

Capital Improvements
Joint Bond Review Committee

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JOINT BOND REVIEW COMMITTEE MEETING

DATE: Tuesday, February 24, 2015
TIME: 10 a.m.
LOCATION: Room 105, Gressette Building

AGENDA

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AGENCY: South Carolina Ports Authority

PROJECT/SUBJECT: Charleston Harbor Deepening Project

The South Carolina Ports Authority requests that the JBRC review and comment on the Authority's plan to commit and expend funds from the Harbor Deepening Reserve Fund to deepen Charleston Harbor to accommodate Post-Panamax Generation 2 and 3 container ships.

In the Fiscal Year 2012-13 Appropriation Act, the General Assembly directed the State Ports Authority to establish the Harbor Deepening Reserve Fund and appropriated \$300 million of non-recurring revenue to be used exclusively for activities associated with deepening the state's harbors. Proviso 88.3 of the FY 2014-15 Appropriation Act further directs that a comprehensive plan be presented to JBRC for review and comment prior to the expenditure of any amount from the Fund. The current balance of the Harbor Deepening Reserve Fund is approximately \$307,076,700 (including accrued interest).

The Charleston Harbor Deepening Project consists of the following navigational improvements:

- Deepening the existing entrance channel from 47 feet to 54 feet.
- Extending the entrance channel approximately three miles seaward from the existing location and deepening to 54 feet.
- Deepening the inner harbor to the Wando Welch container facility on the Wando River and the new Navy Base Terminal on the Cooper River to 52 feet.
- Deepening the area above the new Navy Base Terminal on the Cooper River to the North Charleston container facility to 48 feet.
- Enlarging the existing turning basins to 1,800-foot diameter at the Wando Welch facility and the new terminal.
- Enlarging the North Charleston Terminal turning basin to 1,650-foot diameter.
- Disposing of dredged material properly.

In October 2014, the U.S. Army Corps of Engineers issued a draft feasibility study and environmental impact statement. The Corps' projected cost for construction of the Project is \$509,260,000. Cost-sharing agreements provide for a 50/50 split for the feasibility study and the preconstruction activities and a 60/40 (state/federal) split for construction. Final approval from the Corps is anticipated in September 2015. Utilization of the Reserve Fund for environmental mitigation and preconstruction engineering, planning, and design will allow acceleration of the project and the economic and environmental benefits to accrue earlier.

As part of the effort to expedite the project as well as to minimize project costs, the Ports Authority recently entered into a collaborative agreement with the South Carolina Coastal Conservation League and the Lowcountry Open Land Trust which provides for the Ports

Authority to escrow \$5 million to fund acquisition of property in the Cooper River Corridor by the Land Trust and to provide \$125,000 to the South Carolina Aquarium for its work with sea turtles and monitoring right whales. As part of the agreement, the Coastal Conservation League and the Land Trust have agreed to provide letters of support for the Project and have agreed not to sue the Ports Authority or any authorizing state or federal agency for any claim arising from the Project.

COMMITTEE ACTION:

Review and approve the South Carolina Ports Authority's proposed plan for the use of the Harbor Deepening Reserve Fund in accordance with Proviso 88.3 of the FY 2014-15 Appropriation Act.

ATTACHMENTS:

1. South Carolina Ports Authority Request dated February 2, 2015
2. Lowcountry Open Land Trust Letter dated January 20, 2015
3. Coastal Conservation League Letter dated January 20, 2015

James I. Newsome, III
President and Chief Executive Officer



February 2, 2015

VIA E-MAIL

The Honorable Hugh K. Leatherman, Sr.
Chairman
S.C. Joint Bond Review Committee

176 Concord Street
P.O.Box 22287
Charleston, SC 29413 USA
(843) 577-8608

scspa.com

Re: Request of the S.C. Ports Authority for review and comment

Dear Chairman Leatherman:

On behalf of the South Carolina Ports Authority (Ports Authority), please accept this letter as a request to the S.C. Joint Bond Review Commission (Commission) for review and comment of the Ports Authority's plan to commit and expend funds from the Harbor Deepening Reserve Fund.

As you know, the Charleston Harbor Deepening Project, also known as the Post 45 Project, is proposed to deepen Charleston Harbor to accommodate larger vessels and improve commerce for the State of South Carolina, the region, and the United States. In October 2014, the U.S. Army Corps of Engineers (Corps) issued the Charleston Harbor Post 45 Draft Integrated Feasibility Report and Environmental Impact Statement (DFR/EIS).¹ The DFR/EIS identifies as the tentatively selected plan (TSP) the following navigation improvements:

- Deepen the existing entrance channel from a project depth of -47 feet to -54 feet mean lower low water (MLLW).
- Extend the entrance channel approximately three miles seaward from the existing location to a depth contour including a -54-foot MLLW project depth plus overdepth.
- Deepen the inner harbor from an existing project depth of -45 feet to -52 feet MLLW to the Wando Welch container facility on the Wando River and the new Navy Base Terminal on the Cooper River, and -48 feet MLLW for the reaches above that facility to the North Charleston container facility.

¹ The full DFR/EIS is available at
<http://www.sac.usace.army.mil/Missions/CivilWorks/CharlestonHarborPost45.aspx>.



- Enlarge the existing turning basins to an 1800-foot diameter at the Wando Welch and new SCSPA terminals to accommodate Post Panamax Generation 2 and 3 container ships.
- Enlarge the North Charleston Terminal turning basin to a 1650-foot diameter for Post Panamax Generation 2 container ships.
- Place dredged material and raise dikes at the existing upland confined disposal facilities at Clouter Creek, Yellow House Creek, and/or Daniel Island; and for material dredged from the lower harbor, place at the Ocean Dredged Material Disposal Site (ODMDS) and expand. Place rock to create hardbottom habitat near the entrance channel as a beneficial use of dredged material.

The net benefit from the project is estimated at almost \$80 million annually.

The governing proviso is found in Part 1B of the 2014-15 Appropriation Act and states as follows:

88.3. (SPA: Harbor Deepening Reserve Fund) The State Ports Authority shall maintain the Harbor Deepening Reserve Fund. This fund shall be separate and distinct from the General Fund and interest accrued by the fund must remain in the fund. This fund must be used exclusively by the South Carolina Ports Authority for the activities associated with deepening the state's harbors. Prior to expending any amount from the fund, the State Ports Authority must present a comprehensive plan for the use of the fund for harbor deepening to the Joint Bond Review Committee for review and comment. These funds shall be carried forward from the prior fiscal year into the current fiscal year and must be used for the same purpose.

The current balance in the Harbor Deepening Reserve Fund is approximately Three Hundred Seven Million Seventy-six Thousand Seven Hundred Dollars (\$307,076,700).

