

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF: CALHOUN PARK AREA SITE

Docket Number: 96-10-C

UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE SOUTH
RESPONSE, COMPENSATION, AND)	CAROLINA STATE
LIABILITY ACT OF 1980, 42 U.S.C.)	PORTS AUTHORITY
§ 9601, et seq., as amended.)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and South Carolina State Ports Authority, an entity of the government of the State of South Carolina (the "State Ports Authority") (collectively the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. S 9601, et seq.

There exists in the City of Charleston, South Carolina, an approximately 18-acre Site known as the "Calhoun Park Area Site" (the "Site"). A portion of the Site is occupied by the former Ansonborough Homes housing project. The Ansonborough Homes portion of the Site was developed with government assistance as a housing project, and has been vacant since 1991.

The State Ports Authority requires an easement over the Ansonborough Homes portion of the Site to construct a railroad connection thereon. The purchase by the State Ports Authority of

the property will facilitate the subsequent purchase by the City of Charleston of the remainder of the Ansonborough Homes property, with the Ports Authority retaining an easement.

The Site is presently the subject of a Remedial Investigation/Feasibility Study (RI/FS). This RI/FS is being performed under an Administrative Order on Consent effective January 22, 1993, by South Carolina Electric and Gas Company, the City of Charleston, and the Housing Authority of the City of Charleston.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to avoid, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the State Ports Authority for the Existing Contamination at the Site which would otherwise result from State Ports Authority becoming the owner of the Property.

The Parties agree that the State Ports Authority's entry into this Agreement, and the actions undertaken by the State Ports Authority in accordance with the Agreement, do not constitute an admission of any liability by the State Ports Authority.

The resolution of this potential liability, in exchange for provision by the State Ports Authority to EPA of a substantial benefit, will allow the State Ports Authority to modernize its facilities, will assist the City of Charleston in its subsequent acquisition of the property, will release funds to provide low

cost housing in Charleston, and is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing in its present condition and location, on or under the Site as of the effective date of this Agreement.

3. "Parties" shall mean EPA, and the State Ports Authority.

4. "Property" shall mean that portion of the Site which is described and pictured in Exhibit A of this Agreement.

5. "Easement" shall mean the interest in the Property which will be permanently retained by the State Ports Authority.

6. "Site" shall mean the Calhoun Park Area Site, encompassing approximately 18 acres, located in the City of Charleston, Charleston County, South Carolina, bounded generally by Charlotte St. on the North, Concord St. on the East, Laurens St. on the South, and Washington St. on the West, and depicted generally on the map attached as Exhibit B. The Site shall

include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located thereon.

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

8. The Calhoun Park Site consists of three parcels totaling approximately eighteen acres: Calhoun Park itself, which is owned by the City of Charleston Housing Authority (CHA), a State Agency, which leases the property to the City of Charleston; the South Carolina Electric & Gas Company (SCE&G) property, the site of a manufactured gas plant that operated from the 1850's to the 1950's; and Ansonborough Homes, a former low income housing project owned by the CHA, built in the 1940's in part with HUD funding, which has been closed and vacant since 1991.

Contamination was discovered in areas outside of the present Site during preconstruction geotechnical surveys conducted in 1988 and 1989. Further investigation led to the discovery of soil contamination around the location of the former manufactured gas plant. This led to the closing of Calhoun Park and Ansonborough Homes in 1989 and 1991 respectively.

In January of 1993, CHA, SCE&G and the City of Charleston signed an Administrative Order on Consent to perform the RI/FS under the Superfund Accelerated Cleanup Model (SACM). The Draft RI was submitted in February of 1995. The final RI is expected

in March of 1996.

The State Ports Authority has operated a rail line adjacent to Ansonborough Homes for a number of years. In order to accommodate newer rail cars, an "S" curve in the track must be eliminated. The acquisition of an easement over the Ansonborough Homes portion of the Site will allow the Ports Authority to straighten the track, and will allow it to modernize the connection between major industrial users and the port facilities of the State Ports Authority. To acquire this easement, the Ports Authority will purchase the Ansonborough Homes property. The Ports Authority will later sell the property to the City of Charleston, retaining the easement. The Housing Authority will then be able to use the proceeds of the sale for acquisition of low income housing in the Charleston area. State Ports Authority is not believed to be a potentially responsible party (PRP) at the Calhoun Park Area Site.

