning that lack of standing fails to invoke jurisdiction because "South Carolina courts, like the federal courts, require a justiciable case or controversy ***before*** any decision on the merits can be reached") (emphasis added); *see also Solomon v. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0367-CC (April 30, 2002) (Matthews, J.) ("The Respondents argue that the present action should be dismissed because the Petitioners do not have standing to pursue the action. I agree.... The Administrative Law Judge Division may only hear those cases that present a legitimate justiciable controversy. In order to revoke a permit issued by OCRM, the Petitioners must have been adversely affected by the granting of the permit. S.C. Code Ann. § 48-39-150 (Supp. 2001); 23A S.C. Code Ann. Regs. 30-6(B). Otherwise, the Petitioners would not have standing to bring an action."); *Thomas v. S.C. Dep't of Health and Envtl. Control*, Docket No. 01-ALJ-07-0163-CC (Jun. 28, 2001) (Stevens, J.) (quoting *Lawrence Brunoli, Inc. v. Branford*, 722 A.2d 271 (1999) with approval for the proposition that "[s]tanding is the legal right to set judicial machinery in motion [since] [o]ne cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy."). For the reasons provided in this motion, Cruise Opponents lack standing to challenge DHEC's permit of the UPT Project, and the Court should enter judgment in favor of the Ports Authority on the grounds that this case is non-justiciable.

Cruise Opponents alone bear the heavy burden of satisfying the standing requirements to bring this challenge action. In filings to date, Cruise Opponents have failed to meet their high

burden, relying on threadbare allegations and conclusory testimony to bolster their standing to challenge the Permit. Instead, Cruise Opponents complain about the *status quo*, focusing their conclusory allegations at the existence of the UPT cruise terminal generally, rather than the propriety of the permitting process that should be at issue here. As is evident from Cruise Opponents' own statements,[26] this contested case challenge is nothing more than a means of delay and dissuasion—an attempt to force the Ports Authority into concessions for which Cruise Opponents failed to garner public support and persuasion in the lengthy and inclusive planning phase—in their longstanding and continuing efforts to prevent *any* cruise ship vessels from calling on UPT.

I. DISCOVERY IS CLOSED AND CRUISE OPPONENTS' STANDING IS RIPE FOR ADJUDICATION.

During the September 6, 2013 hearing, as well as in the December 2, 2013 Order, the Court referenced the fact that discovery between the parties was ongoing as a ground for delaying adjudication of Cruise Opponents' standing to bring this contested case. *See, e.g.*, Order at 3 ("[A]t the time of the hearing, the parties were still in the process of conduction discovery.") (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). However, discovery is, and was at the time of the hearing of the Ports Authority's motion to dismiss, closed. Under Rule 21(A), RPALC, all discovery in a contested case shall be completed "within 90 days of the receipt of the Notice of

[26] League Executive Director Dana Beach, in describing his group's opposition to this capital improvement plan, succinctly and tellingly stated that "[t]his thing is not about five pilings." Ex. 65, David Slade, *Charleston Cruise-Ship Opponents Seize Opportunity to Battle New Passenger Terminal*, Charleston Post & Courier, April 19, 2012, at 2. More pointedly, Mr. Beach also stated that "Union Pier is some of the most valuable real estate in the South. Using almost half for a terminal and surface parking is absurd." Ex. 66, Keith Schneider, *Historic City at Odds With Its Popularity as Cruise Port*, New York Times, April 19, 2011, at 2. In other words, the League is litigating over its own policy view of land use rather than any legitimate concern over compliance with the law.

Assignment." This case was assigned on February 19, 2013; therefore, under the Rules, discovery closed on May 20, 2013.[27] Consequently, Cruise Opponents have availed themselves of a full and fair opportunity to participate in discovery under the Rules; therefore, the Ports Authority's instant motion for summary judgment is ripe for adjudication.

II. THE CRUISE OPPONENTS MUST MEET THE STRINGENT CONSTITUTIONAL STANDING REQUIREMENTS.

In South Carolina, a person qualifies for "affected person" status when a party must demonstrate standing under the traditional *Lujan* test. In form and practice, the concepts of statutory and traditional constitutional standing in this setting are one and the same. Under our State's statutes, regulations and established case law, the requirements for standing as an "affected person" pursuant to statute and regulation are synonymous with the "constitutional standing" requirements identified in *Lujan*.[28] *See Smiley v. S.C. Dep't of Health & Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (2007) (concluding that a person "adversely affected" by a permitting decision pursuant to former S.C. Code Ann. § 48-39-150 must satisfy the requirements of "constitutional standing" set forth *Lujan*); *O'Sullivan v. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0491-CC (Jan. 18, 2002) (J. Geathers) ("The requirement that a person

[27] Rule 21(A), RPALC provides that discovery may be expanded upon a motion by the parties with good cause shown. Cruise Opponents filed on December 23, 2013—over seven months after the period for discovery closed in this case—a motion to expand discovery, and only did so after learning that the Ports Authority was filing this motion for summary judgment.

[28] DHEC similarly has averred that an "affected person" means a person meeting the elements of the *Lujan* standing test as adopted by our Supreme Court in *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). *See* Ex. 67, *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, Docket Nos. 07-ALJ-21-0107-CC, -0108-CC, Hrg. Trans. at 37 (July 2, 2007) ("[G]enerally the Department's view would be that unless otherwise defined by statute or regulations [the meaning of affected person] would be the equivalent of judicial standing....").

bringing a contested case be 'adversely affected' by the agency's decision is essentially synonymous with traditional standing requirements.").

Section 44-1-60 of the South Carolina Code provides that an "applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing...." However, as this Court has previously noted in its Order of Denial, the application of the term "affected" does not, without more, confer standing on the person. To the contrary, pursuant to S.C. Code Ann. Regs. 30-6.A, "[a] [DHEC] decision involving the issuance, denial, suspension, or revocation of a permit or certification may be appealed by ***an affected person with standing*** pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, Chapter 23; and Title 48, Chapter 39." (emphasis added); *see also* S.C. Code Ann. § 48-39-150(D) (The Coastal Zone Management Act providing that "a person adversely affected by the granting of the permit has the right of direct appeal from the decision of the administrative law judge pursuant to Section 1-23-610. An applicant having a permit denied may challenge the validity of any or all reasons given for denial.").

"South Carolina Courts routinely hold that a party must not only be an affected person to obtain a contested case hearing, but must also have standing.... Initially, the [petitioner] must satisfy the general standing requirements required for all litigants." *City of Denmark v. S.C. Dep't of Health & Envtl. Control*, Docket No. 06-ALJ-07-0926-CC (Aug. 8, 2007) (J. Matthews) (dismissing case for lack of standing) (internal citations omitted); *Sanders v. S.C. Dep't of Health & Envtl. Control*, Docket No. 00-ALJ-07-0357-CC (March 20, 2001) (J. Anderson) (dismissing case for lack of standing) ("A fundamental prerequisite to institute an action is the requirement that the Plaintiff have standing."). If a party lacks standing, the Court's "jurisdiction has not been properly invoked." *Bryant v. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0350-

CC (Jan. 10, 2002) (J. Stephens) ("Not everyone is entitled to a contested case hearing; rather, only a 'proper party' may obtain such a hearing.... A person is not entitled as of right to be admitted as a party without first having 'standing.'").

In *O'Sullivan*, this Court concisely distilled the concept of standing in the context of a permit challenge under the same statutory and regulatory regime:

> "A party may appeal an administrative decision if he has standing to sue." 6 Jacob A. Stein et al., *Administrative Law* § 50.01, at 50-3 (Supp. 2000). Accordingly, a person may not challenge OCRM's decision to issue a permit unless that person is "adversely affected" by the granting of the permit and thus has standing to bring the challenge. S.C. Code Ann. § 48-39-150(D) (Supp. 2000); 23A S.C. Code Ann. Regs. 30-6 (Supp. 2000). In analyzing questions of standing, the South Carolina Supreme Court has adopted the three-prong test enunciated by the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). *See Sea Pines Assoc. for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001).

O'Sullivan, Docket No. 01-ALJ-07-0491-CC (dismissing case for lack of standing) (Geathers, J); *see Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (emphasis added); *see Upstate Forever v. S.C. Dep't of Health and Envtl. Control*, Docket No. 10-ALJ-07-0919-CC (July 14, 2011) (Anderson, J.) (employing the *Lujan* test to determine whether petitioners had standing to challenge a DHEC decision); *Murphy v. S.C. Dep't of Health and Envtl. Control*, Docket No. 11-ALJ-07-0406-CC (Feb. 9, 2010) (Anderson, J.) (citing to S.C. Code Ann. Regs. 61-9.124.19(a) containing language analogous to S.C. Code Ann. Regs. 30-6.A and applying the *Lujan* test to determine whether petitioners had standing). Thus, the establishment of standing is a statutory condition precedent and prerequisite to the Court's exercise of its jurisdiction. *Id.*; *see also* 2 *State Envtl. L.* § 14:7

(2013) (equating the constitutional standing test in *Lujan* to the requirement that an administrative petitioner must be an "affected," adversely affected," or an "aggrieved party").[29]

In sum, and as conceded by Cruise Opponents through previous argument to the Court, the statutes and regulations applicable to the Permit in this contested case require that they meet the traditional constitutional standing test. Consequently, Cruise Opponents must satisfy the "***stringent*** standing test" articulated in *Lujan*, which they have manifestly failed in doing. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (emphasis added).

III. CRUISE OPPONENTS HAVE FAILED TO MEET THEIR BURDEN OF SATISFYING THE CONSTITUTIONAL STANDING REQUIREMENTS UNDER *LUJAN/SEA PINES*.

A party challenging a permit issued by OCRM has the absolute burden of satisfying the elements of constitutional standing in order to bring the action before this Court. *Georgetown County League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 358, 713 S.E.2d 287, 292 (2011) (citing *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291). "Moreover, a plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). Cruise Opponents have not met their burden of proving any of the required elements of constitutional standing. Further, Cruise Opponents fail to

---

[29] "The courts tend to construe these statutes as requiring the same type of showing by a plaintiff as in the standing cases that apply only judge-made law." 2 *State Envtl. L.* § 14:7 (2013); *see also Bosque River Coalition v. Texas Comm'n on Envtl. Quality*, 347 S.W.3d 366, 375 (Tex. App. Austin 2011) ("the same basic principles governing whether a party has standing to challenge governmental action in court also govern whether a party is an 'affected person' entitled to a contested-case hearing"); *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 903-04 (Del. 1994) (after first observing that the Data Processing test "[n]ormally ... applies only in the absence of a specific statutory grant of review," the court went on to apply the Data Processing test in determining whether the plaintiff was "substantially affected" under the relevant statute); *Trepanier v. City of Everett*, 64 Wash. App. 380, 824 P.2d 524, 526 n.1 (1992) ("We see no reason ... why the statutory standing requirements [under the State Environmental Policy Act] should differ from the constitutional standing test established before the statute was enacted.").

clear the additional hurdle of proving that the Petitioner-associations are the appropriate entities to bring this challenge, rather than their individual members. Accordingly, the Court should grant the Ports Authority's motion for summary judgment for lack of standing.

The "irreducible constitutional minimum of standing"—*i.e.*, constitutional standing—consists of three elements: (1) the plaintiff/petitioner must have suffered an injury-in-fact; (2) there must be a causal connection between the injury and the conduct complained of by the party seeking to demonstrate standing; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (2001) (citing *Lujan*, 504 U.S. at 560–61 (1992)). "To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (citing *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999)); *Beaverdam Community Ass'n v. S.C. Dep't of Health & Envtl. Control*, Docket Nos. 01-ALJ-07-0159-CC; 02-ALJ-07-0012-CC (Feb. 3, 2003) (Anderson, J.) (same). The key for a Court is to determine if plaintiff/petitioner is a real party in interest. *Id.* ("In other words, one must be a real party in interest."). "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Charleston County Sch. Dist.*, 336 S.C. at 181, 519 S.E.2d at 571 (quoting *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)); *S&T Recycling v. S.C. Dep't of Health & Envtl. Control*, Docket No. 06-ALJ-07-0183-CC (Dec. 13, 2006) (Anderson, J.) (same).

A private party has standing to bring an action challenging an executive or legislative action when he has sustained, or is in immediate danger of sustaining, prejudice from the action. *Baird v. Charleston County*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999) (citing *Blandon v.*

Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985)). The prejudice required of an individual must be of a personal nature to the party asserting the challenge, not merely of general interest common to all members of the public. *Id.* (citing *Citizens of Lee County, Inc. v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992)).

Meanwhile, for a party that does not seek to vindicate its own rights, an association may bring an action on behalf of its members, but it is "substantially more difficult." *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citing *Lujan*, 504 U.S. at 560-61). When an organization or an association seeks to assert the rights of one or more of its members, the organization may be deemed to have standing when one or more of its members will suffer an individual injury by virtue of the contested act. *Sea Pines*, 345 S.C. 600-01, 550 S.E.2d at 291 (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972)).

A. The Cruise Opponents have not suffered injury-in-fact.

1. *The injuries alleged pertain to cruise operations generally, rather than the permitted activity.*

The basis for this Court's jurisdiction is a challenge to the Permit issued to the Ports Authority for the UPT Project. Thus, the standing of Cruise Opponents to bring this challenge is irrefutably linked to the permitted conduct and Cruise Opponents must demonstrate an injury-in-fact that derives from DHEC's review and issuance of the Permit. However, Cruise Opponents have failed to identify any imminent injury resulting from the Permit in any filing with the Court. Instead, Cruise Opponents focus on the current operation of cruise passenger vessels on the Charleston peninsula.

An injury-in-fact is "an invasion of a legally protected interest [that] is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (2001) (citing *Lujan*, 504 U.S. at 559–61). There is no injury-in-fact when

a party merely alleges harm indistinguishable from that suffered by the general public. *Id.* (finding that a person does not have standing unless actual or imminent injury exists that is concrete and particularized and "not merely a general interest common to all members of the public"); *see also Warth v. Seldin*, 422 U.S. 490, 501 (1975) (reasoning that the party seeking to establish standing must show "distinct and palpable injury to himself" even if a larger class of other possible litigants also share in the injury).

Based on the filings to date, Cruise Opponents have failed to identify an injury-in-fact that results from the permitted activity. In the request for the contested case, Cruise Opponents cast their alleged injuries as follows:

- Preservation Society's alleged stake in the matter is the "protect[ion] [of] the historic neighborhoods that continue to be at risk from expanded *cruise operations*," Cruise Opponents' Req. for Contested Case at 2, ¶1, Feb. 11, 2013 (emphasis added);
- HCF's alleged stake in this matter is the impact of *cruise operations* on the historic resources of Charleston, Cruise Opponents' Req. for Contested Case at 2, ¶2;
- HANA's alleged stake in this matter is that it has sought "legally binding regulations on the *cruise industry* in Charleston," Cruise Opponents' Req. for Contested Case at 3, ¶3 (emphasis added); and
- The League, CNA, Surfrider, and Cruise Control collectively allege that *cruise operations* create pollution, congestion and noise that adversely affect the quality of life and enjoyment of Charleston's historic aesthetics, Cruise Opponents' Req. for Contested Case at 3-4, ¶¶4-7.

However, each of these assertions are generalized grievances tied to the existence of current cruise operations, rather than the personal and immediate prejudice of a concrete and particularized injury required of individuals claiming standing.

Further, Cruise Opponents fail to advance any claims that are neither "of general interest common to all members of the public," *see Sea Pines*, 345 S.C. at 600, 550 S.E.2d at, 291 (citing *Baird*; *Citizens of Lee County*), nor part and parcel of Cruise Opponents decision to live in the

urban environment that is the Charleston peninsula.[30] Cruise Opponents argue generally that their members "commute along the streets of Charleston which are congested by cruise ship traffic," Cruise Opponents' Req. for Contested Case at 3, ¶4, that continued cruise operations will "increase[ ] ... congestion" on city streets, Cruise Opponents' Req. for Contested Case at 7, ¶19, and that the "membership ... express[es] concerns about ... noise," Cruise Opponents' Req. for Contested Case at 4, ¶5. Cruise Opponents assert that "members ... breathe the air into which cruise ship emissions are discharged." Cruise Opponents' Req. for Contested Case at 3, ¶4. They claim that relocation of the cruise passenger terminal 600 yards north will result in "significant[ly] degrad[ed] [ ] air quality," and will allegedly affect their members' "recreational, environmental, aesthetic and property interests." Cruise Opponents' Req. for Contested Case at 13, ¶26. Finally, Cruise Opponents also allege a "significant degradation of ... property values" as a result of relocating the cruise operations within the existing marine terminal. *Id.*

Far from a concrete injury-in-fact, the harms described by Cruise Opponents are neither personal nor particularized, but instead describe a natural by-product of living in the congested urban environment of the Charleston peninsula *today* and one common to everyone, not organizational membership.[31] These harms fail to derive from the permitted conduct and fail to

---

[30] During the recent oral argument of the companion case at the Supreme Court last month, *see Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012), the Justices were skeptical of the sufficiency of generalized grievances advanced by Cruise Opponents satisfying the injury-in-fact standard. Chief Justice Toal repeatedly questioned counsel on the allegations of injury asserted by Cruise Opponents, including traffic congestion, pollution, crowds, and historic status, sounding a skeptical tone as to whether these were sufficiently particularized to meet the injury-in-fact standard. Ex. 68, Hrg. Trans. at 21-22 (stating "those are not the sort of things that result in particularized damage" and instead amount to "individuals of the association [alleging] generalized damages that are the product of living in an urban environment.").

[31] Visitors and residents alike experience traffic congestion and breathe the air—this is not something unique to the Cruise Opponents.

articulate a harm any different from what may be suffered by the public generally. *See Taubman Realty Group Ltd. P'Ship v. Mineta*, 198 F.Supp.2d 744, 755 (E.D. Va. 2002) (stating that courts "do not sit to entertain generalized grievances that are shared by the public at large") (citing *Lujan*, 504 U.S. at 573-74).

The inclusion of allegations of harm which only derive from current cruise activities is telling, as it reflects Cruise Opponents' singular goal of stopping cruise operations at the UPT. The Permit, and the five pile clusters that it comprises, merely represents the vehicle through which Cruise Opponents can achieve their goal, as in their eyes, the UPT Project is a "step towards new cruise ship home-basing operations" and "would enable cruise ship home-basing operations to continue...."[32] Cruise Opponents' Prehr'g Stmt. at 4. In fact, Cruise Opponents argue that the Permit "authorized" a new cruise terminal and "enable[d]" cruise operations to persist in Charleston.[33] *See* Cruise Opponents' Req. for Contested Case at 6, ¶15. As argued by League Program Director Katie Zimmerman, it is "*[o]ngoing* and *increased* **cruise ship operations** [that] injure the CCL and its members." Ex. 43, Zimmerman Aff. at ¶11 (emphasis added). Preservation Society Executive Director Evan R. Thompson went further, arguing that "cruise *operations* are

[32] At the oral argument on the motion to dismiss for lack of standing, Cruise Opponents' counsel stated that the UPT "before 2010 did not serve as the home base for cruise ships.... That never happened until then." Ex. 69, Hrg. Trans. at 97-98. This representation simply is false, as other cruise lines used Charleston as a home port prior to 2010. Celebrity Cruise Lines and Norwegian Cruise Lines both "home ported" at the UPT as early as 2003.

[33] Notwithstanding, it is worth reiterating that DHEC has no authority over cruise operations in this State because that authority is vested in the Ports Authority. *See* S.C. Code Ann. §§ 54-3-110 ("Through the [Ports] [A]uthority the State may engage in promoting, developing ... and operating the harbors and seaports within the State, namely Charleston ... and works of internal improvement incident thereto."); -120 (stating that the jurisdiction of the Ports Authority "extend[s] over the waters and shores" of any harbor or seaport within the State); -130 ("The Authority is created as an instrumentality of the State for the accomplishment of ... develop[ing] and improv[ing] the harbors or seaports of Charleston [and] foster[ing] and stimulat[ing] ... commerce through such ports.").

widely recognized around the world ... as threatening ... the cities where they locate." Ex. 44, Thompson Aff. at ¶17 (emphasis added).

In place of allegations of concrete and particularized harm that is neither conjectural nor hypothetical, *see Lujan*, 504 U.S. at 560, Cruise Opponents pleadings and submitted affidavits[34] present *ipse dixit* and self-serving conclusory statements declaring an increase in "injury" upon moving cruise operations to the northern end of UPT.[35] However, there is nothing supporting these allegations of future harm save for the force and frequency with which they are delivered. While these allegations are part-and-parcel of Cruise Opponents overall strategy of delay and forced compromise through litigation, lay-person musings on future harm and willful ignoring of planned benefits is insufficient to satisfy Cruise Opponents' burden of proving injury-in-fact under *Sea Pines* and its progeny. *See, e.g., Beaufort Realty*, 346 S.C. at 303, 551 S.E.2d at 590 (finding one must suffer an actual injury in fact, not a prospective concern of future harm, and a "[p]rospective concern falls far short of the standard of 'concrete and particularized and ... actual or imminent' harm set forth in *Lujan*"); *see also Baur v. Veneman*, 352 F.3d 625, 637 (2d Cir. 2003) (finding

[34] *See* discussion, *infra*, regarding Cruise Opponents' affidavits.

[35] No clearer exposition of this concept is needed than the circumstances surrounding the submission by Cruise Opponents of Carolyn A. Agnew's affidavit to the Supreme Court, of which the Court is familiar through the Ports Authority's subpoena and Cruise Opponents' subsequent Motion to Quash. In her sworn affidavit, Ms. Agnew alleged injuries she suffered to person and property resulting from UPT cruise operations near her home in Charleston, South Carolina. *See* Ex. 70, Aff. of Carolyn W. Agnew, Jan. 24, 2012 (Agnew Aff.) *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012). Notwithstanding those assertions, Ms. Agnew executed and filed documents pertaining to the June 2013 sale of her home, including, *inter alia*, the State of South Carolina Residential Property Condition Disclosure Statement, wherein she affirmatively represented to potential buyers the exact *opposite* of the testimony contained in her affidavit. *See* Ex. 71, Agnew Disclosure Statement. Such self-serving and conclusory allegations do not meet Cruise Opponents' burden in satisfying an injury-in-fact.

that "a plaintiff cannot rely solely on conclusory allegations of injury ... in order to find standing") (internal citations omitted).

At bottom, Cruise Opponents challenge is not about the Permit, not about the five pilings,[36] or even about environmental concerns of the Project;[37] instead, this controversy is about whether Charleston should embrace or reject the cruise industry. However, cruise operations in Charleston are not at issue in this contested case, and these types of generalized grievances shared in common by the public are routinely rejected by courts. In the recently-issued opinion of *Town of Arcadia Lakes v. South Carolina Department of Health and Environmental Control and Roper Pond, LLC*, the Court of Appeals rejected comparable claims as insufficient to establish a concrete and particularized injury. 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013). In that case, certain individuals and the Town of Arcadia Lakes (Town)[38] challenged the issuance of a permit to a private landowner and entity for developing a parcel of property, a portion of which contains

---

[36] *See* fn.20 and 26, *supra*, wherein Dana Beach sums up the League's position: "This thing is not about five pilings" and Randy Pelzer opines that Carnival could attract "the wrong type of tourists" to Charleston.

[37] *See* Ex. 29, Jay Williams E-Mail, March 17, 2011, Cruise Opponents 8042 (stating that **"pollution from cruise ships" is a "side issue"** distracting the debate from the use of the UPT property) (emphasis added). Not that Cruise Opponents have any faith in this Court for evaluating the significance and effect of environmental issues presented to it. In its Winter 2006 Newsletter, Cruise Opponent League succinctly delivered its opinion of the Court's skillset to render the final agency decision of a DHEC permitting issue: "As we begin the 2006 legislative session, H. 3285 remains on the Senate's Contested Calendar. This bill would completely strip the S.C. Department of Health and Environmental Control (DHEC) board of its oversight of appeals and **place final agency decisions in the hands of administrative law judges, who lack knowledge of environmental issues and who are not held politically accountable to the public for their decisions.**" *See* Ex. 72, League Winter 2006 Newsletter at 6.

[38] Although the Court of Appeals affirmed the ALC's Order finding the Town had not established standing to challenge the permitted conduct, the discussion of the Town's ability, as a political subdivision of the State, to bring an action to protect the interests of its citizens is not germane to the standing of Cruise Opponents.

wetlands and waters identified by the Corps as a jurisdictional wetland under the CWA. The project required a State storm water discharge permit and a Section 404 permit from the Corps for the filling of jurisdictional wetlands. With respect to the storm water discharges related to the construction project, DHEC determined the project qualified under a general permit. Additionally, the Corps determined the impacts to the subject wetlands would be minimal and authorized the project to proceed under a general, Corps Nationwide Permit.

This Court found that the individual petitioners challenging the permits for the project failed to satisfy their jurisdictional burden of constitutional standing. In particular, the Court found that the individual petitioners failed to establish injury-in-fact from the permitted conduct.[39] The Court of Appeals affirmed this Court's standing analysis. In doing so, it noted that the "injuries" alleged by the individual petitioners were really nothing more than concerns that the Stormwater Pollution Prevention Plan developed by the property owners was insufficient and would not be adequately implemented. The petitioners concerns were based on the current condition of the ponds adjacent to the property and the failure of previous work in the area to sufficiently follow through with mitigation planned measures. However this Court and the Court of Appeals correctly held that speculative concerns about the implementation of an appropriate mitigation plan are insufficient to establish a party's standing to challenge the as-of-yet unimplemented project permit. *Town of Arcadia Lakes*, 404 S.C. at 532, 745 S.E.2d at 394.

[39] The ALC also found that the Kaminer Station Appellants could not prove the necessary causal connection, or traceability, element required for standing under *Sea Pines*. 404 S.C. at 531, 745 S.E.2d at 393. The Court of Appeals, affirming this Court's conclusion that the individual petitioners lacked standing to challenge the permitted conduct, found the Kaminer Station Appellants' inability to establish the requisite traceability to be dispositive. *Id.* at 532, 745 S.E.2d at 394.

A corollary can also be drawn to *Town of Arcadia Lakes* with respect to Cruise Opponents prospective rejection of the Voluntary Cruise Management Plan and the beneficial aspects derived therefrom. *See* Ex. 20, Voluntary Cruise Management Plan. The Plan, including the traffic management component thereof, would reduce traffic and reduce emissions at the UPT and in the surrounding historic neighborhoods, a fact which Cruise Opponents continue to willfully ignore. *See* Ex. 18, OCRM Technical Review at 8; Ex. 19, Trinity Consultants Study: Historical, Current and Future Criteria Pollutant Emissions at Union Pier Terminal (Dec. 23, 2013). Rather than acknowledge the benefits that would come through implementation of the Plan, Cruise Opponents insist on speculating on what could happen in the future planning process between the Ports Authority and the City. However, the Court of Appeals rejected this kind of pre-emptive hand-wringing with respect to a planned project component. *Town of Arcadia Lakes*, 404 S.C. at 532, 745 S.E.2d at 394; *see also Beaufort Realty*, 346 S.C. at 303, 551 S.E.2d at 590 (finding one must suffer an actual injury in fact, not a prospective concern of future harm, in order to satisfy *Lujan*). Cruise Opponents' unwillingness to consider improvements and efficiencies achieved with the UPT Project over the *status quo* reinforces and underscores their tunnel vision with respect to ridding UPT of the cruise industry altogether.

Cruise Opponents' failure to identify any injury beyond a generalized grievance falls well short of the constitutional standing requirement of a particularized harm that is actual or imminent, as opposed to conjectural or hypothetical, and that affects them in a personal and individual way. *See Sea Pines*, 345 S.C. at 601-02, 550 S.E.2d at 291-92; *see also Vt. Agency of Natural Res. v. Stevens*, 529 U.S. 765, 772 (2000) ("An interest unrelated to injury in fact is insufficient to give a plaintiff standing.") (internal citations omitted). Meanwhile, a mere interest in a general dispute, no matter how profound, does not give rise to an injury-in-fact even if the challenged conduct is

at odds with those interests.[40] *Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 588 ("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.") (emphasis added); *Oliver v. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0398-CC (Nov. 20, 2001) (Stevens, J.) ("An

[40] Further, Cruise Opponents conclusory allegation of a "public and private nuisance" as a result of "noise, soot and visual pollution" *see* Cruise Opponents' Req. for Contested Case at 12, ¶24, is similarly unavailing. Initially, conclusory arguments made without any support or explanation may be deemed abandoned. *See Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298, 519 S.E.2d 583, 600 (Ct. App. 1999) (declaring that conclusory arguments may be treated as abandoned); *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304 n.2, 433 S.E.2d 871, 873 n.2 (Ct. App. 1993) (stating a one sentence argument is too conclusory to present any issue). However, even if properly asserted, nuisance allegations only fall within the jurisdictional scope of the ALC if they amount to a specific and individual threat to health and welfare. *See Democratic Reform at Big Creek vs. S.C. Dep't of Health & Envtl. Control*, Docket No. 98-ALJ-07-0556-CC (Mar. 8, 1999) (Anderson, C.J.) (opining that "nuisance factors" associated with a landfill permit "such as odors, dust and litter" may be considered only if they poses a "threat to [ ] health and welfare" and in the absence of such threat "[i]t is beyond the jurisdictional scope of the [ALC] ... to enjoin a potential future civil nuisance"); *Beaverdam*, Docket No. 00-ALJ-07-0671-CC (Sept. 6, 2001) (Anderson, C.J.) (finding that "a court of equity is the proper place to adjudicate" a claim of nuisance likely to affect use and enjoyment of property absent a threat to health and welfare); *Citizens for Responsible Growth in Clemson vs. S.C. Dep't of Health & Envtl. Control*, Docket No. 00-ALJ-07-0317-CC (May 8, 2001) (Stevens, J.) (Finding that a claim of nuisance was "not a basis for denying a stormwater permit. Rather, proving such claims belong in a forum with jurisdiction to entertain actions founded in common law nuisance or nuisance, per accidens.").

Cruise Opponents have not stated any basis for concluding that the alleged "public and private nuisance" amounts to a threat to individual health and welfare created by issuance of the Permit. To the extent these arguments are even cognizable by any Court, the allegations that nuisance factors affect property value and use are wholly outside the scope of ALC review. Moreover, any allegations of threats to health and welfare do not salvage Cruise Opponents' standing, because conclusory allegations of prospective health concerns do not amount to injury-in-fact. *See Beaufort Realty*, 346 S.C. at 303, 551 S.E.2d at 590 (stating that a "[p]rospective concern falls far short of the standard of 'concrete and particularized and ... actual or imminent' harm set forth in *Lujan*") (internal citations omitted); *Baur v. Veneman*, 352 F.3d 625, 637 (2d Cir. 2003) (finding that "a plaintiff cannot rely solely on conclusory allegations of injury ... in order to find standing") (internal citations omitted); *see also Mass. v. U.S. Envtl. Protection Agency*, 549 U.S. 497, 547 (2007) (Roberts, C.J., dissenting) (stating that particularized injury "must be actual or imminent, not conjectural or hypothetical, real and immediate, and *certainly impending*") (emphasis added) (internal quotation omitted) (citing *Lujan*, 504 U.S. at 560–61, *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983), & *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

injury in fact must include a showing that the injury is one that is particular to the complaining person, not simply common to the general public.").[41]

2. *The proffered affidavits fail to establish any of the elements of standing.*

In response to the Ports Authority's motion to dismiss, Cruise Opponents submitted five affidavits of individual members of the Petitioner-organizations in an attempt to shore up their standing arguments. *See* Cruise Opponents Resp. to Mot. to Dismiss at 4 & Exs. A-E (stating that the affidavits were submitted to "describ[e] in detail the concrete and imminent injuries that [the Cruise Opponents] will suffer but-for the permit issued by DHEC to SPA authorizing the construction of [a] new cruise ship terminal on the North end of Union Pier Terminal."). However, the affidavits read like supplemental briefs, full of conclusory statements, legal conclusions, opinion, and speculation.[42] That alone renders the majority of the affidavits inadmissible at trial. More to the point, the affidavits do not even state that they are based on the affiants' personal

[41] Other decisions by the ALC show that these types of generalized and conclusory allegations of injury are routinely dismissed by the ALC for lack of standing. *See, e.g., Bryant vs. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0350-CC (Aug. 31, 2001) (Stevens, J.) (finding Petitioner's assertion that the challenged permit creates a "threat to public health" failed to show a particularized harm); *Morris v. S.C. Dep't of Health & Envtl. Control*, Docket No. 04-ALJ-07-0053-CC (June 24, 2004) (Stevens, J.) ("harm to the environment does not confer standing; standing requires harm to the Petitioners themselves"); *O'Sullivan*, Docket No. 01-ALJ-07-0491-CC (Jan. 18, 2002) (Geathers, J.) (reasoning that Petitioner's allegation that a dock permit would adversely affect nearby oyster beds was insufficient to confer standing because it amounted only to a generalized concern); *Norris v. S.C. Dep't of Health & Envtl. Control*, Docket No. 01-ALJ-07-0163-CC (June 28, 2001) (Stevens, J.) (finding that a general allegation that Petitioner's property located would be adversely affected by the challenged activity located adjacent to that property was not a particularized injury-in-fact); *Connolly v. S.C. Dep't of Health & Envtl. Control*, Docket No. 09-ALJ-07-0278-CC (Sept. 21, 2009) (Durden, J.) (holding that a mere allegation of diminished property value without more is insufficient to establish injury-in-fact where Petitioners failed to submit adequate evidence on the matter and the challenged activity had been in place for years).

[42] And this is exactly how Cruise Opponents' counsel has previously utilized these affidavits, quoting large continuous sections of the affidavits as argument in Cruise Opponents' response to the motion to dismiss.

knowledge or even upon "information and belief." *See* Rule 56(e), SCRCP (requiring affidavits to be "made on personal knowledge" and "set forth ***facts*** ... admissible in evidence."). Instead, the affidavits merely set forth issues the affiants allegedly have experienced in the past or are presently experiencing due to the existence of the cruise industry in Charleston,[43] in a transparent attempt to manufacture sufficient questions of fact to survive a motion for summary judgment and continue the litigation strategy of delay and harassment through a continuation of this suit. *See Germann v. New York Life Ins. Co.*, 286 S.C. 34, 39, 331 S.E.2d 385, 388 (1985) ("A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment."); *see also Dawkins v. Fields*, 354 S.C. 58, 64-66, 580 S.E.2d 433, 436-37 (2003) (affirming trial court's decision to properly refuse to consider legal arguments and conclusions found in affidavit, even though affiant was expert)); *Scott v. Harris*, *supra*; *Blakely v. Moore*, *supra*; *Shupe v. Settle*, *supra*.

While the affidavits purport to lend credence to Cruise Opponents' contention that the permitted activity will contribute to claimed future injuries, the affidavits instead merely reaffirm that Cruise Opponents' allegations ***are already occurring*** and in no way show that the permitted installation of five pile clusters, or even that relocation of the existing cruise operations, will increase, exacerbate, or intensify the alleged injuries from the existing cruise operations. To the extent competency and personal knowledge can be inferred,[44] the affidavits stand for no more than a proposition that ***current*** operations can cause an injury:

---

[43] For example, Stephen Gates purports to testify on behalf of all CNA members and makes conclusions about the project construction effects for which he is unqualified.

[44] *See* discussion, *infra*, pp. 38-43, breaking down the personal and "expert" opinions offered by the affiants as "fact."

- "***In the last several years***, with the Carnival Fantasy moving to Charleston and cruise operations increasing, ***I have already noticed*** a decrease in my overall quality of life." Aff. of Christina Dodd at 2 (Dodd Aff.).

- "***[F]or the past two years***, I have been finding soot on the window sills...." Dodd Aff. at 2.

- "[M]y enjoyment ***has been decreased*** as a result of SPA's operation of the cruise ship terminal at Union Pier." Aff. of Virginia Lane at 3 (Lane Aff.).

- "The location of the cruise ship operations immediately adjacent to my home ***have negatively affected*** the investment I made when I decided to purchase property and move to Charleston." Aff. of Tommie Robertson at 3 (Robertson Aff.).

- "On more than one occasion, ***I have been*** on my terrace while the Carnival Fantasy was docked and departing and ***I have experienced*** the negative effects of the thick smoke being emitted from the ship's smokestacks firsthand." Robertson Aff. at 2.

- "Unfortunately, my ability to use and enjoy my property ***has been substantially interfered*** with by the adverse consequences of the cruise ship operations ***as they are currently functioning.***" Robertson Aff. at 4.

- "***Beginning in 2010***, when the Carnival Fantasy began home port operations in Charleston, ***I noticed*** traffic congestion becoming increasingly unmanageable." Aff. of Stephen F. Gates at 2 (Gates Aff.).

- "***I am now forced*** to waste my time, my energy, my gas and my peace of mind on a regular basis because of the location of the cruise ship operations and my proximity to the consequences of those operations." Gates Aff. at 3.

Each of these statements (and many others like them in the affidavits) is in the past or present tense and complains of the current effects of the cruise industry or the cruise terminal in general. There is no averment that a denial of the permit will remedy these supposed injuries. Consequently, these statements provide no support for the contention that the installation of the five pilings, which has not yet occurred, will cause the Cruise Opponents' alleged injuries.

Further, as set forth above, an affidavit of a fact witness "shall set forth ***facts*** as would be admissible in evidence" and is prohibited from offering opinion testimony which would also be inadmissible at trial. Rule 56(e), SCRCP; *see also Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (holding that "a lay witness may only testify as to matters within his

personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.") (citing Rules 602 and 701 of the South Carolina Rules of Evidence). Contrary to this fundamental requirement for affidavits, Cruise Opponents offer wholesale testimony and opinion in their affidavits as to the merits of their claims without so much as an attempt to qualify the affiants to offer the expert opinion testimony.

i. *Affidavit of Christina Dodd*

In her affidavit, Christina Dodd describes the issues that she has apparently encountered due to past and current cruise operations in Charleston. However, as discussed above, such statements have no bearing on whether the Cruise Opponents have standing to challenge the permitted activity. Also included in her affidavit, though, are the following statements:

- "***I have concluded*** that Permit OCRM-12-054-B will only make worse these problems that I have been experiencing over the last couple years. The Permit facilitates more cruise ships and more people, without limitations needed to combat the problems of pollution and traffic that I have already experienced."

- "***I do not believe*** that the backdrop of an early 19th century neighborhood can coexist with a disproportionately modern behemoth of a vessel looming on the skyline, without that neighborhood losing the values and aesthetics that I appreciate. It is totally incongruous, out of character, and ***I feel*** most unacceptable, to compromise the truly unique setting of the Charleston historic district, especially when alternative sites are available. Needless to say, I am confident that OCRM-12-054-B will detrimentally impact my enjoyment of the historically preserved setting that surrounds my home and neighborhood, [a] setting I have paid a premium to live in and enjoy."

- "A new cruise ship terminal located just a couple of blocks from my home would be a most unwanted addition to my historic neighborhood, a neighborhood which has already seen its quality of life diminished by the impact of these larger vessels over the past two years. To put the new terminal closer to my home, where even more and potentially larger ships would disgorge even more passengers and pollution, would pose a serious threat to many things I hold dear."

Dodd Aff. at pp.2-3 (emphasis added). Of course, Ms. Dodd's conclusions, beliefs, feelings, and opinions are not facts. Nor is her speculation about what she believes will occur in the future,

especially considering the evidence directly contradicting such conjecture.[45] Accordingly, this testimony is improperly included in Ms. Dodd's affidavit and does not support the Cruise Opponents standing argument.

ii. *Affidavit of Virginia Lane*

In her affidavit, Virginia Lane discusses her affiliation with HCF and the reasons HCF decided to "challenge the permit issued to SPA by DHEC authorizing the construction of a new cruise ship terminal." Lane Aff. at pp.1-2. Ms. Lane references, as one of the reasons HCF challenged the Permit, the findings of an "objective study" HCF commissioned regarding the benefits and costs associated with the cruise ship industry in Charleston. *Id.* at 2. Not satisfied with confirming the objectivity of a study paid for by HCF, Ms. Lane proceeds to relay the findings of the study as fact. This is inadmissible hearsay and should be disregarded by the Court. *See* Rule 56(e), SCRCP (requiring affidavits to set forth facts "admissible in evidence"). Like Ms. Dodd's affidavit, Ms. Lane's affidavit is also largely made up of opinion and hyperbolic speculation that, again, has nothing to do with the actual permitted activity. For example, Ms. Lane states the following:

- "The SPA's proposed new terminal which would expand cruise ship operations will make what used to be a daily pleasure [*i.e.*, lunch with her husband] an impossibility." Lane Aff. at 3.
- "The proposed new terminal is akin to killing the golden egg in that the brand of Charleston as a beautiful, small historic town will be forever lost if more and larger ships are allowed to port here, as contemplated by the permit." Lane Aff. at 4.
- "The height, scale and mass of the cruise ship overpowers the colonial fabric of historic Charleston, which is very upsetting and without a doubt has negative impacts on my enjoyment of the City." Lane Aff. at 4.

[45] *See* Ex. 20, Voluntary Cruise Management Plan; Ex. 3, Ports Authority Ltr. to DHEC Board, Ex. G (traffic diagram comparison).

- "With the additional people that a larger ship will bring, we are pushing past the tipping point of what the peninsula can hold. The result is a decreased quality of life in the historic district of Charleston, ultimately resulting in a decline in real estate prices." Lane Aff. at 4-5.

Beyond being generalized grievances shared by the public at large, these opinions and suppositions about what is happening or what will happen to the "brand of Charleston" or the "colonial fabric of historic Charleston" are not admissible. To the contrary, they are simply Ms. Lane's personal views, and they cannot become facts simply because they align with the Cruise Opponents' arguments. Moreover, Ms. Lane has not been presented as an expert witness and there is nothing establishing her as competent to opine as to the effect on traffic patterns in Charleston before or after the Ports Authority's capital improvement plan has been implemented, or to the effect the cruise industry has or will have on real estate values.

iii. *Affidavit of Tommie Robertson*

Likewise, other than her testimony about the past and current issues she has allegedly experienced due to cruise operations in Charleston, nothing in Tommie Robertson's affidavit sets forth facts admissible in evidence. For example, Ms. Robertson states the following opinions and legal conclusions about the issues in this case:

- "[My] interests would be adversely affected if the SPA is permitted to construct the pilings as currently proposed because the pilings are merely a preliminary step for the SPA in expanding the Union Pier terminal and increasing the cruise ship operations it will support." Robertson Aff. at 2.

- "[My] interests would be directly impacted if the SPA is permitted to construct the pilings as currently proposed because the pilings will allow SPA to expand the Union Pier terminal rather than an alternative site and will increase cruise operations at Union Pier accordingly." Robertson Aff. at 2.

- "If the SPA conducts the permitted activity that is now at issue, then its plans for expanded cruise ship operations will surely be carried out and I will feel as though the cruise ships are practically docked right inside my living room, exacerbating the adverse effects that I am currently experiencing." Robertson Aff. at 2.

- "And that interference with use and enjoyment of my property will be increased if SPA is allowed to construct the new cruise ship terminal as permitted by DHEC starting with the pilings." Robertson Aff. at 4.

None of the above assertions are statements of fact, but merely represent conclusory legal opinions offered by Ms. Robertson in support of her preferred vision of Charleston.[46]

iv. *Affidavit of Stephen Gates*

Mr. Gates' affidavit suffers from the same flaws as the affidavits previously discussed. For example, Mr. Gates states that:

- "I felt the historic ambiance of the city being eclipsed by the disproportionately large and unsightly cruise ships as they docked in the middle of the historic downtown district." Gates Aff. at 2.

- "If the State Ports Authority constructs a new cruise ship terminal, these negative consequences I am currently experiencing will be increased." Gates Aff. at 2.

- "These harms will be significantly increased if the State Ports Authority constructs its new cruise ship terminal because the new terminal will allow larger (3,500+ passenger) and more ships to dock at Union Pier." Gates Aff. at 3.

- "CNA members have suffered a real and substantial diminution in the quality of their lives from the traffic congestion, noise, soot and skyline impairment caused by the increasing operations of cruise ships within the historic downtown district." Gates Aff. at 3.

- "Ongoing and increased cruise industry utilization of Union Pier is therefore attributable to the permit for pilings, since the terminal cannot be built or operate without these infrastructure improvements. Therefore, the negative impacts that CAN members are currently experiencing will be perpetuated and exacerbated by allowing the SPA to install the pilings and construct its new expanded cruise ship terminal" Gates Aff. at 4.

- "CNA's founding principles in preserving the historic quality of our neighborhood will continue to be directly threatened by the SPA's performance of the permitted

[46] *See, e.g.*, Robertson Aff. at 3 (claiming to have been chased inside her home by a smoke cloud). *C.f.* Ex. 24, Ltr. of S.D. Thomas, M.D. to DHEC, DHEC-SCPA 000731-32 (wherein one Charleston resident and organization member—a medical doctor who lives closer to UPT than the affiants—dismissed the same claims found in the affidavits submitted by the Cruise Opponents as "utter nonsense.").

activity for it will be immediately followed by increased and expanded cruise operations at Union Pier." Gates Aff. at 4.

- "If the SPA is allowed to move forward with its plan for expanded cruise ship operations at Union Pier by installing these pilings without agreeing to legal limitations on the scale and scope of those operations such as the use of shore power, then I am certain my quality of life and use and enjoyment will suffer further harm and the nationally treasured historic character of my neighborhood will be jeopardized and potentially lost forever." Gates Aff. at 4.

All of the above statements are either legal conclusions or Mr. Gates' personal opinion testimony. None are statements of fact. In addition, Mr. Gates asserts the following:

> I trust the reputable medical opinions of the Charleston County Medical Society and South Carolina Medical Association who have warned and advised local residents of the increased risks associated with low-grade sulfur emissions from cruise ships idling and debarking from port.

Id. at 3. While it is perfectly fine for Mr. Gates to trust the opinion of these medical associations, it is entirely improper for Mr. Gates to include the conclusions of these associations in his affidavit. He is not qualified to offer the opinions himself, and his recitation of the medical associations' conclusions constitute inadmissible hearsay.

v. *Affidavit of Marty Morganello*

Mr. Morganello's affidavit should be disregarded in its entirety. Initially, it is not affirmed to be made on "personal knowledge." Moreover, although failing to establish in any way how Mr. Morganello is competent to testify on such matters, it nevertheless contains Mr. Morganello's description of the practices of cruise ships with respect to their waste and the apparent risks such practices have on the public. These descriptions are not statements of fact made upon personal knowledge. *See* Rule 56(e), SCRCP. Moreover, accompanying these unsupported assertions are Mr. Morganello's own conclusions based on what he believes could happen should the permitted activity go forward. For example, Mr. Morganello concludes his affidavit by stating:

> The potential for raw sewage and pollution to wash onshore or otherwise come into contact with me while I am using the waterways is a real threat with increased cruise operations and without any legally binding regulations in place. My use and enjoyment of the waterways surrounding my home if cruise ship operations at Union Pier are expanded will decrease because I fear how SPA's proposed project will exacerbate the dumping of contaminants into these waterways.

Aff. of Marty Morganello, p.2 (Morganello Aff.). Mr. Morganello's opinion—masquerading as a "fear"—is not based on personal knowledge and fails to demonstrate a "real threat" that he will be harmed as a result of increased cruise operations.

In sum, none of these affidavits contain averments of personal knowledge that are permissible for consideration, and even if considered, none of the affidavits provide a basis for standing.

B. To the extent Cruise Opponents have alleged an injury-in-fact, it is not traceable to the Permit because cruise operations at Union Pier Terminal have been in existence for decades.

In addition to the failure to show injury-in-fact, Cruise Opponents have not alleged any basis for concluding that their alleged injuries are fairly traceable to or caused by the permitted activity at issue. Absent such a showing, an injury-in-fact will still fail for lack of a causal connection between the activity—the installation of five piling clusters under an existing structure and on the footprint of an existing marine terminal—and the alleged harm. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 ("[T]here must be a causal connection between the injury and the conduct complained of—the injury must be 'fairly ... trace[able] to the challenged action of the defendant.'") (quoting *Lujan*, 504 U.S. at 559-61). Notwithstanding a finding of injury, a claim will still fail under *Lujan* where a causal connection between the permitted activity and the alleged harm is not present. *Id.*

It is undisputed that the UPT is already used for marine container traffic and cruise operations, and the permitted activity in no way alters the pre-existing use and operation of the UPT as a marine terminal.[47] Further, there is nothing in the contested case request to support a conclusion that the installation of five piling clusters as permitted by DHEC will cause any of the injuries alleged by Cruise Opponents. To the contrary, to the extent the affiants are to be believed, the complained-of injuries already exist today under the current operation and use of UPT. Perhaps more importantly, UPT is already used for cruise operations and the installation of these five piling clusters in no way changes the pre-existing operations at UPT. Plainly, the installation of five piling clusters will not cause any of the alleged injuries set forth by Cruise Opponents.

Cruise Opponents concede this conclusion through their filings, including their statement that, "[b]ecause the proposed project will enable cruise operations to continue and expand," a variety of injury producing impacts will befall the City of Charleston and its residents. Cruise Opponents' Prehr'g Stmt. at 4, ¶6. Thus, it is ***continued*** cruise operations at UPT that give rise to injuries alleged. However, the permitted activities will not cause any of the injuries about which Cruise Opponents complain, because those activities do not constitute any change from the present-day cruise operations at UPT.[48]

The ALC and the Court of Appeals have recognized and rejected a claim under similar circumstances in *Bailey v. S.C. Department of Health & Environmental Control*, 388 S.C. 1, 693 S.E.2d 426 (Ct. App. 2010). In *Bailey*, a landowner challenged a modification permit issued by

---

[47] As discussed above, the injuries alleged by Cruise Opponents cannot be traced to the permit for the installation of the additional five pile clusters, because they exist today.

[48] All of the alleged injuries—the horn, public announcements, traffic, air emissions, and general alleged nuisances by the presence of the cruise industry in Charleston—are ongoing and, according to Cruise Opponents, currently being felt. Consequently, these alleged injuries cannot, as a matter of law, be traceable to a permit for the installation of five pile clusters.

DHEC to a neighbor's dock on the grounds that the permit facilitated the continued and expanded use of the dock by boats, thereby prejudicially impacting the neighbor's use and enjoyment of the creek and his own property and dock. The ALC dismissed the challenge for lack of standing, finding no causal connection between the alleged injury and the permitted conversion of the dock "because the boats [that are the subject of the neighbor's challenge] had been docked there for years, and they would continue to be docked there regardless of the permitting decision." *Id.*, 388 S.C. at 7, 693 S.E.2d at 429. On appeal, the Court of Appeals affirmed the ALC's decision.

The permit before the Court is analogous to that involved in *Bailey*. Cruise ships have called on UPT continuously since 1973 (and passenger vessels for over 100 years), they do so today, and will continue to call on UPT and the Charleston peninsula in the future regardless of whether the Ports Authority shifts operations less than 600 yards north.[49] In fact, based on the longevity of use of UPT as a port of call for cruise ships, the traceability of the alleged injuries to the permitted activity is much more attenuated than that existing in *Bailey*, especially since this case involves a publicly operated marine terminal not immediately adjacent to any property of the Cruise Opponents and the use of which for a marine terminal predates the existence of every Petitioner. *See Town of Arcadia Lakes, supra* (in holding that Kaminer Station petitioners did not establish causation, Court noted that "Jackson [one of the Kaminer Station Appellants] also conceded that much of her dissatisfaction with prior construction in the area was due to violations of the applicable permits rather than the permits themselves"); *see also Beaufort Realty*, 346 S.C. at 303, 551 S.E.2d 590 (affirming dismissal for lack of standing on grounds that the League had failed to establish a causal connection between the alleged injuries and the challenged conduct of filing of plats subdividing certain parcels).

[49] *See* Ex. 16, Lehman Aff. at ¶9-10.

However, the petitioner in *Bailey* did not merely challenge the dock permit on grounds that it would facilitate continued use of the dock by existing vessels, but instead alleged the challenged permit would facilitate increased commercial development in the area because the dock was slowly being converted into a marina. *See Bailey v. S.C. Dep't of Health & Envtl. Control*, Docket No. 07-ALJ-07-0583-CC (July 23, 2008) (Geathers, J.). This is the exact same argument Cruise Opponents are making in this contested case. The Court in *Bailey* did not accept the petitioner's arguments, countering that the "concerns with commercial development ... and its impact ... are best addressed through the enforcement of local zoning ordinances" and not a permit challenge.[50] *Id.*

Moreover, causation in *Bailey* was found lacking not simply because the "same boats ... would continue to be docked at the same location regardless of the permit decision," but more importantly, because the "the potential of having boats mooring at the dock would still exist" regardless of the permitting decision. *Bailey*, 388 S.C. at 7, 693 S.E.2d at 430; *see also Bailey*, 07-ALJ-07-0583-CC ("An adverse decision might make the permitting process more onerous and cost-prohibitive for [Respondent], but it would not affect [Respondent's] letting friends use her dock nor alter the dock's footprint or impact"). This is a subtle but critical point that solidifies the similarities between *Bailey* and this permit challenge: causation in *Bailey* was lacking ***because a pre-existing use***, *i.e.*, letting friends moor at a dock, would be unaffected by a permitting decision, not merely because the same boats or number of boats would moor at the same dock. Similarly, cruise operations have existed at the UPT for decades and the potential of having cruise vessels call at the UPT—with greater or lesser frequency—will still exist regardless of the permitting

[50] Of course, in the litigation pending before the Supreme Court, Cruise Opponents have done just that, challenging the lack of applicability of the local zoning ordinances on cruise.

decision. *See* Ex. 16, Lehman Aff. ¶¶9-11. Under the precedent of *Bailey*, Cruise Opponents' contention that denying the Permit will redress alleged harms arising from expanded cruise operations is fatally undercut and Cruise Opponents have failed to satisfy their burden in proving traceability to the Ports Authority's actions.

Similarly, in *Beaufort Realty*, the Court of Appeals affirmed the circuit court's determination that fellow Cruise Opponent League, lacked standing to challenge a zoning administrator's decision to exempt the filing of a plat from oversight approval. 346 S.C. at 300, 551 S.E.2d at 589. The Court of Appeals rejected the League's challenge on several grounds, including a failure to articulate an injury-in-fact, an inability to trace the alleged injuries to the actions of the filer of the plat, and the Court questioned whether the League had satisfied its burden of associational standing. *Id.* at 302-03, 551 S.E.2d at 590. The injuries asserted by the League amounted to nothing more than allegation of future injury based on the development of the pieces of property at issue. However the Court of Appeals rejected the League's contentions as conjectural and hypothetical. *Id.* In particular, the Court found no injury deriving from the filing of the plat, but instead relied exclusively on potential for future harm. *Id.*

Analogous to the factual situations of *Bailey* and *Beaufort Realty*, the installation of five pile clusters itself—the activity DHEC permitted—does not injure Cruise Opponents. Instead, the "injuries" alleged by Cruise Opponents all relate to the continuing general cruise presence at UPT. While Cruise Opponents seek to make this contested case hearing a referendum on cruise operations, *Bailey* and *Beaufort* require a conclusion that Cruise Opponents have failed to satisfy the second prong of the standing inquiry because they have not shown a causal connection between the alleged harm and the Permit.

1. *The injuries alleged are caused by the actions of third parties not before the Court.*

As described above, UPT is a fully-operational marine container terminal. Common sense would instruct that the deposition of soot could, and most likely is, attributable to a combination of factors, including, but not limited to, marine cargo operations, cruise operations, railroad operations, and automobile and truck traffic. However, not willing to let the facts stand in the way of its legal arguments, Cruise Opponents cast common sense aside and lay blame exclusively on cruise operations at UPT. While expedient for the purposes of Cruise Opponents' challenge, doing so disregards the multitude of other sources.

In fact, Cruise Opponents' own actions in opposing the cruise industry through multiple case filings are instructive. The case pending before the Supreme Court was filed by these same Cruise Opponents. *See* Ex. 73, First Am. Compl., *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012). In that action, Cruise Opponents seek a declaratory judgment order permanently enjoining cruise operations at the UPT on the basis of the very same alleged injuries to person and property asserted in this contested case. *Compare* First Am. Compl. at 5-9 (complaining that "vessels emit noise pollution ... and burning diesel fuel emits visible particulate soot from ship funnels," traffic problems related to cruise passengers embarking and debarking the ship, pollution to surrounding waters, including ballast water, hull coatings, gray water, and black water, as well as an outbreak of norovirus) with Cruise Opponents' Prehearing Statement and Response to Motion to Dismiss for Lack of Standing. Tellingly, however, Cruise Opponents did not sue the Ports Authority in that action. Instead, ***Cruise Opponents averred through pleadings that the above injuries were solely the result of the***

Carnival Corporation, d/b/a Carnival Cruise Lines.[51] Again, these are the same injuries-in-fact which Cruise Opponents attest to this Court are solely the result of the permitted activity of the Ports Authority.

The League and Cruise Opponents' counsel have acknowledged that traceability is absent. As reflected in the DHEC administrative record: "***Blan Holman of the [SELC]*** (and acting for the plaintiffs in a lawsuit against Carnival) attended the May 2011 Historic Ansonborough Neighborhood Association (HANA) meeting and ***when asked if his organization had any proof or evidence linking Carnival ships to water or air-pollution, answered 'no.'***" *See* Ex. 74, Ltr. of Pat Jones, dated April 16, 2012, DHEC-SCPA 00721-22 (emphasis added).

Cruise Opponents' counsel subsequently affirmed that the Ports Authority is not responsible for any injury. In an interview and subsequent article with *Travel Weekly*, Mr. Holman confirms precisely the reason why the injuries alleged by Cruise Opponents are not traceable to the Ports Authority or the permitted conduct:

> **[Travel Weekly]:** The petition by Carnival, the city and the ports authority implies that if the suit is successful, it would have far-reaching effects on other maritime businesses, such as cargo operations. Is that true?
>
> **[Blan Holman]:** The lawsuit was filed against Carnival only, and the allegations in the complaint refer to Carnival only. The relief sought is only from Carnival…
>
> **[Travel Weekly]:** Why was the lawsuit filed against the cruise line rather than the ports authority?
>
> **[Blan Holman]:** ***The Carnival operation is the one directly causing the injuries to the plaintiffs. They are the cause***, and we thought they were the proper defendant.

[51] The Ports Authority subsequently, on its own initiative, intervened in the action and was made a party.

See Ex. 75, Donna Tunney, "Southern Environmental Law Center's Blan Holman" *Travel Weekly* (Aug. 29, 2011), at http://www.travelweekly.com/print.aspx?id=232209 (emphasis added). Indeed, the Cruise Opponents and the affiants cannot connect the supposed deposition of soot to the cruise vessels. There is no evidence, just mere conjecture and speculation. *See, e.g.*, Ex. 45, Katie Zimmerman E-Mail, Nov. 26, 2012, Cruise Opponents 009334 ("[W]e weren't able to narrow [the soot samples] down to cruise ships ....").

The recurring theme amongst the statements and pleadings of Cruise Opponents is that the positions taken by Cruise Opponents across its many battlefronts are inconsistent and are made as a matter of convenience. The fact that Cruise Opponents sued only Carnival Cruise Lines for these actions in circuit court is proof alone, based on their own pleadings and admissions, that the injuries alleged by Cruise Opponents derive, not from actions of the Ports Authority, but a third party not before the Court.

2. *The causal link between the alleged injuries and the governmental action is superseded by actions of third parties not before the Court.*

Moreover, where the causal link between the complained-of activity and the alleged injuries is superseded by a third party, the alleged injuries are not traceable to the government action. Other courts, including the United States Supreme Court, have found the causal link between a challenged governmental action and alleged injuries to be broken where the action itself does not cause the alleged injuries, but rather independent actions of third parties who are not before the Court do. *See Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Allen v. Wright*, 468 U.S. 737 (1984). In *Simon*, individuals and representative groups brought an action against the Secretary of Treasury and Commissioner of the Internal Revenue Service (IRS) asserting that the IRS had violated the Internal Revenue Code and the Administrative Procedures Act in issuing a revenue ruling affording favorable tax treatment to nonprofit hospitals that allowed

those hospitals to serve only indigent individuals to the extent of the hospital's financial ability. The plaintiffs alleged this revenue ruling and interpretation encouraged hospitals to deny treatment to indigents and was therefore invalid. The Supreme Court rejected these claims on the grounds that the plaintiffs failed to meet their burden in proving standing. Specifically with respect to the redressability of the asserted injuries, the Court found that the chain of causation necessarily presumed the "independent action[s] of some third party not before th[is] court" and that it was "purely speculative whether the denials of service specified in the complaint" would be remedied by an exercise of the Court's remedial powers. *Simon*, 426 U.S. at 42-43. The Court recognized the unlikelihood of fashioning a remedy where the remediation was dependent on predicting the acts of an interest group that was unrepresented in the litigation, particularly where the group is composed of many individual actors, each of whom must react to other market or regulatory factors. *Id.* at 42-46; *see also Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996) (discussing and citing to *Simon*).

Similarly, in *Allen v. Wright*, the Supreme Court evaluated a claim against the IRS that it had failed to ensure that racially discriminatory private schools were denied tax-exempt status. The Court found that the plaintiffs had alleged a judicially cognizable injury in the form of a reduced ability to attend a racially integrated school. However, the Court found the causal connection between the alleged injury and the challenged government conduct was too attenuated to overcome the standing doctrine and would further run afoul of the idea of separation of powers in that the plaintiffs sought to undo an apparatus established by the Executive Branch to fulfill its legal duties. *See Allen*, 468 U.S. at 759 ("The links in the chain of causation between the challenged Government conduct and the asserted injury are far too weak for the chain as a whole to sustain respondents' standing.") (citing *Simon*). The Court went on to note that it was "entirely speculative

... as to whether withdrawal of a tax exemption from any particular school would lead the school to change its policies," and that "it is just as speculative whether any given parent of a child attending such a private school would decide to transfer the child to public school as a result of any changes in educational or financial policy made by the private school once it was threatened with loss of tax-exempt status." *Id.*

This concept has also been applied in two more recent opinions. In *Florida Audubon Society*, environmental organizations and an activist sued the Secretary of Treasury and Commissioner of the IRS under the National Environmental Policy Act (NEPA) for its failure to prepare an environmental impact statement (EIS) on the effects of a tax credit issued by the IRS for the ETBE fuel additive. 94 F.3d 658. In analyzing the causation standard for standing, the full panel of the D.C. Circuit emphasized that "a protracted chain of causation fails both because of the uncertainty of several individual links and because of the number of speculative links that must hold for the chain to connect the challenged acts to the asserted particularized injury," which the court found to be "far weaker than even the [causal connection] alleged in *Simon*." *Id.* at 670 (citing *Cal. Ass'n of the Physically Handicapped, Inc. v. Federal Commc'ns Comm'n*, 778 F.2d 823, 829 n. 4 (D.C. Cir. 1985) (Wald, J., dissenting) (explaining that the "double layer" of speculation in *Allen* made its causal chain far weaker than the chain the Supreme Court rejected in *Simon*)). "As in *Allen*, then, the presence and number of third-party links in this causal chain independently corroborate that appellants' claim of causation is 'entirely speculative' and insufficient for standing." *Id.* (citing *Simon*, 426 U.S. at 46 (Stewart, J., concurring) (observing that suits challenging a third party's taxes are not justiciable, except for First Amendment challenges)).

Likewise, the Fourth Circuit recently relied upon this same line of reasoning in dismissing a claim alleging injuries related to an Executive Order of President Obama removing prior

limitations on federally funded human embryo stem cell research. *Doe v. Obama*, 631 F.3d 157 (2011). The court found that the plaintiffs lacked standing to challenge the Executive Order's funding restrictions included a superseding antecedent involving an independent third party not before the court. The Fourth Circuit held that "*Allen* and *Simon* illustrate a fundamental tenet of standing doctrine: where a third party such as a private school or hospital makes the independent decision that causes an injury, that injury is not fairly traceable to the government." 631 F.3d at 162. Further, "[w]here government policy not only allows [third parties] to choose what to do ... but also safeguards the independence of their decision with strict conditions, the connection between injury and policy is a 'purely speculative' one." *Id.* (citing *Simon*, 426 U.S. at 42).

The import of *Simon*, *Allen*, *Florida Audubon Society*, and *Doe v. Obama* is clear: Government's role, including instrumentalities like the Ports Authority, is to set policy and provide infrastructure and related service to be used by its citizens in a lawful way.[52] Just as the government is not liable for every traffic accident that takes place on its roads, or as an airport is not liable for

[52] A recent decision of the United States District Court for the District of Columbia meets head on and rejects Cruise Opponents' argument that the Ports Authority's provision of adequate infrastructure should be viewed by this Court as synonymous with the activities which cause the alleged injuries in this case. *See Food and Water Watch v. U.S. Envtl. Prot. Agency*, 1:12-cv-01639-FC, dkt.#47 (D.D.C. Dec. 13, 2013) (copy attached as Ex. 76). In rejecting the plaintiff's argument that the alleged injuries were a result of policies put in place by, *inter alia*, the EPA, the court distinguished a line of cases that held the traceability prong of a party's standing could be satisfied if the challenged government action "permits or authorizes third-party conduct that would be otherwise illegal in the absence" of the government permit of approval. *Id.* (distinguishing *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 940-41 (D.C. Cir. 2004); *Animal Legal Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 440-44 (D.C. Cir. 1998) (en banc) and *Am. Road & Transp. Builders Ass'n v. U.S. Envtl. Protection Agency*, 588 F.3d 1109 (D.C. Cir. 2009). In similar accord, Cruise Opponents' contentions in this contested case are directed towards lawful activities of Carnival and others, in compliance with all applicable law and regulations governing environmental impacts. Moreover, these activities are longstanding and ongoing—and will continue regardless of the result of the instant permit challenge—thus, the actions of the Ports Authority in putting in place modern and safe infrastructure for lawful activities of third parties cannot, under any strained hypothesis, cause the injuries alleged by Cruise Opponents.

mistakes made by individual airlines, so too are the collateral effects of the companies who use the Ports Authority's port facilities ***not*** attributable to the Ports Authority for putting in place the necessary infrastructure to accommodate cruise passenger vessels.

In sum, Cruise Opponents have failed to establish that their alleged injuries are caused by or fairly traceable to issuance of the Permit.

C. To the extent Cruise Opponents can articulate an injury-in-fact, it is not redressable by a favorable decision of this Court on the Permit.

Even if this Court were to find Cruise Opponents could satisfy the injury-in-fact and causal connection elements of the standing analysis, they are unable to establish that their alleged injuries will be redressed by a decision of the Court. *See Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291 (providing that it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision) (citing *Lujan*, 504 U.S. at 560-61); *see also Vt. Agency of Natural Res.*, 529 U.S. at 771 (stating that there must be "a '***substantial likelihood***' that the requested relief will remedy the alleged injury in fact") (emphasis added) (internal citations omitted); *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 162 (4th Cir. 2000) ("The redressability requirement ensures that a plaintiff 'personally would benefit in a tangible way from the court's intervention.'").

It is in the context of redressability that the inconsistency of Cruise Opponents' many incongruous arguments begins to reveal themselves. As alleged by Cruise Opponents in their pleadings, as well as in the affidavits discussed above, the injuries sustained by Cruise Opponents are a result of current cruise operations, which they contend will be exacerbated by the relocation of cruise ships 600 yards to the northern end of UPT. However, because the injuries relate to current conditions, even the full granting of Cruise Opponents' requested relief will not remedy their alleged harm. That is, the "injuries" alleged by Cruise Opponents would not be redressed

even if the challenged Permit were denied, because cruise ships and other marine container vessels call on Charleston today and will continue to call on UPT under its current configuration going forward. *See* Ex. 16, Lehman Aff. ¶¶9-10. Based on the injuries alleged, the only way the harm advanced by Cruise Opponents would be redressable is if all cruise operations—not to mention all cargo operations—at UPT were permanently enjoined.

Of course, cruise operations at UPT are not, and cannot be, at issue under the Court's limited jurisdiction in this contested case. Accordingly, and by necessity, Cruise Opponents have been forced to concede in this litigation that they "have never been of the position that they do not want cruise operations to exist at all [at UPT]." Cruise Opponents Resp. to Mot. to Dismiss for Lack of Standing at 7.[53] However, Cruise Opponents are forced into taking two positions—the injuries alleged and disavowing of the only way to remedy said injuries—that are logically incompatible. As a result, the remedy sought by Cruise Opponents in this contested case is only "to mitigate the adverse consequences they ***are experiencing***." *Id.* (emphasis added). This is a telling admission by Cruise Opponents that the requested relief is merely mitigation for current conditions, rather than a remedy for the alleged future injury-in-fact. Cruise Opponents would therefore suffer all the alleged harmful effects of the cruise industry even in the absence of the permitted activity.

---

[53] By contrast, Cruise Opponents expressly seek the remedy of permanent enjoinment in the state litigation pending before the Supreme Court. *See* Ex. 73, First Am. Compl., *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468 (S.C. Sup. Ct. Original Jurisdiction Granted Jan. 11, 2012) (wherein Cruise Opponents seek an order of the Supreme Court declaring "the illegality and unreasonableness of ... the use of Union Pier Terminal and surrounding areas and attached structures for cruise operations", further enjoinment of "violations of law by Defendant Carnival [Cruise Lines]", and the "abat[ion] of cruise operations."); *see* Ex. 59, Jay Williams E-Mail, Cruise Opponents 010056-58 (stating "[UPT] as a location for the future is not acceptable ... the terminal site at [UPT] must be defeated" to which Dana Beach and Randy Pelzer concur).

In fact, Cruise Opponents seem still to be operating under the misconception that, should the permit be denied, cruise operations will cease to take place at the UPT or will operate under terms sought by Cruise Opponents. The UPT is a fully functioning marine container terminal that currently accommodates both cruise vessels and operations and cargo vessels and operations. *See* Ex. 16, Lehman Aff. ¶7. The UPT has accommodated passenger vessel calls for at least 100 years. *Id.* at ¶6; *see also* Ex. 12, Newsome Aff. ¶7. Moreover, passenger vessels, including cruise vessels, have called on the UPT cruise passenger facility since at least 1973, the date of dedication for the existing cruise passenger terminal facility. *Id.* Importantly, should the federal or state environmental permits be ultimately denied, the Ports Authority will continue to accommodate and berth cruise vessels at the UPT, including but not limited to the Carnival Fantasy. Ex. 16, Lehman Aff. ¶¶9-10. Regardless of where cruise operations occur on UPT, the cruise operations will be of similar scope and size, including the frequency of vessel calls and the size of cruise vessels that can be accommodated and berthed, and the operational characteristics of the cruise vessels, such as emissions, will not affected by location on the southern end of the UPT. *Id.* ¶11.

Conversely, Cruise Opponents seek a remand to DHEC for further evaluation of the permit on terms they impose, a remedy that will not address the injuries alleged in this request for contested case and supporting affidavits. *See Bailey*, 388 S.C. at 7, 693 S.E.2d at 429-30 (finding it "not likely that [the neighbor']s alleged injury would be redressed by a favorable decision because the boats would remain at [the permittee']s dock regardless of whether the dock was a fixed or floating dock"); *see also Sea Pines*, 345 S.C. at 602-03, 550 S.E.2d at 292 (holding that, because both the petitioners' and DNR's plans sought to reduce the number of deer in the community, a favorable decision in the challenge action with respect to the means of reduction would not redress the petitioners' alleged injuries). However, Cruise Opponents' request for a

remand for further consideration and evaluation of alternative sites for cruise operations ignores a crucial fact: because cruise operations are not at issue in this permit, should remand be ordered by this Court, the Ports Authority, as permittee, is under no obligation to further pursue the permit under any modified form.[54] The Ports Authority could, and may, simply walk away from the permit and continue to accommodate cruise vessels at the UPT under the current configuration with potential modifications to the existing terminal that would not require additional permitting. *See id.* ¶¶9-11; *see also* S.C. Code Ann. § 48-39-130(C); *S.C. State Ports Auth. v. S.C. Coastal Council,*

---

[54] As summarized in the administrative record:

> There are only two options for Union Pier:
>
> - It will continue to be used exclusively for maritime purposes, including cargo and cruise ships.
> - Or the passenger terminal will be relocated to the northern portion of the property, and more than half of Union Pier will become available for both public and private uses.

Ex. 21, What Kind of Future Do You Want?, SCPA 002630-40. The Cruise Opponents' goal is the removal of cruise from Charleston altogether. However, there are only two options—renovate under a plan that mitigates for impacts and opens up waterfront access to the citizens or maintain the *status quo*. *See id.* The irony is that, in Cruise Opponents' zeal to stop cruise operations at UPT altogether, they wholly ignore the environmental mitigation and lessened impacts that would accompany the redevelopment of the southern end of UPT. Indeed, the concept plan for the renovated UPT includes:

- Removal of 200 cargo ships, trains, tracks, and trucks;
- Extends Market Street to the waterfront;
- Restores a natural shoreline;
- Creates green spaces and view corridors;
- Stabilizes Bennett's Rice Mill;
- Provides public and private uses; and
- Creates jobs and economic vitality.

Ex. 14, UPT Presentation of Riley and Newsome, SCPA 001218-225; *see also* Ex. 15, Existing v. Proposed Drawing Comparison, SCPA 001217; Ex. 16, Lehman Aff. Ex. B SCPA 001253-366 (Concept Plan for Union Pier Waterfront dated Sept. 2010) (discussing renovation and restoration initiatives at the UPT). Indeed, the injuries complained of from cruise operations are lessened, ameliorated, and mitigated through implementation of the UPT Project.

270 S.C. 320, 322-23, 242 S.E.2d 225 (1978); 1989 S.C. Op. Att'y Gen. 254, No. 89-94 (Sept. 20, 1989).

However doing so would leave cargo, rail, and truck operations at UPT ongoing and is not the most environmentally beneficial option, nor does that option provide a better benefit to the public than the Ports Authority's plan. Alternatively, renovating Building 322 would allow the northern end of UPT to be used for cruise operations while the southern end can be redeveloped as green space, mixed use, and provide waterfront access for the public. The result of the Ports Authority's UPT Project is clear: it would reduce air emissions, reduce traffic congestion, and mitigate all of the environmental impacts that the Cruise Opponents complain of from the existing operations. The result if Cruise Opponents are successful in this challenge: the *status quo*. In other words, Cruise Opponents are trying to stop a redevelopment plan that benefits them, the citizens of Charleston, and the State. At bottom, Cruise Opponents are willing to sacrifice the best interests of Charleston in favor or ***their*** preferred vision.

As discussed throughout, Cruise Opponents' goal with this and other pending litigation against the cruise industry in Charleston is nothing more than an attempt to force the Ports Authority and Carnival into capitulating to their demands of a cruise-less UPT. Anything short of a relocated cruise terminal is unacceptable to the Cruise Opponents. However, none of the alleged injuries are a direct result of the driving of five pile clusters, and this Court has no power or authority to address cruise operations in the context of this contested case. Further, the Cruise Opponents' alleged injuries, as they have presented them, result from the emissions and "cruise operations" of a third-party that is not before the Court. In sum, because the remedy sought by

Cruise Opponents in this litigation will not redress the injuries alleged, Cruise Opponents have failed to satisfy their burden of proving standing to challenge this permit.[55]

D. The claims asserted by Cruise Opponents do not satisfy the associational standing requirement for bringing claims on behalf of an organization because the injuries alleged do not derive from membership in the association.

Cruise Opponents are a collection of organizations, each made up of individual members.[56] Rather than suing in their own name, the members of Cruise Opponents seek to share their resources to pursue a common, collective interest in removing the cruise industry from Charleston. "An organization has standing to bring suit on behalf of its members when [1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589 (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). However, in determining whether an association itself has standing, "a court conducts the same inquiry as in the case of an individual." *Md. Highways Contractors Ass'n, Inc. v. Md.*, 933 F.2d 1246, 1250 (4th Cir. 1991) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982), & *Allen*, 468 U.S. at 750). The sufficiency of this allegation in turn depends upon the relief sought, which virtually always is declaratory or injunctive relief. *See Hunt*, 432 U.S. at 343 ("Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the

[55] As noted by this Court in *Bailey*, Cruise Opponents should seek redress of their concerns through other avenues (*e.g.*, legislative advocacy) instead of challenging the actual issuance of the permit. *Bailey*, Docket No. 07-ALJ-07-0583-CC (July 23, 2008) (Geathers, J.).

[56] Although this motion identifies the individual organizations generally as "Cruise Opponents," each of the Petitioners must independently satisfy this associational standing requirement with respect to its respective memberships. Satisfaction of this requirement by one organization does not relieve the others from their burden of proof.

relief sought has been of this kind.") (quoting *Warth*, 422 U.S. at 515); *see also Smith Land*, 393 S.C. at 360, 713 S.E.2d at 293 (dissenting opinion).

Cruise Opponents have failed to meet the prongs set forth in *Beaufort Realty* and *Hunt* and, thus, fail to show associational standing. Indeed, the individual Cruise Opponent organizations have offered no facts, no evidence, no support, and no argument that the organization, itself, has suffered an injury tracing to the permitted conduct. Instead, Cruise Opponents seek to establish standing through the alleged injuries suffered by the individuals making up Cruise Opponents' collective memberships. However in doing so, Cruise Opponents fail to adhere to the associational standing requirements set for in the *Hunt* test.

At the outset, and as established conclusively above, the inability of the individual Cruise Opponent-members to have standing and sue in their own right is similarly fatal to the respective Cruise Opponent-organizations to bring these claims on behalf of their respective memberships. *Hunt*, 432 U.S. at 342 (holding that, in maintaining an action, the "'association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.'") (quoting *Warth*, 422 U.S. at 511); *see also Smith Land*, 393 S.C. at 360, 713 S.E.2d at 293 (dissenting opinion). Stated differently, the petitioning associations cannot show injury-in-fact, traceability to the permitted conduct, or redressability by these proceedings, for the same reasons that no individual can make those showings here. *See* discussion, *supra*. Moreover, even if the Court takes as true the conclusory and self-serving allegations set forth in the submitted affidavits, such injuries inure only to the individuals, rather than their status as members of the representative associations, thus requiring participation by the individuals themselves in this matter and preventing the organizations from asserting associational standing on their behalf.

Cruise Opponents also fail the second prong of *Hunt* because the permitted activity and the interests at stake in this litigation are not germane to the purposes of the respective organizations. A review of the organizational purposes and missions of each of the Cruise Opponents set forth in the request for contested case and supporting affidavits reflects that, while each of the petitioning associations have an interest in eradicating the Charleston peninsula of the cruise industry, the prism through which the Court must view associational standing in this case is limited by the permitted conduct: the installation of five new pile clusters, the renovation of an existing warehouse, and the transfer of on-going and existing cruise operations 600 yards to the north, still within the existing footprint of the fully functioning marine terminal.

1. Preservation Society: "The Preservation Society of Charleston's mission is to inspire the involvement of all who dwell in the Lowcountry to honor and respect our material and cultural heritage." Cruise Opponents' Req. For Contested Case at 2, ¶1. Cruise Opponents, generally, have also asserted that continuation of cruise operations on the peninsula will adversely affect historic buildings in the area and detract from Charleston's "historic ambiance."

