



**County Council of  
Beaufort County  
Executive Committee  
Meeting**

**Committee Members**

JOSEPH PASSIMENT, CHAIRMAN  
PAUL SOMMERVILLE, VICE CHAIRMAN  
BRIAN FLEWELLING,  
ALICE HOWARD  
LAWRENCE MCELYNN  
STU RODMAN

**County Administrator**

ASHLEY M. JACOBS

**Clerk to Council**

SARAH W. BROCK

**Administration Building**

Beaufort County Government  
Robert Smalls Complex  
100 Ribaut Road

**Contact**

Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228  
(843) 255-2180  
[www.beaufortcountysc.gov](http://www.beaufortcountysc.gov)

## Executive Committee Agenda

Monday, April 13, 2020 at 5:00 PM

[This meeting is being held virtually in accordance with Beaufort County Emergency Ordinance 2020-1]

THIS MEETING WILL CLOSED TO THE PUBLIC. CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING VIA EMAIL TO THE CLERK TO COUNCIL AT SBROCK@BCGOV.NET OR PO DRAWER 1228, BEAUFORT SC 29901. CITIZENS MAY ALSO CALL 843-255-2041 TO SIGN UP FOR PUBLIC COMMENT PARTICIPATION BY PHONE AND CAN COMMENT DURING THE MEETING THROUGH FACEBOOK LIVE.

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. APPROVAL OF MINUTES

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### DISCUSSION ITEMS

4. Discussion of a proposed Stormwater Ordinance that would include the exemption of private roadways that are not shown as a separate parcel of land but are used by more than one property owner to access their property and update the ordinance to provide clarification and reflect organizational changes.

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### EXECUTIVE SESSION

5. S.C. Code Section 30-4-70(2): Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property through the Rural and Critical Lands Program Project ID 2020 B.
6. S.C. Code Section 30-4-70(2): Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property through the Rural and Critical Lands Program Project ID Longwood Drive PDR.

7. **Matters Arising Out Of Executive Session**

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### BOARDS AND COMMISSIONS

8. Airports Board Vacancy - Chamber of Commerce Seat

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### CITIZEN COMMENTS

9. CITIZEN COMMENT (Citizens may email sbrock@bcgov.net, mail, comment on our Facebook Live stream or call 843-255-2041 to participate in Citizen Comment)
10. ADJOURNMENT



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Approval of Minutes

**Council Committee:**

Executive Committee

**Meeting Date:**

April 13, 2020

**Committee Presenter (Name and Title):****Issues for Consideration:**

Approval of the March 23, 2020 minutes

**Points to Consider:****Funding & Liability Factors:**

None.

**Council Options:**

Approve, Modify or Reject

**Recommendation:**

Approve



**County Council of  
Beaufort County  
Executive Committee  
Meeting**

**Chairman**  
JOSEPH PASSIMENT

**Vice Chairman**  
BRIAN FLEWELLING

**Committee Members**  
ALICE HOWARD  
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STU RODMAN  
PAUL SOMMERVILLE

**County Administrator**  
ASHLEY M. JACOBS

**Deputy County Administrator**  
CHRIS S. INGLESE, ESQ

**Clerk to Council**  
SARAH W. BROCK

**Administration Building**  
Beaufort County Government  
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## Executive Committee Minutes

Monday, March 23, 2020 at 5:00 PM

Council Chambers, Administration Building Beaufort County  
Government Robert Smalls Complex 100 Ribaut Road, Beaufort

### ATTENDANCE:

Present: Chairman Joseph F. Passiment, Council Member D. Paul Sommerville, Vice Chairman Brian Flewelling, Council Member Stu Rodman, Council Member Alice Howard

Absent:

Ex-officio: Council Member Michael Covert, Council Member York Glover  
Council Member Chris Hervocho, Council Member Mark Lawson, Council Member Lawrence McElynn

1. CALL TO ORDER: 5:00 p.m.
2. PLEDGE OF ALLEGIANCE
3. *[Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act]*
4. APPROVAL OF AGENDA

**Motion:** It was moved by Council Member Chris Hervocho, seconded by Council Member Alice Howard to approve the agenda. Voting Yea: Chairman Passiment, Council Member Sommerville, Council Member Covert, Vice Chairman Flewelling, Council Member Glover, Council Member Rodman, Council Member Hervocho, Council Member Howard, Council Member Lawson, Council Member McElynn

5. APPROVAL OF MINUTES

**Motion:** It was moved by Council Member McElynn, Seconded by Council Member Rodman to approve minutes from March 9, 2020. Voting Yea: Chairman Passiment, Council Member Sommerville, Council Member Covert, Vice Chairman Flewelling, Council Member Glover, Council Member Rodman, Council Member Hervocho, Council Member Howard, Council Member Lawson, Council Member McElynn

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### ACTION ITEMS

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6. Discussion of an Ordinance authorizing the conveyance of real property associated with boundary of 50' Right of Way known as Fiddler Drive located on Lady's Island. Chris Inglese, Deputy County Administrator.

Beaufort County paved Fiddler Drive as part of paving contract 31. During this time period, County Maintained roads were considered prescriptive Right of Way and although the County does not have a clear instrument of ownership, plats dating back to the 1970's and prior Beaufort County Tax

maps designate Fiddler Drive as a ROW. The County has maintained the road for over 25 years. County paving plans are dated May 12, 2006 with County Council approval of the paving contractor on June 26, 2006. County Council also approved restriping of the road on October 27, 2014. The County has invested a lot of time and money into improving and maintaining the road. Title research reflects the County's interest in the road. Surveys and plats of surrounding subdivisions and parcels include the 50' ROW so there does not appear to be a conflict of ownership with other adjacent properties.

Green Heath, LLC is trying to clear up acreage discrepancies associated with parcel R200 010 000 0022 0000 which abuts Fiddler Drive on Lady's Island. Green Heath, LLC is requesting a Quit Claim Deed and Certificate of Abandonment associated with a "GAP" area outside the platted 50 ROW. Green Heath, LLC has provided a Quit Claim Deed for any interest they have in Fiddler Drive. By the County accommodating Green Heath, LLC, the County will also have recorded documents that can be used in support of the County's claim on the ROW.

Council Member Sommerville: Fiddler drive is like a Z if you look at it on a map. Not all of it bumps up to Green Heath, the last part runs up into Brickyard Point Drive. Is that the only part that doesn't have the right of way?

Chris Inglese: I think so, I will confirm with Mr. Tedder, his client is the seller of the Green Heath parcel so in this quit claim the County will get the adjacent rights of way that we have thought we have had for many years but there will still be some work to do to the remaining portions in the future.

Mr. Tedder: (on phone) That is correct. The property aligns to the other side away from Green Heath, there isn't an issue there. This area that is adjacent to Green Heath and there is a 6-foot break in distance across there and that is what is the County is quit claiming to us. We are quit claiming the right of way as claimed by the County is its 2006 engineering drawings. I don't believe there are other areas specifically impacted by this but will look further.

Council Member Sommerville: I am asking specifically about the section that runs between Green Heath and Brickyard. Is the ownership of that still in question?

Mr. Tedder: Not to my knowledge are of those lots were subdivided and they have their own individual plats like they did on the Royal Pines side.

Chris Inglese: We have plats of our rights of way that exist, we just don't have perfect title to some of those.

Vice Chairman Flewelling: How much is paved.

Chris Inglese: All of Fiddler Drive is paved.

Council Member Lawson: By making this a County Road, does this open it up for more development above and beyond what it is currently intended for?

Chris Inglese: No

**Motion:** It was moved by Vice Chairman Flewelling, seconded by Council Member Sommerville to forward Ordinance authorizing the conveyance and acceptance of real property associated with boundary of 50' Right of Way known as Fiddler Drive located on Lady's Island to County Council for first reading on March 22, 2020. Voting Yea: Chairman Passiment, Council Member Sommerville, Council Member Covert, Vice Chairman Flewelling, Council Member Glover, Council Member Rodman, Council Member Hervochon, Council Member Howard, Council Member Lawson, Council Member McElynn

Recommendation: First reading to be held at County Council meeting today at 6pm.

7. Discussion of a resolution amending County Council's Rules and Procedures by establishing standards for electronic meetings as authorized by The Freedom of Information Act SC Code of Laws 30-4-10 et. seq. for County Council and County Council Committee Meetings during a State of Emergency – Chris Inglese, Deputy County Administrator



This only applies during an emergency as declared by adoption of an Emergency Ordinance approved by 2/3 of members present at a duly assembled meeting of county council. This is for the necessity of announcing who the speaker is each time a speaker addresses the body so that the Clerk can properly record minutes. We will want to be proactive to ensure public hearings provide the public multiple forum to submit written comments for consideration. Public comments received should be read into the record by the Chairperson or Clerk to Council.

Council Member Sommerville: Are we taking the boiler plate language out of the freedom of information act saying that we are approving what we are doing or are there going to be some significant changes?

