



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

November 5, 2015

Lt. Col. Matthew Luzzato
Commander and District Engineer,
Charleston District, U.S. Army Corps of Engineers
69-A Hagood Avenue
Charleston, SC 29403

Mr. Nathaniel I. Ball
Charleston District, Corps of Engineers
69A Hagood Avenue
Charleston, SC 29403-5107

Re: P/N# SAC-2003-13026
Union Pier Cruise Terminal Consulting Party Comments | Area of Potential Effect

Dear Lt. Col. Luzzatto and Mr. Ball:

Thank you for granting the request of the National Trust for Historic Preservation¹ to participate as a consulting party pursuant to the National Historic Preservation Act. We look forward to working with you during the Army Corps' review of the South Carolina State Port Authority's application to build a new cruise ship terminal next to Charleston's Historic Landmark District, among other historic resources. We applaud your decision to seek public input on these issues, too.

For the following reasons, and in addition to the comments submitted by Historic Charleston Foundation, Preservation Society of Charleston, and South Carolina Coastal Conservation League—which we incorporate herein by reference—the Army Corps should deny the permit, or prepare an environmental impact statement assessing effective permit conditions and alternatives that would require the permit applicant to find ways to avoid, minimize, and mitigate harm to historic resources.

¹ The National Trust is a federally chartered nonprofit organization established by Congress in 1949 to further the historic preservation policies of the United States and to “facilitate public participation” in the preservation of our nation’s heritage. 54 U.S.C. § 312102. In addition, Congress has designated the Chairman of the National Trust as a member of the President’s Advisory Council on Historic Preservation, which is responsible for overseeing federal agency compliance with Section 106 of the National Historic Preservation Act. *Id.* § 304101(a)(8). The mission of the National Trust is to provide leadership, education, and advocacy to save America’s diverse historic places and revitalize our communities.

Although the Army Corps has not yet made any proposed determinations regarding the Area of Potential Effects (APE) for the permit, the following comments and documentation will assist the Corps' review of the proposed cruise terminal project. As you are aware, adverse effects on the character and use of adjacent historic properties and districts by cruise ships in Charleston are well documented.²