   Lack of Standing Analysis: However, the Preservation Society's purpose is not germane to the permitted conduct of the Ports Authority, and there has been no allegation by the Preservation Society or its members of a single instance in which its preservation efforts in Charleston are hindered, or even impacted, by the UPT Project. Further, the group does not allege how this challenge serves to inspire involvement in historic preservation or affects historic materials or Charleston's cultural heritage. As noted, UPT has been a marine terminal and received passenger cruise vessels for over 100 years; therefore, it is undeniably a part of the fabric of the Charleston peninsula, similar to other parts of

Charleston's material and cultural heritage that the Preservation Society seeks to honor and respect. While the Preservation Society considers this fact to be made in jest, *see* Cruise Opponents Resp. to Mot. to Dismiss for Lack of Standing at 28, the true jest here is the Preservation Society's opposition to the very economic engine—the maritime industry—that made Charleston into the gem that the Preservation Society purports to protect.

2. HCF: HCF is "dedicated to preserving and protecting the architectural, historical and cultural character of Charleston and its Lowcountry environs, and educating the public about Charleston's history and the benefits that are derived from preservation." Cruise Opponents' Req. For Contested Case at 2, ¶2.

Lack of Standing Analysis: HCF's purpose is unrelated to the permitted activity, which does not call for the modification or destruction of any building or site considered to add to the architectural, historical and cultural character of Charleston. UPT is a fully functioning marine terminal today and has been for over 100 years. Because UPT's use as a marine terminal, including for cruise operations, is undisputed, the permitted activity must be put in the context of what exists today, has existed in the past, and what will continue to exist in the future, irrespective of UPT Project. It is also worth noting that UPT has co-existed with the architectural, historical and cultural character of Charleston for all of these years, which in fact predates the formation of these association petitioners. Notwithstanding, Cruise Opponents contend generically that the UPT Project will "impact the architectural and historical character of the downtown district," without bothering to specify what this "impact" will actually be. *See* Cruise Opponents Resp. to Mot. to Dismiss for Lack of Standing at 28, Cruise Opponents, including HCF, simply see this as an

opportunity to impose their own vision on the future of the peninsula. However, because the challenges to the permitted activity are unrelated to the purpose of HCF, this challenge is not germane to its purpose and HCF lacks associational standing to bring these claims.

3. HANA: As described in the contested case request, HANA's purpose is to "address matters of importance to the historic residential neighborhood designated as Ansonborough ... and to foster a spirit of community and cooperation with the Ansonborough Neighborhood." Cruise Opponents' Req. For Contested Case at 3, ¶3.

   Lack of Standing Analysis: The germaneness inquiry here must be tailored to the permitted activity, as opposed to HANA and Cruise Opponents' end-game, *i.e.*, no cruise operations in Charleston. The contested case request admits that HANA is seeking such redress through neighborhood resolutions seeking binding regulations on the cruise industry, but does not ascribe any injury to the permitted activity. Instead, HANA seeks to piggy-back on allegations of "individual harm" set forth in the affidavit of one of its members, *see* Cruise Opponents Resp. to Mot. to Dismiss for Lack of Standing at 29 (citing the affidavit of Christina Dodd); however, nothing in Ms. Dodd's affidavit imputes the allegations of "individual harm" she asserts as deriving from her membership in HANA. Accordingly, these allegations are unrelated to HANA's purpose, they are not germane to its purpose, and HANA lacks associational standing to bring these claims.

4. League: The League did not see fit to include its purpose and mission in the request for contested case; therefore, under the burden of proof assigned to the League in demonstrating its associational standing, the League has failed to meet its burden. Cruise Opponents' Req. For Contested Case at 3, ¶4. Notwithstanding, the League attempts to fill in the blank through Cruise Opponents' affidavits, stating that it "seeks to protect the

natural resources and quality of life in South Carolina communities, to promote appropriate development and to prevent projects that would excessively harm the state's natural resources and interfere with its residents' quality of life." *See* Robertson Aff. at 1.

Lack of Standing Analysis: Once more, Cruise Opponents reflexively fall back to *ipse dixit* conclusory statements essentially arguing that: here is our mission; the UPT Project will adversely affect that mission because, well, we say it does, and our saying so should be sufficient to confer standing on our organization. However, the cruise industry is not subject to this permit dispute, and the permitted activity is not germane to the League's purpose.[57]

5. CNA: The CNA is a membership organization whose purpose is to "give Charleston residents a concerted voice when considering matters that concern the peace, tranquility and orderly well-being of the historic Charleston neighborhood", who, according to the contested case request, are "620 members consisting of residents living south of Broad Street." Cruise Opponents' Req. For Contested Case at 4, ¶5.

Lack of Standing Analysis: The entirety of UPT is many blocks and several hundred yards *north* of Broad Street in Charleston. Additionally, as noted throughout, the capital improvement project will re-locate cruise operations from the southern end of UPT, some 600 yards north—away from Broad Street—to the northern end of the UPT terminal footprint. Cruise Opponents attempt to lessen this disqualifying factor by contending the members of CAN merely "reside" south of Broad Street, but that their "interests" extend beyond the geographic boundary of the neighborhood. However, this attempt to salvage

[57] *See* discussion, *supra*, in *Beaufort Realty*, where the Court of Appeals rejected the League's attempt to insert itself in a challenge action with no more than conjecture, hypotheticals, and the potential for future harm. *See Beaufort Realty*, 346 S.C. at 302-03, 551 S.E.2d at 590.

CNA's interest in this litigation ignores the fact that, in evaluating the ability of an organization to represent the interests of its members, the Court's focus is on the germaneness of the issues to the purpose of the *organization*, not the interests of the members. As the CNA's self-described purpose is limited to activities south of Broad Street, CNA's interests are not germane to the interests at stake in this contested case challenge, and it lacks standing to bring this action on behalf of its membership.

6. Surfrider: Surfrider's purpose is described as an "environmental organization dedicated to the protecting and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education." Cruise Opponents' Req. For Contested Case at at 4, ¶6.

   Lack of Standing Analysis: Surfrider fails to describe how the interests at stake in evaluating the permitted activity in this case will have any effect on the world's oceans, waves and beaches, as the planned improvements take place entirely on industrial and on a longstanding marine terminal facility within Charleston harbor. Moreover, as discussed thoroughly above, Surfrider affiant Mr. Morganello's testimony can be discarded out of hand, as it is not based on personal knowledge—nor is Mr. Morganello qualified to offer the opinion testimony contained in his affidavit—and his "fears" are not tied to anything tangibly related to the permitted activity. Consequently, Surfrider's interests are not germane to those at stake in this contested case.

7. Cruise Control: Cruise Control's purpose is described as "finding a more appropriate location for the proposed new cruise ship terminal; establishing legally binding limits on the number, size and frequency of cruise ship visits; requiring onshore power to be used by cruise ships docking in Charleston; and providing all cruise lines visiting Charleston with

the Charleston Cruise Ship Code of Conduct." Cruise Opponents' Req. For Contested Case at 4, ¶7.

Lack of Standing Analysis: Without a doubt, Cruise Control's purpose is germane to their efforts to eradicate the cruise industry in Charleston. In fact, Cruise Control should be pleased that its stated purpose of establishing "limits on the number, size and frequency of cruise ship visits" has been voluntarily incorporated into the capital improvement project by the Ports Authority through its Cruise Management Plan. *See* Ex. 20, Voluntary Cruise Management Plan. However, eradication of the cruise industry in Charleston is not an interest at stake in this litigation. Similarly, under current conditions at UPT, the Ports Authority may increase cruise operations irrespective of the pending permit; therefore, increased cruise operations is not an issue that is at stake in this permit challenge and cannot form the foundation of Cruise Control's germaneness requirement. Cruise Control has failed to show that its purpose is germane to the permitted activity and has failed in its burden of establishing associational standing.

Moreover, in light of the recent decision in *Smith Land*, Cruise Opponents have failed to satisfy the third prong of the *Hunt* test. The dissenting opinion,[58] which was authored by Justice Hearn and joined by Justice Kittredge, analyzes the third prong in light of the underlying purposes

[58] The *Smith Land* majority found the issue of standing to be unpreserved for its appellate review; therefore, it took no position on the issue. *Smith Land*, 393 S.C. at 352 n.1, 713 S.E.2d at 288 n.1. The dissent, believing the majority had misapplied the rules of preservation, did address the issue of associational standing in a manner that is problematic for Cruise Opponents. *Id.* at 357-58, 713 S.E.2d at 291 (the dissent correctly points out that, because the lower court had found the League of Women Voters lacked standing, and that holding was not appealed, irrespective of whether the parties addressed the issue in the appellate briefs, the legal concept at issue was "law of the case"—not preservation—and therefore it was appropriate for the Court's consideration). Thus, to date, the only two Justices to have evaluated the *Hunt* test under similar circumstances came down on the side of the Ports Authority's argument in this case, while the remaining three Justices have taken no position on the issue.

of associational standing. *Smith Land*, 393 S.C. at 360, 713 S.E.2d at 293. Justices Hearn and Kittredge conclude that, in order to satisfy the third prong of the *Hunt* test, the organization asserting its standing must show that the right it seeks to vindicate is common to the membership. *Id.*, 393 S.C. at 360, 713 S.E.2d at 293. Further, the organization must show that the interest at stake in the litigation, and which its members assert is harmed, must derive from their membership in the organization. *Id.* The dissent recognized that while the League of Women Voters alleged that its members suffered and would continue to suffer harm as a result of the permitted activity, the evidence presented by the League of Women Voters was limited to harm alleged by only one member.[59] Pertinent to the issues at hand, the dissent recognized that injury as to one member of an organization does not extend to the rest of the organization. *Id.*, 393 S.C. at 361, 713 S.E.2d at 293 ("With harm occurring to only one member of the League [of Women Voters] and a cause of action thereby inuring only to that one member, the right the League is pursuing under the Act is not a common one."). Further, the dissent emphasized that the harm suffered by the individual does not, in and of itself, satisfy the associational standing requirement unless the injury suffered flows from the membership in the organization. *Id.*

Applying this sound reasoning to the instant case reveals a similar disconnect between the injuries alleged and the ability of the collective organizations making up Cruise Opponents to assert the rights of their members. The injuries allegedly suffered—pollution, noise, traffic, property values and aesthetic interests—by individual members do not flow from their membership in the respective associations bringing the action. Four of the five affidavits[60] make

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

[60] As discussed above, Mr. Morganello's affidavit should be disregarded in its entirety, as it is not affirmed to be made on "personal knowledge," and Mr. Morganello does not even live on

allegations about their personal experiences with soot, personal fears of breathing air, their forced change of personal driving routes due to traffic concerns associated with the cruise operations, their personal beliefs as to cruise operations and its appropriateness in Charleston, and their fears regarding a reduction in value of their individually properties. However, the individuality of the asserted injuries creates a serious problem in that the third prong of the *Hunt* test cannot be met "when conflicts of interest among members of the association require that the members must join the suit individually in order to protect their own interests." *Maryland Highways Contractors Assn*, 933 F.2d at 1252.

Many people, including members of these organizations, likely will benefit from implementation of the UPT Project plan.[61] The plan would (1) reduce air emissions, (2) reduce traffic, (3) remove cargo vessels and trains from the UPT, and (4) redevelop and devote to public green space over 35 acres of the southern end of the UPT. *See* Ex. 16, Lehman Aff. Indeed, if the affiants' allegations of injury are to be believed, then they would significantly benefit from

---

the Charleston peninsula (but rather, according to his affidavit, in West Ashley near Folly Beach). Moreover, Mr. Morganello claims only to "regularly swim and kayak in our state's waterways," but nowhere does he claim that he actually swims and fishes in the federal navigation channel or the waters surrounding the UPT.

[61] Ironically for Cruise Opponents, successfully challenging the UPT Project permit will fail to materially hinder or halt cruise operations at the UPT, ultimately resulting in more ships, more pollution, more traffic and less green space than under the Project plan. The Ports Authority initially considered refurbishing existing cruise facilities to improve efficiency and operations, but decided against pursuing that as a first option after receiving substantial community input in favor of the current plan relocating terminal facilitates to Building #322, moving cargo operations to the Columbus Street Terminal, and shrinking the UPT footprint to facilitate the restoration of the natural waterfront and other public and private development. *See* Ex. 77, UPT Concept Plan – Background and Benefits, Aug. 30, 2011. Critically, renovating and refurbishing the existing cruise terminal facility requires no additional DHEC approvals, depriving Cruise Opponents of the ability to employ the permitting process for delay and as leverage to effectuate, as Dana Beach put it, Cruise Opponents' "big plans" for the UPT. *See* Ex. 42, Dana Beach E-Mail, May 11, 2011, Cruise Opponents 002292-93; Ex. 78, *A Case for the Redevelopment of Union Pier*. All this further demonstrates that the injuries alleged in this contested case are not redressable by the Court.

implementation of the UPT Project plan, since it mitigates and reduces the alleged injuries. Nevertheless, setting aside the vocal minority[62] whose end game is "no cruise," the UPT Project plan's projected reduction in vessel and train traffic and estimated 35 plus acres of green space would lead to an increase in property values, a reduction in air emissions, and mitigation of the stated traffic concerns.[63] While the affiants and leadership of the Cruise Opponent-organizations may be anti-cruise, many of the organizations' members are not, creating a conflict within the membership because all members would benefit from the UPT Project. For example, a CNA member and former board member of the Preservation Society wrote to DHEC in support of the Project, stating that he is "one hundred percent in favor of approval" of the Permit because the "installation of five new pilings ... will not harm anything" and that moving the cruise operations to the north end of the UPT "is the most environmentally sound and cost effective method of achieving this long needed goal." Ex. 25, Ltr. of Theodore D. Stoney, Jr., DHEC-SCPA 1085-87.

---

[62] As one downtown resident explained in a letter to DHEC supporting the Project, "[m]ost people I know are supportive of the new terminal and we need to make our positions more vocal. The opposing groups just make more noise. There are not more of them." Ex. 22, Ltr. of Sarah Christopher to DHEC, DHEC-SCPA 000727.

Indeed, the positions of the Gates-Pelzer-Rose triumvirate within CNA was referred to by a CNA member and former board member as a "hostile takeover" and the rush by these anti-cruise individuals to present a proposal for the CNA to sue the Ports Authority was "a blitzkrieg." Ex. 23, Minutes of May 9 CNA Mtg., Cruise Opponents 001729-001733. This individual noted that the CNA had become antagonistic and "so split over the issue of cruise ships." *Id.* Clearly the affiants and incestuous leadership (namely, Pelzer, Gates, Rose, Williams, Agnew) seek to control a number of organizations and speak for all of them, regardless of what the majority of the actual membership believes.

[63] In trying to drum-up more support, Randy Pelzer called another landowner in the same building as Ms. Robertson (Laurens Place). He reported that neither the individual he contacted (Sally Harley) nor Doug Robertson (Ms. Robertson's husband) "seemed particularly concerned about the movement of the cruise terminal to property adjoining them, citing either interest in watching the ships come and go or a belief that the traffic situation may improve with the removal or rail lines or that cruise ship pollution and notice may be better than existing cargo ships." Ex. 26, Randy Pelzer E-Mail, Cruise Opponents 008806.

At bottom, Cruise Opponents' injuries, to the extent they exist, flow from the affiants' status as individual property owners. However, the *Smith Land* dissenting opinion instructs that the analysis should be concentrated on the interest individual members have in the organization: if that interest is not harmed, and the alleged injury is instead personal to the member, then the organization lacks associational standing to bring the claim on the member's behalf.

CONCLUSION

Cruise Opponents have failed to meet their burden of proving standing to challenge the Permit. Discovery has closed, and therefore by the Cruise Opponents' argument and admission their standing is ripe for adjudication. Further, the concepts of statutory standing and the public importance exception to standing are inapplicable to Cruise Opponents, because, not only have they failed to argue the concepts' relevance and application here—thus, they are procedurally barred from doing so now—but the concepts find no support in fact or law. With respect to the applicable traditional rubric of standing, all three elements are absent, because Cruise Opponents have failed to meet their burden of proof in showing an actual or imminent injury-in-fact, where the harm alleged is traceable to the permitted activity giving rise to this contested case, and also have not demonstrated that the alleged "injuries" sustained by Cruise Opponents are redressable by a decision of this Court. Further, Cruise Opponents have failed to clear the additional hurdle imposed on organizations wishing to bring causes of action on behalf of their memberships. Accordingly, no case or controversy exists and this Court should enter an order granting summary judgment against Cruise Opponents in the above-captioned matter.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

Randolph R. Lowell
Tracey C. Green
Chad N. Johnston
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
rlowell@willoughbyhoefer.com
cjohnston@willoughbyhoefer.com

Philip L. Lawrence
General Counsel
S.C. STATE PORTS AUTHORITY
Post Office Box 22287
Charleston, South Carolina 29413-2287
plawrence@scspa.com

Attorneys for the Respondent
South Carolina State Ports Authority

December 27, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, Petitioners, v. South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control, Respondents.	)	Docket No. 13-ALJ-07-0056-CC **CERTIFICATE OF SERVICE**

This is to certify that I, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of **South Carolina Ports Authority's Motion For Summary Judgment For Lack of Standing** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Amy Armstrong, Esquire
South Carolina Environmental Law Project
Post Office Box 1380
Pawley's Island, SC 29585

Jefferson Leath, Esquire
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401

Bradley D. Churdar, Esquire
South Carolina Department of
Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

J. Blanding Holman, Esquire
Southern Environmental Law Center
43 Broad Street, Suite 300
Charleston, SC 29401

Breanna M. Karns
Breanna Karns

Columbia, South Carolina
This 27th day of December 2013.

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 1	Map of Union Pier Terminal footprint
Exhibit 2	Map of Pile Clusters
Exhibit 3	Ports Authority Ltr. to DHEC Bd. (Jan. 7, 2013)
Exhibit 4	Permit Applications (SCPA 002642-50 and SCPA000002-9)
Exhibit 5	Public Notices (DHEC-SCPA 001568-93)
Exhibit 6	Permit (Dec. 18, 2012)
Exhibit 7	DHEC Ltr. to SPA (Feb. 10, 2012)
Exhibit 8	SPA Ltr. DHEC (Feb. 27, 2012)
Exhibit 9	Staff Response to DHEC Board (Jan. 10, 2013)
Exhibit 10	DHEC Board Ltr. Declining to Conduct a Final Review Conference (Jan. 11, 2013)
Exhibit 11	DHEC Board Record, BHEC 1-145, and Affidavit of Lisa Lucas Longshore
Exhibit 12	Affidavit of James I. Newsome, III
Exhibit 13	Affidavit of Joseph P. Riley, Jr.
Exhibit 14	UPT Presentation of Riley and Newsome (SCPA 001281-225)
Exhibit 15	Existing v. Proposed Drawing Comparison (SCPA 001217)
Exhibit 16	Affidavit of Peter O. Lehman
Exhibit 17	Ports Authority-CBP MOU

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 18	OCRM Technical Review
Exhibit 19	Trinity Consultants Study: Historical, Current and Future Criteria Pollutant Emissions at Union Pier Terminal (Dec. 23, 2013)
Exhibit 20	Voluntary Cruise Management Plan
Exhibit 21	What Kind of Future Do you Want? (SCPA 002630)
Exhibit 22	Ltr. of Sarah Christopher to DHEC (DHEC-SCPA 000727)
Exhibit 23	Minutes of CNA Mtg. (Cruise Opponents 001729-001733) (May 9, 2012)
Exhibit 24	Ltr. of S.D. Thomas, M.D. to DHEC (DHEC-SCPA 000731-32) (Apr. 23, 2012)
Exhibit 25	Ltr. of Theodore D. Stoney, Jr. (DIIEC-SCPA 001085-87)
Exhibit 26	Randy Pelzer E-Mail (Cruise Opponents 008806) (Feb. 25, 2010)
Exhibit 27	Katie Zimmerman Email (Cruise Opponents 004484-85) (May 11, 2012)
Exhibit 28	Post & Courier Article, "Charleston's No.1 for 3 years running." (Oct. 16, 2013)
Exhibit 29	Jay Williams E-Mail (Cruise Opponents 008042) (Mar. 17, 2011)
Exhibit 30	Minutes from CNA Board Mtg. (Cruise Opponents 001747) (May 3, 2011)
Exhibit 31	Harold Pratt-Thomas E-Mail (Cruise Opponents 004156) (May 19, 2011)
Exhibit 32	Dana Beach E-Mail (Cruise Opponents 006832) (May 22, 2011)

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 33	Dana Beach E-Mail (Cruise Opponents 6831) (July 7, 2011)
Exhibit 34	Dana Beach E-Mail (Cruise Opponents 005255) (July 25, 2011)
Exhibit 35	Carrie Agnew E-mail (Cruise Opponents 001447-48) (July 3, 2012)
Exhibit 36	Carrie Agnew E-Mail (Cruise Opponents 001509) (April 13, 2013)
Exhibit 37	Carrie Agnew E-Mail (Cruise Opponents 001511) (May 5, 2013)
Exhibit 38	*Kiawah Development*, Reh'g Trans. 6:14-17, 11:9-25 (June 5, 2013)
Exhibit 39	Katie Zimmerman E-Mail (Cruise Opponents 005280) (May 12, 2011)
Exhibit 40	Jay Williams E-Mail (Cruise Opponents 008473) (Jun. 1, 2011)
Exhibit 41	Katie Zimmerman E-Mail (Cruise Opponents 09233) (Mar. 4, 2013)
Exhibit 42	Dana Beach E-Mail (Cruise Opponents 002292-93) (May 11, 2011)
Exhibit 43	Affidavit of Katie Zimmerman
Exhibit 44	Affidavit of Evan R. Thompson
Exhibit 45	Katie Zimmerman E-Mail (Cruise Opponents 009334) (Nov. 26, 2012)
Exhibit 46	Ltr. of Nancy Infinger to DHEC (DHEC-SCPA 000088-89)

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 47	S.968 Concurrent Resolution, 119th Session (2011)
Exhibit 48	Charleston City Council Resolution (Sept. 14, 2010)
Exhibit 49	Dana Beach E-Mail (Cruise Opponents 002801) (Sep. 7, 2010)
Exhibit 50	*City's Cruise Plan Steams Ahead*, Charleston Post & Courier (Posted Sept. 15, 2010)
Exhibit 51	*Don't Put New Cruise Terminal in the City's Historic District*, Charleston Post & Courier (Posted Oct. 20, 2010)
Exhibit 52	Evan Thompson E-Mail (Cruise Opponents 003498) (Mar. 11, 2011)
Exhibit 53	Remarks of J. Randolph Pelzer, Charleston City Council Mtg. Minutes (Sep. 14, 2010)
Exhibit 54	Dana Beach E-Mail (Cruise Opponents 008502) (Mar. 28, 2011)
Exhibit 55	Margot Rose E-Mail (Cruise Opponents 005685) (Apr. 28, 2011)
Exhibit 56	Dana Beach E-Mail (Cruise Opponents 006848) (Apr. 11, 2011)
Exhibit 57	Jay Williams E-Mail (Cruise Opponents 003313) (Jun. 6, 2011)
Exhibit 58	Katie Zimmerman E-Mail (Cruise Opponents 008026) (May 5, 2011)
Exhibit 59	Email of Jay Williams (Cruise Opponents 10057-58) (Apr. 19, 2012)

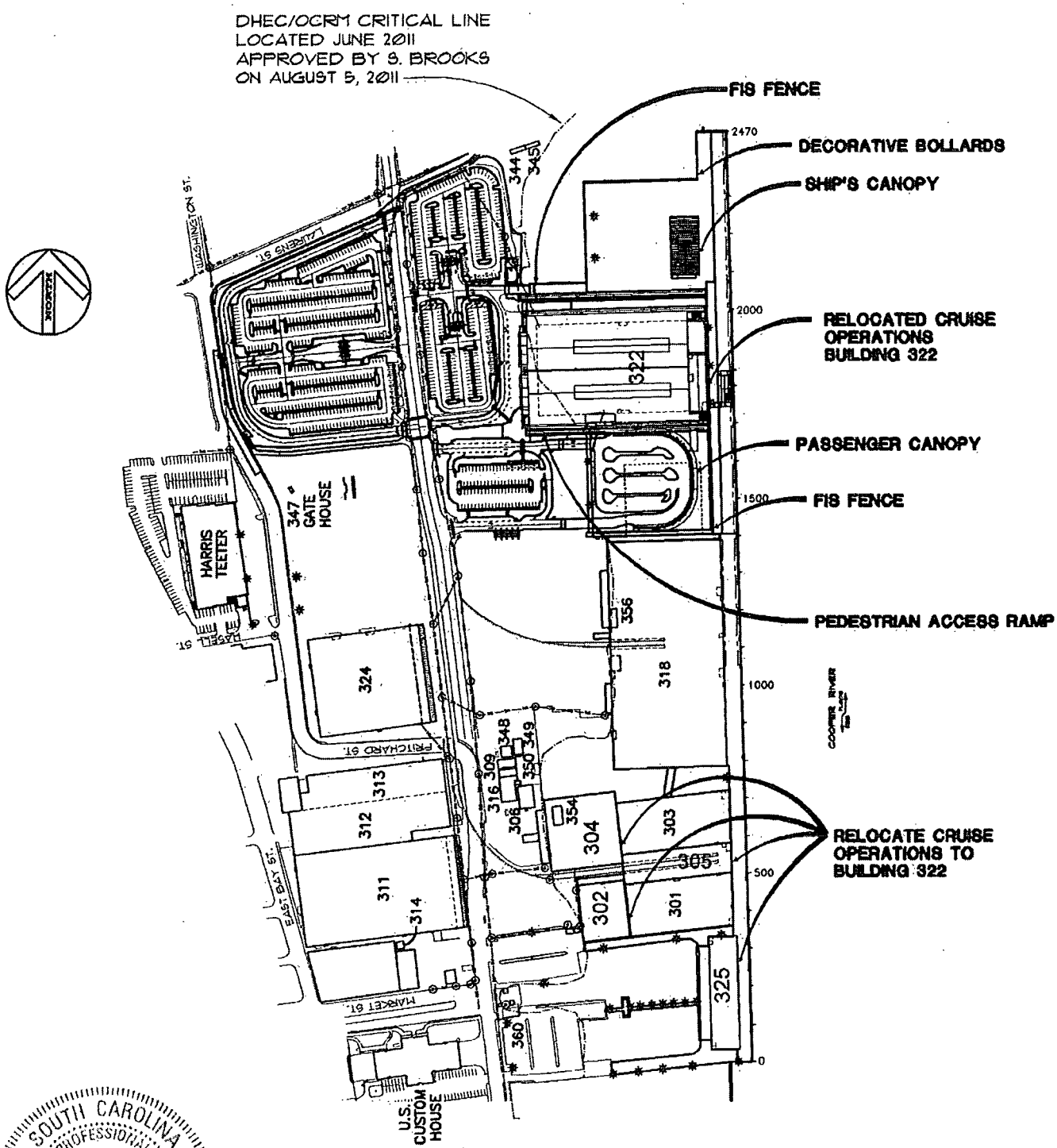
TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 60	Email of Carrie Agnew Cruise Opponents 001407 (Nov. 23, 2011)
Exhibit 61	League Solicitation Ltr. (SCPA 001074-77) (Dec. 31, 2012)
Exhibit 62	Cruise Control Donation Solicitation Ltr.
Exhibit 63	Form 990s field by the League with the IRS (SCPA 001822-001946)
Exhibit 64	S.C. Maritime Ass'n Ltr. (SCPA 001079) (Jan. 2013)
Exhibit 65	*Charleston Cruise-Ship Opponents Seize Opportunity to Battle New Passenger Terminal*, Charleston Post & Courier (Apr. 19, 2012)
Exhibit 66	*Historic City at Odds With Its Popularity as Cruise Port* New York Times (Apr. 19, 2011)
Exhibit 67	*S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, Docket Nos. 07-ALJ-21-0107-CC, -0108-CC, Hrg. Trans. (July 2, 2007)
Exhibit 68	*Carnival Corp. v. Historic Ansonborough*, No. 2011-197468, Hrg. Trans. (Nov. 19, 2013)
Exhibit 69	*Preservation Society of Charleston v. S.C. State Ports Authority*, Docket No. 13-ALJ-07-0056-CC, Hrg. Trans. (Sept. 6, 2013)
Exhibit 70	Affidavit of Carrie Agnew
Exhibit 71	Agnew Disclosure Statement
Exhibit 72	League Winter 2006 Newsletter

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 73	First Amended Complaint, *Carnival Corp. v. Historic Ansonborough*, No. 2011-197468
Exhibit 74	Pat Jones ltr. to DHEC, (DHEC-SCPA 000721) (Apr. 16, 2012)
Exhibit 75	"Southern Environmental Law Center's Blan Holman" *Travel Weekly* (Aug. 29, 2011)
Exhibit 76	*Food and Water Watch v. U.S. Envtl. Prot. Agency*, 1:12-cv-01639-FC, dkt.#47 (D.D.C. Dec. 13, 2013)
Exhibit 77	UPT Concept Plan – Background and Benefits (Aug. 30, 2011)
Exhibit 78	*A Case for the Redevelopment of Union Pier*

Exhibit 1



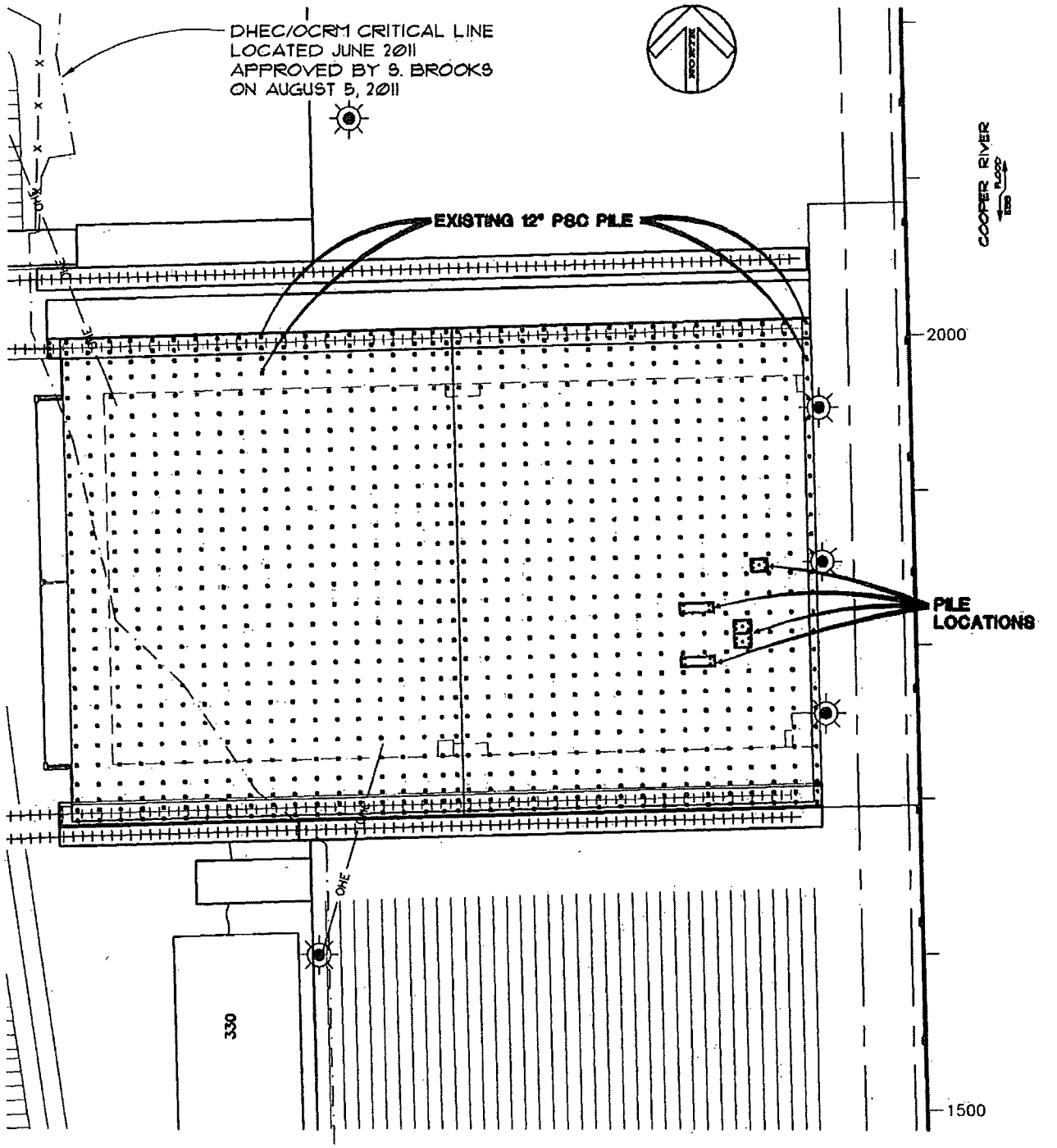
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25449
1/24/12
DERRICK L. BELLAMY

NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp3
DATE: MARCH 2012
SHEET: 3 OF 11

Exhibit 2



100 0 100

SCALE IN FEET

LEGEND

ELEVATORS

ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp4
DATE: JULY 2012
SHEET: 4 OF 11

Exhibit 3

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN P. MUSTIAN
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT FELDER
CHAD N. JOHNSTON
JOHN W. ROBERTS

*ALSO ADMITTED IN TX

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -7 PM 12:35
OFFICE OF GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

January 7, 2013

VIA HAND DELIVERY

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

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

Dear Members of the Board:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

iv. Enter into a Traffic Management Plan to remove maritime cruise traffic from the City streets as soon as possible, as well as continued coordination with the Charleston City Police Department and the City Special Events Committee.

v. Continued commitment to contribute an allocation to the DASH Downtown Shuttle Program, which provides free shuttle rides to those traveling in the downtown areas of the City.

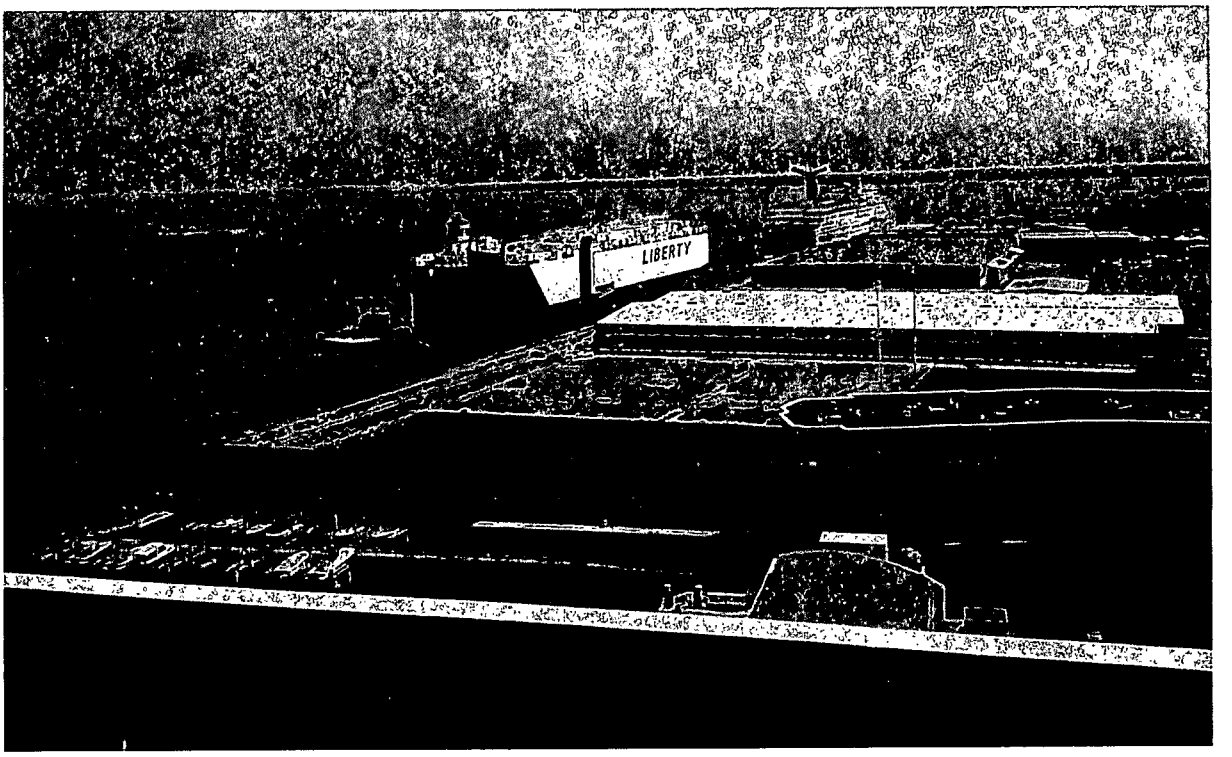
Id. Notwithstanding these good faith efforts of the Ports Authority, and OCRM's thorough review of the permit application, which resulted in special conditions imposed through the permit, Opponents contend OCRM's staff decision was made in violation of applicable statutes, regulations and rules.[2] While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

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

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

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

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



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

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

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

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

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit A	Affidavit of James I. Newsome, III (Aug. 22, 2011)
Exhibit B	Affidavit of Arnaldo Perez (July 2011)
Exhibit C	Map of Union Pier Terminal
Exhibit D	Map of Pile Clusters
Exhibit E	Corps Mem. For Record, SAC-2003-13026 (Apr. 20, 2012)
Exhibit F	OCRM Technical Summary of Review (Dec. 17, 2012)
Exhibit G	Comparison Traffic Diagram
Exhibit H	Affidavit of Joseph P. Riley, Jr. (Aug. 22, 2011)
Exhibit I	Affidavit of Daniel Riccio (Aug. 22, 2011)

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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

v.

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

AFFIDAVIT OF JAMES I. NEWSOME, III

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

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

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

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

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

§ 54-3-130. Purposes of Authority.

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

(1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water-borne commerce from and to any part of the State and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities;

(3) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without the State, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(4) To cooperate with the United States of America, and any agency or any department, corporation or instrumentality thereof in the maintenance, development, improvement and use of such harbors and seaports in connection with and in furtherance of the war operations and needs of the United States;...

(9) In general to do and perform any act or function which may tend to or be useful toward the development and improvement of such harbors and seaports of this State and to the increase of water-borne commerce, foreign and domestic, through such harbors and seaports.

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

§ 54-3-120. Jurisdiction of Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAITH NOT.

James I. Newsome, III

Sworn to and subscribed before me,

this 22nd day of August 2011.

Marsha A. Read

Notary Public for South Carolina
My Commission Expires: Nov. 13, 2016

MARSHA A. READ
Notary Public, South Carolina
My Commission Expires
November 13, 2016

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OFCHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-4139
HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON, Plaintiff, vs. CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES, Defendant.	)	AFFIDAVIT OF ARNALDO PEREZ

PERSONALLY appeared before me, Arnaldo Perez, who, being duly sworn, says:

1. I am employed by Defendant Carnival Corporation ("Carnival") as a Senior Vice President and General Counsel.

2. Carnival, through its operating division, Carnival Cruise Lines, is in the business of owning and operating passenger cruise vessels which take passengers to various port destinations in the Caribbean, the United States and elsewhere.

3. Carnival Cruise Lines has from time to time operated cruises from the Port of Charleston, South Carolina, since 1999. In 2010, Carnival greatly increased its involvement with the Port of Charleston by making Charleston, and specifically the Union Pier terminal facility, the home port of the cruise ship *Carnival Fantasy*. Since that time, the *Carnival Fantasy* has operated approximately 80 cruises from Charleston, taking approximately 185,000 passengers on cruises to the Bahamas, Grand Turk and Bermuda.

4. Carnival is aware of plans by the South Carolina State Ports Authority ("SCSPA") to redevelop the Union Pier port terminal facility and construct a new, modern passenger terminal. Carnival agrees that the improvements planned by SCSPA would greatly enhance Charleston's attractiveness as an embarkation and destination point for cruises and would also improve the flow of pedestrian and vehicular traffic in and around the proposed passenger terminal.

5. Carnival has been engaged in discussions with the SCSPA over an agreement contemplating Carnival Cruise Lines' long term use of the planned passenger terminal at Union Pier. Carnival is excited about the prospect of such an arrangement and believes it could be very advantageous both to Carnival and to the City of Charleston. Carnival has, however, recently been sued by a group of plaintiffs who allege that its operations at Union Pier violate various local zoning ordinances and state laws. While Carnival does not believe the lawsuit has any merit, the prospect of a lengthy court battle and the possibility, however remote, of a determination that Carnival Cruise Lines' use of Union Pier is unlawful, make it difficult for Carnival Cruise Lines to justify the long term arrangement proposed by SCSPA. Carnival Cruise Lines has communicated its reservations to SCSPA in the course of their ongoing negotiations.

FURTHER, AFFIANT SAITH NOT.

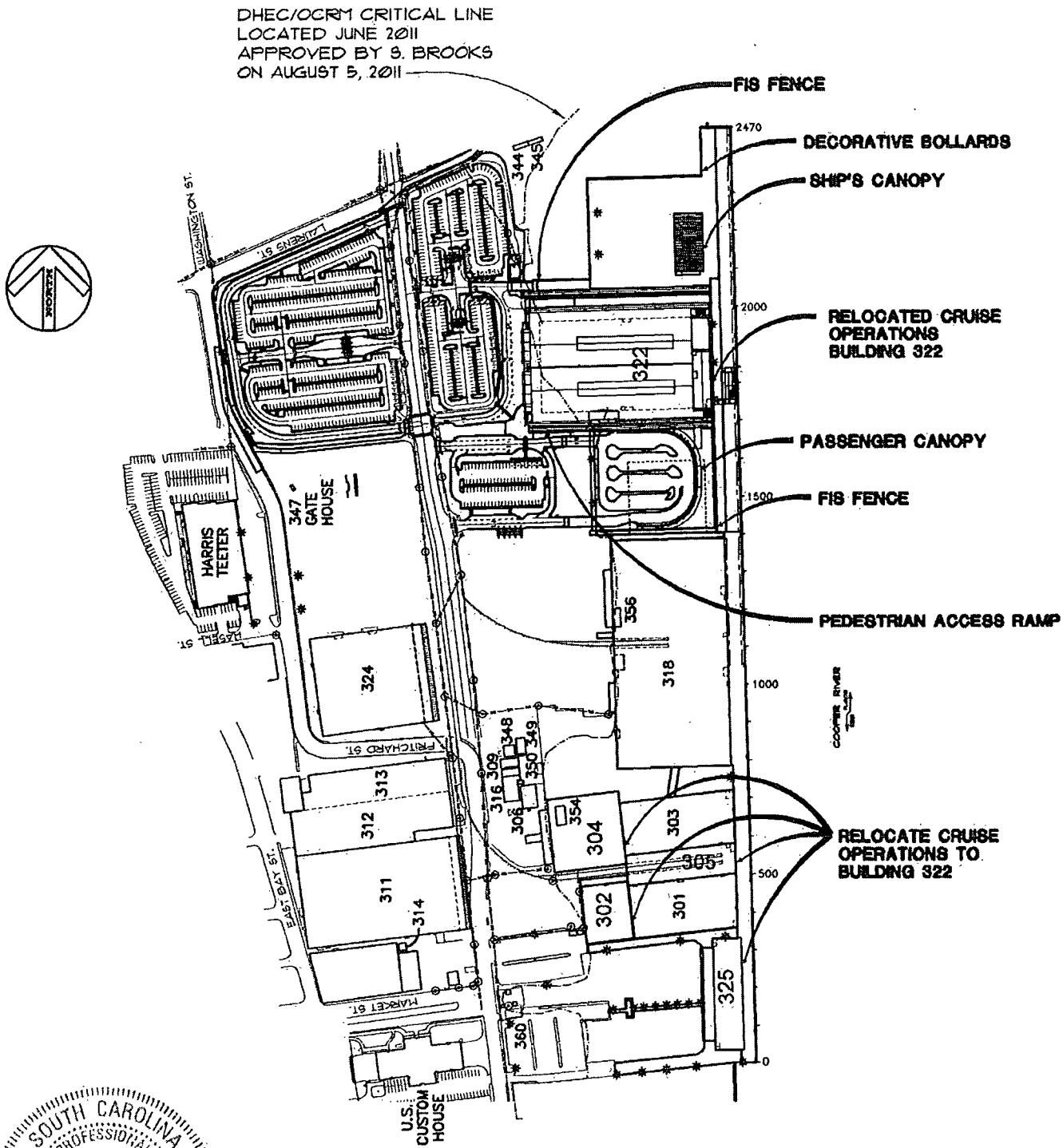
ARNALDO PEREZ

Sworn to and subscribed before me, this ___ day of July 2011

Notary Public for _____
My Commission expires: _____

MARTHA DE ZAYAS
MY COMMISSION # EE 024310
EXPIRES: September 8, 2014
Bonded Thru Budget Notary Services

EXHIBIT C



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25449
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

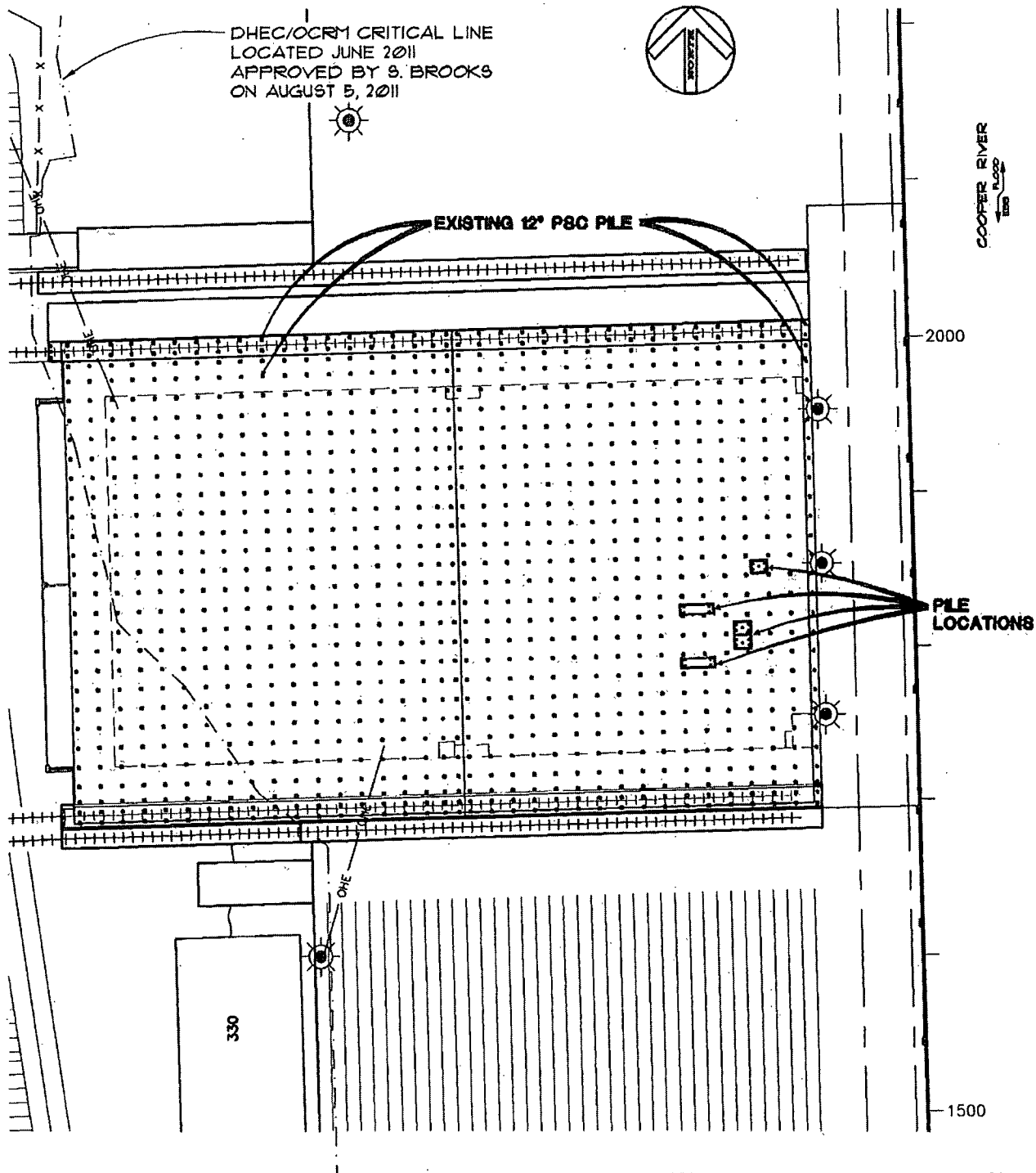
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400
SCALE IN FEET

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

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

EXHIBIT D



100 0 100

SCALE IN FEET

LEGEND

B — B ELEVATORS

A — A ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L. Bellamy

MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp4
DATE: JULY 2012
SHEET: 4 OF 11

EXHIBIT E

CESAC-RD-SP
Application: SAC-2003-13026

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

Applicant: South Carolina State Ports Authority

Reviewer: Nathaniel I. Ball **Date of Review:** April 18, 2012

On-Site review: ☐Yes ☒No **Off –Site Review:** ☒Yes ☐No

Project Location *(Waterway, Section, Township, Range, City, County, State):* Union Pier Terminal is located near the intersection of Market Street and Washington Street in Charleston, South Carolina.

Pre-Construction Notification Receipt Date: January 27, 2012 **Complete?** ☐Yes ☒No

Additional Information Requested Date: February 15, 2012, March 15, 2012, and April 5, 2012. The Corps requested additional information about the avoidance and minimization of potential impacts to waters of the United States, the method for installing the additional pilings, and clarification about the limits of waters of the United States on the project site.

Pre-Construction Notification Complete Date: April 16, 2012

Waters of the US: The existing pile supported deck and wharf are located in the Cooper River, a navigable water of the United States.

Authority: ☒Section 10 ☐Section 404 ☐Section 103

Project Description *(Describe activities in waters of the U.S. considered for verification):* The proposed activities in waters of the United States consist of the installation of additional pilings underneath a portion of a previously permitted pile supported wharf at Union Pier. The existing wharf is 2,470 feet long and includes several buildings that are currently used to support commercial shipping activities (break bulk cargo, Ro-Ro, passengers, etc). As described below, the SCSPA has operated a passenger facility at Union Pier for more than 40 years. Therefore, the renovation of Building 322 to consolidate existing activities at Union Pier and to increase the efficiency of the existing passenger facility is not considered a "change in use".

With regard to Nationwide Permit 3 (NWP 3), the existing wharf is considered a currently serviceable structure and the additional pilings and the proposed renovations to Building 322 are considered minor deviations in the existing structure's configuration that are required to comply with Federal regulations and current terminal security requirements that were established after September 11, 2001. In addition, renovating an existing building at Union Pier avoids and minimizes potential impacts to waters of the United States and will enable the SCSPA to continue operating the existing passenger facility at Union Pier while the necessary improvements are being constructed.

Site Assessment (*Describe the present land use, cover type, and a qualitative assessment of the aquatic resources):* The project site is developed as Union Pier Terminal and has been used for different types of commercial shipping for more than 100 years. The existing marine terminal has 2,470 linear feet of continuous pile supported wharf and berth space. The proposed pilings will be located **underneath** Building 322. This portion of Union Pier was redeveloped between 35 and 40 years ago. In order to construct this portion of the existing pile supported structure and Building 322, the SCSPA removed old pilings and structures and dredged approximately 50,000 cubic yards of dredged material, which was shifted back and forth across the project site to provide access for construction and pile driving equipment. The existing structure is operated and maintained by the SCSPA to meet the commercial shipping needs of their customers. The SCSPA maintains the existing berth at a depth of -45 feet Mean Low Water (MLW).

Type of Permit Requested: NWP 3 **RGP #**

Pre-construction Notification Required: ☒Yes ☐No. Although the proposed activities in waters of the United States are considered minor, pre-construction notification is required because Union Pier Terminal is located adjacent to the Charleston Harbor Federal Navigation Project.

Waiver required to begin work *(see GC 31 (a)(2) as applied to appropriate NWPs)*:
☐Yes ☒No
Rationale:

Coordination with Agencies/Tribes Needed: ☐Yes ☒No Date:
Resolution:

Commenting Agencies:
Coordination Needed/Required: ☐Yes ☒No
(If yes, check appropriate agency(s))
US Fish and Wildlife Service ☐
US Environmental Protection Agency ☐
National Marine Fisheries Service ☐
State Agency (list commenting state agencies) ☐
State Historic Preservation Office ☐
Other: ☐

Substantive Issues Raised and Corps Resolution *(Consideration of Comments)*:

Compliance with Other Federal Laws *(If specific law is not applicable write N/A; however, you must provide an 'effects' determination):*

a) Endangered Species Act:
Name of species present: The following species are known to occur in Charleston County, South Carolina: West Indian manatee (*Trichechus manatus*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Shortnose sturgeon (*Acipenser brevirostrum*), and Atlantic sturgeon (*Acipenser oxyrinchus*).
Potential or Critical Habitat present: The proposed pilings are located underneath a pile supported wharf at an existing commercial shipping facility. The project site is not considered potential or critical habitat for any of the species that are identified above.
Effects determination: No Effect

Date of Service(s) concurrence: N/A
Basis for "no effect" determination: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The proposed pilings will be installed using land based equipment and will have a negligible impact on aquatic resources or the available habitat underneath the existing wharf. According to the SCSPA, the pilings will be placed rather than dropped into the water to avoid potential impacts to marine life in the water column. Once installed the actual footprint of the additional pilings represents a very small area among the thousands of pilings that are already located underneath the existing pile supported structure. Therefore, the installation of these additional pilings is expected to have "no effect" on Federally listed threatened or endangered species that are known to occur in Charleston Harbor.
Additional information (describe steps taken to address concerns, as needed):

b) Magnuson-Stevens Act (Essential Fish Habitat):
Name of species present: The estuarine substrates, water column, and estuarine waters near the project site are considered Essential Fish Habitat (EFH) for white shrimp (*Litopenaeus setiferus*), brown shrimp (*Farfantepenaeus aztecus*), adult summer flounder (*Parlichthys dentatus*), and adult and juvenile blue fish (*Pomatomus saltatrix*).
Effects determination (Is this a project that "may adversely affect essential fish habitat?): No Effect
Date of Service(s) concurrence: N/A
Basis for "no effect" determination: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The proposed pilings will be installed using land based equipment and will have a negligible impact on aquatic resources, estuarine waters, or the available habitat that is located underneath the existing wharf. In addition, the actual footprint of the additional pilings represents a very small area among the thousands of pilings that are already located underneath the existing pile supported structure. Therefore, the installation of these additional pilings is expected to have "no effect" on EFH.
Additional information (Describe steps taken to address concerns, as needed):

c) Section 106 of the National Historic Preservation Act:
Known site present: ☐ yes ☒ no
Survey required/conducted: ☐ yes ☒ no
Effects determination: No Potential to Cause Effect
Rationale: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The DA permit (SAC-72-10-087-Revised) that authorized the construction of this portion of the wharf at Union Pier Terminal authorized the removal of old pilings and the excavation and backfilling of dredged material within the footprint of the structure. In order to provide both flotation and access for construction and pile driving equipment, approximately 50,000 cubic yards of dredged material was shifted back and forth across the project site during the construction of the existing structure.

As described above, the shallow open waters underneath the existing structure were disturbed by previous construction activities on the project site during the 1970s. According to our records, the entire pile supported wharf and the support facilities that are located on top of this structure have been extensively modified by previous work, including reconstruction, renovation, and/or extension at different times over the past 50 years. The existing wharf and Building 322, where the proposed

pilings will be located, is approximately 40 years old and is not considered eligible for the National Register of Historic Places.

The Corps acknowledges that a lawsuit has been filed in state court against Carnival Corporation, D/B/A Carnival Cruise Lines regarding the operation of the existing passenger terminal at Union Pier. In addition, the plaintiffs in the above referenced case have submitted "a request to be notified as consulting parties pertaining to any Section 106 review relating to Federal funding or permitting with respect to the Union Pier Cruise Terminal in Charleston, South Carolina." This request was submitted to several Federal agencies, including the Corps. Specifically, the plaintiffs expressed an interest in the preservation of historic properties that are located near the project site. However, for the reasons which follow, the Corps has determined that there is no potential to cause effects on historic properties and that no project-specific consultation is required under Section 106.

In accordance with the Standard Operating Procedures for the Regulatory Program dated July 2009, the Corps used 33 CFR 325 Appendix C, the Revised Interim Guidance for Implementing Appendix C dated April 25, 2005, and the Clarification of the Revised Interim Guidance for Implementing Appendix C dated January 31, 2007 to determine the "permit area" for the proposed project. As described in the Revised Interim Guidance, "(t)he limits of the "permit area" are constrained by the extent of Federal Control and responsibility over a particular project (i.e., the undertaking)." In this case, the proposed "undertaking" consists of the installation of additional pilings in waters of the United States underneath an existing, previously permitted pile supported wharf.

Similar to maintenance dredging, the installation of additional pilings underneath an existing wharf and the renovation of existing buildings that are located on a previously permitted pile supported structure, such as Building 322 at Union Pier, are considered maintenance activities. The "permit area" for this type of project is limited to the footprint of the proposed activities in waters of the United States. Therefore, the Corps' evaluation focuses on the footprint of the proposed pilings and any potential impacts associated with the installation of the additional pilings because of the limited scale and magnitude of the proposed undertaking.

Direct impacts associated with the installation of the additional pilings will occur underneath the existing wharf and have no potential to cause effects to historic properties pursuant to 36 CFR 800.3(a)(1). As described above, the Corps recognizes that Union Pier is located adjacent to historic properties, such as the U.S. Customs House. However, effects associated with the installation of additional pilings, such as noise associated with construction or pile driving equipment, will be short-term and negligible, and, therefore, will not directly or indirectly alter the listing or eligibility characteristics of any historic properties. Existing conditions on or near the proposed undertaking include busy city streets, an existing railroad spur, and the operation of an existing commercial shipping facility. In sum, the installation of additional pilings underneath an existing (and extensively modified) wharf is understood to be the type of activity that is of such limited nature and scope that it has no potential to cause effects to historic properties in or outside of the "permit area," even if such properties were deemed to be present within the permit area.

Date consultation complete (if necessary): N/A
Additional information (Describe steps taken to address concerns, as needed):

d) Section 401 Water Quality Certification: The effective date for the 2012 Nationwide Permits is March 19, 2012. At this time, the S.C. Department of Health and Environmental Control has not certified the new NWPs. Therefore, an individual Section 401 Water Quality Certification is required.

Individual certification required: ☒ yes ☐ no A special condition of this NWP requires the permittee to obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations prior to beginning the authorized work.
☐Issued ☐Waived ☐Denied

e) Coastal Zone Management Act: The effective date for the 2012 Nationwide Permits is March 19, 2012. At this time, the S.C. Department of Health and Environmental Control has not certified the new NWPs. Therefore, an individual Coastal Zone Consistency Determination and/or a Critical Area Permit is required.
Individual certification required: ☒ yes ☐ no A special condition of this NWP requires the permittee to obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations prior to beginning the authorized work.
☐Issued ☐Waived ☐Denied

Additional information (optional):
f) Wild and Scenic Rivers Act:
Project located on designated or "study" river: ☐ yes ☒no
Managing Agency:
Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:
Additional information (optional):

g) Other

Special Conditions Required *(include rationale for each required condition/explanation for requiring no special conditions)*: ☒ yes ☐ no The existing pile supported wharf and the additional pilings are located within navigable waters of the United States. Therefore, the following special conditions will be included in the Nationwide Permit verification letter:

That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

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.

That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:

1. **A copy of this permit;**
2. **A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;**
3. **A statement that any required mitigation was completed in accordance with the permit conditions;**
4. **The signature of the permittee certifying the completion of the work and**

mitigation.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

It is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of Charleston Harbor. This permit does not convey any property rights either in real estate or material or any exclusive use privileges; nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of Charleston Harbor pursuant to its easement rights.

It is understood and agreed that if the District Commander determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of Charleston Harbor, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Commander, and there shall be no entitlement to compensation from the United States for damage or injury.

Conveyance of this permit applies only to the structure authorized and does not authorize the construction of any permanent structure or any structure suitable for habitation or any utility leading either to permanent structures suitable for habitation or to permanent structures within the bounds of areas on which the Corps of Engineers enjoys easement rights.

That permittee agrees that no permanent structures, beyond those authorized by this document, will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Commander.

That the Secretary of the Army, representing the United States of America, hereby consents to the herein authorized facilities or structures to be located on or across easement lands vested in the United States of America for the construction and operation of Charleston Harbor. The permittee shall not engage in any act which may interfere with or abridge the easement interests of the United States, except those specifically authorized herein.

Compensatory Mitigation Determination: Has the applicant avoided and minimized impacts to the maximum extent practicable? ☒ yes ☐ no If "NO", Explain:

(1) Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?

☐ yes ☒ no *[If "no," do not complete the rest of this section and include an explanation of why not here]* The proposed project consists of the installation of additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The potential impact to waters of the United States would affect a small area underneath an existing structure, and the additional pilings will be installed among thousands of pilings that are already located underneath this previously permitted structure. Therefore, compensatory mitigation is not required.

Is the impact in the service area of an approved mitigation bank? ☐ yes ☐ no

i. Does the mitigation bank have appropriate number and resource type of credits available? ☐ yes ☐ no

(2) Is the impact in the service area of an approved in-lieu fee program? ☐ yes ☐ no

i. Does the in-lieu fee program have appropriate number and resource type of credits available? ☐ yes ☐ no

(3) Check the selected compensatory mitigation option(s):

☐ mitigation bank credits

☐ in-lieu fee program credits

☐ permittee-responsible mitigation under a watershed approach

☐ permittee-responsible mitigation, on-site and in-kind

☐ permittee-responsible mitigation, off-site and out-of-kind

(4) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

District Engineer's Decision:

The proposed activity would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest.

PREPARED BY:

for Nathaniel I. Ball
Project Manager

20 April 2012
Date

REVIEWED BY:

Travis G. Hughes
Chief, Special Projects Branch
Regulatory Division

20 April 2012
Date

REVIEWED BY:

Tina B. Hadden
Chief, Regulatory Division

20 April 2012
Date

APPROVED BY:

Edward P. Chamberlayne, P.E.
Lieutenant Colonel, U.S. Army
Commander and District Engineer

20 APR 12
Date

EXHIBIT F

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

TECHNICAL SUMMARY OF REVIEW

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

Permit:
Permit with Conditions: X
Deny:

I. Background Information:

Database ID# 75114

Permit Number: OCRM-12-054-B

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

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

County: Charleston Water Body: Charleston Harbor/Cooper River

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

II. Project Description and Stated Purpose:

Description:

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

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

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

Federal Agencies: **None**

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

Local Agencies: **None**

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

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

IV. Environmental Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

Open water areas beneath an existing wharf and existing building over the water.

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

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

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

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

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

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

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

V. Policy Assessment:

A. Regulatory History:

1) Previous OCRM authorizations (land disturbance, Federal cert.):

SC STATE PORTS AUTHORITY	**90-4T-172-P**
FLEET LANDING RESTAURANT, LLC	**OCRM-04-339-R**
SC STATE PORTS AUTHORITY	**99-1P-261-P-C**

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**

3) Master Plans (dock, archaeological, wetland): **No**

4) Date of O & M: **N/A**

5) Navigable tributary crossings proposed: **None**

6) Property frontage at highground and water, offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**

7) Community or public marina: **Commercial Pier**

8) Water quality sampling/monitoring program required: **No**.

9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**

10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**

11) Dock masters office location and number: **No**.

12) SAMP restrictions: **N/A**

13) NERRS review area: **N/A**

14) Deed restrictions: **N/A**

15) Wetland delineation approved by ACOE: **N/A**

16) Development plan and parking approved by local government: **N/A**

17) Valid critical area line certified: **Yes**

18) Marsh ownership claims: **None**

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

1) CZMA:

Approval or denial of permits; appeal to council	**48-39-150**
Legislative declaration of state policy	**48-39-30**
Legislative declaration of findings	**48-39-20**

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

Mitigation Criteria	**R.30-4(G)(2)**
General Considerations	**R.30-11(B)**
Further Guidelines	**R.30-11(C)**

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

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

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

3) CZ Policies (Management Program Document):

Policies for Port Facilities

1) **New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

2) **Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

3) **To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.**

4) **New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.**

5) **Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.**

6) **Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.**

7) **Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.**

8) **Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development**

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

9) **Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.**

10) **Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.**

11) **All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].**

12) **All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.**

13) **All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.**

14) **Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.**

15) **The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).**

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

Priority of Uses

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

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;
2) Water-related uses which do not reduce or degrade the natural value or resources within the port;
3) Nonwater-dependent or nonwater-re1ated uses which retain future flexibility of the port for water-dependent needs.

Designated Sites

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

C. Does the project contravene any coastal zone regulations?

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

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

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

See attached Special Conditions

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

N/A

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

(Name) **(Date)**

VIII: Reviewed By:

1. Project Manager: Steven Brooks 12/17/12

(Signature) **(Date)**

2. Section Manager 12/17/12

(Signature) **(Date)**

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

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

LONGTERM CUMULATIVE AFFECTS

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

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

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

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

AIR EMISSIONS

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

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

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

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

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal is conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA requires its contractors, for the activities addressed under this permit, to:

    a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

    b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all nonroad equipment between 100 and 750 horsepower.

    c. turn off construction equipment and vehicles not in active use.

    d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

    e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

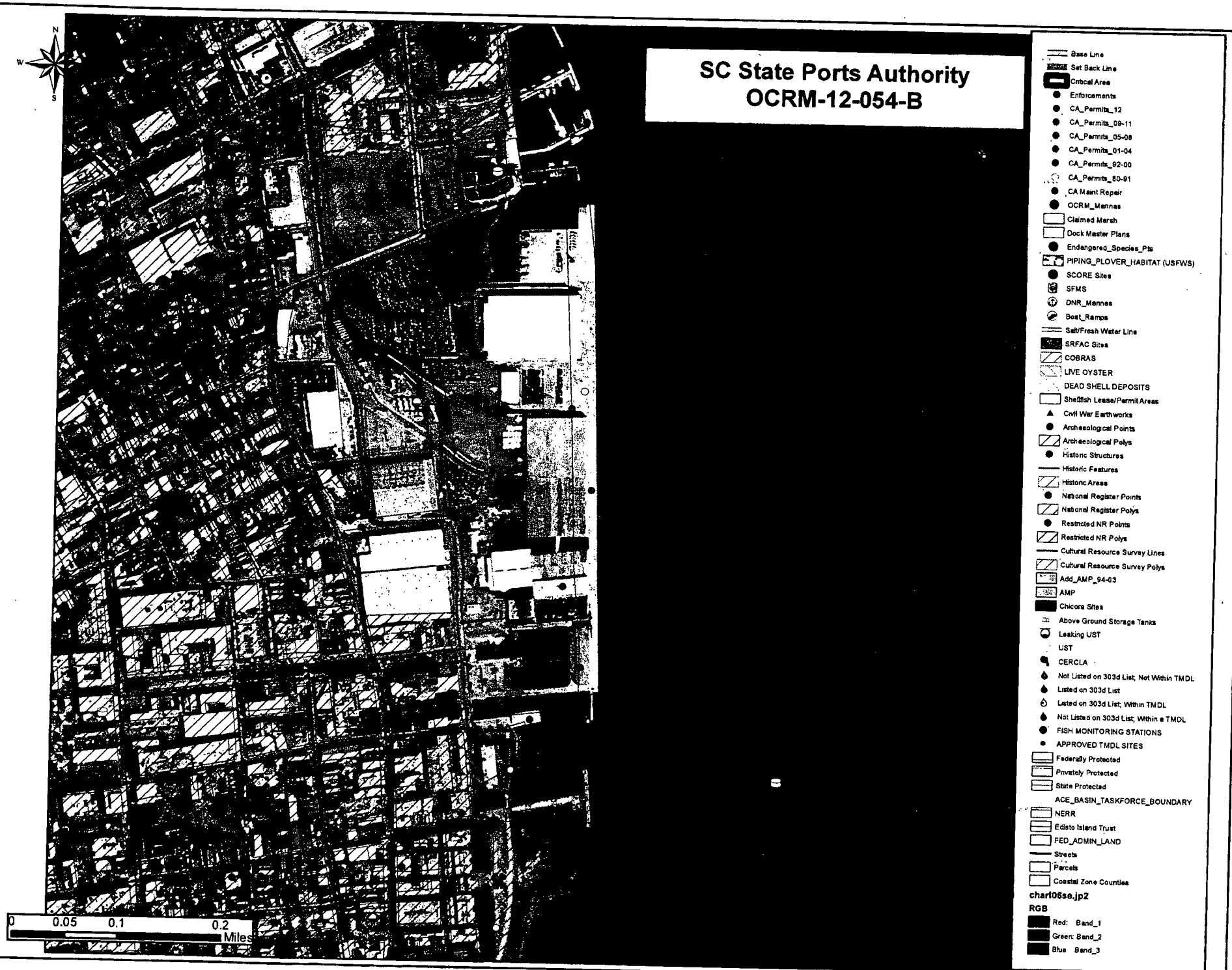
6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning

System equipment.

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

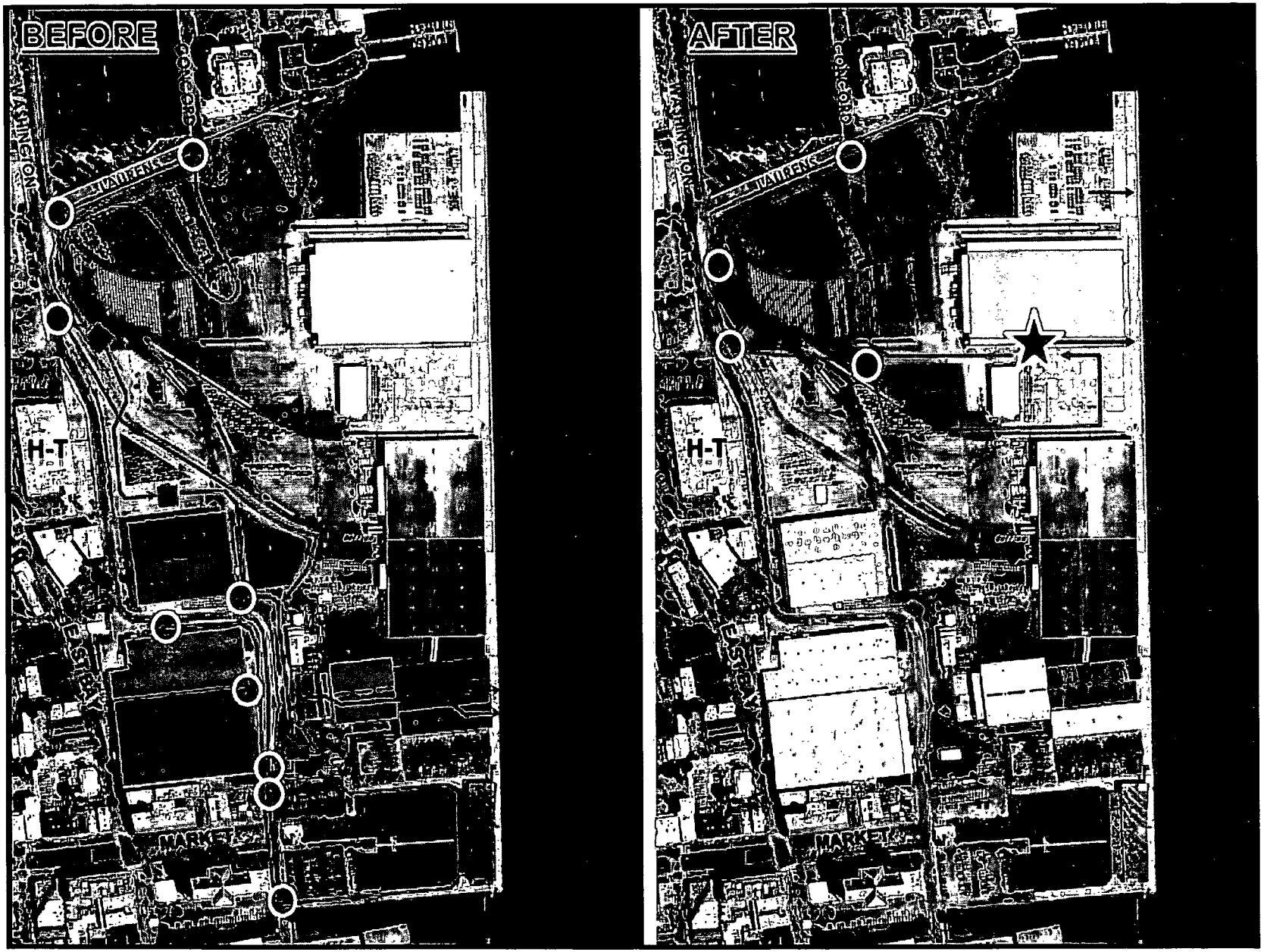
X. **Attachments Required:**

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


SC State Ports Authority
OCRM-12-054-B
N
W
S
0 0.05 0.1 0.2
Miles
Base Line
Set Back Line
Critical Area
Enforcements
CA_Permits_12
CA_Permits_09-11
CA_Permits_05-08
CA_Permits_01-04
CA_Permits_92-00
CA_Permits_80-91
CA Maint Repair
OCRM_Marinas
Claimed Marsh
Dock Master Plans
Endangered_Species_Pts
PIPING_PLOVER_HABITAT (USFWS)
SCORE Sites
SFMS
DNR_Marinas
Boat_Ramps
Salt/Fresh Water Line
SRFAC Sites
COBRAS
LIVE OYSTER
DEAD SHELL DEPOSITS
Shellfish Lease/Permit Areas
Civil War Earthworks
Archaeological Points
Archaeological Polys
Historic Structures
Historic Features
Historic Areas
National Register Points
National Register Polys
Restricted NR Points
Restricted NR Polys
Cultural Resource Survey Lines
Cultural Resource Survey Polys
Add_AMP_94-03
AMP
Chicora Sites
Above Ground Storage Tanks
Leaking UST
UST
CERCLA
Not Listed on 303d List; Not Within TMDL
Listed on 303d List
Listed on 303d List; Within TMDL
Not Listed on 303d List; Within a TMDL
FISH MONITORING STATIONS
APPROVED TMDL SITES
Federally Protected
Privately Protected
State Protected
ACE_BASIN_TASKFORCE_BOUNDARY
NERR
Edisto Island Trust
FED_ADMIN_LAND
Streets
Parcels
Coastal Zone Counties
charl06se.jp2
RGB
Red: Band_1
Green: Band_2
Blue Band_3

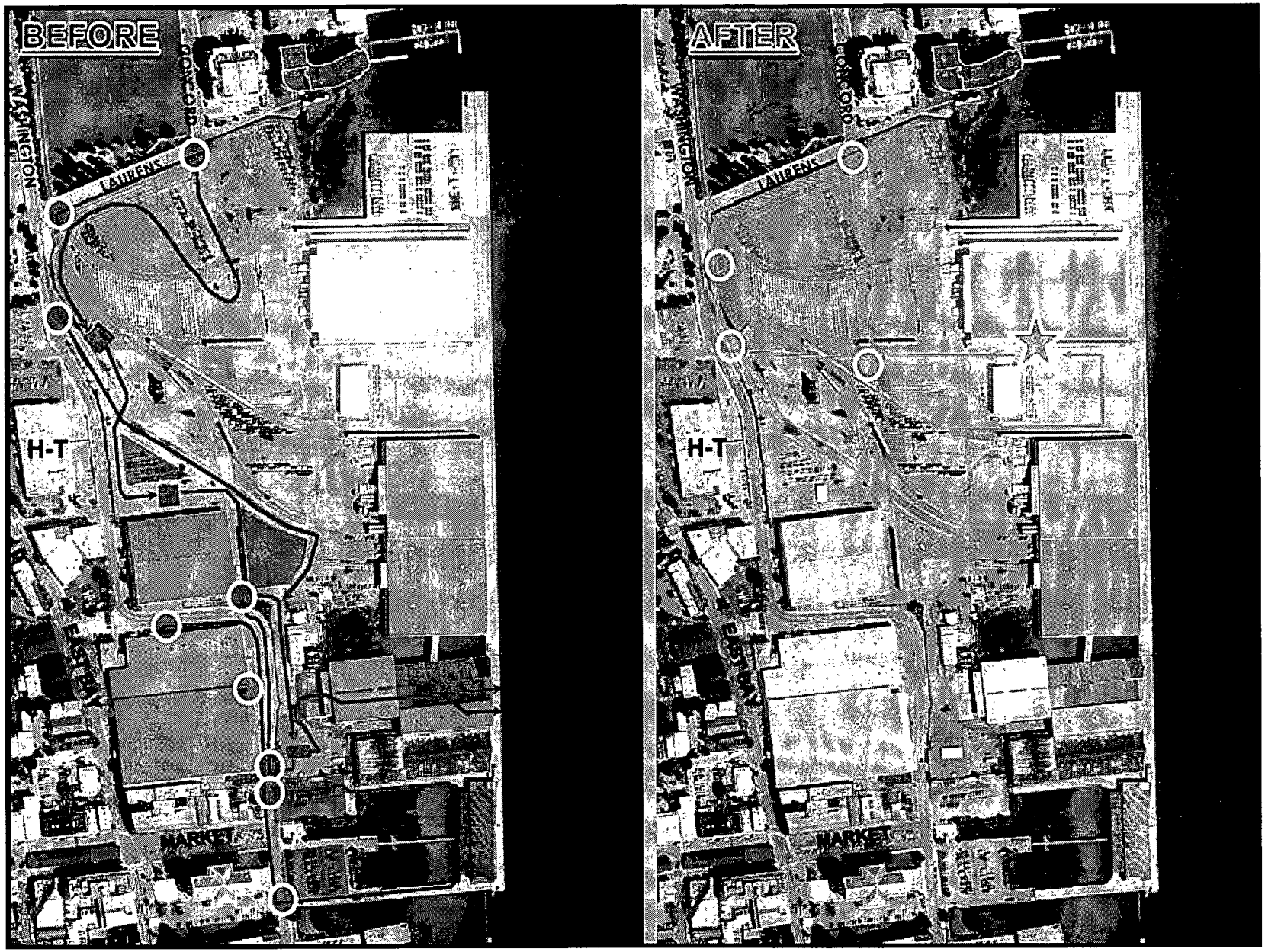
R.001228

EXHIBIT G



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

EXHIBIT G



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

EXHIBIT H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-4139
	)	
HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON,	)	AFFIDAVIT OF JOSEPH P. RILEY, JR.
Plaintiffs,	)	
vs.	)	
CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES,	)	
Defendant,	)	
and	)	
SOUTH CAROLINA STATE PORTS AUTHORITY; AND THE CITY OF CHARLESTON,	)	
Intervening Defendants.	)	

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:

1. My name is Joseph P. Riley, Jr. I am the Mayor of Charleston, South Carolina and have continuously served in this capacity since December 1975.