Chairman Passiment: The proposed resolution has been attached.

Chris Inglese: The freedom of information act simply references meetings of the body by electronic equipment. The resolution goes much further than that by establishing parameters and procedures

Chairman Passiment: There has already been some suggestions made to this packet, I can read what has been suggested.

Council Member Covert: Chris, did you put this together?

Chris Inglese: It was a team effort.

Council Member Covert: Section 1G; *with respect to any electronic meeting, any public comment periods provided for by local ordinance, resolution, policy, or bylaws are hereby suspended. Members of the public may submit written public comments which shall be distributed to the members of the Governing Body.* Am I reading too much in to that or is that saying that we won't take public comment if we are operating in an electronic fashion.

Chris Inglese: I don't read it that way. Maybe it would be clearer to say "may be suspended" but members of the public for this particular meeting today, we have made available several forms for submitting comments directly to the clerk.

Council Member Covert: Which I agree with, it's fantastic. "Are hereby suspended", got me a little worried.

Vice Chairman Flewelling: I want to make a motion to amend.

Chairman Passiment: There are going to be several other changes so that is going to be one the we are going to want to insert.

Vice Chairman Flewelling: Regarding that particular comment. My only concern, is that when we say "may" I would like notice at the beginning of the meeting that public comment is suspended for some particular reason. No electronic activity was able to be received from some technical reasons. If there is something that prohibits the public from making that comment, I want to know at the beginning of the meeting so that we can make arrangements for appropriate public comment or deferring action that public comment would have been helpful on for a later time.

Chairman Passiment: It is my opinion at this time, what we are doing here for the next 60 days but it is going to be encompassing not only what County Council is doing at its meetings but going to affect our boards and commissions. We need to temper those words to do what we need to do.

Vice Chairman Flewelling: Do we have the ability to receive video or audio public comment from the public at any meeting? Could we publish a number during a particular period of time that the public could call in and we could receive that comment?

Chris Inglese: Short answer, yes. Public comment and public hearings we need to deal with separately. For public comments that is an optional item that council has honored for many years and we have set up several forms for submitting public comment. There is no technical legal requirement for it so everything we do to

set up public comment for meetings is sufficient. For Public Hearings that have statutory requirements, we need to do everything we can to accept comments for those required public hearings. One form we would like to set up is a phone in number to call in. You would call in during the meetings and call would be screened in for the record and the nature of their comments and you could hear them live via phone. Another thing that has been discussed is setting up a live video feed and they could skype in or somehow see their face. That may be hard with the building closed to the public. The phone lines are something that is feasible and that we can have for those meetings that are required to receive public hearing. All other efforts to receive public comments and addition to the phone lines we will have to keep thinking about it and it would likely comply with public hearing statutory requirements considering the circumstances we are operating in.

Council Member Covert: Is today's meeting and subsequent meetings and the County Channel is carrying it, is this also being covered on Facebook Live.

Chris Inglese: Yes, that is my understanding for today's meeting.

Council Member Covert: Will we be able to receive or will the citizens be able to type in a questions or comment?

Chris Inglese: They are able live type their comments and the Chairman is able to see that and monitor them as they come in.

Council Member Covert: The only other thing, this is germane to this subject the transparency committee in our final report, talking about electronic communications in other areas of the County that are not able to get here, that is one of our initiatives.

Chairman Passiment: I'm on Facebook live right now, the video is showing various members here and there is a box where I can see comments as they come in and deal with that as we go along

Council Member Howard: Is there a phone number where they can call in now?

Councilman Flewelling: Can you share that?

Scott Groom: 843-255-2041. That number goes to my control room, someone is answering it and sending it to me and we can call back from this speaker phone and put on the mic.

Council Member Rodman: My sense over all these years. Most of the public comments are non-related items like public hearing for ordinance, an option could be, submitting a written comment and it could be read on their behalf. They resolution, it does seem to me the ability to have an electronic meeting a call meeting to have in a state of emergency because we all me scattered.

Chairman Passiment: item 1A; *"the beginning of any electronic meeting, the presiding officer shall poll the members of the Governing Body to confirm attendance,"* I would like to add by name to this because we may be in a situation when we are not in the same room. Therefore, again, I am thinking about not only the Council meetings but the committee meetings that could be done telephonically and need to take action at these meetings and if that is acceptable, to add that. Also *"and any member of the Governing Body attending by way of electronic media shall be considered present for the purpose of constituting a quorum"*. add, all other staff in attendance should be named by name and title that way the public will know exactly who all is in this meeting.

Vice Chairman Flewelling: Both present physically and electronically?

Chairman Passiment: Yes

Vice Chairman Flewelling: Maybe clarify that is should be only staff that is official attendance because if it is just a member of administrations there are a thousand people in the county that work for the county and we should just name those who are present in an official capacity.

Chairman Passiment: 1C *"any vote of the Governing Body must be conducted by individual voice vote of the members of the Governing Body, who shall verbally indicate their vote on any matter by stating 'yay' or 'nay'. All individual votes shall be recorded by the clerk, secretary, or presiding officers, as appropriate. We may be taking votes telephonically, we may have to insert, any vote of the governing body must be conducted by individual voice vote, who by name shall verbally indicate their vote.*

Vice Chairman Flewelling: In this specific emergency. It seems to me our best course of action is to use this room exclusively. The burden of staff to go to remote location and sterilizing it. We should amend our calendar.

Chris Inglese: We can do that with no problem at any time.

Council Member Lawson: Will we have the capability of someone videoing themselves and sending it to us and it can be played, used as their three-minute comment.

Scott Groom: Yes, it can be sent as a mpeg4 and emailed to Sarah and she can play it back on the screen.

Council Member Lawson: That isn't only something we can do for an emergency situation but anyone can do for their three-minute comment.

Chairman Passiment: As we speak I am getting comments. When it comes time for public comments, I can read that tonight.

Vice Chairman Flewelling: I don't want to speak for Councilman Covert but specifically for item G, wanted to change in the second line where it says, "public comment periods provided for by local ordinance resolution bylaws may be suspended"

Council Member Covert: To avoid any hypotheticals add -not only suspended but generally be accepted. So strike and remove are by suspended and add may be suspended but will generally be accepted.

Chairman Passiment: I would also add- generally accepted by means because of the mentioning of writing.

Council Member Howard: Going back to previous comment you can also add by writing or video.

Chairman Passiment: Is everyone agreeable to those changes? They can now specifically apply to us and how we conduct business as a Committee and Boards and Commissions.

Chris Inglese: This resolution doesn't specifically apply to boards and commission. We still want to work on that because that is a big change for 30+ boards and commissions.

Council Member Rodman: What Councilman Covert was talking about, if we are going to suspend something it should be voted on it.

Vice Chairman Flewelling: At the beginning of that meeting?

Council Member Rodman: Suspended by a majority vote of members present.

Vice Chairman Flewelling: That resolves my concerns about there being notice of suspension of public comment. I don't want to vote on something that the public can't talk to me about it. It seems like it's a secret move and I don't like it. We do all have phone numbers and email address on the website. The public does have access to contact us.

Council Member Rodman: Will you include the suggestion to include the special call meeting to be considered during the state of emergency.

Chairman Passiment: This is an item on the regular agenda item #12. We will move to approve to regular council meeting and read the changes again.

Council Member Covert: Just to clarify 1C When we vote it will all be by roll call while on the phone.

Chris Inglese: If you are all on the phone, the clerk will hear your name and your vote.

Council Member Covert: Only if we are on the phone?

Chris Inglese: It would be prudent that if you are on the phone and do a roll call on the phone that everyone would be called by name and vote.

Vice Chairman Flewelling: I can't see any provision in Robert's Rule of Law for a partial roll call vote. It is either roll call everything or nothing.

**Motion:** It was moved by Vice Chairman Flewelling, seconded by Council Member Covert to forward to council a resolution amending County Council's Rules and Procedures by establishing standards for electronic meetings as authorized by The Freedom of Information Act SC Code of Laws 30-4-10 et. seq. for County Council and County Council Committee Meetings during a State of Emergency .

Voting Yea: Chairman Passiment, Council Member Sommerville, Council Member Covert, Vice Chairman Flewelling, Council Member Glover, Council Member Rodman, Council Member Hervochon, Council Member Howard, Council Member Lawson, Council Member McElynn

Recommendation: Forward to Council

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## CITIZEN COMMENTS

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8. CITIZEN COMMENTS:

Public Comments from Facebook live read aloud by Chairman Passiment. Addressed by Council or Administration.

Will Council be discussing a ban on yard waste burning? Shutting down resort and vacation rentals? No one has responded to emails and phone messages regarding dirty air situation. Private business operating? County doesn't have jurisdiction about private businesses and how they operate.

