

Condemnation Notice and Tender of Payment

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) C/A NO. **2014-CP-1D-7858**
)

FILED
2014 DEC 29 PM 3:27
JULIE J. ANSTRONG
CLERK OF COURT

Road/Route **Port Access Road**
File **10.037345A**
Item
Project **GEN8**
PIN **37345 RD01**
Tract **9, 10, 11, 12, 14, 15, 16, 17, 18**
and 18A

South Carolina Department of Transportation,)
)
Condemnor,)
)
VS.)
)
Xiphias Holdings, LLC,)
)
)
Landowner(s),)
)
and)
)
Harold I. Sherman, as Trustee for)
Ivan M. Sherman, Howard B. Sherman,)
and Mitchell L. Sherman,)
c/o Sherman Agency, Mortgagee; Community)
FirstBank, Mortgagee; Wachovia Bank, National)
Association, Mortgagee; and Wells Fargo Bank, NA,)
Mortgagee,)
)
)
Other Condemnee(s).)
)

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)

COPY TO: Rick Bybee, Attorney at Law, Post Office Box 1542, Mount Pleasant, SC 29465

TO: THE LANDOWNER(S) AND OTHER CONDEMNTEE(S) ABOVE NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

Road/Route Port Access Road File 10.037345A County Charleston Tract 9,10,11,12,14,15
16,17,18, and
18A

Condemnation Notice and Tender of Payment (continued)

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Xiphias Holding, LLC** is named as Landowner(s) in this action by virtue of their claim(s) of title (or other interests) as shown by those certain **Deeds dated March 4, 2011 from William R. Byars, Jr. Personal Representative of the Estate of Arthur E. Crisp, recorded March 4, 2011 in the ROD Office for Charleston County in Deed Book 175, Page 389, from ADJ and Associates, LLC and William R. Byars, Jr. Personal Representative of the Estate of Arthur E. Crisp, dated March 4, 2011 recorded March 4, 2011 in the ROD Office for Charleston County in Deed Book 175, Page 391, and by Quit Claim Deed from Harold I. Sherman, dated January 4, 2002 recorded January 4, 2002 in the ROD Office for Charleston County in Deed Book Z-392, Page 429.**

3. **Harold I. Sherman, as Trustee for Ivan M. Sherman, Howard B. Sherman, and Mitchell L. Sherman, c/o Sherman Agency, Mortgagee** is made a party in this action as "Other Condemnee(s)" by virtue of its claims of interest in that certain Mortgage recorded in the RMC office for Charleston County in Record Book B393, Page 376.

4. **Community FirstBank, Mortgagee** is made a party in this action as "Other Condemnee(s)" by virtue of its claims of interest in that certain Mortgage recorded in the RMC office for Charleston County in Record Book A426, Page 557.

5. **Wachovia Bank Nation Association, Mortgagee** is made a party in this action as "Other Condemnee(s)" by virtue of its claims of interest in that certain Mortgage recorded in the RMC office for Charleston County in Record Book G580, Page 720.

6. **Wells Fargo Bank, NA, Mortgagee** is made a party in this action as "Other Condemnee(s): by virtue of its claims of interest in that certain Mortgage recorded in the RMC office for Charleston County in Record Book O175, Page 395.

7. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

Road/Route	Port Access Road	File	10.037345A	County	Charleston	Tract	9,10,11,12,14,15 16,17,18, and 18A
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Condemnation Notice and Tender of Payment

All that parcel or strip of land to establish a right of way containing 0.51 acre (22,057 SF) more or less, plus contributory value of site improvements, 30,324 SF commercial building improvements, and damages to the remainder (including the remaining commercial building, cost to cure-refacing a building, and lost architect fees, and all improvements thereon if any, right of access as may be needed for controlled access facilities, owned by Xiphias Holdings, LLC, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations 5834+00 and 5845+00 right of I-26 Line "C".

All that parcel or strip of land to establish a temporary right of way containing 0.66 acre (28,769 SF) more or less, and all improvements, thereon if any, right of access as may be needed for controlled access facilities, owned by Xiphias Holdings, LLC, shown as the "Area of Acquisition" on Exhibit B, attached hereto and made a part hereof, between approximate survey stations 5834+00 and 5845+00 right of I-26 Line "C".

Tax Map Number 466-16-00-118, 466-16-00-100, 466-16-00-101, 466-16-00-104, 466-16-00-120, 466-16-00-108, and 466-16-00-112.

8. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

9. The property sought herein is to be acquired for public purposes, more particularly for the construction of **From: I-26 (Exit 216) To Proposed Port Terminal**.

10. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

11. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-28-2940, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

12. Project plans may be inspected at the office of **South Carolina Department of Transportation, Charleston County Maintenance Office, 6355 Fain Street, North Charleston,**

Condemnation Notice and Tender of Payment (continued)

South Carolina, 29418, under PIN 37345 RD01, Tract 9, 10, 11, 12, 14, 15, 16, 17, 18 and 18A, Port Access Road (r/w corridor).