2. I submit this affidavit in support of the passenger cruise business at Union Pier. I do so because this business helps sustain the City's economy, furthers tourism by exposing Charleston and its extraordinary natural and built environments to untold thousands of visitors who might

not otherwise visit here and is in keeping with the maritime history of the City as a viable seaport.

3. I have been fortunate to preside over the City through an era of rebirth. While many factors have played a role in the success the City now enjoys as a desirable place to live, work, play or visit, perhaps the most important key to Charleston's success has been its resilient economy. A major component of City's economy is, and has been since its founding, its maritime industry. The direct and indirect economic effects of the operations at the Port of Charleston cannot be overstated. These operations generate millions of dollars in revenue and support hundreds, if not thousands, of jobs, across the State.

4. An important segment of the maritime industry, particularly for Charleston, is the passenger cruise business. Passenger cruise vessels are not new to Charleston. They have been calling on Charleston since the turn of the last century, and have regularly called on the Port over the last 40 years. The economic benefit of this business to the City's economy is real and significant and not limited to tourist dollars. Passenger vessels provide jobs for our stevedores and longshoremen and order supplies from our businesses. Their crews purchase goods from our local merchants, and their passengers eat in our restaurants, shop in our stores and stay in our hotels. In 2010 alone, this business generated some $35 million and over 400 jobs. While embarking vessels require that portions of Washington and Concord Streets be closed about 5 hours for traffic management purposes, the State Ports Authority has hired trained, off-duty police officers to direct traffic operations, and the traffic impact of an embarking ship is no greater than that associated with events at the Gaillard Auditorium, College of Charleston and Citadel sporting events, the Cooper River Bridge Run or the Maritime Festival.

5. I am aware that the South Carolina State Ports Authority is seeking to establish a sustainable passenger cruise business at Union Pier. I endorse these efforts not just for the economic reasons already stated, but also because, if a long term contract with Carnival Cruise Lines is successfully negotiated, an unprecedented opportunity for the citizens of this community to mold and guide the redevelopment of a significant area of our waterfront will ensue.

6. To establish a sustainable passenger cruise business, the South Carolina State Ports Authority has recognized the need to provide an attractive and modern passenger terminal. The current terminal, dedicated in 1973, is dated and inadequate. The State Ports Authority has plans to construct a new, state-of-the-art terminal just north of the location of the current terminal at Union Pier. The financing is in place to construct the new terminal, with an estimated completion date being late 2012. When the new terminal is completed, street closures now occurring when vessels embark from Charleston will cease, and the Ports Authority will make available for redevelopment some 35 acres along the Cooper River waterfront. The redevelopment of Union Pier poses an extraordinary, once in forever opportunity for the City and the State. Under the redevelopment plan, streets will be reconstructed, view corridors reopened, new parks constructed and eyesores removed. The plan will create opportunities for additional places for people to live and work in the City. Properties which are now bordered by chain link or barbed wire fencing will be opened and lined with trees and shrubs. And, public access to the water's edge will be restored and preserved.

FURTHER YOUR DEPONENT SAITH NOT.

Joseph P. Riley, Jr.

Sworn to and subscribed before me,
this 23rd day of August 2011.

Notary Public for South Carolina
My Commission Expires: 2/1/15

EXHIBIT I

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-4139
	)	
HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON,	)	AFFIDAVIT OF DANIEL RICCIO
Plaintiffs,	)	
vs.	)	
CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES,	)	
Defendant,	)	
and	)	
SOUTH CAROLINA STATE PORTS AUTHORITY; AND THE CITY OF CHARLESTON,	)	
Intervening Defendants.	)	

PERSONALLY, appeared before me the undersigned who, being duly sworn, deposes and says:

1. My name is Daniel Riccio. I am the director of Livability Division of the City of Charleston Department of Planning, Preservation and Sustainability. In 2002, the City of Charleston created, as part of its municipal court system, a livability court. I was assigned as a police officer and supervised the court from January 2002 until October 2007. From October 2007 until my retirement, I served on the City Police force. In 2010, after I retired from the police department, I was hired by the City of Charleston as the Director of the Livability Division. The purpose of the livability court is to hear cases arising under City ordinances that have a direct bearing on the quality of residential life in the City. Cases before the court concern issues related to noise, sanitation, tourism management, animal control

and the like. My division responds to complaints of these natures, issues citations and, when applicable, assists in the prosecution of matters before the court.

2. Over the years, the Livability Division has fielded many complaints and issued many citations for violations of the City's noise ordinance. I have consulted the police department and reviewed the records of the Livability Division regarding complaints pertaining to noise or pollution from passenger ships that call at Union Pier and as of the date of the Affidavit, there have been none.

FURTHER YOUR DEPONENT SAITH NOT.

DANIEL RICCIO

Sworn to and subscribed before me,
this 2nd day of August 2011.

Notary Public for South Carolina
My Commission Expires: 2/1/15

Exhibit 4

JAN 27 2012

South Carolina State **PORTS AUTHORITY**

P.O. Box 22287
Charleston, S.C. 29413-2287 USA
(843) 856-7048
Fax: (843) 856-7067

January 23, 2012

Mr. Nathaniel Ball
Permit Evaluation Branch, USACOE
69A Hagood Avenue
Charleston, SC 29403-5107

Dear Mr. Ball:

Subject: Joint Federal and State Application Form for Activities Affecting Waters of The Unites States or Critical Areas of the State of South Carolina
Union Pier Cruise Facility – Renovation of Building 322
Union Pier Terminal – State Pier 2
Project Number CIF11E006B

The South Carolina State Ports Authority would like to submit the above referenced application for your review and approval. If you have any questions or require any additional information, please feel free to contact me.

Respectfully submitted,

Derrick L. Bellamy

Derrick L. Bellamy, P.E.
Staff Engineer

cc: Mr. Joe T. Bryant, SCSPA
Mr. David N. Smith, SCSPA

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina	This Space for Official Use Only Application No. Date Received JAN 27 2012 Project Manager Watershed #

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant Last Name: Bellamy		11. Agent Last Name (agent is not required):	
2. Applicant First Name: Derrick		12. Agent First Name:	
3. Applicant Company Name: South Carolina State Ports Authority		13. Agent Company Name:	
4. Applicant Mailing Address: Post Office Box 22287		14. Agent Mailing Address:	
5. Applicant City: Charleston		15. Agent City:	
6. Applicant State: South Carolina	7. Applicant Zip: 29413-2287	16. Agent State:	17. Agent Zip:
8. Applicant Area Code and Phone No.: 843-856-7057		18. Agent Area Code and Phone No.:	
9. Applicant Fax No.: 843-856-7067		19. Agent Fax No.:	
10. Applicant E-mail: dbellamy@scspa.com		20. Agent E-mail:	

21. Project Name: Building No. 322 Renovation		22. Project Street Address: 32 Washington Street (Future 180 Concord St.)	
23. Project City: Charleston	24. Project County: Charlesotn	25. Project Zip Code: 29403	26. Nearest Waterbody: Cooper River
27. Tax Parcel ID: 459-00-00-009		28. Property Size (acres): 49.4	
29. Latitude: 32 47' 9"		30. Longitude: 79 55' 29"	

31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):

Exit I-26 at Exit 219 - B (Morrison Drive & East Bay Street). From East Bay Street. turn left onto Calhoun Street. From Calhoun Street. turn right onto Concord Street. The Cruise Terminal will be at 180 Concord Street.

32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed)

See Attached Sheet

33. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed):

See Attached Sheet.

34. Type and quantity of Materials to Be Discharged

Dirt or Topsoil:	____	☐cubic yards
Clean Sand:	____	☐cubic yards
Mud:	____	☐cubic yards
Clay:	____	☐cubic yards
Gravel, Rock, or Stone:	____	☐cubic yards
Concrete:	____	☐cubic yards
Other (describe):	____	☐cubic yards
TOTAL:	____	cubic yards

35. Type and Quantity of Impacts to U.S. Waters (including wetlands).

Filling:	____	☐acres ☐ sq.ft.	____	☐cubic yards
Backfill & Bedding:	____	☐acres ☐ sq.ft	____	☐cubic yards
Landclearing:	____	☐acres ☐ sq.ft	____	☐cubic yards
Dredging:	____	☐ acres☐ sq.ft.	____	☐cubic yards
Flooding:	____	☐acres ☐ sq.ft.	____	☐cubic yards
Draining/Excavation:	____	☐acres ☐ sq.ft.	____	☐cubic yards
Shading:	____	☐acres ☐ sq.ft.	____	☐cubic yards

TOTALS: ____ acres ____ sq.ft. ____ cubic yards

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
			Total Wetland Impacts (acres)	

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
			Total Stream Impacts (Linear Feet)	

38. Have you commenced work on the project site? ■ YES ☐ NO If yes, describe all work that has occurred and provide dates.

New work has not commenced. Repairs to the building substructure has been started.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

See Attached Sheet

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

It is reasonably anticipated that the work planned will cause no adverse impacts to jurisdictional areas.

41. See the attached sheet to list the names and addresses of adjacent property owners.
A search is being performed to identify the names and addresses of the adjacent property owners.

42. List all Corps Permit Authorizations and other Federal , State, or Local Certifications, Approvals, Denials received for work described in this application.

#71-05-37 / #72-10-087 / 78-3R-337

43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application. [1]

Applicant's Signature Date

44. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant. [1]

Derrick L. Bellamy 23 Jan. 12

Applicant's Signature Date Agent's Signature Date

[1]**The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 11 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.**

32. Description of Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas

The South Carolina State Ports Authority's (SCSPA) first cruise sailing from Charleston seems to have been the Moore-McCormack Lines vessel, Brasil, which sailed from Charleston to Bermuda on April 30, 1967. Cruise activity in Charleston steadily grew resulting in a dedicated passenger facility and berth being constructed at Union Pier Terminal. The current passenger terminal was dedicated in October 1973. With continued growth of the cruise business and especially with the current terminal security requirements, the need for a new facility has become critical. To address the requirements of new Federal regulations, in 2007 the SCSPA entered into a Memorandum of Understanding with US Customs and Border Protection (CBP) for the conditional approval of ongoing cruise operations on a trial basis. That conditional approval has been renewed on an annual basis with the understanding that an improved facility would be needed for continued operations.

The current cruise operation involves the Passenger Terminal (Building #325), Buildings #302, #303 & #304 for stores and luggage. These buildings are denoted on Sheet 2 of 4.

The SCSPA evaluated several options for providing an improved facility satisfactory to CBP requirements. These options were explored in a study by Berimello Ajamil & Partners, Inc. completed September 2007 and in the Concept Plan for Union Pier Terminal completed in March 2010, by Cooper Robertson & Partners. Relocating the passenger facility to Building #322 is the preferred option. Building #322 is denoted on Sheet 2 of 4.

The only activity in the preferred option that will affect U.S. Waters or State Critical Areas will be the installation of five pile clusters driven to the marl to support three elevators and two escalators. All clusters will be within the footprint of the existing pile supported Building #322. Those locations are shown on the attached Sheet 3 of 4 with cross section shown on Sheet 4 of 4.

Other activities not affecting waters of the US, but relative to this project, will be general renovation of Building #322. The renovation will include a mezzanine accessed by ADA compliant elevators and escalators for boarding passengers to the cruise ships similar to the stairs and elevators serving the mezzanine of Building #325. Other landside improvements include renovation of the building's exterior and interior, canopies over pedestrian areas, and a loading dock for transferring ship stores from delivery trucks to the cruise ship. Ship store activity is now carried out in Buildings #302, #303, & #304. Building #330 (Sheet 2 of 4) will be demolished.

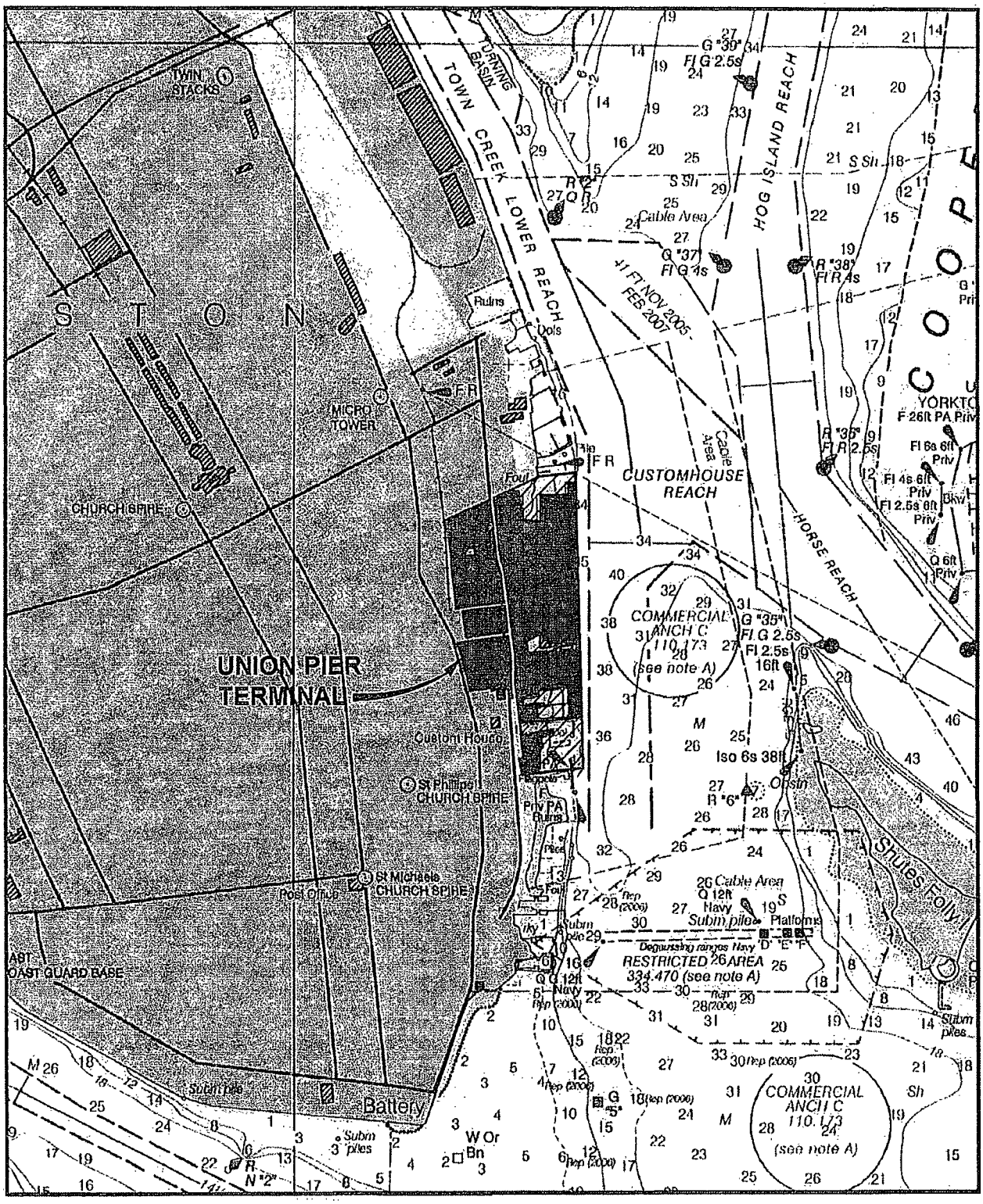
33. Overall Project Purpose...

The overall project purpose is to provide a passenger facility satisfactory for the continued handling of cruise vessels at Union Pier Terminal. The purpose of the installation of elevators and escalators (activity affecting US waters) is to provide ADA compliant access to the mezzanine level for boarding passengers.

39. Describe measures taken to avoid...

The use of Building #322 for cruise passenger operations reduces the impacts to US waters. Modifying the current Passenger Terminal (Building #325) by enlarging and improving its access to better accommodate current CBP requirements would impact wetlands immediately to the shore side of the building. Constructing a new facility on the footprint of Buildings #301 - #305 would involve, at a minimum, demolition of Buildings #301, #302, & #305 and reconstructing over water at the same site.

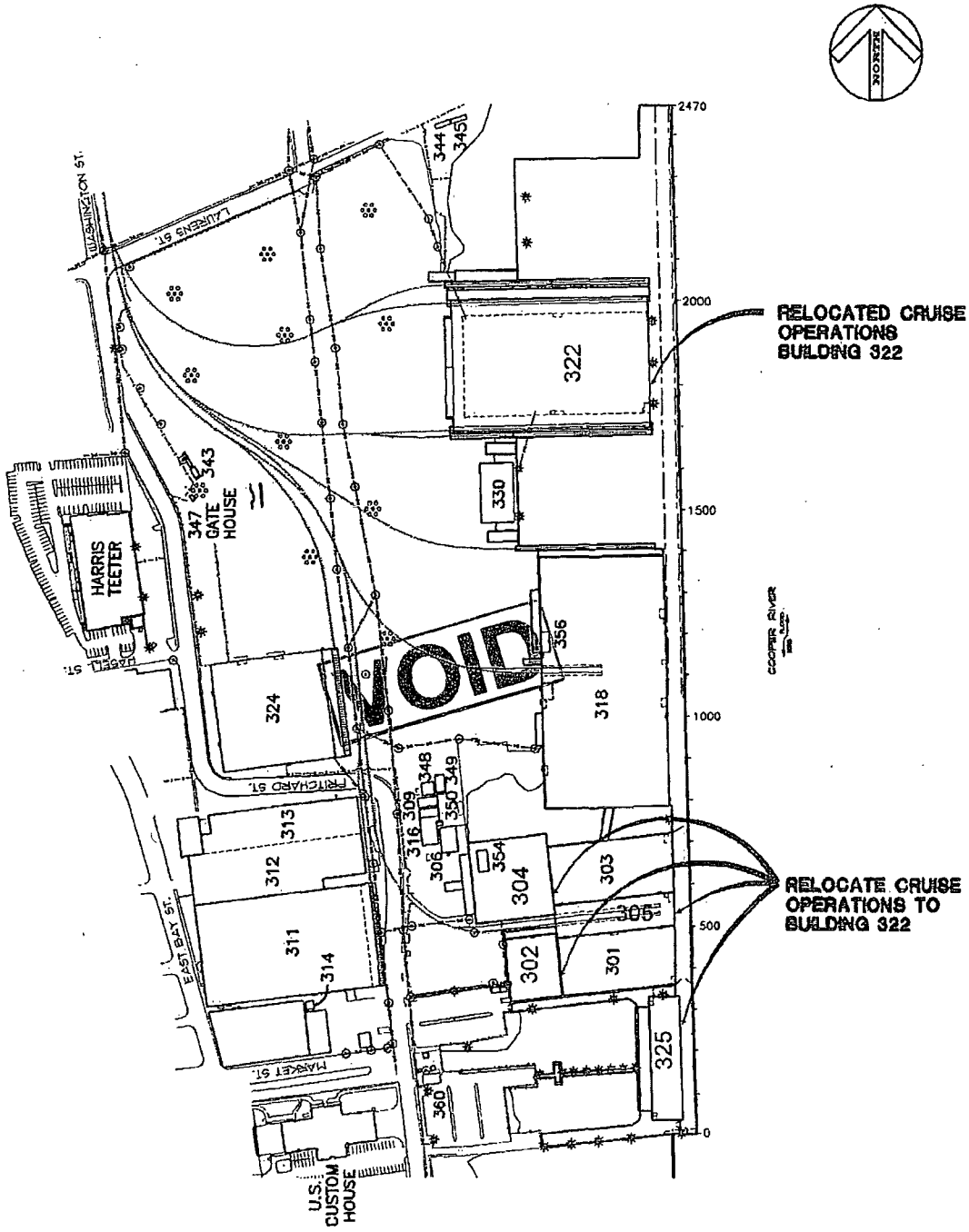
The use of Building #322 will also reduce the cargo capacity of Union Pier Terminal, since Building #325 (current passenger terminal) is not suitable for cargo. Its reuse would likely center around waterfront events, such as tall ships and other such water dependent activities. The use of Building #322 will also require the removal of existing rail service to Union Pier. This also affects Union Pier's cargo capability. The reduced cargo capacity and single passenger berth will result in a reduction in the number of large vessels calling Union Pier Terminal.



LOCATION

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp1
DATE: DECEMBER 2011
SHEET: 1 OF 4



BUILDING LOCATION PLAN
UNION PIER TERMINAL

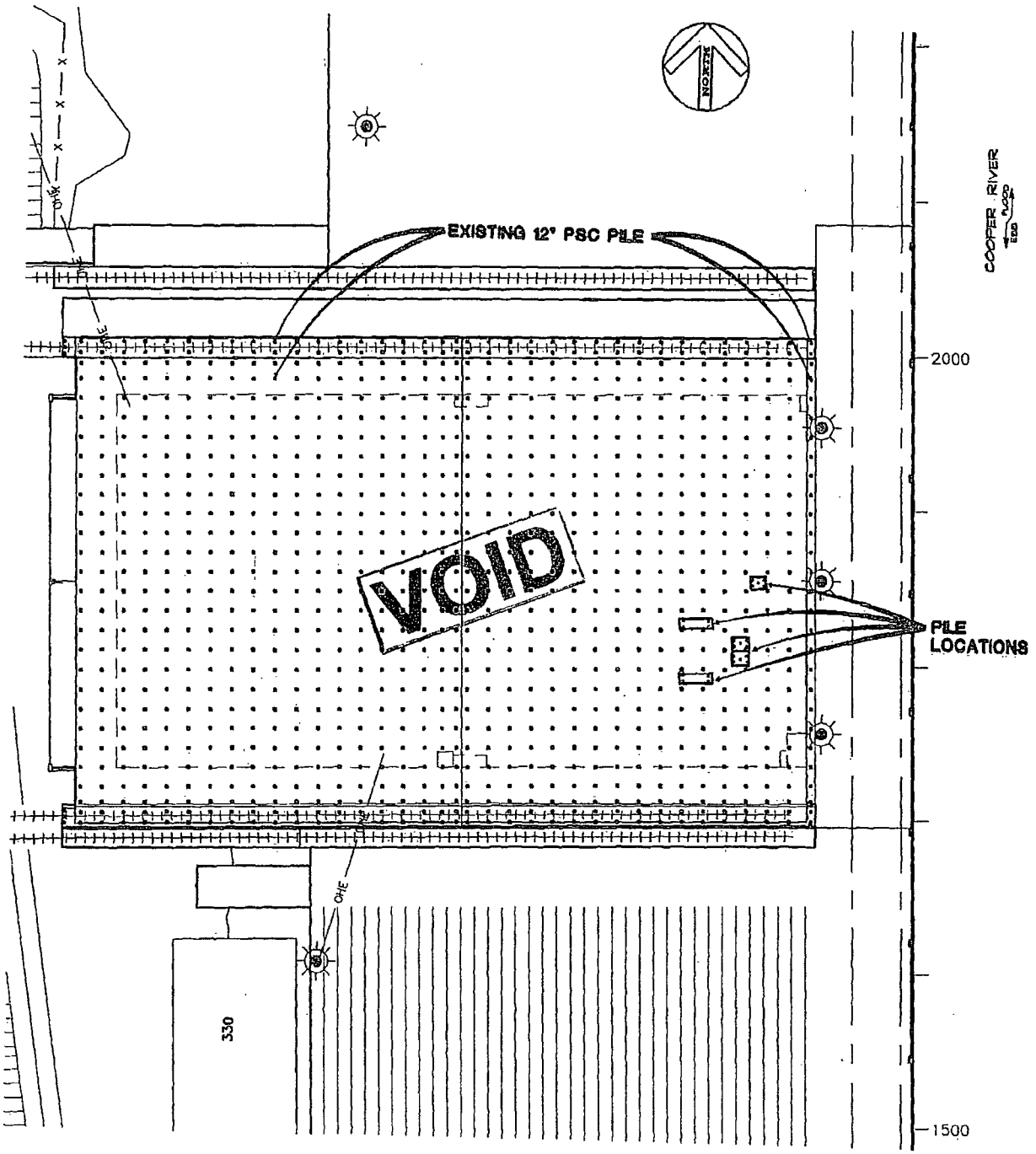
400 0 400

SCALE IN FEET

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp2
DATE: DECEMBER 2011
SHEET: 2 OF 4

COE00043



LEGEND

B — B — ELEVATORS

A — A — ESCALATOR

100 0 100

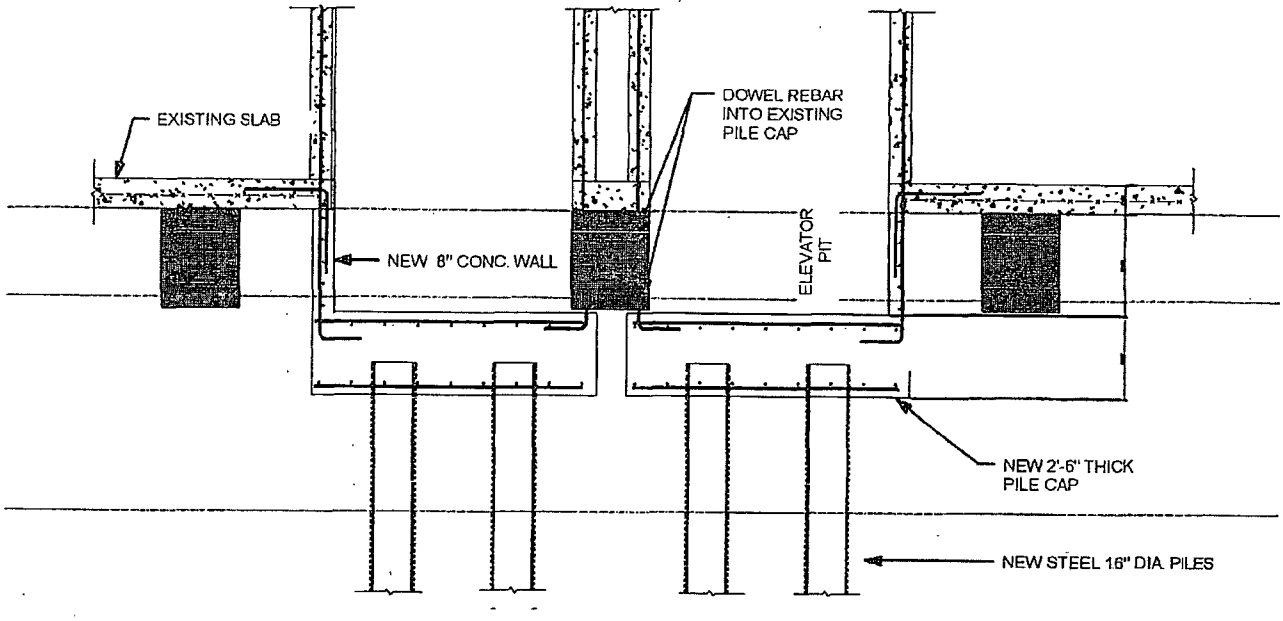
SCALE IN FEET

MODIFICATIONS (BUILDING 322)

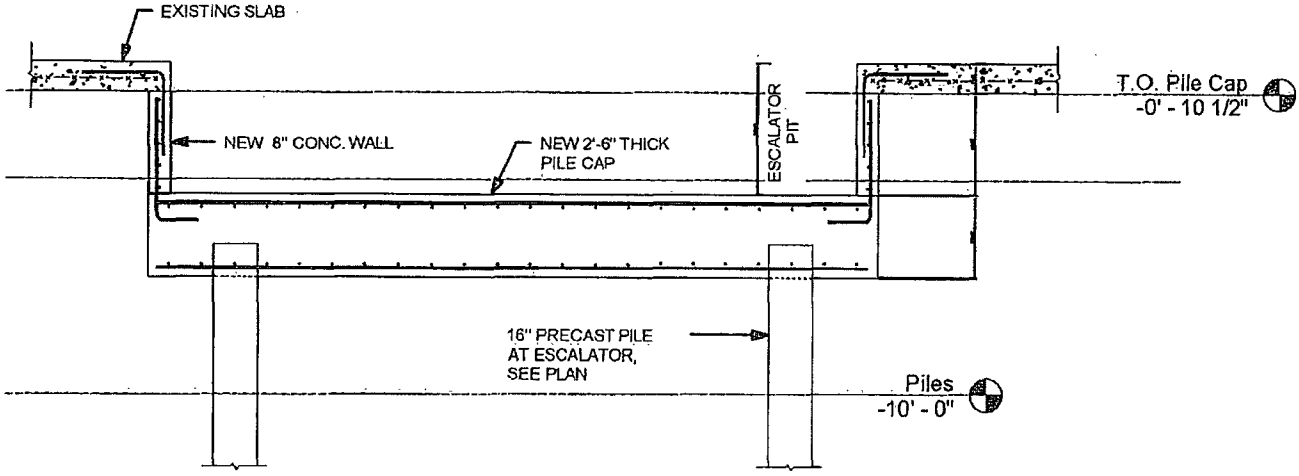
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

PROJECT NO. : CIF11E006B
FILE NAME : Upcptp3
DATE: DECEMBER 2011
SHEET: 3 OF 4

COE00044



A SECTION
ELEVATOR



B SECTION
ESCALATOR

MODIFICATIONS
(CROSS SECTION)

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcptp4
DATE: DECEMBER 2011
SHEET: 4 OF 4

COE00045

South Carolina State PORTS AUTHORITY

P.O. Box 22287
Charleston, S.C. 29413-2287 USA
(843) 856-7048
Fax: (843) 856-7067

January 27, 2012

Mrs. Rheta DiNovo, Director
Regulatory Programs Division
South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillian Ave., Suite 400
Charleston, SC 29405

Dear Mrs. DiNovo:

Subject: Joint Federal & State Application Form for Activities Affecting Waters of The Unites States or Critical Areas of the State of South Carolina
Union Pier Cruise Facility – Renovation of Building 322
Union Pier Terminal – State Pier 2
Project Number CIF11E006B

The South Carolina State Ports Authority would like to submit the above referenced application for your review and approval. If you have any questions or require any additional information, please feel free to contact me.

Respectfully submitted,

Derrick L. Bellamy

Derrick L. Bellamy, P.E.
Staff Engineer

Enclosures

cc: Mr. Joe T. Bryant, SCSPA
Mr. David N. Smith, SCSPA

Joint Federal and State Application Form For Activities Affecting Waters of the United States Or Critical Areas of the State of South Carolina	This Space for Official Use Only Application No._____ Date Received_____ Project Manager_____ Watershed # _____

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. Seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information

1. Applicant Last Name: Bellamy		11. Agent Last Name (agent is not required):	
2. Applicant First Name: Derrick		12. Agent First Name:	
3. Applicant Company Name: South Carolina State Ports Authority		13. Agent Company Name:	
4. Applicant Mailing Address: Post Office Box 22287		14. Agent Mailing Address:	
5. Applicant City: Charleston		15. Agent City:	
6. Applicant State: South Carolina	7. Applicant Zip: 29413-2287	16. Agent State:	17. Agent Zip:
8. Applicant Area Code and Phone No.: 843-856-7057		18. Agent Area Code and Phone No.:	
9. Applicant Fax No.: 843-856-7067		19. Agent Fax No.:	
10. Applicant E-mail: dbellamy@scspa.com		20. Agent E-mail:	

21. Project Name: Building No. 322 Renovation		22. Project Street Address: 32 Washington Street (Future 180 Concord St.)	
23. Project City: Charleston	24. Project County: Charlesotn	25. Project Zip Code: 29403	26. Nearest Waterbody: Cooper River
27. Tax Parcel ID: 459-00-00-009		28. Property Size (acres): 49.4	
29. Latitude: 32 47' 9"		30. Longitude: 79 55' 29"	

31. Directions to Project Site (Include Street Numbers, Street Names, and Landmarks and attach additional sheet if necessary):

Exit I-26 at Exit 219 - B (Morrison Drive & East Bay Street). From East Bay Street. turn left onto Calhoun Street. From Calhoun Street. turn right onto Concord Street. The Cruise Terminal will be at 180 Concord Street.

32. Description of the Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed)

See Attached Sheet

33. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed):

See Attached Sheet.

34. Type and quantity of Materials to Be Discharged

Dirt or Topsoil:	_____	☐cubic yards
Clean Sand:	_____	☐cubic yards
Mud:	_____	☐cubic yards
Clay:	_____	☐cubic yards
Gravel, Rock, or Stone:	_____	☐cubic yards
Concrete:	_____	☐cubic yards
Other (describe):	_____	☐cubic yards
TOTAL:	_____	cubic yards

35. Type and Quantity of Impacts to U.S. Waters (including wetlands):

Filling:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Backfill & Bedding:	_____	☐acres ☐ sq.ft	_____	☐cubic yards
Landclearing:	_____	☐acres ☐ sq.ft	_____	☐cubic yards
Dredging:	_____	☐ acres☐ sq.ft.	_____	☐cubic yards
Flooding:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Draining/Excavation:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
Shading:	_____	☐acres ☐ sq.ft.	_____	☐cubic yards
TOTALS:	_____ acres	_____ sq.ft.	_____	cubic yards

36. Individually list wetland impacts including mechanized clearing, fill, excavation, flooding, draining, shading, etc. and attach a site map with location of each impact (attach additional sheets if needed).

Impact No.	Wetland Type	Distance to Receiving Water body (LF)	Purpose of Impact (road crossing, impoundment, flooding, etc)	Impact Size (acres)
			Total Wetland Impacts (acres)	

37. Individually list all seasonal and perennial stream impacts and attach a site map with location of each impact (attach additional sheets)

Impact No.	Seasonal or Perennial Flow	Average Stream Width (LF)	Impact Type (road crossing, impoundment, flooding, etc)	Impact Length (LF)
			Total Stream Impacts (Linear Feet)	

38. Have you commenced work on the project site? ☒ YES ☐ NO If yes, describe all work that has occurred and provide dates.

New work has not commenced. Repairs to the building substructure has been started.

39. Describe measures taken to avoid and minimize impacts to Waters of the United States:

See Attached Sheet

40. Provide a brief description of the proposed mitigation plan to compensate for impacts to aquatic resources or provide justification as to why mitigation should not be required (Attach a copy of the proposed mitigation plan for review).

It is reasonably anticipated that the work planned will cause no adverse impacts to jurisdictional areas.

41. See the attached sheet to list the names and addresses of adjacent property owners.
A search is being performed to identify the names and addresses of the adjacent property owners.

42. List all Corps Permit Authorizations and other Federal , State, or Local Certifications, Approvals, Denials received for work described in this application.

#71-05-37 / #72-10-087 / 78-3R-337

43. Authorization of Agent. I hereby authorize the agent whose name is given on page one of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application. [1]

Applicant's Signature Date

44. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant. [1]

Denise L. Bellamy 1-27-12

Applicant's Signature Date Agent's Signature Date

[1]The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 11 and 43 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

32. Description of Overall Project and of Each Activity in or Affecting U.S. Waters or State Critical Areas

The South Carolina State Ports Authority's (SCSPA) first cruise sailing from Charleston seems to have been the Moore-McCormack Lines vessel, Brasil, which sailed from Charleston to Bermuda on April 30, 1967. Cruise activity in Charleston steadily grew resulting in a dedicated passenger facility and berth being constructed at Union Pier Terminal. The current passenger terminal was dedicated in October 1973. With continued growth of the cruise business and especially with the current terminal security requirements, the need for a new facility has become critical. To address the requirements of new Federal regulations, in 2007 the SCSPA entered into a Memorandum of Understanding with US Customs and Border Protection (CBP) for the conditional approval of ongoing cruise operations on a trial basis. That conditional approval has been renewed on an annual basis with the understanding that an improved facility would be needed for continued operations.

The current cruise operation involves the Passenger Terminal (Building #325), Buildings #302, #303 & #304 for stores and luggage. These buildings are denoted on Sheet 2 of 4.

The SCSPA evaluated several options for providing an improved facility satisfactory to CBP requirements. These options were explored in a study by Berimello Ajamil & Partners, Inc. completed September 2007 and in the Concept Plan for Union Pier Terminal completed in March 2010, by Cooper Robertson & Partners. Relocating the passenger facility to Building #322 is the preferred option. Building #322 is denoted on Sheet 2 of 4.

The only activity in the preferred option that will affect U.S. Waters or State Critical Areas will be the installation of five pile clusters driven to the marl to support three elevators and two escalators. All clusters will be within the footprint of the existing pile supported Building #322. Those locations are shown on the attached Sheet 3 of 4 with cross section shown on Sheet 4 of 4.

Other activities not affecting waters of the US, but relative to this project, will be general renovation of Building #322. The renovation will include a mezzanine accessed by ADA compliant elevators and escalators for boarding passengers to the cruise ships similar to the stairs and elevators serving the mezzanine of Building #325. Other landside improvements include renovation of the building's exterior and interior, canopies over pedestrian areas, and a loading dock for transferring ship stores from delivery trucks to the cruise ship. Ship store activity is now carried out in Buildings #302, #303, & #304. Building #330 (Sheet 2 of 4) will be demolished.

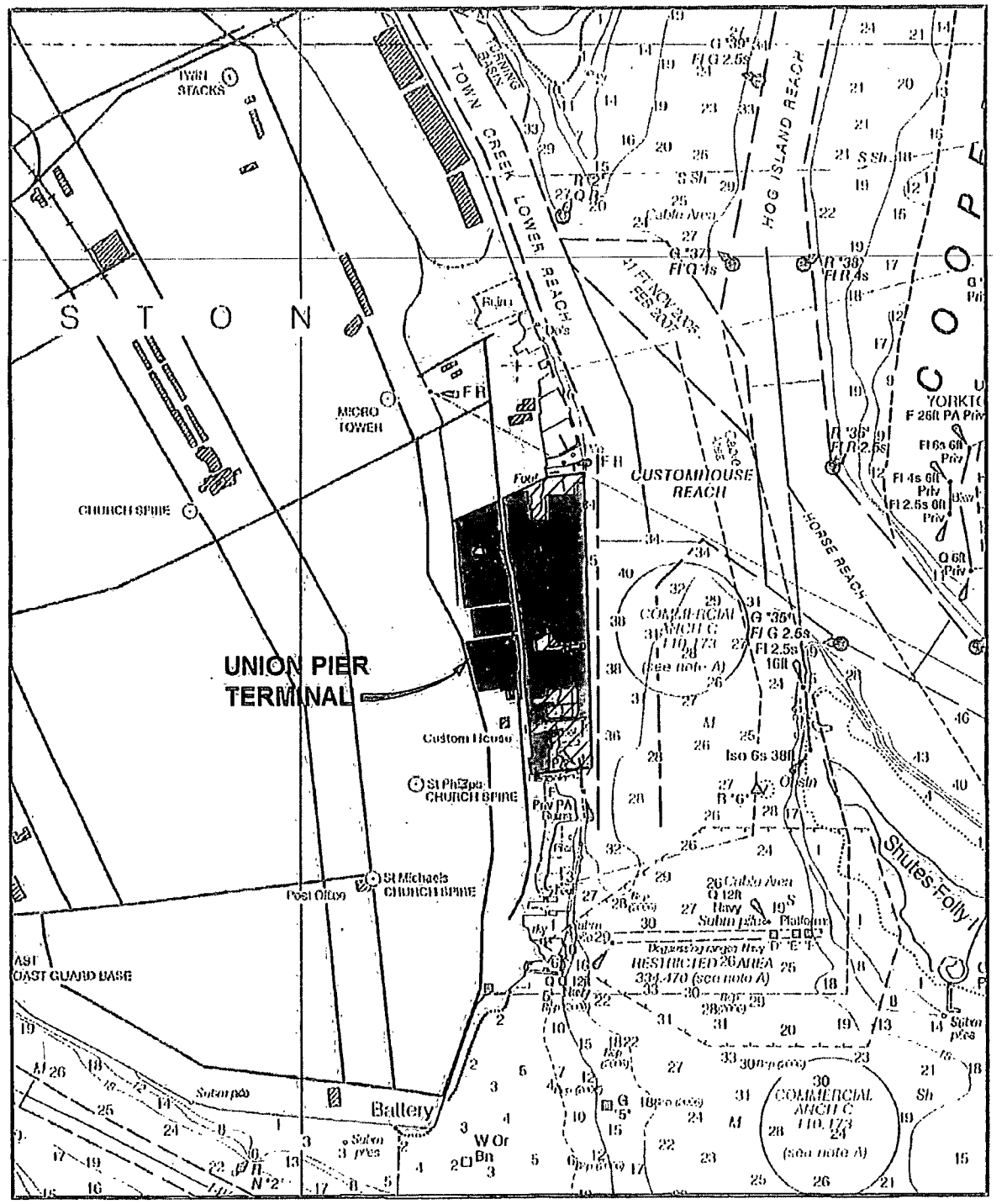
33. Overall Project Purpose...

The overall project purpose is to provide a passenger facility satisfactory for the continued handling of cruise vessels at Union Pier Terminal. The purpose of the installation of elevators and escalators (activity affecting US waters) is to provide ADA compliant access to the mezzanine level for boarding passengers.

39. Describe measures taken to avoid...

The use of Building #322 for cruise passenger operations reduces the impacts to US waters. Modifying the current Passenger Terminal (Building #325) by enlarging and improving its access to better accommodate current CBP requirements would impact wetlands immediately to the shore side of the building. Constructing a new facility on the footprint of Buildings #301 - #305 would involve, at a minimum, demolition of Buildings #301, #302, & #305 and reconstructing over water at the same site.

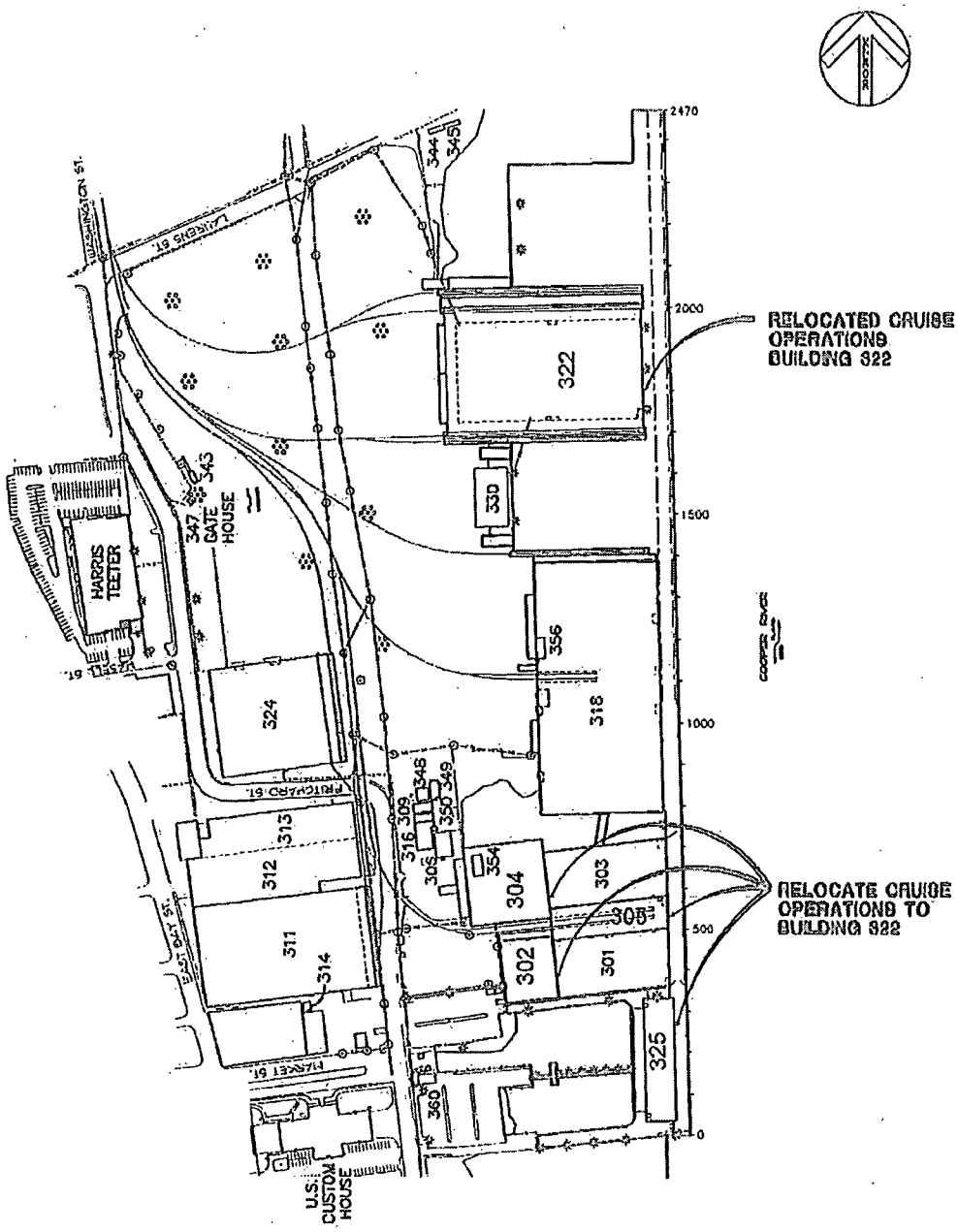
The use of Building #322 will also reduce the cargo capacity of Union Pier Terminal, since Building #325 (current passenger terminal) is not suitable for cargo. Its reuse would likely center around waterfront events, such as tall ships and other such water dependent activities. The use of Building #322 will also require the removal of existing rail service to Union Pier. This also affects Union Pier's cargo capability. The reduced cargo capacity and single passenger berth will result in a reduction in the number of large vessels calling Union Pier Terminal.



LOCATION

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplpl
DATE: DECEMBER 2011
SHEET: 1 OF 4



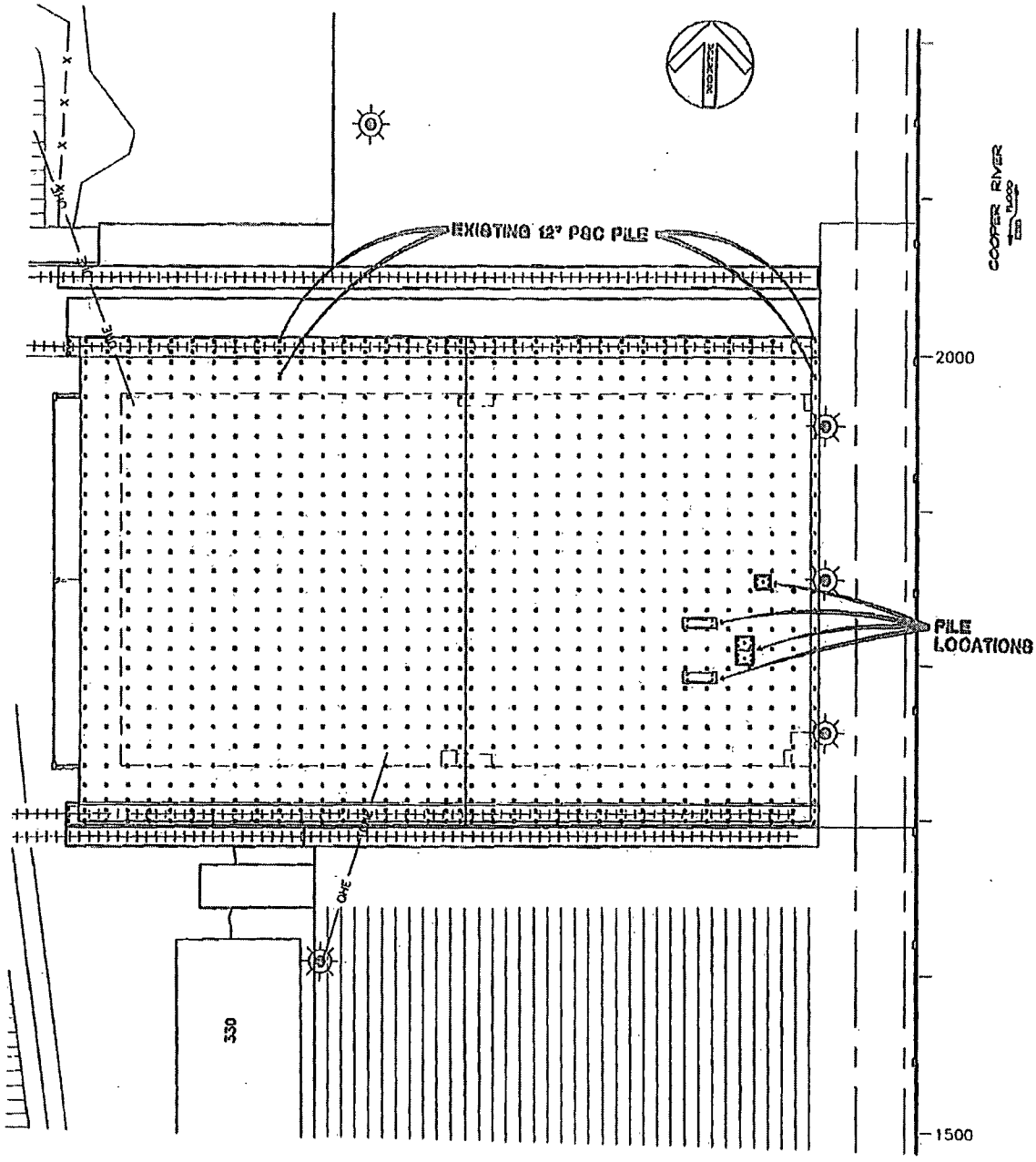
BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400

SCALE IN FEET

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp2
DATE: DECEMBER 2011
SHEET: 2 OF 4



LEGEND

ELEVATORS

ESCALATOR

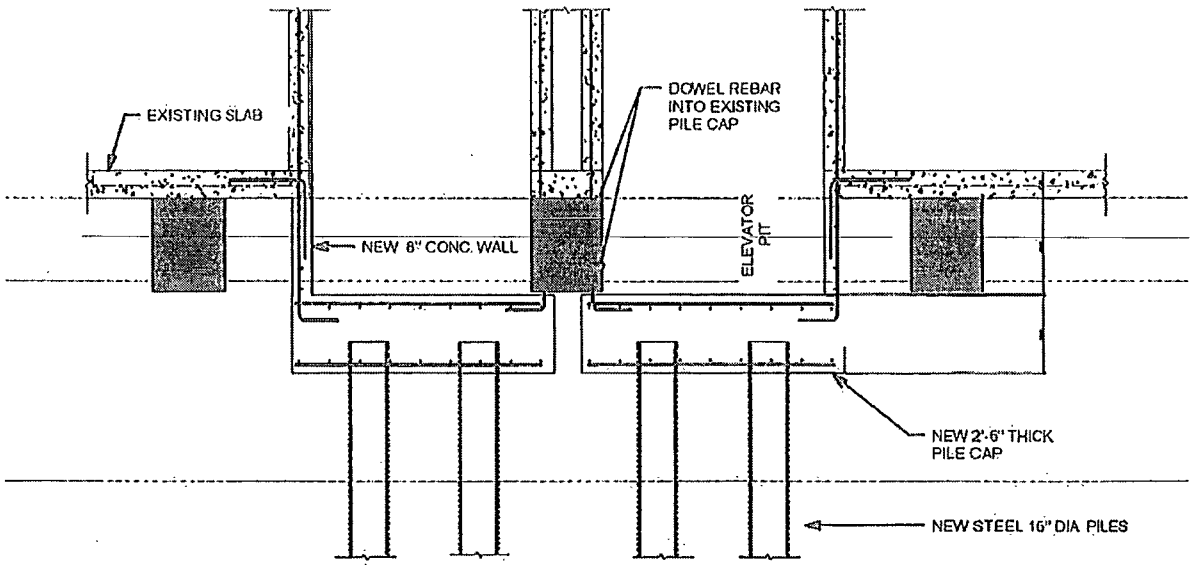
100 0 100

SCALE IN FEET

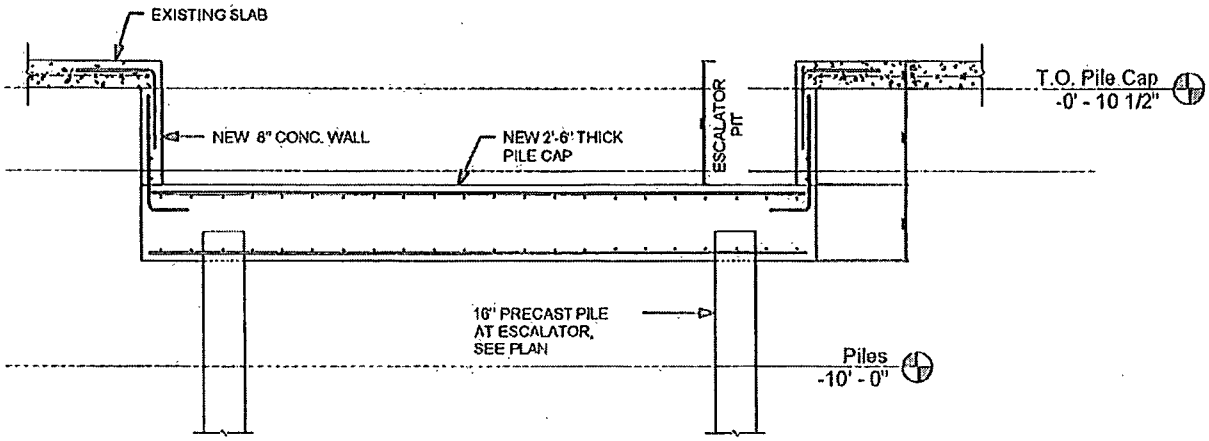
MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp3
DATE: DECEMBER 2011
SHEET: 3 OF 4



A SECTION
ELEVATOR



B SECTION
ESCALATOR

MODIFICATIONS
(CROSS SECTION)

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

PROJECT NO.: CIF11E0068
FILE NAME: Upcplp4
DATE: DECEMBER 2011
SHEET: 4 OF 4

Exhibit 5

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE

August 3, 2012 (Revision)

Permit Number: OCRM-12-054-B
Permit ID: 75114

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: South Carolina State Ports Authority
C/O Derrick Bellamy
PO Box 22287
Charleston, SC 29413

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

WORK: The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Previously, this project was advertised as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. This project is being revised to include proposed modifications, in accordance with the attached plans dated July 24, 2012, that are associated with this project. Specifically, these modifications consist of additional structural changes that are to be made to building 322 and the construction of two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322. **Please Note:** This notice will only address the improvements to building 322 and the construction of two covered staging areas.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before September 2, 2012. For further information please contact the project manager for this activity, Steve Brooks at 843-953-0235.

PLEASE REPLY TO:

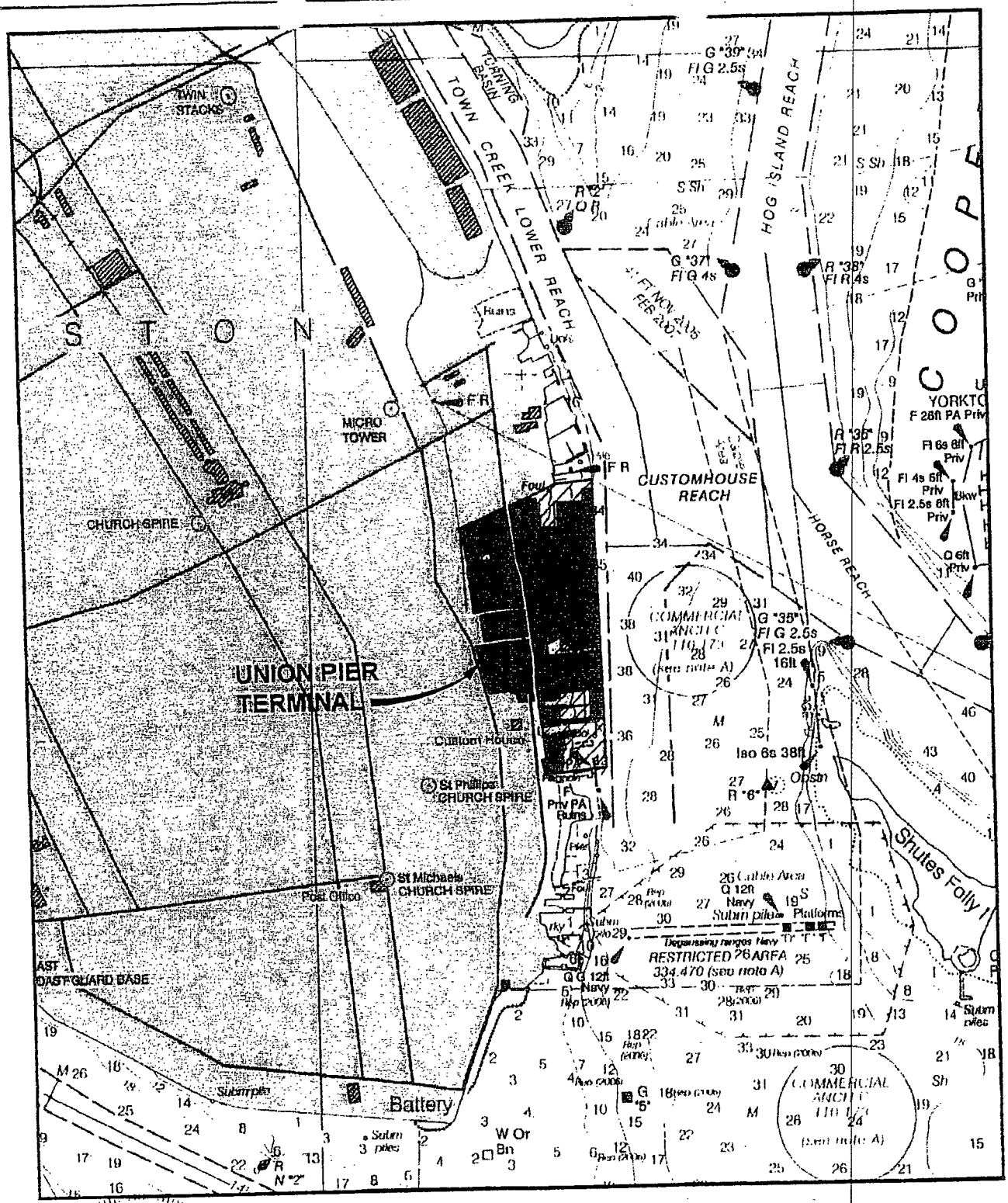
SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

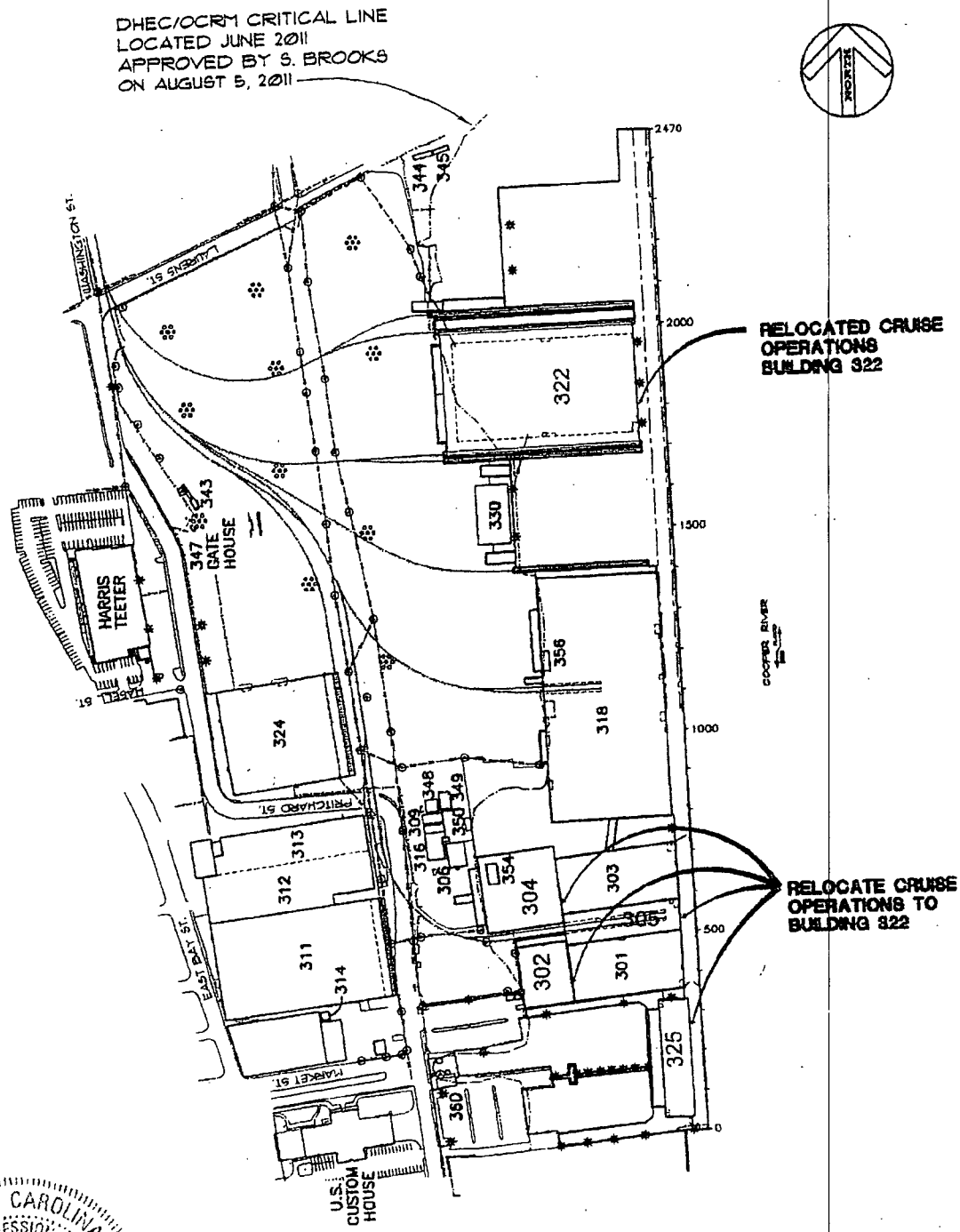
Please refer to P/N# OCRM-12-054-B BW

Steven Brooks

Steven Brooks, Wetland Section Project Manager

M


TWIN STACKS
TURNING BASIN
TOWN CREEK LOWER REACH
HOG ISLAND REACH
S T O N
MICRO TOWER
CHURCH SPIRE
CUSTOMHOUSE REACH
HORSE REACH
UNION PIER TERMINAL
Custom House
St Philips CHURCH SPIRE
St Michaels CHURCH SPIRE
Post Office
COAST GUARD BASE
Battery
COMMERCIAL ANCHORAGE
RESTRICTED AREA
334.470 (see note A)
Shutes Folly I
Obsn
Iso 6s 38ft
Platforms
Submarine cable area
Submarine pipeline
Ruins
Priv PA Ruins
YORKTC
F 28ft PA Priv
Fl 6s 8ft Priv
Fl 4s 6ft Priv
Fl 2.5s 6ft Priv
Q 6ft Priv
Fl G 2.5s
Fl R 2.5s
Fl G 4s
Fl R 4s
Fl WR 10s
Fl WG 10s
Fl G 2.5s
Q G 12ft
Q 12ft
Navy
Fl 2.5s 16ft
Fl G 2.5s
Fl G 2.5s
Fl G 2.5s



SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

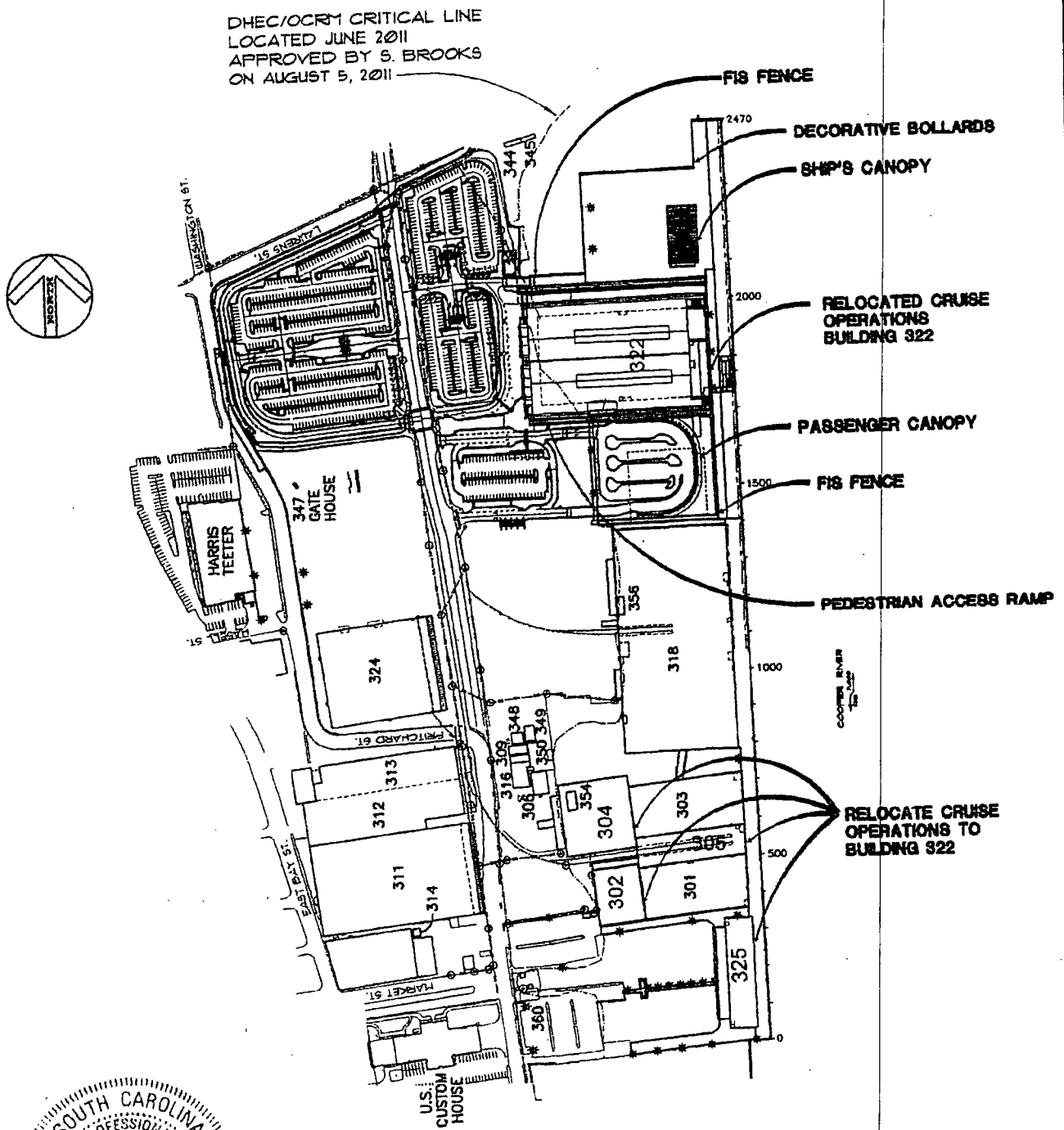
Derrick L Bellamy

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp2
DATE: MARCH 2012
SHEET: 2 OF 11



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L Bellamy

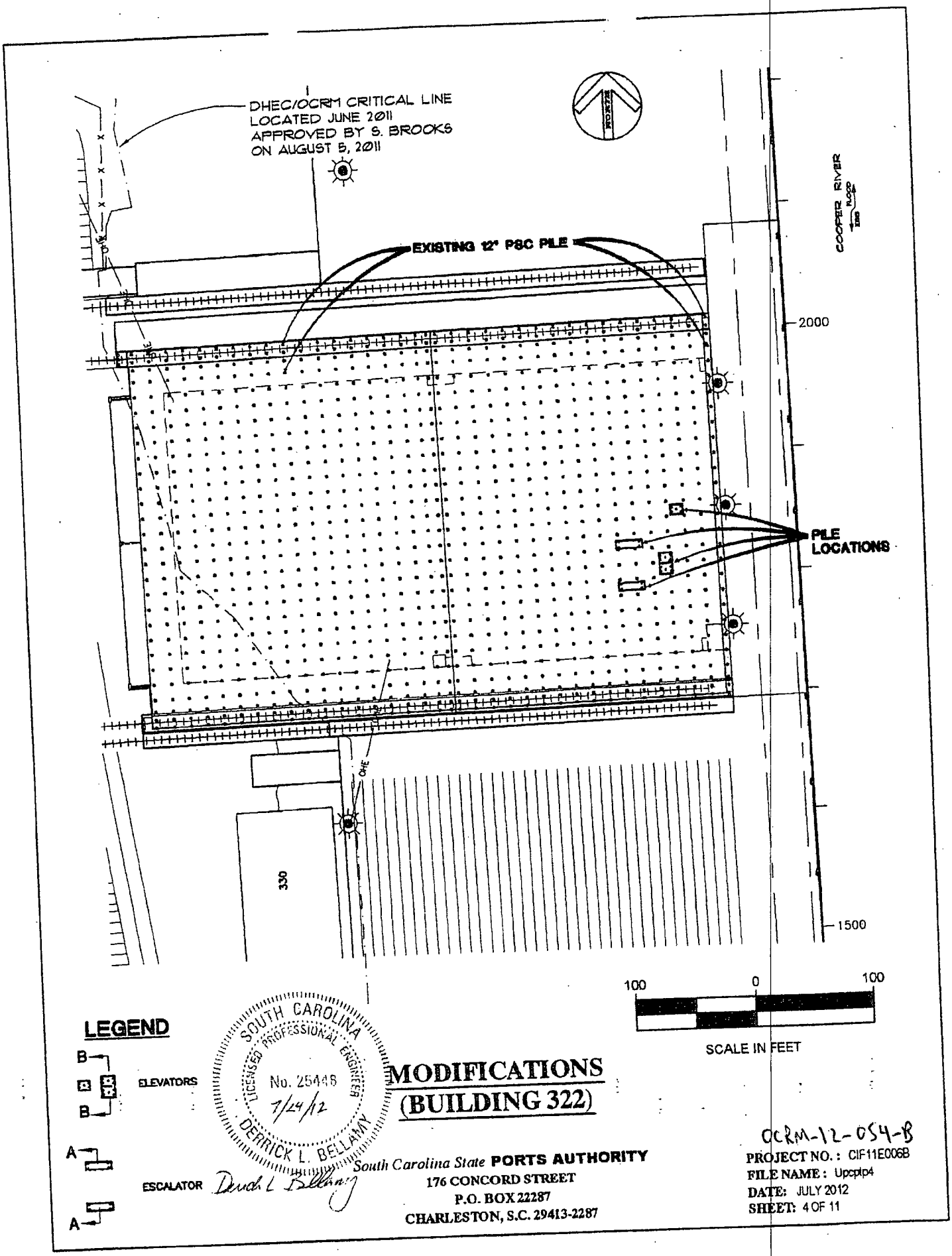
400 0 400
SCALE IN FEET

NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

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

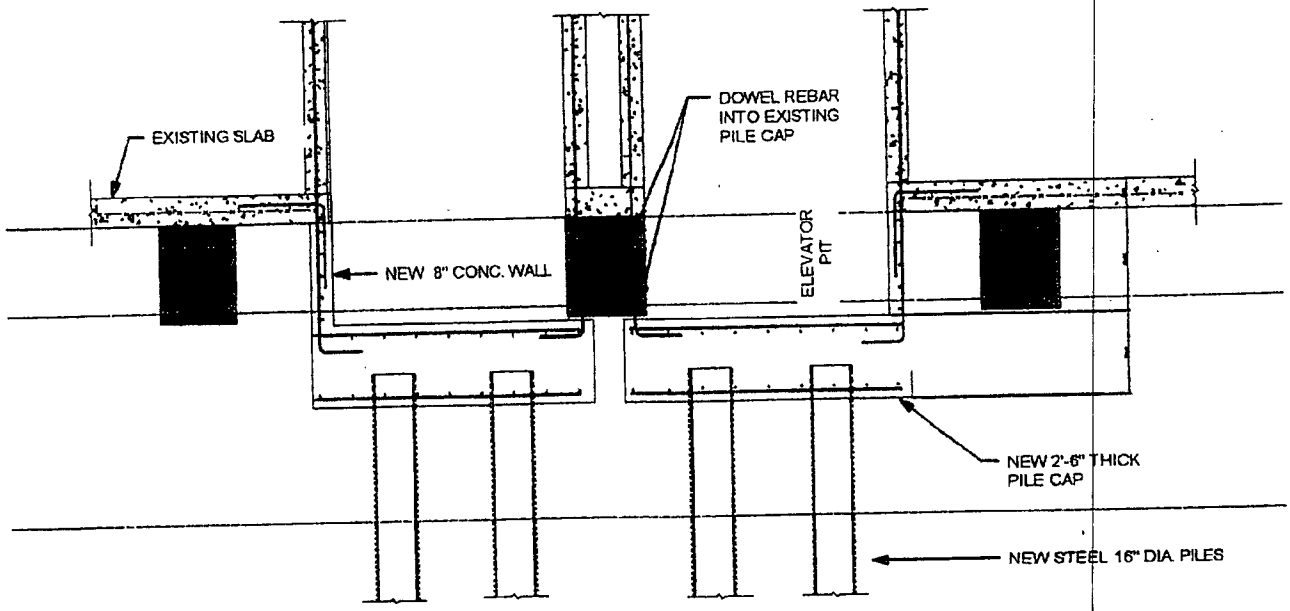
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp3
DATE: MARCH 2012
SHEET: 3 OF 11



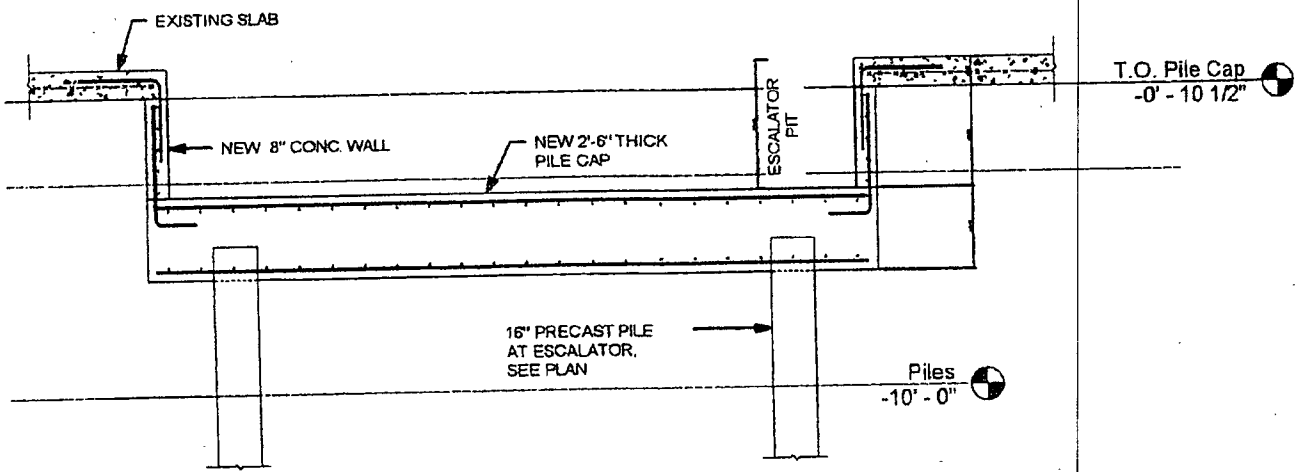
MODIFICATIONS (BUILDING 322)

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

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp4
DATE: JULY 2012
SHEET: 4 OF 11



A/65 SECTION
ELEVATOR



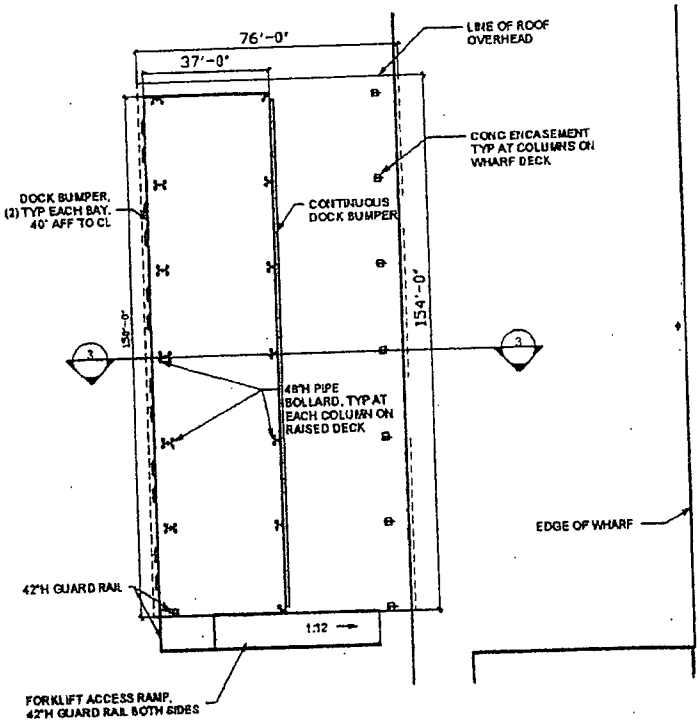
B/65 SECTION
ESCALATOR

SOUTH CAROLINA PROFESSIONAL ENGINEER
No 25448
7/24/12
DERRICK L. BELLAMY
David L. Bellamy

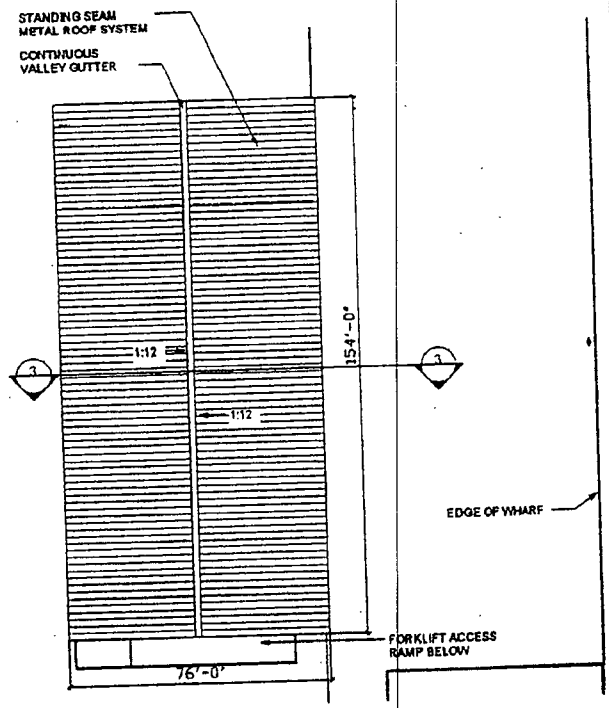
MODIFICATIONS (CROSS SECTION)

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

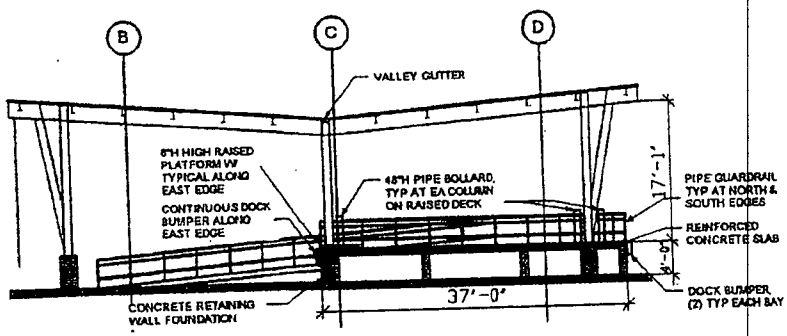
ECRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp5
DATE: JULY 2012
SHEET: 5 OF 11



