
AGENCY: Division of General Services

SUBJECT: State Ports Authority Conveyance of 317.51± Acres in Port Royal to Port Royal Redevelopment Group, LLC

The SC Code of Laws Section 54-3-700 requires certain actions concerning the State Ports Authority (SPA) and its marine terminal at Port Royal consisting of 51.6 acres of highland and 265 acres of marshlands. In addition to the cessation of marine operations, the statute directs the SPA to sell its real and personal property in Port Royal in a “manner that is financially responsible and advantageous to the State Ports Authority.” Since the property was not sold by December 31, 2009, the property was transferred to the Budget and Control Board (B&CB) for sale. The B&CB is vested with all of the SPA’s fiduciary duties to the SPA and SPA bondholders. The sale proceeds are to be retained by the SPA unless, upon petition by the Town of Port Royal, the B&CB allocates up to five percent of the funds to pay for infrastructure needs directly associated with and necessitated by the closing and sale of the terminal. At its meeting on December 15, 2009, the B&CB authorized the SPA and its staff to serve as agents of the B&CB and to work with the Division of General Services to continue the effort to market the Port Royal property, effective December 31, 2009.

The properties were put out for bid by the SPA in 2007 and one bidder met the minimum criteria. A contract was negotiated, approved by the B&CB and executed by the SPA; however a closing of the sale failed to occur. In March 2008, following the failed sale, the property was placed with NAI Avant to market and sell. Since that time, NAI Avant’s national marketing efforts have resulted in two negotiated contracts. The first contract was approved by the B&CB at its September 29, 2010 meeting, but ultimately failed to close. The present contract negotiated with the SPA is with Port Royal Redevelopment Group, LLC (Buyer), a South Carolina limited liability company. Buyer’s lender has issued a loan commitment letter to Buyer for the purchase of the property, and the SPA is satisfied that Buyer is a qualified purchaser financially able to complete the purchase.

The contract with Buyer is for the sale of approximately 51.44 acres of highland and approximately 265.91 acres of marshlands for a price of \$17,000,000 to be paid in full at closing. The remaining 0.16 acre consists of an outparcel on which a title defect was discovered and the SPA is trying to obtain clear title. If the SPA obtains clear title, the outparcel will also be conveyed to Buyer as part of the consideration to be paid under the contract. The closing on the remaining property will proceed, however, should the SPA become unable to obtain clear title to the outparcel. If the SPA cannot transfer clear title to the outparcel within ninety days following the closing on the majority of the property, Buyer will be refunded a sum of \$50,000.

Buyer has deposited \$50,000 earnest money, and an additional \$150,000 will be deposited if the approval to sell the property under the terms of the current contract is granted by the Budget and Control Board. The earnest money is refundable to Buyer if the property is deemed not suitable

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at Buyer's discretion during a ninety (90) day inspection period following the approval of the B&CB and execution of the contract by the SPA and Buyer. Buyer may extend the inspection period thirty (30) days for an additional sum of \$75,000. The earnest money is non-refundable after the inspection period and will be applied towards the total purchase price.

A commission of 2.5% of the sales price (\$425,000) will be paid by the SPA to NAI Avant at closing. Buyer has committed to include a 9.8 acre waterfront park on the property as part of its redevelopment plan. The State Ports Authority Board approved the contract for sale at its July 19, 2011 meeting and requests the approval of the Budget and Control Board.

By Summons and Complaint served on July 6, 2010, the SPA initiated an action against the State seeking a declaratory judgment from the court that the SPA has the sole power to transfer the marshlands to a private party as a part of the sale of the property under the previous failed contract and "...declaring that the State is forever barred from any claim to ownership of the marshlands and declaring that any clouds on the marshlands associated with any claim of right of the State to ownership of the marshlands is forever removed. The SPA stopped actively pursuing the litigation when the contract fell through. Under the current contract, the SPA will convey the marshlands by quitclaim deed only, conveying all interest the SPA has, if any, in the marshlands.

After the closing on the property takes place with Buyer, the SPA will request that the litigation be dismissed.