9. The State Ports Authority represents, and for the purposes of this Agreement EPA relies on those representations, that State Ports Authority has had no prior involvement with the Property and the Site.

IV. PAYMENT

10. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, State Ports Authority agrees to pay to EPA \$2,707, an amount agreed by the parties to be sufficient to recover the cost of the preparation of this Agreement, within 30 days of EPA's presentation of cost

documentation. The State Ports Authority shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region 4, EPA Docket Number, site ID, and name and address of the State Ports Authority. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions) and to EPA Region 4, Financial Management Officer at Atlanta, Georgia.

11. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

12. Commencing upon the date that it acquires title to the property, State Ports Authority agrees to provide to EPA its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the State Ports Authority for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the State Ports Authority of the timing of response actions to be undertaken at the Property.

Notwithstanding any provision of this Agreement, EPA retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

13. Within 30 days after the effective date of this Agreement, the State Ports Authority shall record a certified copy of this Agreement with the Office of the Recorder of Deeds, Charleston County, State of South Carolina. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

14. The State Ports Authority shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. The State Ports Authority shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VI. DUE CARE/COOPERATION

15. The State Ports Authority shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations. The State Ports Authority recognizes that the implementation of response actions at the Site may interfere with the State Ports Authority's use of the Property, and may require closure of its operations or a part thereof. The State Ports Authority agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the State Ports Authority's operations by such entry and response. In the event the State Ports Authority becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, State Ports Authority shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

16. The State Ports Authority agrees to provide for proper

disposal of any wastes, debris, or other materials generated by the proposed railroad construction. The State Ports Authority agrees to provide such disposal within 90 days for any wastes so generated. No waste shall be stored in such a manner as to interfere with other activity at the Site, and no construction-generated debris or other waste materials shall be stored on-site for greater than 90 days. Under this Agreement, the State Ports Authority will prepare a waste disposal plan for the State of South Carolina Department of Health and Environmental Control (DHEC). South Carolina Ports Authority will only take action under this Agreement consistent with approval of plan and practices. EPA reserves the right to consult with DHEC regarding the plan, and to reject the plan if it is not in compliance with applicable Federal Law.

VII. CERTIFICATION

17. By entering into this Agreement, the State Ports Authority certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to State Ports Authority and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The State Ports Authority also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or

threat of release of hazardous substances or pollutants or contaminants at the Site. If information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

18. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants' not to sue or take any other civil or administrative action against State Ports Authority for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

19. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against State Ports Authority with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by State Ports Authority to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV

(Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by State Ports Authority, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

20. With respect to any claim or cause of action asserted by the United States, the State Ports Authority shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

21. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

22. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the State Ports Authority to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. State Ports Authority acknowledges that it is acquiring property where response actions may be required.

X. STATE PORTS AUTHORITY'S COVENANT NOT TO SUE

23. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the State Ports Authority hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims

based on EPA's oversight of such activities or approval of plans for such activities.

24. The State Ports Authority reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the State Ports Authority's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

25. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on the State Ports Authority its officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

26. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon State Ports Authority under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

27. The State Ports Authority agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for

consent to assign or transfer the Property.

28. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

29. Upon receiving in writing, consent to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement, EPA agrees to also grant all rights, benefits and obligations conferred upon State Ports Authority under this Agreement to the South Carolina Public Railways, a state of South Carolina Agency, that is responsible for the operation of the rail line serving the South Carolina Ports Authority facilities in Charleston.

XII. DISCLAIMER

30. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

31. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

32. If the State Ports Authority fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

33. All notices which are to be given pursuant to this Agreement shall be given:

If to EPA:

Kevin Beswick
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4,
345 Courtland St. N.E.
Atlanta, Georgia 30365

With a copy to:

Bernie Hayes
North Superfund Remedial Branch
U.S. Environmental Protection Agency, Region 4,
345 Courtland St. N.E.
Atlanta, Georgia 30365

If to State Ports Authority to:

South Carolina State Ports Authority
Attention: Director of Planning
P.O. Box 817
Charleston, South Carolina 29402

With a copy to:

Vaughan & Lawrence, P.A.,
23 Broad Street,
Charleston, South Carolina 29401,
Attention: William H. Vaughan, Jr., Esq.

XVI. EFFECTIVE DATE

34. The effective date of this Agreement shall be the date upon which South Carolina Ports Authority acquires title to the property, after EPA has issued written notice to the State Ports Authority that EPA has fully executed the Agreement after review of and response to any public comments received.