Pursuant to the proviso, the Ports Authority respectfully submits this letter and the accompanying information as a comprehensive plan for the use of the Harbor Deepening Reserve Fund for the Post 45 Project to deepen Charleston Harbor and seeks the Committee's review and comment of the commitment and expenditure of these funds.



The Ports Authority anticipates receiving final approval from the Corps for the Post 45 Project in September 2015. While the Ports Authority and Corps are moving forward expeditiously, time is of the essence. Currently, the Ports Authority and Corps have signed a Feasibility Cost Sharing Agreement. By utilizing the Harbor Deepening Reserve Fund now and in the near future on, among other things, environmental mitigation and preconstruction engineering, planning, and design (PED), the Ports Authority accelerates the Post 45 Project's timeline and allows the economic and environmental benefits of the project to accrue earlier. The Ports Authority plans to commit and expend the Harbor Deepening Reserve Fund on these various components of the Post 45 Project as soon as reasonably practicable to ensure the most expeditious construction of the project. Specifically, the Ports Authority intends to commit funds for the PED (est. \$5.7 million), environmental mitigation and monitoring requirements (est. \$46 million), bulkhead construction (est. \$22 million), dredging (est. \$418.5 million), dike improvements (est. \$14 million), and construction management (est. \$7 million). These estimates will vary based on bids, construction scheduling, and other factors, and the Ports Authority will remain flexible in its commitment of funds to allow for an expeditious and cost-efficient manner of construction.

Notably, in addition to the Corps' projected overall project cost and associated components, the Ports Authority recently entered into a collaborative agreement with the South Carolina Coastal Conservation League (CCL) and the Lowcountry Open Land Trust (LOLT), a copy of which is attached as Attachment A (Collaborative Agreement). The Board of the Ports Authority approved the Collaborative Agreement on January 5, 2015, a copy of which is attached as Attachment B. The Collaborative Agreement recognizes the intersection of economic development and prosperity in conjunction with the positive benefits of land preservation. This supplementary component of mitigation for the Post 45 Project's impacts provides additional benefits for water quality and wetlands and addresses significant comments to the Post 45 Project. The Collaborative Agreement generally provides as follows:

- The Ports Authority will provide \$5,000,000 for an escrow account to fund property acquisition by the LOLT in the Cooper River Corridor, which has been designated as a high priority for conservation.
- The Ports Authority will provide \$125,000 to the South Carolina Aquarium after issuance of the Record of Decision for sea turtles and the Ports Authority will also help finalize shipping lanes developed for the monitoring of right whales.
- The CCL and LOLT agree to release and covenant not to sue for any claim arising from the Post 45 Project against the Ports Authority and any authorizing State or Federal agency.



- The CCL and LOLT have sent letters of support for the Post 45 Project for the TSP depth of -52 feet MLLW to: (1) the Corps, (2) NOAA, National Marine Fisheries Service, (3) U.S. Fish & Wildlife Service, (4) U.S. EPA, and (5) DHEC.

To meet these commitments in this milestone Collaboration Agreement, the Ports Authority plans to commit and expend the Harbor Deepening Reserve Fund in furtherance of the mitigation initiatives in the Collaboration Agreement.

Therefore, the Ports Authority specifically requests the Committee's review and comment of the commitment and expenditure of the Harbor Deepening Reserve Fund for the PED (est. \$5.7 million), environmental mitigation and monitoring requirements (est. \$46 million), bulkhead construction (est. \$22 million), dredging (est. \$418.5 million), dike improvements (est. \$14 million), and construction management (est. \$7 million), with these amounts subject to change based on changes due to, among other things, bid proposals received. Moreover, the Ports Authority seeks the Committee's review and comment on the exercise of the Ports Authority's discretion in committing these funds on a schedule and in an amount that in its judgment will best serve the project, as such flexibility will allow the Ports Authority to work closely with the Corps and other regulatory agencies to achieve a cost-effective and efficient construction schedule.

Thank you for your time and consideration. The Ports Authority appreciates the Committee's support of the Charleston Harbor Deepening Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "James I. Newsome, III".

James I. Newsome, III
President and Chief Executive Officer

ATTACHMENT A

COOPERATIVE AGREEMENT
AND CONTRACT FOR INTENT TO PURCHASE

This Cooperative Agreement and Contract for Intent to Purchase Real Property (Agreement) is made and entered into on the 19th day of December, 2014, by and between the South Carolina Coastal Conservation League (CCL), the Lowcountry Open Land Trust (LOLT), and the South Carolina State Ports Authority (Port or SCSPA) (referred to each individually as a “Party” and collectively as “Parties”) to memorialize the understanding between the Parties regarding impacts associated with the Charleston Harbor Deepening Project, also known as Post 45 (Project), and to resolve any and all issues concerning environmental issues associated with construction of the Project.

WHEREAS, CCL is a nonprofit advocacy organization dedicated to protecting the coastal resources of South Carolina, with a mission to protect the natural landscapes, abundant wildlife, clean water, and traditional communities by working with citizens, local governments and the state legislature, and LOLT is a local land conservation organization that is focused on the permanent protection of natural and rural lands throughout the lowcountry of South Carolina in perpetuity through conservation easements and acquisitions;

WHEREAS, SCSPA is committed to responsible environmental stewardship in its operation of South Carolina’s seaport assets, as it continues its vital role in advancing South Carolina’s economy through job creation and the propulsion of economic investment to the State;

WHEREAS, SCSPA is a non-federal sponsor for the Project and is working with the United States Army Corps of Engineers (Corps), other Federal agencies, the South Carolina Department of Health and Environmental Control (DHEC), and other State agencies to address the environmental issues regarding the Project and mitigate for associated impacts of the Project;

WHEREAS, the Cooper River Corridor, including the main stem of the river and its tributaries, is a high priority for the conservation and historic preservation communities including local, state, and federal agencies, non-profit partners and private landowners, which has resulted in the protection of 56,000 acres of land to date. Approximately 15,000 acres of land, harboring significant wetland and upland forest habitat have yet to be protected and are considered critical to the protection of the integrity of the Cooper River Corridor;

WHEREAS, SCSPA, CCL, and LOLT have agreed that impacts associated with construction of the Project, whatever they may be, would, in part, be mitigated by the multiple conservation benefits from the preservation of parcels along or in the vicinity of the East Branch of the Cooper River within the Cooper River Corridor agreed-upon by the Parties, identified in Exhibit A to this Agreement (as may be amended), which are identified as providing significant conservation qualities;

WHEREAS, the tracts within the Cooper River Corridor agreed-upon by the Parties, identified in Exhibit A to this Agreement (as may be amended), contain important habitat worthy of protection through preservation efforts and activities through acquisition or conservation easements;

WHEREAS, the tracts within the Cooper River Corridor, identified in Exhibit A to this Agreement (as may be amended), contain wetlands and important habitats for numerous species that should be preserved for the benefit of the State and its citizens and are real properties that have been identified by CCL, LOLT, Federal and State agencies, and SCSPA as a priority for preservation due to their size, strategic locations within the appropriate geographic watershed area for impacts in the Cooper River Corridor, and potential for permanent protection of flora and fauna important to the conservation community and the State;

WHEREAS, dolphins, right whales, shortnose and Atlantic sturgeon, manatees, and sea turtles are important species that SCSPA, CCL, and LOLT desire to protect, and a key component of those actions include additional study, tracking, and public education; and

WHEREAS, the LOLT, CCL, and SCSPA have the opportunity to collaborate for the benefit of the environment, marine life, and the Project and recognize the positive benefits of collaboration and cooperation that serve the best interests of the communities, citizens, environment, wildlife, and economy of the State of South Carolina and the United States.