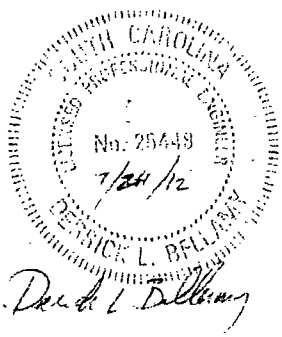
1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN



3 STORES CANOPY E-W SECTION

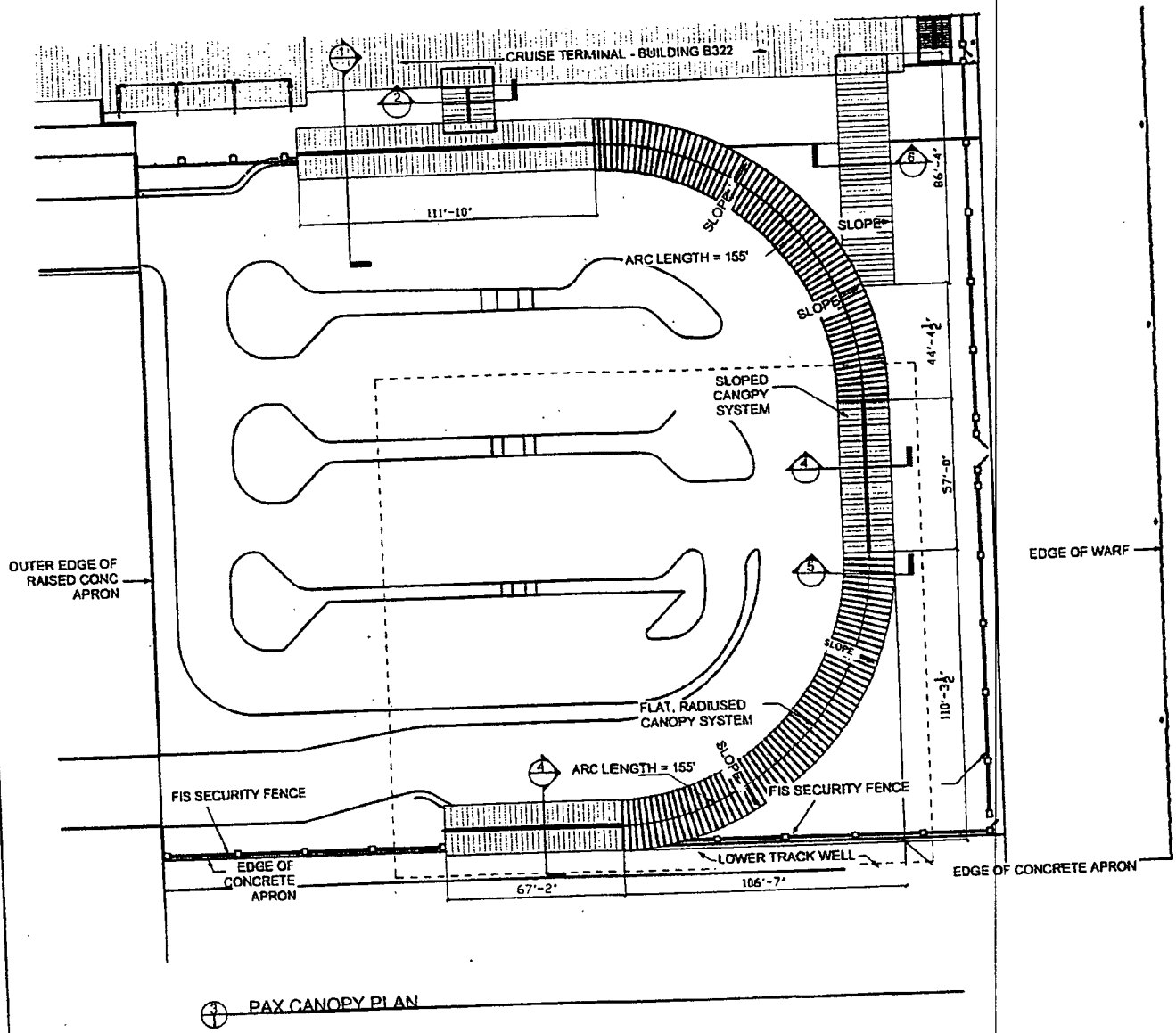


MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp6
DATE: JULY 2012
SHEET: 6 OF 11



PAX CANOPY PLAN

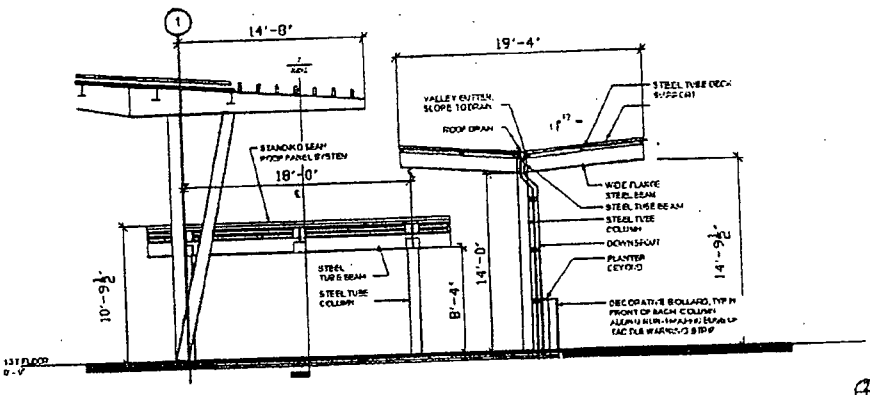
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

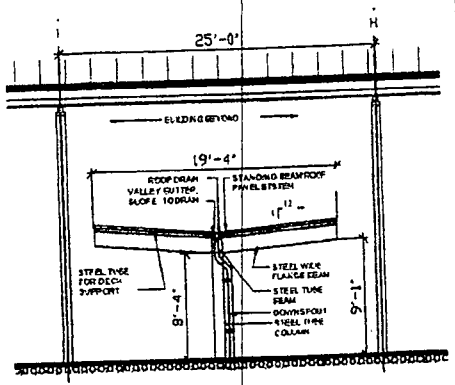
MODIFICATIONS
SOUTH APRON

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

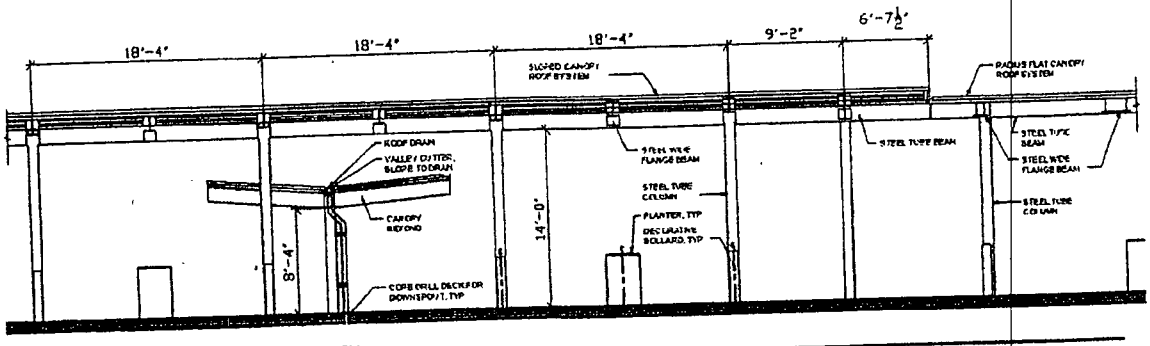
CCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



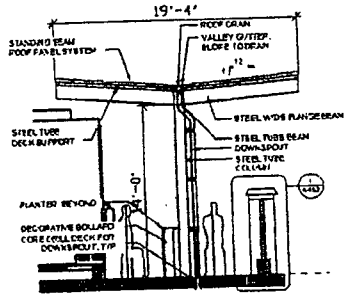
SECTION - PAX DROP OFF ZONE CANOPY



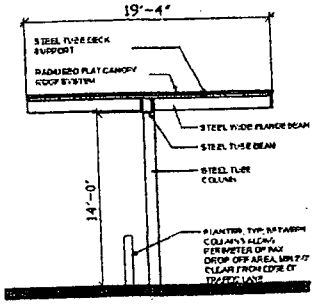
SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION



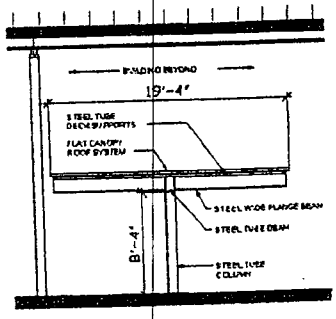
SECTION - PAX ACCESS CANOPY



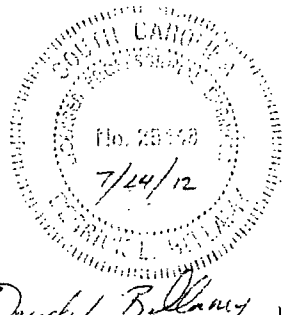
SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY



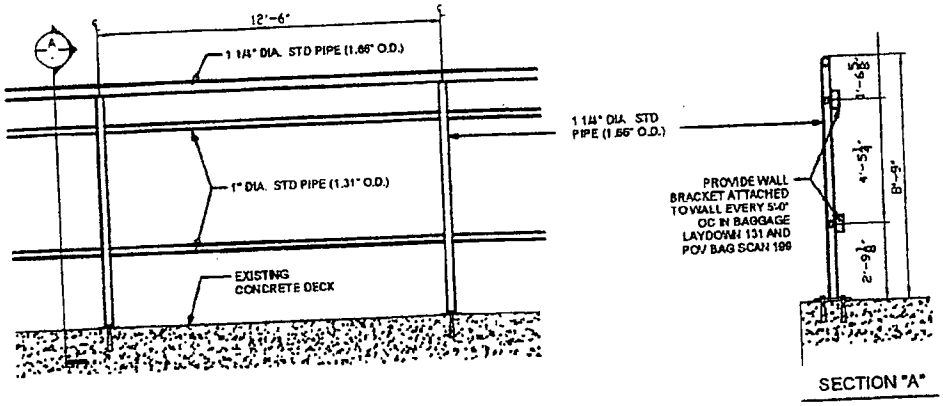
Donald L. Bellamy

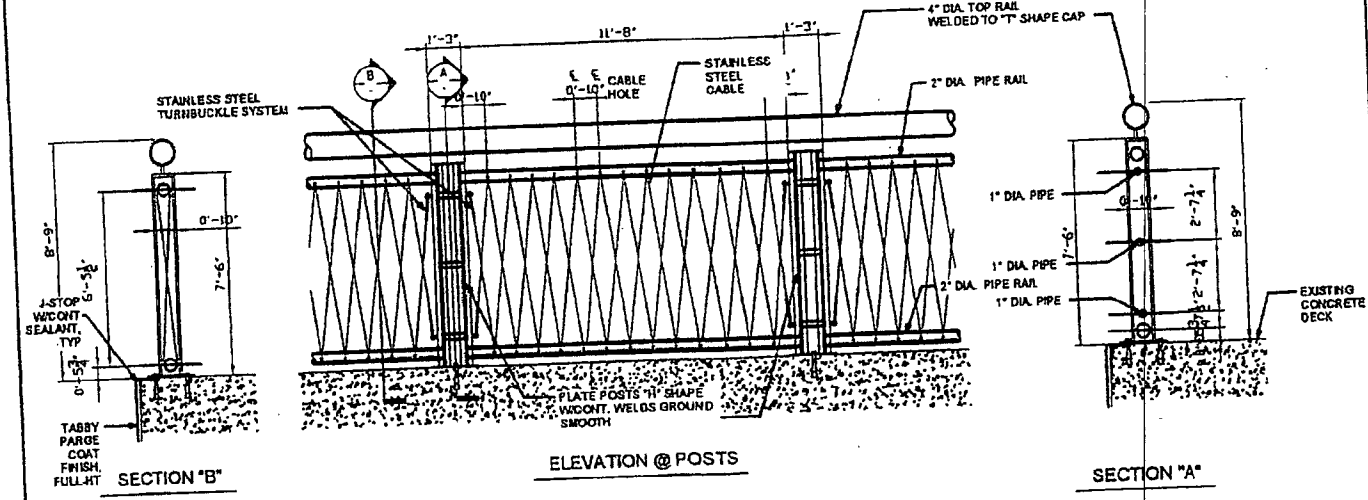
MODIFICATION
SOUTH APRON - DETAILS

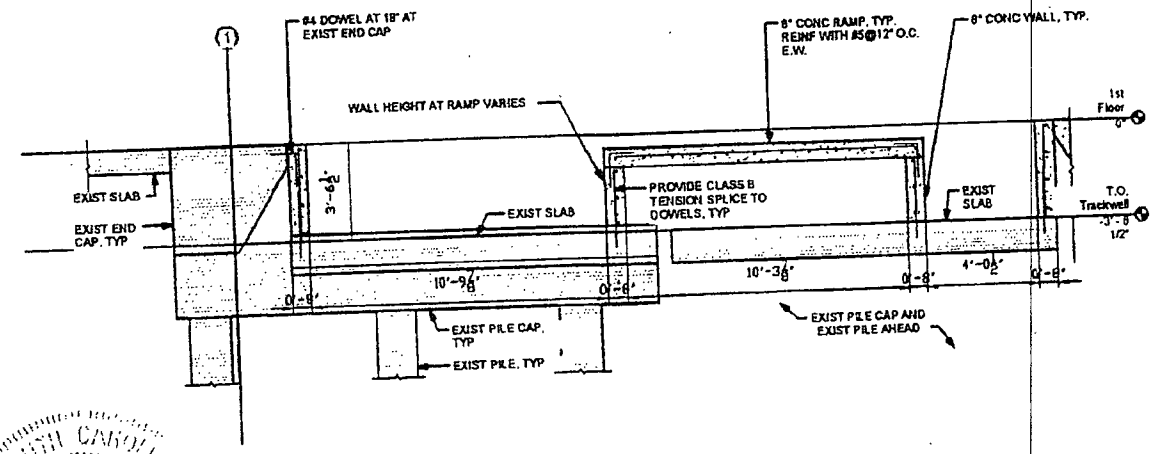
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

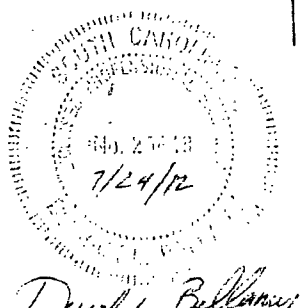
OCEM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp8
DATE: JULY 2012
SHEET: 8 OF 11







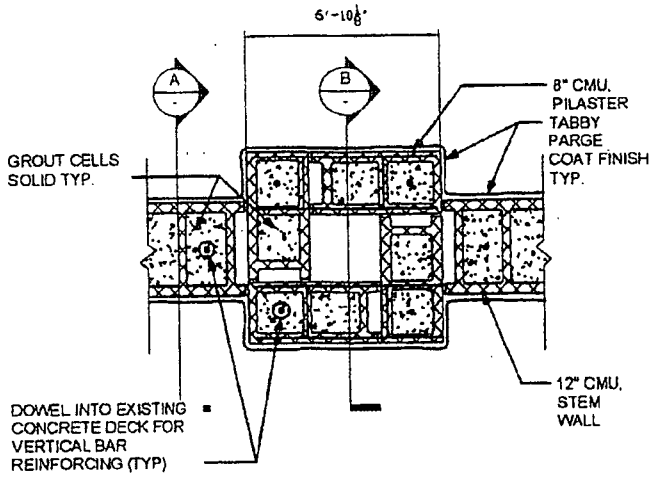


Derek L. Ballamy

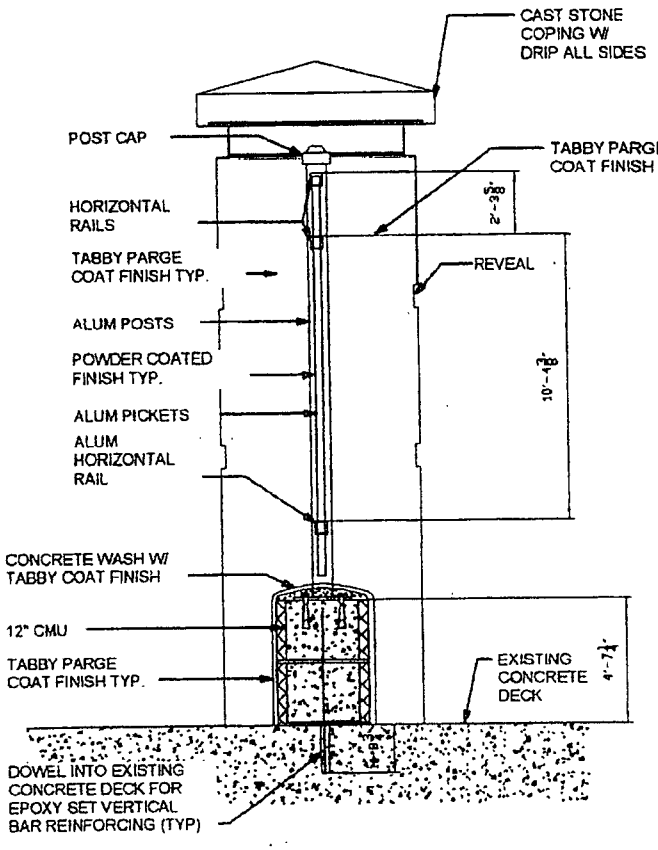
MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

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

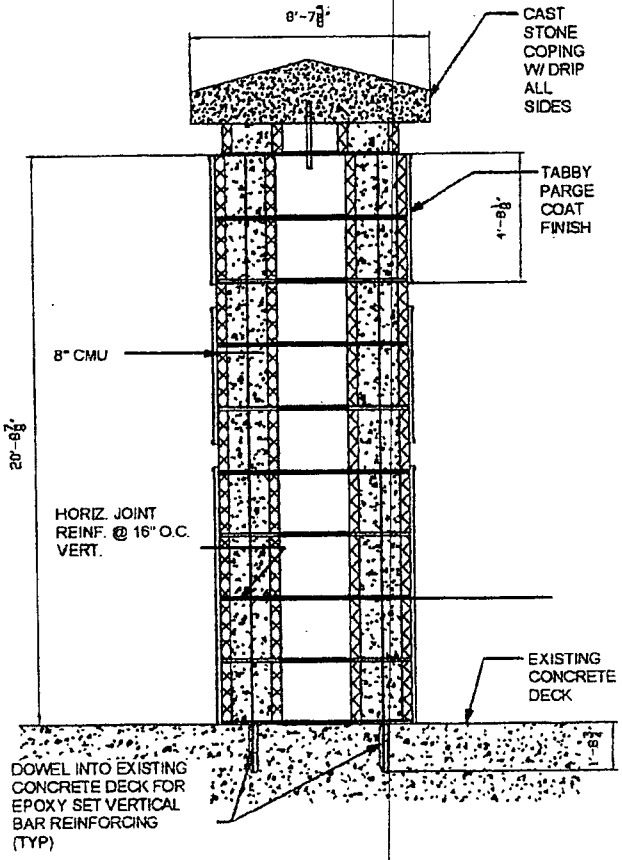
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11



PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

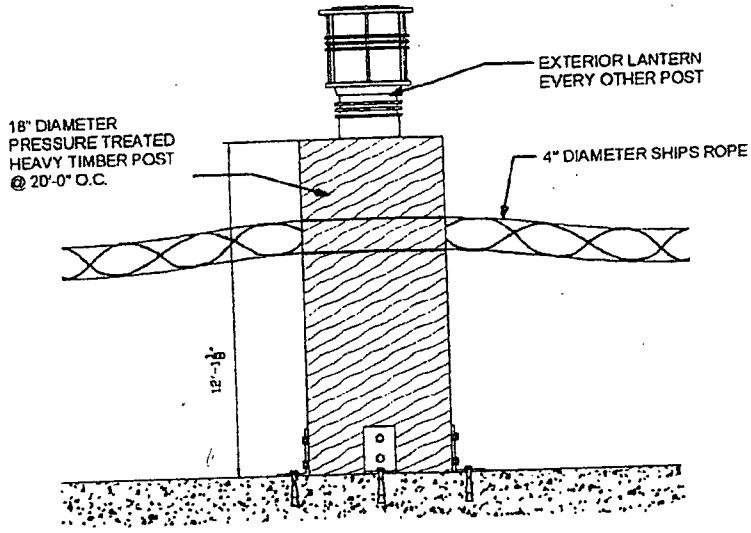
SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DENNIS L. BELLAMY

Dennis L Bellamy

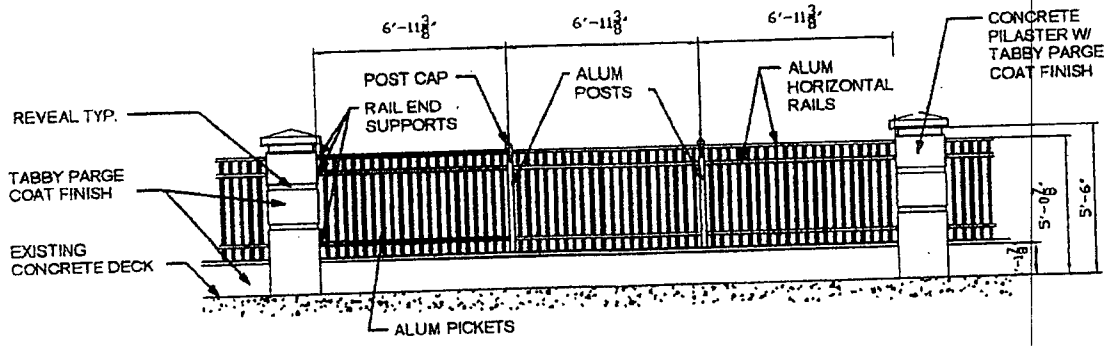
MODIFICATIONS
SECURITY FENCE DETAILS

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

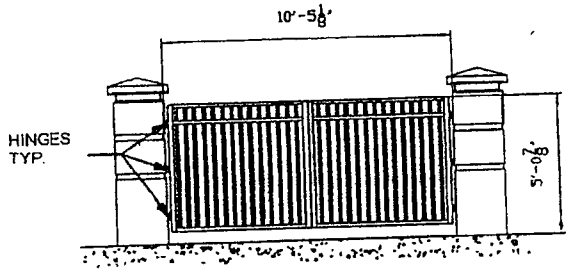
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11



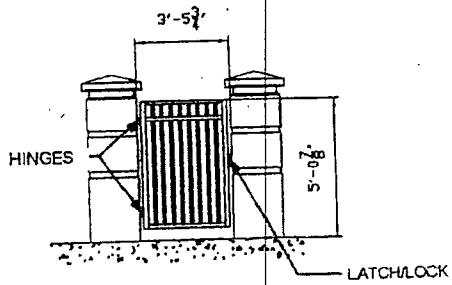
NORTH APRON DECORATIVE BOLLARDS



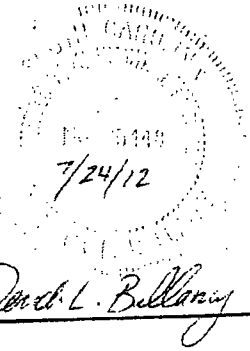
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



MODIFICATIONS
SECURITY FENCE DETAILS

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

8CRM-12-054-8

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp11
DATE: JULY 2012
SHEET: 11 OF 11

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

TO ALL INTERESTED PARTIES

Notification of Public Notice

Enclosed are public notices issued by the SCDHEC Office of Ocean and Coastal Resource Management. All interested parties are allowed 30 days for major developments and 15 days for minor developments after receipt of the public notices to file written comments to the OCRM pertaining to the applications. Only those comments received within this period must be reviewed by the OCRM in processing the permit application. Any person wishing notification of the initial OCRM decision on any specific public notice must make written request within the designated review period for that public notice.

APPLICANT	PUBLIC NOTICE NUMBER	SUSPENSE DATE
SC State Ports Authority	OCRM-12-054-B	September 2, 2012
Jean F. McCombs	OCRM-12-161-A	August 18, 2012
Aaron Nettles	OCRM-12-164-B	September 2, 2012
Evans Townsend	OCRM-12-189-E	August 18, 2012
Evans Townsend	OCRM-12-190-E	August 18, 2012
Janet Machado	OCRM-12-191-B	August 18, 2012

OCRM-09-005-D Amendment, has been withdrawn by the applicant, Teresa Norton.

August 3, 2012

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE

March 23, 2012 (Revision)

Permit Number: OCRM-12-054-B
Permit ID: 75114

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: South Carolina State Ports Authority
C/O Derrick Bellamy
PO Box 22287
Charleston, SC 29413

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

WORK: The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Specifically, the applicant seeks to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. The work as described is to provide a passenger facility satisfactory of the continued handling of cruise vessels at the Union Pier Terminal. The purpose of the pilings for the elevators and escalators is to provide ADA compliant access to the mezzanine level for boarding passengers. **Please Note:** This project is being revised to reflect the correct OCRM Critical Area Line location on the permit drawings. There are no changes to the project impact from the original notice of March 9, 2012. **The suspense date for this project will remain April 8, 2012.**

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before April 8, 2012. For further information please contact the project manager for this activity, Steve Brooks at 843-953-0235.

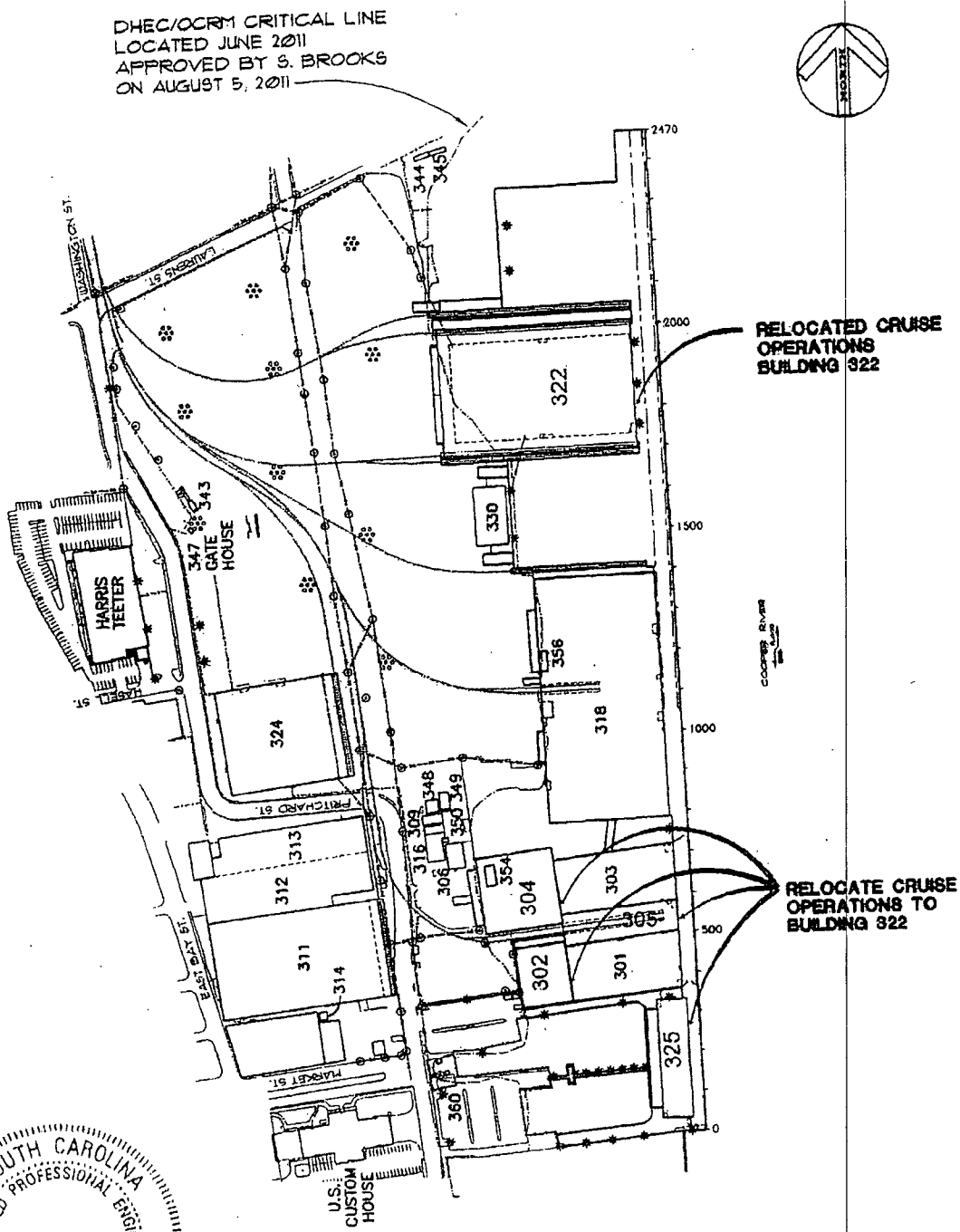
PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Please refer to P/N# OCRM-12-054-B

Tiffany Turbyfill, Wetland Section Coordinator

M



SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
3/19/12
DERRICK L. BELLAMY

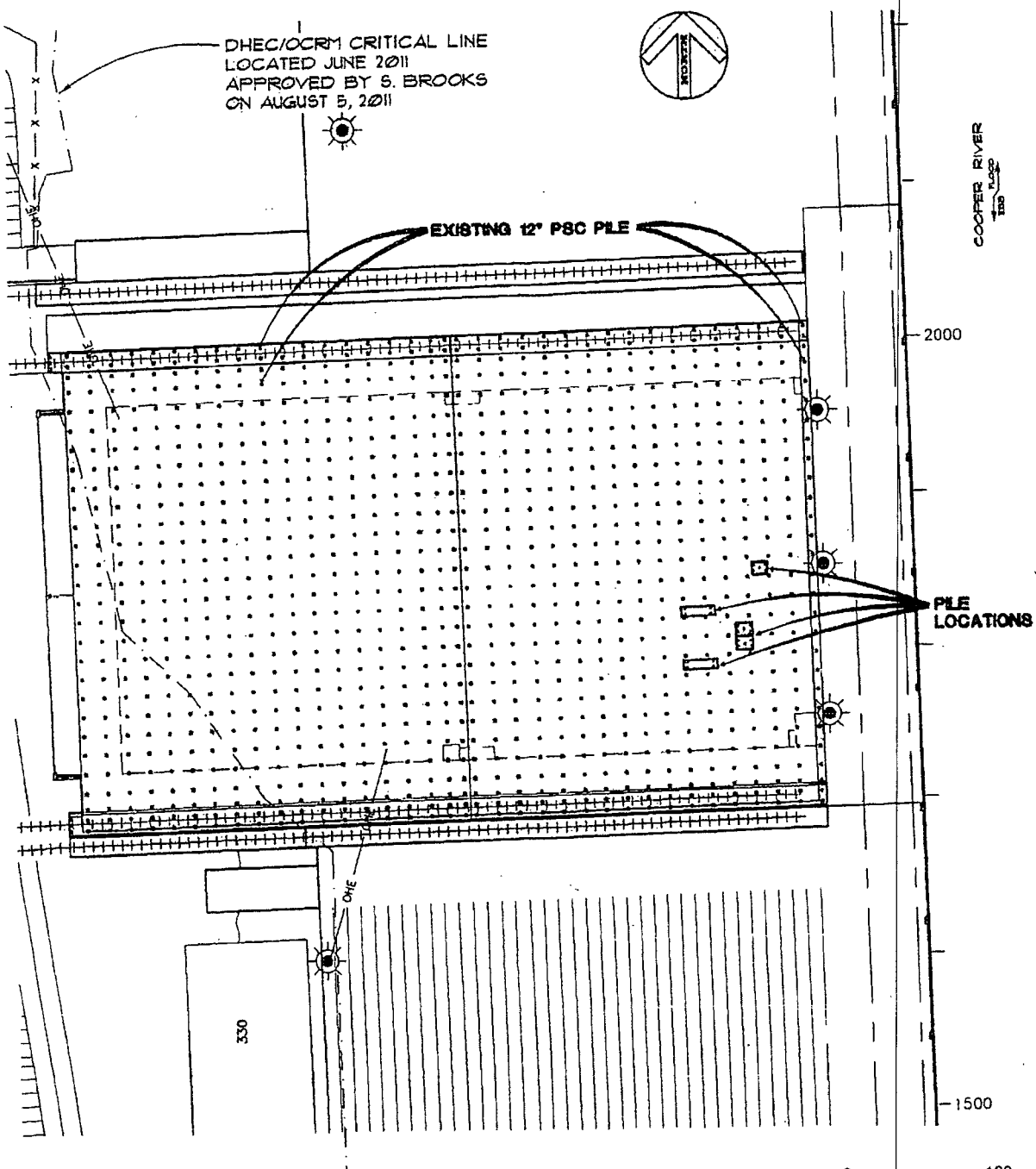
OCRM-D-054-B

BUILDING LOCATION PLAN
UNION PIER TERMINAL

400 0 400
SCALE IN FEET

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp2r2
DATE: MARCH 2012
SHEET: 2 OF 4



100 0 100

SCALE IN FEET

LEGEND

ELEVATORS

ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
3/19/12
DERRICK L. BELLAMY

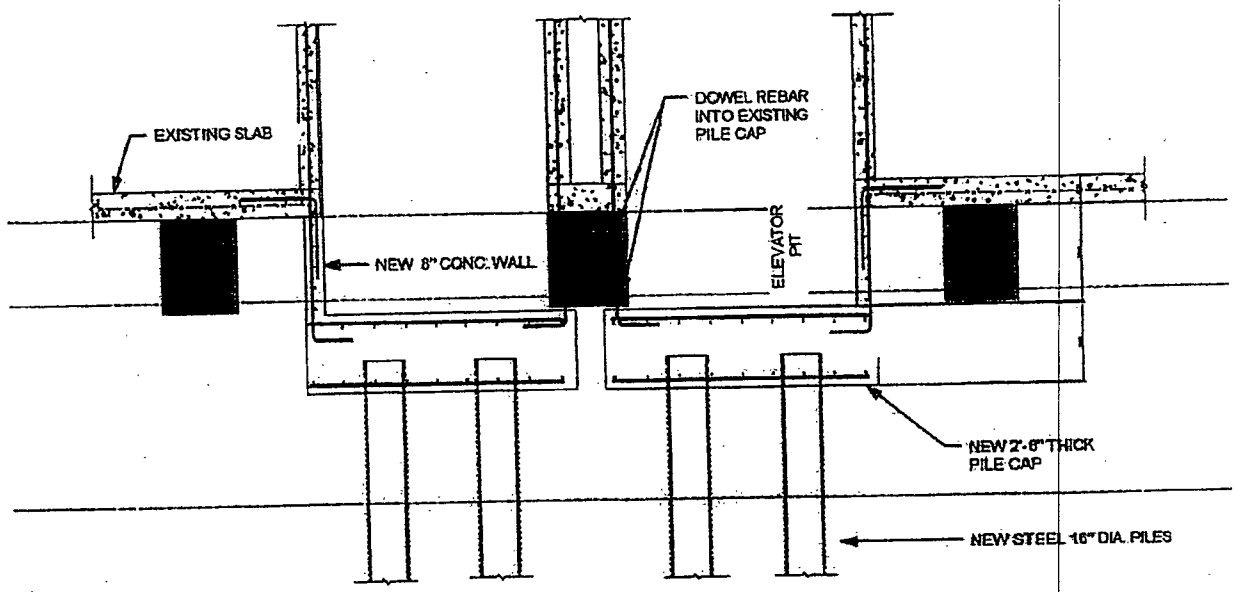
Derrick L. Bellamy

MODIFICATIONS
(BUILDING 322)

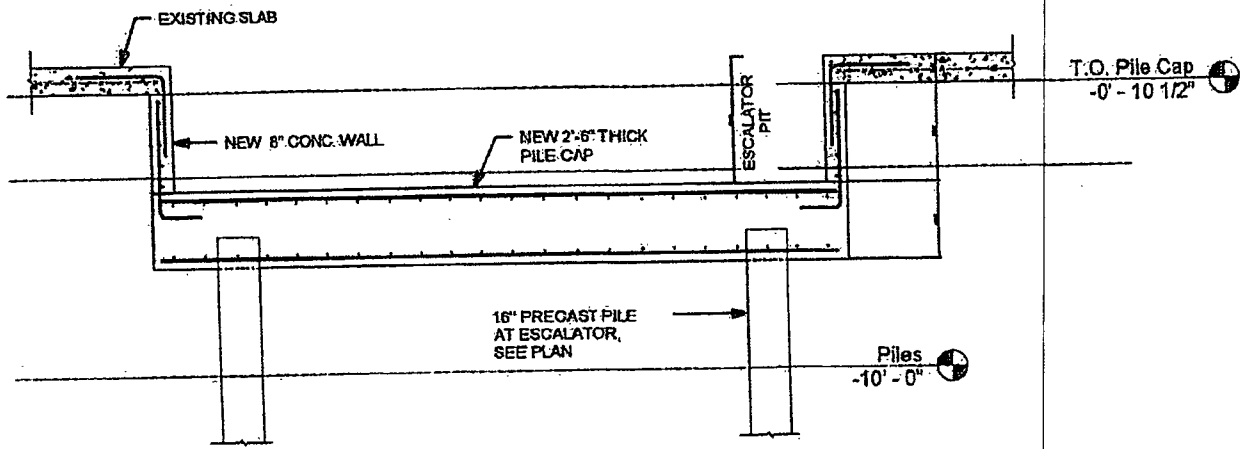
OCRM-12-054-B

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

PROJECT NO. : CIF11E006B
FILE NAME : Upcptp3r2
DATE: MARCH 2012
SHEET: 3 OF 4



A SECTION
ELEVATOR



B SECTION
ESCALATOR

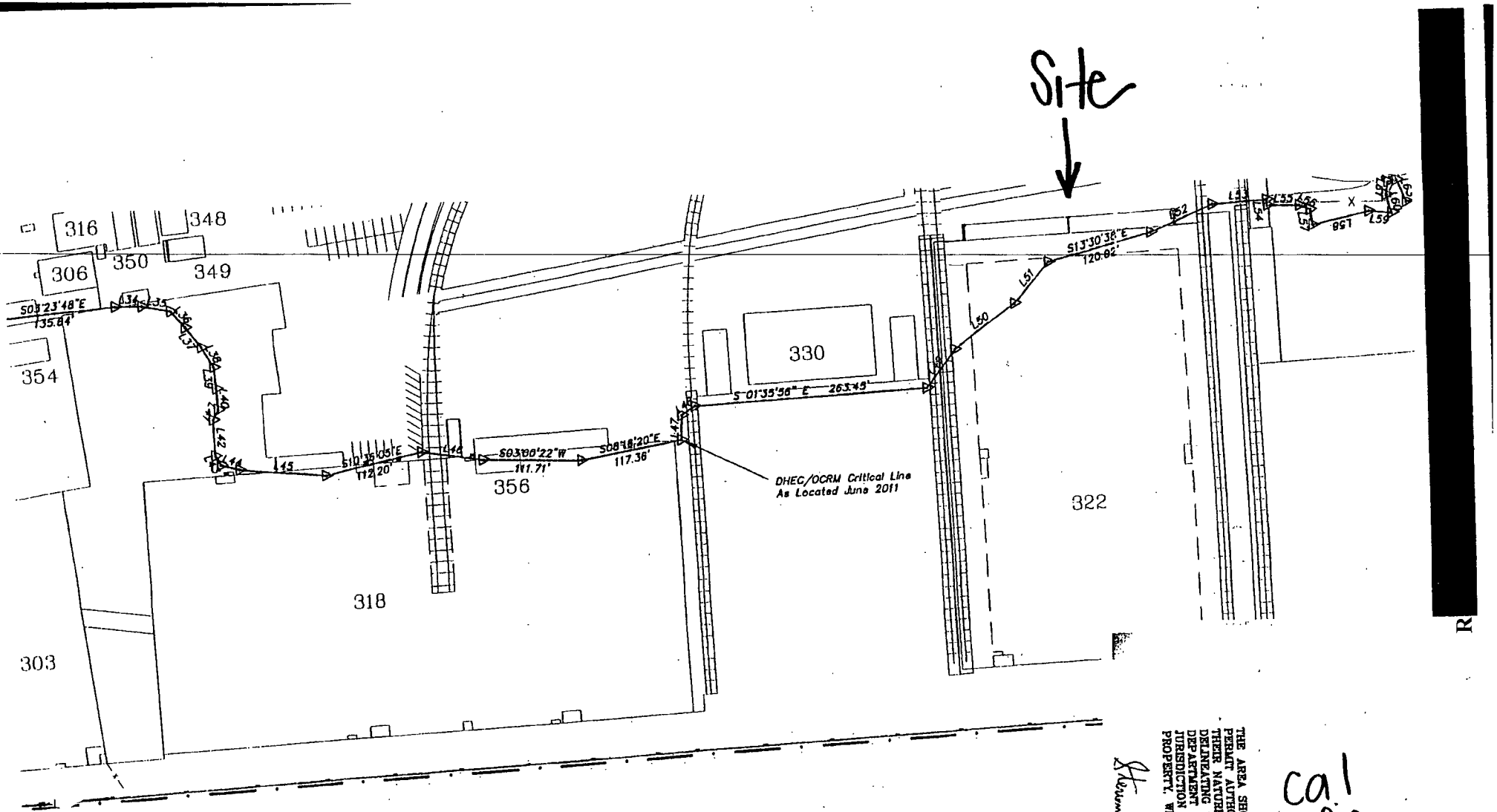
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY
Derrick L. Bellamy

MODIFICATIONS (CROSS SECTION)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp4
DATE: DECEMBER 2011
SHEET: 4 OF 4

DCRM-12-054-B
(2)



SC STATE PORTS Authority

OCRM-12-054-B

COOPER RIVER
FLOOD
EBB

NO.

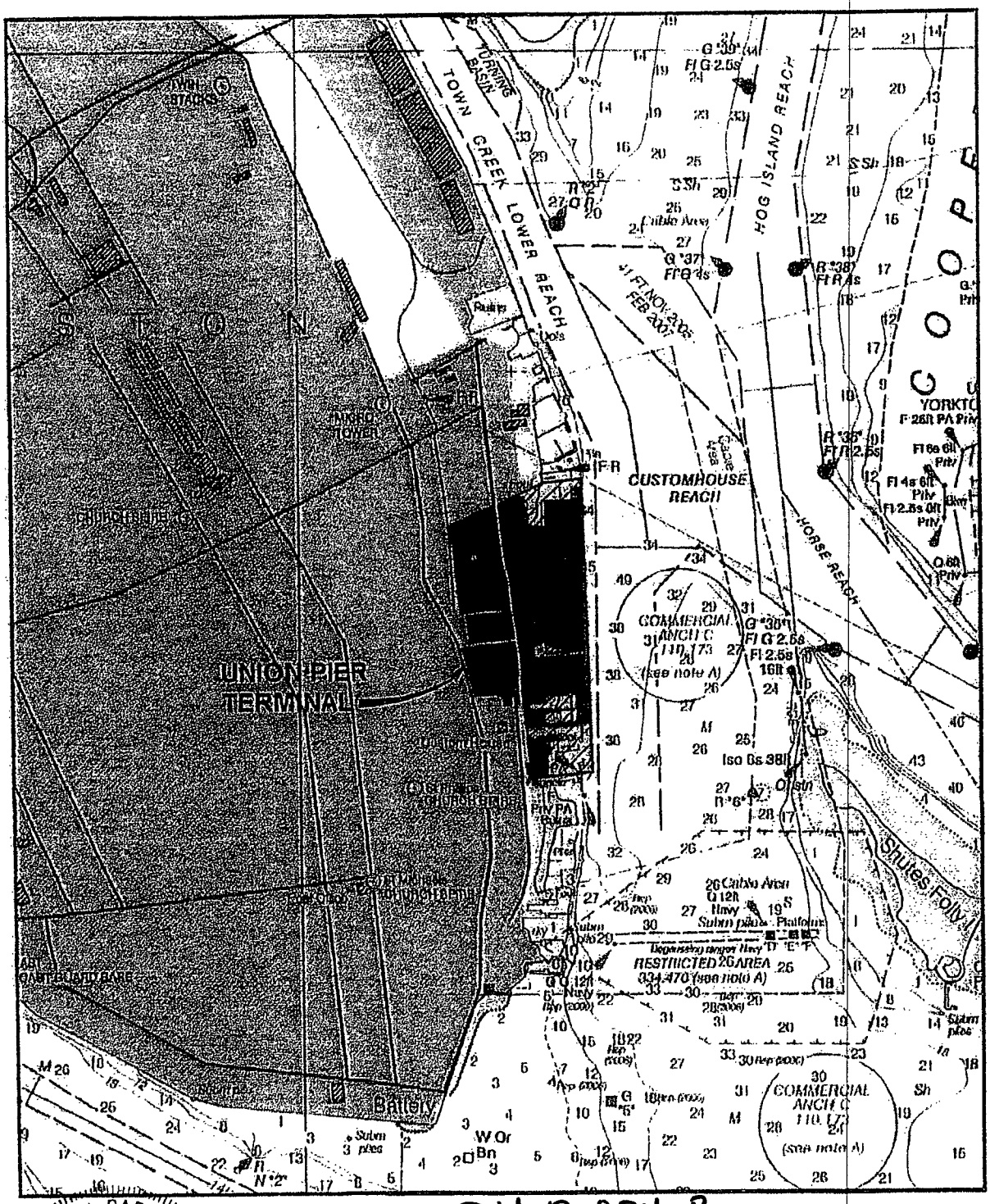
23432

8-5-11

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEP PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREA THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER T DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT. THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUB PROPERTY, WHETHER SHOWN HEREIN OR NOT.

OF DEPARTMENT
L AREAS, BY
OVER TIME. BY

cal
efis
#-73543
2011



OCRM-12-054-B

LOCATION

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

PROJECT NO.: OF11E006B
FILE NAME: Upcptp1
DATE: DECEMBER 2011
SHEET: 1 OF 4

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

Derek L. Bellamy

RECEIVED
MAR 02 2012

R.001277

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

TO ALL INTERESTED PARTIES

Notification of Public Notice

Enclosed are public notices issued by the SCDHEC Office of Ocean and Coastal Resource Management. All interested parties are allowed 30 days for major developments and 15 days for minor developments after receipt of the public notices to file written comments to the OCRM pertaining to the applications. Only those comments received within this period must be reviewed by the OCRM in processing the permit application. Any person wishing notification of the initial OCRM decision on any specific public notice must make written request within the designated review period for that public notice.

APPLICANT	PUBLIC NOTICE NUMBER	SUSPENSE DATE
Estate of Hilda G. Boltjes	OCRM-11-106-B	April 07, 2012
Michael Heidingsfelder	OCRM-12-033-E	April 07, 2012
SC State Ports Authority	OCRM-12-054-B	April 08, 2012
Chuck Richardson	OCRM-12-057-S	April 07, 2012
Palmetto Bluff Uplands, LLC	OCRM-12-061-L	April 22, 2012
Nimrod 102, LLC	OCRM-12-064-E	April 07, 2012
Charles C. Wannamaker, II	OCRM-12-065-M	April 07, 2012
Dewey Wise	OCRM-12-066-M	April 07, 2012
Agnes L. Baldwin	OCRM-12-067-M	April 07, 2012
Clay M. Rice	OCRM-12-068-G	April 07, 2012
Florence Kirchoffer	OCRM-12-069-M	April 07, 2012
Tracy Loggins	OCRM-12-070-M	April 07, 2012

March 23, 2012

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office • 1362 McMillan Avenue • Suite 400 • Charleston, SC 29405 • Phone: (843) 953-0200 • Fax: (843) 953-0201 • www.scdhec.gov

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
PERMIT APPLICATION PUBLIC NOTICE

March 9, 2012

Permit Number: OCRM-12-054-B
Permit ID: 75114

The SCDHEC Office of Ocean and Coastal Resource Management has received an application for a permit for the alteration of a critical area. This application was submitted pursuant to the Coastal Zone Management Act (Act 123) of the 1977 South Carolina General Assembly. The application, in brief, is described as follows:

APPLICANT: South Carolina State Ports Authority
C/O Derrick Bellamy
PO Box 22287
Charleston, SC 29413

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

WORK: The work as proposed and shown on the attached plans consists of making improvements to an existing waterfront building. Specifically, the applicant seeks to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. The work as described is to provide a passenger facility satisfactory of the continued handling of cruise vessels at the Union Pier Terminal. The purpose of the pilings for the elevators and escalators is to provide ADA compliant access to the mezzanine level for boarding passengers.

This public notice is being distributed to all known interested persons and agencies to assist in developing facts on which a decision by OCRM can be based. Comments concerning the proposed work should be submitted in writing, setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

The decision to issue or deny a permit will be based on the individual merits of the application, the policies specified in the South Carolina Coastal Zone Management Act, and the considerations outlined in the State of South Carolina Coastal Zone Management Program. Interested parties who wish to be notified of final permit action must notify OCRM in writing of this request.

To assure review by OCRM, comments regarding this application must be received by OCRM on or before April 8, 2012. For further information please contact the project manager for this activity, Steve Brooks at 843-953-0235.

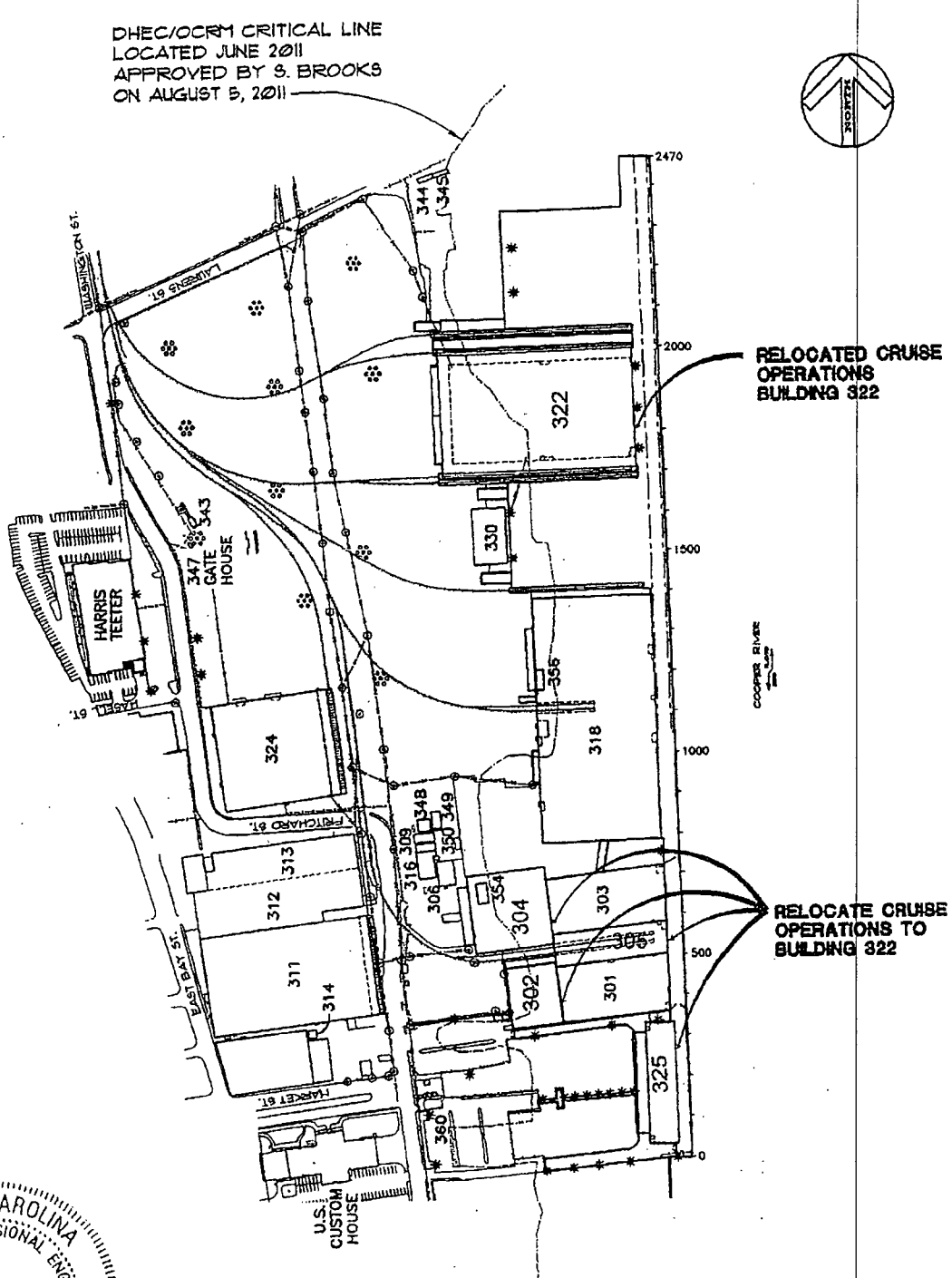
PLEASE REPLY TO:

SCDHEC OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Please refer to P/N# OCRM-12-054-B

Tess Trumbull, Wetland Section Coordinator

M



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

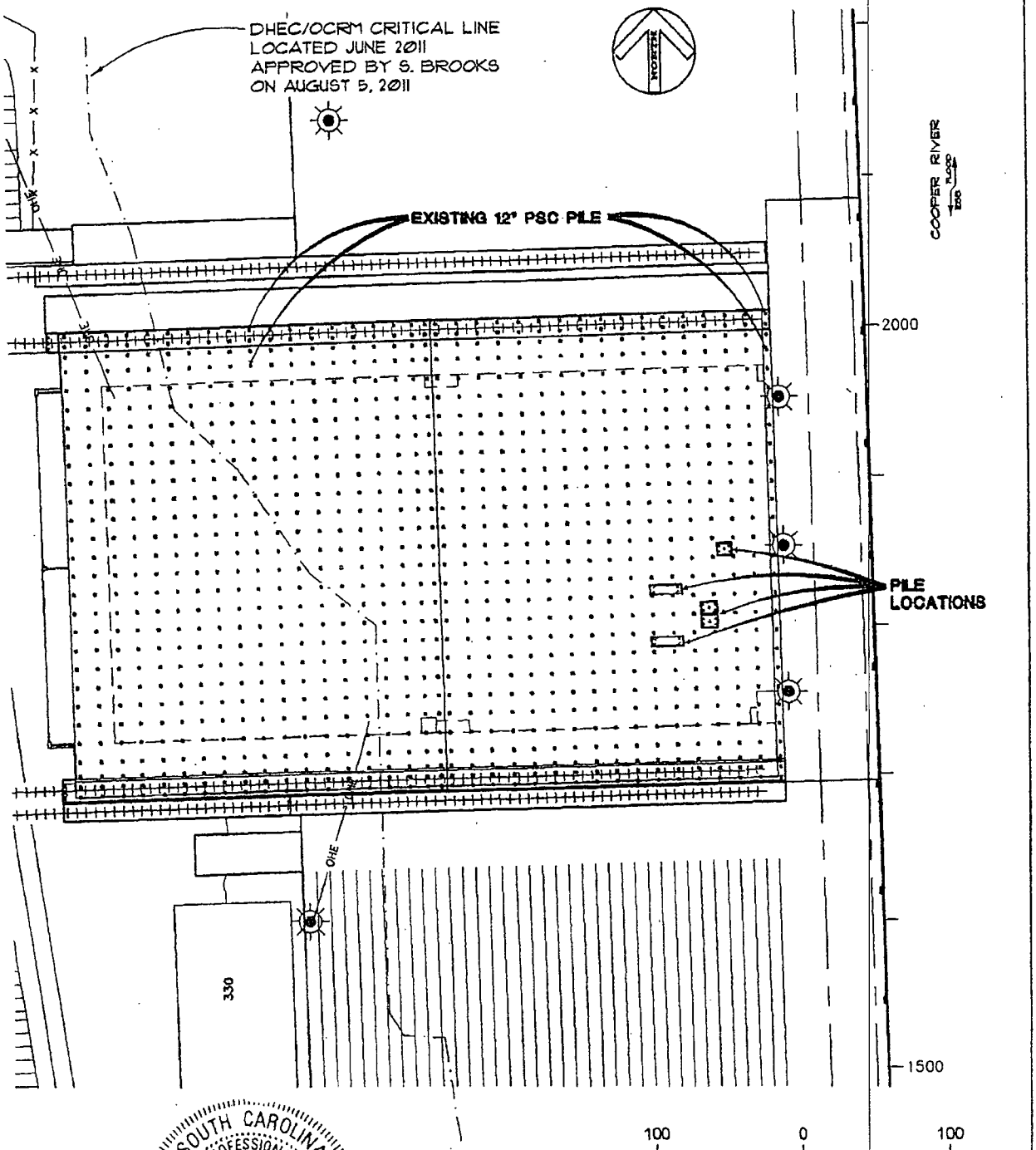
Derrick L. Bellamy

400 0 400
SCALE IN FEET

OCRM-12-054-B
BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp2r1
DATE: FEBRUARY 2012
SHEET: 2 OF 4



100 0 100

SCALE IN FEET

LEGEND

B — B — ELEVATORS

A — A — ESCALATOR

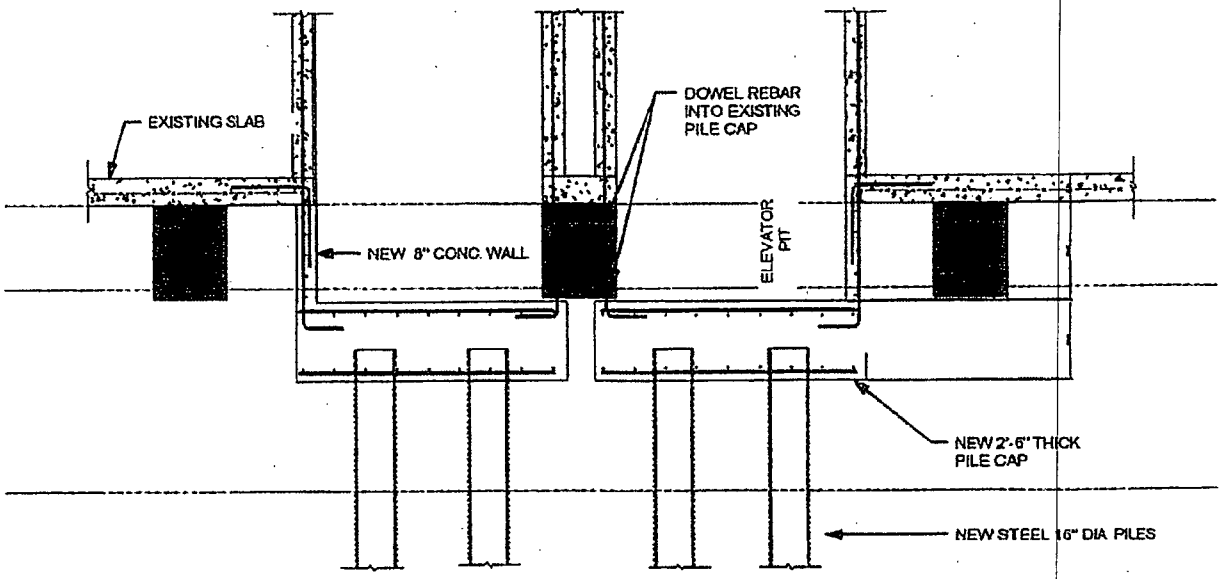
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

OCRM-12-054-B

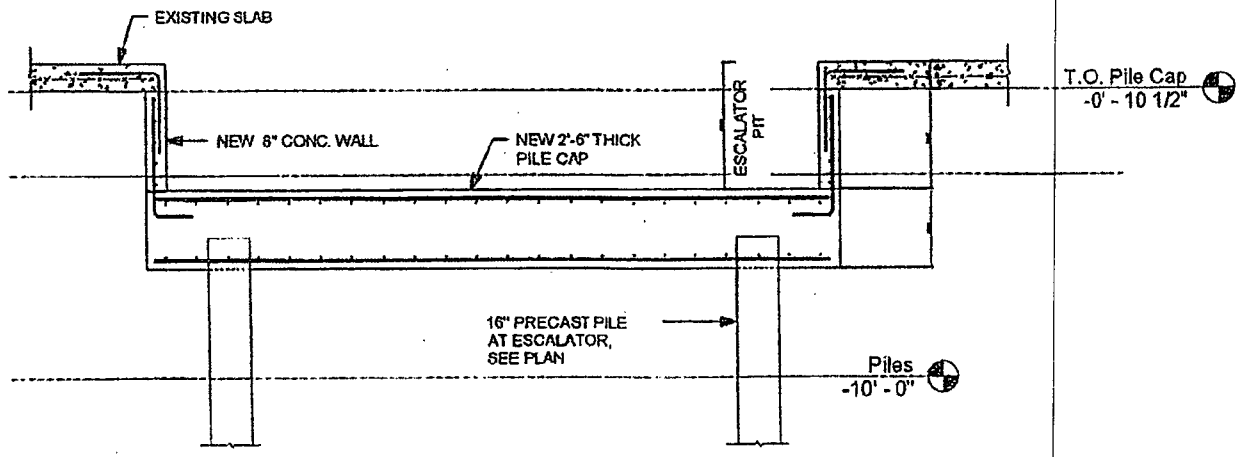
MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp3r1
DATE: FEBRUARY 2012
SHEET: 3 OF 4



A SECTION ELEVATOR



B SECTION ESCALATOR

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY
Derrick L. Bellamy

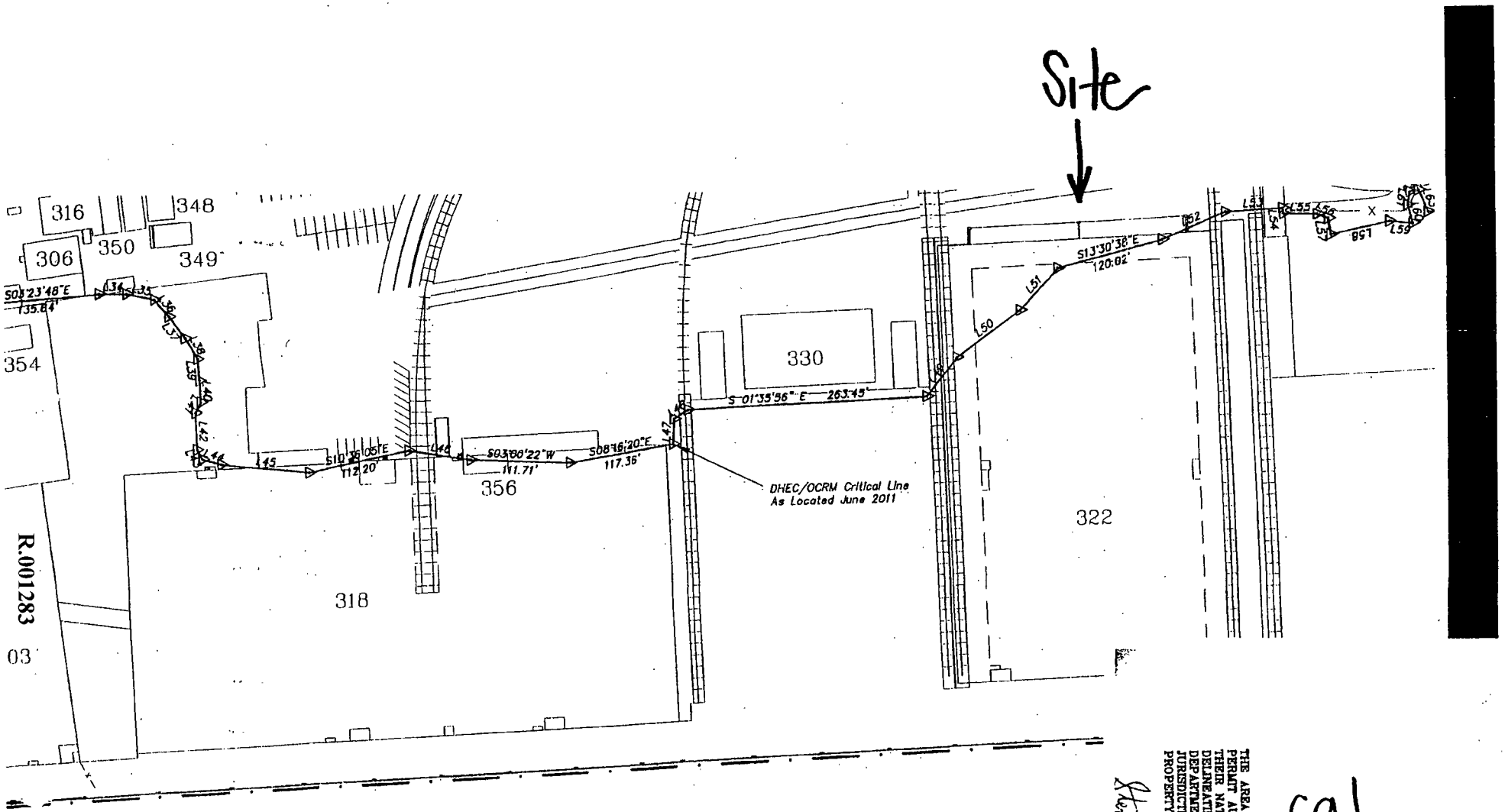
MODIFICATIONS (CROSS SECTION)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp4
DATE: DECEMBER 2011
SHEET: 4 OF 4

OCRM-12-054-B

R.001282



SC STATE PORTS Authority

OCRM-12-054-B

COOPER RIVER

FLOOD

EBB

NO.

23432

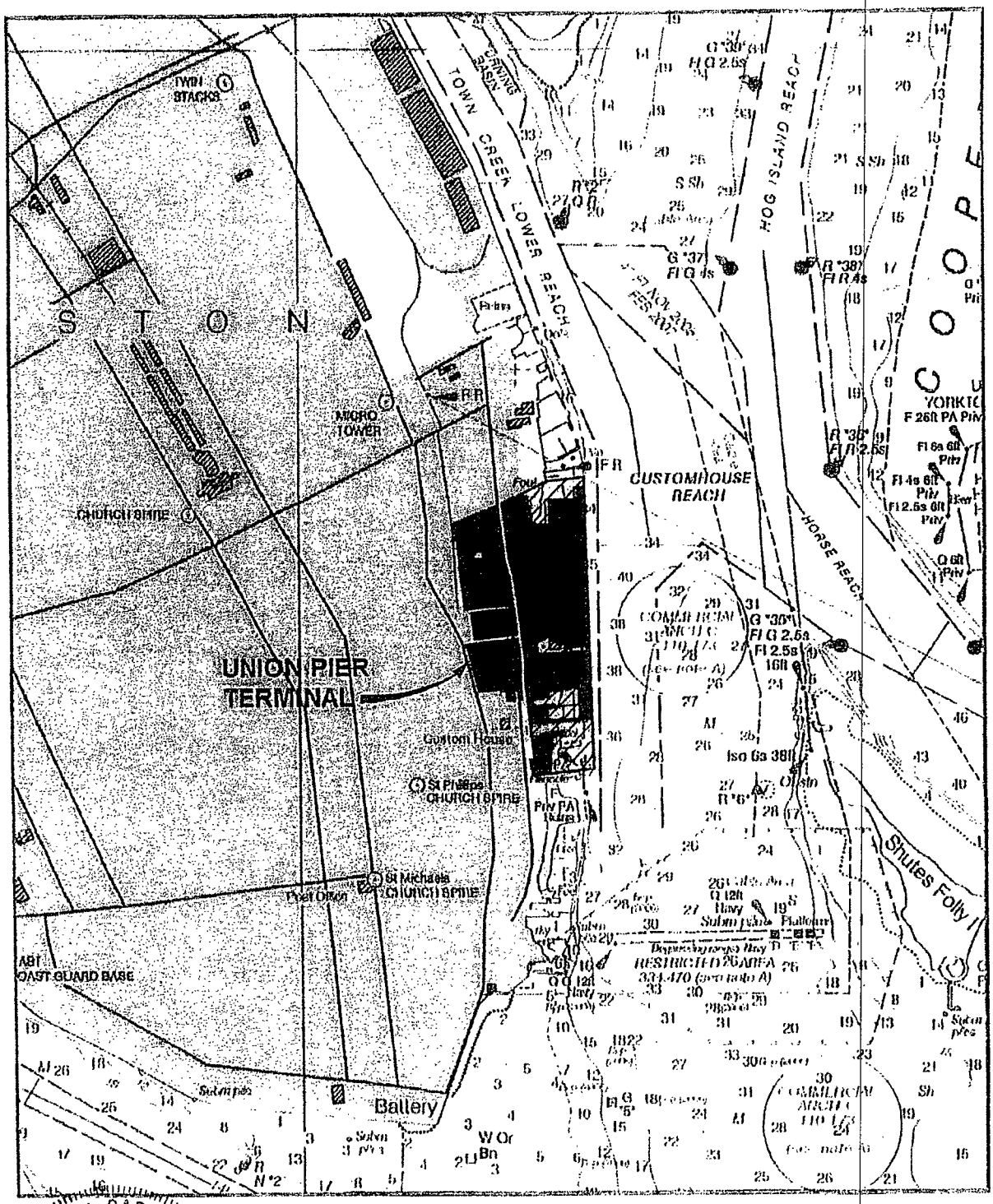
SOUTH CARO

8-5-11

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPA
PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS
THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TI
DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT. THE
DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT
JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJ
PROPERTY, WHETHER SHOWN HEREIN OR NOT.

DEPARTMENT
AREAS, BY
/ER TIME. BY
THE

cal
efis
#-73543
2011



LOCATION

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptpt
DATE: DECEMBER 2011
SHEET: 1 OF 4

SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

Derrick L. Bellamy

RECEIVED
MAR 02 2012

R.001284

Exhibit 6

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

RECEIVED

DEC 19 2012

DHEC - OCRM
CHARLESTON OFFICE

TRIDENT CONSTRUCTION CO., LLC

MEMORANDUM

TO: **All interested parties**

FROM: **STEVEN BROOKS**

RE: **SC State Ports Authority**
P/N# **OCRM-12-054-B**

DATE: **DECEMBER 18, 2012**

This is to inform you that the above referenced permit was issued and validated on December 18, 2012.

This letter is in reference to the following activities:

To make improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322

Any person adversely affected by this decision has the right to appeal as outlined in the enclosed "Notice of Appeal Procedure."

I Scanned & e-mailed to everyone. No one claimed this. Call 572-7600 to discuss.

