

EXECUTIVE ORDER NO.

2022-20

WHEREAS, the State of South Carolina is richly blessed with abundant natural and environmental resources, which South Carolinians must simultaneously promote and strive to protect and preserve for future generations; and

WHEREAS, among the State’s cherished environmental features and natural resources is its approximately 2,876 miles of pristine coastline—including roughly 200 miles of direct beachfront and neighboring ecosystems such as marshes, estuaries, barrier islands, and tidal creeks—which not only serves as a source of pride and enjoyment but also generates or facilitates a significant portion of the State’s economic investment and activity; and

WHEREAS, on October 15, 2018, the undersigned issued Executive Order No. 2018-50, establishing the South Carolina Floodwater Commission to coordinate a comprehensive evaluation of the State’s accommodation, response, and mitigation efforts related to the impacts of flooding, storms, and other natural disasters, with particular emphasis on cities, communities, and enterprises located along the State’s coast and rivers, and to identify short-term and long-term recommendations regarding potential opportunities to minimize such impacts, while also facilitating economic growth, promoting tourism, and assisting impacted areas; and

WHEREAS, following review of the South Carolina Floodwater Commission’s report, the undersigned proposed the appointment of a Chief Resilience Officer responsible for developing and coordinating implementation of comprehensive resilience and disaster-recovery initiatives designed to enhance South Carolina’s preparation for and response to, and ability to recover from, natural disasters and other adverse events and conditions; and

WHEREAS, the General Assembly subsequently passed, and on September 29, 2020, the undersigned signed into law, Act No. 163 of 2020, codified as amended in Chapter 62 of Title 48 of the South Carolina Code of Laws, which created the South Carolina Office of Resilience (“SCOR”), governed by a Chief Resilience Officer, and charged SCOR with, *inter alia*,

developing, implementing, and maintaining the Statewide Resilience Plan and coordinating statewide resilience and disaster-recovery efforts, including coordination with federal, state, and local governmental agencies, stakeholders, and nongovernmental entities; and

WHEREAS, although the State of South Carolina is uniquely prepared and positioned to prepare for, respond to, and recover from natural and other disasters as a result of the aforementioned initiatives and other precautionary measures, the undersigned has called attention to the need to address proactively certain environmental risks and concerns associated with legacy contaminants contained within the *USS Yorktown*, which is a World War II-era Essex-class aircraft carrier donated by the United States Navy to the State of South Carolina in 1975 for use as a museum ship and which is currently located in the Charleston Harbor; and

WHEREAS, the *USS Yorktown* is maintained by the Patriots Point Development Authority (“Authority”) and serves as the primary tourist attraction at the Authority’s Patriots Point Naval and Maritime Museum facility in the Town of Mount Pleasant, which receives more than 300,000 visitors per year; and

WHEREAS, prior to donating and delivering the *USS Yorktown* to the State of South Carolina, the United States Navy did not remove various hazardous or potentially hazardous materials from the aircraft carrier’s interior tanks, compartments, and other components, including hundreds of thousands of gallons of petroleum products, polluted ballast waters, and materials containing polychlorinated biphenyl compounds (“PCBs”); and

WHEREAS, if the aforementioned legacy contaminants were to leak out of the *USS Yorktown* and pollute the Charleston Harbor, any such release would represent a significant environmental risk and could cause immeasurable damage and destruction to the natural resources and ecosystem of the surrounding area, including nearby marshlands, estuaries, barrier islands, tidal creeks, and beaches; and

WHEREAS, in 2012, the Authority commissioned an environmental study to assess the legacy contaminants and potentially hazardous materials that the United States Navy failed or neglected to remove from the *USS Yorktown* prior to delivering the aircraft carrier to the State of South Carolina, to identify and inventory the types and quantities of these materials, and to provide recommendations and cost estimates regarding environmental remediation options; and

WHEREAS, according to a report produced in 2013, the environmental study commissioned by the Authority identified a significant quantity of hazardous or potentially hazardous materials contained within the *USS Yorktown* and concluded that “[t]he presence of these legacy contaminants create[d] potential safety issues, increased cost for maintenance, and increased risk for a release of contaminants to Charleston Harbor”; and

WHEREAS, of the hazardous or potentially hazardous materials identified within the *USS Yorktown*, the 2013 report determined that the “primary concern is the 160,000 gallons of legacy residual fuel found to exist in 129 structural tanks and compartments aboard the ship,” primarily

located in the ship's exterior "skin tanks," and noted that "[t]his oil is combined with 1.75 million gallons of water which will also need to be removed so the tanks can be cleaned"; and

WHEREAS, the 2013 report of the environmental assessment of the *USS Yorktown* further confirmed that, "[a]s expected for a ship this age," PCBs "were found to be present on the ship in a variety of materials"; and

WHEREAS, according to the environmental study and resulting report, the estimated costs associated with removing and remediating the various legacy contaminants identified in the *USS Yorktown* were anticipated to total approximately \$4.4 million in 2013; and

WHEREAS, in 2017, the Authority retained a contractor to remove 60,000 gallons of fuel from six of the *USS Yorktown*'s tanks, but it is estimated that there are in excess of 120 tanks on the *USS Yorktown* that may still contain fuel or residues that warrant removal or remediation; and