BOARD ACTION REQUESTED:

Consider the request of the State Ports Authority to approve the contract for sale between the State Ports Authority and Port Royal Redevelopment Group, LLC for the sale of 317.51± acres in Port Royal for \$17,000,000.

ATTACHMENTS:

Agenda item worksheet; Letter from the State Ports Authority dated July 27, 2011; Resolution Authorizing Sale of Real Property from South Carolina State Ports Authority Board dated July 19, 2011; Maps; SC Code of Laws Section 54-3-700

BUDGET AND CONTROL BOARD AGENDA ITEM WORKSHEET

Meeting Scheduled for: August 9, 2011

Regular Agenda

1. Submitted by:

- (a) Agency: Division of General Services
- (b) Authorized Official Signature:


Carla Griffin, Deputy Director

- 2. Subject:** State Ports Authority Conveyance of 317.51± Acres in Port Royal to Port Royal Redevelopment Group, LLC
-

3. Summary Background Information:

The SC Code of Laws Section 54-3-700 requires certain actions concerning the State Ports Authority (SPA) and its marine terminal at Port Royal consisting of 51.6 acres of highland and 265 acres of marshlands. In addition to the cessation of marine operations, the statute directs the SPA to sell its real and personal property in Port Royal in a “manner that is financially responsible and advantageous to the State Ports Authority.” Since the property was not sold by December 31, 2009, the property was transferred to the Budget and Control Board (B&CB) for sale. The B&CB is vested with all of the SPA’s fiduciary duties to the SPA and SPA bondholders. The sale proceeds are to be retained by the SPA unless, upon petition by the Town of Port Royal, the B&CB allocates up to five percent of the funds to pay for infrastructure needs directly associated with and necessitated by the closing and sale of the terminal. At its meeting on December 15, 2009, the B&CB authorized the SPA and its staff to serve as agents of the B&CB and to work with the Division of General Services to continue the effort to market the Port Royal property, effective December 31, 2009.

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inspection period and will be applied towards the total purchase price.

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4. What is the Board asked to do? Approve the contract for sale between the State Ports Authority and Port Royal Redevelopment Group, LLC for the sale of 317.51± acres in Port Royal for \$17,000,000.

5. What is recommendation of the Division of General Services? Consider the request of the State Ports Authority to approve the contract for sale between the State Ports Authority and Port Royal Redevelopment Group, LLC for the sale of 317.51± acres in Port Royal for \$17,000,000.

6. Supporting Documents:

- (a) Letter from the State Ports Authority dated July 27, 2011
- (b) Resolution Authorizing Sale of Real Property from South Carolina State Ports Authority Board dated July 19, 2011
- (b) Maps
- (c) SC Code of Laws Section 54-3-700

South Carolina State **PORTS AUTHORITY**

Joseph H. Farrell, III
Assistant Legal Counsel

P.O. Box 22187
CHARLESTON, S.C. 29413-2287 USA
(843) 577-8765
FAX: (843) 577-8138

July 27, 2011

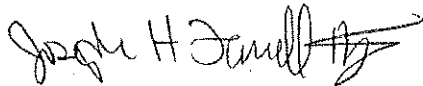
Ms. Eleanor Kitzman
Executive Director
S.C. Budget and Control Board
P.O. Box 12444
Columbia, SC 29211

RE: Sale of South Carolina State Ports Authority Property

Dear Ms. Kitzman,

Pursuant to S.C. Code Ann. §54-3-700 (1976, as amended), the South Carolina State Ports Authority ("SCSPA") respectfully requests State Budget and Control Board approval of the sale of SCSPA's Port Royal property for the price of Seventeen Million and 00/100 Dollars (\$17,000,000.00) as reflected in the attached "Resolution Authorizing Sale of Real Property (Port Royal Property)" adopted by the SCSPA's Board of Directors on July 19, 2011.