NOW, THEREFORE, in consideration of the above-stated premises, the promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Environmental and Marine Life Efforts

- 1.1 Subject to requisite approval from the responsible state entity with authority over available Project funds, within fifteen (15) days following the execution of this Agreement or such requisite approval, whichever occurs later, the SCSPA agrees to fund an escrow account in the amount of Five Million Dollars (\$5,000,000). The escrow agreement shall include but not be limited to the following terms.
- a. The LOLT may draw up to Two Million Dollars (\$2,000,000) from the escrow account prior to the issuance of the Record of Decision from the United States Army Corps of Engineers for the Project approving a depth of -52 feet MLLW.
 - b. After the issuance of the Record of Decision for the Project from the United States Army Corps of Engineers approving a depth of -52 feet MLLW or such other time as the Parties may agree in writing, the LOLT may draw all remaining funds from the escrow account.
 - c. All available funds from the escrow account must be utilized for options on real property, closing, and purchase of real property or the acquisition of conservation easements on the real property, and associated administrative and management costs, including but not limited to: survey costs; closing costs; due diligence costs; administrative staffing costs and expenses; title insurance costs; attorneys' fees and costs; substantially similar fees and costs customarily paid by purchasers of real property in South Carolina; and property management. The expenditure of all funds from the escrow account must be itemized and documented.
 - d. LOLT may elect to transfer, at its option, subject to SCSPA approval, which shall not be unreasonably withheld, some or all such properties to another governmental organization, such as the U.S. Forest Service, or to a public or private conservation buyer subject to the conservation easement. SCSPA agrees that if LOLT sells the Property to a private or public conservation buyer, subject to a conservation easement, the proceeds of such sale belong exclusively to LOLT to reinvest in the conservation of other land in the Cooper River Corridor. *Provided, however,* that LOLT

agrees that if such properties in their existing condition as protected by LOLT's conservation easement qualify for water quality or wetlands preservation mitigation in a governmental permit or authorization for the Project, such transfer must be subject to such conservation easement.

- e. Any deed for a land acquisition of properties purchased in whole or in part with the escrowed funds prior to the initiation of dredging shall contain the following provision:

TO HAVE AND TO HOLD the said real property unto Grantee, Grantee's successors and assigns, provided, however, if the Project is (a) terminated prior to the initiation of dredging or (b) the South Carolina Coastal Conservation League or the Lowcountry Open Land Trust challenges, appeals, or otherwise contests the Record of Decision or other governmental permit or authorization prior to the initiation of dredging, the said real property shall automatically revert back or otherwise be transferred to the South Carolina State Ports Authority without the necessity of entry or re-entry and without the necessity of demand or any action brought or taken by the South Carolina State Ports Authority, any instrument or conveyance executed or delivered by Grantee, any liability of the South Carolina State Ports Authority to make or pay any compensation therefore to Grantee or Grantee's successors and assigns, it being intended hereby to create a determinable fee in Grantee with a possibility of reverter and transfer being retained by the South Carolina State Ports Authority so that when an above-stated event shall occur the South Carolina State Ports Authority shall promptly notify Grantee in writing and the title of Grantee to said real property shall automatically be at an end and by operation of law the title to said real property shall immediately transfer, revert to, and/or vest in the South Carolina State Ports Authority in the same state of title as initially conveyed to Grantee. After such transfer or reversion, upon the South Carolina State Ports Authority's written request, Grantee will execute and deliver a quitclaim deed to the South Carolina State Ports Authority conveying whatever right, title, and interest in such property within thirty days from receipt of the South Carolina State Ports Authority's written request. The

failure of Grantee to execute and deliver such quitclaim deed shall not prevent the automatic transfer and/or reversion of fee simple title in said real property to the South Carolina State Ports Authority. If the Project is not terminated prior to the initiation of dredging and if neither the South Carolina Coastal Conservation League or the Lowcountry Open Land Trust challenges, appeals, or otherwise contests the Record of Decision or other governmental permit or authorization prior to the initiation of dredging, the South Carolina State Ports Authority will execute and deliver to Grantee a termination of its reverter and release of all of its rights, title, and interest in the property in recordable form within thirty days from receipt of the Grantee's written request.

- f. LOLT shall cooperate with SCSPA or its assigns and make any of the properties purchased in whole or in part with the escrowed funds available to such reasonable due diligence as SCSPA shall require for water quality or wetlands preservation mitigation purposes to offset impacts related to the Project, the costs of which shall be paid by SCSPA. Such mitigation shall be limited to the properties in their existing condition as protected by LOLT's conservation easement.

1.2 SCSPA agrees to provide the South Carolina Aquarium with the sum of One Hundred Twenty-five Thousand Dollars (\$125,000) within sixty (60) days after the issuance of the Record of Decision for the Project from the United States Army Corps of Engineers for the Project approving a depth of -52 feet MLLW. Such funds must be dedicated to public education about sea turtles in the Charleston Harbor area and/or turtle rehabilitation.

1.3 SCSPA agrees to work in good faith with the U.S. Department of Commerce (NOAA, National Marine Fisheries Service) to finalize the designation of shipping lanes developed by the monitoring of right whales over the five-year period previously funded by SCSPA through 2012. The Parties recognize that shipping lanes are effective to help ship operators better avoid right whale interaction. The SCSPA further agrees to support in good faith the utilization of such shipping lanes and observation of applicable NOAA-promulgated speed restrictions for the protection of right whales.

1.4 SCSPA agrees to support in good faith current efforts of the U.S. Environmental Protection Agency to conduct limited air monitoring in Charleston existing at the time of execution of this Agreement. SCSPA further agrees to make summaries of its quality-controlled air monitoring data public and updated no less than quarterly online, consistent with its current practice, as long as SCSPA maintains such air monitors on its Wando Welch, Charleston Navy Base, and Union Pier terminals.