9. ADJOURNMENT: 5:33 pm



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

#### Item Title:

Amendment to the Stormwater Ordinance

#### Council Committee:

Natural Resources Committee

#### Meeting Date:

April 6, 2020

#### Committee Presenter (Name and Title):

Neil Desai, Public Works Director

#### Issues for Consideration:

Currently the ordinance includes an exemption for improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property. Amendment to the ordinance is needed to include an exemption for improved private roadways that are not shown as a separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property. This will allow fair and equitable assessment of stormwater fees. Other proposed revisions are to reflect organizational changes and provide clarification in regards to Beaufort County Stormwater Utility's jurisdiction.

#### Points to Consider:

Consistent application of stormwater fees for roadways used by more than one property owner to access their property. Presented to Stormwater Management Utility Board on February 12, 2020 and the Board recommends the proposed changes to the ordinance.

#### Funding & Liability Factors:

Allows stormwater rate structure to be more defensible and consistently applied.

#### Council Options:

Approve the amendment as proposed or leave the ordinance as written.

#### Recommendation:

To approve the proposed amendment of the Stormwater Ordinance to include the exemption of private roadways that are not shown as a separate parcel of land but are used by more than one property owner to access their property and update the ordinance to provide clarification and reflect organizational changes.

**ORDINANCE 2020 /**

**AN ORDINANCE TO AMEND THE STORMWATER MANAGEMENT UTILITY ORDINANCE 2018/6 AS ADOPTED MARCH 12, 2018 TO PROVIDE FOR ADDITIONAL EXEMPTIONS RELATED TO PRIVATE ROADWAYS, REFLECT ORGANIZATIONAL CHANGES AND PROVIDE CLARIFICATION IN REGARDS TO BEAUFORT COUNTY STORMWATER UTILITY'S JURISDICTION.**

**WHEREAS**, Act 283 of 1975, The Home Rule Act, vested Beaufort County Council with the independent authority to control all acts and powers of local governmental authority that are not expressly prohibited by South Carolina law; and

**WHEREAS**, Chapter 99, Article II, "Stormwater Management Utility" was adopted on August 27, 2001 and was modified by Ordinance on August 22, 2005, September 28, 2015, September 26, 2016, October 24, 2016, and March 12, 2018; and

**WHEREAS**, Stormwater Management Utility was established for the purpose of managing, acquiring, constructing, protecting, operating, maintaining, enhancing, controlling, and regulating the use of stormwater drainage systems in the county; and

**WHEREAS**, to meet the increasing demands on the Stormwater Management Utility in the areas of mandated municipal Separate Stormsewer Systems (MS4) permitting, capital project needs, and cost of service of operations and maintenance, as well as an evolving understanding of the impacts of the urban environment on water quality, the Stormwater Management Utility finds it necessary to amend the structure in which fees are determined and adjust the fees charged to the citizens of Beaufort County to meet said demands in a fair and equitable manner; and

**WHEREAS**, currently the ordinance includes an exemption for improved public road rights-of-way that have been conveyed to and accepted for maintenance by the state department of transportation and are available for use in common for vehicular transportation by the general public, and

**WHEREAS**, currently the ordinance includes an exemption for improved public road rights-of-way that have been conveyed to and accepted for maintenance by Beaufort County and are available for use in common for vehicular transportation by the general public, and

**WHEREAS**, currently the ordinance includes an exemption for improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property, and

**WHEREAS**, further amendments are needed to make adjustments to the rate structure to address the differences in fee determination and billing for private roadways; and

**WHEREAS**, the Stormwater Management Utility Board has determined that it would be fair and equitable to include an exemption for improved private roadways that are not shown as a



separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property, and

**WHEREAS**, Beaufort County Council believes it is appropriate to amend Chapter 99 of the Beaufort County Code and to provide for additional terms to said Article; and

**WHEREAS**, text that is underscored shall be added text and text ~~lined through~~ shall be deleted text.

**NOW, THEREFORE, BE IT ORDAINED BY BEAUFORT COUNTY COUNCIL**, that Chapter 99 of the Beaufort County Code is hereby amended and replaced with the following:

## Chapter 99 - STORMWATER MANAGEMENT

### ARTICLE I. - IN GENERAL

Secs. 99-1—99-100. - Reserved.

### ARTICLE II. - STORMWATER MANAGEMENT UTILITY

Sec. 99-102. - Establishment of a stormwater management utility and a utility enterprise fund.

There is hereby established within ~~the environmental engineering division of~~ Beaufort County a stormwater management utility for the purpose of conducting the county's stormwater management program. The county administrator shall establish and maintain a stormwater management utility enterprise fund in the county budget and accounting system, which shall be and remain separate from other funds. All revenues of the utility shall be placed into the stormwater management utility enterprise fund and all expenses of the utility shall be paid from the fund, except that other revenues, receipts, and resources not accounted for in the stormwater management utility enterprise fund may be applied to stormwater management programs, services, systems, and facilities as deemed appropriate by the Beaufort County Council. The county administrator may designate within the stormwater management utility enterprise fund such sub-units as necessary for the purpose of accounting for the geographical generation of revenues and allocation of expenditures pursuant to interlocal governmental agreements with the cities and towns of Beaufort County.

Sec. 99-109. - Exemptions and credits applicable to stormwater service fees.

Except as provided in this section, no public or private property shall be exempt from stormwater utility service fees. No exemption, credit, offset, or other reduction in stormwater service fees shall be granted based on the age, tax, or economic status, race, or religion of the customer, or other condition unrelated to the stormwater management utility's cost of providing stormwater programs, services, systems, and facilities. A stormwater management utility service fee credit manual shall be prepared by the stormwater manager specifying the design and

performance standards of on-site stormwater services, systems, facilities, and activities that qualify for application of a service fee credit, and how such credits shall be calculated.

(b) Exemptions. The following exemptions from the stormwater service fees shall be allowed:

- (1) Improved public road rights-of-way that have been conveyed to and accepted for maintenance by the state department of transportation and are available for use in common for vehicular transportation by the general public.
- (2) Improved public road rights-of-way that have been conveyed to and accepted for maintenance by Beaufort County and are available for use in common for vehicular transportation by the general public.
- (3) Improved private roadways that are shown as a separate parcel of land on the most current Beaufort County tax maps and are used by more than one property owner to access their property.
- (4) Improved private roadways that are not shown as a separate parcel of land on the most current Beaufort County tax maps but are used by more than one property owner to access their property.
- ~~(4)~~ (5) Railroad tracks shall be exempt from stormwater service fees. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from stormwater service fees.
- ~~(5)~~ (6) Condominium boat slips shall be exempt from stormwater service fees.
- ~~(6)~~ (7) Properties determined by the assessor having 100 percent of the gross area of the property submerged, salt water marsh, or freshwater wetland will not receive an administrative charge, if applicable in the utility rate structure, after the applicable credit defined in paragraph (a) above has been applied to the account.

Sec. 99-203. - Definitions.

The following definitions shall apply in articles III, IV, V, and VI this chapter. Any term not herein defined shall be given the definition, if any, as is found elsewhere in the Code of Articles of Beaufort County, including the community development code (CDC) ordinance.

*Administrators.* ~~The director of environmental engineering and land management~~ Beaufort County, the stormwater manager and other individuals designated by the county administrator, from time to time, to administer interpret and enforce this article.

Sec. 99-206. - County stormwater management administration.

Stormwater management will be administered by ~~the environmental engineering and land management division~~ Beaufort County and the stormwater department to administer and implement the regulations of this article as set forth in the CDC and BMP manual.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
Joseph Passiment, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Ashley M. Jacobs  
Beaufort County Administrator

ATTEST:

\_\_\_\_\_  
Sarah Brock, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:

# ADD-ONS

The document(s) herein were provided to Council for information and/or discussion after release of the official agenda and backup items.



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Due Diligence Request for Rural & Critical Land Preservation Program - Project 2020B, Warsaw Island Boat Ramp

**Council Committee:**

Natural Resources Committee

**Meeting Date:**

April 6, 2020

**Committee Presenter (Name and Title):**

Barbara G. Holmes, Beaufort County Contractor; Eric Greenway, CDD Director

**Issues for Consideration:**

Whether to authorize due diligence expenditures for the potential fee-simple acquisition of a 1.05 acre property on Warsaw Island that was used for many years as a community boat ramp to Jenkins Creek. The current owner purchased the property in 2015 and closed access to the property. Project Summary Sheet attached.

**Points to Consider:**

The property is currently for sale although two lawsuits are pending regarding its ownership and use. Other cost-share funds will be actively pursued for this purchase. Public ownership could provide passive recreation and restore water access to the community, to other citizens and to visitors.

**Funding & Liability Factors:**

Due diligence expenses are funded through Rural & Critical Land Preservation Program funds and are estimated to be \$15,000. Other cost-share funds will be pursued for this project. Due diligence will provide information on extent of possible future costs.

**Council Options:**

Approve, modify, or reject

**Recommendation:**

Staff recommends Council approve the request.