Thanks

Bobbie

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Ocean and Coastal Resource Management

Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405

Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed or otherwise sent to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed or otherwise sent to persons entitled to receive notice. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:

a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision

b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference

c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

January 7, 2011

D H E C
PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

JAN 03 2013

DHEC - OCRM
CHARLESTON OFFICE

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

SEE SPECIAL CONDITIONS(S)

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE

Enclosure

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

   SEE SPECIAL CONDITIONS(S)

   Clerk of the Board
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

SEE SPECIAL CONDITIONS(S)

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use.

   d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

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

SEE SPECIAL CONDITIONS

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

SEE SPECIAL CONDITIONS(S)

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Barbara L Melvin
(PERMITTEE(S))
SC State Ports Authority

1/2/13
(DATE)

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks
(PROJECT MANAGER, WETLAND SECTION)
Steven Brooks
or her Designee
Other Authorized State Official

12/18/12
(DATE)

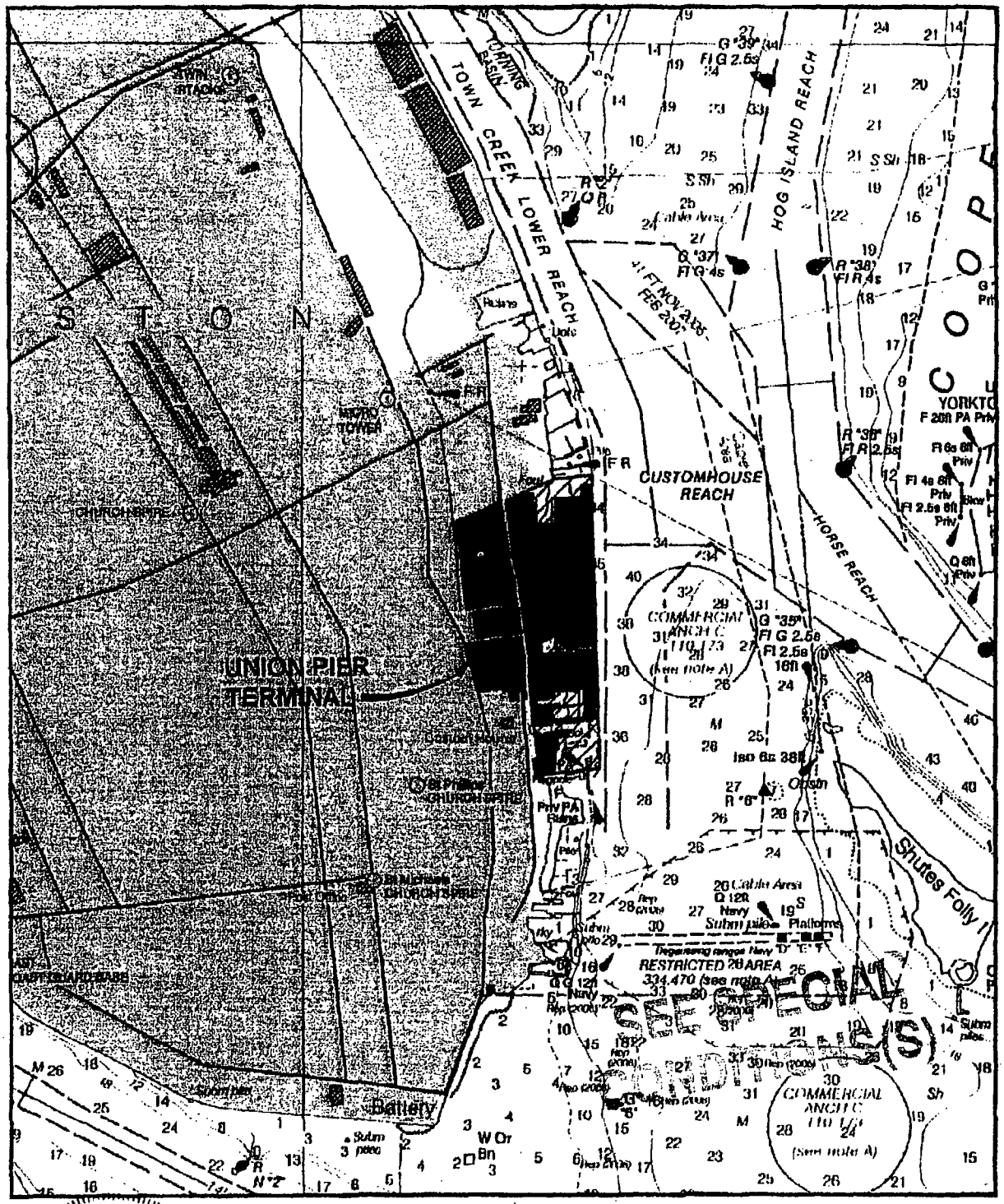
RECEIVED
JAN 03 2013
DHEC-OCRM
CHARLESTON OFFICE

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

SEE SPECIAL CONDITIONS



SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

LOCATION

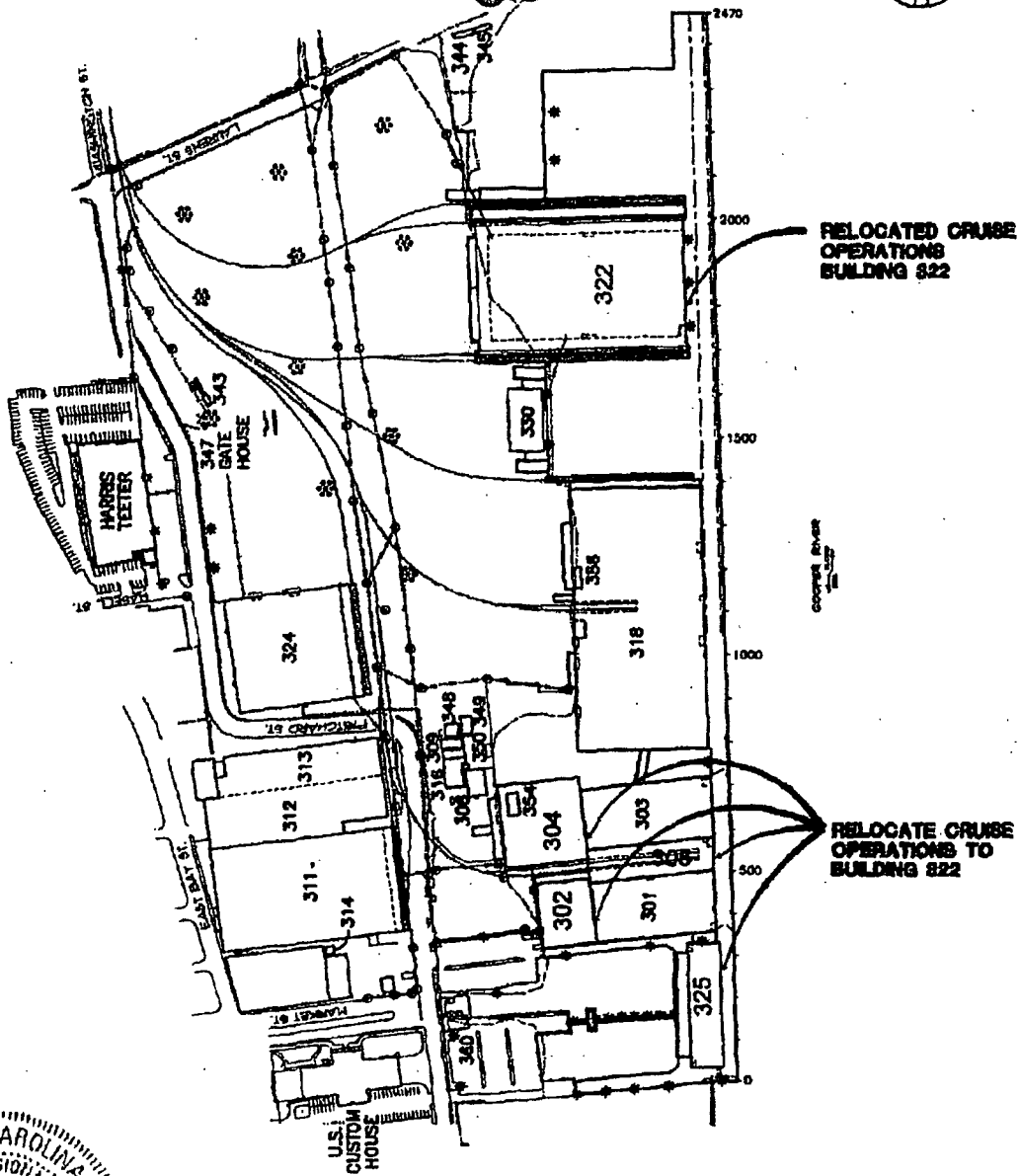
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp1
DATE: JULY 2012
SHEET: 1 OF 11

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

SEE SPECIAL CONDITIONS(S)



RELOCATED CRUISE OPERATIONS BUILDING 322

RELOCATE CRUISE OPERATIONS TO BUILDING 322

SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

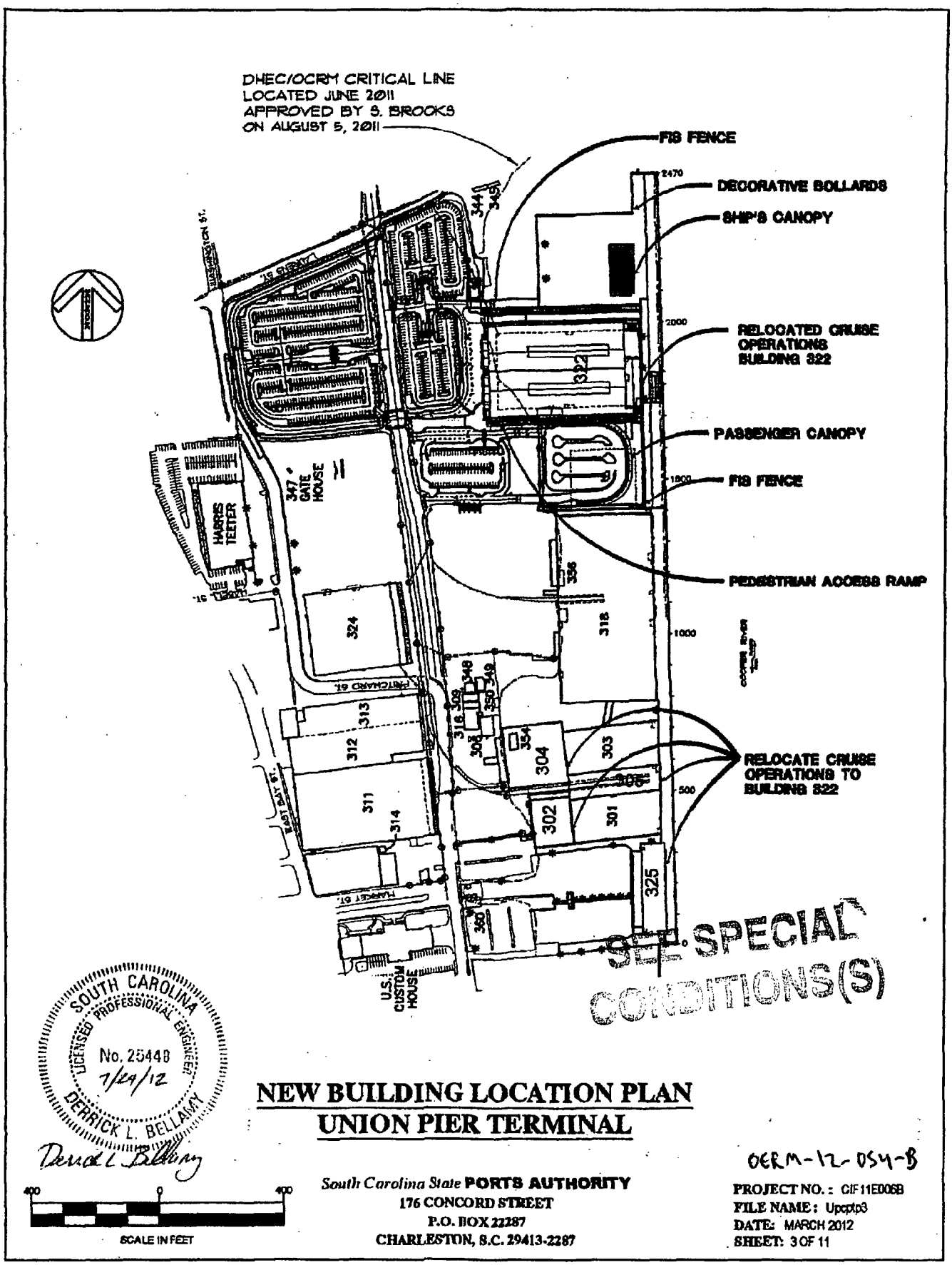
400 0 400
SCALE IN FEET

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E0068
FILE NAME: Upopip2
DATE: MARCH 2012
SHEET: 2 OF 11

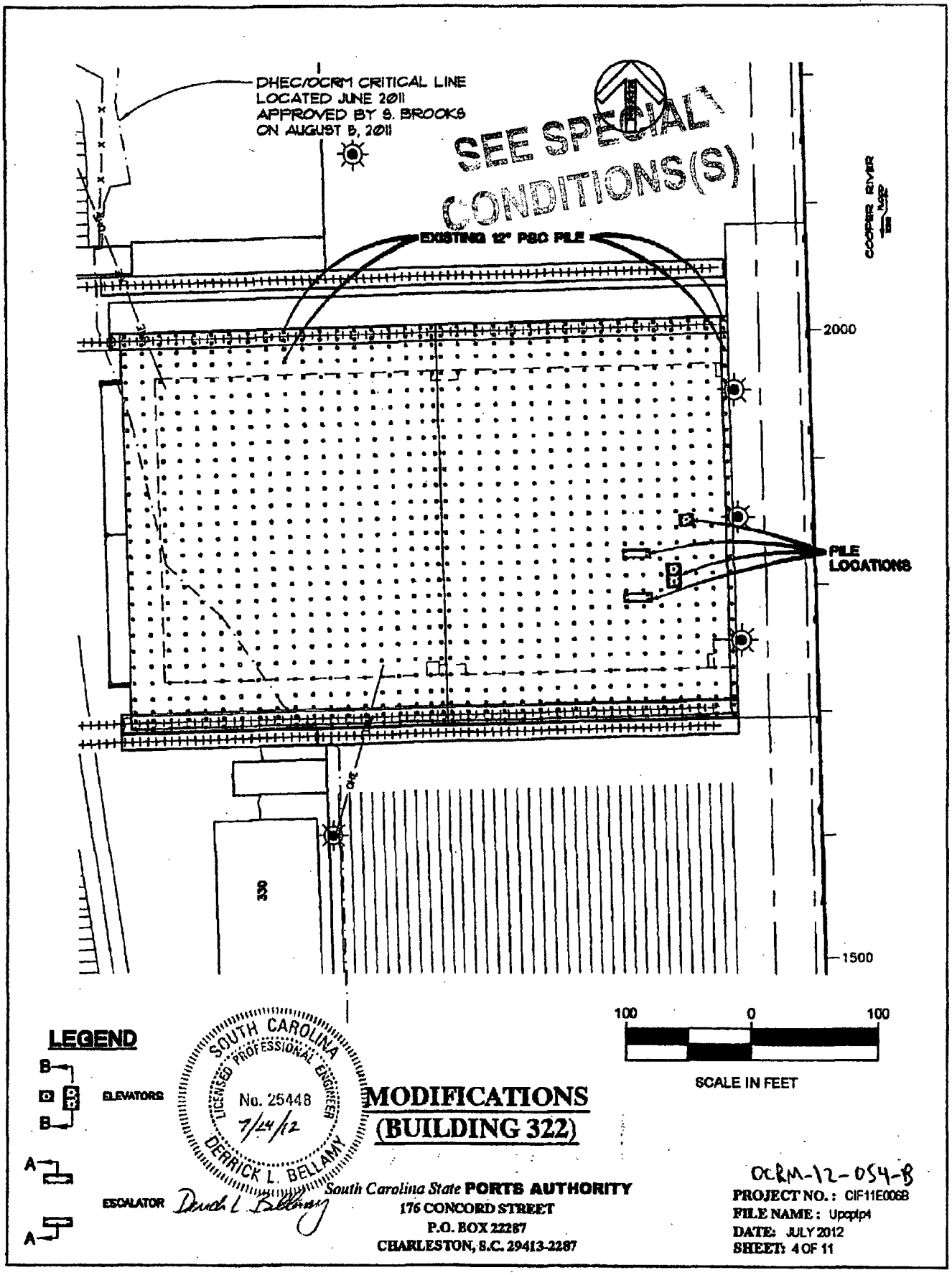


NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

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



LEGEND

B — B — B ELEVATORS

A — A ESCALATOR

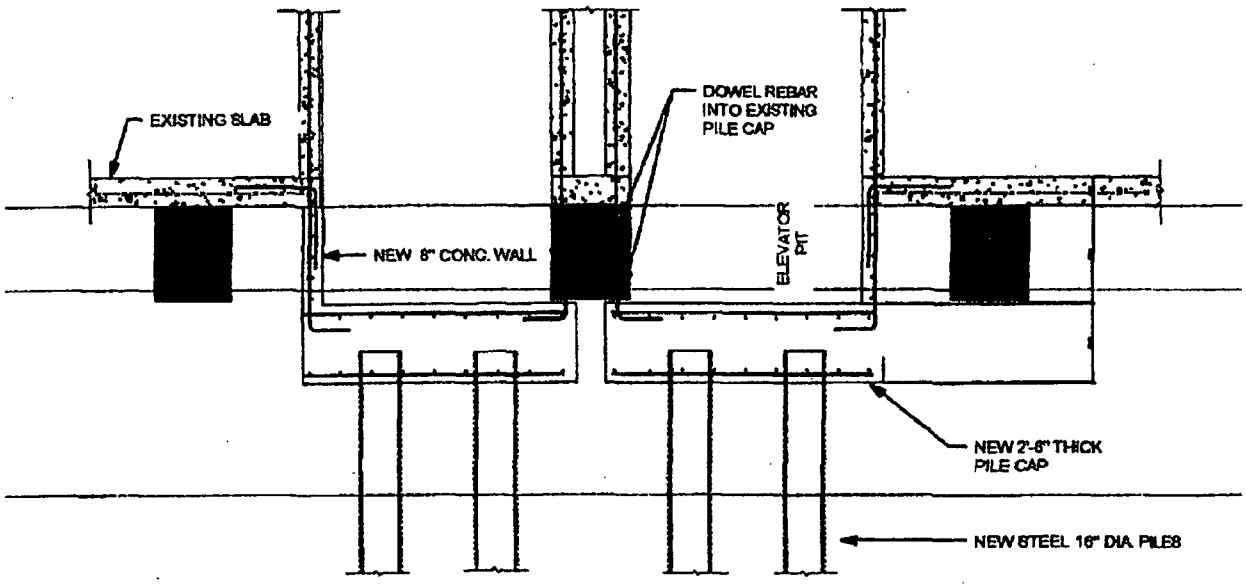
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

Derrick L Bellamy

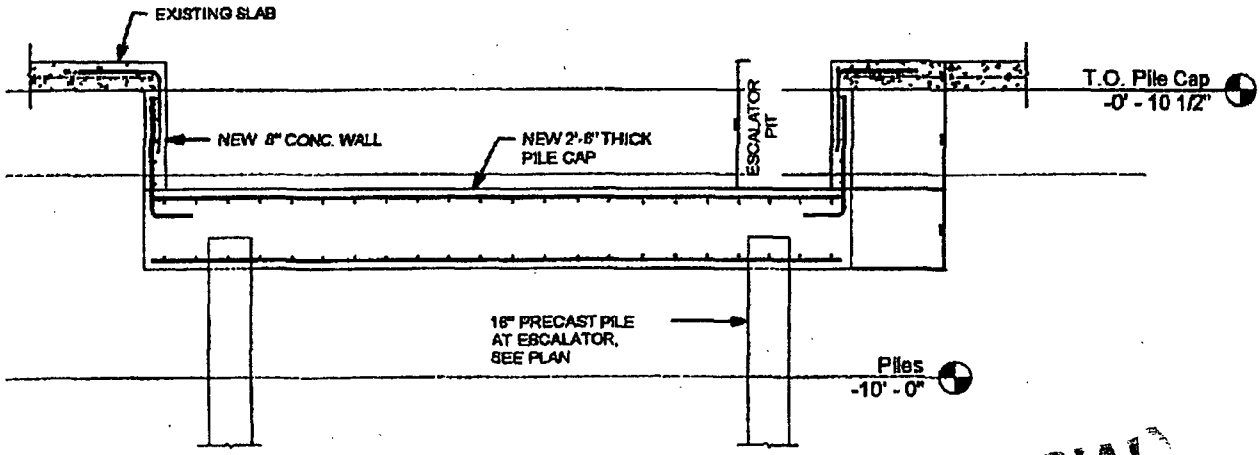
MODIFICATIONS (BUILDING 322)

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

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp4
DATE: JULY 2012
SHEET: 4 OF 11



A/EB SECTION ELEVATOR



B/EB SECTION ESCALATOR

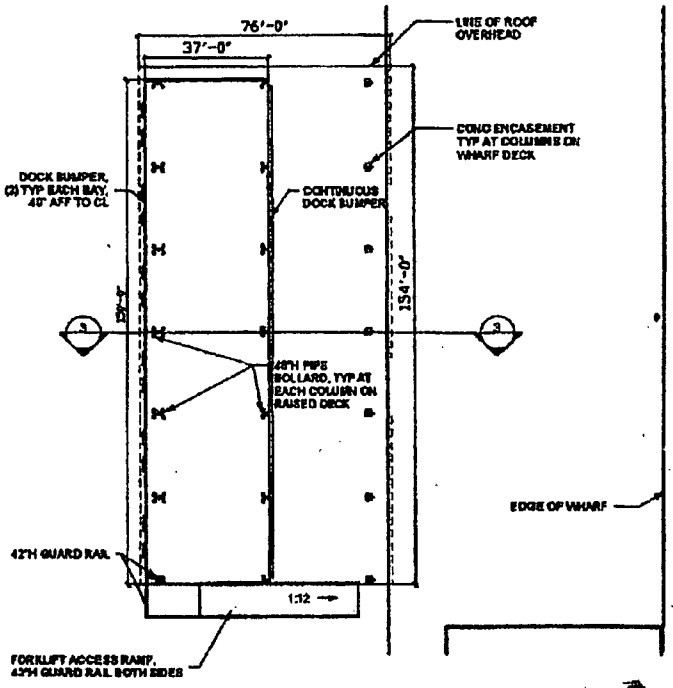
SEE SPECIAL CONDITION(S)

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
LICENSED

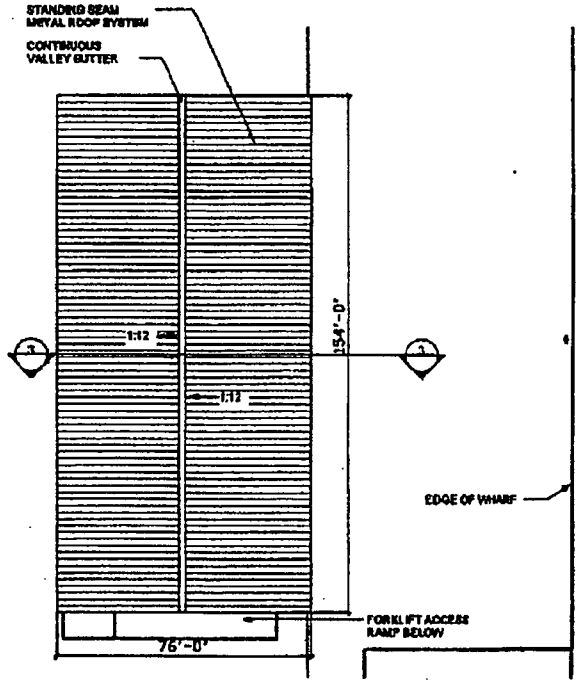
MODIFICATIONS (CROSS SECTION)

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

OCRM-12-054-B
PROJECT NO.: CF11E006B
FILE NAME: Upcplp5
DATE: JULY 2012
SHEET: 5 OF 11

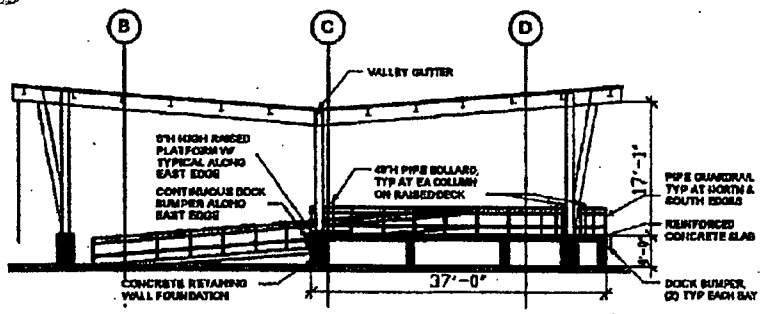


1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN

SEE SPECIAL CONDITIONS(S)



3 STORES CANOPY E-W SECTION

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

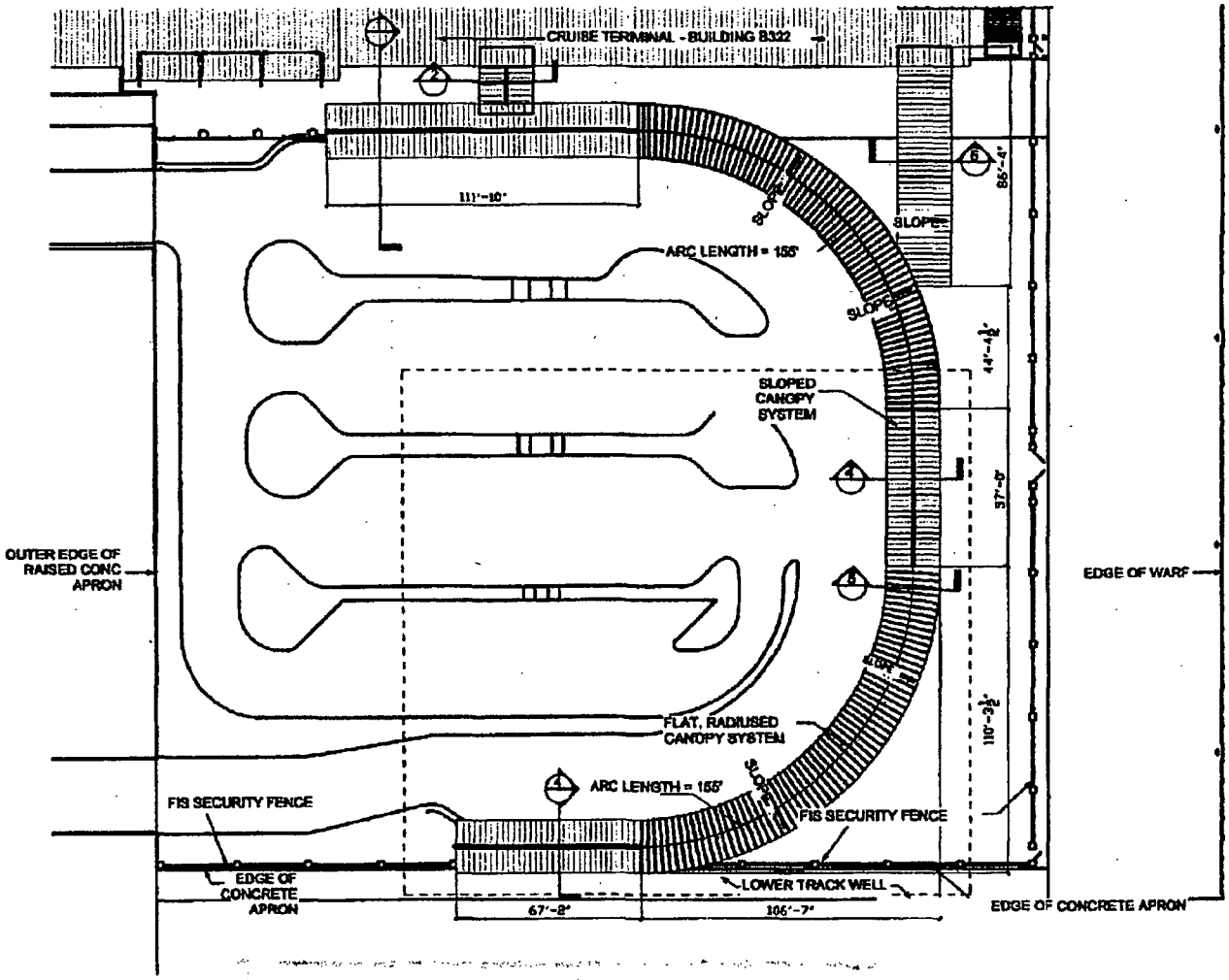
MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upgdp6
DATE: JULY 2012
SHEET: 6 OF 11

SEE SPECIAL CONDITIONS(S)



PAX CANOPY PLAN

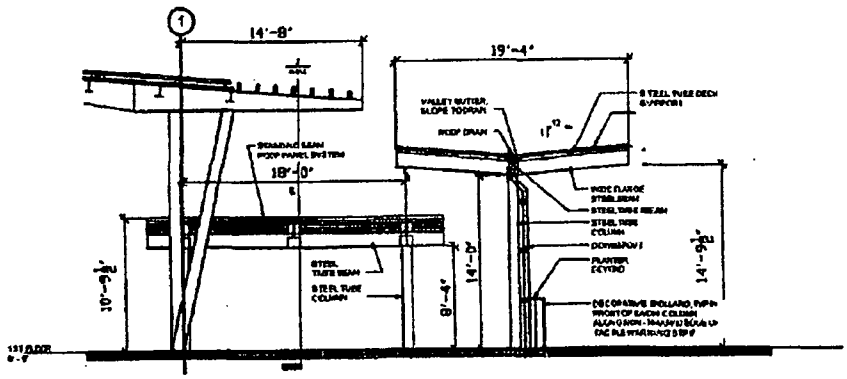
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

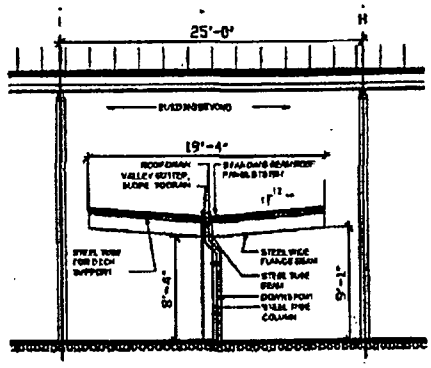
MODIFICATIONS
SOUTH APRON

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

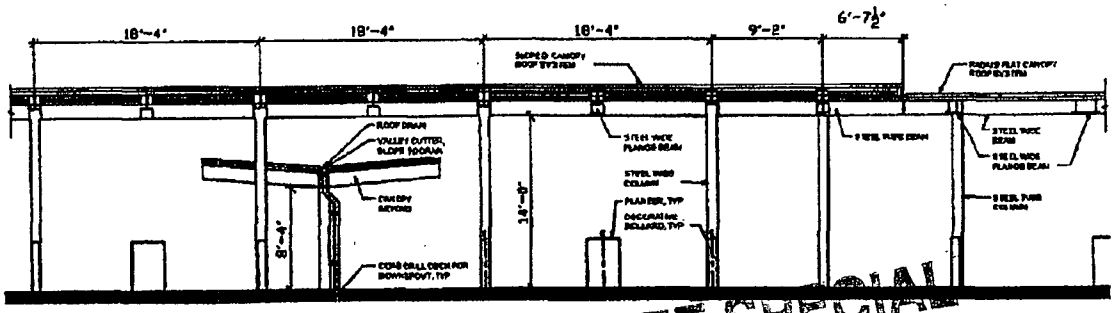
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



SECTION - PAX DROP OFF ZONE CANOPY

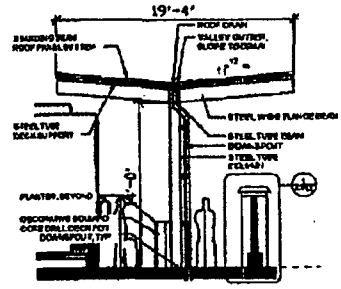


SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION

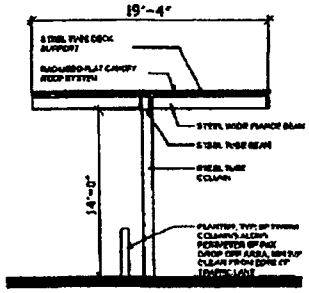


SECTION - PAX ACCESS CANOPY

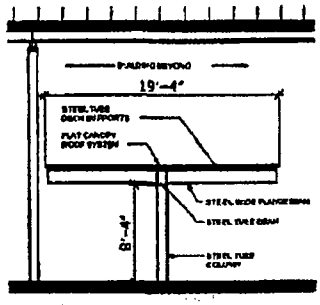
SEE SPECIAL CONDITIONS(S)



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

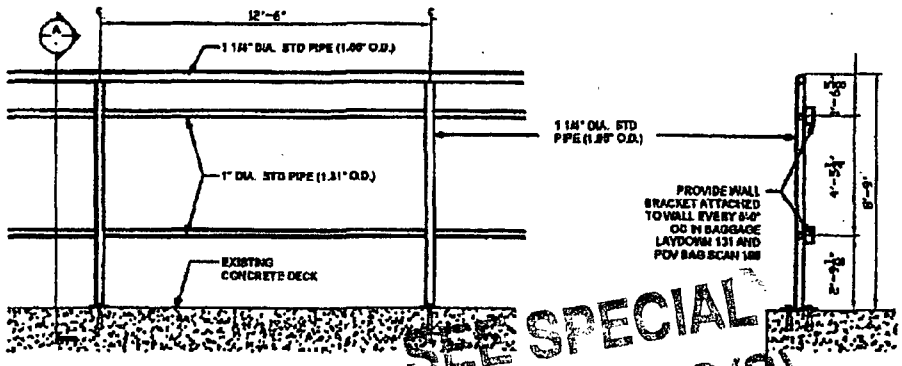
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25148
7/24/12
CEDRICK L. BELLAMY

Cedrick L. Bellamy

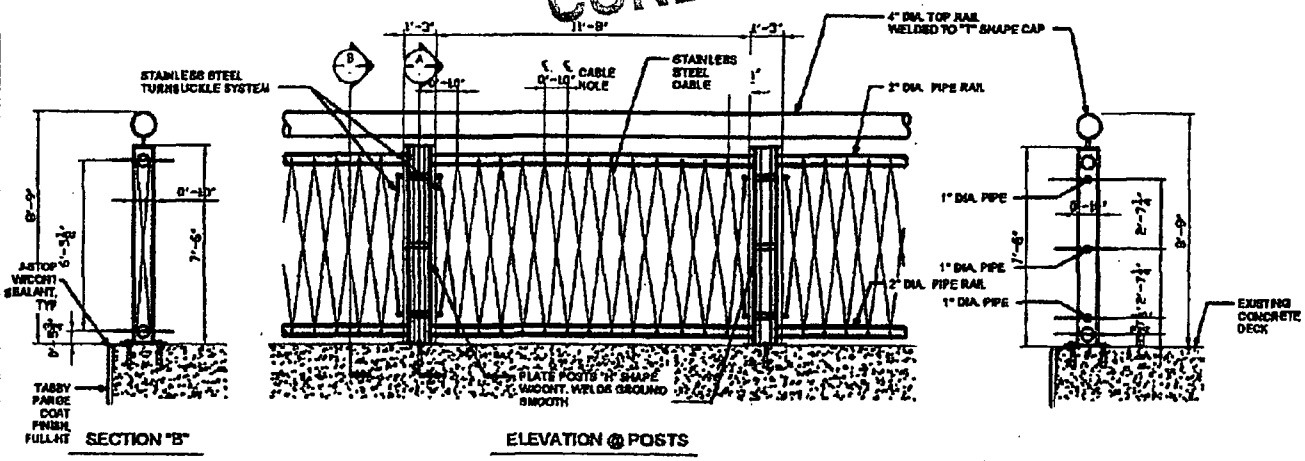
MODIFICATION
SOUTH APRON - DETAILS

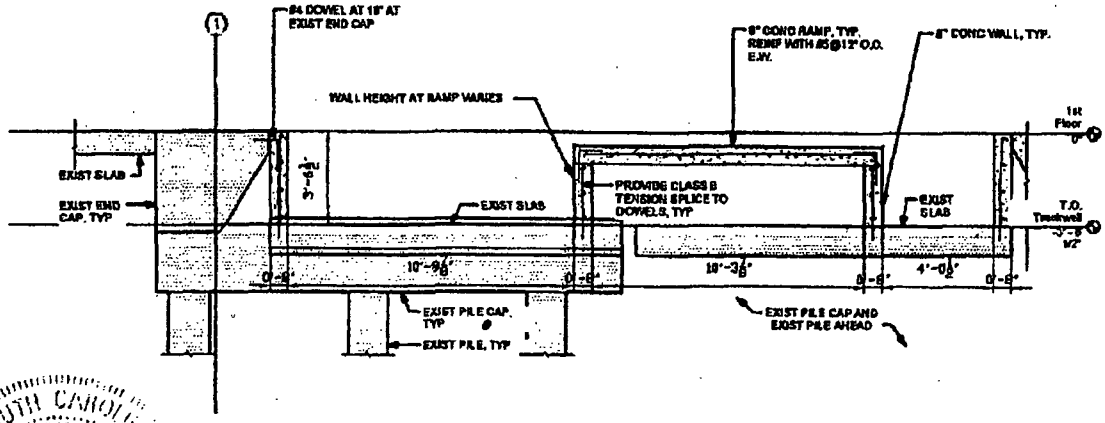
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM- 12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp8
DATE: JULY 2012
SHEET: 8 OF 11



SEE SPECIAL CONDITIONS(S)





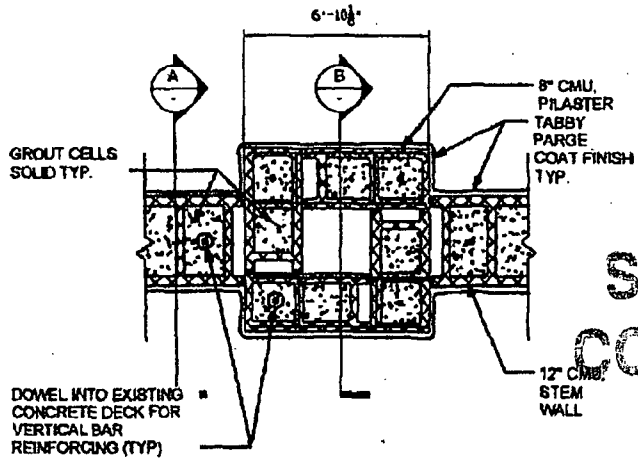
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25418
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

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

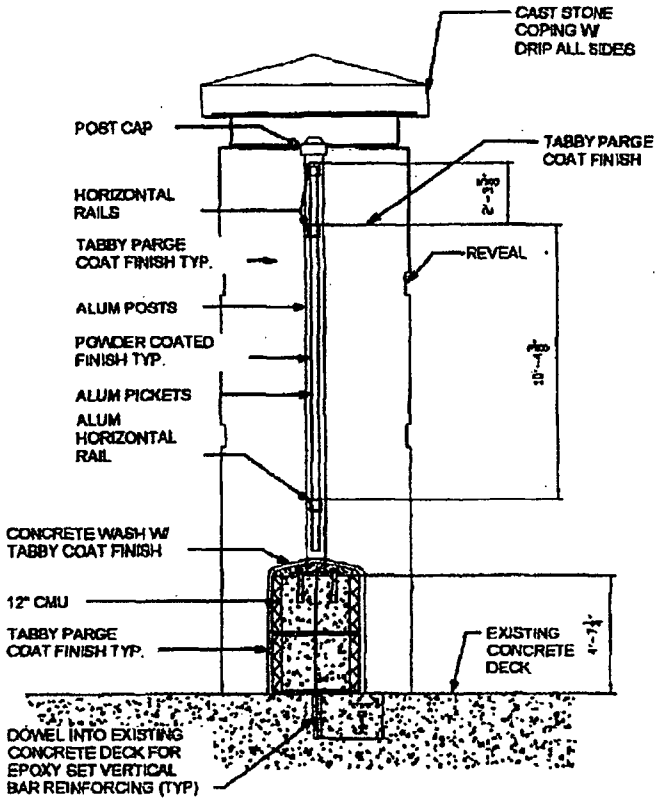
OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp9
DATE: JULY 2012
SHEET: 9 OF 11

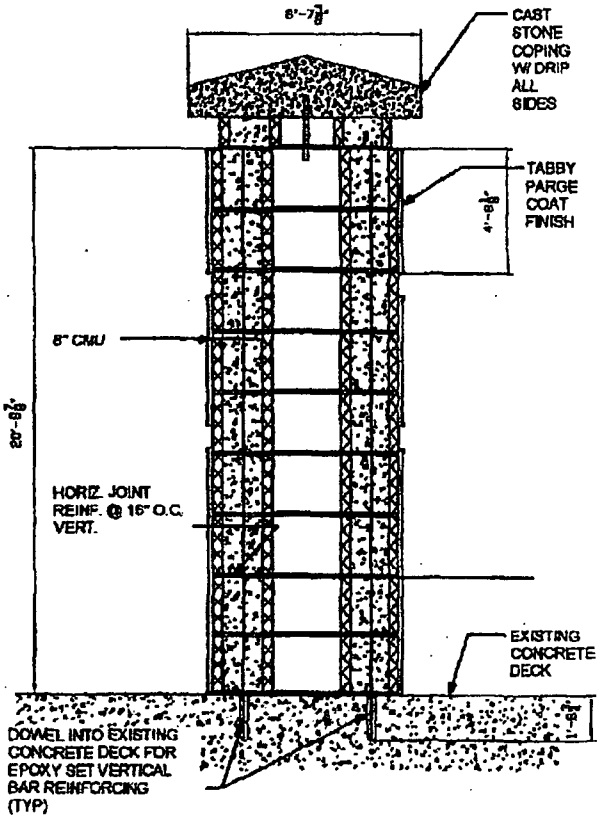


SEE SPECIAL CONDITIONS(S)

PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

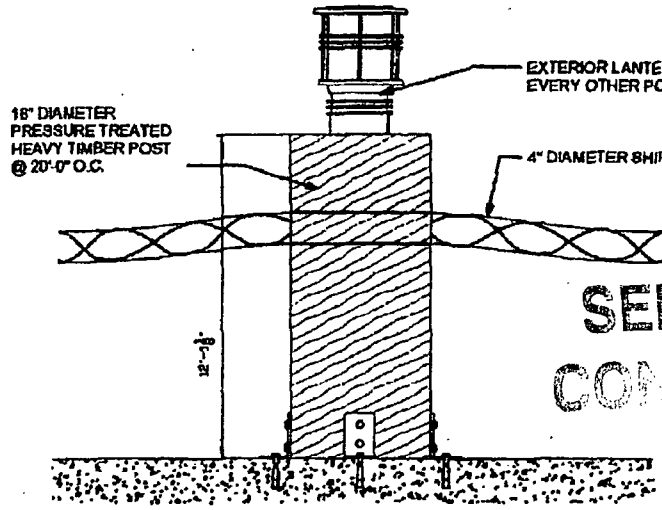
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

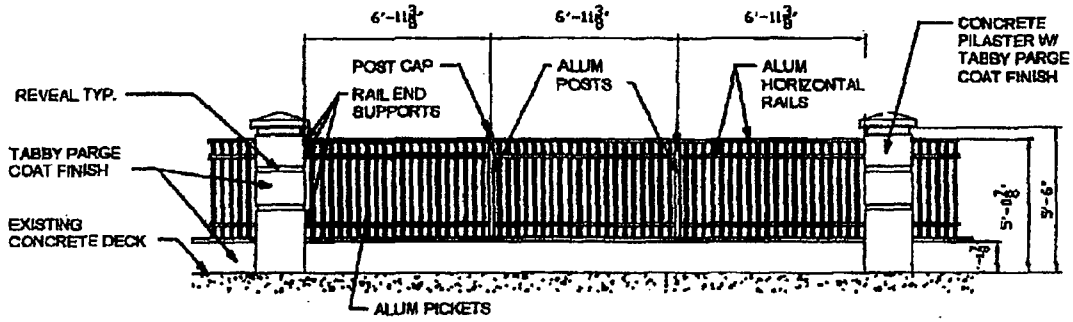
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11

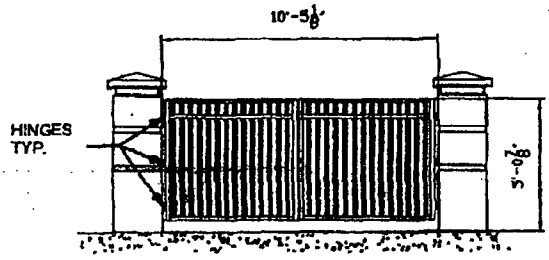


SEE SPECIAL CONDITIONS(S)

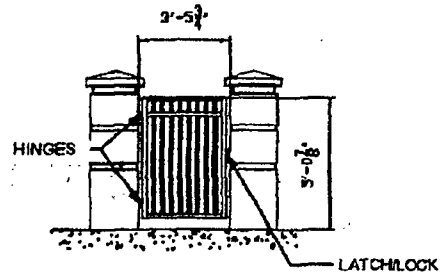
NORTH APRON DECORATIVE BOLLARDS



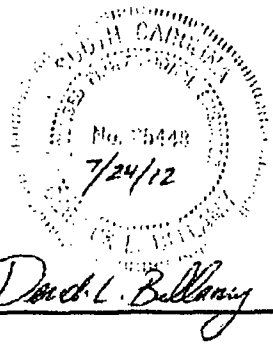
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



Derek L. Ballaney

MODIFICATIONS
SECURITY FENCE DETAILS

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

6CRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp11
DATE: JULY 2012
SHEET: 11 OF 11

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

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

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

SEE SPECIAL CONDITION(S)

ATTACHMENT A

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

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE SPECIAL CONDITIONS(S)

Exhibit 7

D H E C

PROMOTE PROTECT PROSPER

FEB 14 2012

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

February 10, 2012

South Carolina State Ports Authority
Attn: Derrick Bellamy
PO Box 22287
Charleston, SC 29413-2287

Re: Recent Application for "Building No. 332 Renovation"

Dear Mr. Bellamy:

Staff has initiated the Department's review of your project and I am writing this letter to inform you of administrative deficiencies with your submitted application and to advise you that your application is not administratively complete. The administrative deficiencies, as discussed, are the following:

1. The application did not contain a notarized copy of the Affidavit of Ownership or Control along with the appropriate supporting documents (**Title and Plat**). **The plat must have a current, valid OCRM critical area line signed off by OCRM staff.** Please complete the enclosed affidavit of ownership from the OCRM permit application and provide the supporting documents. I have also enclosed a request to have OCRM certify the Critical Area Line.

2. The application did not contain permit drawings. Drawings must be computer generated and produced a professional engineer, professional surveyor or registered landscape architect. These drawings must be stamped and signed by one of the above licensed professionals. The permit drawings must reference the current plat or survey from which the OCRM Critical Area Line was pulled.

3. The application written description must match the permit drawings. Please provide written dimensions for the "five pile clusters", as mentioned in the project description.

You must submit the requested information within the next 30 days. If after 30 days, SCDHEC-OCRM has not received all of the requested information, the application will be deemed withdrawn and the submittal will be destroyed. SCDHEC-OCRM will not keep copies. If the information is submitted within the next thirty days, the Department will process your application in accordance with applicable Department regulations. If during the review period, staff determines there are technical deficiencies you will be notified of the deficiencies and the timeframes within which to respond.

The Department looks forward to assisting you with your application and processing it pursuant to appropriate regulations. Therefore, please call me at 843-953-0233 or email me at trumbumt@dhec.sc.gov if you have any questions concerning the content of this letter.

Sincerely,

Tess Trumbull
Wetland Section Coordinator

cc: Blair Williams, Wetland Section Manager
Steve Brooks, Wetland Section Project Manager

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Ave, Suite 400 · Charleston, SC 29405-2047
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

D H E C
PROMOTE PROTECT PROSPER

AFFIDAVIT OF OWNERSHIP OR CONTROL

S. C. Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management

Charleston	Beaufort	Myrtle Beach
953-0200	846-9400	238-4528
953-0201 (fax)	846-9810(fax)	238-4526(fax)

I hereby certify that I am the (check one):

- [X] Record Owner
- [ ] Lessee
- [ ] Record Easement Holder
- [ ] Applicant To Record Owner For Easement
- [ ] Contract To Purchase Property

of the below described property situated in _____ County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

WRITE LEGAL DESCRIPTION OF HIGHLAND (as described in deed, lease, etc.) BELOW OR WRITE "SEE ATTACHED" (in large bold letters) AND ATTACH A COPY OF THE DEED, LEASE, EASEMENT, OR MOST RECENT CERTIFIED PLAT OF THE PROPERTY. IF YOU ARE NOT THE RECORD OWNER, LESSEE OR EASEMENT HOLDER, YOU MUST ALSO SUBMIT WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY TO CARRY OUT THE PROPOSED ACTIVITY.

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

_____
Signature of Record Holder or Lessee

Sworn to and subscribed before me at _____, _____ County,
South Carolina, this _____ day of _____, 20____.

_____
Notary Public

My commission expires:

D H E C

PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

Request to Have a Critical Area Line Established

Property owners Name & Address: _____

_____

(Email) _____

Phone Number: _____

Surveyor: _____

(Email) _____

Phone Number: _____

This is a request to:
A – Set a new critical area line.
B – Certify a line set by OCRM.
C – Certify a line set by another party

Site address: _____ **County:** _____
Tax Map Number: _____ **Acreage:** _____

Adjacent Waterbody/Marshes of: _____

Special Instructions (example - dog, locked gate, landmarks, marked property corners):

_____

_____

*****Please attach any previous plats or surveys and a site map. This form must be completed in full in order for OCRM to process the request. Any additional information that will assist staff fulfill this request may be included. Incomplete requests will be returned.**

Please submit this request to:

Charleston Office: SCDHEC-OCRM Attn: Tess Rodgers
1362 McMillan Ave, Suite 400
Charleston, SC 29405

Beaufort Office: SCDHEC-OCRM Attn: Geordy Madlinger
104 Parker Drive
Beaufort, SC 29906

Myrtle Beach Office: SCDHEC-OCRM Attn: Tanitra Marshall
927 Shine Ave
Myrtle Beach, SC 29557

For official use only: tracking #_____ Date Received: _____
Date Flagged: _____ Date Certified: _____

DHEC 3902 (03/2007)

Exhibit 8

South Carolina State **PORTS AUTHORITY**

P.O. Box 22287
Charleston, S.C. 29413-2287 USA
(843) 856-7048
Fax: (843) 856-7067

February 27, 2012

Mrs. Tess Trumbull, Wetland Section Coordinator
South Carolina Department of Health and Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillian Ave., Suite 400
Charleston, SC 29405

Dear Mrs. Trumbull:

Re: Recent Application for "Building No. 322 Renovation"

The South Carolina State Ports Authority is in receipt of your letter dated February 12, 2012 in regards to the administrative deficiencies with our submitted application. Please find attached the documents addressing the administrative deficiencies as follows:

1. Notarized copy of the Affidavit of Ownership or Control along with the appropriate supporting documents.

2. Permit drawings referencing the current plat or survey from which the OCRM Critical Area line was pulled.

3. The written dimension for the "five pile clusters," as mentioned in the project description is sixteen inch (16") precast pile as noted on drawing 4 of 4 titled Modifications.

If you have any questions or require any additional information, please feel free to contact me.

Respectfully submitted,

Derrick L. Bellamy, P.E.
Staff Engineer

Enclosures

cc: Mr. Joe T. Bryant, SCSPA
Mr. David N. Smith, SCSPA

D H E C PROMOTE PROTECT PROSPER	**AFFIDAVIT OF OWNERSHIP OR CONTROL**	S. C. Department of Health and Environmental Control Office of Ocean and Coastal Resource Management Charleston 953-0200 953-0201 (fax) Beaufort 846-9400 846-9810(fax) Myrtle Beach 238-4528 238-4526(fax)

I hereby certify that I am the (check one):

- [X] Record Owner
- [ ] Lessee
- [ ] Record Easement Holder
- [ ] Applicant To Record Owner For Easement
- [ ] Contract To Purchase Property

of the below described property situated in Charleston County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

WRITE LEGAL DESCRIPTION OF HIGHLAND (as described in deed, lease, etc.) BELOW OR WRITE "SEE ATTACHED" (in large bold letters) AND ATTACH A COPY OF THE DEED, LEASE, EASEMENT, OR MOST RECENT CERTIFIED PLAT OF THE PROPERTY. IF YOU ARE NOT THE RECORD OWNER, LESSEE OR EASEMENT HOLDER, YOU MUST ALSO SUBMIT WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY TO CARRY OUT THE PROPOSED ACTIVITY.

SEE ATTACHED

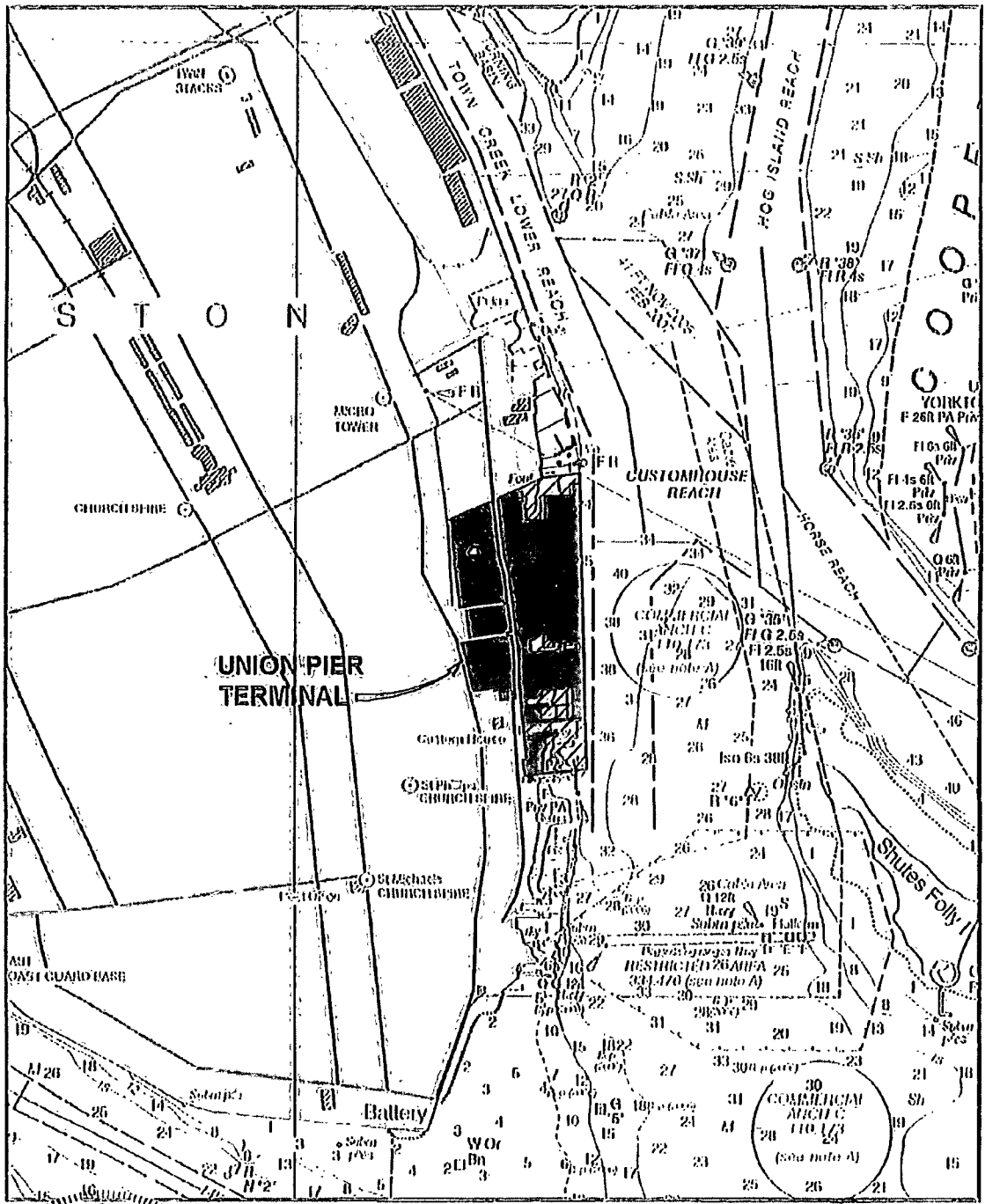
I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean high water by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Dank L. Bellamy
Signature of Record Holder or Lessee

Sworn to and subscribed before me at 400 Longpoint Rd. Mt. Pleasant, Charleston County, South Carolina, this 21 day of February, 2012.

Pamela J. Jones
Notary Public

My commission expires: Aug. 11, 2016



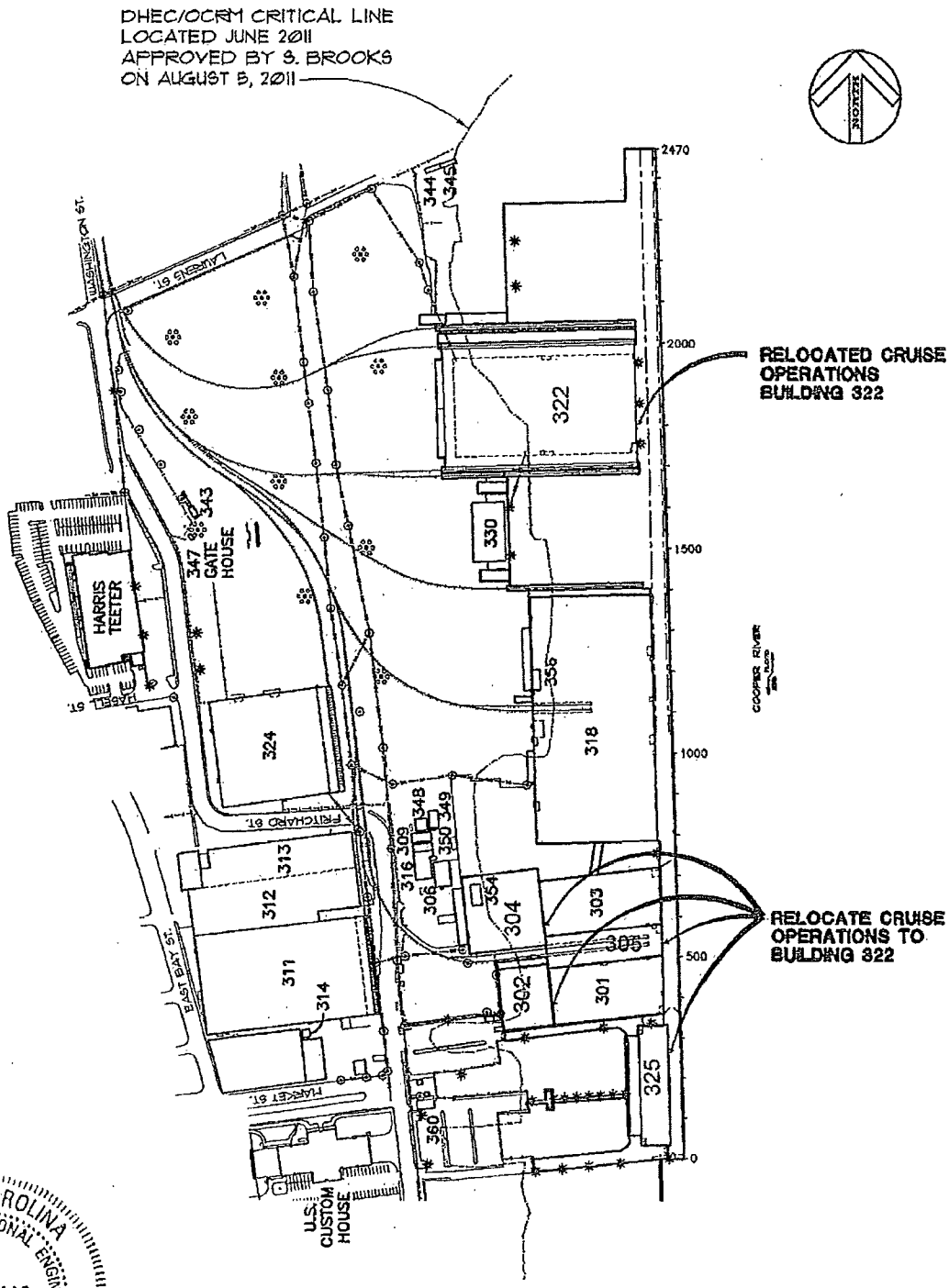
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

Derrick L. Bellamy

LOCATION

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

PROJECT NO.: CIF11E0068
FILE NAME: Upcptpl
DATE: DECEMBER 2011
SHEET: 1 OF 4

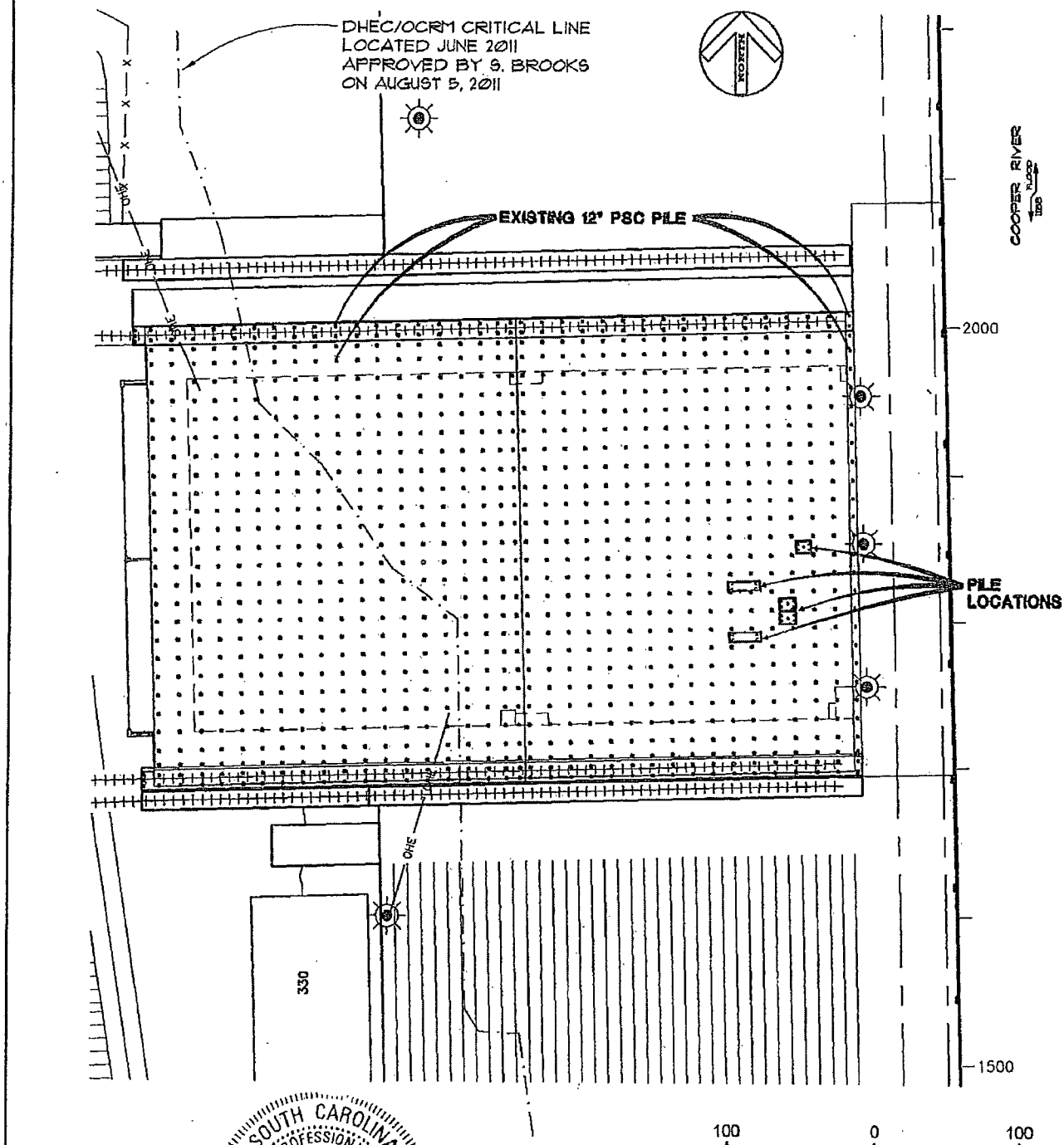


SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

PROJECT NO.: CIF11E006B
FILE NAME: Upcptp2r1
DATE: FEBRUARY 2012
SHEET: 2 OF 4



LEGEND

B — B — ELEVATORS

A — A — ESCALATOR

100 0 100

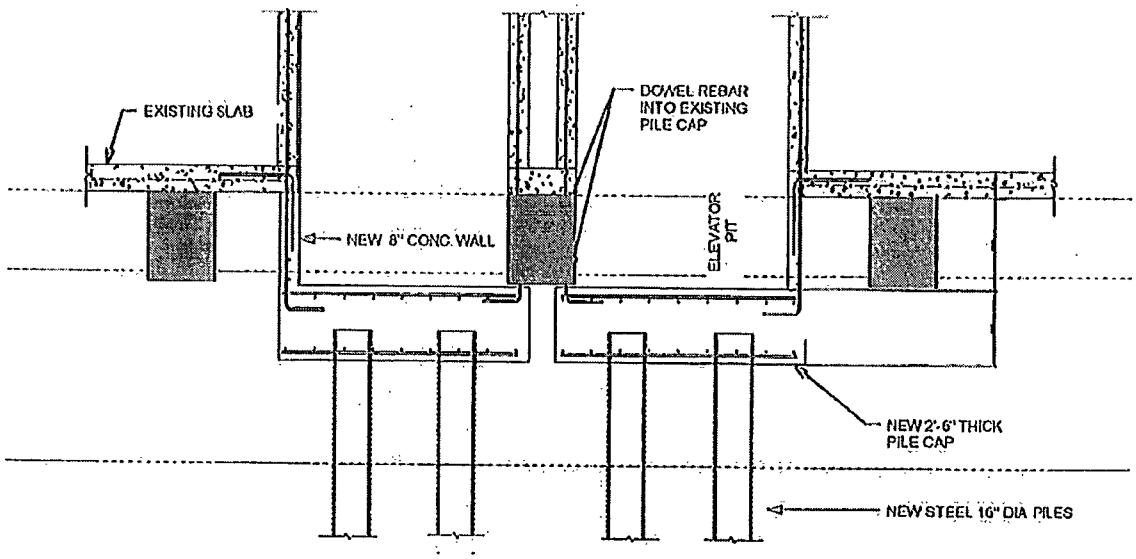
SCALE IN FEET

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

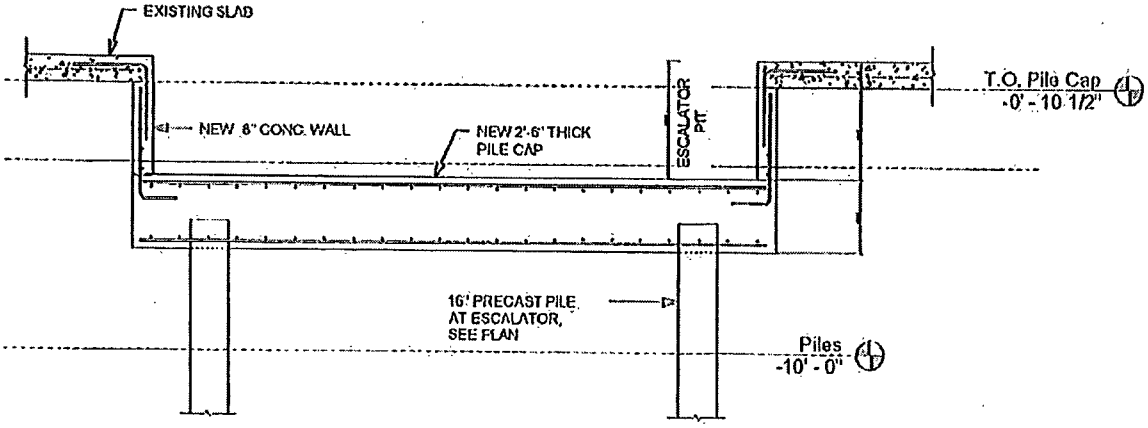
MODIFICATIONS (BUILDING 322)

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

PROJECT NO.: CIF11E006B
FILE NAME: Upoplp3r1
DATE: FEBRUARY 2012
SHEET: 3 OF 4



A SECTION
ELEVATOR



B SECTION
ESCALATOR

SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
2/21/12
DERRICK L. BELLAMY

Derrick L. Bellamy

MODIFICATIONS (CROSS SECTION)

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

PROJECT NO.: CIF11E0008
FILE NAME: Upgrd1
DATE: DECEMBER 2011
SHEET: 4 OF 4

Deed Bk. T64 pg. 736

south carolina state ports authority
P. O. BOX 817, CHARLESTON, SOUTH CAROLINA 29402, TELEPHONE 803/723-8651

October 14, 1981

SPA Deed File 20

Honorable John Tucker Campbell
Secretary of State
State of South Carolina
Hampton Office Building
Post Office Box 11350
Columbia, South Carolina 29211

Re: Coal Tipple Property
Charleston, South Carolina

Dear Mr. Campbell:

You are hereby notified that the South Carolina State Ports Authority has taken and is now occupying, for use in connection with the development and improvement of the port facilities at Charleston Harbor, the marsh, tidelands, and high lands with the improvements thereon described as follows:

ALL those certain tracts or parcels of land situate, lying and being at Charleston, in Charleston County, South Carolina, more particularly described as follows:

Parcel 72
Map 3

PARCEL 1: A tract of land bounded on the east by Cooper River, on the northwest by main track right of way of Seaboard Air Line Railroad and on the southwest by Belvedere Creek and a line extending from Belvedere Creek to the right of way of the Seaboard Air Line Railroad, more particularly described as follows: BEGINNING at a rail planted at the corner formed by the intersection of the southerly boundary line of Green Street with easterly boundary line of Railroad Avenue, said beginning point being ninety (90) feet northeastwardly from, measured at a right angle to, the center line of the main track of Charleston, Atlantic and Western Railway; and running thence North 65° 10' East, along said southerly line of Green Street, two hundred three and two-tenths (203.2) feet, more or less, to a corner (marked by a rail); thence South 25° 00' East, three hundred ten (310) feet, more or less, to a corner (marked by a rail); thence South 50° 35' East, four hundred twenty-nine and one-tenth (429.1) feet, more or less, to a

corner (marked by a rail); thence North 65° 00' East, four hundred seventy-eight and four-tenths (478.4) feet, more or less, to a west edge or bank of Cooper River; thence Southeastwardly, along the west edge or bank of Cooper River, a distance of five thousand two hundred (5,200) feet, more or less, to the north edge or bank of Belvedere Creek; thence along the north edge or bank of said Creek, in a general westerly direction, with the meandering thereof, two thousand eight hundred thirty-four (2,834) feet, more or less, to a corner; thence North 88° 30' West, one thousand one hundred thirty and four-tenths (1,130.4) feet, more or less, to the easterly line of Railroad Avenue; thence Northwardly, along the said easterly line of Railroad Avenue, four thousand (4,000) feet, more or less, to the point or place of beginning; containing 116 acres, more or less;

PARCEL 2: A lot bounded by Washington and Bay Streets and extending southwardly from Chapel Street a distance of approximately two hundred (200) feet, more particularly described as follows: BEGINNING at the intersection of the easterly line of Bay Street with the southerly line of Chapel Street; and running thence Northeastwardly, along said southerly line of Chapel Street, twenty-one and nine-tenths (21.9) feet, more or less, to a corner; thence North 66° 29' East, one hundred sixty-five and eight-tenths (165.8) feet, more or less, to a point in the westerly line of Washington Street; thence South 26° 52' East, along the said westerly line of Washington Street, one hundred ninety-nine and seven-tenths (199.7) feet, more or less, to a corner; thence South 63° 03' West, twenty-five and two-tenths (25.2) feet, more or less, to a point fifteen (15) feet north (measured at a right angle) of the center line of a Seaboard Air Line Railroad track; thence Northwestwardly, parallel to or concentric with and at all points fifteen (15) feet northwardly from center line of said last mentioned track one hundred ninety-three and nine-tenths (193.9) feet, more or less, to a point twenty-three (23) feet south (measured at a right angle) of center line of

Parcel 51
Map 2

track of Southern Railway; thence, Westwardly, concentric with center line of said Southern Railway track, thirty-three and seven-tenths (33.7) feet to a point fifteen (15) feet southwestwardly (measured at a right angle) of center line of said Seaboard Air Line Railroad track; thence Southeastwardly, parallel to or concentric with and at all points fifteen (15) feet southwestwardly from center line of said Seaboard Air Line Railroad track, two hundred and seven-tenths (200.7) feet, more or less, to a corner; thence South 63° 08' West, one hundred thirty-one and seven-tenths (131.7) feet, more or less, to the northeasterly line of Bay Street; thence North 22° 53' West, along said northeasterly line of Bay Street, two hundred two (202) feet, more or less, to the point or place of beginning; containing 0.75 acre, more or less;

PARCEL 3: A strip of land forty-five (45) feet in width, that is, fifteen (15) feet on the north side and thirty (30) feet on the south side of track 1-14 of Southern Railway, extending eastwardly from Washington Street, opposite Parcel 2, approximately four hundred (400) feet, more particularly described as follows: BEGINNING at a point in the easterly line of Washington Street fifteen (15) feet northwest of center line of Southern Railway track 1-14 (measured on a radius of curve therein); and running thence Northeastwardly, concentric with and all point fifteen (15) feet northwestwardly of center line of said track 1-14, three hundred twenty-five (325) feet, more or less, to the northerly line of property of Southern Railway; thence Eastwardly, along said northerly line of Southern Railway property, crossing track 1-14, sixty-three (63) feet, more or less, to a point thirty (30) feet distant southeastwardly from center line of said track 1-14 (measured on a radius of curve therein); thence Southwestwardly, concentric with and at all points thirty (30) feet southeastwardly from center line of said track 1-14, four hundred seven (407) feet, more or less, to the easterly line of Washington Street; thence Northwardly, along said easterly line of Washington Street, forty-five (45) feet, more or less, to the point or place of beginning; containing 0.4 acre, more or less;

Parcel 52
Map 2

PARCEL 4: A strip of land fronting fifty-two (52) feet on Washington Street and thirty-six (36) feet on Calhoun Street, more particularly described as follows: BEGINNING at the intersection of the easterly line of Washington Street with the southerly line of Calhoun Street; and running thence Eastwardly, along said southerly line of Calhoun Street, thirty-six (36) feet; thence Southwardly, sixty-five (65) feet; thence Westwardly, fourteen (14) feet to the easterly line of Washington Street; thence Northwardly, along said easterly line of Washington Street, fifty-two (52) feet, more or less, to the point or place of beginning; containing 0.03 acre, more or less;

Parcel 42 Map 1

PARCEL 5: Lots 11 to 25, inclusive, except Lot 19, in the block bounded by Marsh, Society, Washington and Laurens Streets, more particularly described as follows: BEGINNING at the intersection of the easterly line of Washington Street with the southerly line of Laurens Street, said point being also the northwesterly corner of Lot 17 in the aforesaid block; and running thence Northeastwardly, along said southerly line of Laurens Street, ninety and six-tenths (90.6) feet, more or less, to the northeasterly corner of Lot 18; thence Southwardly, along the line dividing Lots 18 and 19, one hundred fifteen (115) feet, to the southeasterly corner of Lot 18; thence Eastwardly, along the line dividing Lot 19 from Lots 16 and 22, forty-three and three-tenths (43.3) feet to the southwesterly corner of Lot 20; thence Northwardly, along the line dividing Lots 19 and 20, one hundred twenty-four and six-tenths (124.6) feet, more or less, to the northwesterly corner of Lot 20 in the southerly line of Laurens Street; thence Northeastwardly, along said southerly line of Laurens Street, ninety and two-tenths (90.2) feet, more or less, to intersection with the westerly line of Marsh Street, at the northeasterly corner of Lot 21; thence southwardly, along the westerly line of Marsh Street, three hundred ten (310) feet, more or less, to the southeasterly corner of Lot 25; thence Westwardly, along the line dividing Lots 25 and 26, one hundred nine and two-tenths (109.2) feet, more or less, to a corner common to Lots 12, 13, 25, and 26; thence Southwardly, along the line dividing Lots 12 and 11 from Lots 26 and 27, eighty (80) feet, more or less, to the

Parcel 35 Map 1

southeasterly corner of Lot 11; thence Westwardly, along the line dividing Lot 11 from Lots 8, 7 and 6, one hundred nine (109) feet, more or less, to the easterly line of Washington Street at the southwesterly corner of Lot 11; thence Northwardly, along the easterly line of Washington Street, three hundred thirty-seven and three-tenths (337.3) feet, more or less, to the point or place of beginning; containing 1.5 acres, more or less;

PARCEL 6: Lots 36 to 40, inclusive, and 45 to 50, inclusive, and parts of Lots 44 and 51, in the block bounded by Concord, Society, Marsh and Laurens Streets, more particularly described as follows: BEGINNING at the northwesterly corner of Lot 40 in the aforementioned block, which corner is in the easterly line of Marsh Street; and running thence Eastwardly, along the line dividing Lots 40 and 46 from Lots 41, 42 and 43, one hundred twenty-five and six-tenths (125.6) feet; thence Northeastwardly, crossing Lot 44, sixty-seven and two-tenths (67.2) feet to a point in the line dividing Lots 44 and 45; thence Northwardly, along last mentioned dividing line, ninety-six and six-tenths (96.6) feet, more or less, to the southerly line of Laurens Street, which is the northwesterly corner of Lot 45; thence Northeastwardly, along said southerly line of Laurens Street, forty-six and three-tenths (46.3) feet, more or less, to the westerly line of Concord Street, which is also the northeasterly corner of Lot 45; thence Southwardly, along said westerly line of Concord Street, four hundred one and three-tenths (401.3) feet, more or less, to the southeasterly corner of Lot 51; thence Northwestwardly, across Lot 51, fifty-five and eight-tenths (55.8) feet, more or less, to a point in the line dividing Lots 50 and 51; thence Westwardly, along said last mentioned dividing line, and continuing along the line dividing Lots 35 and 36, one hundred sixty (160) feet to the easterly line of Marsh Street, which is also the southwesterly corner of Lot 36; thence Northwardly, along the said easterly line of Marsh Street, two hundred (200) feet, more or less, to the point or place of beginning; containing 1.2 acres, more or less;

Parcel 36
Map 1

PARCEL 7: A tract of land bounded on the north by Laurens Street and the same extended, on the east by Cooper River, on the west by Concord Street and on the south by the north line of Lot 54 and the same extended, more particularly described as follows: BEGINNING at the intersection of the easterly line of Concord Street with the southerly line of Laurens Street, which is also the northwesterly corner of Lot 58 in the block bounded by Laurens, Concord and Society Streets and Cooper River; and running thence Northeastwardly, along the southerly line of Laurens Street (projected eastwardly), eight hundred sixty-six (866) feet, more or less, to the Pierhead Line of Cooper River; thence Southwardly, along said Pierhead Line, seven hundred thirty-five (735) feet, more or less, to intersection with the line dividing Lots 54 and 55 (projected eastwardly); thence Westwardly, along said dividing line and the same projected, eight hundred twenty-seven (827) feet, more or less, to the easterly line of Concord Street; thence Northwardly, along said easterly line of Concord Street, four hundred ninety-six (496) feet, more or less, to the point or place of beginning; being all of Lots 55, 56, 57 and 58 in the aforedescribed block and the area between the easterly line of said Lots and said Pierhead Line; EXCEPTING, however, right of way for track of Port Utilities Commission extending across the northwesterly corner of said Lot 58; containing 11.9 acres, more or less;

Parcel 40
Map 1

TOGETHER with the coal pier, and other improvements located on Parcel 1, the banana pier, utilities building and other improvements located on Parcel 7; and all riparian rights appertaining;

ALSO, all tracks located on the aforedescribed parcels and across streets intervening between Parcels 2 and 3, 5 and 6, 6 and 7, and also the track extending from a point in the north line of John Street about three hundred (300) feet west of Meeting Street, thence along and across John Street, Chapel Street, Bay Street, Parcel 2 and Washington Street to terminus at a point opposite Parcel 5, and portions of tracks extending from said last mentioned track within Washington Street to said Parcel 5; which said tracks are further described as follows:

(a) All of the tracks on Parcel 1 comprising 1.47 miles of yard tracks;

(b) The lead track beginning at the north line of John Street and extending thence eastwardly and southwardly in and along John Street, Chapel Street, Parcel 2 and Washington Street, to a point in Washington Street about one hundred fifty (150) feet north of Society Street;

(c) A connecting track springing from the lead track described in (b) in Parcel 2 and extending thence eastwardly across Parcel 2, Washington Street and Parcel 3, to the end of Southern Railway's ownership at the northeasterly line of Parcel 3;

(d) A system of tracks springing from the lead track described in (b), in Washington Street in the vicinity of Laurens Street, and extending thence eastwardly on, along and across Washington Street, Parcel 5, Marsh Street, Parcel 6, Concord Street, Parcel 7, and Vernon and Laurens Streets or the same projected;

All being substantially as shown on print of map bearing identifying number 34/392, dated August 21, 1957, last revised December 19, 1957, prepared in the office of Chief Engineer of Southern Railway System at Washington, D. C., hereunto annexed;

TOGETHER with all improvements located on the aforedescribed land and all rights or franchises granted to Southern Railway by the City of Charleston, or otherwise, for the construction, maintenance or operation of said tracks in any of the aforementioned streeds, including specifically (but not limited to) such rights in public streets granted to Southern Railway by the City of Charleston under Ordinances of October 24, 1933, January 13, 1942, May 22, 1945, and October 8, 1946, as well as all and singular the rights, members, hereditaments and appurtenances to the same belonging or in any wise incident or appertaining.

This property is necessary as part of the development and improvement of the port facilities for Charleston Harbor, Charleston County.

This property was taken and this notice is filed with you under the authority of Section 54-3-170 Code of Laws of South Carolina 1976.

Yours very truly,

SOUTH CAROLINA STATE PORTS AUTHORITY

By: _____
General Counsel

WHVjr/jd

cc: Division Director T. M. Copeland
Division of General Services of
So. Carolina Budget & Control Board
G. Luther Rosebrock
W. Don Welch

BOOK D 66 PAGE 489

LD 94853
ssh
5-16-58

THIS DEED, Made this 28th day of May, 1958, between Seaboard Air Line Railroad Company, a corporation duly created and existing pursuant to and by virtue of the laws of the Commonwealth of Virginia, hereinafter called "Grantor"; and South Carolina State Ports Authority, an instrumentality of the State of South Carolina, hereinafter called "Grantee"; and in the execution and delivery of which the undersigned Mercantile-Safe Deposit and Trust Company, as successor Corporate Trustee, and F. Edmund Sutton, as successor Individual Trustee, under the First Mortgage of Seaboard Air Line Railroad Company, join for the purpose hereinafter stated;

Parcel 34

W I T N E S S E T H:

That for and in consideration of the sum of One Hundred Forty Five Thousand Dollars ($145,000.00) and of other good and valuable considerations, the receipt whereof is hereby acknowledged, the Grantor has, subject to the terms and conditions hereinafter set forth, granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns, in fee simple forever, all those certain parcels of land owned by the Grantor in the City of Charleston, County of Charleston, South Carolina, lying south of Laurens Street and easterly of the east line of Washington Street and a southerly projection thereof, together with all of the tracks (except as hereinafter provided), warehouses, wharves, buildings and other improvements located thereon (including specifically the old rice mill building and site lying west of Concord Street, but excluding specifically the machinery, property and other property located on the premises covered by the four (4) lease agreements enumerated on page 2 hereof and owned by the respective tenants thereunder) and owned by Grantor, and being all that portion of Society Street east of the easterly line of Washington Street closed by the City Council of the City of Charleston at its regular meeting held on November 23, 1915, and all of the land conveyed to Grantor's predecessors in title by the following deeds recorded in said Charleston County:

1. Martin Luhrs to Carolina, Atlantic and Western Railway by deed dated October 9, 1914, recorded in Deed Book T-27, Page 115;

2. Eveline Goodwine to Carolina, Atlantic and Western Railway by deed dated August 1, 1914, recorded in Deed Book T-27, Page 66;

3. Samuel Banov to Carolina, Atlantic and Western Railway by deed dated October 7, 1914, recorded in Deed Book T-27, Page 116;

4. Elizabeth Grace to Carolina, Atlantic and Western Railway by deed dated October 7, 1914, recorded in Deed Book R-26, Page 527;

5. Andrew B. Murray and Sarah B. Smith, to Carolina, Atlantic and Western Railway by deed dated July 16, 1914, recorded in Deed Book O-27, Page 272;

6. Charles S. Bennett to Carolina, Atlantic and Western Railway by deed dated July 16, 1914, recorded in Deed Book O-27, Page 270;

LD 94853
ssh
5-12-58

7. John R. Bennett to Carolina, Atlantic and Western Railway by deed dated July 13, 1914, recorded in Deed Book O-27, Page 271;

8. Atlantic Terminal Corporation to Charleston Northern Railway by deed dated January 13, 1914, recorded in Deed Book Y-25, Page 427; and

9. Frances Elizabeth Pregnall to Carolina, Atlantic and Western Railway by deed dated November 9, 1915, recorded in Deed Book Y-27, Page 132.

SAVING AND EXCEPTING the interchange track shown in GREEN on print of a part of Valuation Map L-5 SC, S3b, dated April 4, 1956, attached hereto as a part hereof, and RESERVING unto the Grantor, its successors and assigns, a perpetual right of way and easement for the operation and maintenance of said track.

The land hereinabove described and hereby conveyed is shown outlined in YELLOW on said attached print.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, its successors and assigns, in fee simple forever.

The property hereinabove described is conveyed to the Grantee subject (a) to any state of facts that an accurate survey would disclose, (b) to the rights of the public in and to all streets abutting or traversing said property and (c) to the rights of any and all persons using or occupying said land, including, but not limited to, the rights created and existing by virtue of the following agreements:

1. Grantor's Contract No. 40272 dated December 5, 1946, as supplemented, between Grantor and John T. Leonard, Jr., covering lease of land and the improvements thereon;

2. Grantor's Contract No. 41418 dated September 15, 1947, between Grantor and Geer Drug Company, Inc., covering lease of land;

3. Grantor's Contract No. 46682 dated March 21, 1952, between Grantor and L. Louis Green, Jr., and H. V. Salmons, covering lease of land and wharf facilities; and

4. Grantor's Contract No. 48178 dated June 4, 1953, as supplemented, between Grantor and Shipyard River Terminals, Division of Etiwan Fertilizer Company, covering lease of Bulk Storage Warehouse No. 22.