1.5 SCSPA agrees to support in good faith the completion of the sturgeon stock assessments by the Atlantic States Marine Fisheries Commission and, if practicable and reasonable based on the length of time it takes to complete the assessments, its incorporation into the Final Environmental Impact Statement (Final EIS) developed by the Corps, *provided, however*, that such good faith efforts towards incorporation shall not delay the issuance of the Final EIS, in which such event the assessments will be issued after the Final EIS. SCSPA agrees to work in good faith with the South Carolina Department of Natural Resources to ensure that the stock assessments are completed in a timely manner. SCSPA also agrees to coordinate with SCDNR in good faith to determine how best to assist with sturgeon tracking efforts in the future.

1.6 SCSPA agrees to support in good faith the provision of manatee observers if the Project construction continues between May 15 and September 15 in any given year of Project construction.

2. Release

2.1 For and in consideration of the agreements, terms, and conditions made in this Agreement, and for so long as this Agreement remains in effect, each Party hereby releases, acquits, and discharges all other Parties and their respective representatives and officials from any and all claims, counterclaims, defenses, causes of action, and liabilities, including, but not limited to, any common law claim or any violation of any federal, state, municipal, or other governmental constitution, statute, regulation, or ordinance, of any nature whatsoever, whether these claims are known or unknown, direct or contingent, suspected or unsuspected, arising out of the construction of the Project. This release also applies to any claims CCL or LOLT may have against any federal and state agency or its officers authorizing or approving the Project.

2.2 It is the intent of the Parties to give the broadest release and discharge possible under the law and the provisions hereof should be interpreted so as to give

effect to such intent so that SCSPA, the Corps, DHEC, and any and all federal or state authorizing agencies for the Project will not be the subject of any claim or action for approving or authorizing the construction of the Project. It is not the intent of the Parties to provide any release for claims or causes of action against third parties for violations of applicable law that do not arise from the construction of the Project. By way of example, the release herein would not protect a third party from liability for an oil spill in Charleston Harbor causing damage to marine life and natural resources nor release any claim arising independently to enforce the terms of an approved Total Maximum Daily Load for Charleston Harbor. Further, CCL retains its right to challenge any violation of any permit or authorization necessary for construction of the Project.

3. Covenant Not to Sue and Covenant Not to Assist Third Parties with Suit.

3.1 CCL and LOLT further covenant that they will not initiate, participate in, file or assert any action, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, local, legal, or equitable) against SCSPA and any and all federal and state authorizing agencies to the permits or authorizations issued for the construction of the Project. This covenant not to sue is intended to have the broadest interpretation possible and shall absolutely prohibit CCL and LOLT from any claim or action against SCSPA and any and all federal and state authorizing agencies for the Record of Decision issued for the Project and for any biological opinion, permit, or other authorization issued prior to issuance of the Record of Decision for the Project.

It is not the intent of the Parties to provide a covenant not to sue for claims or causes of action against third parties for violations of applicable law that do not arise from the construction of the Project. By way of example, the covenant herein would not protect a third party from liability for an oil spill in Charleston Harbor causing damage to marine life and natural resources nor foreclose any claim arising independently to enforce the terms of an approved Total Maximum Daily Load for Charleston Harbor.

In the event that the SCSPA or the Corps seeks a modification of the permits or authorizations for the Project after issuance of the Record of Decision that requires public notice, CCL retains any rights it may have regarding any such proposed modification. Further, CCL retains its right to challenge any violation of any permit or authorization necessary for construction of the Project.

3.2 CCL and LOLT further covenant that they will not assist, encourage, support, or aid a third party, or participate in, or assert any action, proceeding, lawsuit, claim, or cause of action (whether common law, statutory, regulatory, federal, state, local, legal, or equitable) against SCSPA and any and all federal and state authorizing agencies challenging the construction of the Project.

4. Compromise and Intention of Parties. It is expressly understood and agreed that the terms hereof are contractual in nature and not merely recitals and that the agreements, terms, conditions, covenants, and releases contained herein are made and given in order to compromise and settle disputed claims. The Parties further agree, between them, that this is a compromise, resolution, and settlement of any and all claims, allegations, or issues arising from the construction of the Project primarily to avoid the uncertainty, time, trouble and expense of litigation, and that such compromise, resolution and settlement shall not be taken as an admission of liability. No promise or inducement has been offered except as set forth herein. This Agreement is executed without reliance upon any oral, written, express or implied representations, statements, promises, warranties, or other inducement of any nature or sort made by any person or party hereto other than as is expressly set forth herein.

5. Public Statements.

5.1 Each of the Parties stipulates and agrees that the terms of this Agreement constitute public information and may be provided to third parties pursuant to a request under the federal or state freedom of information acts. CCL, LOLT, and SCSPA agree to make good faith efforts to conform any public statements concerning this matter to the spirit and intent of this Agreement.

5.2 CCL and LOLT further agree to publicly support the Project to a depth of -52 feet MLLW by submitting letters of support substantially similar to Exhibit B to: (1) the Corps, (2) U.S. Department of Commerce (NOAA, National Marine Fisheries Service), (3) U.S. Department of the Interior (U.S. Fish & Wildlife Service), (4) U.S. Environmental Protection Agency (EPA), and (5) DHEC within thirty (30) days of the execution of this Agreement acknowledging that CCL and LOLT support the issuance of all governmental permits, licenses, and authorizations for the Project approving a depth of -52 feet MLLW as the National Economic Development (NED) plan on an expedited basis. CCL and LOLT further agree to convey to other environmental advocacy organizations and conservation groups LOLT's and CCL's support of the Project and the necessary

government licenses and approvals, including any authorization, license, or permit applications to the Corps, DHEC, and other federal and state authorizing agencies.

6. Binding Effect.

6.1 This Agreement shall inure to the benefit of and shall be binding upon the undersigned Parties and their respective agents, representatives, affiliates, and successors.

6.2 It is explicitly acknowledged by CCL, LOLT, and SCSPA that the Corps, DHEC, and other federal and state authorizing agencies are third-party beneficiaries of this Agreement with all such rights and privileges, including but not limited to Sections 2 and 3. No other third parties are beneficiaries of this Agreement.

6.3 Provided, however, that all rights, duties, and obligations of this Agreement shall be null and void *ab initio*, and all transactions unwound and the Parties restored to their position prior to executing this Agreement in the event no Record of Decision is issued by the United States Army Corps of Engineers for the Project approving a depth of -52 feet MLLW.

7. Governing Law. THIS AGREEMENT IS MADE AND ENTERED INTO IN THE STATE OF SOUTH CAROLINA AND SHALL IN ALL RESPECTS BE INTERPRETED, ENFORCED, AND GOVERNED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. The language in all parts of this Agreement shall be in all cases construed as a whole according to its meaning and not strictly for or against any Party.