² See, e.g., Linda NOWLAN & INES KWAN, *CRUISE CONTROL: REGULATING CRUISE SHIP POLLUTION ON THE PACIFIC COAST OF CANADA* (2001), available at http://dec.alaska.gov/water/cruise_ships/pdfs/wcelcuiserep.pdf; OCEANA, *CONTAMINATION BY CRUISE SHIPS* (June 2004), available at <http://oceana.org/en/eu/media-reports/publications/reports/contamination-by-cruise-ships>; ROSS A. KLEIN, *CRUISE SHIP BLUES: THE UNDERSIDE OF THE CRUISE INDUSTRY* (2002); WORLD TOURISM ORGANIZATION, *WORLDWIDE CRUISE SHIP ACTIVITY* (2003). Law reviews and journals highlight cruise impacts, too. See, e.g., David Johnson, *Environmentally Sustainable Cruise Tourism: A Reality Check*, 26 *MARINE POL'Y* 261 (2002); John G.C. Kester, *Cruise Tourism*, 9 *TOURISM ECON.* 337, 337-40 (2002); Robert J. Kwortnik, *Carnival Cruise Lines: Burnishing the Brand*, 47 *CORNELL Q.* 286, 288 (2006); Katharine Mapes, *Expanding Ecotourism: Embedding Environmental Sustainability in Panama's Burgeoning Tourist Industry*, 33 *HARV. ENVTL. L. REV.* 225 (2009); Samantha S. Marrin, Note, *Rough Seas Ahead for Alaska Cruises? The Judicial and Legislative Battle over Glacier Bay*, 13 *FORDHAM ENVTL. L.J.* 323 (Spring 2002); Constantine G. Papavizas & Lawrence I. Kiern, *U.S. Maritime Legislative Developments*, 34 *J. MAR. L. & COM.* 451 (2003); Andrew Schulkin, *Safe Harbors: Crafting an International Solution to Cruise Ship Pollution*, 15 *GEO. INT'L ENVTL. L. REV.* 105 (2002); Angela Williams, *RECONCILING TOURISM AND THE ENVIRONMENT: A TASK FOR INTERNATIONAL ENVIRONMENTAL LAW*, 9 *VT. J. ENVTL. L.* 23 (Fall 2007). And see the popular press: *Adopt stronger cruise ordinance*, *POST & COURIER*, Sept. 11, 2011, available at <http://www.postandcourier.com/article/20110911/ARCHIVES/309119974>; *Ahoy there, Carnival*, *POST & COURIER*, Mar. 14, 2012, available at: <http://www.postandcourier.com/article/20120314/ARCHIVES/303149964>; Associated Press, *Cayman Islands Bans Cruise Ships from Port to Protect Coral*, May 1, 2007, available at: http://www.usatoday.com/travel/news/2007-05-01-cayman-islands-cruise_N.htm; Associated Press, *Judge Orders Fewer Ships in Glacier Bay*, Aug. 6, 2001, available at http://www.abpnews.com/newscenter/breakingnews/2001/09/01/story_fewer_ships_inglacier_bay.html; Robert Behre, *Cruise foes, port in power struggle: Shore-side electricity conflict raises pollution, cost issues*, *POST & COURIER*, Sept. 12, 2011, available at <http://www.postandcourier.com/article/20110912/PC1602/309129932>; Robert Behre, *Historic District on new watch list*, *POST & COURIER*, Oct. 6, 2011, available at <http://www.postandcourier.com/article/20111006/PC1602/310069904>; Marco Bertacche, *Italy Urged to Curb Cruise Ship Routes After Accident*, *BLOOMBERG NEWS*, Jan. 24, 2012, available at <http://www.bloomberg.com/news/2012-01-24/italy-urged-to-curb-cruise-ship-routes-after-accident.html>; Alfred Borcover, *Cruise Ships Mixed Blessing for Alaskan Towns*, *CHI. TRIB.*, Sept. 16, 2001, at C6; Costas Christ, *Shore is a shame: more cruise lines go green at sea, but will they commit to acting responsibly on land?*; *Tales From The Frontier*, *NATIONAL GEOGRAPHIC TRAVELER*, Oct. 1, 2011, at p.20(2), Vol. 28, No. 7; *Cruise industry yields mixed results for local restaurants*, *CBS Live 5 News | WCSC*, Feb. 20, 2012, available at <http://www.live5news.com/story/16975783/restaurant-owners; Cruise Ship Smoke Called Illegal; Thirteen Ships had Clean Air Act Violations in the Waters of Alaska Last Summer>, *ORLANDO SENTINEL*, March 2, 2000, at A13; *Cruise ship visits pose dilemma for Charleston*, *CBS News*, Aug. 18, 2011,