13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, **INCLUDING ALL DAMAGES**, TO BE THE SUM OF **TWO MILLION THIRTY-EIGHT THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$2,038,900.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

14. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested to South Carolina Department of Transportation, Director, Rights of Way, Post Office Box 191, Columbia, South Carolina 29202-0191 or delivered in person to South Carolina Department of Transportation, Director, Rights of Way, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor

Road/Route Port Access Road **File** 10.037345A **County** Charleston **Tract** 9,10,11,12,14,15
16,17,18, and
18A

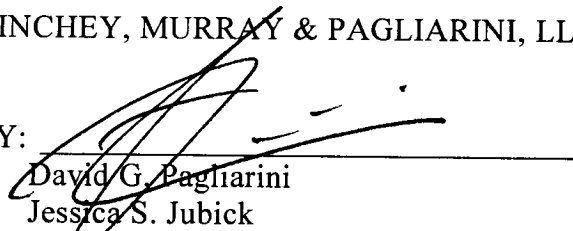
demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

15. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

16. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

HINCHEY, MURRAY & PAGLIARINI, LLC

BY:



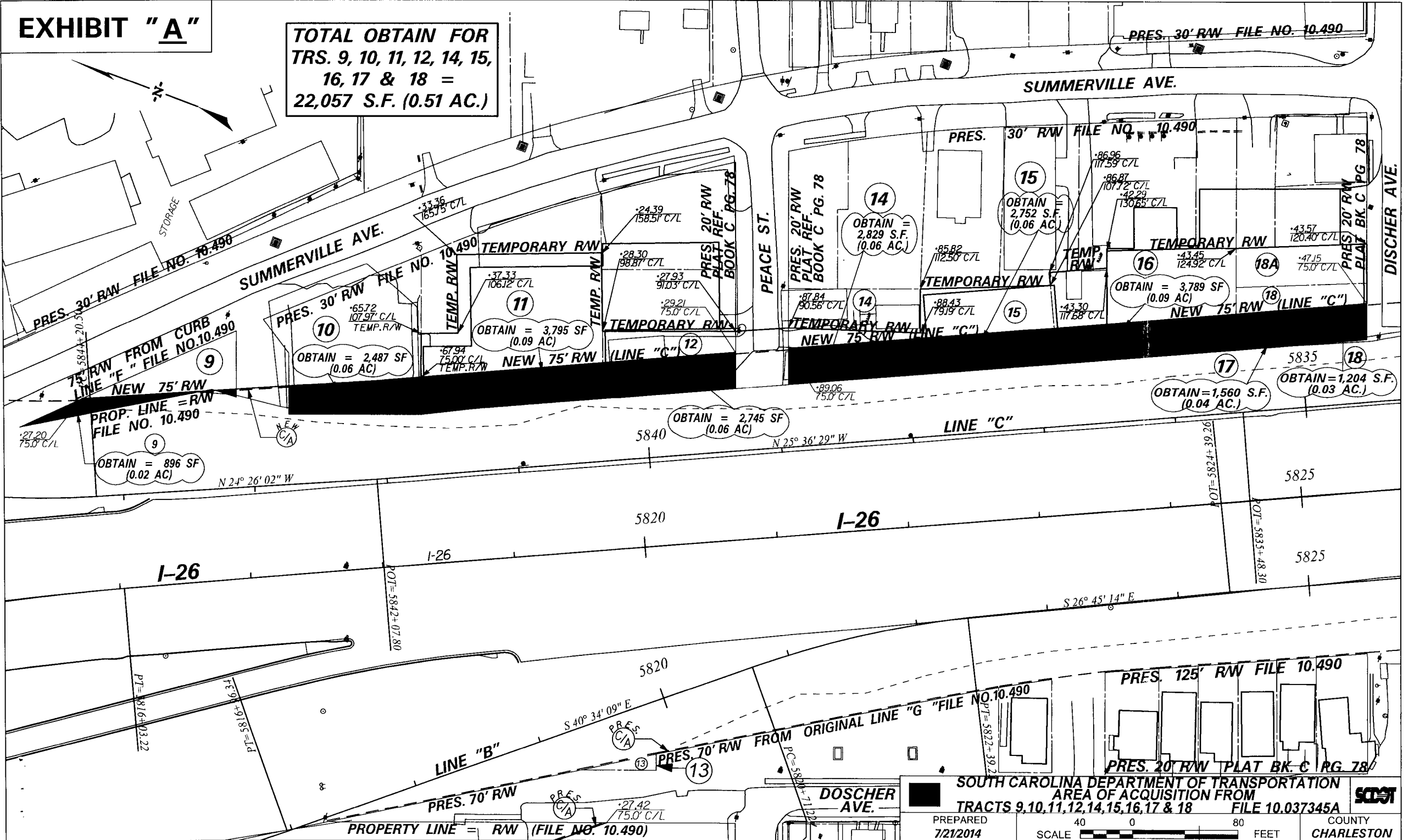
David G. Pagliarini
Jessica S. Jubick
234 Seven Farms Drive, Suite 111-A
Charleston, South Carolina 29492
Telephone: (843) 971-8646
Attorneys for Condemnor (SCDOT)