8. Voluntary Agreement. Each of the Parties acknowledges that this Agreement has been executed freely and voluntarily, without compulsion and with full knowledge of its legal significance and consequences.

9. Authority. Each of the undersigned warrants and covenants that he or she has the authority and authorization to execute this Agreement on behalf of his or her respective Party and that each Party has taken any and all necessary steps to ratify, approve, and consent to the terms and conditions contained herein.

10. Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon all the Parties as if all the Parties signed the same document.

11. Headings. The headings used in this Agreement are intended solely for the convenience of reference and should not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions of the Agreement.

12. Entire Agreement. This Agreement embodies, merges, and integrates all prior and current agreements and understandings of the Parties and may not be clarified, modified, changed, or amended except in writing signed by each signatory hereto or their other authorized representatives.

13. Survival. All representations, covenants, and warranties contained herein shall survive the execution and delivery of this Agreement and the execution and delivery of any other document or instrument referred to herein.

14. Severability. Should any term or condition of this Agreement become invalid as a matter of law, then the remainder of this Agreement shall remain in full force and effect.

15. Further Acts. In addition to the acts recited in this Agreement, the Parties agree to perform or cause to be performed on the date of this Agreement or thereafter any and all such further acts as may be reasonably necessary to fulfill the terms and conditions herein.


16. Counsel. The Parties, together with their respective legal counsel, actively and equally participated in the negotiation and review of this Agreement, with the Parties having the opportunity to make changes. Therefore, in the event of any ambiguity in this Agreement, such ambiguity shall not be presumptively construed in favor of or against either Party solely because that Party or its legal representation drafted the provision.

17. Scope. The terms of this Settlement Agreement shall be the complete settlement of all claims and causes of action that CCL and LOLT has or could allege against SCSPA, the Corps, DHEC, or other federal and state authorizing agencies or its representatives, officers, or agents with respect to the construction of the Project, which is the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

This Agreement is executed as of the date first written above.

South Carolina State Ports Authority:



By: James I. Newsome, III
Its: President and CEO

South Carolina Coastal Conservation League:



By: Dana Beach
Its: Executive Director

Lowcountry Open Land Trust:

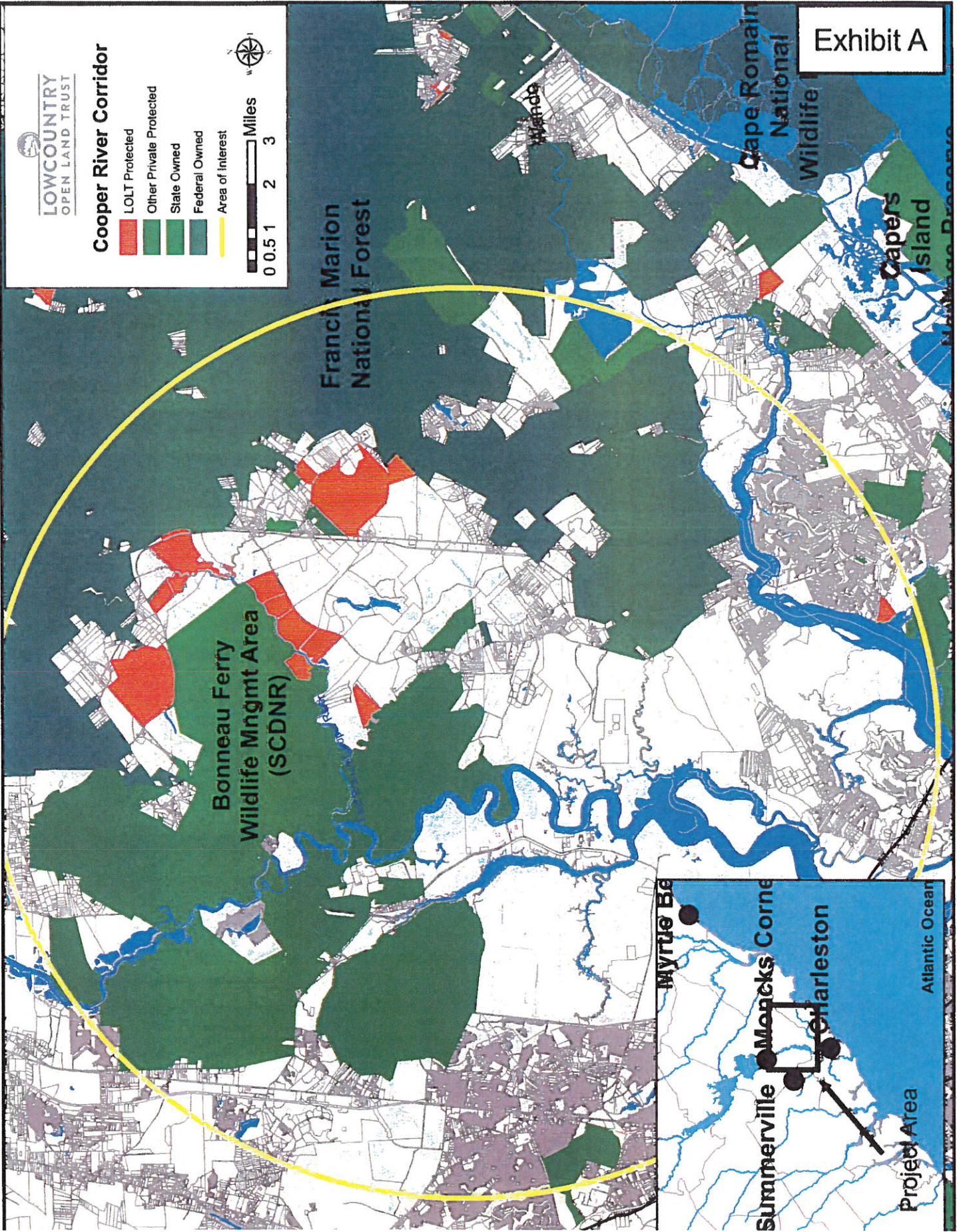


By: Elizabeth Hagood
Its: Executive Director



Cooper River Corridor

- LOLT Protected
- Other Private Protected
- State Owned
- Federal Owned
- Area of Interest



Bonneau Ferry Wildlife Mngmt Area (SCDNR)