LD 94853
ssh
5-12-58

Subject to the aforesaid exception and reservation, and to the conditions set forth in the preceding paragraph, the Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the Grantee, its successors and assigns, against itself and its successors and assigns, or any person whomsoever lawfully claiming, or to claim, the same or any part thereof, EXCEPTING, HOWEVER, from this warranty the following portions of said premises:

(a) Such portions as were included within the lines of an old canal situated generally to the south of the Bennett's Rice Mill property; and

(b) Such portions as extend to the channel of Cooper River from the land as delineated on plat of McCrady Bros. & Cheves, Inc., dated February, 1913, and recorded February 14, 1913, in Plat Book C, Page 86, in the Public Records of Charleston County, South Carolina.

As to said portions (a) and (b), Grantor binds only itself and its successors and all persons claiming by, through and under it.

The property above described is herein conveyed freed of and discharged from the lien of the First Mortgage of Grantor to Mercantile Trust Company of Baltimore and Nelson H. Stritehoff, as Trustees, dated January 1, 1946, as supplemented by that certain First Supplemental Indenture dated March 30, 1950, affecting only properties in Dade County, Florida, therein described, and as supplemented and modified by that certain Second Supplemental Indenture dated May 1, 1950, and said Mercantile-Safe Deposit and Trust Company and F. Edmund Sutton, as the present successor Corporate and Individual Trustees, respectively, under said First Mortgage, as so supplemented and modified, by joining in the execution and delivery of this deed hereby release and discharge the property hereinabove described from the lien of said First Mortgage, pursuant to Section 1 of Article Twelve thereof.

IN TESTIMONY WHEREOF, Grantor and Mercantile-Safe Deposit and Trust Company, as such successor Corporate Trustee, have caused this deed to be duly signed and sealed, and F. Edmund Sutton, as such successor Individual Trustee, has hereunto set his hand and seal, all as of the day and year first above written.

Attest:

Secretary.

SEABOARD AIR LINE RAILROAD COMPANY,

By

Vice President.

LD 94853
ssh
5-12-58

Signed, sealed and delivered by Seaboard Air Line Railroad Company, in the presence of:

M. B. Harris

L. B. Bayard Jr.

Attest:

J. R. Henry
Assistant Secretary.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as successor Corporate Trustee under Seaboard Air Line Railroad Company First Mortgage, dated as of January 1, 1946, as supplemented and modified,

By _____
Vice President.

Signed, sealed and delivered by Mercantile-Safe Deposit and Trust Company, as successor Corporate Trustee, in the presence of:

_____

_____

_____ (SEAL)
As successor Individual Trustee under Seaboard Air Line Railroad Company First Mortgage, dated as of January 1, 1946, as supplemented and modified.

Signed, sealed and delivered by F. Edmund Sutton, as successor Individual Trustee, in the presence of:

_____

_____

LD 94853
ssh
5-12-58

STATE OF VIRGINIA,)
: ss.
CITY OF NORFOLK.)

Personally appeared before me L. R. Bozard, Jr., who being duly sworn, says that he saw Seaboard Air Line Railroad Company, by L. L. KNIGHT, its Vice President, execute and deliver the foregoing instrument, and by E. L. Lash, Jr., its ——— Secretary, affix and attest the seal of the corporation thereto and, by its said officers as and for its act and deed, deliver the same; and that he, with M. B. DAVIS, witnessed the execution thereof.

L. R. Bozard, Jr.

Sworn to and subscribed before me this 28th day of May, 1958.

Notary Public.

My commission expires January 10, 1960

LD 94853
ssh
5-12-58

STATE OF MARYLAND,)
:
CITY OF BALTIMORE.)

Personally appeared before me J. J. Dolan , who, being duly sworn, says that he saw MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a corporation, as successor Corporate Trustee under Seaboard Air Line Railroad Company First Mortgage dated as of January 1, 1946, as supplemented and modified, by J. R. Crunkleton , its Vice President, execute and deliver the foregoing instrument, and by J. E. Henry , its Assistant Secretary, affix and attest the seal of the corporation thereto and, by its said officers as and for its act and deed, deliver the same; and that he, with E. F. Conroy , witnessed the execution thereof.

J. J. Dolan

Sworn to and subscribed before me this 3RD day of JUNE, 1958.

Dorothy E. Schaaf
Notary Public

My commission expires
5-4-59

S. C. Individual

BOOK D 66 PAGE 495

LD 94853
ssh
5-12-58

STATE OF MARYLAND,)
:
CITY OF BALTIMORE.)

Personally appeared before me J. J. Dolan and made oath that he was present and saw the within named F. Edmund Sutton, as successor Individual Trustee under Seaboard Air Line Railroad Company First Mortgage dated as of January 1, 1946, as supplemented and modified, sign, seal and as his act and deed, deliver the within written instrument and that he with E. E. Conroy witnessed the execution thereof.

J. J. Dolan

Subscribed and sworn to before me this 3RD day of JUNE, 1958.

Dorothy E. Ebaugh
Notary Public

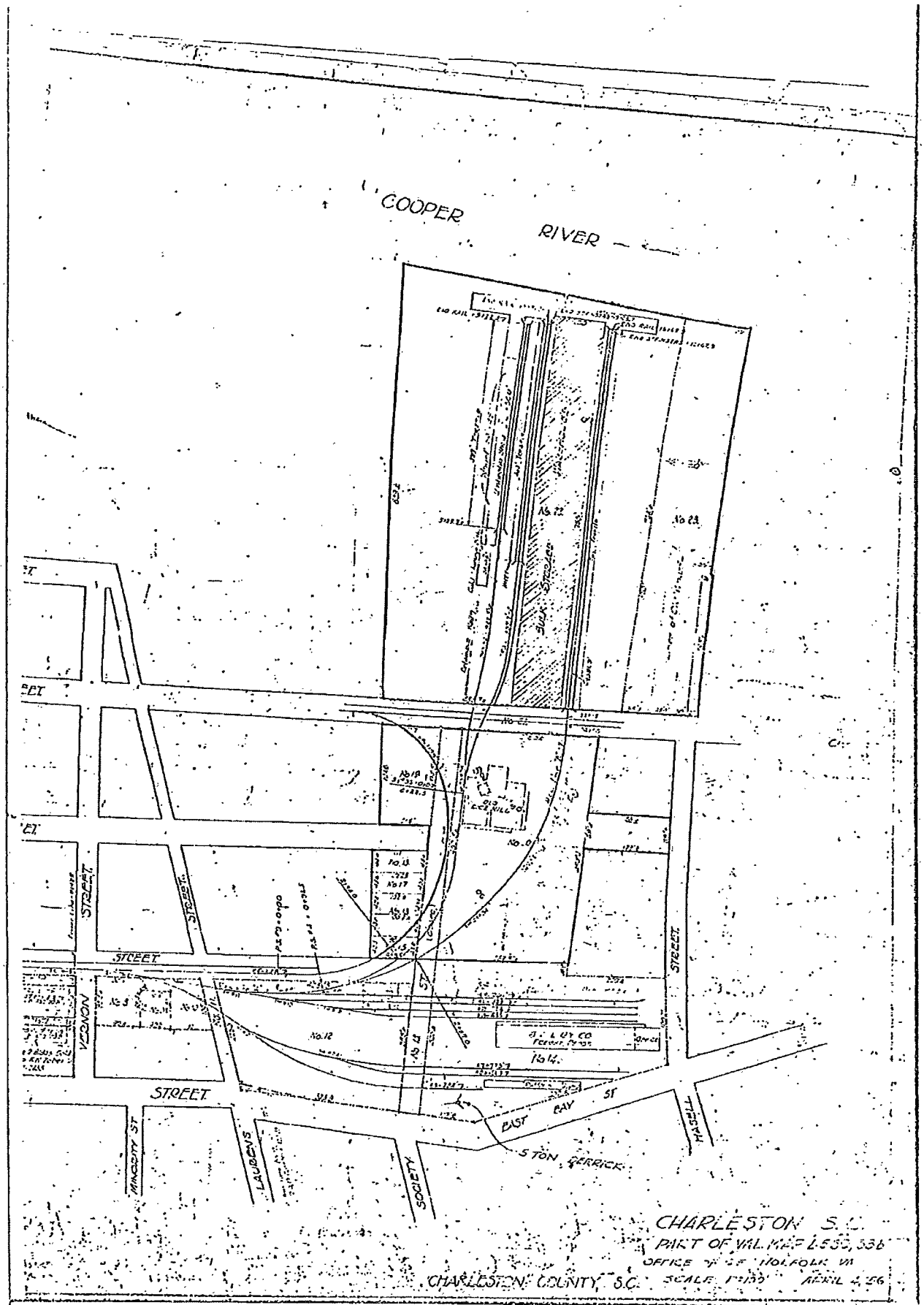
My commission expires
5-4-59

Recorded this ____ day of ____

in Book 0-Y Page 119 Fee ____

Henry Lesesne
Auditor Charleston County

R.001333


COOPER RIVER
STREET
VERNON
MAGDY ST
LAURENS
SOCIETY
EAST BAY ST
HASELL
5 TON DERRICK
CHARLESTON S.C.
PART OF VAL. MAP L-55, 56
OFFICE OF C.E. NORFOLK VA
CHARLESTON COUNTY, S.C.
SCALE 1"=100'
APRIL 4, 56

1. The City of Charleston
2. The South Carolina Department of Transportation
3. Adjacent Condominiums

Maurice Fox
President of Gadsden Wharf {Laurens Place: Anson House: Wharf Side}

Laurens Place:

April Gawrych
McAlister Development (HOA Company)
http://mcalisterdevelopment.com/property-management/

Wendell Robinson
HOA Lauren Place {President & Resident}

Anson House:

Low occupancy & currently on the market

Disher, Hamrick & Myers
25 Cumberland St
Charleston SC 29401
843-577-4115 phone

http://ansonhouse.com/contact-us

Exhibit 9

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

January 10, 2013

Docket Number:	13-RFR-01 (OCRM)
Requestors:	Historic Charleston Foundation, SC Environmental Law Project, Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and The Charleston Chapter of the Surfrider Foundation
Permittee:	SC State Ports Authority
Permit Number:	OCRM-12-054-B

STAFF RESPONSE TO REQUEST FOR REVIEW
Submitted by: Steven Brooks, OCRM Project Manager for SC State Ports Authority

---

This review conference involves a challenge to staff's decision to issue a permit to the SC State Ports Authority, OCRM-12-054-B, to install 5 pilings underneath an existing commercial pier, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators, make additional structural changes to building 322, and add two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

The Department reviewed the above referenced application under the applicable statutory provisions in S.C. Code Ann. §48-39-10, et. seq., and the Department's Critical Area Regulations, S.C. Code Reg. 30-1 et. seq. After following the required procedures set forth in §48-39-150 and Reg. 30-4, the Department issued the above referenced permit, as requested, on December 18, 2012.

The details of the review of this amendment request are set forth below:

- This project was placed on public notice on March 9th and March 23rd as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. On April 18, 2012, a public hearing was held. Additional information was requested in a letter dated June 29, 2012 from the Department. The application was re-noticed on August 3, 2012 and the comment period was extended to September 2, 2012. The project is located on and adjacent to the Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. Please see exhibit A & B (Aerial Overlays) for details.

- Many comment letters were received from multiple entities. Most of the comments were objections to the proposed permit request. The majority of the objections were based on the following:

  - Regulation 30-11(C): cumulative impacts in evaluating this project

- S.C. Code Ann. §48-39-150(A)(9) and R. 30-11(B)(9): All feasible safeguards are taken to avoid adverse environmental impact resulting from a project.

- Regulation 30-12.F(2)(b): Regulations that require that transportation projects avoid the critical areas to the maximum extent feasible.

- S.C. Code Ann. §48-39-150(A)(7) and R. 30-11(B)(7): The extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state. Specifically, comments were focused around impacts to adjacent neighborhoods and businesses from noise pollution, air pollution, traffic congestion, and the historic qualities of the City of Charleston.

- S.C. Code Ann. §48-39-150: Comments stated the project fails to comply with the Coastal Zone Management Act's requirement that DHEC consider the "extent to which the proposed use could affect the value and enjoyment of adjacent owners.

- CMP, IV-25: Comments state staff's decision fails to give the highest priority to the identified primary value of the GAPC, the Charleston Historic District. In the case of a historic site, the priority is placed on uses "which preserve the historical or cultural values for which the site was placed on the National Register of Historic Places."

- Additionally, it was requested that OCRM require, as part of its environmental review of the proposed changes to Building 322, that the SPA produce data which analyzes the cumulative impacts of the proposed new cruise terminal use on the surrounding historic districts and neighborhoods.

- Also, it was requested that OCRM require, as part of its environmental review that the SPA provide research regarding reasonable alternatives for the site of the new terminal and a justification that the proposed location is the most appropriate.

- Geographic area of the existing port facility

  The proposed activity is located at an **existing** SCSPA commercial pier. In fact, the current operations and location of the cruise terminal is located on the same pier approximately 1,300 feet south of the proposed location. This area of the Cooper River historically has been utilized directly and indirectly by commercial maritime shipping industry for centuries, including the cruise ship industry. The area is currently surrounded by other commercial and residential facilities.

Current Regulations:

Regulation 30-11.B (6) The extent to which the development could affect the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone

Regulation 30-11.B (9) The extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project

Regulation 30-11.C (1) The extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area.

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

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

Regulation 30-12(F)(2)(d) Transportation

CZMP Policies:

CZMP Chapter III MANAGEMENT OF COASTAL RESOURCES – Ports	111-19
CZMP Chapter IV SPECIAL MANAGEMENT AREAS – GAPC's	IV-I8

- Staff Review and Decision:

LONGTERM CUMULATIVE AFFECTS

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

This is an activity that would be occurring on an existing commercial pier that is owned and operated by the SC State Port Authority. The activity (cruise ship operation) currently exists on this facility.

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

It is important to note that both the Historic Charleston District and the Port are considered Geographical Areas of Particular Concern (GAPC). Both the Historic Charleston District and the Port have coexisted for centuries. In fact, the maritime shipping industry is part of the landscape of Charleston. In evaluating the impacts to a GAPC, staff must consider the priority of uses for both the Charleston Historic District and the Port. The primary goal of the Charleston Historic District is to maintain the architectural integrity of the district which "includes certain areas all located in peninsular Charleston south of a line drawn from the Ashley River through the center line of Bee, Morris, and Mary Streets and extending eastward to the Cooper River." The priority uses for the South Carolina State Ports Authority are as follows:

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;

2) Water-related uses which do not reduce or degrade the natural value or resources within the port;

3) Nonwater-dependent or nonwater-related uses which retain future flexibility of the port for water-dependent needs.

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

The Department does not have the regulatory authority to regulate the number of cruise ship calls. However, the South Carolina State Ports Authority (SCSPA) has committed to a very responsible Voluntary Cruise Management Plan to

manage the number of cruise ship calls per year. The operations for the new passenger cruise facility at Union Pier Terminal will be conducted in accordance with the Voluntary Cruise Management Plan. The SCSPA will include the Department in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration". The Department has made the voluntary agreement a special condition of the permit. It is important to note that the applicant can utilize existing locations and operations and expand the number of calls without Department authorization. Because the Department does not have the authority to regulate the number of cruise ship calls, the Department's intent in requiring the Voluntary Cruise Management Plan as a special condition was for the purpose of "notice" only.

AIR EMISSIONS

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

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

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

In summary, the applicant's request is permissible by law. The basis of the objections relate primarily to potential cumulative impacts in evaluating this project; feasible safeguards to avoid adverse environmental impacts; the avoidance of critical areas to the maximum extent feasible; the extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state; the extent to which the proposed use could affect the value and enjoyment of adjacent owners; the preservation of historical or cultural values for a GAPC; lack of a study that analyzes the cumulative impacts of the proposed new cruise terminal use; and lack of a study that outlines reasonable alternatives for the site of the new terminal. It has been determined that the applicant's request meets air standards and is permissible by law. The proposed work is in line with the general character of the surrounding area. This is a request to install 5 pilings underneath an existing commercial pier to support three elevators and two escalators, to make additional structural changes to building 322, and to add two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322, which is approximately 1300 feet to the north of the current location. This proposal does not impact the adjacent Historic Charleston District, which is considered a Geographical Areas of Particular Concern (GAPC).

Based on the foregoing, DHEC staff requests that the Board affirm the staff's decision to issue the permit.

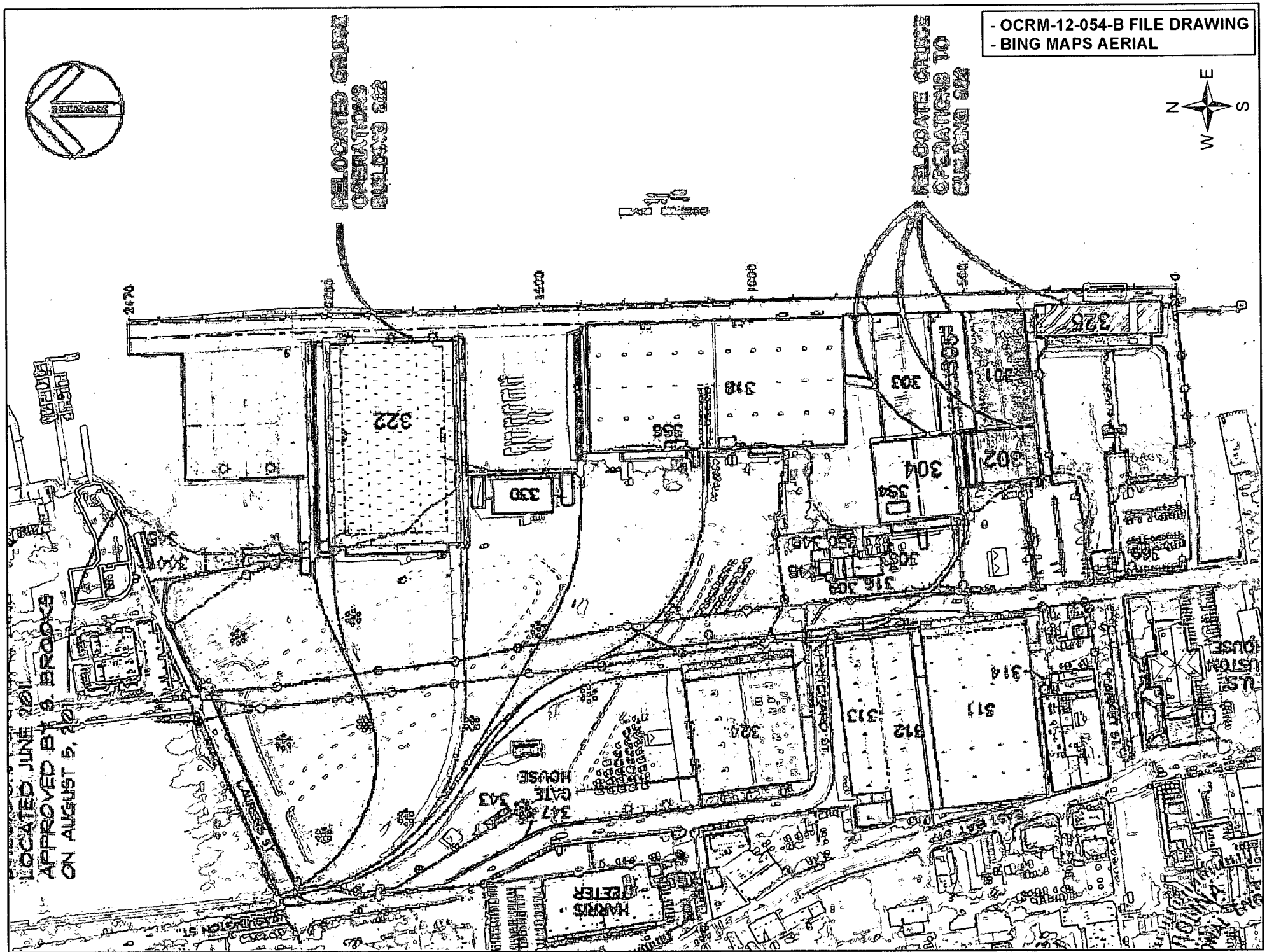

- OCRM-12-054-B FILE DRAWING
- BING MAPS AERIAL
N
E
S
W
RELOCATE CHUTE OPERATIONS SOUTH TO CHUTE 322
RELOCATED CHUTE OPERATIONS BELOW 322
322
330
356
318
303
301
304
302
316
314
313
312
311
324
343
347
HARRIS PETER
GATE HOUSE
CUSTOM HOUSE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011

Exhibit 10

BOARD:
Allen Amsler
Chairman

Mark S. Lutz
Vice Chairman

D H E C

PROMOTE PROTECT PROSPER

BOARD:
R. Kenyon Wells

L. Clarence Batts, Jr.

Ann B. Kirol, DDS

John O. Hutto, Sr., MD

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201
Telephone (803) 898-3309 Fax: (803) 898-3393

RECEIVED

JAN 17 2013

Willoughby & Hoefer, P.A.

January 11, 2013

U.S. Mail - CERTIFIED – Return Receipt

91 7199 9991 7031 3717 3561

Winslow Hastie
Chief Preservation Officer
Historic Charleston Foudation
P.O. Box 1120
Charleston, SC 29402

91 7199 9991 7031 3717 3554

Amy E. Armstrong, Esq.
S.C. Environmental Law Project
P.O. 1380
Pawleys Island, SC 29585

91 7199 9991 7031 3717 3547

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202

Via Interagency Mail Delivery
Bradley Churdur, Esq.
Nathan Haber, Esq.
SCDHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: ***Docket No. 13-RFR-01 – Decision dated December 18, 2012, to issue Permit #OCRM-12-054-B to make improvements to an existing waterfront building. The purpose of the project is to facilitate the relocation of the cruise passenger facility to Building #322.***

The South Carolina Board of Health and Environmental Control decided on January 10, 2013 not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,

Pamela Hawley

for Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 21680

S:\ALL\MATTERS\21680 SCSPA Cruise Ship Terminal\RFR\review conference denial.doc

Exhibit 11

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman

D H E C

PROMOTE PROTECT PROSPER

13-RFR-01

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment
South Carolina Board of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201
Telephone: (803) 898-3309 Fax: (803) 898-3393

ACKNOWLEDGMENT OF REQUEST FOR FINAL REVIEW

TO: *Historic Charleston Foundation, Requestor*

Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owner Association, Charleston Chapter of the Surfrider Foundation, Requestors
Amy E. Armstrong, Attorney for Requestors

South Carolina State Ports Authority, Applicant
Randy Lowell, Attorney for Applicant

Bradley Churdar and Nathan Haber, Attorneys for Department

FROM: *Lisa Lucas Longshore, Clerk*

RE: ***Docket No. 13-RFR-01*** *- Decision dated December 18, 2012, to issue Permit # OCRM-12-054-B to make improvements to an existing waterfront building. The purpose of the project is to facilitate the relocation of the cruise passenger facility to Building #322.*

DATE: *January 3, 2013*

A Request for Final Review of the above-referenced decision was filed on January 2, 2013. A copy of the request is attached. The Board of Health and Environmental Control will notify you by mail as to whether it will conduct a final review conference in this matter.

The Board has 60 days from the date of receipt of a Request for Final Review to conduct a final review conference. If a final review conference is scheduled, all parties will be given at least 10 calendar days' written notice of the conference.

Procedures for final review conferences and requesting further review are provided in S.C. Code Section 44-1-60. Additional information on procedures will be provided to you after the Board decides whether to conduct a final review conference in this matter.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

OGC # 21680

S:\ALL\MATTERS\21680 SCSPA Cruise Ship Terminal\RFR\Acknowledgement.doc

BOARD:
Allen Amsler
Chairman

Mark S. Lutz
Vice Chairman

D H E C

PROMOTE PROTECT PROSPER

BOARD:
R. Kenyon Wells

L. Clarence Batts, Jr.

Ann B. Kirol, DDS

John O. Hutto, Sr., MD

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

CERTIFICATE OF SERVICE

I, Lisa Lucas Longshore, Clerk, S.C. Board of Health and Environmental Control, with the South Carolina Department of Health and Environmental Control, hereby certify that I have this 3rd day of January 2013 served the foregoing ***Acknowledgement of Request For Final Review and Notice of Procedures – Docket Nos. 13-RFR-01*** upon all parties and counsel of record by placing a copy of same in an envelope and depositing it in the U.S. Mail, as indicated below, with sufficient postage paid, at the address indicated below:

U.S. Mail
Winslow Hastie
Chief Preservation Officer
Historic Charleston Foundation
PO Box 1120
Charleston, SC 29402

Amy E. Armstrong, Esq.
S.C. Environmental Law Project
PO Box 1380
Pawleys Island, SC 29585

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
PO Box 8416
Columbia, SC 29202

Via Interagency Mail Delivery
Bradley Churdar, Esq.
Nathan Haber, Esq.
SCDHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

Lisa Lucas Longshore, Clerk

January 3, 2013
Columbia, South Carolina



HISTORIC CHARLESTON FOUNDATION

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL

2013 JAN -2 AM 10: 27

OFFICE OF GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

December 31, 2012

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

RE: P/N # OCRM-12-054-B, South Carolina State Ports Authority

Historic Charleston Foundation (HCF) respectfully requests that DHEC conduct a final review of the decision by OCRM to issue the South Carolina State Ports Authority's (SPA) permit (OCRM-12-054-B) on December 18, 2012. We are requesting this final review conference because we need to better understand what analysis was undertaken to determine the broad environmental impacts that the proposed new cruise passenger facility could have on the historic districts in downtown Charleston.

We also have questions concerning the "special conditions" that were attached to the approved permit. Could you please clarify what the "life of the project" is for these conditions to remain in effect? We assume that this term would be as long as the facility is being operated as a cruise terminal, but this is not clearly defined. Also, the role of DHEC in reviewing proposed future changes to the Voluntary Cruise Management Plan is not clear. Would DHEC undertake its own public review process to assess the appropriateness of any proposed changes to these conditions?

In addition, HCF would like to know if the SPA has submitted the requested information that was outlined in OCRM's letter from June 29, 2012. It is our position that OCRM's request for additional analysis was appropriate for a project of this magnitude, and we believe this information should be made available for the public's review and comment. We have not seen any of these impact studies that were requested by OCRM. Certain bullets included in the June 29th letter were of particular interest to us, including the following requests:

"Please provide the following:

- Current traffic plan for current operations and proposed traffic plan/study that shows the impacts on surrounding traffic and community. Specifically, does the proposed traffic plan increase traffic congestions on neighboring communities? Please provide any proposed drawings/layouts that may be available.
- Information that indicates whether or not cruise ship(s) that will berth at this dock will be equipped with shore power and whether or not the facility will be able to provide shore power.
- A description of activities that will be occurring, in the future, in the area where the current cruise operations exist. Will this area be utilized for cargo ships or shipping

Post Office Box 1120 • Charleston, South Carolina 29402 • (843) 723-1623 • FAX (843) 577-2067 • www.historiccharleston.org

activities in the future? Will the total number of ships calling on Union Pier as a whole increase?

- The Department must evaluate the extent to which the proposed use could affect the value and enjoyment of adjacent owners. Please address how the proposed use of Building 322, the covered staging area and cruise operations could affect the value and enjoyment of adjacent owners.
- Proof of Coordination between the SC State Ports Authority and the State Historic Preservation Office to determine if and how the cruise ship operation is its new location will impact a designated historic area."

In submitted written statements that were provided to OCRM at two public hearings this year, on April 18th and September 19th, HCF requested that OCRM require, as part of its environmental review of the proposed changes to Building 322, that the SPA produce data which analyzes the cumulative impacts of the proposed new cruise terminal use on the surrounding historic districts and neighborhoods. If, through this analysis, potential adverse impacts are determined, then we request the recommendation of reasonable mitigation measures.

In accordance with a Foundation Board resolution dated March 29th, 2011, we also requested that the SPA provide research regarding reasonable alternatives for the site of the new terminal and a justification that the proposed location is the most appropriate. We feel that this information is necessary because it is through this review process that OCRM identifies all direct, indirect and cumulative impacts of the proposed activity and determines whether the requirements of critical area permitting and coastal zone consistency are met.

Since our mission is to preserve and protect the historic, architectural and cultural character of Charleston and its historic environs, we are most concerned with how this intensified use in the heart of the historic district is going to impact the local and National Register-listed historic districts downtown. The expansion of unregulated cruise tourism in Charleston has the potential to create significant adverse impacts on Charleston's historic resources. An objective economic impacts study commissioned by the Foundation, titled *The Cruise Industry in Charleston: A Clear Perspective,* focuses on both the benefits and the costs associated with the cruise industry and its impacts on Charleston residents. This study has identified that there is a clear "non-alignment" of benefits and costs since the bulk of the cruise industry benefits go to the SPA while the bulk of the costs are borne by the residents and businesses located in the surrounding downtown neighborhoods.

Since we have not seen any studies or data produced by the State Ports Authority or OCRM that exhibit an adequate level of review of the potential adverse impacts of this cruise terminal on the city of Charleston, we are requesting this final review conference.

Sincerely,

Winslow Hastie
Chief Preservation Officer

BHEC 4

D H E C
PROMOTE PROTECT PROSPER
Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,
Steven Brooks
Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE
Enclosure

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Ocean and Coastal Resource Management
Charleston Office · 1362 McMillan Avenue, Suite 400 · Charleston, SC 29405
Phone: 843-953-0200 · Fax: 843-953-0201 · www.scdhec.gov

BHEC 5

Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

   Clerk of the Board
   SC DHEC
   2600 Bull Street
   Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

SPECIAL CONDITION(S)

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use.

   d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

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

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S)) (DATE)
SC State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

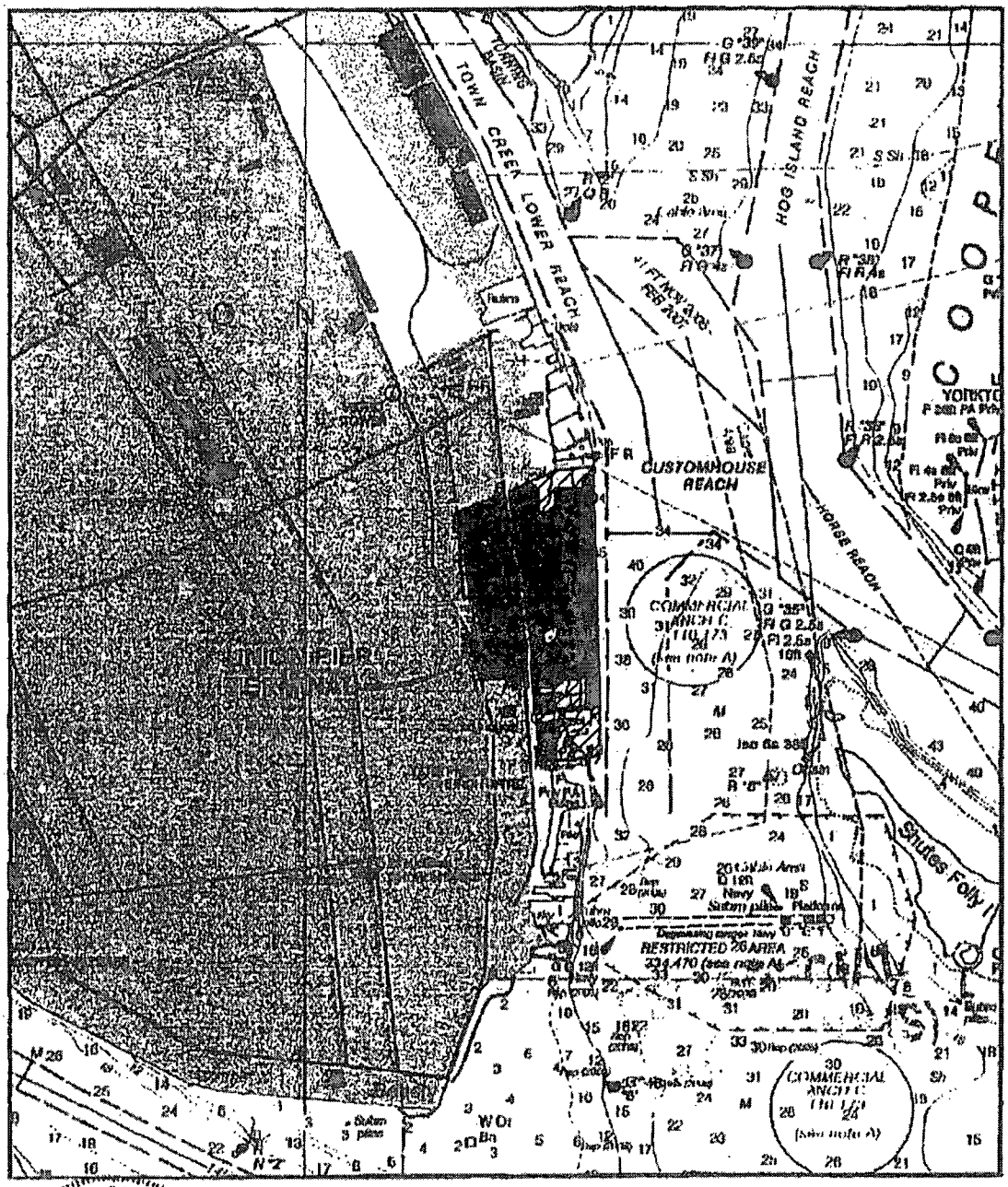
Steven Brooks 12/18/12

(PROJECT MANAGER, WETLAND SECTION) (DATE)
Steven Brooks
or her Designee
Other Authorized State Official

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

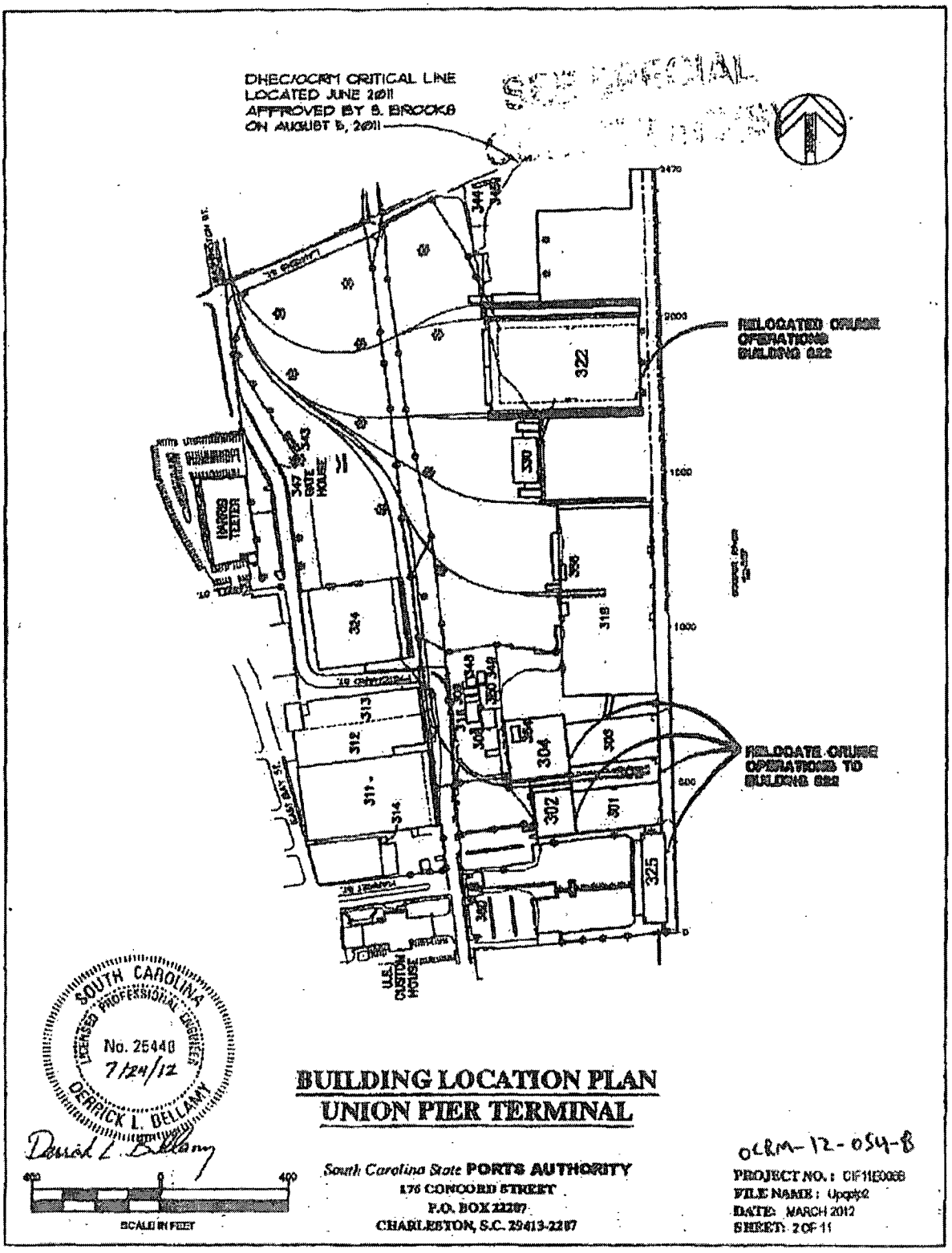
LOCATION

OLRM-12-054-B

South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22387
CHARLESTON, S.C. 29413-2387

PROJECT NO.: CF11E003B
FILE NAME: Upcplot
DATE: JULY 2012
SHEET: 1 OF 11

~~BHEC 11~~



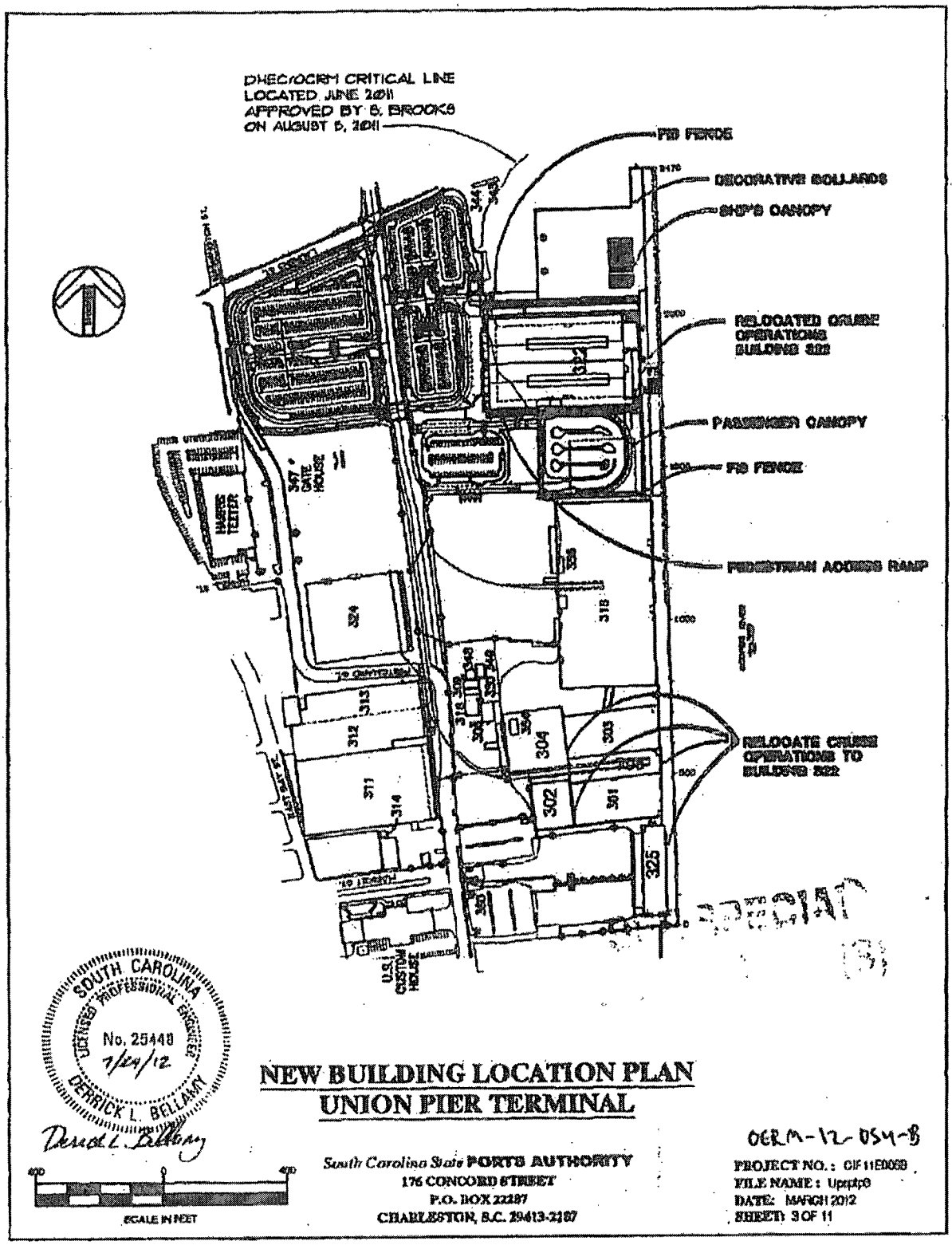
BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: 0F11E006B
FILE NAME: Upqpt2
DATE: MARCH 2012
SHEET: 2 OF 11

BHEC 12



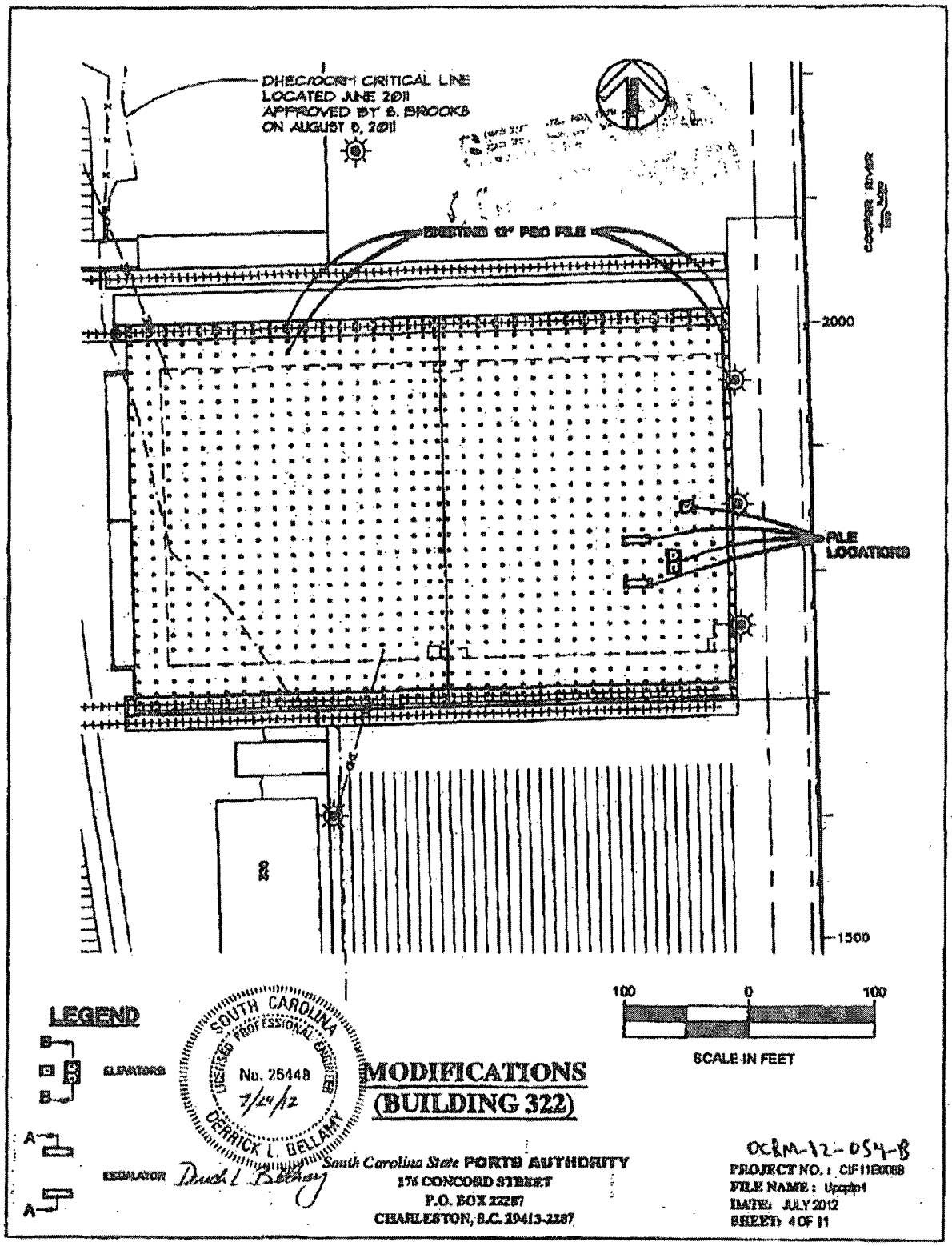
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

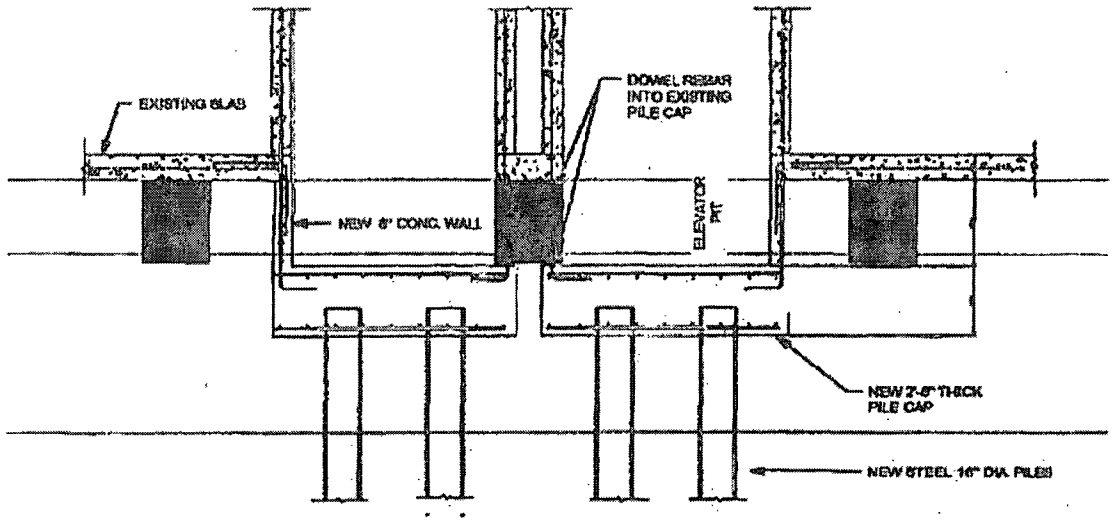
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

PROJECT NO.: GIF11E0009
FILE NAME: Upptp9
DATE: MARCH 2012
SHEET: 3 OF 11

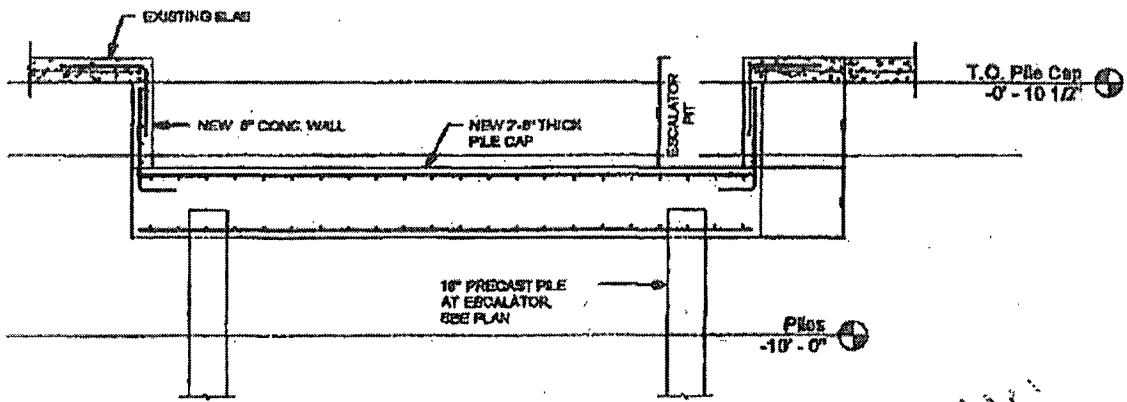
BHEC 13


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 9, 2011
EXISTING 12" PSD PILE
COOPER RIVER
2000
PILE LOCATIONS
1500
100
0
100
SCALE IN FEET
LEGEND
ELEVATORS
ESCALATOR
SOUTH CAROLINA
PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
OCRM-12-054-B
PROJECT NO. : CF11E0058
FILE NAME : Upgrp4
DATE: JULY 2012
SHEET: 4 OF 11

BHEC-14



SECTION
ELEVATOR



SECTION
ESCALATOR

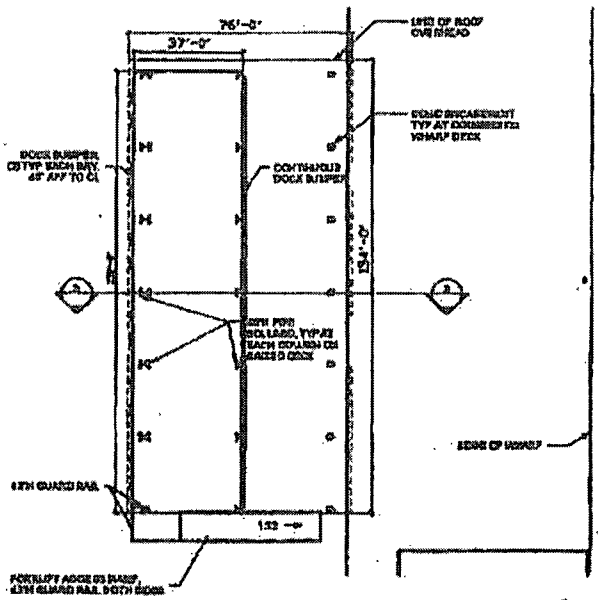
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25440
7/24/12
DERRICK L. BELLAMY

MODIFICATIONS (CROSS SECTION)

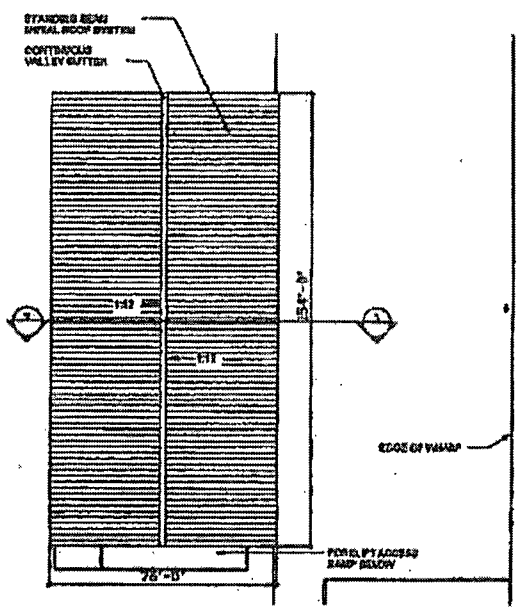
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

CCRM-12-054-B
PROJECT NO.: CF 11E0018
FILE NAME: Upcplp5
DATE: JULY 2012
SHEET: 5 OF 11

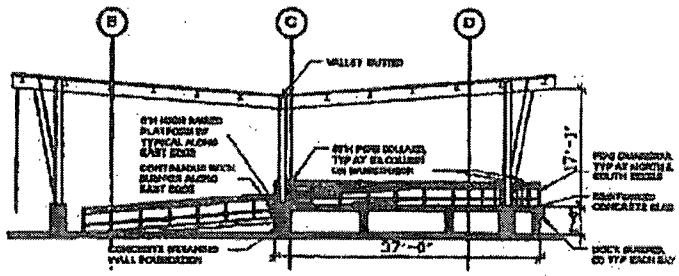
BHEC 15



STORES CANOPY FLOOR PLAN



STORES CANOPY ROOF PLAN



STORES CANOPY B-W SECTION

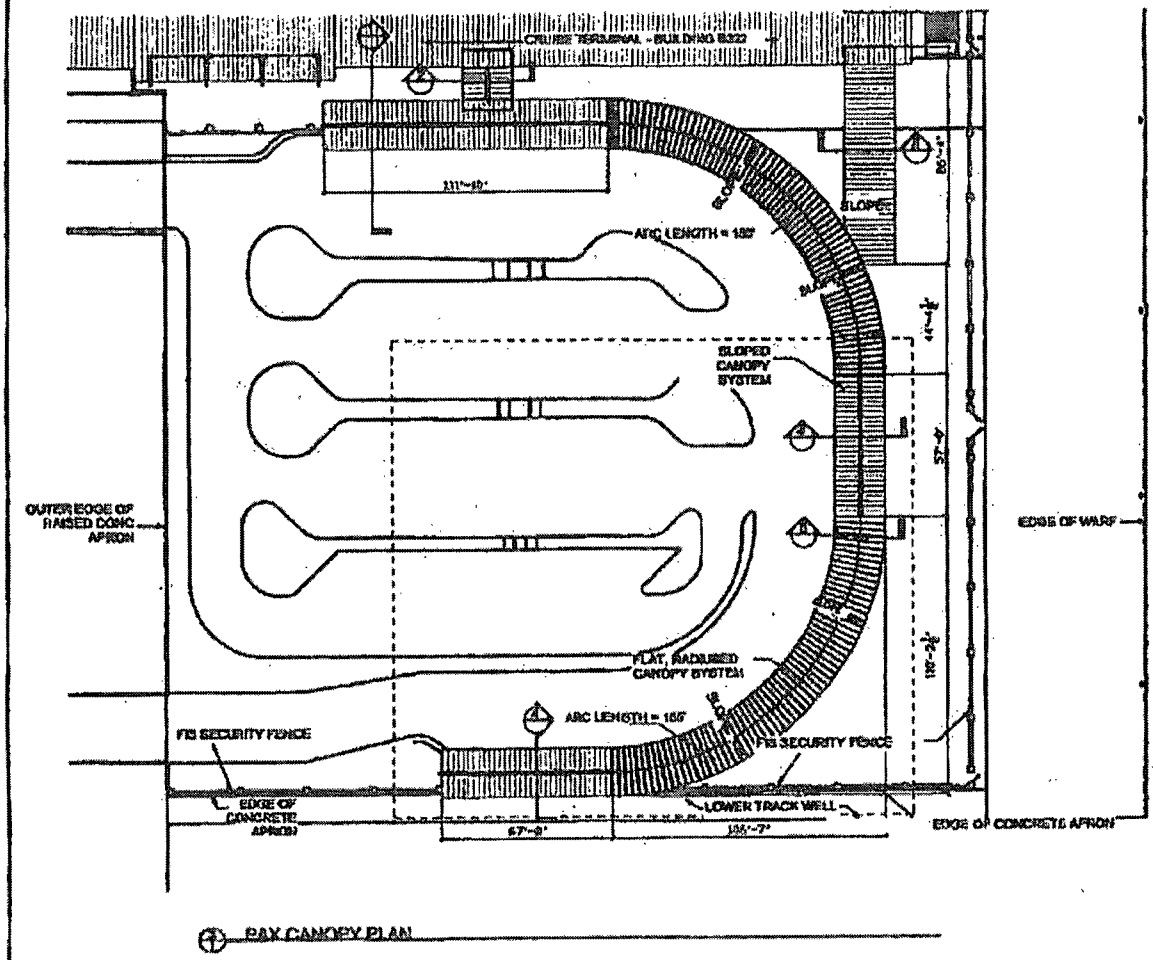
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
DERRICK L. BELLAMY

MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B

PROJECT NO.: CF11E005B
FILE NAME: Upgrade
DATE: JULY 2012
SHEET 8 OF 11



PAX CANOPY PLAN

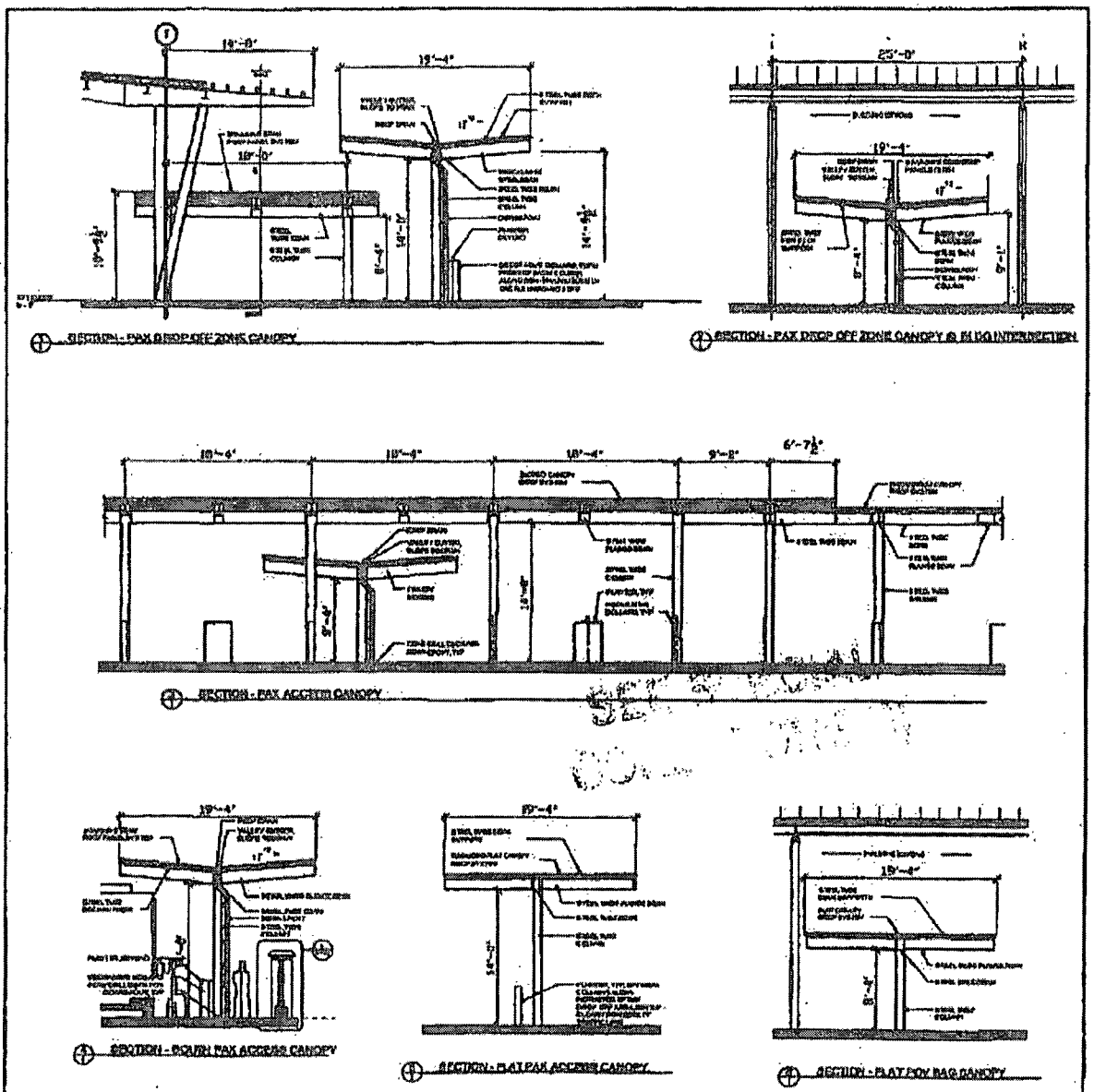
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/20/12
DERRICK L. BELLAMY

Derrick L. Bellamy

MODIFICATIONS
SOUTH APRON

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

OCRM-12-054-B
PROJECT NO.: CIF11E008B
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11



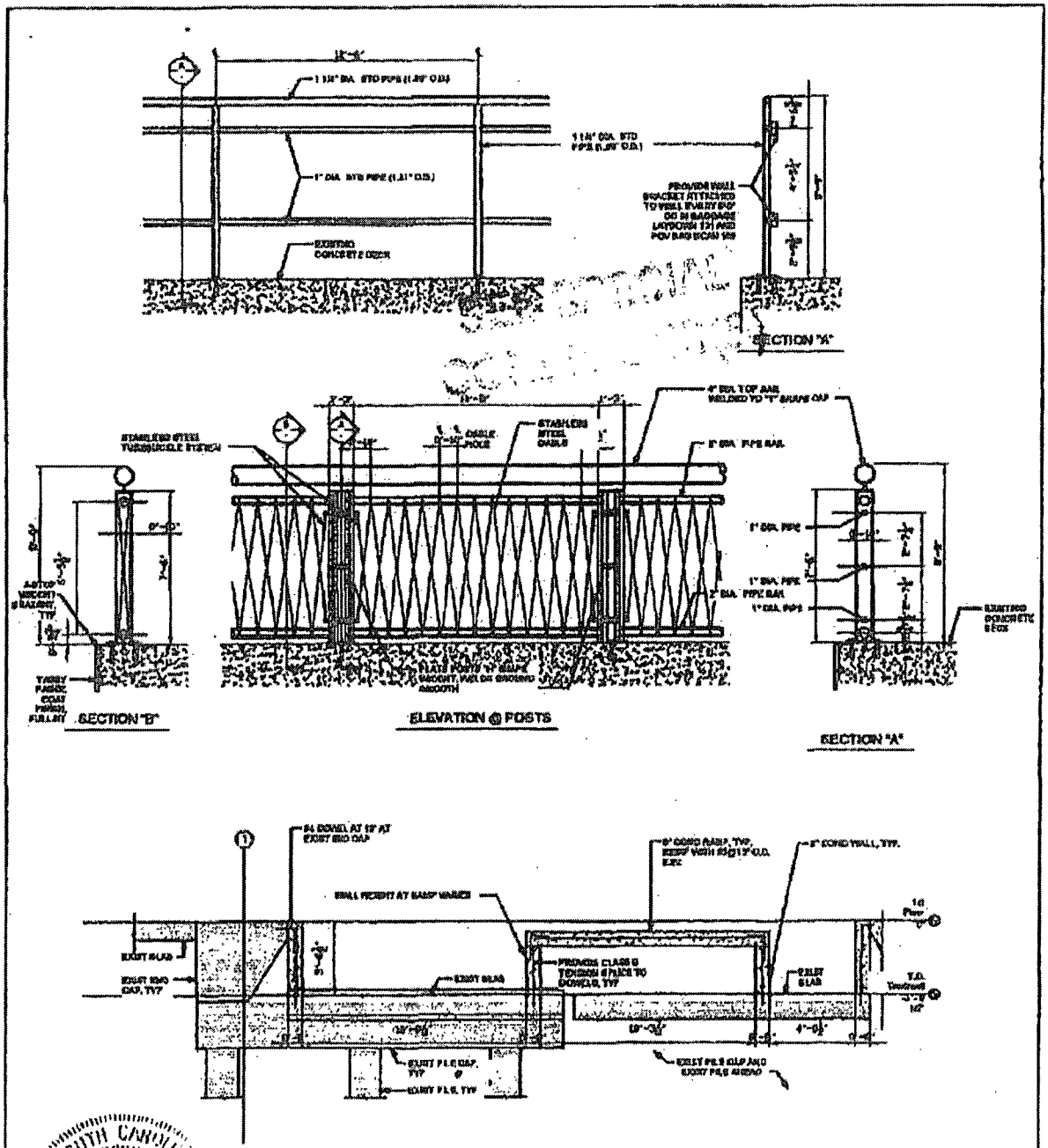
SOUTH CAROLINA
No. 25118
7/24/12
DENNIS L. BELLAMY

MODIFICATION
SOUTH APRON - DETAILS

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

OCEM-12-054-B
PROJECT NO.: CF11E0068
FILE NAME: Upcptp8
DATE: JULY 2012
SHEET: 8 OF 11

~~BHEC-18~~



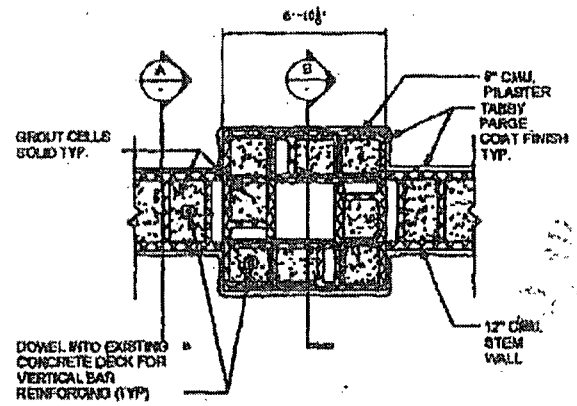
SOUTH CAROLINA
No. 25418
7/24/12

Derek L. Bellamy

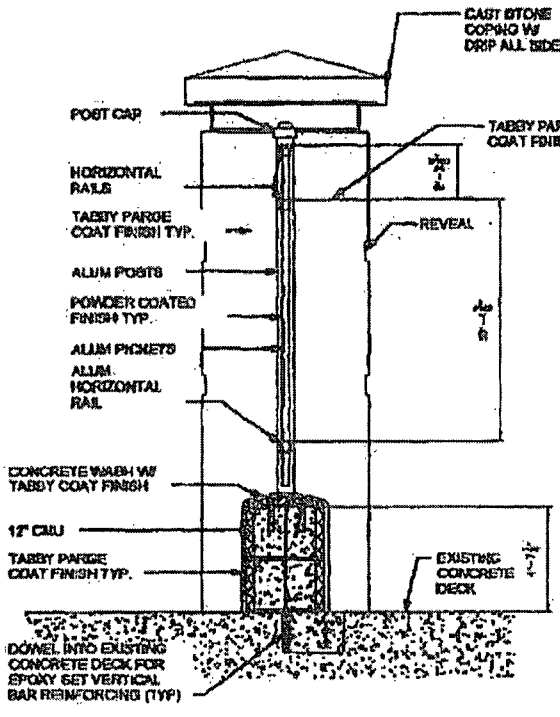
MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

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

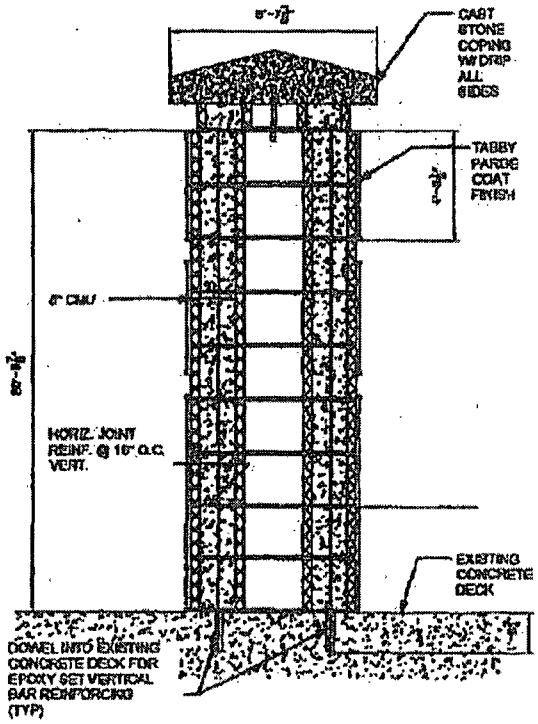
OCRM 12-054-B
PROJECT NO.: CF11E008B
FILE NAME: Upcpp9
DATE: JULY 2012
SHEET: 9 OF 11



PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. DELLAMEY

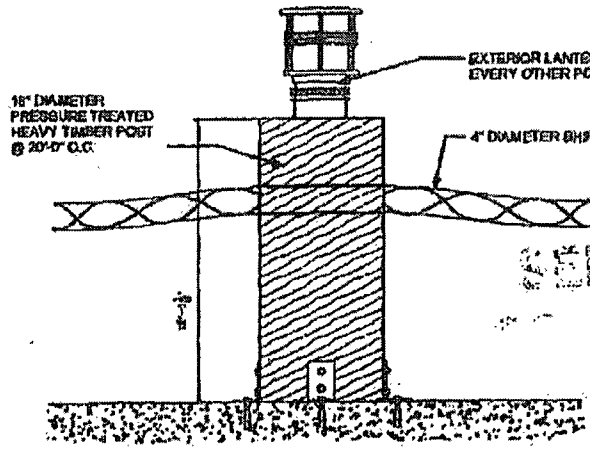
Derrick L. Dellamey

MODIFICATIONS
SECURITY FENCE DETAILS

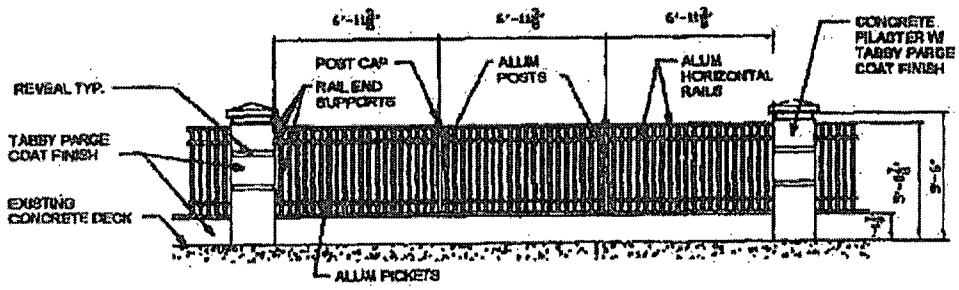
South Carolina State **PORTS AUTHORITY**
1776 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: 08-11E0060
FILE NAME: Upgrade10
DATE: JULY 2012
SHEET: 10 OF 11

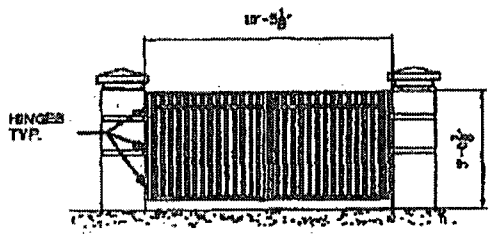
~~BHEC 20~~



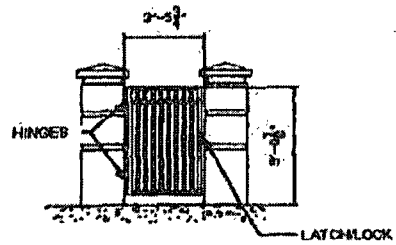
NORTH APRON DECORATIVE BOLLARDS



ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE

SOUTH CAROLINA No. 15448 7/24/12

David L. Bellamy

MODIFICATIONS
SECURITY FENCE DETAILS

South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 21287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcplpt11
DATE: JULY 2012
SHEET: 11 OF 11

~~BHEC 21~~

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

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

ATTACHMENT 4

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

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

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

South Carolina Environmental Law Project

Lawyers for the wild side of South Carolina

a 501c3 non-profit organization

Amy E. Armstrong
President

Michael G. Corley
Staff Attorney

OFFICE ADDRESS
430 Highmarket Street
Georgetown, SC 29440

MAILING ADDRESS
P. O. Box 1380
Pawleys Island, SC 29585

(843) 527-0078
Fax (843) 527-0540
E-mail: amy@scelp.org
michael@scelp.org
Website: www.scelp.org

BOARD OF DIRECTORS

Frances Close
Chairperson

Wendy Zara
Nancy Vinson
David J. Harmon
Gary W. Poliakoff
Margaret D. Fabri
John Mark Dean
Leon Rice

OUR MISSION

To protect the natural environment of South Carolina by providing legal services and advice to environmental organizations and concerned citizens and by improving the state's system of environmental regulation.

Printed on recycled paper

January 2, 2013

VIA FAX, EMAIL AND U.S. MAIL

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -2 PM 4:30
FOR GENERAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

Ms. Lisa Lucas Longshore
Clerk of the Board
S.C. Dept. of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Re: Permit #OCRM-10-169-D
S.C. State Ports Authority
Request for Final Review Conference

Dear Lisa:

Enclosed for filing please find the Request for Final Review Conference, submitted on behalf of the Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and the Charleston Chapter of the Surfrider Foundation, along with my $100 filing fee and certificate of service.

Please return a clocked-in copy by FAX.

Thank you very much for your kind cooperation and assistance.

Yours very truly,

Amy E. Armstrong

cc: Marshall Taylor, Esquire
Derrick Bellamy, SPA
Dana Beach
Will Cook, Esquire
Carrie Agnew
Steve Gates
Steve Hanson

BHEC 24

Evan Thompson
Kenneth B. Fonville
Marty Morganello

BHEC 25

STATE OF SOUTH CAROLINA

BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

RECEIVED
S.C. DEPT OF HEALTH
& ENVIRONMENTAL CONTROL
2013 JAN -2 PM 4:30
LEGAL COUNSEL
ADMINISTRATION
CLERK, BOARD OF DHEC

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

Requestors,

vs.

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

Respondents.

RE: Permit number OCRM-10-169-D

REQUEST FOR FINAL REVIEW CONFERENCE

The Preservation Society of Charleston, Charleston Communities for Cruise Control, the Historic Ansonborough Neighborhood Association, the South Carolina Coastal Conservation League, the Charlestowne Neighborhood Association, the Anson House Condominium Owners Association and the Charleston Chapter of the Surfrider Foundation pursuant to S.C. Code Ann. §44-1-60, hereby request that the Board of the South Carolina Department of Health and Environmental Control ("DHEC") conduct a Final Review Conference in connection with the DHEC staff decision to issue a Critical Area Permit and Coastal Zone Consistency Certification # OCRM-12-054-B to the South Carolina State Ports Authority authorizing the construction of pilings and structural changes to staging areas in and over the critical area to enable construction of new cruise ship terminal operations at SPA's Union Pier facility in the City of Charleston.

THE REQUESTORS

1. The Preservation Society of Charleston was founded in 1920 and is the oldest community based historic preservation organization in America. The Preservation Society of Charleston's mission is to inspire the involvement of all who dwell in the Lowcountry to honor and respect our material and cultural heritage. The Preservation Society of Charleston has a membership of over 1,100 households. The Society's sole interest in the cruise ship debate is to ensure maximum protection for the City's historic neighborhoods and residents and appropriate management of mass tourism downtown. The Preservation Society recognizes that while the Charleston Port is old, our modern mega-cruise ship industry is new, and it must be properly located and managed responsibly within an enforceable legal framework. The Preservation Society seeks to protect the historic neighborhoods that continue to be at risk from expanded cruise ship operations.

2. Charleston Communities for Cruise Control ("C4") is a non-profit (educational status) founded in 2010 for the purpose of finding a more appropriate location for the proposed new cruise ship terminal; establishing legally binding limits on the number, size and frequency of cruise ship visits; requiring onshore power to be used by cruise ships docking in Charleston; and providing all cruise lines visiting Charleston with the Charleston Cruise Ship Code of Conduct. C4represents 464 members concerned with the delicate balance between the historical residential port City of Charleston and the tourist experience of the City. C4 has played an active role in the efforts to regulate the cruise ship industry.

3. The South Carolina Coastal Conservation League ("League") is a non-profit membership corporation organized and existing under the laws of the State of South Carolina.

The League represents over 4,000 members throughout South Carolina and the U.S., in particular members that live in Charleston and use and enjoy the aesthetic, historic, cultural and natural resources that would be adversely affected by an increase in size and quantity of cruise ships at Union Pier Terminal. Members of the League breathe the air into which cruise ship emissions are discharged; commute along the streets in Charleston which are congested by cruise ship traffic; and enjoy the historic and cultural beauty of the City, which will be adversely impacted by increased size and quantity of cruise ships.

4. The Historic Ansonborough Neighborhood Association ("HANA") is a membership organization created to address matters of importance to the historic residential neighborhood designated as Ansonborough by the City of Charleston, South Carolina, and to foster a spirit of community and cooperation within the Ansonborough neighborhood. HANA represents its 110 members who are residents of the Ansonoborough Neighborhood, which is adjacent to Union Pier Terminal and the proposed project. HANA has passed resolutions seeking legally binding regulations on the cruise industry in Charleston and supporting an amendment that alternative locations to the Union Pier property be considered.

5. Charlestowne Neighborhood Association ("CNA") is a membership organization created to give Charleston residents a concerted voice when considering matters that concern the peace, tranquility and orderly well-being of the historic Charleston neighborhood. CNA represents its 620 members consisting of residents living south of Broad Street. CNA membership overwhemingly passed resolutions expressing concerns about congestion, pollution, noise, scale, calling for enforceable limits and standards and for study of an alternative terminal location.

6. Anson House Condominium Owners Association represents the thirty-two (32)

condominium units within Anson House. Anson House is located on the corner of Laurens and Concord Streets within the historic Ansonborough neighborhood. Anson House is adjacent to the Union Pier facility.

7. The Charleston Chapter of the Surfrider Foundation ("Surfrider") is a non-profit environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and education. Surfrider represents 270 members in the Charleston area.

BACKGROUND OF THE PROJECT AND THE DHEC DECISION

8. SPA's Union Pier facility is located on and adjacent to the Cooper River and is within the City of Charleston. The Union Pier facility is near and adjacent to the Charleston Historic District, listed on the National Register of Historic Places, including the historic neighborhoods of Ansonborough and Charlestowne. Charleston is one of this nation's most historic cities, with one of the most intact inventories of National Register-listed and National Historic Landmark districts and properties. National Historic Landmark and National Register-listed historic districts were qualified for and depend on the maintenance of the character-defining qualities—such as historic setting, context, and small scale. These historic resources are immediately adjacent to the proposed cruise terminal and are clearly within the project's area of potential effects.

9. The atmosphere, ambience and historic scale of the downtown neighborhoods are the primary reasons why Charleston is recognized as a world-class city in which to live, visit and invest. The National Trust for Historic Preservation has formally recognized the endangerment to Charleston's historic resources by placing Charleston on "Watch Status" on the National Trust's 2011 List of America's Most Endangered Places. In addition, the World Monuments Fund listed

Charleston as a 2012 Watch Site to draw attention to the dangers of cruise tourism's adverse impacts there. More recently, an objective study by Columbia, SC-based Miley & Associates, Inc., *The Cruise Industry in Charleston: A Clear Perspective*—the first and only attempt to conduct an objective study of the costs associated with the cruise tourism industry and its impacts on Charleston residents—has identified a "non-alignment" of benefits and costs.

10. Both the Charleston Historic District and the Port of Charleston have been designated Geographic Areas of Particular Concern ("GAPCs") under DHEC's Coastal Management Program. GAPC designation requires heightened consideration in reviewing activities for consistency with the CMP.

11. The Advisory Council on Historic Preservation, the nation's leading independent agency charged with protecting historic resources, and which advises the President and Congress on historic preservation policy, has expressed concern to the U.S. Army Corps of Engineers related to the expansion of the proposed Union Pier facility.

12. On December 18, 2012, the DHEC staff issued notice that it was authorizing the construction five (5) pilings consisting of 16" precast pile driven into the marl necessary to construct two elevators and two escalators and make structural changes to Building #322 and two covered staging areas designed to handle passengers, luggage and loading and unloading of cruise ship supplies. See attached Critical Area Permit, Exhibit A.

13. The permit is a necessary step towards construction of a new cruise ship terminal that would enable cruise ship home-basing operations in Charleston. Currently, SPA conducts cruise ship operations out of several dated buildings a quarter mile away. The existing facilities were not designed to serve as a home base for large, modern cruise vessels, i.e., those having 2,500 passengers or more, and without significant alteration and refurbishment, these structures do not

meet the operational and security requirements for such operations going forward.