Yours very truly,



Joseph H. Farrell, III

JHF/mlh

Attachment

Cc: Neil Robinson, Jr., Esquire

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RESOLUTION AUTHORIZING SALE OF REAL PROPERTY
(PORT ROYAL PROPERTY)

WHEREAS, the South Carolina State Ports Authority is created as an instrumentality of the State for the accomplishment of its purposes, which include development and improvement of the harbors and seaports of Charleston, Georgetown and Port Royal 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 may 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 the provisions of 1942 Act 626 of the General Assembly, all or any of them; and

WHEREAS, Seller is the owner of certain real property in the Town of Port Royal, South Carolina, known generally as the Port Royal Property, and further described as approximately 51.6 Acres of highland and approximately 265 Acres of marsh at or near the South Carolina State Ports Authority Terminal, South of Ribaut Road, in the Town of Port Royal, and as particularly generally shown on a certain Plat prepared by Thomas and Hutton Engineering Co., dated December 20, 2006; and

WHEREAS, in 2004, the South Carolina General Assembly enacted 2004 Act No. 313, and as amended in 2009 Act No. 73, as codified in South Carolina Code of Laws Section 54-3-700, in which it was determined that operation of the marine terminal in Port Royal should cease,

and which directed the Authority to sell its property in Port Royal in a manner that is financially responsible and advantageous to the State Ports Authority; and

WHEREAS, the said property is no longer required for operation of the Authority port facilities; and

WHEREAS, the market value of the said property was recently determined by an appraisal obtained by the Authority on or about March 31, 2011, and prepared by a competent appraiser appointed by the Authority, who is further qualified as a State Certified General Real Estate Appraiser, and a Member of the Appraisal Institute (MAI), and who is knowledgeable in appraisal and in appraising marine terminal facilities; and

WHEREAS, in June 2007, the Authority issued a public solicitation for offers to purchase the said property, as is and where is, which solicitation has continued into calendar year 2011; and

WHEREAS, in response to the Authority's solicitation for offers, a proposed buyer has offered and agreed to pay to the Authority the sum of Seventeen Million and no/100 Dollars (\$17,000,000.00) for purchase of said real property, as is and where is, and has submitted and offered a written contract for the purchase and sale of said property for the price stated; and

WHEREAS, pursuant to South Carolina Code of Laws, 1976, as amended, Section 54-3-700, the sale of the Port Royal property under the proposed contract to purchase property must be duly approved by the South Carolina State Budget and Control Board; and

WHEREAS, on November 13, 1991, the South Carolina State Ports Authority (the "SPA") adopted a resolution entitled "A RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND SECURING OF SOUTH CAROLINA STATE PORTS AUTHORITY REVENUE BONDS, AND OTHER MATTERS RELATING THERETO (the "Bond Resolution"); and

WHEREAS, Article XI of the Bond Resolution imposes certain limitations upon the sale or disposal of the Port Facilities (as defined in the Bond Resolution); and

WHEREAS, Article XI of the Bond Resolution imposes specific requirements which must be met prior to the sale or other disposition of Real Property (as defined in the Bond Resolution); and

WHEREAS, the Authority issued certain Revenue Bonds which are still outstanding, none of which have any Event of Default, and whereby under the Revenue Bond Resolutions the Authority may sell or dispose of real property or rights in property upon the adoption of this resolution; and

WHEREAS, the Authority Board finds as follows:

- (1) The property to be sold is described as:

Approximately 51.6 Acres of highland and approximately 265 Acres of marsh at or near the South Carolina State Ports Authority Terminal, South of Ribaut Road, in the Town of Port Royal, and as shown on a certain Plat prepared by Thomas and Hutton Engineering Co., dated December 20, 2006; and
- (2) The Authority has determined the book value of the property, which is less than the appraised value of said property;
- (3) The Authority has determined the current market value of the property by competent appraiser appointed by the Authority;
- (4) The Authority has received an offer and a proposed contract to purchase the property for the sum of Seventeen Million and no/100 Dollars (\$17,000,000.00), which the Authority has determined is at or above the appraised value of the property;

NOW, THEREFORE, BE IT RESOLVED by the South Carolina State Ports Authority in meeting duly assembled:

1. The sale of the property pursuant to the proposed contract to purchase the property for the price of Seventeen Million and no/100 Dollars (\$17,000,000.00) is hereby approved, subject to review and approval by the State Budget and Control Board in accordance with law; and

2. The President and Chief Executive Officer and the Chief Financial Officer of the Authority, upon prior approval of sale by the State Budget and Control Board, are authorized to take all actions and to prepare and execute all contracts and documents necessary to sell the property for the sum of Seventeen Million and no/100Dollars (\$17,000,000.00) Dollars, and the President and Chief Executive Officer and Chief Financial Officer are further authorized to sign and deliver a deed or deeds for the above described property in consideration of payment of Seventeen Million and no/100 Dollars (\$17,000,000.00), pursuant to the terms of said proposed contract to purchase the property.