**INITIAL REVIEW / REQUEST FOR DUE DILIGENCE**

**PROJECT 2020B – WARSAW ISLAND BOAT RAMP**

**Beaufort County, SC**

**PROPOSAL FOR: FEE ACQUISITION**

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**PROPERTY ID:** R300 009 000 010A 0000  
**SELLER:** Taylor Ruben Adams  
**ACREAGE:** 1.05 acre  
**APPRAISED VALUE:** Unknown  
**PURCHASE PRICE:** Unknown  
**RCLPP FUNDS:** Unknown  
**COST-SHARE FUNDS:** Unknown  
**ZONING:** T2 Rural  
**COUNCIL DISTRICT:** 3 (Councilman Paul Sommerville)

**LOCATION:** 240 Warsaw Island Road, St. Helena Island, 29920

**Property Characteristics:**

- The property is located at the eastern end of Warsaw Island Road
- Parcel is long and narrow, bounded by 733’ feet of tidal marsh frontage along the south border
- Property includes forest canopy and characteristic maritime transition vegetation along the creek edge. Underbrush has been cleared.
- Paved boat ramp extends into deepwater Jenkins Creek (10 feet at low tide)
- No permanent structures have been built on the property. The owner currently lives onsite in a travel trailer.
- The owner currently has a River Buffer/Septic System Waiver to build a 1,856 sq. ft. house on the property
- Dock permit with boatlift has been issued
- Electricity and water available to site
- Expansive views of tidal marsh and creek







### **Background:**

- For years, property was owned by an absentee landowner and was used as a community boat ramp
- Property purchased in 2015 by current owner. Boat ramp and “road” have been closed to public use
- Two lawsuits are pending regarding title to and use of the property

### **Critical Lands Criteria:**

- High public access and recreation potential, includes water access
- Vista protection - scenic views of Jenkins Creek
- Proximity to other protected property: Directly across Jenkins Creek from Oak Island, 33 acres protected by The Nature Conservancy
- Water quality protection:
  - 733’ tidal creek frontage on Jenkins Creek draining into St. Helena Sound
  - Creek frontage ranks as Priority 1 (highest) on Port Royal Mapping Analysis, indicating properties important for water quality

Beaufort County  
Rural & Critical

# LAND PRESERVATION PROGRAM

**Purchase and Cost Structure:**

- Appraised Value: Unknown
- Purchase Price – RCLPP funds: Unknown
- Contributions toward project: Unknown

**Estimated Due Diligence Costs:**

<b>Appraisal</b>	<b>\$3,500</b>
<b>Phase I ESA</b>	<b>\$2,500</b>
<b>Survey</b>	<b>\$4,000</b>
<b>Other</b>	<b><u>\$5,000</u></b>
<b>Total (without title search)</b>	<b>\$15,000</b>

**Future Cost Considerations:**

- Economic impact on tax base of the County:
  - Foregone property tax revenue \$578 / year
- Costs of managing the property by the County Unknown
- Planning costs (conceptual / civil) Unknown
- Construction costs Unknown





**Project Analysis:**

Purchase of the Warsaw Island property would benefit both the citizens and visitors of the County by providing additional public water access. As the property has informally been used as a boat ramp, the "road" and ramp are in place and no conversion for these uses is needed, although safety improvements would be required. Water access could possibly be expanded and additional uses are possible such as an area for picnicking.

In addition to providing public access, purchase of this property would prevent the construction of a house on the property that would not currently be permitted. The critical line setback regulations have been strengthened since the existing septic waiver was issued. The property also provides natural resource protection of the extensive marsh edge. This property with the property ranked as highest priority on Port Royal Sound Mapping Initiative for Water Quality Priority.

Due to the pending lawsuits by third parties, it is possible that this project will take more time to negotiate than is typical for most Rural & Critical projects. However, the property is currently for sale by owner and could be sold to another buyer. There are clear public benefits to pursuing this project and the owner is willing to negotiate.

**Photos**

Boat Ramp to Jenkins Creek



At Jenkins Creek looking south over the intertidal marsh

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Ranking: N/A

Beaufort County  
Rural & Critical  
**LAND  
PRESERVATION  
PROGRAM**

April 6, 2020



View toward Jenkins Creek

P. O. Box 75  
Beaufort, SC 29901  
O: (843) 521-2175 F: (843) 521-1946



Beaufort County  
Rural & Critical  
**LAND  
PRESERVATION  
PROGRAM**



Marsh frontage



Gated entrance to property





## Project 2020B – Warsaw Island Boat Ramp Fee Simple Purchase - For Initial Review



- Northern Beaufort County

8



- 1.05 acres, T2 Rural Zoning
- Tidal creek frontage on Jenkins Creek
- Proximity to Oak Island, 33 acres TNC

9



- Longtime community use as boat ramp
- Now closed to public use
- Owner has septic & house permit

10

### Critical Lands Criteria

- High public access and recreation potential, includes water access
- Vista protection - scenic views of Jenkins Creek
- Proximity to other protected property: Directly across Jenkins Creek from Oak Island, 33 acres protected by The Nature Conservancy
- Water quality protection:
  - 733' tidal creek frontage on Jenkins Creek draining into St. Helena Sound
  - Creek frontage ranks as highest priority on Port Royal Mapping Analysis, indicating properties important for water quality



11

*Future Cost Considerations for County*

- Economic impact on tax base of the County:
  - Foregone property tax revenue \$578 / year
- Costs of managing property by the County Unknown
- Planning costs & construction costs Unknown



12

**Transaction Outline – Project 2020B**  
**Request for Due Diligence**

Estimated costs for due diligence \$ 15,000

**Today’s Natural Resources Committee Decision – 2020B**

Approve due diligence expenditures on project?

13





**LONGWOOD**

**PROPOSAL FOR: Purchase of Development Rights/Conservation Easement**

**PROPERTY ID:** 21 Contiguous Parcels, St. Helena Island – see Exhibit A  
**SELLER:** Dukes Real Estate Company  
**ACREAGE:** 227 acres upland and 42 acres marsh (record title to marsh)  
**TOTAL PRICE:** \$360,000  
**RCLPP FUNDS:** \$360,000  
**APPRAISED VALUE:** \$720,000 (appraised value of development rights)  
**ZONING:** T2 Rural with St. Helena Cultural Protection Overlay  
**COUNCIL DISTRICT:** 3, Councilman York Glover

**LOCATION:** 1792 Seaside Road, St. Helena Island  
 On the south end of St. Helena Island, bordered by Lands End Road on the west and spanning to Seaside Road on the east.

**Permanent Protection:** Conservation easement to be granted to BCOLT

**Project Background:**

- Previously under consideration (2011) as a USDA FRPP project, but ineligible by USDA criteria due to high percentage of forest cover and wetlands, project went inactive

**Property Characteristics:**

- Undeveloped property characterized by mixed upland forest, evergreen upland forest and non-forested wetlands
- Property contains both saltwater and freshwater wetlands including 42 acres intertidal marsh
- Two unimproved private roads traverse the property
- Tidally influenced salt marsh serves as the headwaters of Tombee Creek, a major tributary of Station Creek draining into Port Royal Sound
- The parcels are zoned T2 Rural, allowing 1-unit/3 acres by right; current parcel configuration would accommodate the construction of 66 residential dwelling units.
- Public views of scenic forested road frontage and on Lands End Road and Seaside Road, expansive views of intertidal salt marsh from Seaside Road.



**Purchase and Cost Structure:**

Appraised Value of Development Rights: \$720,000  
 Negotiated Purchase Price: \$360,000

**Bargain Sale Transaction (Part Sale, Part Gift) by Seller**

The seller of the development rights on the Longwood property has agreed to sell the rights for 50% of fair market value, leveraging County purchase funds 1:1.

**Cost Considerations:**

Due Diligence Costs expended by County \$ 10,650  
 (Phase I ESA, survey, appraisal)

Closing Costs to be paid (Title search, closing attorney) Est. not available

Future Cost Considerations:  
 Economic impact of purchase on tax base of the County  
*Reduction* in property tax revenue, estimated \$ 525/year  
 Property tax to be collected = ~\$643/year

No operations/maintenance or monitoring expenses for County

**Conservation Easement Terms:**

<b>Subdivision:</b>	All property parcels shall be held by a maximum of three (3) different owners.
<b>Impervious Surface Limitation:</b>	24,000 square feet of impervious surface in aggregate (1/4 of 1%)
<b>Designated Building Areas</b>	Three (3) permitted, each no larger than five acres
<b>Residential Structures:</b>	Six (6) structures for permanent/long-term residency
<b>Docks:</b>	Interior docks permitted, none on Tombee/Station Creek.
<b>Boat Ramps:</b>	None.
<b>Road Buffers:</b>	100' structure setback (not including fences and gates).
<b>Creek Buffers:</b>	100' structure setback.
<b>Industrial Uses:</b>	Prohibited.