14. The new cruise terminal authorized by the DHEC decision would enable cruise ship home-basing operations to continue and indeed expand both in number and size of ships. The Carnival Fantasy currently utilizing the Union Pier facility has a capacity of 2,054 passengers and ten decks. The next generation of Carnival ships has a capacity of 3,650 passengers and fifteen decks.

15. Cruise ships utilize diesel fuel and emit large amounts of air pollution. Pollutants include particulate matter, nitrogen oxides, air toxics and sulfur dioxide ("SO2"). These pollutants are known to to negatively impact human health.

16. The permit contains special conditions that have become binding requirements under the permit. Of particular relevance to this request, the permit contains a requirement that SPA operate the new passenger cruise facility "in accordance with the attached Voluntary Cruise Management Plan (Attachment A)." Exhibit A, special condition #1. The Voluntary Cruise Management Plan attached to the permit limits the number of cruise ships to no more than 104 calls per calendar year; limits the port to no more than one ship per day; and limits the size and profile of cruise ships to that which has been used in the past, i.e., 1,900 to 3,500 passenger design capacity.

17. Currently the fuel burned by cruise ships is 667 times dirtier than diesel fuel burned by 18-wheel trucks. New standards for cruise ship fuel should reduce the sulfur dioxide ("SO2") emissions from cruise ships, but those standards will not be in place until 2015, and even then, the fuel burned will be to 67 times dirtier than diesel trucks.

18. Because the proposed project will enable cruise operations to continue and expand, impacts beyond the critical area itself include harmful air emissions of SO2 and other pollutants;

BHEC 31

increased truck and car traffic; increased noise and congestion; decreased property values; and adverse health impacts. Evidence of these impacts can be found within the agency's file for this permit, and will be supported by live testimony should a final review conference be granted.

19. Upon information and belief, to be supported by testimony should final review conference be granted, air pollutant emissions and attendant adverse health impacts can be mitigated by the implementation of onshore power sources. Onshore power is currently utilized at numerous other ports world-wide in an effort to reduce air emissions.

ANALYSIS AND GROUNDS FOR REVIEW

20. The Requestors are informed and believe that the staff's permit decision was made in violation of applicable statutes, regulations and rules contained in the S.C. Coastal Zone Management Act, S.C. Code Ann. §48-39-10, *et seq.*, OCRM Regulations 30-1, *et seq.*, and the Coastal Management Program. Staff erred in issuing the permit, as this project is inconsistent with the applicable laws more fully discussed below.

21. The permit as issued violates Critical Area Regulation 30-11(C) and the Coastal Management Program in that DHEC failed to give proper weight to cumulative impacts in evaluating this project. Both the CMP and the critical area regulations call for the consideration of cumulative impacts resulting from the project. In particular, both call for consideration of the "long-range, cumulative effects" in the context of "other possible development and the general character of the area." R.30-11.C(1); CMP, III-14. Regulation 30-11(c) requires DHEC to consider the "extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area." The Court in *Kiawah Development Partners v. DHEC and SCCCL* 2011 WL 5840326, reached important conclusions relating to the scope of this consideration for projects like this one. Under the

Court's ruling, though this is a request for a critical area permit, the Department must consider impacts beyond "the critical area upon which the device is to be constructed." Id. at 3. The Court in fact held that, "[b]y law, OCRM **must** take into account the impact of any critical area permit" on factors such as upland sprawl and general over development. Id. In short, the *Kiawah Development Partners* case makes clear that OCRM's assessment of this critical area permit is "concerned with the coastal zone, and its vulnerability to manmade alterations." Id. at 4. Indeed, the staff denied *Kiawah Development Partners'* permit request based solely on the direct and indirect impacts flowing from that project.

The Court's holding in *Kiawah Development Partners* is best embodied by its ruling that "While OCRM's permitting authority is limited to critical areas, it is charged with managing the entire coastal zone, and thus **permitting decisions are not to be made in a vacuum**." Id. Rarely will this ruling be more important or more strongly implicated than it is for the project at hand. Yet the agency isolated the impacts flowing from the proposed project in a vacuum. This project creates a host of detrimental impacts that will splinter across the surrounding communities and ecosystems.

Examples of cumulative impacts on the general character of the area, which will be supported by testimony should final review conference be granted, include historic skyline obstruction, water view obstructions, the gridlock on small neighborhood streets caused by massive cruise ship and harmful air emissions.

DHEC staff recognized those impacts by including, as a condition of this permit, limitations on the cruise terminal's operation, including the number and size of calling vessels. However, DHEC failed to conduct a complete analysis of cumulative and secondary effects of its permitting decision by evaluating further measures to minimize impacts on human health,

livability and historic structures.

22. The DHEC staff failed to conduct a feasibility analysis as contemplated by the Coastal Zone Management Act and Critical Area Regulations. "Feasibile" means that the staff decision must be "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." The staff failed to undertake the required feasibility analysis in the following respects:

A. The CZMA and Regulations require that "all feasible safeguards are taken to avoid adverse environmental impact resulting from a project." S.C. Code Ann. §48-39-150(A)(9); R. 30-11(B)(9). Upon information and belief, which will be supported by testimony should a final review conference be granted, DHEC staff failed to give consideration to environmental, social and economic factors. Specifically, staff failed to consider the impact that ongoing and expanded cruise ship operations will have on the residents and tourists of Charleston, including the serious health impacts resulting from burning fuel high in sulfur that generates SO2 and other air pollutants. This omission is particularly troublesome given that, when in port, emissions from cruise ships are concentrated in a very highly populated area. SO2 is known to create a variety of health issues, particularly in those with breathing problems, which generates a corresponding spike in medical costs and diminishment of property values.

B. The Regulations require that transportation project "avoid the critical areas to the maximum extent feasible." R. 30-12.F(2)(b). The staff decision fails to ensure that critical areas are avoided and fails to consider alternatives that would avoid critical areas, such as alternative site locations for expanded cruise ship operations.

23. DHEC failed to weigh the "extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state" by failing to consider the impacts to adjacent neighborhoods and businesses from noise pollution, air pollution, traffic congestion, and the historic qualities of the City of Charleston. S.C. Code Ann. §48-39-150(A)(7); R. 30-11(B)(7).

24. The project fails to comply with the Coastal Zone Management Act's requirement that DHEC consider the "extent to which the proposed use could affect the value and enjoyment of adjacent owners." S.C. Code Ann. §48-39-150. Upon information and belief, to be supported by Affidavit and testimony, increased cruise ship operations will adversely affect property values. Decreases in property values will result from increased noise pollution, increased congestion, and emission of particulate matter that falls on and around houses located near the terminal.

The Requestors will demonstrate that cruise ship operations amount to a public and private nuisance because of the traffic congestion, noise, soot and visual pollution. In particular, traffic from cruise tourism is a major inconvenience and causes serious traffic in and around the surrounding neighborhoods, of whom HANA, C4, CNA, and SCCCL have members. One member and resident has reported that soot emitted from the Carnival Cruise Ship, the Fantasy, settles on the interior and exterior of her property, requiring cleaning and maintenance, posing

health concerns, and significantly degrading her use and enjoyment of her property. Requestors will demonstrate that the activities permitted by the SPA have negatively impacted her property values, as well as the property values of her neighbors.

25. The staff decision fails to give the highest priority to the identified primary value of the GAPC, the Charleston Historic District. In the case of a historic site, the priority is placed on uses "which preserve the historical or cultural values for which the site was placed on the National Register of Historic Places." CMP, IV-25. Those values, enumerated in the Charleston Historic District's site nomination, include "the unique visual appeal of old Charleston, a picturesqueness created by the close proximity of buildings, in a wide variety of architectural styles, general harmony in terms of height, scale and proportion, materials, textures, colors and characteristic forms and a flavor of an earlier America." Yet the staff decision fails to give priority to the preservation of these historic and cultural values in violation of the CMP policies.

The scale of the ships are incompatible with the height, scale and mass of Charleston's buildings and are enormous when compared to the historic scale of shipping on Charleston's waterfront. Indeed, the presence of the ship is felt all over the district including bridges leading to and from Charleston on the opposite side of the peninsula, with noise and pollution impacts occurring in areas distant from the terminal itself. This is radically different from the much smaller scale, quieter and otherwise unobtrusive cargo ships which do not require street closures and sandwich board signs to announce their presence.

26. The Requestors are informed and believe that the impacts of the proposed expansion of the Union Pier Terminal will result in significant degradation of air quality; the living and

working environment of Charleston; property values; and the overall historic and cultural values of Charleston.

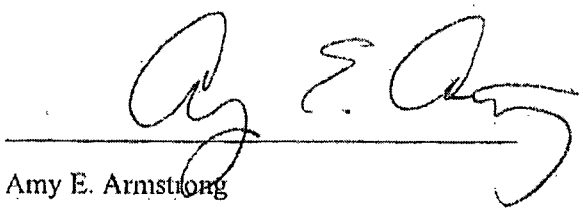
2. As a direct and proximate result of these violations, the Requestors and their members will suffer injury in fact. Among other things, the natural resources and environment of this area will be degraded, resulting in material harm to the Requestors' recreational, environmental, aesthetic and property interests.

28. The Requestors reserve all rights under Section 44-1-60 and other applicable laws to present evidence and argument during the review proceeding.

RELIEF REQUESTED

WHEREFORE, the Requestors request that the Board conduct a final review proceeding and issue an order reversing the proposed decision to issue the permit and certifications, or in the alternative remanding the decision back to staff with instructions to conduct an analysis of alternative terminal locations and to impose a condition for onshore power to minimize adverse air emission impacts. Further, to the extent that limitations on ship numbers or sizes are asserted to be a non-binding condition of the permit by SPA, the Requestors ask the DHEC Board to clarify that these conditions are mandatory.

Respectfully submitted,



Amy E. Armstrong

Michael G. Corley

SOUTH CAROLINA ENVIRONMENTAL LAW PROJECT

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Requestors, Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, Charleston Chapter of Surfrider

Georgetown, South Carolina

January 2, 2013

STATE OF SOUTH CAROLINA

BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and Charleston Chapter of Surfrider,

Requestors,

vs.

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

Respondents.

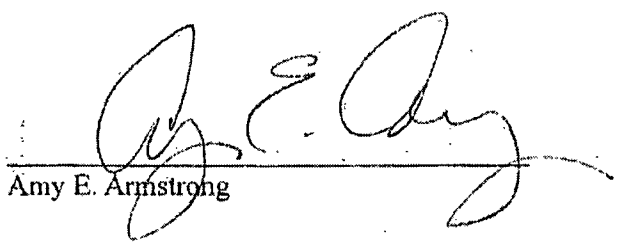
RE: Permit number OCRM-10-169-D

CERTIFICATE OF SERVICE

I hereby certify that on this date I served Respondents SC State Ports Authority and DHEC by placing copies of the foregoing Request for Final Review Conference in the U.S. Mail addressed to:

Derrick Bellamy
S.C. State Ports Authority
P.O. Box 22287
Charleston, SC 29413

Marshall Taylor,
DHEC Legal Office
2600 Bull Street
Columbia, SC 29201



Amy E. Armstrong

Georgetown, South Carolina
January 2, 2013

BHEC 39

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

December 18, 2012

Derrick Bellamy
SC State Ports Authority
P.O. Box 22287
Charleston, SC 29413-2287

SEE SPECIAL CONDITIONS(S)

Re: **P/N# OCRM-12-054-B**
SC State Ports Authority

Dear Mr. Bellamy:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to make improvements to an existing waterfront building and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina, and has issued a permit for this work. You should carefully read the description of the authorized project and any special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, *OR* appealed within 15 days as described on the enclosed "Notice of Appeal Procedure", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Notice of Appeal Procedure" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

Steven Brooks

Steven Brooks
Senior Regulatory Project Manager
Regulatory Programs Division

Exhibit A

Cc: Blair Williams, Wetland Section Manager
Patrick Moore, SCSPA
Nathaniel Ball, USACOE

Enclosure

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

Notice of Appeal Procedure
Pursuant to S.C. Code Section 44-1-60

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 calendar days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a timely written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393. A filing fee in the amount of $100 made payable to SC DHEC must also be received by the Clerk within the time allowed for filing a request for final review. However, if a request for final review is filed by facsimile, the filing fee may be mailed to the Clerk of the Board if the envelope is postmarked within the time allowed for filing a request for final review.

SEE SPECIAL CONDITIONS(S)

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 calendar days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due. A request for final review will be returned to the requestor if the filing fee is not received on time as described above.

4. The request for final review should include the following:
   a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
   b. a statement of any significant issues or factors the Board should consider in deciding whether to conduct a final review conference
   c. a copy of the Department's decision for which review is requested

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures. If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within 30 calendar days after notice is mailed that the Board declined to hold a final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

July 1, 2010

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s):	**SC State Ports Authority**
Permit Number(s):	**OCRM-12-054-B**
Date of Issuance:	**December 18, 2012**
Expiration Date:	**December 18, 2017**
Location:	**On and adjacent to Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. TMS#: 459-00-00-009.**

SEE SPECIAL CONDITIONS(S)

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed. If there are no special conditions, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of $5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. **All listed special and general conditions will remain in effect for the life of the project if work commences during the life of the permit. This applies to permittee, future property owners, or permit assignees.**

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The work as shown on the attached plans will consist of making improvements to an existing waterfront building. Specifically, the permittee will install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. The pilings will be constructed within the existing footprint of pile supported Building #322. Additionally, additional structural changes will be made to building 322 and two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies will be constructed. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

SPECIAL CONDITIONS

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal are conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA require its contractors, for the activities addressed under this permit, to:

   a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

   b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all non road equipment between 100 and 750 horsepower.

   c. turn off construction equipment and vehicles not in active use. SEE SPECIAL CONDITIONS

   d. implement dust control using the best management practices that may include but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

   e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.

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

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

SEE SPECIAL CONDITIONS(S)

Permit Number: **OCRM-12-054-B**

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S)) (DATE)

SC State Ports Authority

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.

Steven Brooks 12/18/12

(PROJECT MANAGER, WETLAND SECTION) (DATE)

Steven Brooks
or her Designee
Other Authorized State Official

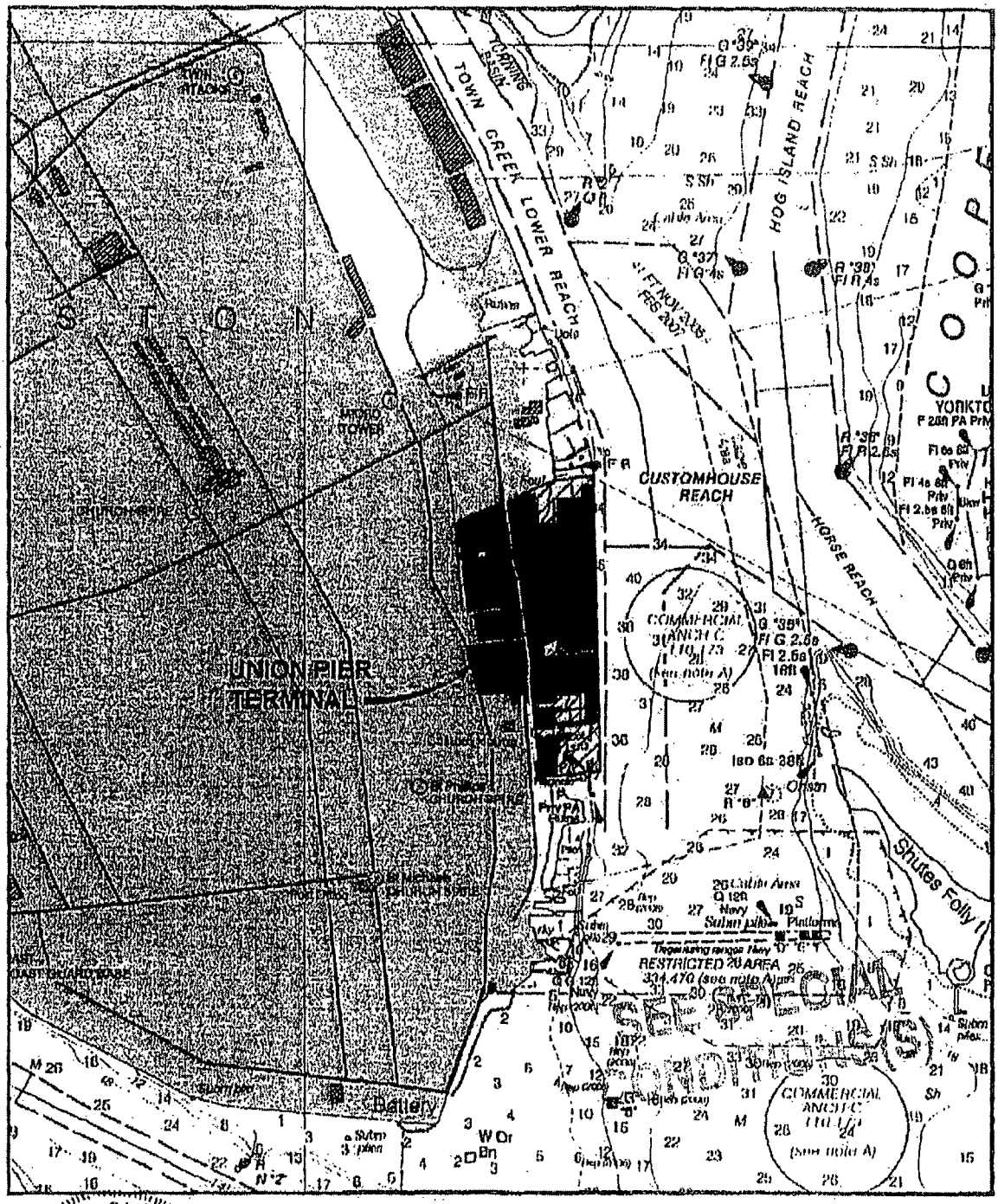
BHEC 44

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. That this permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That the permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. That OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

BHEC 45



SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

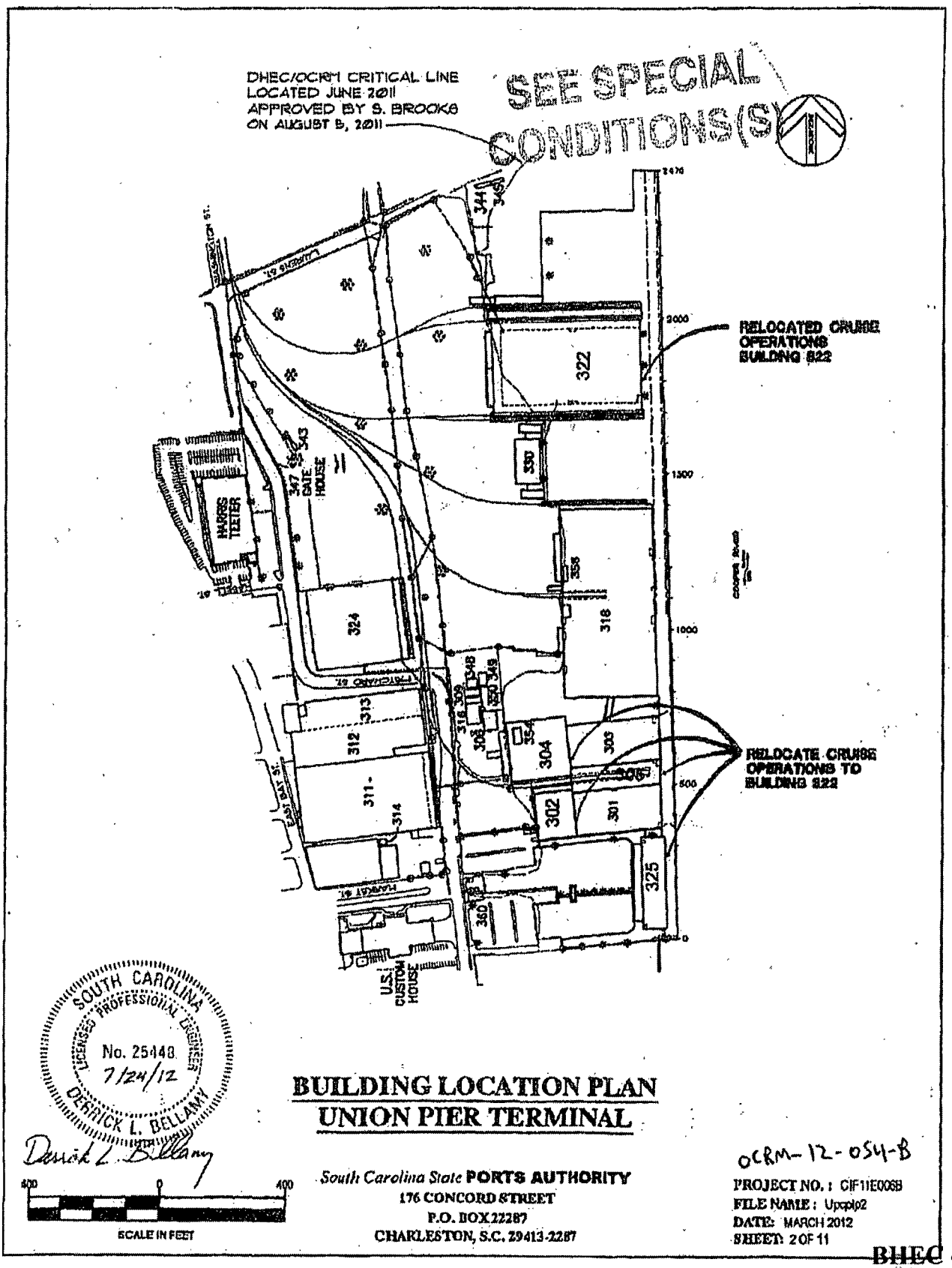
LOCATION

OCRM-12-054-B

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

PROJECT NO.: GF11E0068
FILE NAME: Upcplpl
DATE: JULY 2012
SHEET: 1 OF 11

BHEC 46



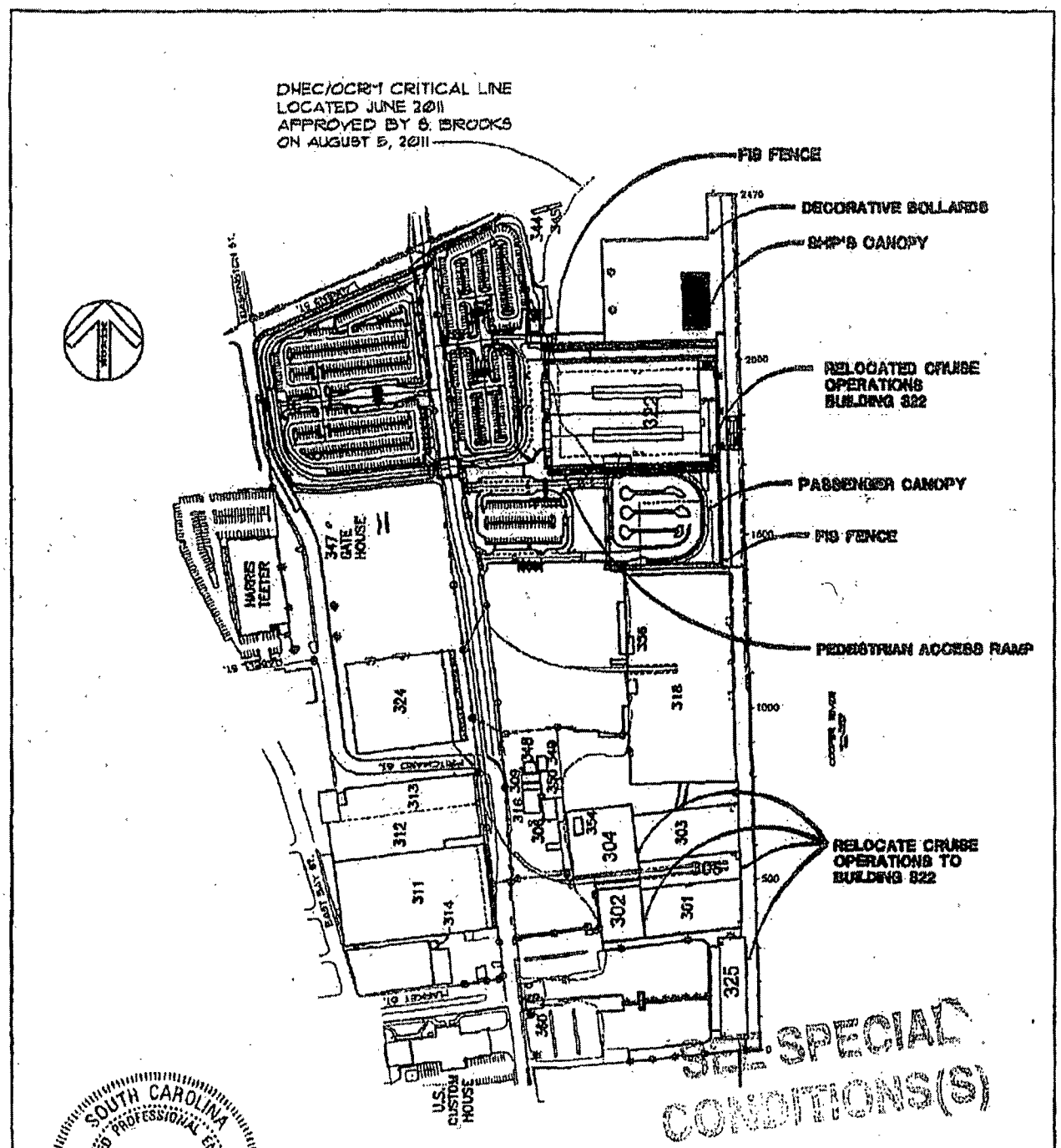
BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

OCRM-12-054-B

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp2
DATE: MARCH 2012
SHEET: 2 OF 11

BHEC 47



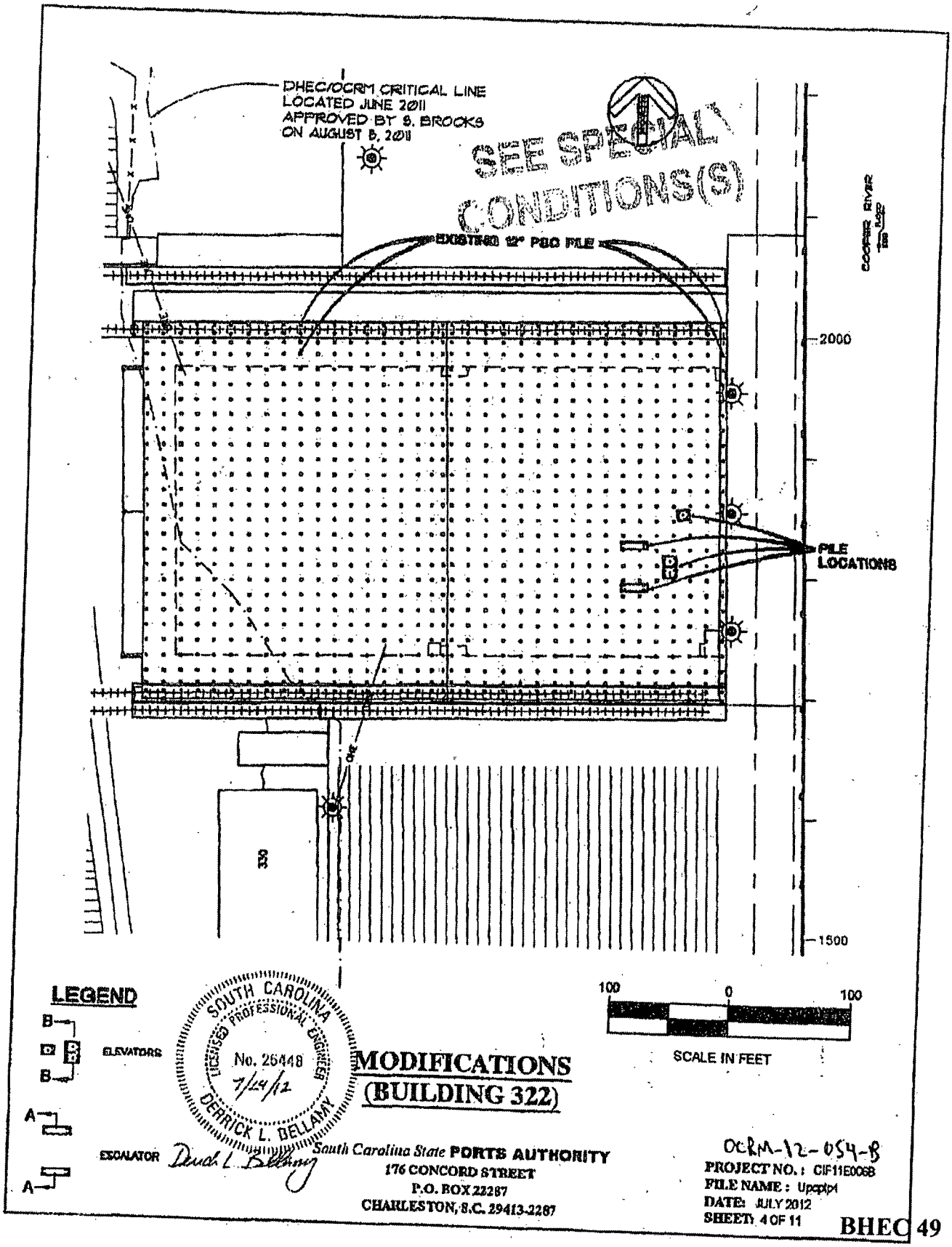
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

OCRM-12-054-B

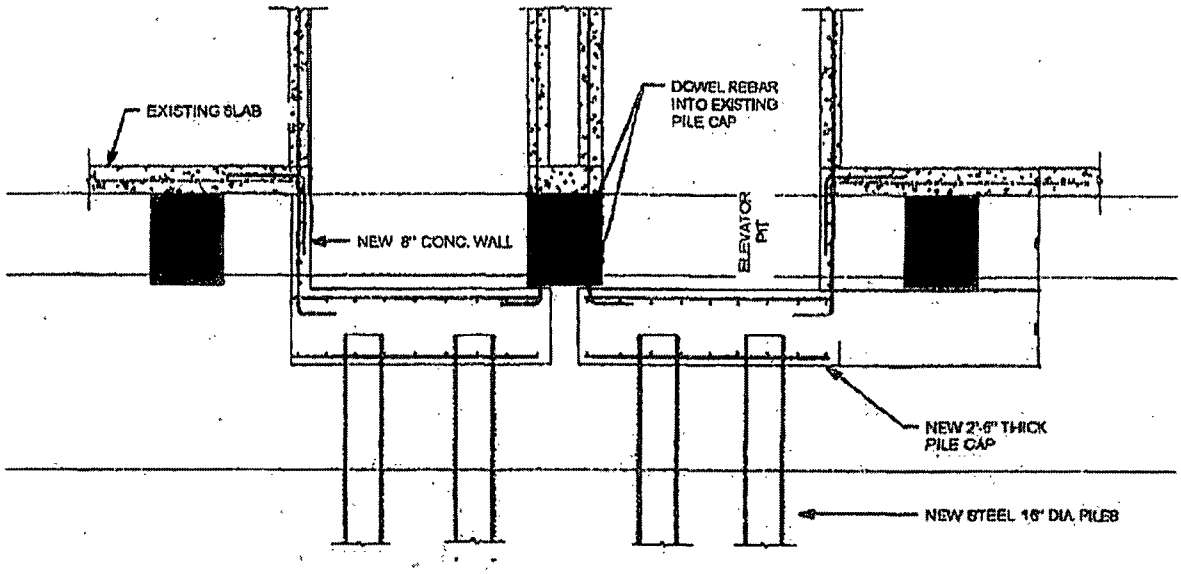
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

PROJECT NO.: CIF11E006B
FILE NAME: Upcplp3
DATE: MARCH 2012
SHEET: 3 OF 11

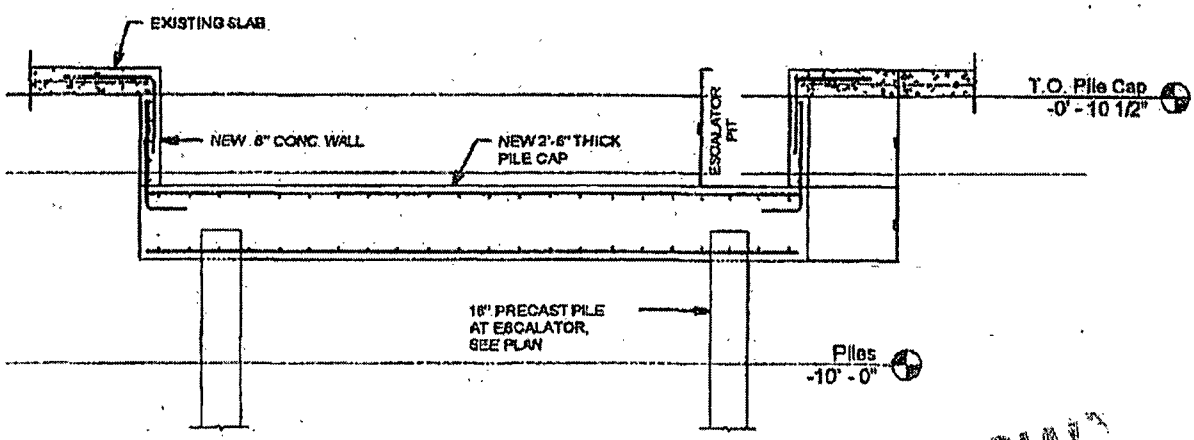
BHEC 48


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011
SEE SPECIAL CONDITIONS(S)
EXISTING 12" PSC PILE
COOPER RIVER
2000
1500
PILE LOCATIONS
359
100
0
100
SCALE IN FEET
LEGEND
ELEVATORS
ESCALATOR
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 26448
7/24/12
DERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upgdpl
DATE: JULY 2012
SHEET: 4 OF 11

BHEC 49



A SECTION ELEVATOR



B SECTION ESCALATOR

SEE SPECIAL CONDITIONS(S)

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 25448 7/24/12 DERRICK L. BELLAMY

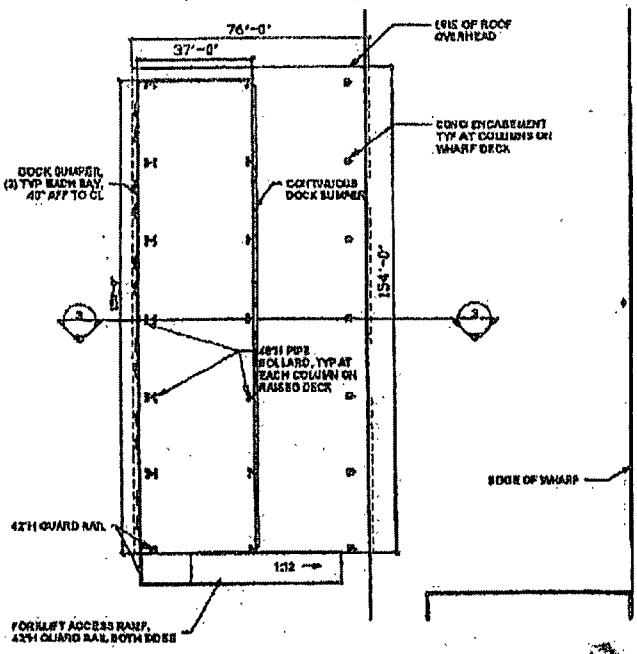
David L. Bellamy

MODIFICATIONS (CROSS SECTION)

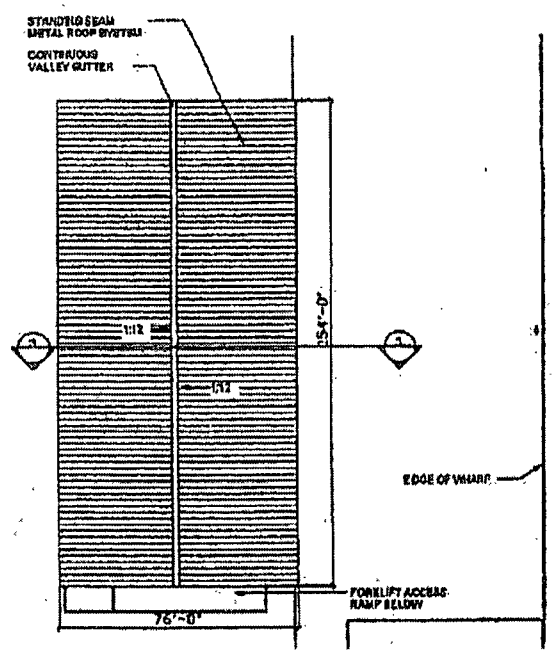
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

GCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp6
DATE: JULY 2012
SHEET: 6 OF 11

BHEC 50

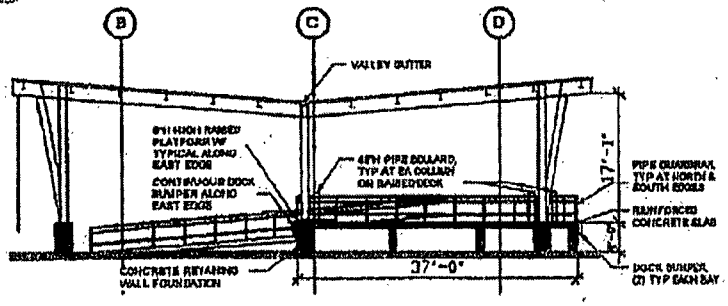


1 STORES CANOPY FLOOR PLAN



2 STORES CANOPY ROOF PLAN

SEE SPECIAL CONDITIONS(S)



3 STORES CANOPY E-W SECTION

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 25648 DERRICK L. BELLAMY

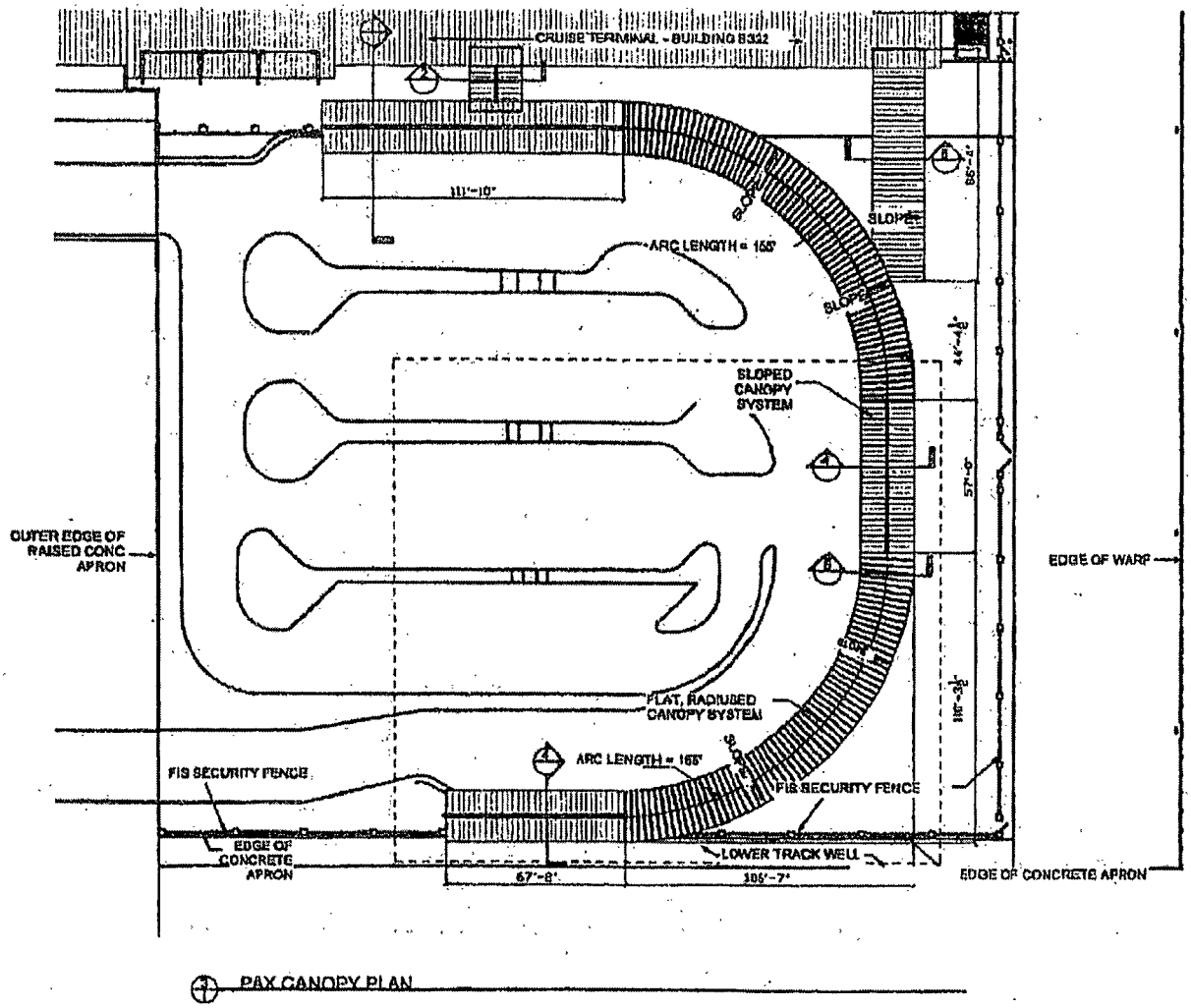
MODIFICATIONS
NORTH APRON

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

OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcplp8
DATE: JULY 2012
SHEET: 6 OF 11

BHEC 51

SEE SPECIAL CONDITIONS(S)



PAX CANOPY PLAN

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
No. 25448
7/25/12
DERRICK L. BELLAMY

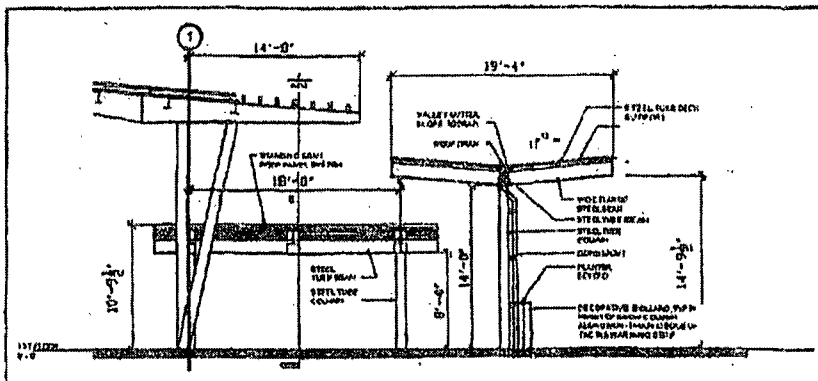
Derrick L. Bellamy

MODIFICATIONS
SOUTH APRON

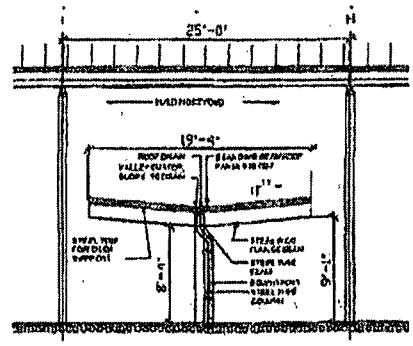
South Carolina State **PORTS AUTHORITY**
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
PROJECT NO.: CIP11E0068
FILE NAME: Upcptp7
DATE: JULY 2012
SHEET: 7 OF 11

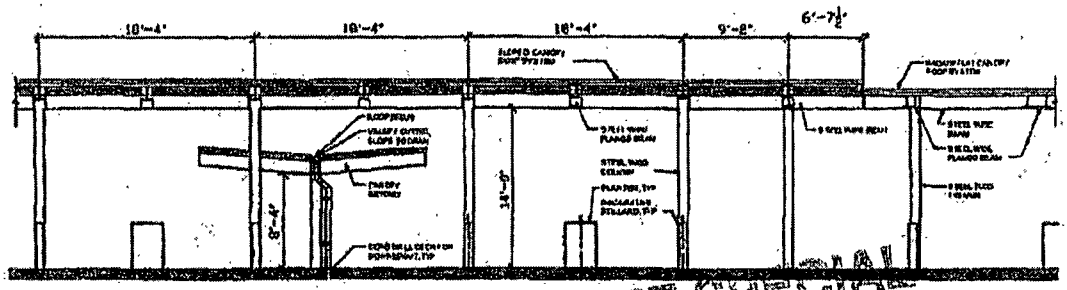
BHEC 52



SECTION - PAX DROP OFF ZONE CANOPY

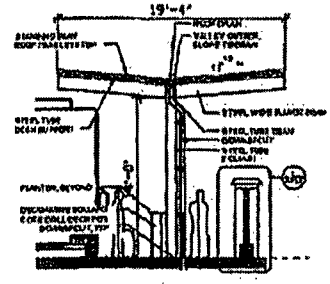


SECTION - PAX DROP OFF ZONE CANOPY @ BLDG INTERSECTION

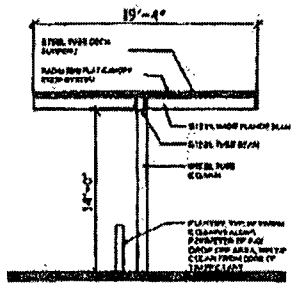


SECTION - PAX ACCESS CANOPY

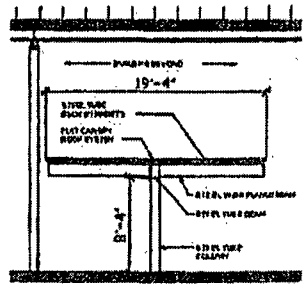
SEE SPECIAL CONDITIONS(S)



SECTION - SOUTH PAX ACCESS CANOPY



SECTION - FLAT PAX ACCESS CANOPY



SECTION - FLAT POV BAG CANOPY

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 25138
7/24/12
PATRICK L. BELLAMY

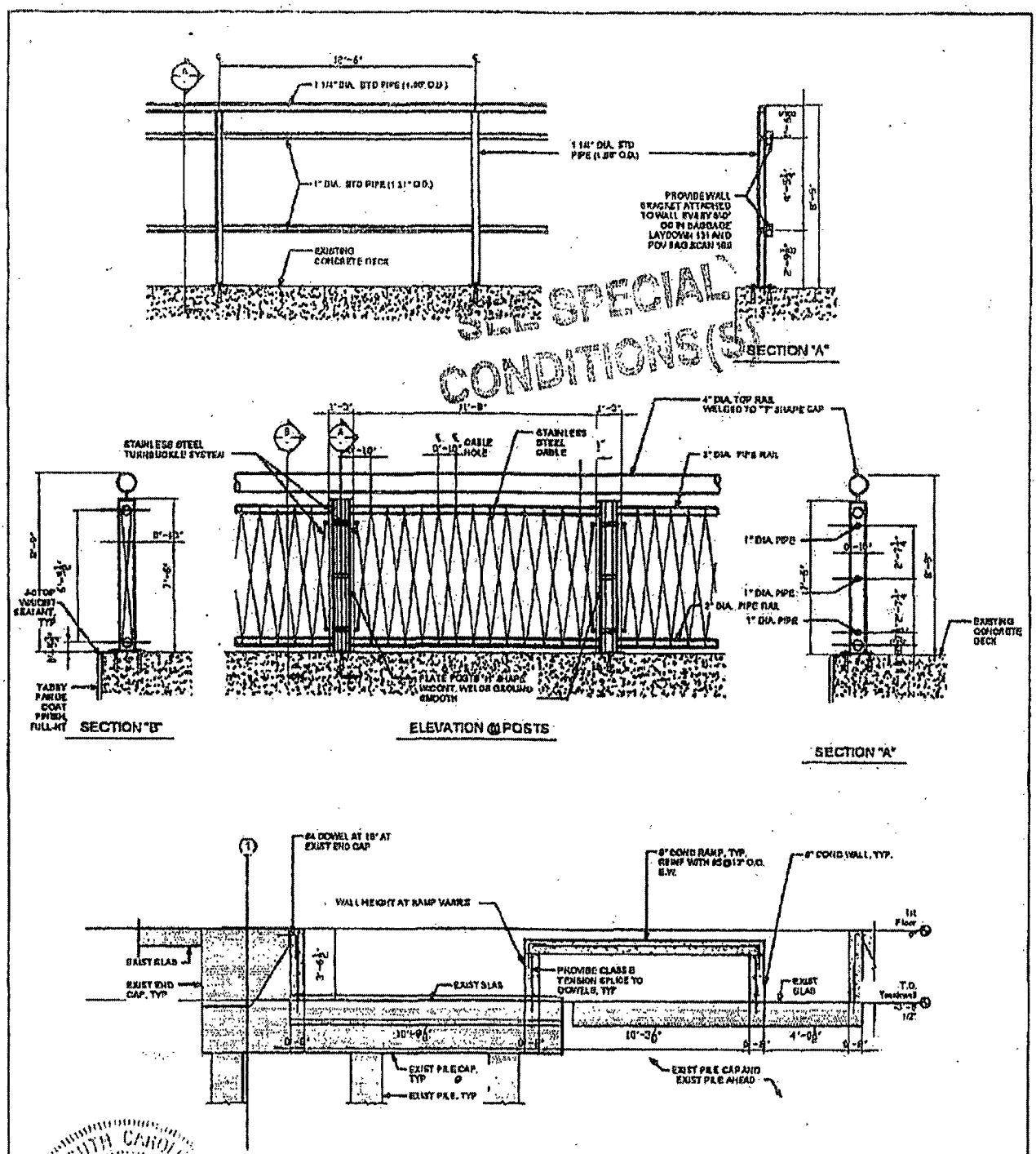
Patrick L. Bellamy

MODIFICATION
SOUTH APRON - DETAILS

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

OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcplp8
DATE: JULY 2012
SHEET: 8 OF 11

BHEC 53

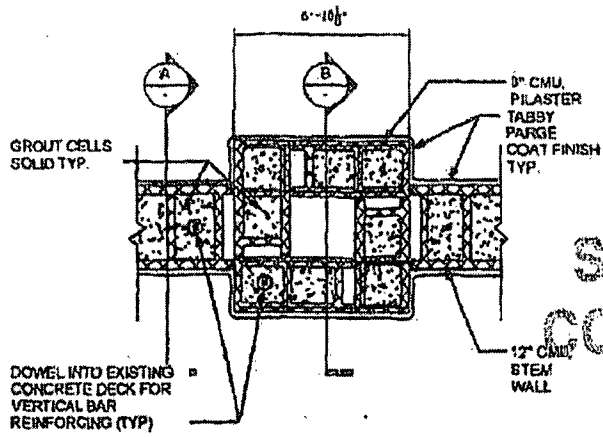


MODIFICATIONS
PEDESTRIAN ACCESS RAMP DETAIL

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

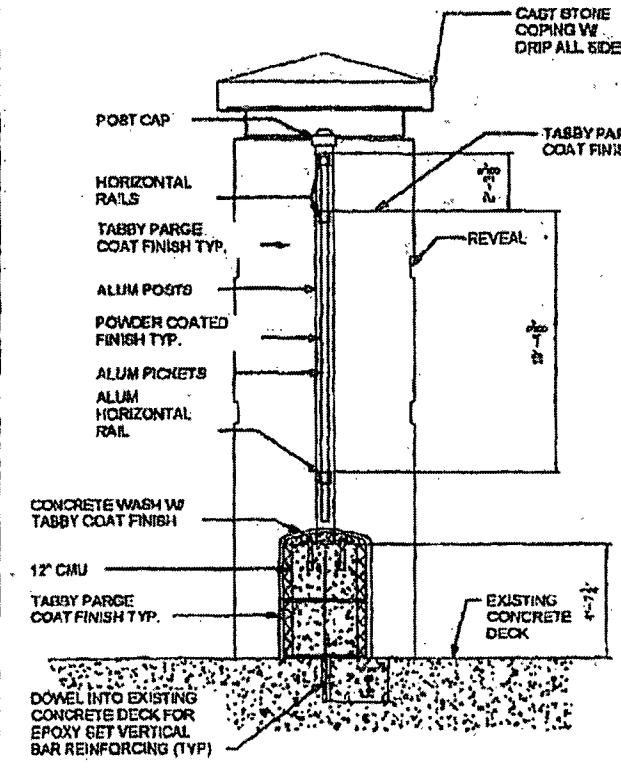
OCRM-12-054-B
PROJECT NO.: CIF11E0068
FILE NAME: Upcpip9
DATE: JULY 2012
SHEET: 9 OF 11

BHEC 54

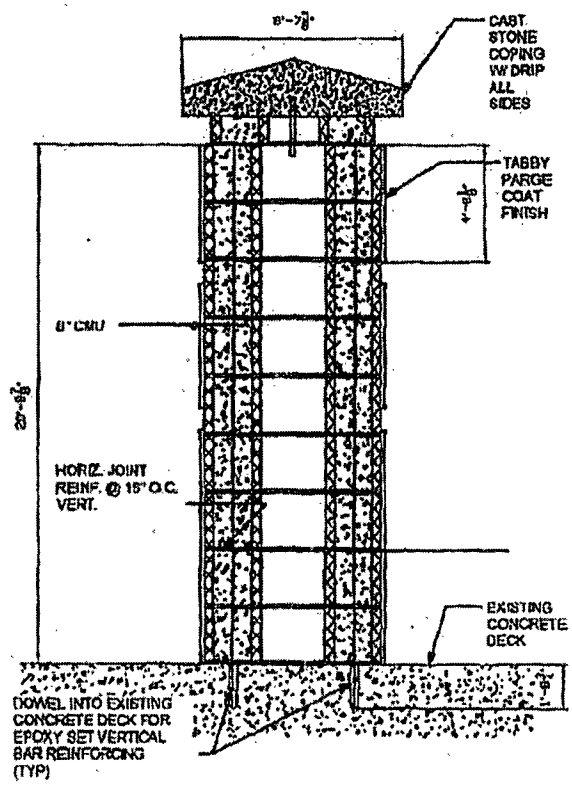


SEE SPECIAL CONDITIONS(S)

PLAN DETAIL @ MASONRY PILASTER



WALL SECTION "A" @ MASONRY STEM WALL



WALL SECTION "B" @ MASONRY PILASTER

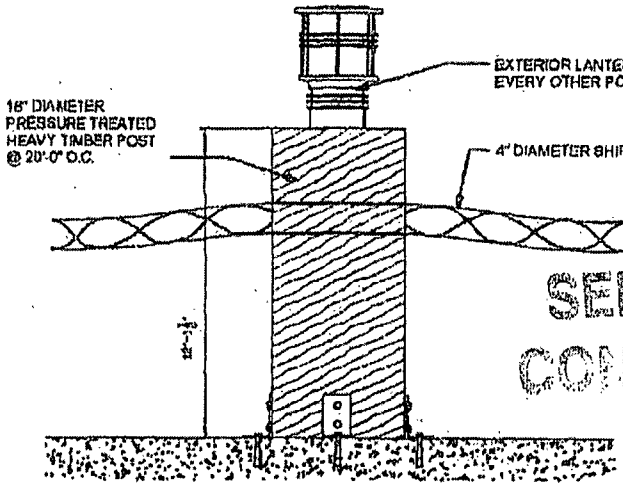
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. DELLABARCA

MODIFICATIONS
SECURITY FENCE DETAILS

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

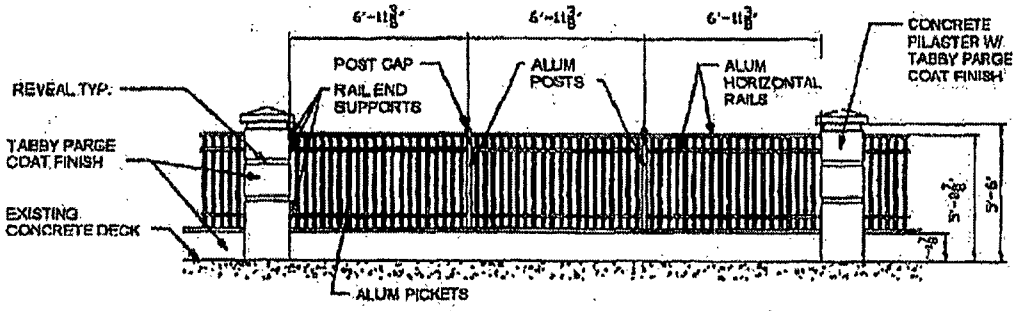
OCRM-12-054-B
PROJECT NO.: CIF11E006B
FILE NAME: Upcptp10
DATE: JULY 2012
SHEET: 10 OF 11

BHEC 55

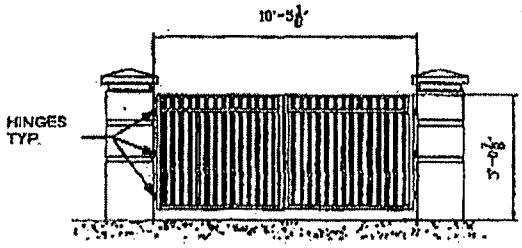


SEE SPECIAL CONDITIONS(S)

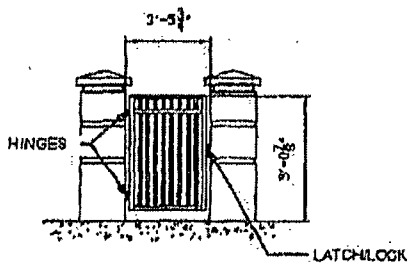
NORTH APRON DECORATIVE BOLLARDS



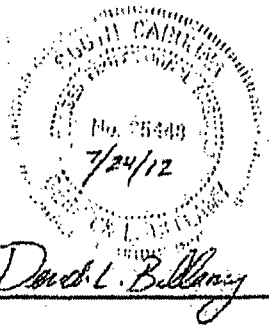
ELEVATION @ FIS SECURITY FENCE



ELEVATION @ ACCESS GATE



ELEVATION @ PED GATE



Daniel L. Billmeier

MODIFICATIONS
SECURITY FENCE DETAILS

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

OCRM-12-0549-B
PROJECT NO.: CIF11E005B
FILE NAME: Upcplp11
DATE: JULY 2012
SHEET: 11 OF 11

BHEC 56

ATTACHMENT A

CLARIFICATION OF PROCESS OF CITY CONSULTATION REGARDING CRUISE MANAGEMENT PLAN ALTERATION

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

(1) Written notification to the Mayor and City Council.

(2) Written notification to the Cruise Neighborhood Advisory Council.

(3) Written notification to Charleston Metro Chamber of Commerce and the Maritime Association of South Carolina.

(4) Written notification to the Historic Charleston Foundation and the Preservation Society.

(5) The convening of a community forum to discuss any material change to the plan.

(6) The solicitation of public input through one or more public hearings, including a public hearing at a City Council meeting.

(7) Careful and thoughtful consideration of the public input.

(8) Report to the Mayor and City Council of the SCSPA board and staff findings and decision.

ATTACHMENT A

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

(1) The number of cruise ships will be no more than 104 calls per calendar year.

(2) The port will host no more than one ship at a time at the cruise terminal.

(3) The terminal will be designed at the northern end of Union Pier to accommodate ships consistent with the size and profile that have called Charleston in the past (1,900 to 3,500 passenger design capacity)

(4) A Traffic Management Plan which removes maritime cruise traffic from City streets as soon as possible as well as continued coordination and communication with the Charleston City Police Department and the City Special Events Committee.

(5) A continued commitment by the SCSPA to contribute an allocation to the DASH Downtown Shuttle program, as described in the City Agreement with the SCSPA, providing free shuttle rides to those traveling in the downtown areas of the City.

SEE SPECIAL CONDITIONS(S)

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN P. MUSTIAN
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT FELDER
CHAD N. JOHNSTON
JOHN W. ROBERTS

*ALSO ADMITTED IN TX

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

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

January 7, 2013

VIA HAND DELIVERY

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

Re: Request for Final Review, P/N OCRM-12-054-B (Historic Charleston Foundation)

Dear Members of the Board:

The South Carolina Ports Authority (Ports Authority) files this response to the request for final review (RFR) filed on or about January 2, 2013, by the Historic Charleston Foundation (HCF). In short, the project application was thoroughly vetted by OCRM staff, HCF has raised no issues for consideration, and all indications are that HCF intends on pursuing this matter further in a request for a contested case hearing before the South Carolina Administrative Law Court (ALC) in continuation of their ongoing crusade against cruise business.[1] Therefore, the Ports Authority respectfully requests that the Board decline to conduct a final review conference to allow the parties to move forward to the ALC in the most expeditious manner possible.

The HCF request is notable in its lack of raising any issue for this Board to review. Instead, the request for review reads more like a request for information under the Freedom of Information Act (FOIA). Specifically, HCF appears to seek the information that the Ports Authority provided to OCRM and may be found in the OCRM permitting file. See HCF Request at 1 ("HCF would like to know if the [Ports Authority] has submitted the requested information...."), 2 ("Since we have not

[1] Note that Carnival Cruise Lines has suspended long-term contract discussions with the Ports Authority until the litigation is resolved. It appears that HCF intends to delay as long as possible in the hopes of destroying the cruise business in Charleston. Of course, if this tactic is successful, the Union Pier Terminal will continue to be used as a cargo terminal with more ships, more traffic, and more rail than the cruise operations generate.

seen any studies or data produced by the [Ports Authority] or OCRM....").[2] In other words, HCF acknowledges that it lacks any information or knowledge to raise any specific objection to the permit. Of course, from HCF's perspective, such information actually is irrelevant. Whatever analysis may have been conducted, because that analysis resulted in the issuance of the permit, the analysis is, from HCF's view, deficient. Only analysis that would have resulted in the denial of the permit would have been sufficient to HCF (even though denial would result in more environmental impacts). These non-substantive requests do not merit a hearing of the Board.

This RFR, along with the companion request filed by the South Carolina Environmental Law Project (SCELP) on behalf of other entities (collectively, Opponents), constitute the third and fourth legal actions filed on behalf of these same entities in their longstanding and continuing attempt to prevent cruise ship vessels from calling on the Port of Charleston.[3] The Opponents already have actions pending before the South Carolina Supreme Court and the Federal District Court attacking the cruise business in Charleston, and, relevant to HCF, whose professed mission is to preserve historic Charleston, the federal lawsuit specifically targets historic preservation issues.

In their efforts to block this capital improvement project by the Ports Authority, Opponents continue to ignore an inconvenient truth: **Charleston, and specifically the Union Pier property owned and operated by the Ports Authority, has accommodated passenger vessel calls for over 100 years**. In fact, passenger vessels, including cruise vessels, have called on the Union Pier passenger facility every year since 1973 (prior to the area's historic designation in 1977). The reality that Opponents would prefer this Board disregard is that passenger cruise vessels called on Union Pier and Charleston in the past, they do so today, and irrespective of the ultimate determination on this pending Permit, passenger cruise vessels will continue to call on Union Pier and Charleston in the future.

More importantly, the relocation of cruise operations from the south end of the Union Pier Terminal to the north end of the terminal addresses the only real issue that the vast majority of Charlestonians have with the cruise business: traffic. Should the permit be reversed, then the existing traffic patterns will be maintained and there will be additional rail and truck traffic generated from the use of the north end of the Union Pier Terminal to handle cargo (in addition to the continued use of the south end of the terminal as a cruise terminal). In other words, the issuance of the permit provides for an overall reduction in annual vessel calls at Union Pier Terminal through the removal of cargo vessel and rail operations, which also means an overall reduction of environmental impacts from operations at Union Pier Terminal. **Ironically, what the Opponents fail to understand and appreciate is that denial or reversal of the permit results in greater environmental and community impacts than terminal operations after installation of the permitted pilings.**

---

[2] For example, HCF wants to know if the Ports Authority responded to OCRM's June 29, 2012 information request. As reflected in the OCRM Technical Summary Review dated December 17, 2012, on July 26, 2012 "the requested information was received." If HCF wanted to review the information, it has been available for over five months if only HCF had submitted a FOIA request.

[3] This response incorporates by reference the Ports Authority's response to the SCELP's request for final review on behalf of other challengers.

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

Thus, **the permitted project is for pile clusters to provide additional support for an existing structure within the existing footprint of an already developed marine terminal.** See Exhibit B, Map of Pile Clusters. The entirety of the effect of this project is that current cruise operations will be relocated less than 600 yards to the north in a renovated warehouse, still within the existing boundary of the Union Pier Terminal footprint. This project enables the relocation of existing operations and current capabilities. See Exhibit C, OCRM Technical Summary of Review, dated Dec. 17, 2012 ("The existing commercial pier is a [Ports Authority] pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.").

While the permitted activity simply aids the retrofit and repurpose of an existing cargo warehouse, which is both economically efficient and an environmentally sustainable reuse, the larger plan of Union Pier redevelopment will see the demolition of older warehouses and facilities on the southern end of the Terminal, where the cruise passenger facilities are currently located, and allow for the potential restoration of the natural waterfront and establishment of approximately 35 acres of public green spaces and private commercial and residential units (which is larger than the 27 acre footprint of the north end cruise terminal operations).

Further, in anticipation of the move of cruise facilities to the northern end of the base, most existing cargo operations have been relocated to another Ports Authority terminal facility. In addition to the decrease in emissions at the Union Pier Terminal as a result of this relocation, this has the added benefit of ceasing rail operations to Union Pier Terminal, which blocked vehicular traffic on a daily basis. The result of these relocations and the additional traffic management plan is that the relocated cruise passenger facility will result in no increase in traffic and will reduce the current route congestion. Exhibit D, Comparison Traffic Diagram. However, should the north end not be utilized for cruise operations, it will continue its use for cargo operations, increasing air emissions and traffic congestion beyond what would exist for cruise operations.

As this RFR appears to be nothing more than a broader litigation strategy of Opponents across several courts and venues, it is in the best interest of the Ports Authority and DHEC for a speedy resolution from the courts, and the Ports Authority respectfully requests that the Board decline conducting a Final Review Conference in this matter.

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

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

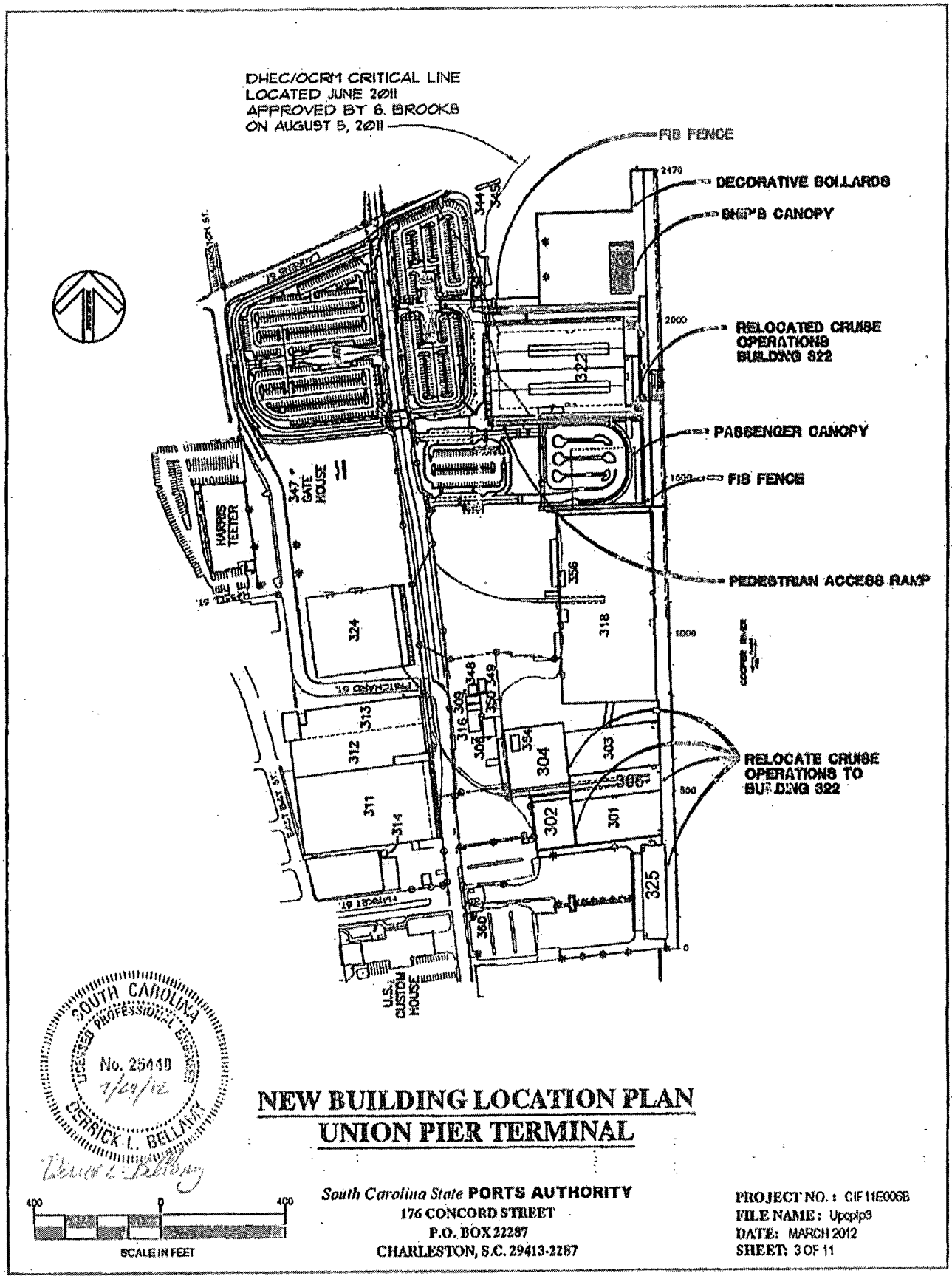
Enclosures

cc: Bradley Churdar, Esquire
Mr. Winslow Hastie
Philip L. Lawrence, Esquire
Ms. Barbara Melvin

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit A	Map of Union Pier Terminal
Exhibit B	Map of Pile Clusters
Exhibit C	OCRM Technical Summary of Review (Dec. 17, 2012)
Exhibit D	Comparison Traffic Diagram

EXHIBIT A



SOUTH CAROLINA
PROFESSIONAL ENGINEER
No. 25449
9/29/12
DERRICK L. BELLAMY

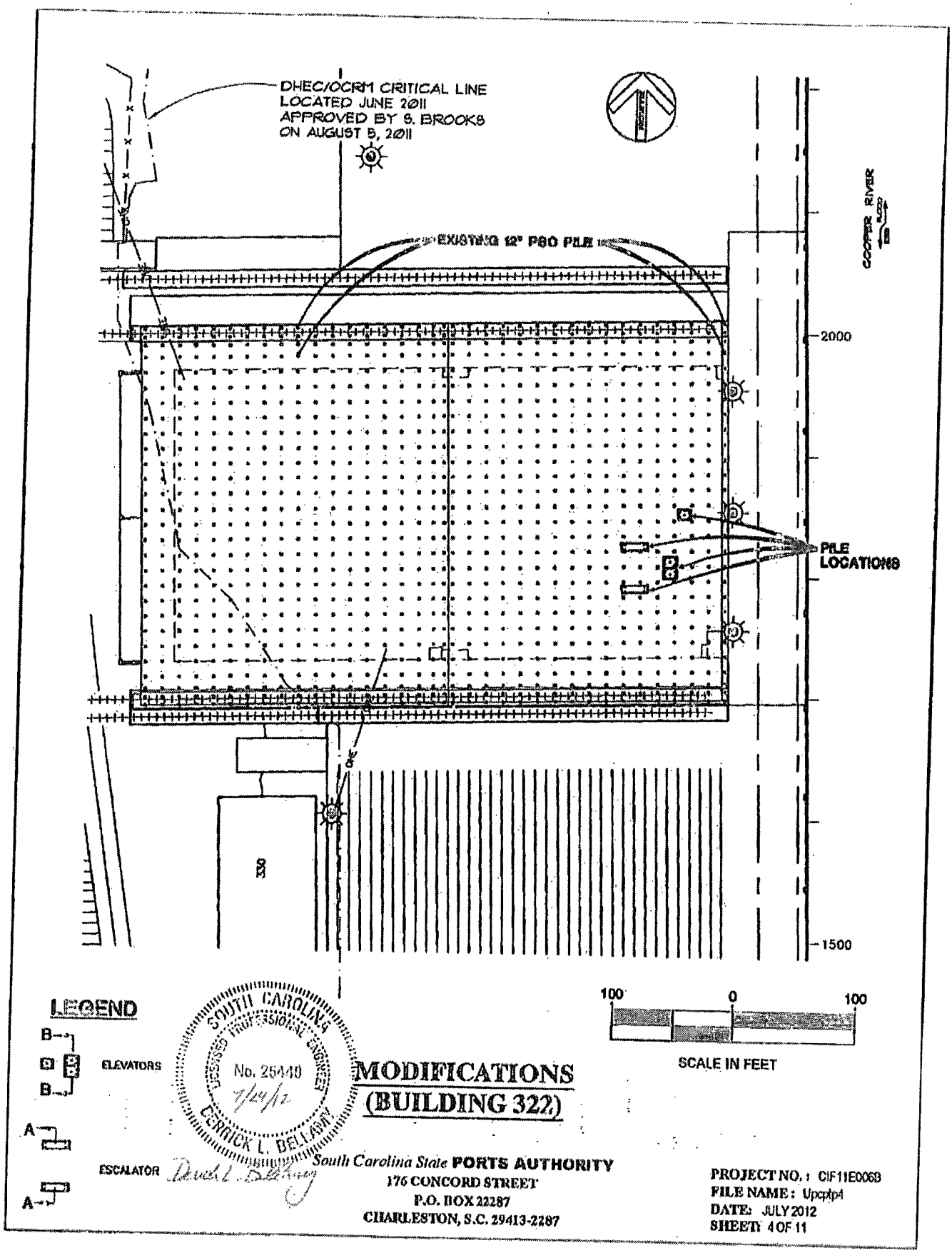
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

PROJECT NO.: GIF11E006B
FILE NAME: Upcplp9
DATE: MARCH 2012
SHEET: 3 OF 11

BHEC 65

EXHIBIT B


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011
EXISTING 12" PSC PILE
COOPER RIVER
FLOOD
2000
PILE LOCATIONS
1500
322
LEGEND
ELEVATORS
ESCALATOR
100
0
100
SCALE IN FEET
SOUTH CAROLINA
PROFESSIONAL ENGINEER
No. 25440
7/24/12
CERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
PROJECT NO. : CIF11E006B
FILE NAME : Upcptp4
DATE: JULY 2012
SHEET 4 OF 11

BHEC 67

EXHIBIT C

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

TECHNICAL SUMMARY OF REVIEW

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

Permit:
Permit with Conditions: X
Deny:

I. Background Information:

Database ID# 76114

Permit Number: OCRM-12-054-B

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

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

County: Charleston Water Body: Charleston Harbor/Cooper River

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

II. Project Description and Stated Purpose:

Description:

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

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

BHEC 69

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

Federal Agencies: **None**

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

Local Agencies: **None**

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

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

IV. **Environmental Assessment:**

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

Open water areas beneath an existing wharf and existing building over the water.

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

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

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

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

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

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

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

V. **Policy Assessment:**

A. Regulatory History:

1) Previous OCRM authorizations (land disturbance, Federal cert.):

SC STATE PORTS AUTHORITY	**90-4T-172-P**
FLEET LANDING RESTAURANT, LLC	**OCRM-04-339-R**
SC STATE PORTS AUTHORITY	**99-1P-261-P-C**

BHEC 70

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**

3) Master Plans (dock, archaeological, wetland): **No**

4) Date of O & M: **N/A**

5) Navigable tributary crossings proposed: **None**

6) Property frontage at highground and water; offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**

7) Community or public marina: **Commercial Pier**

8) Water quality sampling/monitoring program required: **No.**

9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**

10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**

11) Dock masters office location and number: **No.**

12) SAMP restrictions: **N/A**

13) NERRS review area: **N/A**

14) Deed restrictions: **N/A**

15) Wetland delineation approved by ACOE: **N/A**

16) Development plan and parking approved by local government: **N/A**

17) Valid critical area line certified: **Yes**

18) Marsh ownership claims: **None**

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

1) CZMA:

Approval or denial of permits; appeal to council	**48-39-150**
Legislative declaration of state policy	**48-39-30**
Legislative declaration of findings	**48-39-20**

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

Mitigation Criteria	**R.30-4(G)(2)**
General Considerations	**R.30-11(B)**
Further Guidelines	**R.30-11(C)**

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

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

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

3) CZ Policies (Management Program Document):

Policies for Port Facilities

1) **New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

2) **Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

3) **To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.**

4) **New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.**

5) **Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.**

6) **Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.**

7) **Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.**

8) **Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development**

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

9) **Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.**

10) **Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.**

11) **All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].**

12) **All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.**

13) **All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.**

14) **Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.**

15) **The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).**

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

Priority of Uees

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

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;
2) Water-related uses which do not reduce or degrade the natural value or resources within the port;
3) Nonwater-dependent or nonwater-re1ated uses which retain future flexibility of the port for water-dependent needs.

Designated Sites

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

C. Does the project contravene any coastal zone regulations?

YES X NO

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

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

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

See attached Special Conditions

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

N/A

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

(Name) **(Date)**

VIII: Reviewed By:

1. Project Manager: Steven Brooks 12/17/12

(Signature) **(Date)**

2. Section Manager 12/17/12

(Signature) **(Date)**

BHEC 74

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

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

LONGTERM CUMULATIVE AFFECTS

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

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

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

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

AIR EMISSIONS

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

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

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

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

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal is conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA requires its contractors, for the activities addressed under this permit, to:

    a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

    b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all nonroad equipment between 100 and 750 horsepower.

    c. turn off construction equipment and vehicles not in active use.

    d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

    e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning

System equipment.