available at
<http://www.cbsnews.com/stories/2011/08/18/earlyshow/main20093969.shtml?tag=contentMain%3BcontentBody>; Paula Dobbyn, *Court Rules Cut in Glacier Bay Cruises*, ANCHORAGE DAILY NEWS, Feb. 24, 2001, available at http://www.earthland.org/bw/adn2_24.shtml; Tom Eckert, *Treasure Island Revisited, Plot This Time Has Big Government, Big Business and Big Ships Threatening Precious Coral Reefs*, TORONTO STAR, Feb. 22, 1997, at A6; Peter Finrite, *EPA bans ships from dumping waste off state coast*, SAN FRANCISCO CHRONICLE, Feb. 10, 2012, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=%2Fc%2Fa%2F2012%2F02%2F10%2FMN2J1N5AAP.DTL>; Doug Frantz, *Sovereign Islands—A Question of Regulation: Alaskans Choose Sides in Battle Over Cruise Ships*, N.Y. TIMES, Nov. 29, 1999, at A1; Kristin Jackson, *Cruises get mixed reviews in Alaska; Group aims to toughen environmental rules - Record number of ship visits expected in Seattle*, SEATTLE TIMES, Jan. 30, 2005, at L1; Marika Lynch, *Popular Port Says No More: Key West Votes Against Plan to Accommodate More Cruise Ships*, MIAMI HERALD, Jan. 17, 1999, at 6B; Sara Macefield, *Sustainable Tourism Development: Cruise lines under fire*, TRAVEL TRADE GAZETTE UK & IRELAND, May 21, 2010, at p.14; Edwin McDowell, *Key West Debates Impact of Cruise Ships*, N.Y. TIMES, July 20, 2003, at Sec. 5, Col. 1, Travel Desk, p.3; Mike Melia, *Caribbean a Dumping Ground for Garbage from Cruise Ships*, L.A. TIMES, Mar. 01, 2009, available at: <http://articles.latimes.com/2009/mar/01/news/adfg-cruise-dumpig1>; Veronica Melelli, *Venetians Sour Over Cruise Ship Invasion*, EPOCH TIMES, Mar. 9, 2012, available at: <http://www.theepochtimes.com/n2/world/venetians-sour-over-cruise-ship-invasion-202568.html>; Molly Moore, *Cozumel Pier Debate: Cruise Ships or Coral?*, SEATTLE TIMES, June 2, 1996, at K8; Paul Motter, *A Look at Charleston's Cruise Ship Controversy*, Foxnews.com, Nov. 1, 2011, available at <http://www.foxnews.com/travel/2011/11/01/cruise-ships-charleston/>; Anthony Paletta, *How Charleston Is Handling the Cruise Ship "Threat,"* WALL ST. J., Aug. 6, 2011, available at: <http://online.wsj.com/article/SB10001424053111903454504576486303965790900.html>; Polly Pattullo, *Trouble in Paradise; 20,000 Worlds Under the Sea; The Negative Effects of Tourism on the Caribbean Ecosystem*, UNESCO COURIER, July 1, 1998, at p.49(1); Elisabetta Povoledo, *Venice Tourist Ships Rattle Windows and Nerves*, N.Y. TIMES, May 14, 2011, available at: <http://www.nytimes.com/2011/05/15/world/europe/15venice.html>; Federico Quilodran & Richard Jacobsen, *Boom in Antarctic tourism raises concerns*, SEATTLE TIMES, Nov. 27, 2007, at A12; *Report on cruise industry impacts should open the city's eyes*, POST & COURIER, Feb. 9, 2012, available at <http://www.postandcourier.com/article/20120209/ARCHIVES/302099887>; *Rockefeller calls for taxing cruise lines to fund cleanups*, ENERGY & ENV'T DAILY (Mar. 2, 2012); Shurna Robbins, *Loss of Coral Could Harm Tourism*, GLOBE AND MAIL (Canada), May 9, 2007, at R15; Keith Schneider, *Historic City at Odds With Its Popularity as Cruise Port*, N.Y. TIMES, Apr. 19, 2011, available at: <http://www.nytimes.com/2011/04/20/realestate/commercial/20charleston.html?pagewanted=all>; Keith Schneider, *Alaska Cruise-Ship Plan Stirs Environmentalists*, N.Y. TIMES, Mar. 19, 1995, at D3; Tina Susman, *Charleston, S.C., lands on a list of endangered sites—again*, LOS ANGELES TIMES BLOG, Oct. 7, 2011, available at <http://latimesblogs.latimes.com/nationnow/2011/10/preservation-group-puts-charleston-sc-on-list-of-endangered-sites.html>; Mark Townsend, *Cruise Ships Must Clean Up Their Act*, OBSERVER, Mar. 28, 2004, available at <http://www.guardian.co.uk/travel/2004/mar/28/travelnews.boatingholidays>; *Why not shore-side*

Moreover, Section 110 of the National Historic Preservation Act requires the Army Corps' to consider all prudent and feasible alternatives, to the maximum extent possible, to avoid an adverse impact on a National Historic Landmark. To this extent, the Army Corps' National Historic Preservation Act duties are heightened. The public record is full of information about new and expanded uses not previously permitted at the proposed terminal, which new pilings are needed to support. The reasonably foreseeable indirect and cumulative effects of the permitted project will include soot, aesthetic blight, noise, and traffic congestion—harmful effects involving changes to historic character and use that expanded cruise ship operations, made possible by the new pier pilings, will exacerbate. To this end, the Advisory Council on Historic Preservation, the nation's leading independent federal agency charged with protecting historic resources, and which advises the President and Congress on historic preservation policy, has expressed concern to the Army Corps about the SPA's permit application on at least two occasions.

As you are already aware, historic property owners in the area surrounding Union Pier have serious concerns about how the SPA's proposed project would affect the use, character, value, and enjoyment of their property. Charleston is one of this nation's most historic cities, with one of the most intact inventories of National Register-listed and National Historic Landmark districts and properties. These historic resources are immediately adjacent to the proposed cruise terminal and are clearly within the project's APE, which extends beyond peninsular Charleston as our visualizations prove. Our *amicus curiae* briefs submitted to the Supreme Court of South Carolina and U.S. District Court for the District of South Carolina, Charleston Division, describe these adverse effects and explained their causal connection to the proposed additional pier pilings in detail.³ The National Trust previously addressed the same concerns in its May 21, 2012, and September 23, 2015, correspondence to the Army Corps.

In addition, the National Trust has formally recognized the endangerment to Charleston's historic resources arising from unregulated cruise ships by placing Charleston on "Watch Status" on the National Trust's 2011 List of America's Most Endangered Places, and by recognizing Historic

power?, POST & COURIER, Mar. 8, 2012, available at <http://www.postandcourier.com/article/20120308/ARCHIVES/303089917>; Carol J. Williams, *Pier Pressure*, SEATTLE TIMES, Jan. 31, 2003, at A3.

³ These briefs were filed in support of a lawsuit brought by the Historic Ansonborough Neighborhood Association, Charlestowne Neighborhood Association, Coastal Conservation League, and Preservation Society of Charleston to address ways to avoid, minimize, and mitigate harmful cruise ship impacts to the residents and property within Charleston's historic districts. See *Carnival Corp. d/b/a Carnival Cruise Lines v. Historic Ansonborough Neighborhood Ass'n*, No. 11-CP-10-4139 (Chas. Co., S.C. Cir. Ct., filed June 13, 2011), *cert. granted*, (S.C. Jan. 17, 2012) (granting petition to exercise original jurisdiction). On May 23, 2012, the Supreme Court of South Carolina appointed a special referee to hold a hearing and make recommendations to the court on issues related to pending motions to dismiss.

Charleston as a National Treasure.⁴ The World Monuments Fund followed suit by listing Charleston to its annual list in 2012.⁵ The World Monuments Fund also helped to organize, along with the National Trust and Preservation Society of Charleston, and in cooperation with the International Council on Monuments and Sites (ICOMOS), the Center for Responsible Travel, and the Coastal Conservation League, an international symposium in Charleston held February 6-8, 2013. A copy of *Harboring Tourism: Cruise Ships in Historic Port Communities*—the published report from the conference—is available at http://www.wmf.org/sites/default/files/wmf_publication/Charleston-Report.pdf. This report, which we provided to the Army Corps during the October 22, 2015, consultation meeting, details the adverse effects of unregulated cruise ship tourism in historic port cities. The report makes clear that any argument in favor of a “no effect” determination, such as the one asserted by the SPA, is wrong.

We would also emphasize, as our preliminary GIS mapping and attached data visualizations show, that the Area of Potential Effects (APE)—the geographic area or areas within which an undertaking may directly or indirectly cause changes in the *character or use* of historic properties (36 C.F.R. § 800.4(a)(1))—extends well beyond the pier and cruise ship terminal that the State Ports Authority intends to build because of the massive size and frequency of the cruise ships that will dock, load, and unload thousands of passengers there. They also show visual impacts to and from the Fort Sumter National Historic Landmark and National Register-listed Castle Pinckney, and disrupt their visual connection to and from the Charleston National Historic Landmark District, thus affecting how these historic landmarks are perceived. For this reason, the APE extends beyond the property owned by the State Ports Authority and the Charleston peninsula. In demonstration of these effects, a copy of a representative data visualization video prepared by the National Trust was shared with the Army Corps during our meeting on October 22, 2015, consulting parties meeting. It is also available here at <https://youtu.be/0IDNerZFTQY> (“National Trust APE video”). As noted in the video, various cruise ship graphics are drawn to scale and integrated within the Charleston landscape using state-of-the-art GIS mapping technology.

As outlined above and which the attached images and the National Trust APE video makes clear, adverse effects that change the character and use of the Charleston Historic Landmark district—including visual impacts—are experienced not only within Charleston’s historic districts and by those who own or live in properties therein, but also by people who live or reside in other areas of Charleston. Their ability to appreciate Charleston’s landscape and skyline is compromised from a variety of vantage points all over the city. The Army Corps should also note that views of the Charleston National Historic Landmark District are compromised looking to and from Fort Sumter National Historic Landmark or the National Register-listed Castle Pinckney, or from areas in or near the Town of Mt. Pleasant that face Charleston’s historic peninsula.

⁴ See <http://www.preservationnation.org/issues/11-most-endangered/locations/watch-status-charleston-1.html> (Watch List) and <http://www.savingplaces.org/treasures/charleston> (National Treasure).

⁵ See <http://www.wmf.org/project/charleston-historic-district> (WMF Watch List).

Related—and diminished—experiences of Charleston’s historic character, setting, and context are available from any one of Charleston’s numerous public rooftops, upper-level stories of National Register-listed buildings like the People’s Building or Francis Marion Hotel, and even from the balconies of Charleston’s many church steeples or when viewing the historic peninsula from Charleston’s bridges. As stated previously, the Army Corps’ duty to protect Charleston’s National Historic Landmark district is even greater, requiring the Corps to “minimize harm” to the “maximum extent possible.” 54 U.S.C. § 306107.

In summary, the evidence is clear: cruise ships have significant adverse impacts on the environments in which they operate. *See, e.g., National Parks Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730-33 (9th Cir. 2001) (detailing harmful wildlife effects of cruise ships and violations of state air quality standards, concluding that “Glacier Bay is too precious an ecosystem . . . to ignore significant risks [by cruise ships] to its diverse inhabitants and its fragile atmosphere”).⁶ And in Charleston—a historic city characterized by a low-height, human-scale environment—the unregulated cruise ship impacts on Charleston’s historic districts are exacerbated by the low scale of the historic properties there.

Finally, the adverse impacts that the proposed terminal’s cruise ships would grow and magnify threaten the integrity of the factors that supported Charleston National Historic Landmark and National Register listings in the first place. *See* 36 C.F.R. § 60.4 (criteria for evaluation, including integrity of location, feeling, and association) and 36 C.F.R. § 60.14 (changes and revisions to properties listed in the National Register). All of these significant impacts require the Corps to prepare an environmental impact statement assessing mitigation measures and alternatives before issuing any permit, and to avoid harm to historic properties to the maximum extent possible.

We look forward to working with you during the consultation process to resolve these concerns.

Respectfully submitted,



William J. Cook
Associate General Counsel

⁶ To the extent the SPA purports to bind itself to unenforceable “limits,” this type of commitment is essentially meaningless. All available evidence suggests that the number of cruise ships using Union Pier—which has tripled since Carnival Cruise Lines started using Charleston as an origination port—will continue to rise. In the event that the SPA decides to increase the number of cruise ships beyond 104 ships per year, the SPA has merely stated that it will notify the City of Charleston. However, because the City has refused to regulate cruise tourism, it is hard to understand how giving such notice would carry any weight or lead to any measures that might ameliorate the additional adverse effects.

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