<b>Commercial Uses:</b>	Prohibited without prior Approval. Exclusions: Agricultural Activities, Forest Management Practices and the leasing of hunting, trapping and fishing rights.
<b>Forestry and Agricultural Uses:</b>	Permitted.
<b>Rural Recreational Uses:</b>	Hunting, fishing, shooting, tennis and equine sports permitted.
<b>Ponds:</b>	Three (3) acres of upland ponds permitted.

**Rural Lands Criteria:**

- Virtually all of the upland acreage is comprised of USDA-designated prime soils (if it were to be drained and irrigated)
- Proximity to protected properties: RCLPP-protected Sanders Tract (159 acres), Scott Hill Farm (92 acres), Penn Center Tree Farm (195 acres), Lands End Plantation Holding Corp (231 acres), Orange Grove Plantation (785 acres), Christian Trask (74 acres), and the State of South Carolina’s St. Phillips Island (4,682 acres)
- Adjacent to other large acreage tracts with strong potential for conservation transactions
- Sufficient size for stand-alone rural use
- Strong funding leverage through bargain sale transaction
- Water quality protection – significant forested freshwater wetlands provide water quality/groundwater recharge ecosystem services benefits
- Uplands and intertidal marsh on Longwood ranked as highest priority on Port Royal Sound Mapping Initiative for Water Quality Priority and Flooding Priority (areas for future marsh migration)
- The 44 acres of intertidal marsh slows shoreline erosion and absorbs excess nutrients before draining into Tombee Creek and Station Creek before draining into Port Royal Sound, one of the most productive estuaries on the East Coast. This marsh provides vital food and habitat for clams, crabs and juvenile fish, as well as offering shelter and nesting sites for several species of migratory waterfowl.
- Wildlife habitat - Forested areas offer an abundance of food sources for a variety of mammals, vertebrate and invertebrate species. The forest structure provides travel corridors between the more densely developed southern end of St. Helena Island and the active agricultural properties located further north.



**Project Analysis:**

Longwood Plantation offers an opportunity to protect one of the last remaining relatively large tracts of natural habitat on St. Helena Island. The parcel is strategically located in close proximity to other protected properties and is adjacent to other potential conservation properties. Taken in concert, these properties would solidify a sizeable conservation complex on southern St. Helena Island.

Acquisition of this conservation easement would ensure that adequate land remains available for wildlife habitation and migration. The easement would substantially reduce residential construction and improvements on the property. The protected area would extend across the entire parcel with allowed building envelopes minimized, and woodland/wetland habitat maximized. The natural landscape will be preserved to the greatest extent possible as both an aesthetic and ecological contribution to the island and region. The project presents a substantial opportunity to preserve the rural nature of the island while simultaneously minimizing impacts of residential development on adjacent waterways.





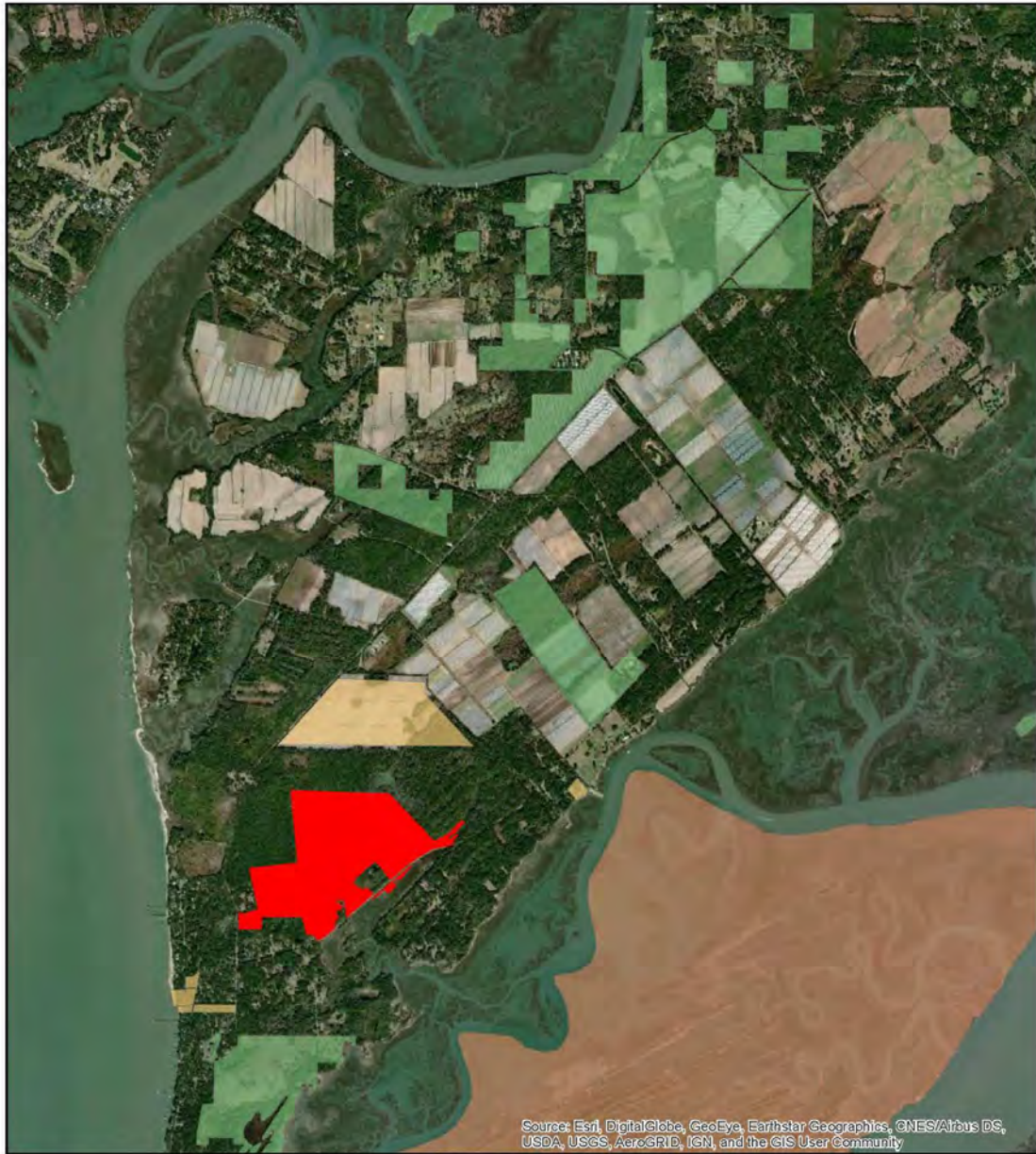
**Exhibit A – Parcel Numbers and Acreages**

<u>Parcel #</u>	<u>Upland Acres</u>	<u>Prp Taxes</u>		
R300 035 000 0138 0000	8.13	32.47		
R300 035 000 0139 0000	5.91	25.15		
R300 035 000 0140 0000	24.95	96.25		
R300 035 000 0141 0000	21.42	88.41		
R300 035 000 0142 0000	7.3	26.22		
R300 035 000 0143 0000	9.61	31.02		
R300 035 000 0144 0000	6.51	30.97		
R300 035 000 0145 0000	5.84	22.37		
R300 035 000 0146 0000	12.49	56.39		
R300 035 000 0147 0000	12.9	55.1		
R300 036 000 0001 0000*	6.99	246.03	*plus marsh acreage	<b>41.69</b>
R300 036 000 0066 0000	15.91	68.96		
R300 036 000 0067 0000	12.36	56.3		
R300 036 000 0068 0000	11.21	48.93		
R300 036 000 0069 0000	6.55	31.37		
R300 036 000 0070 0000	12.36	49.09		
R300 036 000 0071 0000	5.41	26.43		
R300 036 000 0072 0000	5.08	18.48		
R300 036 000 0075 0000	5.98	25.3		
R300 036 000 0076 0000	6.93	29.8		
R300 036 000 0077 0000	<u>23.65</u>	<u>102.98</u>		
	<b>227.49</b>	1,168.02		
Total Upland and Marsh Acreage				<b>269.18</b>

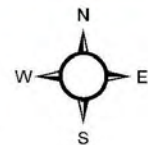
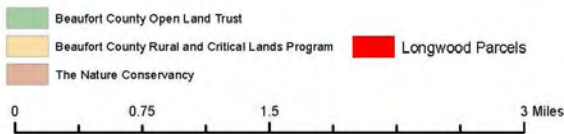


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PROGRAM**

Nearby Protected Properties



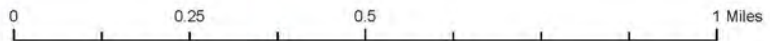
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



True Color Aerial



- ST HELENA PAVED ROADS
- LONGWOOD PARCELS



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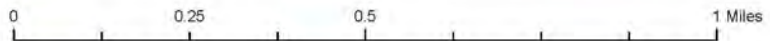
Land Cover