Francis Marion National Forest

Wando

Cape Romain National Wildlife Refuge

Capers Island

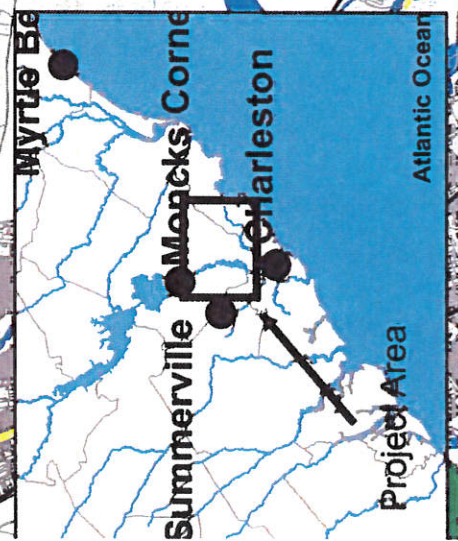


Exhibit B

In response to the comments made on the October 2014 Charleston Harbor Post 45 Draft Integrated Feasibility Report and Environmental Impact Statement (DFR/EIS) issued by the U.S. Army Corps of Engineers (Corps), the South Carolina State Ports Authority (Ports Authority) has engaged in outreach on the Post 45 Project and resolved to take additional, voluntary conservation measures to take into account the Project and its impacts. The DFR/EIS identifies the Tentatively Selected Plan (TSP) as a -54/-52/-48 foot plan, which will deepen the entrance channel to -54 feet, the harbor channel to the Wando Welch and Navy Base terminals to -52 feet, and the channel to the North Charleston terminal to -48 feet. Channels and turning basins will similarly be widened or extended to accommodate the vessels.

In particular, the Ports Authority has committed to significant additional mitigation measures above and beyond the proposed mitigation in the DFR/EIS to offset the impacts from the Post 45 Project for the TSP. These include establishing a multi-million dollar fund for the preservation of properties in the “Cooper River Corridor,” which has been identified as a critical area by natural resource agencies and conservation groups for preservation. The Ports Authority has also committed to good faith support of efforts to protect endangered right whales, manatees, and both shortnose and Atlantic sturgeon, as well as funding an educational initiative to improve public awareness of sea turtle issues.

We believe these additional mitigation efforts provide considerable permanent public conservation benefits that compensate for the most significant concerns raised in our comment letter. While the Post 45 Project may have impacts, through its commitments and mitigation efforts, we believe the Ports Authority has minimized these impacts in a way that is acceptable to us.

Therefore, we support moving forward with all necessary governmental approvals and authorizations for the TSP (-52/-48 foot) for the Post 45 Project as the National Economic Development (NED) plan and encourage the expeditious review and approval of the TSP.

ATTACHMENT B

**RESOLUTION OF THE SOUTH CAROLINA STATE PORTS AUTHORITY
APPROVING COOPERATIVE AGREEMENT AND CONTRACT FOR INTENT TO
PURCHASE PROPERTY FOR MITIGATION RELATED TO CHARLESTON HARBOR
NAVIGATION PROJECT**

WHEREAS, the South Carolina State Ports Authority is created as an instrumentality of the State by 1942 Act. No. 626 of the South Carolina General Assembly, for the accomplishment of its purposes now set forth in South Carolina Code of Laws, 1976, as amended, Section 54-3-130, which include development and improvement of the harbors and seaports of Charleston, Georgetown and Jasper, for the handling of water-borne commerce from and to any part of this State and other states and foreign countries, to acquire, equip, maintain, develop and improve such harbors and their facilities, and to foster and stimulate the shipment of freight and commerce through such ports; and

WHEREAS, among its powers, the Authority has the powers to make contracts, rent, lease, buy, own, acquire, mortgage and dispose of such property, real or personal, as the Authority may deem proper to carry out its purposes, and may do any and all things necessary to accomplish its purposes as set forth in 1942 Act 626 of the General Assembly, all or any of them, and may acquire, construct, maintain, equip and operate wharves, docks, ships, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto; and

WHEREAS, the Authority has determined that it is necessary and useful to deepen and improve the shipping channels and turning basins in Charleston Harbor to fifty-two feet, to meet the needs of modern vessels and water-borne commerce in the Harbor, and in the navigation of vessels to and from, and use of, the port facilities of the State in Charleston Harbor (hereinafter Deepening Project); and

WHEREAS, the navigable waters and navigational features of Charleston Harbor are under jurisdiction of the United States of America, and of the United States Army Corps of Engineers (hereinafter USACE), which has performed studies regarding the deepening of the Harbor navigational features and produced a Draft Integrated Feasibility Report and Environmental Impact Statement of October 2014; and

WHEREAS, as a part of the Deepening Project, the Authority anticipates certain required actions to mitigate environmental impacts; and

WHEREAS, the South Carolina Coastal Conservation League (hereinafter CCL) and the Lowcountry Open Land Trust (hereinafter LOLT) have long engaged in preserving and improving the environment and land use in the area around and near Charleston Harbor and have knowledge and experience in crafting mitigation efforts to offset environmental impacts of projects such as the Deepening Project, and the CCL has submitted a letter of comment concerning environmental concerns to the USACE, which concerns have been considered by the Corps and the Authority; and

WHEREAS, on or about December 19, 2014, Authority management reached a Cooperative Agreement and Contract for Intent to Purchase with the CCL and the LOLT (hereinafter Agreement), to carry out certain steps in mitigation of environmental impacts of the Deepening Project, which steps the parties agree will satisfy concerns over Project impacts, and a copy of the Agreement is attached to this Resolution; and

WHEREAS, the Authority will support requests to the State Conservation Bank to further initiatives in the Agreement and the reauthorization of the State Conservation Bank; and

WHEREAS, the Agreement requires the approval of the Board, and will require approval of the Joint Bond Review Committee of the South Carolina General Assembly, as the Agreement includes utilization of funds appropriated by the General Assembly for use in the Deepening Project; and

WHEREAS, the Board of the Authority believes that the purchases of property and the protections set forth in the Agreement are fitting mitigation actions for any negative effect on the environment or quality of life of residents in communities located near port facilities, by the Deepening Project, that the Agreement will resolve concerns of the parties reflected in the comments submitted for the Deepening Project, and will serve to achieve the purposes of the Authority set forth in South Carolina Code of Laws, 1976, as amended, Section 54-3-130:

NOW, THEREFORE BE IT RESOLVED by the Board of the South Carolina State Ports Authority, in meeting duly assembled, that the Cooperative Agreement and Contract for Intent to Purchase, a copy of which is attached hereto, is hereby approved by the Board, and the Board further authorizes the President and Chief Executive Officer and his designees to take any and all actions necessary to effect the Authority's obligations thereunder, and the Board ratifies all steps taken heretofore in preparation for the performance of the Authority required by the terms of the Agreement.

BE IT FURTHER RESOLVED that the Board urges the Joint Bond Review Committee of the South Carolina General Assembly to approve the attached Agreement and the expenditure of funds required to be transferred in discharge of the obligations under the Agreement.

ADOPTED at a special meeting of the South Carolina State Ports Authority held January 5, 2015.

WITNESS the hand and seal of the Secretary of the South Carolina State Ports Authority.