XVII. ATTORNEY GENERAL APPROVAL

35. The Attorney General of the United States or her designee has issued prior written approval of the settlement embodied in this Agreement.

XVIII. TERMINATION

36. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided, however, that the provisions in question shall continue in force unless and until the party requesting such termination receives written Agreement from the other party to terminate such provisions.

XIX. CONTRIBUTION PROTECTION

37. With regard to claims for contribution against State Ports Authority, the Parties hereto agree that the State Ports Authority is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement include all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

38. The State Ports Authority agrees that with respect to any suit or claim for contribution brought by it for matters

related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

39. The State Ports Authority also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 30 days of service of the complaint on them.

XX. EXHIBITS

40. Exhibit A shall mean the description and map of the Property which is the subject of this Agreement.

41. Exhibit B shall mean the map depicting the Site.

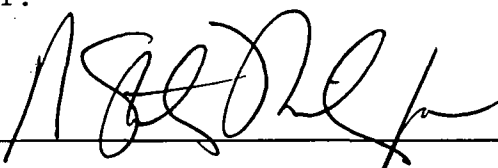
XXI. PUBLIC COMMENT

42. This Agreement has been entered into by the EPA subsequent to a thirty-day public comment period.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Regional Administrator, Region IV

5/9/96

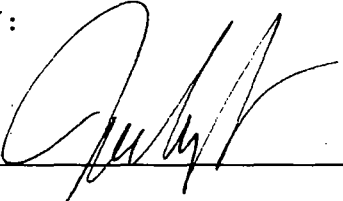
Date

IT IS SO AGREED:

IT IS SO AGREED:

SOUTH CAROLINA STATE PORTS AUTHORITY

BY:

A handwritten signature in black ink, appearing to be 'J. M. ...', written over a horizontal line.