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

X. Attachments Required:

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

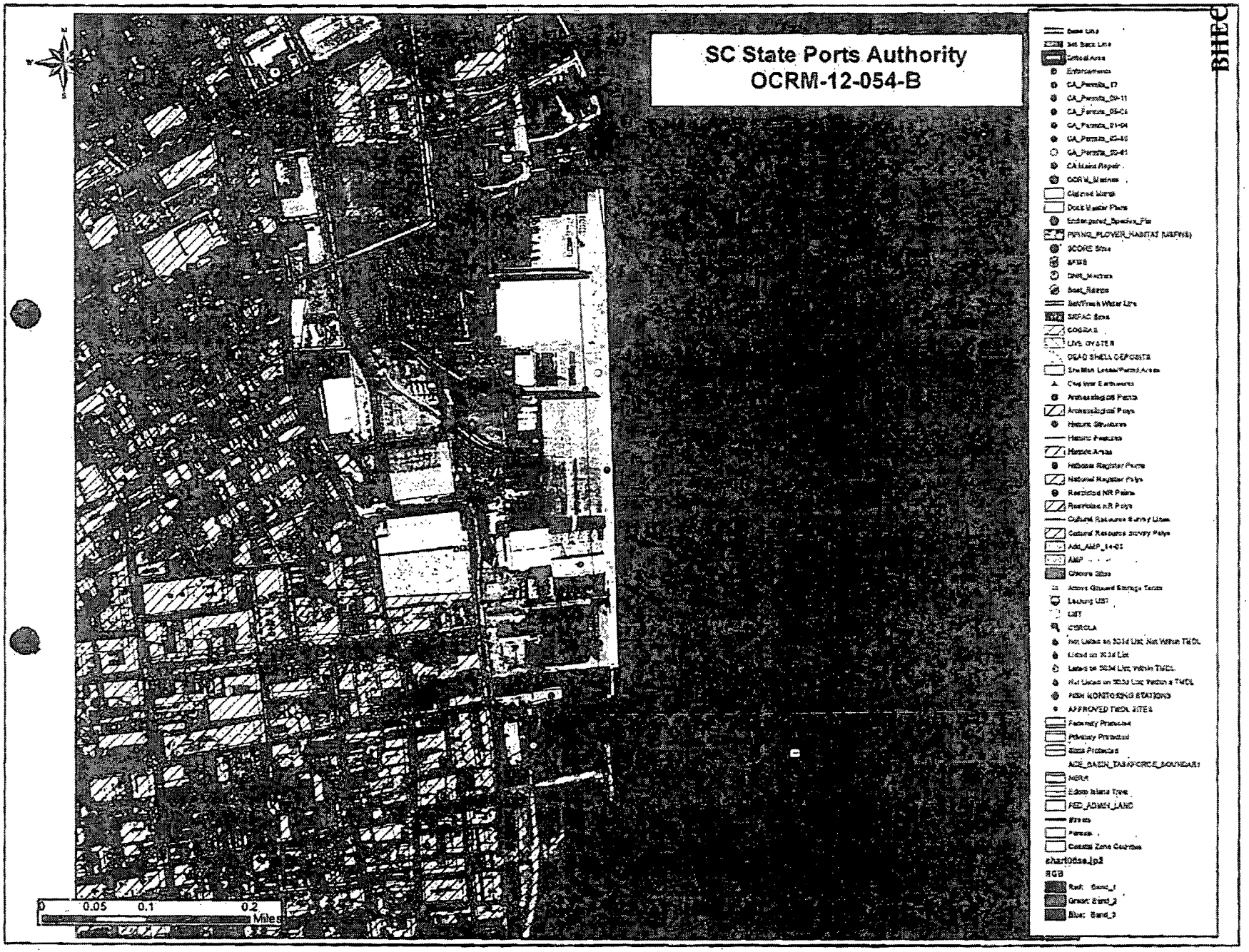
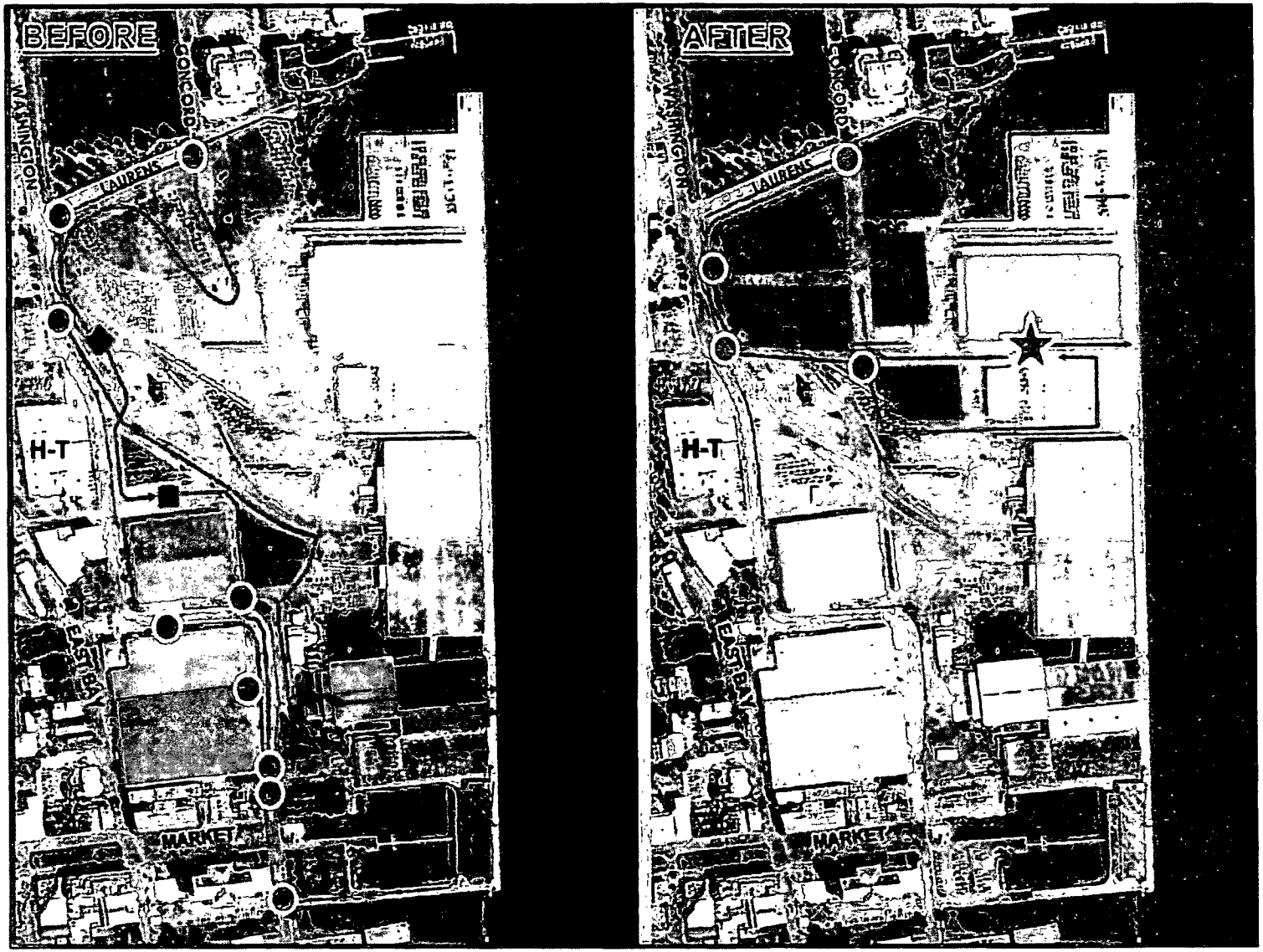

SC State Ports Authority
OCRM-12-054-B
0 0.05 0.1 0.2
Miles

EXHIBIT D



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

BHEC 80

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN P. MUSTIAN
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT FELDER
CHAD N. JOHNSTON
JOHN W. ROBERTS

*ALSO ADMITTED IN TX

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

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

January 7, 2013

VIA HAND DELIVERY

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

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

Dear Members of the Board:

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

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

BHEC 81

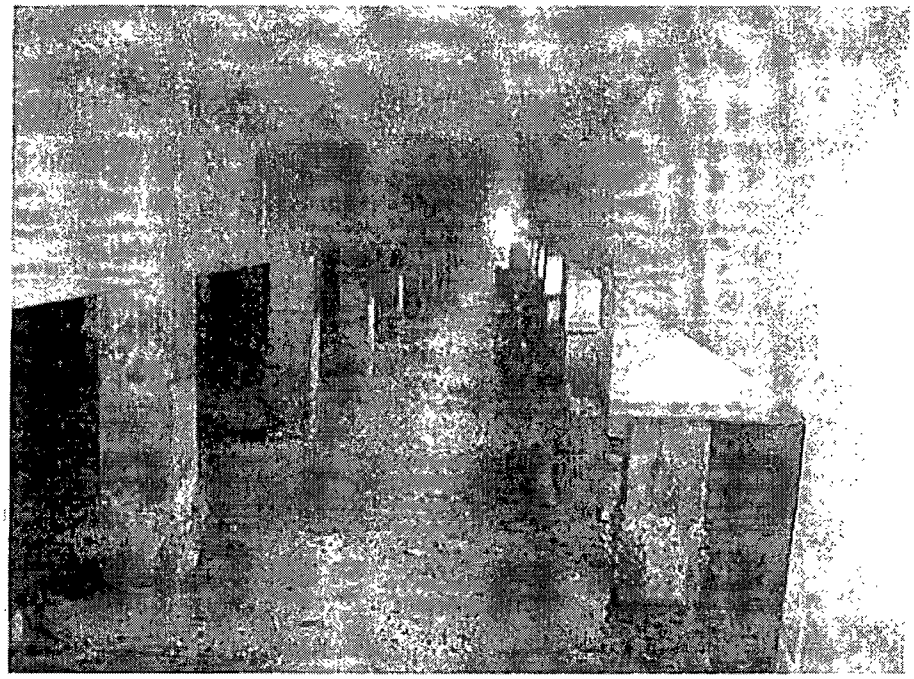
final review conference to allow the parties to move forward to the ALC in the most expeditious manner possible.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

iv. Enter into a Traffic Management Plan to remove maritime cruise traffic from the City streets as soon as possible, as well as continued coordination with the Charleston City Police Department and the City Special Events Committee.

v. Continued commitment to contribute an allocation to the DASH Downtown Shuttle Program, which provides free shuttle rides to those traveling in the downtown areas of the City.

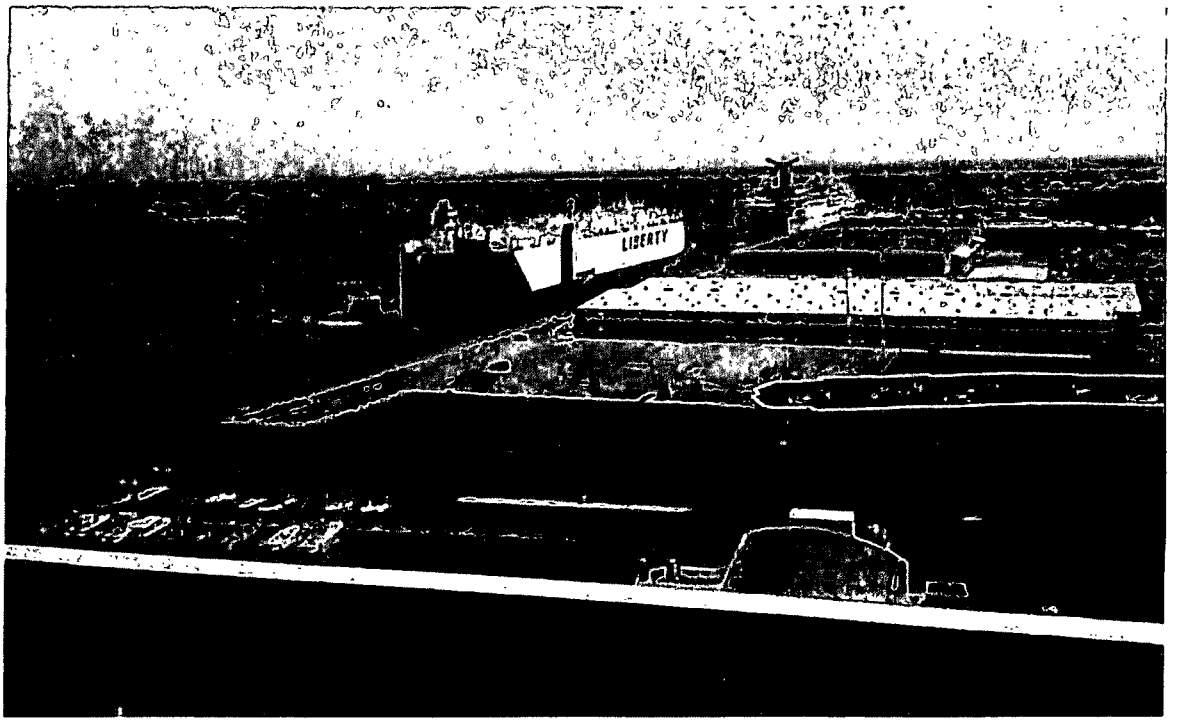
Id. Notwithstanding these good faith efforts of the Ports Authority, and OCRM's thorough review of the permit application, which resulted in special conditions imposed through the permit, Opponents contend OCRM's staff decision was made in violation of applicable statutes, regulations and rules.[2] While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

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

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

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

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



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

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

Very truly yours,

WILLOUGHBY & HOEFER, P.A.

Randolph R. Lowell

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

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit A	Affidavit of James I. Newsome, III (Aug. 22, 2011)
Exhibit B	Affidavit of Arnaldo Perez (July 2011)
Exhibit C	Map of Union Pier Terminal
Exhibit D	Map of Pile Clusters
Exhibit E	Corps Mem. For Record, SAC-2003-13026 (Apr. 20, 2012)
Exhibit F	OCRM Technical Summary of Review (Dec. 17, 2012)
Exhibit G	Comparison Traffic Diagram
Exhibit H	Affidavit of Joseph P. Riley, Jr. (Aug. 22, 2011)
Exhibit I	Affidavit of Daniel Riccio (Aug. 22, 2011)

EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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

v.

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

AFFIDAVIT OF JAMES I. NEWSOME, III

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

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

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

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

BHEC 90

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

§ 54-3-130. Purposes of Authority.

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

(1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water-borne commerce from and to any part of the State and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities;

(3) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without the State, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(4) To cooperate with the United States of America, and any agency or any department, corporation or instrumentality thereof in the maintenance, development, improvement and use of such harbors and seaports in connection with and in furtherance of the war operations and needs of the United States;...

(9) In general to do and perform any act or function which may tend to or be useful toward the development and improvement of such harbors and seaports of this State and to the increase of water-borne commerce, foreign and domestic, through such harbors and seaports.

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

§ 54-3-120. Jurisdiction of Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAITH NOT.

James I. Newsome, III

Sworn to and subscribed before me,

this 22nd day of August 2011.

Marsha A. Read

Notary Public for South Carolina
My Commission Expires: Nov. 13, 2016

MARSHA A. READ
Notary Public, South Carolina
My Commission Expires
November 13, 2016

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON, Plaintiff, vs. CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES, Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-4139 AFFIDAVIT OF ARNALDO PEREZ

PERSONALLY appeared before me, Arnaldo Perez, who, being duly sworn, says:

1. I am employed by Defendant Carnival Corporation ("Carnival") as a Senior Vice President and General Counsel.

2. Carnival, through its operating division, Carnival Cruise Lines, is in the business of owning and operating passenger cruise vessels which take passengers to various port destinations in the Caribbean, the United States and elsewhere.

3. Carnival Cruise Lines has from time to time operated cruises from the Port of Charleston, South Carolina, since 1999. In 2010, Carnival greatly increased its involvement with the Port of Charleston by making Charleston, and specifically the Union Pier terminal facility, the home port of the cruise ship *Carnival Fantasy*. Since that time, the *Carnival Fantasy* has operated approximately 80 cruises from Charleston, taking approximately 185,000 passengers on cruises to the Bahamas, Grand Turk and Bermuda.

4. Carnival is aware of plans by the South Carolina State Ports Authority ("SCSPA") to redevelop the Union Pier port terminal facility and construct a new, modern passenger terminal. Carnival agrees that the improvements planned by SCSPA would greatly enhance Charleston's attractiveness as an embarkation and destination point for cruises and would also improve the flow of pedestrian and vehicular traffic in and around the proposed passenger terminal.

5. Carnival has been engaged in discussions with the SCSPA over an agreement contemplating Carnival Cruise Lines' long term use of the planned passenger terminal at Union Pier. Carnival is excited about the prospect of such an arrangement and believes it could be very advantageous both to Carnival and to the City of Charleston. Carnival has, however, recently been sued by a group of plaintiffs who allege that its operations at Union Pier violate various local zoning ordinances and state laws. While Carnival does not believe the lawsuit has any merit, the prospect of a lengthy court battle and the possibility, however remote, of a determination that Carnival Cruise Lines' use of Union Pier is unlawful, make it difficult for Carnival Cruise Lines to justify the long term arrangement proposed by SCSPA. Carnival Cruise Lines has communicated its reservations to SCSPA in the course of their ongoing negotiations.

FURTHER, AFFIANT SAITH NOT.

ARNALDO PEREZ

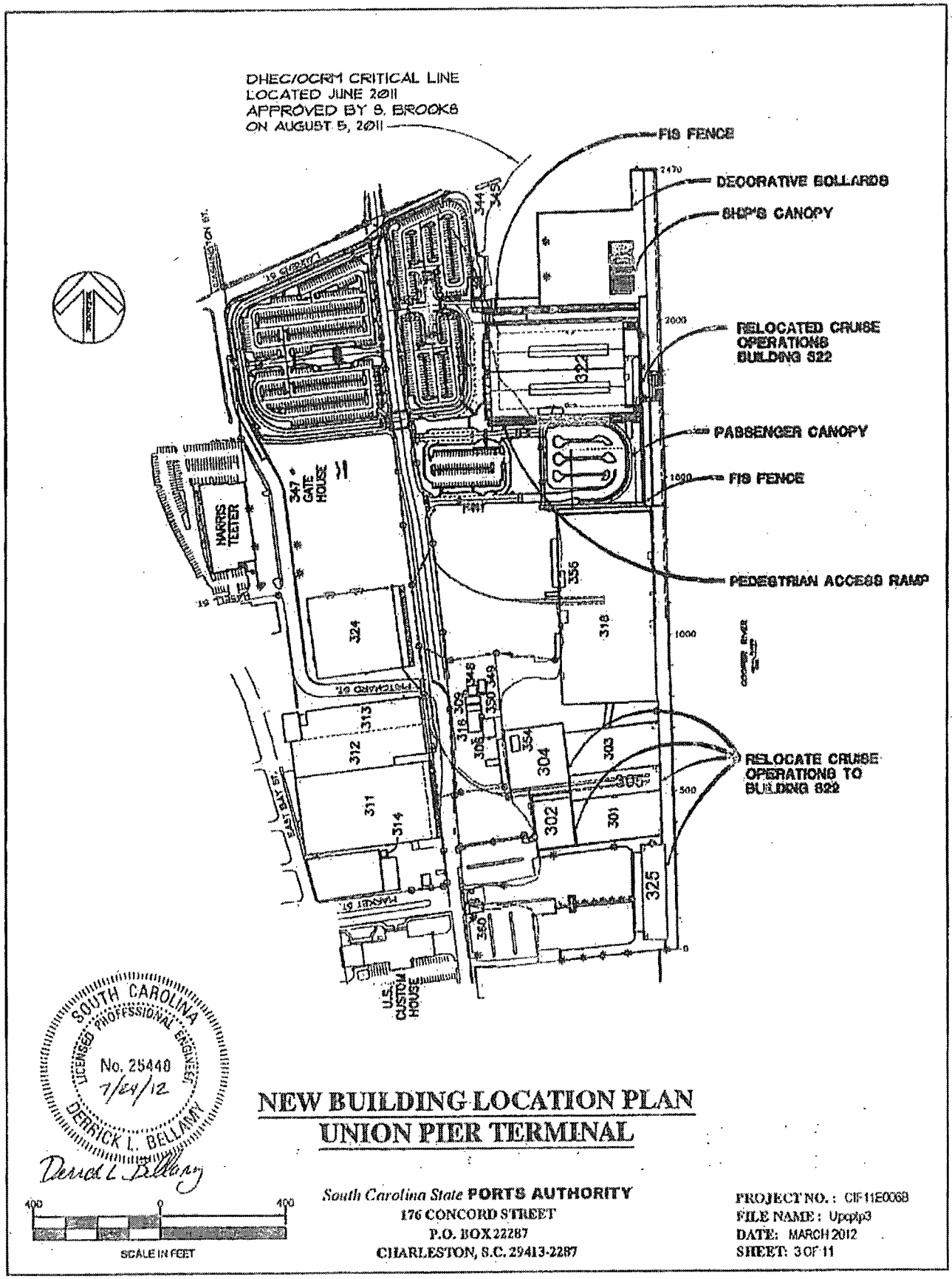
Sworn to and subscribed before me, this ___ day of July 2011

Notary Public for _____
My Commission expires: _____

MARTHA DE ZAYAS
MY COMMISSION # EE 024910
EXPIRES: September 8, 2014
Bonded Thru Budget Notary Services

BHEC 99

EXHIBIT C



SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY

Derrick L. Bellamy

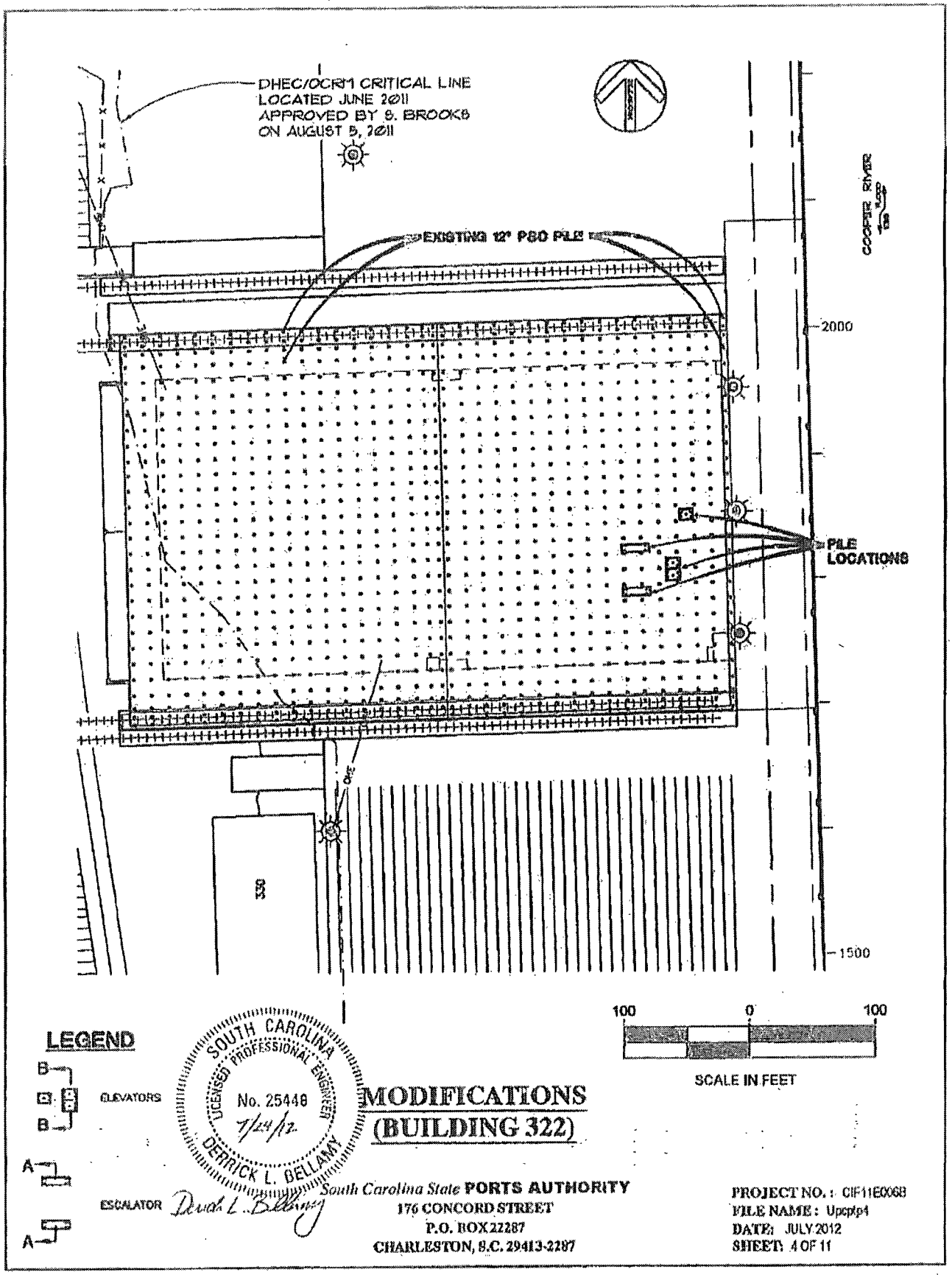
NEW BUILDING LOCATION PLAN
UNION PIER TERMINAL

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

PROJECT NO.: CIF11E0068
FILE NAME: Upoplp3
DATE: MARCH 2012
SHEET: 3 OF 11

BHEC 101

EXHIBIT D


DHEC/OCRM CRITICAL LINE
LOCATED JUNE 2011
APPROVED BY S. BROOKS
ON AUGUST 5, 2011
EXISTING 12" PSD PILE
COOPER RIVER
2000
PILE
LOCATIONS
1500
100
0
100
SCALE IN FEET
LEGEND
ELEVATORS
ESCALATOR
SOUTH CAROLINA
LICENSED PROFESSIONAL ENGINEER
No. 25448
7/24/12
DERRICK L. BELLAMY
MODIFICATIONS
(BUILDING 322)
South Carolina State PORTS AUTHORITY
176 CONCORD STREET
P.O. BOX 22287
CHARLESTON, S.C. 29413-2287
PROJECT NO.: CIF11E0068
FILE NAME: Upcpfp1
DATE: JULY 2012
SHEET: 4 OF 11

BHEC 103

EXHIBIT E

CESAC-RD-SP
Application: SAC-2003-13026

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

Applicant: South Carolina State Ports Authority

Reviewer: Nathaniel I. Ball **Date of Review:** April 18, 2012

On-Site review: ☐Yes ☒No **Off –Site Review:** ☒Yes ☐No

Project Location ***(Waterway, Section, Township, Range, City, County, State):*** Union Pier Terminal is located near the intersection of Market Street and Washington Street in Charleston, South Carolina.

Pre-Construction Notification Receipt Date: January 27, 2012 **Complete?** ☐Yes ☒No

Additional Information Requested Date: February 15, 2012, March 15, 2012, and April 5, 2012. The Corps requested additional information about the avoidance and minimization of potential impacts to waters of the United States, the method for installing the additional pilings, and clarification about the limits of waters of the United States on the project site.

Pre-Construction Notification Complete Date: April 16, 2012

Waters of the US: The existing pile supported deck and wharf are located in the Cooper River, a navigable water of the United States.

Authority: ☒Section 10 ☐Section 404 ☐Section 103

Project Description ***(Describe activities in waters of the U.S. considered for verification):*** The proposed activities in waters of the United States consist of the installation of additional pilings underneath a portion of a previously permitted pile supported wharf at Union Pier. The existing wharf is 2,470 feet long and includes several buildings that are currently used to support commercial shipping activities (break bulk cargo, Ro-Ro, passengers, etc). As described below, the SCSPA has operated a passenger facility at Union Pier for more than 40 years. Therefore, the renovation of Building 322 to consolidate existing activities at Union Pier and to increase the efficiency of the existing passenger facility is not considered a "change in use".

With regard to Nationwide Permit 3 (NWP 3), the existing wharf is considered a currently serviceable structure and the additional pilings and the proposed renovations to Building 322 are considered minor deviations in the existing structure's configuration that are required to comply with Federal regulations and current terminal security requirements that were established after September 11, 2001. In addition, renovating an existing building at Union Pier avoids and minimizes potential impacts to waters of the United States and will enable the SCSPA to continue operating the existing passenger facility at Union Pier while the necessary improvements are being constructed.

BHEC 105

Site Assessment (*Describe the present land use, cover type, and a qualitative assessment of the aquatic resources):* The project site is developed as Union Pier Terminal and has been used for different types of commercial shipping for more than 100 years. The existing marine terminal has 2,470 linear feet of continuous pile supported wharf and berth space. The proposed pilings will be located **underneath** Building 322. This portion of Union Pier was redeveloped between 35 and 40 years ago. In order to construct this portion of the existing pile supported structure and Building 322, the SCSPA removed old pilings and structures and dredged approximately 50,000 cubic yards of dredged material, which was shifted back and forth across the project site to provide access for construction and pile driving equipment. The existing structure is operated and maintained by the SCSPA to meet the commercial shipping needs of their customers. The SCSPA maintains the existing berth at a depth of -45 feet Mean Low Water (MLW).

Type of Permit Requested: NWP 3 **RGP #**

Pre-construction Notification Required: ☒Yes ☐No Although the proposed activities in waters of the United States are considered minor, pre-construction notification is required because Union Pier Terminal is located adjacent to the Charleston Harbor Federal Navigation Project.

Waiver required to begin work *(see GC 31 (a)(2) as applied to appropriate NWPs)*:
☐Yes ☒ No
Rationale:

Coordination with Agencies/Tribes Needed: ☐Yes ☒No Date:
Resolution:

Commenting Agencies:
Coordination Needed/Required: ☐Yes ☒No
(If yes, check appropriate agency(s))
US Fish and Wildlife Service ☐
US Environmental Protection Agency ☐
National Marine Fisheries Service ☐
State Agency (list commenting state agencies) ☐
State Historic Preservation Office ☐
Other: ☐

Substantive Issues Raised and Corps Resolution *(Consideration of Comments)*:

Compliance with Other Federal Laws *(If specific law is not applicable write N/A; however, you must provide an 'effects' determination)*:

a) Endangered Species Act:
Name of species present: The following species are known to occur in Charleston County, South Carolina: West Indian manatee (*Trichechus manatus*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Leatherback sea turtle (*Dermochelys coriacea*), Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Shortnose sturgeon (*Acipenser brevirostrum*), and Atlantic sturgeon (*Acipenser oxyrinchus*).
Potential or Critical Habitat present: The proposed pilings are located underneath a pile supported wharf at an existing commercial shipping facility. The project site is not considered potential or critical habitat for any of the species that are identified above.
Effects determination: No Effect

Date of Service(s) concurrence: N/A
Basis for "no effect" determination: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The proposed pilings will be installed using land based equipment and will have a negligible impact on aquatic resources or the available habitat underneath the existing wharf. According to the SCSPA, the pilings will be placed rather than dropped into the water to avoid potential impacts to marine life in the water column. Once installed the actual footprint of the additional pilings represents a very small area among the thousands of pilings that are already located underneath the existing pile supported structure. Therefore, the installation of these additional pilings is expected to have "no effect" on Federally listed threatened or endangered species that are known to occur in Charleston Harbor.
Additional information (describe steps taken to address concerns, as needed):

b) Magnuson-Stevens Act (Essential Fish Habitat):
Name of species present: The estuarine substrates, water column, and estuarine waters near the project site are considered Essential Fish Habitat (EFH) for white shrimp (*Litopenaeus setiferus*), brown shrimp (*Farfantepenaeus aztecus*), adult summer flounder (*Parlichthys dentatus*), and adult and juvenile blue fish (*Pomatomus saltatrix*).
Effects determination (Is this a project that "may adversely affect essential fish habitat?): No Effect
Date of Service(s) concurrence: N/A
Basis for "no effect" determination: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The proposed pilings will be installed using land based equipment and will have a negligible impact on aquatic resources, estuarine waters, or the available habitat that is located underneath the existing wharf. In addition, the actual footprint of the additional pilings represents a very small area among the thousands of pilings that are already located underneath the existing pile supported structure. Therefore, the installation of these additional pilings is expected to have "no effect" on EFH.
Additional information (Describe steps taken to address concerns, as needed):

c) Section 106 of the National Historic Preservation Act:
Known site present: ☐ yes ☒ no
Survey required/conducted: ☐ yes ☒ no
Effects determination: No Potential to Cause Effect
Rationale: The proposed activities in waters of the United States consist of installing additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The DA permit (SAC-72-10-087-Revised) that authorized the construction of this portion of the wharf at Union Pier Terminal authorized the removal of old pilings and the excavation and backfilling of dredged material within the footprint of the structure. In order to provide both flotation and access for construction and pile driving equipment, approximately 50,000 cubic yards of dredged material was shifted back and forth across the project site during the construction of the existing structure.

As described above, the shallow open waters underneath the existing structure were disturbed by previous construction activities on the project site during the 1970s. According to our records, the entire pile supported wharf and the support facilities that are located on top of this structure have been extensively modified by previous work, including reconstruction, renovation, and/or extension at different times over the past 50 years. The existing wharf and Building 322, where the proposed

pilings will be located, is approximately 40 years old and is not considered eligible for the National Register of Historic Places.

The Corps acknowledges that a lawsuit has been filed in state court against Carnival Corporation, D/B/A Carnival Cruise Lines regarding the operation of the existing passenger terminal at Union Pier. In addition, the plaintiffs in the above referenced case have submitted "a request to be notified as consulting parties pertaining to any Section 106 review relating to Federal funding or permitting with respect to the Union Pier Cruise Terminal in Charleston, South Carolina." This request was submitted to several Federal agencies, including the Corps. Specifically, the plaintiffs expressed an interest in the preservation of historic properties that are located near the project site. However, for the reasons which follow, the Corps has determined that there is no potential to cause effects on historic properties and that no project-specific consultation is required under Section 106.

In accordance with the Standard Operating Procedures for the Regulatory Program dated July 2009, the Corps used 33 CFR 325 Appendix C, the Revised Interim Guidance for Implementing Appendix C dated April 25, 2005, and the Clarification of the Revised Interim Guidance for Implementing Appendix C dated January 31, 2007 to determine the "permit area" for the proposed project. As described in the Revised Interim Guidance, "(t)he limits of the "permit area" are constrained by the extent of Federal Control and responsibility over a particular project (i.e., the undertaking)." In this case, the proposed "undertaking" consists of the installation of additional pilings in waters of the United States underneath an existing, previously permitted pile supported wharf.

Similar to maintenance dredging, the installation of additional pilings underneath an existing wharf and the renovation of existing buildings that are located on a previously permitted pile supported structure, such as Building 322 at Union Pier, are considered maintenance activities. The "permit area" for this type of project is limited to the footprint of the proposed activities in waters of the United States. Therefore, the Corps' evaluation focuses on the footprint of the proposed pilings and any potential impacts associated with the installation of the additional pilings because of the limited scale and magnitude of the proposed undertaking.

Direct impacts associated with the installation of the additional pilings will occur underneath the existing wharf and have no potential to cause effects to historic properties pursuant to 36 CFR 800.3(a)(1). As described above, the Corps recognizes that Union Pier is located adjacent to historic properties, such as the U.S. Customs House. However, effects associated with the installation of additional pilings, such as noise associated with construction or pile driving equipment, will be short-term and negligible, and, therefore, will not directly or indirectly alter the listing or eligibility characteristics of any historic properties. Existing conditions on or near the proposed undertaking include busy city streets, an existing railroad spur, and the operation of an existing commercial shipping facility. In sum, the installation of additional pilings underneath an existing (and extensively modified) wharf is understood to be the type of activity that is of such limited nature and scope that it has no potential to cause effects to historic properties in or outside of the "permit area," even if such properties were deemed to be present within the permit area.

Date consultation complete (if necessary): N/A
Additional information (Describe steps taken to address concerns, as needed):

d). Section 401 Water Quality Certification: The effective date for the 2012 Nationwide Permits is March 19, 2012. At this time, the S.C. Department of Health and Environmental Control has not certified the new NWPs. Therefore, an individual Section 401 Water Quality Certification is required.

CESAC-RD-SP
SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification for the Above-Numbered Permit Application

Individual certification required: ☒ yes ☐ no A special condition of this NWP requires the permittee to obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations prior to beginning the authorized work.
☐Issued ☐Waived ☐Denied

e) Coastal Zone Management Act: The effective date for the 2012 Nationwide Permits is March 19, 2012. At this time, the S.C. Department of Health and Environmental Control has not certified the new NWPs. Therefore, an individual Coastal Zone Consistency Determination and/or a Critical Area Permit is required.
Individual certification required: ☒ yes ☐ no A special condition of this NWP requires the permittee to obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations prior to beginning the authorized work.
☐Issued ☐Waived ☐Denied

Additional information (optional):
f) Wild and Scenic Rivers Act:
Project located on designated or "study" river: ☐ yes ☒no
Managing Agency:
Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:
Additional information (optional):

g) Other

Special Conditions Required *(include rationale for each required condition/explanation for requiring no special conditions)*: ☒ yes ☐ no The existing pile supported wharf and the additional pilings are located within navigable waters of the United States. Therefore, the following special conditions will be included in the Nationwide Permit verification letter:

That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

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.

That the permittee shall submit a signed compliance certification to the Corps within 60 days following completion of the authorized work and any required mitigation. The certification will include:

1. **A copy of this permit;**
2. **A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;**
3. **A statement that any required mitigation was completed in accordance with the permit conditions;**
4. **The signature of the permittee certifying the completion of the work and**

mitigation.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

It is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of Charleston Harbor. This permit does not convey any property rights either in real estate or material or any exclusive use privileges; nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of Charleston Harbor pursuant to its easement rights.

It is understood and agreed that if the District Commander determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of Charleston Harbor, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Commander, and there shall be no entitlement to compensation from the United States for damage or injury.

Conveyance of this permit applies only to the structure authorized and does not authorize the construction of any permanent structure or any structure suitable for habitation or any utility leading either to permanent structures suitable for habitation or to permanent structures within the bounds of areas on which the Corps of Engineers enjoys easement rights.

That permittee agrees that no permanent structures, beyond those authorized by this document, will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Commander.

That the Secretary of the Army, representing the United States of America, hereby consents to the herein authorized facilities or structures to be located on or across easement lands vested in the United States of America for the construction and operation of Charleston Harbor. The permittee shall not engage in any act which may interfere with or abridge the easement interests of the United States, except those specifically authorized herein.

Compensatory Mitigation Determination: Has the applicant avoided and minimized impacts to the maximum extent practicable? ☒ yes ☐ no If "NO", Explain:

(1) Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?

☐ yes ☒ no *[If "no," do not complete the rest of this section and include an explanation of why not here]* The proposed project consists of the installation of additional pilings underneath an existing pile supported wharf at a commercial shipping facility. The potential impact to waters of the United States would affect a small area underneath an existing structure, and the additional pilings will be installed among thousands of pilings that are already located underneath this previously permitted structure. Therefore, compensatory mitigation is not required.

Is the impact in the service area of an approved mitigation bank? ☐ yes ☐ no

i. Does the mitigation bank have appropriate number and resource type of credits available? ☐ yes ☐ no

(2) Is the impact in the service area of an approved in-lieu fee program? ☐ yes ☐ no

i. Does the in-lieu fee program have appropriate number and resource type of credits available? ☐ yes ☐ no

(3) Check the selected compensatory mitigation option(s):

☐ mitigation bank credits

☐ in-lieu fee program credits

☐ permittee-responsible mitigation under a watershed approach

☐ permittee-responsible mitigation, on-site and in-kind

☐ permittee-responsible mitigation, off-site and out-of-kind

(4) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

CESAC-RD-SP
SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification for the Above-Numbered Permit Application

District Engineer's Decision:

The proposed activity would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest.

PREPARED BY:

20 April 2012

Nathaniel I. Ball
Project Manager

Date

REVIEWED BY:

20 April 2012

Travis G. Hughes
Chief, Special Projects Branch
Regulatory Division

Date

REVIEWED BY:

20 April 2012

Tina B. Hadden
Chief, Regulatory Division

Date

APPROVED BY:

20 APR 12

Edward P. Chamberlayne, P.E.
Lieutenant Colonel, U.S. Army
Commander and District Engineer

Date

BHEC 112

EXHIBIT F

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

TECHNICAL SUMMARY OF REVIEW

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

Permit:	
Permit with Conditions:	X
Deny:	

I. Background Information: Database ID# 75114

Permit Number: OCRM-12-054-B

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

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

County: Charleston Water Body: Charleston Harbor/Cooper River

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

II. Project Description and Stated Purpose:

Description:

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

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

BHEC 114

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

Federal Agencies: **None**

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

Local Agencies: **None**

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

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

IV. **Environmental Assessment:**

A. Describe the coastal resources (i.e., vegetation, habitat, etc.), which will be impacted:

Open water areas beneath an existing wharf and existing building over the water.

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

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

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

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

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

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

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

V. **Policy Assessment:**

A. Regulatory History:

1) Previous OCRM authorizations (land disturbance, Federal cert.):

SC STATE PORTS AUTHORITY	**90-4T-172-P**
FLEET LANDING RESTAURANT, LLC	**OCRM-04-339-R**
SC STATE PORTS AUTHORITY	**99-1P-261-P-C**

BHEC 115

2) Previous Enforcements (is project in compliance w/all previous permits, etc.): **None**

3) Master Plans (dock, archaeological, wetland): **No**

4) Date of O & M: **N/A**

5) Navigable tributary crossings proposed: **None**

6) Property frontage at highground and water, offsets these lines: **N/A. The existing commercial pier is a SC State Port Authority pier. It is also a permitted/grandfathered structure with permitted/grandfathered activities (including cruise ship operations), that will be modified within the existing pier footprint.**

7) Community or public marina: **Commercial Pier**

8) Water quality sampling/monitoring program required: **No.**

9) Stormwater permit submitted or approved for highground dev: **No. Facility is an existing commercial pier with buildings that have been approved in the past.**

10) Bathroom numbers: **N/A. Facility is an existing commercial pier.**

11) Dock masters office location and number: **No.**

12) SAMP restrictions: **N/A**

13) NERRS review area: **N/A**

14) Deed restrictions: **N/A**

15) Wetland delineation approved by ACOE: **N/A**

16) Development plan and parking approved by local government: **N/A**

17) Valid critical area line certified: **Yes**

18) Marsh ownership claims: **None**

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

1) CZMA:

Approval or denial of permits; appeal to council	**48-39-150**
Legislative declaration of state policy	**48-39-30**
Legislative declaration of findings	**48-39-20**

2) Regulations (General Guidelines, Further Guidelines, Specific Project Standards):

Mitigation Criteria	**R.30-4(G)(2)**
General Considerations	**R.30-11(B)**
Further Guidelines	**R.30-11(C)**

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

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

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

3) CZ Policies (Management Program Document):

Policies for Port Facilities

1) **New port development should take place in existing industrialized areas where sufficient support facilities are available including public utilities, rail and highway transportation access, and navigational channels which are already maintained, unless there are no feasible alternatives or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

2) **Port development should occur in areas that have adequate high ground (non-wetland) acreage for proposed current development and near-term expansion plans, and related facilities. Port development should be located in areas where the filling of productive salt, brackish or freshwater wetlands will not be required or can be minimized. If site preparation does require filling in these wetlands, it must be clearly demonstrated that no other feasible alternatives exist or an overriding public interest can be demonstrated, and any substantial environment damage can be minimized.**

3) **To the extent feasible, port development and expansion should locate on existing channels so that the need for initial and maintenance dredging can be minimized.**

4) **New port development that will require maintenance dredging must identify adequate upland (non-wetland) spoil areas, ocean disposal, or other environmentally-acceptable alternative disposal techniques to meet the long-term demands for spoil disposal.**

5) **Port areas must provide for the handling of dangerous and volatile cargoes and materials in relatively isolated or restricted areas, so that in the event of accident, measures can be implemented to contain any spills or other contamination with minimal environmental damage and limited threat to the health, safety and welfare of the public.**

6) **Wharves, piers, mooring dolphins and other port-related structures should not restrict or block navigation or alter the natural pattern of water currents.**

7) **Proposed port development or expansion and operation must meet existing air and water quality standards, as regulated by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control.**

8) **Port facilities developed by the State Ports Authority (SPA), as well as by private developers, must be sited, constructed and operated in a manner that is consistent with local and State development**

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

9) Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.

10) Port development or expansion plans must include provision for necessary breakwater or other wake protection measures along major navigable ship channels where appropriate in order to reduce erosion damage. These structures must be in compliance with other applicable policies and Rules and Regulations.

11) All bulkheads associated with a port area must meet the policies as stated in the Erosion Control Program [Chapter IV(C)].

12) All dredging and dredge spoil disposal policies, as stated in VIII (A) and (B) of the Resource Policies will be applied to port activities.

13) All piers and dockage must meet the policy requirements as stated in VI (C) of the Resource Policies.

14) Transportation projects associated with port development must follow the transportation policies stated in II (B)-(E) of the Resource Policies.

15) The policies for manufacturing will apply to port development and related industrial development (III (D) of the Resource Policies).

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

Priority of Uses

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

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

Designated Sites

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

C. Does the project contravene any coastal zone regulations?

YES X NO

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

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

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

See attached Special Conditions

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

N/A

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

(Name) **(Date)**

VIII: Reviewed By:

1. Project Manager: Steven Brooks 12/17/12

(Signature) **(Date)**

2. Section Manager [signature] 12/17/12

(Signature) **(Date)**

BHEC 119

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

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

LONGTERM CUMULATIVE AFFECTS

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

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

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

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

AIR EMISSIONS

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

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

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

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

1. Provided that operations for the new passenger cruise facility at Union Pier Terminal is conducted in accordance with the attached Voluntary Cruise Management Plan (Attachment A). If there are any future changes proposed to the Voluntary Cruise Management Plan, the Department must be included in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration".

2. Provided that the construction detailed in this permit does not begin until after the Memorandum of Agreement, dated March 26, 2007 (as amended), between the State Ports Authority and the SCDHEC has been revised and finalized.

3. Provided that the SPA requires its contractors, for the activities addressed under this permit, to:

    a. perform work in compliance with all applicable local, state, and federal environmental laws and requirements.

    b. use low emission vehicles that conform to the federal Tier 2 or higher emissions standards for all nonroad equipment between 100 and 750 horsepower.

    c. turn off construction equipment and vehicles not in active use.

    d. implement dust control using the best management practices that may include, but not be limited to, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with state and federal environmental regulations.

    e. require that all diesel vehicles, construction equipment and generators on site use ultra-low sulfur diesel (15 ppm), a biodiesel blend approved by the original engine or equipment manufacturer with sulfur content of 15 ppm or less, or other clean burning alternative fuel such as propane, where such fuel is commercially and reasonably available.

4. Provided that any disturbed critical area adjacent to the construction site be restored to original contours and conditions upon project completion.

5. Once the project is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.

6. Provided that an as-built survey of the modified terminal facility must be submitted to the Department within 90 days of the expiration date of the final construction placard. The survey must be performed by a registered land surveyor, must show all components of the new terminal facility, and must list the starting and ending coordinates of the new terminal facility in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning

System equipment.

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

X. **Attachments Required:**

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

BHEC 122

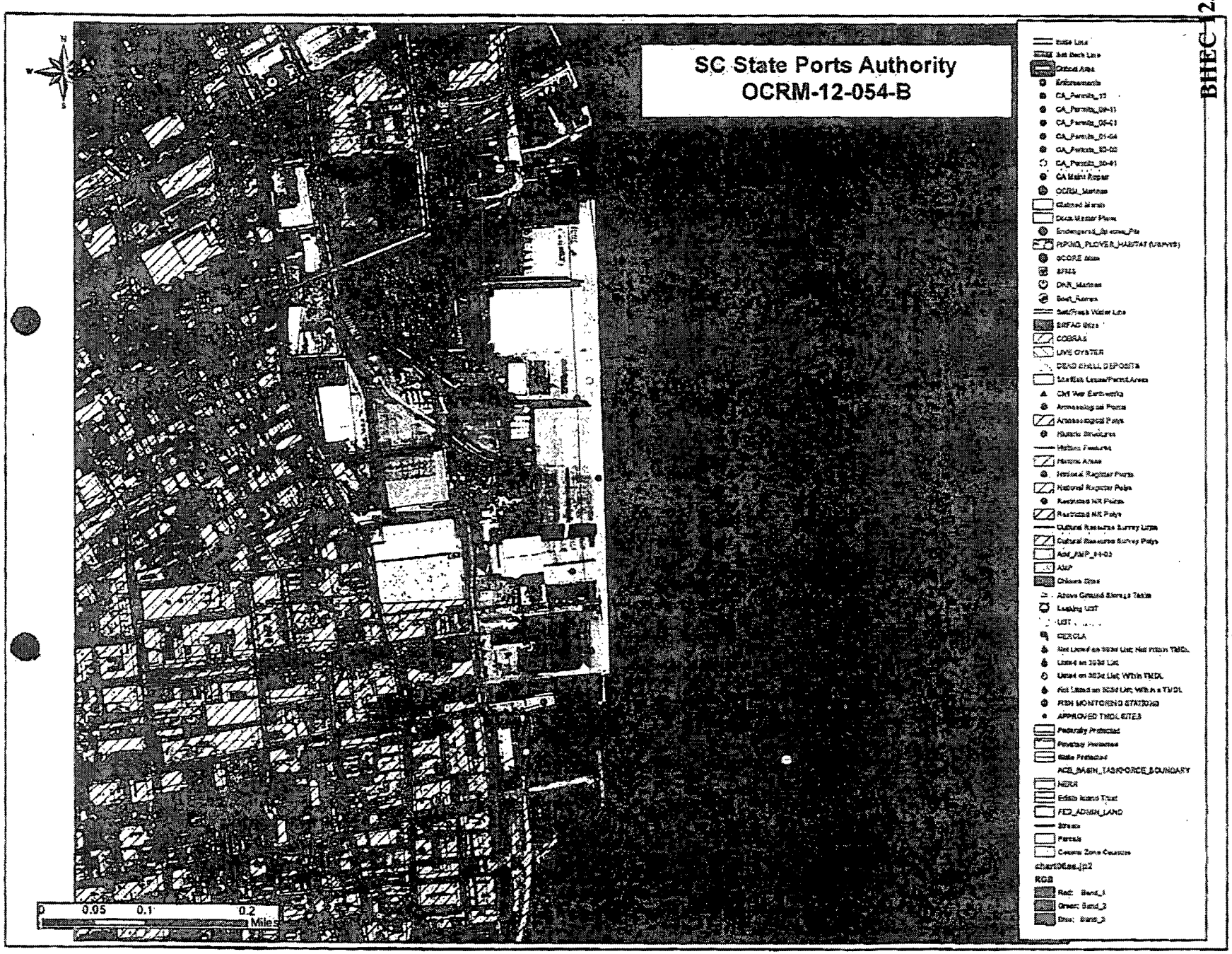
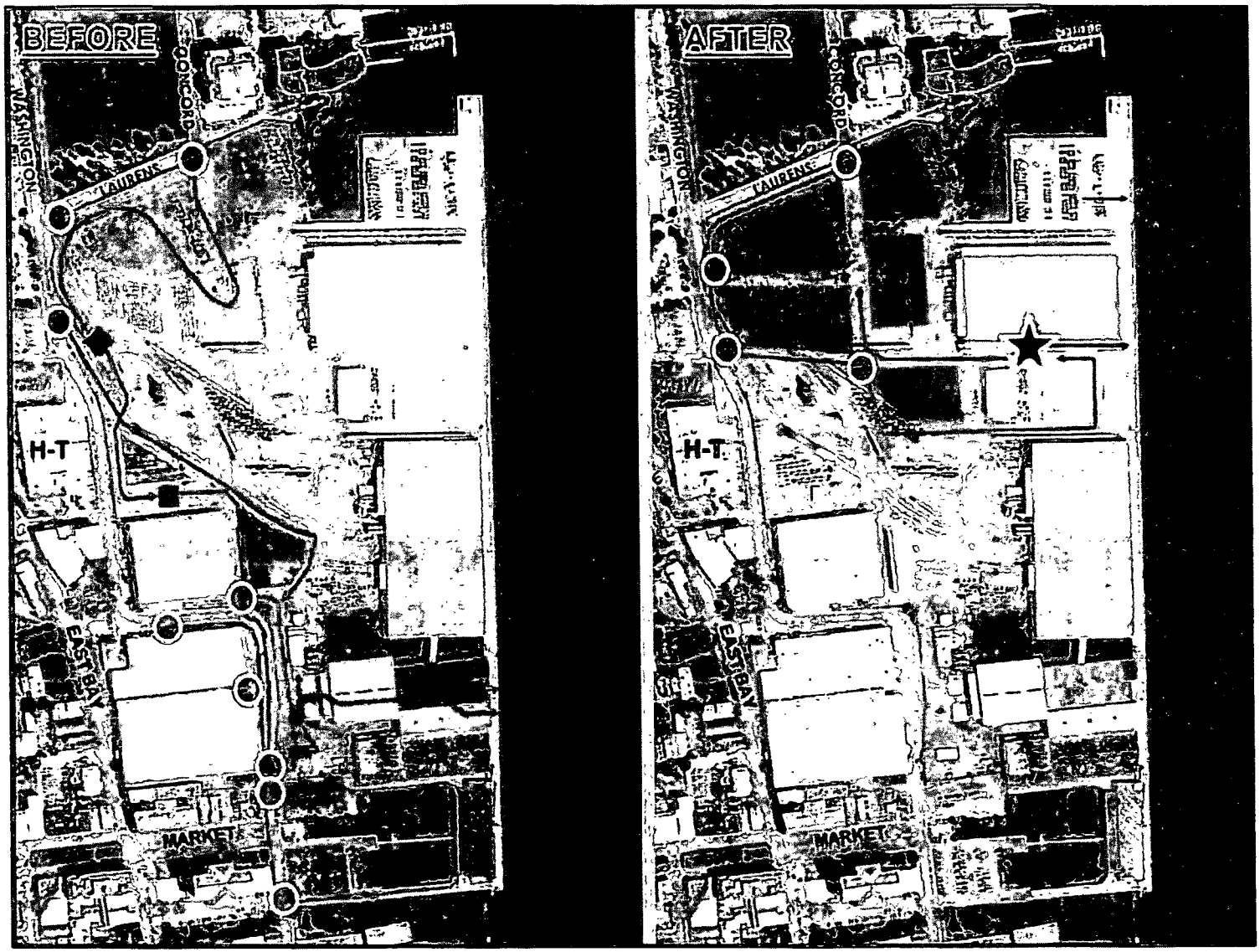

SC State Ports Authority
OCRM-12-054-B
0 0.05 0.1 0.2
Miles

EXHIBIT G



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

BHEC 125

EXHIBIT H

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON, Plaintiffs, vs. CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES, Defendant, and SOUTH CAROLINA STATE PORTS AUTHORITY; AND THE CITY OF CHARLESTON, Intervening Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2011-CP-10-4139 AFFIDAVIT OF JOSEPH P. RILEY, JR.

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:

1. My name is Joseph P. Riley, Jr. I am the Mayor of Charleston, South Carolina and have continuously served in this capacity since December 1975.

2. I submit this affidavit in support of the passenger cruise business at Union Pier. I do so because this business helps sustain the City's economy, furthers tourism by exposing Charleston and its extraordinary natural and built environments to untold thousands of visitors who might

not otherwise visit here and is in keeping with the maritime history of the City as a viable seaport.

3. I have been fortunate to preside over the City through an era of rebirth. While many factors have played a role in the success the City now enjoys as a desirable place to live, work, play or visit, perhaps the most important key to Charleston's success has been its resilient economy. A major component of City's economy is, and has been since its founding, its maritime industry. The direct and indirect economic effects of the operations at the Port of Charleston cannot be overstated. These operations generate millions of dollars in revenue and support hundreds, if not thousands, of jobs, across the State.

4. An important segment of the maritime industry, particularly for Charleston, is the passenger cruise business. Passenger cruise vessels are not new to Charleston. They have been calling on Charleston since the turn of the last century, and have regularly called on the Port over the last 40 years. The economic benefit of this business to the City's economy is real and significant and not limited to tourist dollars. Passenger vessels provide jobs for our stevedores and longshoremen and order supplies from our businesses. Their crews purchase goods from our local merchants, and their passengers eat in our restaurants, shop in our stores and stay in our hotels. In 2010 alone, this business generated some $35 million and over 400 jobs. While embarking vessels require that portions of Washington and Concord Streets be closed about 5 hours for traffic management purposes, the State Ports Authority has hired trained, off-duty police officers to direct traffic operations, and the traffic impact of an embarking ship is no greater than that associated with events at the Gaillard Auditorium, College of Charleston and Citadel sporting events, the Cooper River Bridge Run or the Maritime Festival.

5. I am aware that the South Carolina State Ports Authority is seeking to establish a sustainable passenger cruise business at Union Pier. I endorse these efforts not just for the economic reasons already stated, but also because, if a long term contract with Carnival Cruise Lines is successfully negotiated, an unprecedented opportunity for the citizens of this community to mold and guide the redevelopment of a significant area of our waterfront will ensue.

6. To establish a sustainable passenger cruise business, the South Carolina State Ports Authority has recognized the need to provide an attractive and modern passenger terminal. The current terminal, dedicated in 1973, is dated and inadequate. The State Ports Authority has plans to construct a new, state-of-the-art terminal just north of the location of the current terminal at Union Pier. The financing is in place to construct the new terminal, with an estimated completion date being late 2012. When the new terminal is completed, street closures now occurring when vessels embark from Charleston will cease, and the Ports Authority will make available for redevelopment some 35 acres along the Cooper River waterfront. The redevelopment of Union Pier poses an extraordinary, once in forever opportunity for the City and the State. Under the redevelopment plan, streets will be reconstructed, view corridors reopened, new parks constructed and eyesores removed. The plan will create opportunities for additional places for people to live and work in the City. Properties which are now bordered by chain link or barbed wire fencing will be opened and lined with trees and shrubs. And, public access to the water's edge will be restored and preserved.

FURTHER YOUR DEPONENT SAITH NOT.

Joseph P. Riley, Jr.

BHEC 129

Sworn to and subscribed before me,
this 22nd day of August 2011.

Notary Public for South Carolina
My Commission Expires: 2/1/15

EXHIBIT I

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-4139
	)	
HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON,	)	AFFIDAVIT OF DANIEL RICCIO
Plaintiffs,	)	
vs.	)	
CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES,	)	
Defendant,	)	
and	)	
SOUTH CAROLINA STATE PORTS AUTHORITY; AND THE CITY OF CHARLESTON,	)	
Intervening Defendants.	)	

PERSONALLY, appeared before me the undersigned who, being duly sworn, deposes and says:

1. My name is Daniel Riccio. I am the director of Livability Division of the City of Charleston Department of Planning, Preservation and Sustainability. In 2002, the City of Charleston created, as part of its municipal court system, a livability court. I was assigned as a police officer and supervised the court from January 2002 until October 2007. From October 2007 until my retirement, I served on the City Police force. In 2010, after I retired from the police department, I was hired by the City of Charleston as the Director of the Livability Division. The purpose of the livability court is to hear cases arising under City ordinances that have a direct bearing on the quality of residential life in the City. Cases before the court concern issues related to noise, sanitation, tourism management, animal control

and the like. My division responds to complaints of these natures, issues citations and, when applicable, assists in the prosecution of matters before the court.

2. Over the years, the Livability Division has fielded many complaints and issued many citations for violations of the City's noise ordinance. I have consulted the police department and reviewed the records of the Livability Division regarding complaints pertaining to noise or pollution from passenger ships that call at Union Pier and as of the date of the Affidavit, there have been none.

FURTHER YOUR DEPONENT SAITH NOT.

Daniel Riccio
DANIEL RICCIO

Sworn to and subscribed before me,
this 22nd day of August 2011.

Notary Public for South Carolina
My Commission Expires: 2/1/15

BHEC 133

D H E C
PROMOTE PROTECT PROSPER
Catherine B. Templeton, Director
Promoting and protecting the health of the public and the environment

RECEIVED
JAN 8 2013
Clerk, Board of Health
and Environmental Control

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

January 10, 2013

Docket Number:	13-RFR-01 (OCRM)
Requestors:	Historic Charleston Foundation, SC Environmental Law Project, Preservation Society of Charleston, Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, and The Charleston Chapter of the Surfrider Foundation
Permittee:	SC State Ports Authority
Permit Number:	OCRM-12-054-B

STAFF RESPONSE TO REQUEST FOR REVIEW
Submitted by: Steven Brooks, OCRM Project Manager for SC State Ports Authority

---

This review conference involves a challenge to staff's decision to issue a permit to the SC State Ports Authority, OCRM-12-054-B, to install 5 pilings underneath an existing commercial pier, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators, make additional structural changes to building 322, and add two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322.

The Department reviewed the above referenced application under the applicable statutory provisions in S.C. Code Ann. §48-39-10, et. seq., and the Department's Critical Area Regulations, S.C. Code Reg. 30-1 et. seq. After following the required procedures set forth in §48-39-150 and Reg. 30-4, the Department issued the above referenced permit, as requested, on December 18, 2012.

The details of the review of this amendment request are set forth below:

- This project was placed on public notice on March 9th and March 23rd as a proposal to install 5 pilings, consisting of a 16" precast pile, driven into the marl to support three elevators and two escalators. On April 18, 2012, a public hearing was held. Additional information was requested in a letter dated June 29, 2012 from the Department. The application was re-noticed on August 3, 2012 and the comment period was extended to September 2, 2012. The project is located on and adjacent to the Cooper River at 32 Washington Street, South Carolina State Ports Authority - Union Pier Terminal, Charleston, Charleston County, South Carolina. Please see exhibit A & B (Aerial Overlays) for details.

- Many comment letters were received from multiple entities. Most of the comments were objections to the proposed permit request. The majority of the objections were based on the following:

  - Regulation 30-11(C): cumulative impacts in evaluating this project

- S.C. Code Ann. §48-39-150(A)(9) and R. 30-11(B)(9): All feasible safeguards are taken to avoid adverse environmental impact resulting from a project.

- Regulation 30-12.F(2)(b): Regulations that require that transportation projects avoid the critical areas to the maximum extent feasible.

- S.C. Code Ann. §48-39-150(A)(7) and R. 30-11(B)(7): The extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state. Specifically, comments were focused around impacts to adjacent neighborhoods and businesses from noise pollution, air pollution, traffic congestion, and the historic qualities of the City of Charleston.

- S.C. Code Ann. §48-39-150: Comments stated the project fails to comply with the Coastal Zone Management Act's requirement that DHEC consider the "extent to which the proposed use could affect the value and enjoyment of adjacent owners.

- CMP, IV-25: Comments state staff's decision fails to give the highest priority to the identified primary value of the GAPC, the Charleston Historic District. In the case of a historic site, the priority is placed on uses "which preserve the historical or cultural values for which the site was placed on the National Register of Historic Places."

- Additionally, it was requested that OCRM require, as part of its environmental review of the proposed changes to Building 322, that the SPA produce data which analyzes the cumulative impacts of the proposed new cruise terminal use on the surrounding historic districts and neighborhoods.

- Also, it was requested that OCRM require, as part of its environmental review that the SPA provide research regarding reasonable alternatives for the site of the new terminal and a justification that the proposed location is the most appropriate.

- Geographic area of the existing port facility

The proposed activity is located at an **existing** SCSPA commercial pier. In fact, the current operations and location of the cruise terminal is located on the same pier approximately 1,300 feet south of the proposed location. This area of the Cooper River historically has been utilized directly and indirectly by commercial maritime shipping industry for centuries, including the cruise ship industry. The area is currently surrounded by other commercial and residential facilities.

Current Regulations:

Regulation 30-11.B (6) The extent to which the development could affect the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone

Regulation 30-11.B (9) The extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project

Regulation 30-11.C (1) The extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area.

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

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

Regulation 30-12(F)(2)(d) Transportation

CZMP Policies:

CZMP Chapter III MANAGEMENT OF COASTAL RESOURCES – Ports	III-19
CZMP Chapter IV SPECIAL MANAGEMENT AREAS – GAPC's	IV-18

- Staff Review and Decision:

LONGTERM CUMULATIVE AFFECTS

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

This is an activity that would be occurring on an existing commercial pier that is owned and operated by the SC State Port Authority. The activity (cruise ship operation) currently exists on this facility.

NEW LOCATION POTENTIAL IMPACT A DESIGNATED HISTORIC AREA

It is important to note that both the Historic Charleston District and the Port are considered Geographical Areas of Particular Concern (GAPC). Both the Historic Charleston District and the Port have coexisted for centuries. In fact, the maritime shipping industry is part of the landscape of Charleston. In evaluating the impacts to a GAPC, staff must consider the priority of uses for both the Charleston Historic District and the Port. The primary goal of the Charleston Historic District is to maintain the architectural integrity of the district which "includes certain areas all located in peninsular Charleston south of a line drawn from the Ashley River through the center line of Bee, Morris, and Mary Streets and extending eastward to the Cooper River." The priority uses for the South Carolina State Ports Authority are as follows:

1) Uses which require water access or uses for which the water orientation is the central purpose of the activity, such as maritime shipping, fishing, marine industry, and recreational boating. Included in the uses of highest priority for state ports are provisions to assure safety within the ports. These water-dependent uses should have no prudent or feasible alternative;

2) Water-related uses which do not reduce or degrade the natural value or resources within the port;

3) Nonwater-dependent or nonwater-related uses which retain future flexibility of the port for water-dependent needs.

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

CRUISE SHIP CALLS AFTER SHIFT TO NEW TERMINAL

The Department does not have the regulatory authority to regulate the number of cruise ship calls. However, the South Carolina State Ports Authority (SCSPA) has committed to a very responsible Voluntary Cruise Management Plan to

manage the number of cruise ship calls per year. The operations for the new passenger cruise facility at Union Pier Terminal will be conducted in accordance with the Voluntary Cruise Management Plan. The SCSPA will include the Department in the notification process as outlined on the second page of the Voluntary Cruise Management Plan titled "Clarification Process of City Consultation Regarding Cruise Management Plan Alteration". The Department has made the voluntary agreement a special condition of the permit. It is important to note that the applicant can utilize existing locations and operations and expand the number of calls without Department authorization. Because the Department does not have the authority to regulate the number of cruise ship calls, the Department's intent in requiring the Voluntary Cruise Management Plan as a special condition was for the purpose of "notice" only.

AIR EMISSIONS

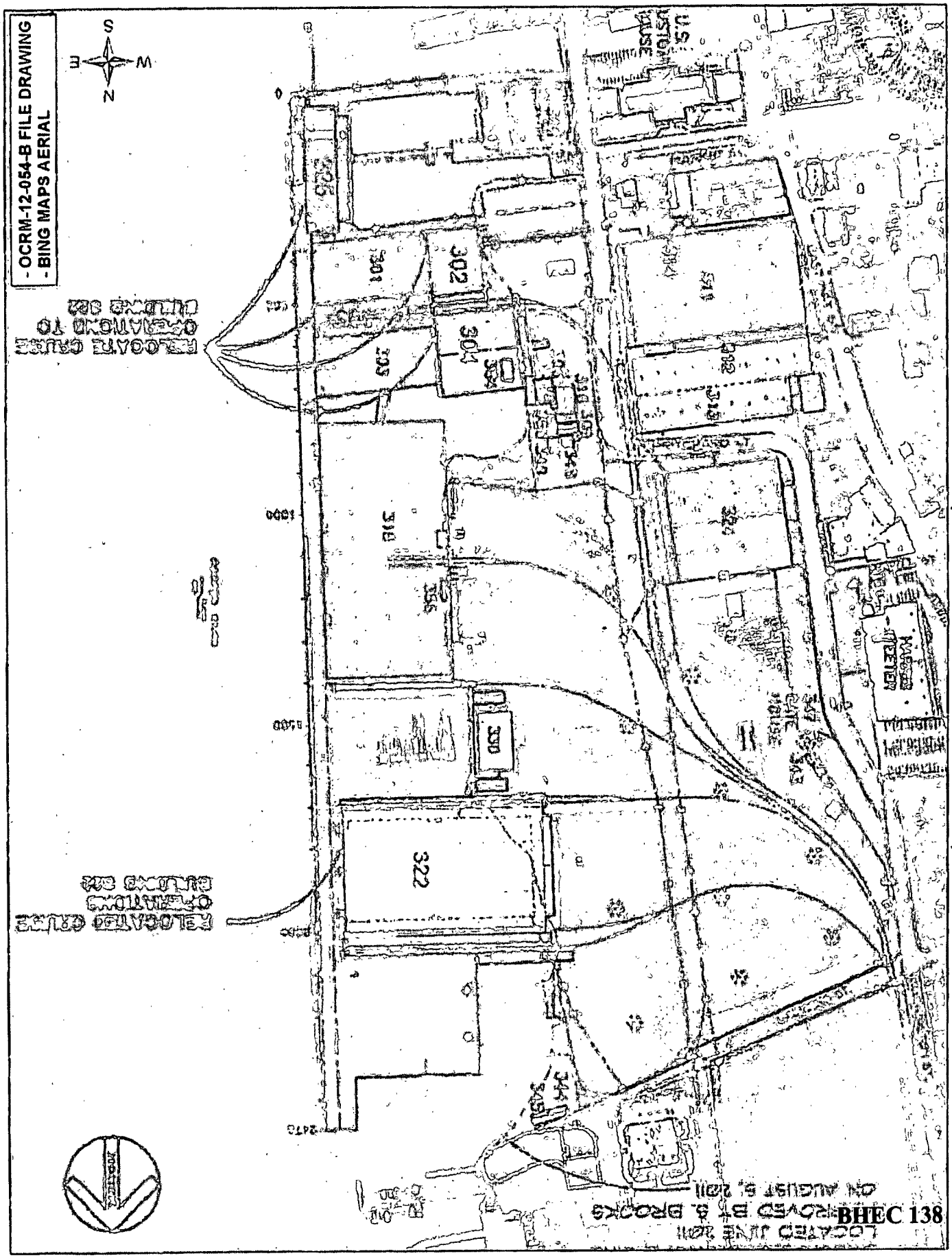
Air quality for vessel mobile source is governed by international treaty and federal regulation (MARPOL Annex VI), and Congressional adoption of that treaty. Regulatory authority is under the federal EPA and U.S. Coast Guard.

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

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

In summary, the applicant's request is permissible by law. The basis of the objections relate primarily to potential cumulative impacts in evaluating this project; feasible safeguards to avoid adverse environmental impacts; the avoidance of critical areas to the maximum extent feasible; the extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state; the extent to which the proposed use could affect the value and enjoyment of adjacent owners; the preservation of historical or cultural values for a GAPC; lack of a study that analyzes the cumulative impacts of the proposed new cruise terminal use; and lack of a study that outlines reasonable alternatives for the site of the new terminal. It has been determined that the applicant's request meets air standards and is permissible by law. The proposed work is in line with the general character of the surrounding area. This is a request to install 5 pilings underneath an existing commercial pier to support three elevators and two escalators, to make additional structural changes to building 322, and to add two covered staging areas designed to handle passengers, luggage, and loading & unloading of ship supplies. The purpose of the overall project is to facilitate the relocation of the cruise passenger facility to Building #322, which is approximately 1300 feet to the north of the current location. This proposal does not impact the adjacent Historic Charleston District, which is considered a Geographical Areas of Particular Concern (GAPC).

Based on the foregoing, DHEC staff requests that the Board affirm the staff's decision to issue the permit.


- OCRM-12-054-B FILE DRAWING
- BING MAPS AERIAL
S
W
E
N
322
BHEC 138

RECEIVED

JAN 9 2013

Clerk, Board of Health
and Environmental Control

STATE OF SOUTH CAROLINA

BEFORE THE BOARD OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

Charleston Communities for Cruise Control, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Preservation Society of Charleston, Charlestowne Neighborhood Association, Anson House Condominium Owners Association, Charleston Chapter of the Surfrider Foundation,

Requestors,

vs.

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

Respondents.

RE: Permit Number: OCRM-10-169-D

REQUESTORS/PERMIT OPPONENTS RESPONSE TO PORTS AUTHORITY REQUEST TO DHEC BOARD TO DECLINE TO CONDUCT FINAL REVIEW CONFERENCE

The above organizations, as Requestors and Permit Opponents, properly filed their Request for Final Review on January 2, 2013, pursuant to S.C. Code § 44-1-160, which mandates that "No later than sixty calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair." The Ports Authority filed its Response and Request to the Board to decline to conduct the Final Review on January 7, 2013. Requestors submit that the Ports Authority Response and Request lacks merit, is not authorized under the statute, fails to address the central issues raised by the Requestors, and

should be rejected. Further, the public, the Board, and the Requestors, are entitled to a full explanation of the staff decision, and especially the materials relied upon in the administrative record to support the staff decision, as required by § 44-1-160(F)(1), with at least regard to adverse environmental impacts regarding air pollution and the ability to mitigate pollution, and with regard to utilization of alternative site locations in order to mitigate impact to critical areas.

DISCUSSION

This Final Review Conference provides a critical opportunity for the Board to review a staff decision that will have far-reaching and long-term impacts and to ensure that the staff decision is consistent with legal precedent and agency policy. This Final Review procedure has the beneficial effect of correcting errors, and giving citizens, both applicants and opponents, the benefit of this Board's consideration. Review by this Board is critical because the DHEC decision is given deference by the Administrative Law Court pursuant to § 44-1-160(F), based on the agency's "specialized knowledge." What the final Review Conference does is to place that "specialized knowledge" in an evidence-based setting, and give the Board the opportunity to ensure that its staff has properly utilized the best available science and data before it in arriving at the permitting decision.

A central problem with this permit, as the Ports Authority, inferentially admits, is that what is sought is not "maintenance" of an existing structure, but, rather, a "repurpose", in other words, a CHANGE in use. Thus, building 322 morphs from a shed having very occasional break-bulk cargo usage, to a full-time dedicated cruise line facility. The affidavits supplied by the Ports Authority underline the concept that a massive, and long-term cruise line presence is contemplated, and the parties, Ports and Carnival, are only awaiting this final

permitting process to ink a contract providing those terms. Thus, from a now-and-then arrival of a relatively small cargo ship, now the residents of this area will face essentially a permanent presence of 3000- passenger hotels, docked, and idling, while burning bunker crude.

It is this fact, among others, which calls out for a full Agency review as contemplated by the above Statute, and which will be required to develop an adequate record upon which a Court can make an informed decision. This Agency has the responsibility under law to conduct itself as the front line protector of the environmental health of the citizens of this State. It must ensure that its staff decisions are well-founded and based upon empirical data.

To that end, a Final Review Conference must and will explore staff conclusions regarding pollution and other environmental impacts of this permit. For example, statements made regarding "Air Emissions" must be critically examined, especially where, as here, they are directly challenged. The Technical Summary of Review at section IX states, "Shore power is prohibitively expensive infrastructure. Shore power is extremely costly, and is usually required only in areas that face air quality challenges. Charleston does not face air quality challenges." Since Requestors/Opponents directly challenge these assertions and are prepared to present credible evidence to the contrary, they are entitled to do so and to challenge these conclusions. What are the sources of these conclusions - what is their evidentiary support?

Likewise with the staff conclusion regarding "New Location Potential Impact" again in Section IX. Here, staff states: "The S.C. State Ports Authority is not undertaking any new activity that would threaten the architectural integrity of the historic district." Again, since this statement is directly contradicted by the Ports Authority's admission as to the

BHEC 141

"repurposed" building and the "Voluntary Cruise Management Plan" providing for a minimum of 104 Cruise Liner parkings of several days each in the middle of the historic district, then again, these conclusions and their alternatives, must be examined in the light of a Final Review Conference.

CONCLUSION

This permit - and the activities sought to be permitted pursuant to it-are of national significance. Only after a full record review, and with any necessary additional conditions, should this permit be allowed to issue. Only in this way can the health and welfare of the public be balanced against the revenues which the Ports Authority places at the forefront of its mission. Only with a full review, will a reviewing Court have an adequate record upon which to base an ultimate decision.

This Agency has begun a careful analysis of these issues, it simply needs to continue that process and verify - or not - staff conclusions in certain areas. The decision to require implementation of the Voluntary Cruise Management Plan as a permit condition, is an excellent first step. The contractor work provisos including emission controls and ultra-low diesel fuel, again, demonstrate a sensitivity to those very issues about which these Requestors/Opponents are voicing concerns.

Pursuant to the Statutory requirements, this Board should set the Final Review Conference, give the parties the requisite ten days written notice, and inform the parties of their ability to present evidence. Requestors/Opponents are ready and willing to comply.

Michael G. Corley

Attorney for the Requestors

January 9, 2013

Georgetown, SC

BHEC 143

BOARD:
Allen Amsler
Chairman

Mark S. Lutz
Vice Chairman

BOARD:
R. Kenyon Wells

L. Clarence Bates, Jr.

Ann B. Kirol, DDS

John O. Hutto, Sr., MD

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

South Carolina Board of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201
Telephone (803) 898-3309 Fax: (803) 898-3393

January 11, 2013

U.S. Mail - CERTIFIED – Return Receipt

91 7199 9991 7031 3717 3561

Winslow Hastie
Chief Preservation Officer
Historic Charleston Foudation
P.O. Box 1120
Charleston, SC 29402

91 7199 9991 7031 3717 3554

Amy E. Armstrong, Esq.
S.C. Environmental Law Project
P.O. 1380
Pawleys Island, SC 29585

91 7199 9991 7031 3717 3547

Randolph R. Lowell, Esq.
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, SC 29202

Via Interagency Mail Delivery
Bradley Churdur, Esq.
Nathan Haber, Esq.
SCDHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: ***Docket No. 13-RFR-01 – Decision dated December 18, 2012, to issue Permit #OCRM-12-054-B to make improvements to an existing waterfront building. The purpose of the project is to facilitate the relocation of the cruise passenger facility to Building #322.***

The South Carolina Board of Health and Environmental Control decided on January 10, 2013 not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60 provides that if the Board declines in writing to schedule a final review conference, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court (ALC) within thirty calendar days after notice is mailed to the applicant, permittee, licensee, and affected person that the Board declined to hold a final review conference.

A request for a contested case hearing before the Administrative Law Court must be filed within the time allowed and in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: http://www.scalc.net. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,

Pamela Hawley

for Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 21680

S:\ALL\MATTERS\21680 SCSPA Cruise Ship Terminal\RFR\review conference denial.doc

Exhibit 12

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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

v.

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

AFFIDAVIT OF JAMES I. NEWSOME, III

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

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

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

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

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

§ 54-3-130. Purposes of Authority.

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

(1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water-borne commerce from and to any part of the State and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve such harbors or seaports and their port facilities;

(3) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without the State, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(4) To cooperate with the United States of America, and any agency or any department, corporation or instrumentality thereof in the maintenance, development, improvement and use of such harbors and seaports in connection with and in furtherance of the war operations and needs of the United States;...

(9) In general to do and perform any act or function which may tend to or be useful toward the development and improvement of such harbors and seaports of this State and to the increase of water-borne commerce, foreign and domestic, through such harbors and seaports.

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

§ 54-3-120. Jurisdiction of Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAITH NOT.

James I. Newsome, III

Sworn to and subscribed before me,

this 22nd day of August 2011.

Marsha A. Read

Notary Public for South Carolina
My Commission Expires: Nov. 13, 2016

MARSHA A. READ
Notary Public, South Carolina
My Commission Expires
November 13, 2016

Exhibit 13

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON HISTORIC ANSONBOROUGH NEIGHBORHOOD ASSOCIATION, CHARLESTOWNE NEIGHBORHOOD ASSOCIATION, COASTAL CONSERVATION LEAGUE, AND PRESERVATION SOCIETY OF CHARLESTON, Plaintiffs, vs. CARNIVAL CORPORATION, d/b/a CARNIVAL CRUISE LINES, Defendant, and SOUTH CAROLINA STATE PORTS AUTHORITY; AND THE CITY OF CHARLESTON, Intervening Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 201 1-CP-10-4139 AFFIDAVIT OF JOSEPH P. RILEY, JR.

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:

1. My name is Joseph P. Riley, Jr. I am the Mayor of Charleston, South Carolina and have continuously served in this capacity since December 1975.

2. I submit this affidavit in support of the passenger cruise business at Union Pier. I do so because this business helps sustain the City's economy, furthers tourism by exposing Charleston and its extraordinary natural and built environments to untold thousands of visitors who might