SOUTH CAROLINA STATE PORTS AUTHORITY

By: Bill H. Stern

Bill H. Stern, Chairman



January 20, 2015

Ms. Dianne Carraway
Budget and Control Board Liaison
P.O. Box 142
Columbia, SC 29202

Dear Dianne,

Last week the South Carolina Ports Authority announced a milestone agreement for the Post 45 Harbor Deepening Project including a significant contribution to land conservation along the Cooper River Corridor. The Port's announcement builds on the recent Boeing Corporation mitigation project for the expansion of their North Charleston facility which also included a significant contribution to conservation in the Cooper River/Francis Marion Corridor. Both the Boeing and Port investments build on decades of conservation investment in the Corridor from private landowners, industries, state and federal agencies, and non-profit organizations. Working together has produced a visionary solution and benefits South Carolina both economically and environmentally.

The collaboration of the business and conservation community on these mitigation projects epitomizes the power of cooperation. As Governor Haley stated at the Port's announcement, "I want you to look at our sister states. They are not doing this today - they are struggling today. They're about to spend a lot of money, a lot of time and a lot of effort and be fighting for years to come. But not us...Today is the day we say 'yes' to conservation and business."

Jim Newsome, President and CEO of the South Carolina Ports Authority said, "...economic and development and environmental groups have to collaborate to yield creative solutions."

Jack Jones, Vice President and General Manager of Boeing South Carolina said, Boeing's plan "...supports our business growth as well as our commitment to the environment and communities where we live and work. It's exciting because it ensures our ability to grow while protecting the unique natural ecosystem of this state for future generations of South Carolinians and visitors."

The Land Trust commends these leaders for working proactively with the conservation community to create "win-win" outcomes that advance our state economically and environmentally. We believe that this solutions-based approach can serve as a model for collaborative problem-solving in many areas of our state. We look forward to working with you to build on this cooperative spirit and commitment. We would welcome the chance to meet with you in person to discuss further at your convenience.

We look forward to following up with you soon.

Sincerely,

Elizabeth M. Hagood

enc: Information on the Cooper River Corridor
Board of Trustees

Robert M. Baldwin, Samuel C. Carlton, Carol B. Ervin, Stephen F. Gates, J. Stanfield Gray, Thomas D.W. Hutto, Eleanor Moore Kuhl, Ann G. Kulze, M.D., Bradford S. Marshall
Burnet R. Maybank III, David Maybank III, Ford P. Menefee, Richard W. Salmons Jr., G. Trenholm Walker, R. Scott Wallinger, J. Rutledge Young Jr., J. Conrad Zimmerman



COASTAL
CONSERVATION
LEAGUE

January 20, 2015

Mark Messersmith
Planning and Environmental Branch
Charleston District, U.S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403
mark.j.messersmith@usace.army.mil

VIA E-MAIL AND POST

Re: Charleston Harbor Post 45 Draft Integrated Feasibility Report and Environmental Impact Statement, Updated Comments

Dear Mr. Messersmith:

The South Carolina Coastal Conservation League ("Conservation League") submitted comments on the October 2014 Charleston Harbor Post 45 Draft Integrated Feasibility Report and Environmental Impact Statement (DFR/EIS) issued by the U.S. Army Corps of Engineers (Corps) on November 26, 2014. The DFR/EIS identifies the Tentatively Selected Plan (TSP) as a 54/52/48 foot plan, which will deepen the entrance channel to -54 feet, the harbor channel to the Wando Welch and Navy Base terminals to -52 feet, and the channel to the North Charleston terminal to -48 feet. Channels and turning basins will similarly be widened or extended to accommodate the vessels.

Since that time, the South Carolina State Ports Authority (Ports Authority) has engaged in outreach on the Post 45 Project and provided a better understanding of the Project and its impacts. Additionally, the Ports Authority has committed to significant additional mitigation measures above and beyond the proposed mitigation in the DFR/EIS to offset the impacts from the Post 45 Project for the TSP. These include establishing a multi-million dollar fund for the preservation of properties in the "Cooper River Corridor," which has been identified as a critical area by natural resource agencies and conservation groups for preservation. The Ports Authority has also committed to good faith support of efforts to protect endangered right whales, manatees, and sturgeon, as well as funding an educational initiative/Sea Turtle Hospital work to improve public awareness of sea turtle

"Nature and Community in Balance"

P.O. Box 1861 • Beaufort, S.C. 29901-1861 • Telephone (843) 522-1800 • Fax (843) 525-1197
P.O. Box 1765 • Charleston, S.C. 29402-1765 • Telephone (843) 723-8035 • Fax (843) 723-8308
1001 Washington Street, 3rd Floor • Columbia, S.C. 29201 • Telephone (803) 771-7102 • Fax (803) 771-7103
P.O. Box 603 • Georgetown, S.C. 29442-0603 • Telephone (843) 545-0403 • Fax (843) 545-8854
www.CoastalConservationLeague.org • info@sccl.org

issues.

We believe these additional mitigation efforts provide considerable public conservation benefits that compensate for the most significant concerns raised in our comment letter. While the Post 45 Project may have impacts, through its commitments and mitigation efforts the Ports Authority has minimized these impacts in a way that is acceptable to us.

Therefore, we support moving forward with all necessary governmental approvals and authorizations for the TSP (-52/-48 foot) for the Post 45 Project as the National Economic Development (NED) plan and encourage the expeditious review and approval of the TSP.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dana Beach".

Dana Beach
Executive Director

AGENCY: The Citadel

PROJECT/SUBJECT: Not Exceeding \$16,700,000 Refunding Revenue Bonds,
Series 2015

The Citadel requests approval to issue Higher Education Refunding Revenue Bonds in an amount not to exceed \$16,700,000 to reduce its annual debt service payments and capture savings on interest costs. The proceeds will pay the current outstanding balance of Series 2005 bonds as well as the cost of issuance. Net present value savings of \$639,411 are anticipated.

The bonds were originally issued in 2005 to pay for replacement of the Law Barracks.

The refunding bonds will mature no later than April 1, 2029, and do not extend the term of the Series 2005 bonds. The bonds will be secured by The Citadel's net revenues and additional funds.

As directed by Section 59-147-110 of the South Carolina Code of Laws, the bonds do not commit the faith and credit of the state.

COMMITTEE ACTION:

Review and approve The Citadel's request for issuance of Higher Education Refunding Revenue Bonds in an amount not to exceed \$16,700,000.