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



77 ac	EVERGREEN UPLAND FOREST	91 ac	MIXED UPLAND FOREST	ST HELENA PAVED ROADS
52 ac	FORESTED WETLAND	51 ac	NON-FORESTED WETLAND	LONGWOOD PARCELS
2 ac	HERBACEOUS RANGELAND	0.5 ac	TRANSPORTATION/UTILITY	



COPI

Soils Map

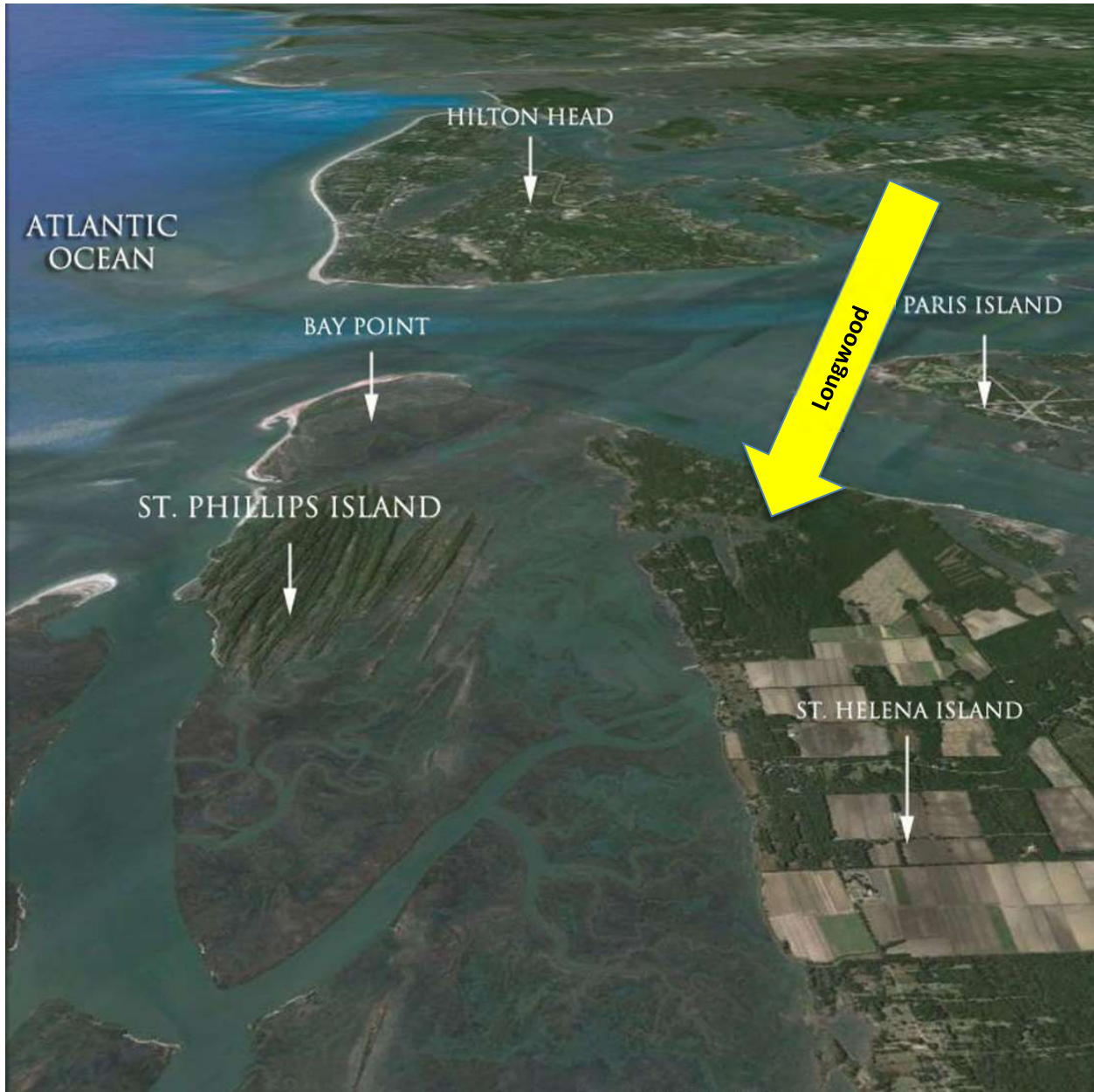


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Locational Aerial





Photos



Mixed Forested Upland





Intertidal Marsh



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## BEAUFORT COUNTY COUNCIL

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### Agenda Item Summary

**Item Title:**

Purchase of Development Rights Proposal through Rural & Critical Land Program - Longwood PDR

**Council Committee:**

Natural Resources - Executive Session

**Meeting Date:**

April 6, 2020

**Committee Presenter (Name and Title):**

Barbara G. Holmes, Beaufort County Contractor; Eric Greenway, Community Development Department Director

**Issues for Consideration:**

The acquisition of development rights on 227 forested upland acres between Lands End Road and Seaside Road on St. Helena Island for \$360,000 in Rural and Critical Program land acquisition funds. Project Summary Sheet and Purchase & Sale contract (including Grant of Conservation Easement) attached. Rural & Critical Land Preservation Board unanimously recommended approval on February 13, 2020.

**Points to Consider:**

Development rights being purchased at 50% of fair market value. The 21 parcels under consideration comprise a significant assemblage of undeveloped land on the southern end of St. Helena Island and also protects 42 acres of intertidal salt marsh. The Beaufort County Open Land Trust will hold a conservation easement on Longwood to protect the natural resources of the property in perpetuity.

**Funding & Liability Factors:**

Land acquisition cost from Rural & Critical Program funds = \$360,000. County has expended \$10,650 in identifiable due diligence expenses, additional attorney costs expected for closing including title search and closing costs. Property tax collection reduction to County estimated at \$525/year. No long-term operations/maintenance cost for Beaufort County as the Open Land Trust is responsible for annual monitoring of the conservation easement.

**Council Options:**

Approve the proposal and recommend purchase to Council, modify proposal, or reject proposal

**Recommendation:**

Staff recommends the Committee approve the purchase proposal.



WHEREAS, the Protected Property is situated on and prominently visible by the public from Lands End Road, having approximately 440 feet of scenic rural road frontage and on Seaside Road, having approximately 1,600 feet of scenic rural road frontage adding to the rural character of the region [possibly 1,400 feet on the eastern side of Seaside Road] and 7,155 feet of saltwater tidal creek and river frontage on Tombee Creek, draining into Station Creek, Beaufort River and ultimately into the Port Royal Sound, recognized as one of the most ecologically productive estuaries on the eastern seaboard; and

WHEREAS, the Protected Property is located within one mile of other RCLPP-protected properties including Penn Center Tree Farm (195 acres) and Lands End Plantation Holding Corp (231 acres), and within two miles from Sanders Tract (159 acres), and within three miles of Orange Grove Plantation (785 acres), which is adjacent to Christian Trask (74 acres), all protected by conservation easements held by Beaufort County Open Land Trust, and is located approximately 1.5 miles from the State of South Carolina's St. Phillips Island (4,680 acres); all of these properties being situated near and on Station Creek which flows into the Beaufort River and Port Royal Sound. Thus, the Protected Property contributes to the extensive network of protective wildlife habitat, the protection of water quality in the Broad-St. Helena watershed, and the scenic natural and rural character of the area; and

WHEREAS, the Protected Property contains forested and non-forested wetlands, which function to improve water quality by providing for nutrient uptake and sediment deposition from runoff draining from upstream lands, and also provide many wildlife habitat components such as breeding grounds, nesting sites and other critical habitat for a variety of fish and wildlife species as well as the unique habitat requirements of many threatened and endangered plants and animals; and

WHEREAS, the Protected Property provides a diversity, quality, and combination of natural habitats significant to wildlife habitat functions including feeding, nesting and roosting areas for migratory songbirds, ground-nesting birds, colonial shorebirds, and waterfowl, and also including feeding, breeding and resting areas for native small and large game and non-game mammals; and

WHEREAS, in particular, the Protected Property in its existing relatively natural condition contributes very little nonpoint source pollution to the adjacent creeks and waterways due to the marsh wetlands surrounding all watercourses that provide for nutrient uptake and sediment deposition as well as the low percentage of impervious surface that reduces sources of pollution and nutrient loading; and

WHEREAS, more specifically, the Protected Property contains habitat with the potential to support rare, threatened or endangered species and species of concern which have known occurrences in Beaufort County including but not limited to the Bald Eagle (*Haliaeetus leucocephalus*), the Swallow-tailed Kite (*Elanoides forficatus*), the Swainson's Warbler (*Limnothlypis swainsonii*), the Big Brown Bat (*Eptesicus fuscus*), the Northern Yellow Bat (*Lasiurus intermedius*), the Seminole Bat (*Lasiurus seminolus*), the Southeastern Bat (*Myotis austroriparius*), the Northern Long-eared Bat (*Myotis septentrionalis*), the Tricolored Bat (*Perimyotis subflavus*), the Eastern Woodrat (*Neotoma floridana*), the Frosted Flatwoods