Adopted at the regular meeting of the South Carolina State Ports Authority held July 19, 2011.

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

SOUTH CAROLINA STATE PORTS AUTHORITY

By: William H. Stern

William H. Stern, Chairman

TO DOCKSIDE VILLAGE

WATERFRONT PARK

CONNECT TO COMMERCIAL NATURAL VIEW TO WATER FROM PARIS AVE VIEW TO WATER FROM SANDS BEACH ROAD

PARIS AVE

LONDON AVE

HARBOUR MASTER COTTAGE PARK
CREATION OF PARK AND TO GREATLY ENHANCE VIEW TO HOOK LANE AVENUE TO DISTANT STERLING SHED

EAST SIDE BLIND

EAST SIDE STORAGE SHED

EAST SIDE STORAGE SHED

9.8 AC. PARK

IMPROVE SIGHTS AND VIEWS TO EXISTING BUILDING

WATERFRONT COMMERCIAL VILLAGE

ADAPT OFFICE SPACE BUILDINGS FURNISH HARVEST DATE PARK SPACE VARIATIONS IN BUILDINGS
HARRIS RAY CONSULTING INC TO BOARDWALK

IMPROVE TRAIL AND VIEWS TO SANDS BEACH ROAD
ADAPT OFFICE SPACE VARIATIONS IN BUILDINGS

BATTER CREEK

MARINA VILLAGE & TOWN PARK

PORT ROYAL PORT REDEVELOPMENT
JULY 2011

STREETSCAPE

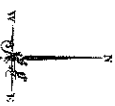
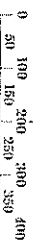
IMPROVE STREETSCAPE AND VIEWS TO WATERFRONT PARK AND SANDS BEACH ROAD
IMPROVE STREETSCAPE AND VIEWS TO WATERFRONT PARK AND SANDS BEACH ROAD