5/8/96

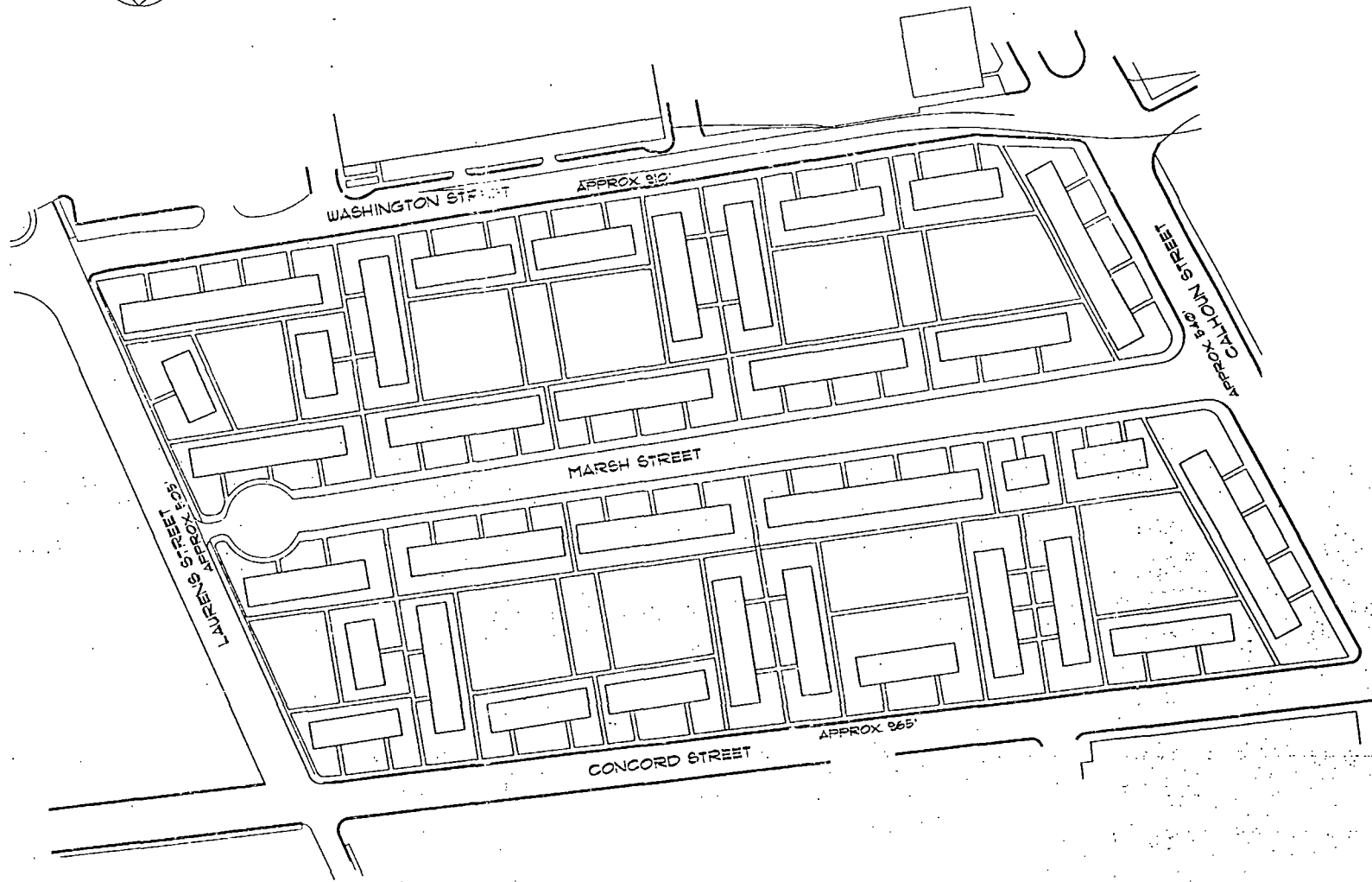
Name
ACTING
EXECUTIVE DIRECTOR

Date

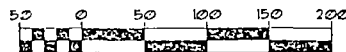
o

EXHIBIT A**Ansonborough Homes Site Description**

All that lot, piece, or parcel of land in the City and County of Charleston known as Ansonborough Homes containing approximately 10.5 acres and butting and bounding: North approximately 540 feet on Calhoun Street, East approximately 965 feet on Concord Street, South approximately 505 feet on Laurens Street, and West approximately 910 feet on Washington Street, saving and excepting therefrom Marsh Street between Calhoun and Laurens Street, all as shown on the attached 1996 drawing of the South Carolina State Ports Authority entitled "Ansonborough Homes Site".



SITE PLAN



SCALE IN FEET

LIPANSONS		NO.	DESCRIPTION	DATE	APP'D. BY
		REVISIONS			
SOUTH CAROLINA STATE PORTS AUTHORITY					
DRAWN BY:	WF	ANSONBOROUGH HOMES SITE			DATE: 27 MAR 96
CHECKED BY:	RWB	LOCATED IN CHARLESTON, S.C.			SHEET NO.:
APPROVED BY:	RWB	PROJECT NO.:	N/A	SCALE:	REVISION NO.:
				GRAPHIC	

related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

39. The State Ports Authority also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 30 days of service of the complaint on them.

XX. EXHIBITS

40. Exhibit A shall mean the description and map of the Property which is the subject of this Agreement.

41. Exhibit B shall mean the map depicting the Site.

XXI. PUBLIC COMMENT

42. This Agreement has been entered into by the EPA subsequent to a thirty-day public comment period.

K/B

Beswick

Hayes
4/24

Hayes

RL

Leahy

Rogers
4/24

Rogers

Pa 4/23

Harris

Jourdan

Jourdan

JK
Kutzman
Green

JK for
Green

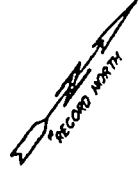
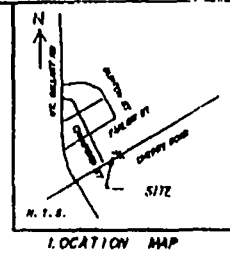
EXHIBIT A

Ansonborough Homes Site Description

All that lot, piece, or parcel of land in the City and County of Charleston known as Ansonborough Homes containing approximately 10.5 acres and butting and bounding: North approximately 540 feet on Calhoun Street, East approximately 965 feet on Concord Street, South approximately 505 feet on Laurens Street, and West approximately 910 feet on Washington Street, saving and excepting therefrom Marsh Street between Calhoun and Laurens Street, all as shown on the attached 1996 drawing of the South Carolina State Ports Authority entitled "Ansonborough Homes Site".