Charleston, South Carolina

December 29, 2014

EXHIBIT "A"

**TOTAL OBTAIN FOR
TRS. 9, 10, 11, 12, 14, 15,
16, 17 & 18 =
22,057 S.F. (0.51 AC.)**



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF ACQUISITION FROM
TRACTS 9, 10, 11, 12, 14, 15, 16, 17 & 18 FILE 10.037345A

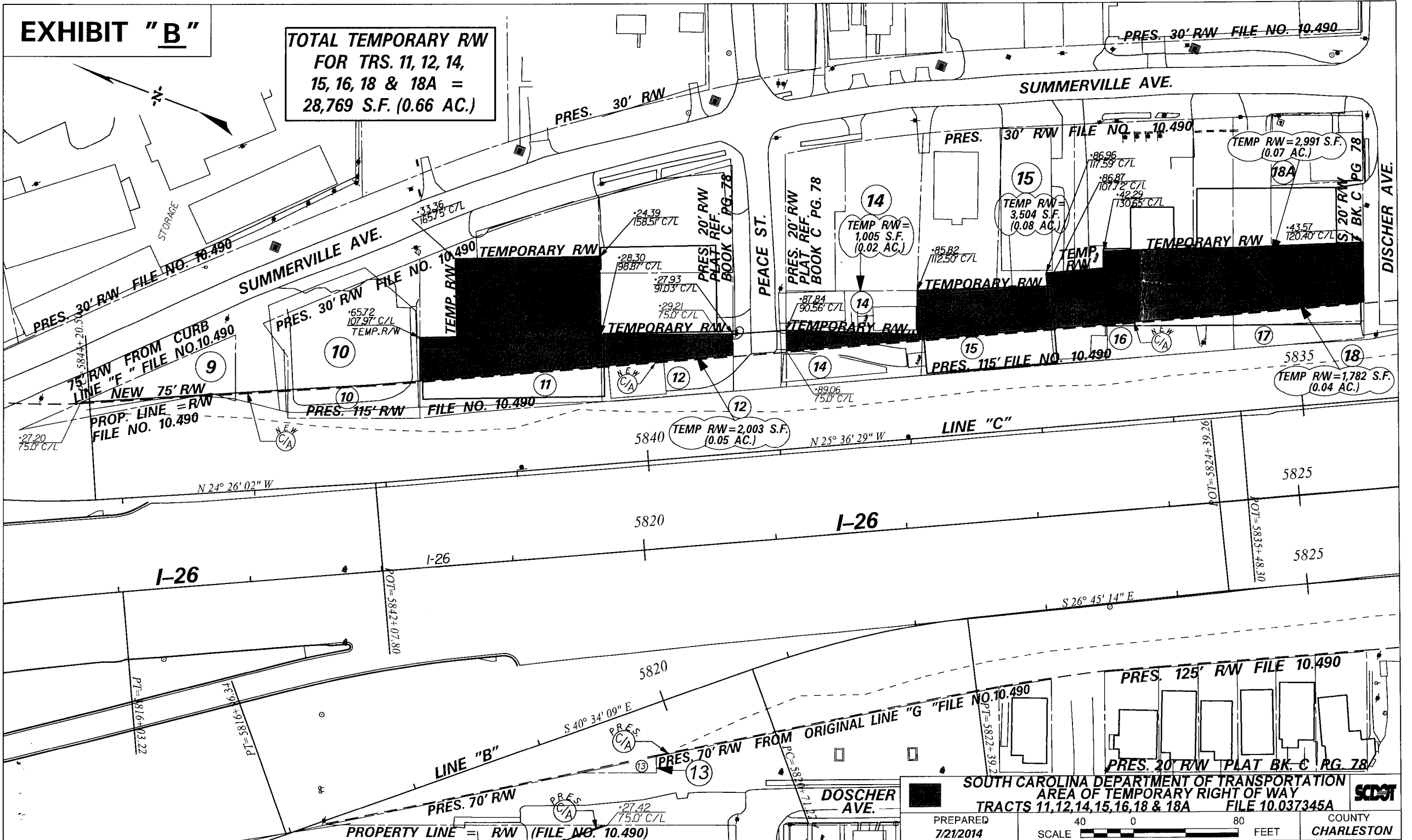
PREPARED 7/21/2014

SCALE 40 0 80 FEET

COUNTY CHARLESTON

EXHIBIT "B"

**TOTAL TEMPORARY RW
FOR TRS. 11, 12, 14,
15, 16, 18 & 18A =
28,769 S.F. (0.66 AC.)**



**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA OF TEMPORARY RIGHT OF WAY
TRACTS 11, 12, 14, 15, 16, 18 & 18A FILE 10.037345A**

PREPARED 7/21/2014 SCALE 40 0 80 FEET COUNTY CHARLESTON