MUNICIPAL PARK

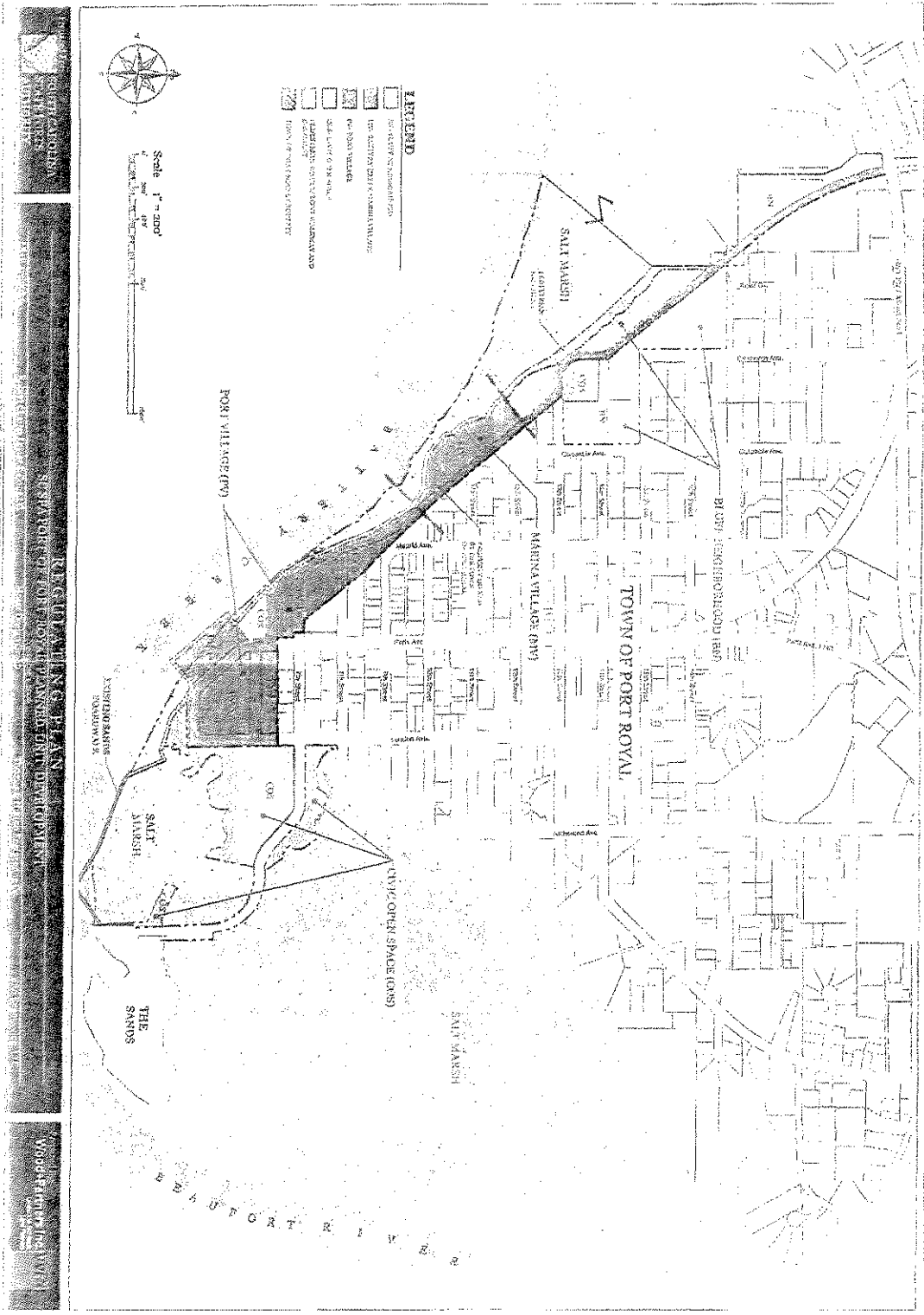
IMPROVE VIEWS TO WATERFRONT PARK AND SANDS BEACH ROAD
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IMPROVE VIEWS TO WATERFRONT PARK AND SANDS BEACH ROAD

SANDS BEACH



Wilmer, Jones, Hooper
The Ltd. of
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SECTION 54-3-700. Cessation of marine terminal operations at Port Royal; sale of property.

(A) Upon the effective date of this section:

(1) the State Ports Authority has no statutory responsibility to operate a marine terminal at Port Royal; and

(2) marine operations at Port Royal shall cease as soon as practicable.

(B) The State Ports Authority is hereby directed to sell all its real and personal property at Port Royal upon the effective date of this section, but in a manner that is financially responsible and advantageous to the State Ports Authority.

(C)(1) The State Ports Authority, in its discretion, shall determine the manner of the sale, but in no event shall terms of the sale extend beyond December 31, 2009, except for parcels under long-term contract, in which case the South Carolina Ports Authority is directed to terminate these leases as soon as possible through "lease purchases", "buy outs", or other lawful means.

(2) The property must be transferred to the State Budget and Control Board for sale if the authority is unable to complete the sale by December 31, 2009. The State Budget and Control Board is vested with all of the board's fiduciary duties to the authority and the authority's bondholders if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner. The State Budget and Control Board may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority.

(D) Any real or personal property at Port Royal which is to be sold must be first appraised and then sold at fair market value. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising marine terminal facilities. The appraisal of the real property should include its future development opportunities and those of the surrounding properties. The State Ports Authority Board of Directors shall exercise its lawful discretion in the acceptance of any sales price with due regard to its fiduciary duties to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including conversion of a nonperforming asset into revenue in the most expeditious manner. The sale of the real property shall comply with all state procedures, must be approved by the State Budget and Control Board, and must be on an open-bid basis, and no bid may be accepted which is less than the property's fair market value as shown by the appraisal. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority; except that the Town of Port Royal may petition the State Budget and Control Board for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port at Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Budget and Control Board, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract.