

October 17, 2016

Governor Nikki Haley
✓ S. C. Statehouse 1st Floor
1205 Pendleton Street
Columbia, S C 29201

Honorable Hugh Leatherman
Gressette Bldg.
1101 Pendleton Street #111
Columbia, S C 29201

Robert Hitt, Secretary
S C Department of Commerce
1201 Main Street Suite 1600
Columbia, S C 29201

Re: Intermodal Rail Project / SCSPA Hugh Leatherman Terminal

Dear Governor Haley, Senator Leatherman and Secretary Hitt:

I write in an effort to avoid having any construction related delays push back the scheduled opening of the Hugh Leatherman terminal ("Terminal") and accompanying Intermodal Container Transfer Facility (ICTF). I have heard that a December 2019 opening is "etched in stone." Unfortunately, neither the SCSPA nor SCDOT appears to have even begun working on the legally required infrastructure necessary for such an opening date to be realized. In March of this year I wrote Jim Newsome, President and CEO of the SCSPA, and informed him that the Army Corps of Engineers permit for the Terminal incorporated the 2002 MOU requirement that three overpasses "must be in place before the SPA commences container operations." (Copy of letter enclosed.) I urged him to share with us the permitting and design documents showing the SCSPA's progress on those overpasses. He informed me that no such documents existed. If the SCSPA and SCDOT have not even started design on the required overpasses, then it is almost impossible to imagine that they can be completed in time for the Terminal to open in December of 2019. I write to you in hopes that you can spur the SCSPA and SCDOT into action to avoid a delayed opening.

The Rail Settlement of 2013 did provide that the City would consider whether the results of a traffic impact study satisfied it that transportation impacts of the proposed project could be addressed better by some alternative other than the required overpasses. The EIS traffic

component suggests that some crossings will be adversely impacted. While progress has been made on a more comprehensive study, we have yet to see anything in terms of better-performing options. The comprehensive study is likely to be further compromised by the fact that we understand Palmetto Railways may be considering still more project redesigns. Some potential redesigns may actually be advantageous, but study would likely be required to determine that. The end result, however, is clear. No preferable alternatives have been developed and, at this point, the SCSPA and SCDOT are fast running out of time to complete the overpasses legally required before the Terminal can open.

Please take whatever steps you can to urge the SCSPA and the SCDOT to move forward expeditiously to fulfill their commitments.

Sincerely,



R. Keith Summey
Mayor

cc: Jim Newsome, SCSPA
Randy Lowell, Counsel for SCSPA
Jeff McWhorter, Palmetto Railways
Brady Hair, City Attorney

March 28, 2016

Mr. Jim Newsome
President and CEO
South Carolina State Ports Authority

Re: SCSPA / City of North Charleston MOU
Freedom of Information Act Request

Dear Jim:

We've heard much talk lately of the Port's plan to open the Navy Base Terminal for container operations in December of 2019. Let me be the first to congratulate you on the Port's progress. At the same time, I also want to be sure that the Port is focusing on its 2002 overpass promise since completion of those overpasses is a legal requirement for the Navy Base Terminal to commence operations. I am not a civil engineer, but my understanding of construction timelines is that the Port would need to commence permitting, design and construction of our overpasses almost immediately if Terminal operations are actually going to start as scheduled.

A brief history recap might be beneficial since I know that the operative legal documents predate your tenure at the Port. The Navy closed the Base in 1996. For several years there were varying visions about how the Base property might most productively be put back into use. By the early 2000's the City was envisioning the Noiset development on the base. Around that same time the Port had staked its future on a new terminal, known as the Global Gateway, to be constructed on Daniel Island. Public opposition to the Global Gateway was staggering – so much so that the Legislature decided any new Port terminal would not be built on Daniel Island. There was also fierce citizen opposition to the idea of Port expansion in North Charleston. The Legislature weighed into the fray and directed a compromise in which the Port's new terminal would be constructed on the South end of the Navy Base and, as an offset, the City of North Charleston would receive the North end. The Legislature directed that the City and Port place the terms of this land division into writing. The 2002 MOU emerged and was ultimately presented to the South Carolina Budget and Control Board. Based on the MOU the Budget and Control Board approved the land transfers that took place.

There are a few components of the 2002 MOU that have been central in recent years. The City received two protections in the document. *First*, that the Port would not utilize Northern rail access. The logic behind this was simple – if the City received the Northern acreage as an offset for accepting the Port, that offset would be significantly impaired if Port related operations eventually took over that acreage. I was, of course, at the table when this term was negotiated. Interestingly, the bar to Northern rail access generated little concern from the Port because under prior Port leadership there was little

interest in rail service. *Second*, the Port and City extensively discussed the fact that operation of the new terminal would result in thousands and thousands of containers being moved through the City. We also extensively discussed ways in which such an impact might be ameliorated. One key mitigation component was a requirement that three designated overpasses be constructed and open for use prior to the Port commencing operations. This requirement is stated in plain English.¹

The 2010's started with the State announcing a plan to establish a rail service on the Northern end of the Base, precisely where the 2002 MOU forbid it. That plan was hotly litigated. Ultimately it was settled. Under the settlement the City agreed to withdraw objection to Northern rail access. Critical to the Port, however, the overpass requirement of the 2002 MOU was specifically referenced and left standing. In other words, all parties to the settlement acknowledged the existence of that clause and agreed to leave it in place.

The argument that the Department of Commerce relied on in litigating the 2002 MOU actually tightened the City's control over the Port on the overpass issue. South Carolina Public Railways and the Department of Commerce were fond of arguing that since the 2002 MOU was a document signed by the Ports Authority it did not apply to Commerce's project since the Port was not itself doing the conduct forbidden by the 2002 MOU.² The problem for the Port here is that the overpass requirement is solely one for the Port to deal with. The Agreement says that the Port (you) cannot operate the new Terminal unless the overpasses are in place. Contrary to Commerce's earlier arguments, there is no question that the Port signed the agreement and no question that the Budget and Control Board approved it. The Port is bound.

The 2013 Settlement Agreement between the City and Commerce did not release the overpass requirement. To the contrary, it stated "Nothing in this Settlement Agreement will be construed to waive the City's claims against the State Ports Authority to the three overpasses referenced in the MOU between the City and State Ports Authority dated October 25, 2002 ('2002 MOU')." The City did promise to reasonably consider alternatives that a Surface Transportation Impact Study might recommend. However, no such alternatives have been developed and, even if such alternatives had been, it is the City that retains the right to decide whether to release the required overpasses.

I would also like to better understand the Port's position regarding Section 4.5 of the 2002 MOU. That section says that "The City will use its best efforts to assist The SPA in petitioning" various federal agencies to move their operations off of the Navy Base. I understand from Councilman Ron Brinson that you have contended that the City has not fulfilled its responsibility under this Section. The City is ready and willing to assist in

¹ "The SPA acknowledges that The City requires that certain minimum infrastructure must be in place before The SPA commences container operations. This minimum infrastructure includes a truck access road leading directly from the Port Facility Area to I-26 and three rail overpasses in the areas of Rivers Avenue and Harley Street, Rivers Avenue and Durant Road, and North Rhett and I-526 Streets."

² The City does not, and did not believe that Commerce and Palmetto Railways were independent of the Port for purposes of the 2002 MOU rail issues. That said, cases, including this one, settle for a variety of reasons.

regards to any such SPA petition. The City has been ready and willing to do this since 2002. However, I am not aware that the SPA has ever informed the City that it was submitting a petition, informed the City of lobbying that the SPA was performing to support such an effort, or even asked for assistance in any regard. If I am mistaken please send me copies of the requests the Port has sent the City over the years pursuant to Section 4.5 and I am happy to look into the matter. The City is also willing to assist today should the Port specify what the City could do to reasonably render aid.

In closing, the City commends the Port for its progress and intends this letter to remind you of your obligation with sufficient time that the grand opening will not be delayed. With that goal in mind we would like to review the permitting, design and engineering contracts, current design plans and construction documents associated with the three overpasses. If you could please consider this letter, in part, as a Freedom of Information Act request for production of such documents, as well as any email, notes or correspondence, from June 2013 to present relating to the overpasses I would greatly appreciate it. Hopefully the Port can assemble those documents quickly so that the City can review and offer constructive design feedback in a timely manner to keep your scheduled opening on track.

Sincerely,



R. Keith Summey
Mayor

cc: State Ports Authority Board members (listing attached)

Copies mailed to SCSPA Board Members below:

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