ATTACHMENTS:

- 1) Summary of Refinancing Proposal
- 2) Letter from Haynsworth Sinkler Boyd, P.A., dated February 9, 2015
- 3) Board of Visitors Petition dated February 6, 2015
- 4) South Carolina Code of Laws Sections 59-147-30 and 59-147-110

DOCUMENTS AVAILABLE UPON REQUEST:

- 1) Bond Resolution of 1997 Providing for Issuance and Sale of Revenue Bonds for The Citadel, Adopted by Board of Visitors on September 6, 1997
- 2) Series 2015 Resolution Providing for Issuance and Sale of Refunding Revenue Bonds, Adopted by the Board of Visitors on January 24, 2015

Summary of Refinancing Proposal for
The Citadel

Outstanding bonds proposed to be refinanced	Approximately \$14,460,000 Revenue Bonds, Series 2005 of The Citadel, the Military College of South Carolina
Interest rate of bonds refinanced	3.75 - 4.55%
Interest rate of refinancing bonds	3.00%
Projected net present value savings (net of costs)	\$639,411
Projected net present value savings as a percentage of the bonds refinanced	4.40%
Estimated costs (costs as a percentage of refinancing bonds, costs as a percentage of refinancing savings)	.40% 8.40%
Underwriting	0
Legal fees	\$18,750
Rating agency fees	0
Advisory fees	\$35,000
Bond trustee/registrar	0
Accounting and verification	0
Credit enhancement/bond insurance	0
Publication, printing, contingencies and all other expenses	0
Total	\$53,750

Prepared by: Jeremy L. Cook, Haynsworth Sinkler Boyd, P.A. and Jay Puchir, The Citadel
Date: February 11, 2015

February 9, 2015

The Honorable Hugh K. Leatherman, Sr.
Chairman
Joint Bond Review Committee
P. O. Box 11867
Columbia, South Carolina 29211

Re: Not Exceeding \$16,700,000 Refunding Revenue Bonds of The Citadel, the Military College
of South Carolina

Dear Senator Leatherman:

The Citadel is seeking authority to issue refunding revenue bonds in the principal amount of not exceeding \$16,700,000, the proceeds of which will be used to refund previous revenue bonds issued by The Citadel in 2005. The Citadel is undertaking this refunding to reduce its annual debt service payments.

The bonds will be secured by a pledge of the Net Revenues and Additional Funds as described in the Bond Resolution adopted by the Board of Visitors on September 6, 1997 and the Series Resolution adopted by the Board of Visitors on January 24, 2015.

I understand that the Joint Bond Review Committee needs to review this action, and respectfully request that this matter be placed on the agenda for the Committee's upcoming meeting.

Enclosed are the documents that are being sent to the Budget and Control Board for inclusion in the agenda for its March 3rd. The Citadel is currently preparing the summary of the refunding which I will send to you later this week. Please let me know if I or anyone at The Citadel can provide you with any additional information.

Thank you very much for your assistance.

With best regards, I remain

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.


Jeremy L. Cook

Enclosures

TO THE SOUTH CAROLINA STATE

PETITION

BUDGET AND CONTROL BOARD

This Petition of the Board of Visitors of The Citadel (the "Board of Visitors"), acting pursuant to Title 59, Chapters 121 and 147 of the Code of Laws of South Carolina 1976, as the same may be amended from time to time (together, the "Act"), respectfully shows:

1. The Act, among other things, empowers The Citadel, the Military College of South Carolina ("The Citadel"), to make provision for the issuance of revenue bonds, subject to obtaining the approval of the South Carolina State Budget and Control Board (the "State Board"), from time to time in order to raise funds to defray the cost of financing or refinancing in whole or in part the cost of the acquisition, construction, renovation, and equipping of certain facilities identified under the Act and now owned or hereafter acquired by The Citadel, and to refund bonds that may from time to time be outstanding pursuant to the provisions of the Act.

2. The Board of Visitors has determined to undertake the refunding of certain outstanding revenue bonds which were issued by The Citadel in 2005 (the "Undertaking"); and

3. The Board of Visitors has determined to issue revenue bonds (the "Bonds") in the principal amount of not exceeding \$16,700,000 to defray all or a portion of the costs of the Undertaking.

4. The Board of Visitors has determined that:

(a) It is in the best interests of The Citadel to issue the Bonds as authorized by the Act and to use the proceeds thereof to pay all or a portion of the costs of the Undertaking and the costs of issuance of the Bonds.

(b) The Undertaking serves authorized purposes within the scope of the Act, and has a cost of approximately \$16,700,000.

(c) The revenues that are to be pledged to the payment of the Bonds are the Net Revenues and Additional Funds described in the Bond Resolution adopted by the Board of Visitors of The Citadel on September 6, 1997 and the Series Resolution adopted by the Board of Visitors of The Citadel on January 24, 2015.

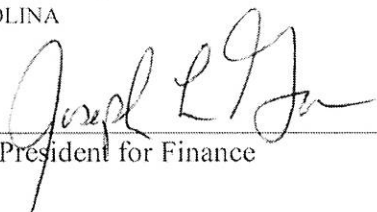
5. The Bonds will be sold to such purchaser and upon such terms and in such manner as the Board of Visitors has determined in the Series Resolution.

Upon the basis of the foregoing, the Board of Visitors respectfully prays that the State Board (i) accept the filing of this Petition and the documents submitted herewith, (ii) make any

review it deems advisable, and (iii) approve the issuance of the Bonds by The Citadel pursuant to the Act to defray all or a portion of the cost of the Undertaking.

Respectfully submitted,

THE CITADEL, THE MILITARY COLLEGE OF SOUTH
CAROLINA



Vice President for Finance

February 6, 2015

SECTION 59-147-30. Issuance of revenue bonds; purpose.

Subject to the approval of the State Budget and Control Board by resolution duly adopted, the university may issue revenue bonds of the university for the purpose of financing or refinancing in whole or in part the cost of acquisition, construction, reconstruction, renovation and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing facilities serving the needs of the university including, but not limited to:

(1) dormitories, apartment buildings, dwelling houses, bookstores and other university operated stores, laundries, dining halls, cafeterias, parking facilities, student recreational, entertainment and fitness related facilities, inns, conference and other nondegree educational facilities and similar auxiliary facilities of the university and any other facilities which are auxiliary to any of the foregoing excluding, however, athletic department projects which primarily serve varsity athletic teams of the university; and

(2) those academic facilities as may be authorized by joint resolution of the General Assembly.

SECTION 59-147-110. Sources of revenue or funds for payment of bonds; liability of signers.

The bonds must be made payable solely from all or such portion of the revenues as the university in its discretion may designate pursuant to the authorizing resolution and also from any other available funds of the university designated by the university pursuant to the authorizing resolution except funds of the university derived from appropriations received from the General Assembly and any tuition funds pledged to the repayment of state institution bonds. The use of academic fees must be approved by the university's board. The bonds are not general obligations of the State. Neither the members of the board nor any person signing the bonds shall be personally liable for the bonds. No bonds may be issued pursuant to this chapter unless an identified source or sources of revenue are designated for the repayment of the bonds.