WHEREAS, upon information and belief, it does not appear that additional legacy contaminants have been removed from the *USS Yorktown*, or that other substantial environmental mitigation and remediation activities have been conducted, since 2017; and

WHEREAS, absent further action and environmental mitigation and remediation activities, continued corrosion of the outer hull of the *USS Yorktown* may lead to deterioration and failure of the inner tanks, which could result in the release of hazardous materials into the Charleston Harbor; and

WHEREAS, promptly removing or remediating the remaining hazardous or potentially hazardous materials that are currently contained within the *USS Yorktown* is both reasonable and necessary to prevent a future uncontrolled release of such legacy contaminants into the Charleston Harbor and to avoid any resulting adverse impacts to the surrounding environment and to commercial and recreational marine activities; and

WHEREAS, earlier this year, both in the annual State of the State address and in the Executive Budget, the undersigned recommended that the General Assembly authorize SCOR to use funds allocated by the federal government to the State of South Carolina under the American Rescue Plan Act of 2021 ("ARPA"), Pub. L. 117-2, for resilience-related initiatives and specifically proposed that SCOR utilize a portion of such funds to remove or remediate the hazardous or potentially hazardous materials contained within the *USS Yorktown*; and

WHEREAS, in recommending the aforementioned action, the undersigned noted that there is no more meritorious use of taxpayer funds than to protect the State's pristine natural resources for future generations of South Carolinians; and

WHEREAS, in furtherance of the foregoing, the undersigned has determined that it is imperative that the State obtain an updated evaluation of the remaining legacy contaminants contained within the *USS Yorktown*, develop a comprehensive plan to remove or remediate the

hazardous or potentially hazardous materials, assess the corresponding costs, and promptly initiate any necessary regulatory or other processes required to conduct and complete such activities; and

WHEREAS, it is necessary and appropriate that SCOR coordinate the aforementioned endeavor, in consultation with and with the assistance of the Authority and any other relevant state agencies and departments; and

WHEREAS, article IV, section 17 of the South Carolina Constitution provides that “[a]ll State officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices, agencies, and institutions, including itemized accounts of receipts and disbursements”; and

WHEREAS, section 1-1-840 of the South Carolina Code of Laws, as amended, similarly authorizes the Governor to “call upon any department or institution at any time for such special reports as may be deemed in the interest of the public welfare”; and

WHEREAS, section 1-3-10 of the South Carolina Code of Laws, as amended, also requires that “[t]he departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities”; and

WHEREAS, to facilitate and advance the aforementioned initiative, the undersigned has determined that immediate action is required to ensure that the State obtains an updated evaluation of the remaining legacy contaminants currently contained within the *USS Yorktown*, develops a comprehensive plan to remove or remediate the hazardous or potentially hazardous materials, assesses the corresponding costs, and promptly initiates any necessary regulatory or other processes required to conduct and complete such activities.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Directing Immediate Action to Address Potential Environmental Hazards Associated with the *USS Yorktown*

A. I hereby authorize and direct SCOR, in consultation with and with the assistance of the Authority and any other relevant state agencies and departments, to utilize existing funds or any other authorized, appropriated, or available funds to commission, perform, procure, conduct, or obtain an updated comprehensive review, evaluation, analysis, or assessment of any and all remaining legacy contaminants that are currently contained within the *USS Yorktown* and the options or plans to remove or remediate any such hazardous or potentially hazardous materials, including an updated estimate of the corresponding costs.

B. I hereby authorize and direct SCOR, in consultation with and with the assistance of the Authority and any other relevant state agencies and departments, to promptly initiate any regulatory, legislative, or other approval processes required to conduct and complete, or to procure services for conducting and completing, any necessary and appropriate activities identified, recommended, or proposed by the aforementioned review, evaluation, analysis, or assessment or otherwise required by this Section.

C. I hereby authorize and direct SCOR, in consultation with and with the assistance of the Authority and any other relevant state agencies and departments, to explore any and all opportunities to utilize existing or available state or federal funds, including any ARPA funds allocated by the federal government to the State of South Carolina or federal funds appropriated or available to the United States Navy, to perform the actions and activities contemplated or required by this Section.

D. Pursuant to article IV, section 17 of the South Carolina Constitution and sections 1-1-840 and 1-3-10 of the South Carolina Code of Laws, and in furtherance of the principles, considerations, and initiatives set forth above, I hereby direct the Authority and any other state agencies, departments, or officials called upon for assistance by SCOR to cooperate with, accommodate, and assist SCOR in conducting or performing the activities contemplated or required by this Section and to provide SCOR with any and all data, information, documents, or materials requested by SCOR in connection with the same.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to alter or conflict with provisions of the Appropriations Act or any other applicable law, to include the Consolidated Procurement Code or the Administrative Procedures Act.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede,

or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

D. I hereby expressly authorize the Office of the Governor and the Executive Budget Office to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

E. This Order is effective immediately and shall remain in effect unless otherwise expressly stated herein or modified, amended, extended, or rescinded by subsequent Order.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 11th DAY OF
JULY, 2022.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State