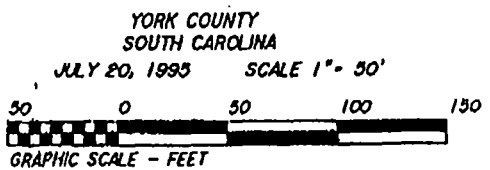
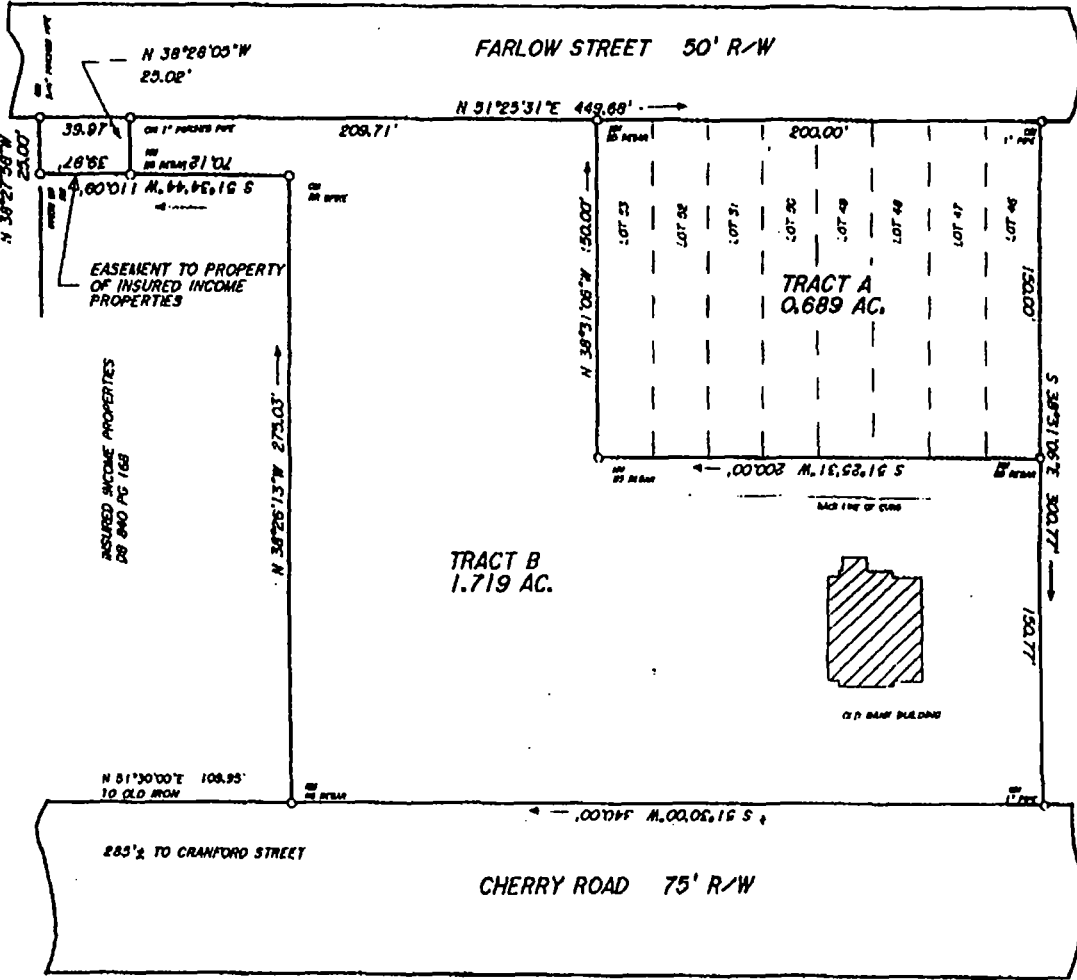
I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN, THE PROPERTY DOES NOT LIE WITHIN A FLOOD PLAIN.

William C. White Jr.
 WILLIAM C. WHITE JR. P. L. S. #11077



OM - OLD MONUMENT
 NM - NEW MONUMENT WITH ID CAP

TRACT A SHOWN AS LOTS 46-53 IN BLOCK B ON PLAT OF CRAWFORD PARK SUBD. TRACT B SHOWN AS LOTS 13-25 AND A PORTION OF LOTS 59-63 AND LOT 12 ON MAP OF CRAWFORD PARK SUBD. RECORDED IN PLAT BOOK 5 PAGE 2.



WHITE LAND SURVEYING
 P. O. BOX 685
 421 E. BLACK STREET
 ROCK HILL S. C. 29731
 (803) 387-3738

58017