Salamander (*Ambystoma cingulatum*), the Eastern Diamondback Rattlesnake (*Crotalus adamanteus*), the Eastern or Harlequin Coral Snake (*Micrurus fulvius*), the Florida Pine Snake (*Pituophis melanoleucus mugitus*), the Spotted Turtle (*Clemmys guttata*), the Southern Fox Squirrel (*Sciurus niger*) and the Bluff Oak (*Quercus austrina*); and

WHEREAS, all of the above fauna and flora in the list of threatened or endangered species and species of concern are listed as priority species for the South Carolina State Wildlife Action Plan; and

WHEREAS, the Protected Property has approximately 204 acres of Prime Soils as determined by USDA National Resources Conservation Service; and

WHEREAS, the specific Conservation Values, as detailed in the Recitals above and outlined in Paragraph 1 below, are summarized hereunder and documented in a report on file at the **Grantee's** office and incorporated herein by this reference (hereinafter the "Baseline Documentation"), which consists of maps, reports and on-site photographs taken by a representative of the **Grantee**, and the parties agree that the Baseline Documentation provides, collectively, an accurate representation of the Protected Property at the time of this Easement and is intended to serve as an objective point of reference from which **Grantee** shall monitor and enforce compliance with the terms of this Easement; and

WHEREAS, **Grantor** believes that through this Easement, the natural resources, habitat, beauty and unique ecological character of the Protected Property can be protected in a manner that permits continuing private ownership of land and its continued use and enjoyment; and

WHEREAS, **Grantor** intends to preserve and protect the Conservation Values, as detailed in the Recitals above and outlined in Paragraph 1 below, in perpetuity; and

WHEREAS, **Grantor** is willing to forego forever the right to fully exploit the financial potential of the Protected Property by encumbering the Protected Property with this Easement; and

WHEREAS, by act of the General Assembly of the State of South Carolina, as enacted in South Carolina Code Ann. (1976, as amended) (hereinafter the "SC Code") §27-8-10, et. seq. (The South Carolina Conservation Easement Act of 1991) (hereinafter the "Act"), South Carolina recognizes and authorizes the creation of conservation restrictions and easements; and

WHEREAS, this Easement contains the conservation purposes pursuant to the Act, as outlined therein and stated below:

- (A) "retaining or protecting natural, scenic, or open-space aspects of real property";
- (B) "ensuring the availability of real property for agricultural, forest, recreational, educational, or open-space use";
- (C) "protecting natural resources"; and
- (D) "maintaining or enhancing air or water quality".

WHEREAS, **Grantor** and **Grantee** recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property pursuant to Code §170(h) and in the regulations promulgated thereunder by the United States Department of the Treasury (hereinafter “Treasury Regulations”) as follows:

(I) Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem within the meaning of Code §170(h)(4)(A)(ii) which will yield a significant public benefit, including the protection of habitats and water quality and the public benefits described in the recitals to this Easement; and

(II) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(I) for the scenic enjoyment of the general public which will yield a significant public benefit, including the opportunities for scenic enjoyment and the public benefits described in the recitals to this Easement; and

(III) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(II) pursuant to clearly delineated Federal, state, or local governmental conservation policies which will yield a significant public benefit, including the policies and public benefits described in the recitals to this Easement.

WHEREAS, **Grantor** and **Grantee** agree these purposes can be accomplished by the **Grantor** voluntarily placing perpetual restrictions upon the use of the Protected Property and by providing for the transfer from the **Grantor** to the **Grantee** of affirmative rights for the protection of the Protected Property so as to be considered a “qualified conservation contribution” as such term is defined in Code §170(h) and the Treasury Regulations promulgated thereunder; and

WHEREAS, the **Grantee** is a corporation of which its purposes and powers include one or more of the purposes set forth in SC Code §27-8-20(1); and **Grantee** is a holder of conservation easements as conservation easements are defined by the Act; and, **Grantee** is a publicly supported, tax-exempt, nonprofit corporation organized and operated under Code §501(c)(3) dedicated to the preservation of the irreplaceable natural and historical resources of the South Carolina Lowcountry landscape by protecting significant lands, waters and vistas and is not a private foundation under Code §509;

NOW, THEREFORE, in consideration of payment to **Grantor** of the sum of \$360,000 and of the above recitals and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to §§170(h) and 2031(c) of the Code and pursuant to the laws of the State of South Carolina, the **Grantor** hereby voluntarily grants and conveys to **Grantee** this Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth. **Grantor** herein declares that the Protected Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to be a burden on the Protected Property in perpetuity.

1. Purpose. The purpose of this Easement (hereinafter the “Purpose”) is to protect the Conservation Values (detailed in the Recitals above and outlined below) and to preserve the Protected Property for the continuation of historic and traditional uses and activities, as well as other limited uses, provided no such uses significantly impair or degrade the Conservation Values. The Conservation Values of the Protected Property include the following:

- 1) Open space for agricultural or forestry use,
- 2) Relatively natural habitat and biological diversity,
- 3) Preservation or enhancement of downstream water quality,
- 4) Scenic views of the Protected Property from Lands End Road and Seaside Road,
- 5) Scenic views of the Protected Property from Tombee Creek, Station Creek and its tributaries.

The protection of these Conservation Values by stewardship, enforcement, and monitoring in perpetuity is set forth in this Easement.

**This Purpose is to ensure that the Protected Property will be retained in perpetuity predominantly in its relatively natural and scenic condition for conservation purposes and to prevent any use of the Protected Property that would significantly impair or interfere with the Conservation Values of the Protected Property, while allowing for limited low-impact rural residential, recreational, agricultural, forestry and other open-space uses of the Protected Property that are compatible with and not destructive of those Conservation Values. It is the intent of the parties that Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the Purpose of this Easement. Grantor understands that nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Protected Property imposed by law.**

2. Rights of Grantee. Grantor hereby conveys the following rights to the Grantee:

(A) Right of Visual Access. To have visual access to the Protected Property, provided that such right shall not be construed to permit general public access over or upon the Protected Property;

(B) Right to Monitor. To enter upon the Protected Property in a reasonable manner, at reasonable times, with reasonable notice, in order to monitor compliance with this Easement and to further document natural and manmade features of the Protected Property. The Grantee shall limit entry to annual visits (after completion of the Baseline Documentation) unless the Grantee has reason to believe there is a violation of the terms of this Easement. Grantee shall not unreasonably interfere with Grantor’s quiet use and enjoyment of the Protected Property;

(C) Right to Prevent Inconsistent Uses. To prevent Grantor or third parties from conducting any activity or use inconsistent with the Purpose;

(D) Right to Require Restoration. To require **Grantor** to restore such Conservation Values that may be damaged by any uses or activities prohibited by this Easement, or any activity or use inconsistent with the Purpose to include third party activities.

3. Definitions. For the purposes of this Easement, **Grantor** and **Grantee** agree that those bold-faced terms that appear throughout this Easement shall be defined as follows:

**Agricultural Activities** shall be defined as activities directly related to the production of plant or animal products on the Protected Property including crop production, animal husbandry, floriculture and horticulture, in a manner that preserves the long-term productivity of the soil. Permitted activities shall not include **Feedlots**, intensive livestock production facilities nor any type of large-scale operation where animals are confined. Notwithstanding the above, aquaculture and/or mariculture activities must have **Approval**.

**Agricultural Structure** shall be defined as any building designed to be used or currently used in conjunction with permitted **Agricultural Activities** or **Forest Management Practices**, not including any structure used as a dwelling for human beings.

**Approval** shall be defined as the prior written consent of the **Grantee** to permit **Grantor** to exercise certain rights described in Paragraphs 4 and 5, or to undertake any activity otherwise permitted through Discretionary Consent as described in Paragraph 9. The rationale for requiring the **Grantor** to receive **Approval** is to afford **Grantee** an adequate opportunity to evaluate the activities in question to confirm if they are designed and will be carried out in a manner that is not inconsistent with the Purpose of this Easement. **Approval** shall not be unreasonably withheld by the **Grantee**. **Approval** does not relieve **Grantor** of the obligation to obtain all other necessary permits, consents and approvals.

**Building Height** shall be measured, for the purposes of any permitted structure, from ground elevation or the legal building elevation within a Federal Emergency Management Agency (or successor agency) flood zone, whichever is greater, to the top of the highest structural component, excluding chimneys, antennas and weather vanes.

**Designated Building Area** shall be defined as those three (3) areas, each no larger than approximately five (5) acres in size, designated for the siting of all **Residential Structures**, **Related Outbuildings**, and **Agricultural Structures**, the location and configuration of which shall be at the **Grantor's** discretion, subject to **Approval**.

**Feedlot** shall be defined as any confined area or facility for feeding livestock for commercial purposes, or within which the land is not grazed or cropped at least annually, or which is used to receive livestock that have been raised off the Protected Property for feeding and fattening for market.

**Forest Management Plan** shall be defined as a written plan subject to periodic updates, on file with the **Grantee** and agreed upon by both **Grantor** and **Grantee**, which outlines **Forest Management Practices** on the Protected Property. The **Forest Management Plan** shall be compatible with the terms of this Easement and shall not significantly impair or degrade any of the Conservation Values of the Protected Property.

**Forest Management Practices** shall be defined as the production, improvement and maintenance of forest lands for timber production and commercial harvesting, wildlife management, aesthetics or any other purpose. **Forest Management Practices** include silvicultural practices, which are used to control the establishment, growth, composition, health, quality and utilization of forestlands for multiple-use purposes and include, but are not limited to, harvesting, thinning, reforestation, competition control, prescribed fire or fire breaks.

**Grantee** shall be defined as the above-named §501(c)(3) South Carolina charitable corporation, designated as the holder of this Easement, and its successors and assigns.

**Grantor** shall be defined as the original donor of this Easement and his (or her, their or its) personal representatives, heirs, successors, assigns, and subsequent owners of record.

**Impervious Surface** shall be defined as a hard surface area which either prevents or significantly retards the entry of water into the soil mantle at a rate lower than that present under natural conditions prior to development. Impervious surfaces can include, but are not limited to, roof tops, walkways, patios and decking, enclosed and unenclosed porches, paved driveways, paved parking lots, covered storage areas, concrete or asphalt paving, swimming pools, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. **Impervious Surface** specifically excludes ground surfaces covered with sand, gravel, shell sand, crushed stone, or other similar traditional permeable materials. The use, installation, and/or introduction of new products and/or technologies for pervious surfaces (those surfaces which allow for the direct percolation of water into the soil surface), requires prior **Approval** from the **Grantee**. **Approval** will be case by case and all requests for the use, installation and/or introduction of such new products and/or technologies must be accompanied by the appropriate research, data and information on the material for **Grantee** to accurately evaluate the proposed product and/or technology.

**Notice** shall be defined as a written communication, not a request for **Approval**, prior to undertaking a permitted activity, as defined in Paragraph 21.

**Recreational Structure** shall be defined as any building designed or used in conjunction with recreational activities on the property and shall not include any structure used as a permanent or temporary **Residential Structure**.



**Related Outbuilding** shall be defined as any auxiliary structure customarily used as an accessory to a private **Residential Structure** in the South Carolina Lowcountry, not including any structure used as a permanent or temporary **Residential Structure**.

**Request for Approval** shall be defined as a written request by **Grantor** for **Approval** by **Grantee** of a defined activity proposed by the **Grantor**.

**Residential Structure** shall be defined as any dwelling having sleeping quarters, sanitary facilities, and cooking facilities, which constitutes temporary or permanent residential use or occupancy on the Protected Property by the **Grantor**, permitted lessee, and guests or employees of the **Grantor** or permitted lessee.

**Setback Line** shall be defined as the edge of a waterway which is either the critical line as defined by the South Carolina Office of Coastal Resource Management or, if no critical line has been established, the ordinary high water mark as defined by the Army Corps of Engineers or established by a surveyor. If the critical line or the mean high water line cannot be established or are no longer used to define the edge of a waterway, then the comparable demarcation line as defined by successor entities of the above name agencies shall be used.

**Significant Tree** shall be defined as any bald cypress (*Taxodium distichum*), pond cypress (*Taxodium ascendens*), live oak (*Quercus virginiana*) or southern magnolia (*Magnolia grandiflora*) having a diameter at breast height of twelve (12) inches or greater.

**Subdivided Tract** shall be defined as a legally divided, transferable parcel of land having a unique tax identification number according to Beaufort County real property tax records.

**Subdivision** shall be defined as the permitted creation of a **Subdivided Tract** after the date of this Easement.

**Wetlands** shall be defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions,” as stated in the United States Army Corps of Engineers Wetlands Delineation Manual (1987, or as amended).

4. **Reserved Rights.** **Grantor** reserves all the rights, uses and activities (collectively, the “Reserved Rights”) inherent in fee simple ownership of the Protected Property in its entirety, subject to the specific Restrictions and Limitations of Paragraph 5, which are included to accomplish the Purpose of this Easement stated in Paragraph 1. In addition, the exercise of all Reserved Rights shall be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement stated in Paragraph 1.

5. Restrictions and Limitations. **Grantor** will not perform or permit or will perform or permit, as specified below, the following acts or uses on, over or under the Protected Property:

(A) Subdivision. The Protected Property is currently composed of twenty-one (21) tracts under a single ownership, which are Beaufort County DMP#s R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000 (excluding marsh), R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000. Although the legal description of the Protected Property describes more than one tract of land, **Grantor** agrees that all of the Protected Property shall be held by no more than three (3) different owners. **Grantor** may configure or reconfigure the interior tract lines of the Protected Property so long as the Protected Property is not owned by more than three (3) different owners. There shall be no further **Subdivision** of the Protected Property. The **Grantor** shall not indirectly or practically divide all or any part of the Protected Property through the allocation of property rights among partners, shareholders or members of any successor entity, the creation of a horizontal property regime, leasing or any other means.

(B) Structural Limitations. The construction, enlargement, removal and replacement of **Residential Structures, Related Outbuildings, Recreational Structures, Agricultural Structures** and all other structures are subject to the following limitations:

I. Total **Impervious Surface** on the Protected Property shall not exceed a maximum of twenty-four thousand (24,000) square feet in the aggregate.

II. No **Residential Structure, Related Outbuilding, Recreational Structure** or **Agricultural Structure** shall exceed thirty-five (35) feet in **Building Height**.

III. **Residential Structures** shall be limited to six (6) such structures.

IV. **Related Outbuildings, Recreational Structures** and **Agricultural Structures** shall be permitted, provided that the square footage of all **Impervious Surface** on the Protected Property does not exceed the allowance stated in Paragraph 5(B)(I).

V. All permitted **Residential Structures, Related Outbuildings, Recreational Structures** and **Agricultural Structures** shall be located within a permitted **Designated Building Area**. Siting of future **Designated Building Areas** not in existence at the time of this Easement donation shall be subject to **Notice** to the **Grantee**.

VI. Other than permitted **Residential Structures**, no other structure on the Protected Property shall be used as a temporary or permanent dwelling for human beings.

VII. Docks. Docks providing access to interior ponds or impoundments may be constructed, maintained, repaired, improved, removed or replaced and are not subject to the **Impervious Surface** limitation in Paragraph 5(B)(I).

VIII. Boardwalk. Boardwalks sited within any freshwater **Wetlands** may be constructed, maintained, repaired, improved, removed or replaced, provided they shall be limited to walkways no wider than six (6) feet and associated observation platforms with a maximum of eight hundred (800) square feet in the aggregate. There shall be minimal adverse impact to the freshwater **Wetlands** during construction.

IX. Towers. There shall be no towers on the Protected Property, including, but not limited to, radio, microwave, broadcast, communication and cellular towers.

Notwithstanding the above, **Grantor** retains the right to construct, maintain, improve, repair and replace wildlife observation towers (and/or shooting range towers); such towers in excess of twenty-five (25) feet in height shall not be visible from off the Protected Property when viewed from ground elevation.

(C) Buffers. Buffer Areas, as shown in Exhibit “B” and in the Baseline Documentation, shall be subject to the following restrictions:

Lands End Road and Seaside Road Setback Buffers. In order to protect the scenic view along these public roadways, there shall be no structures (other than mailboxes, fencing and gates, utility and service lines for any permitted use under the terms of this Easement, or other structures existing at the time of this Easement as documented in the Baseline Documentation) on that portion of the Protected Property within one hundred (100) feet of the legal or established right-of-way along Lands End Road and along Seaside Road. **Grantor** reserves the right to engage in **Forest Management Practices** in the Road Buffers.

Station Creek Buffer. In order to protect an aesthetic and ecological transition zone between permitted structures and waterways, there shall be no **Impervious Surface**, structures (other than fencing and gates, permitted docks or boat ramp) on that portion of the Protected Property within one hundred (100) feet of the **Setback Line** adjacent to Tombee Creek or Station Creek or their tributaries. Existing native vegetation shall be maintained in this Buffer.

There shall be no activities that endanger the health or survival of **Significant Trees** without **Approval**.

Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(D) Industrial Uses. There shall be no industrial uses, activities, or structures. No right of passage across or upon the Protected Property shall be allowed or granted if that right of passage is used in conjunction with any industrial uses or activities.

(E) Commercial Uses. There shall be no commercial uses, activities or structures, other than home-based business without prior **Approval** by the **Grantee**. No right of passage across or upon the Protected Property shall be allowed or granted if that right of passage is used in conjunction with any commercial uses or activities not permitted in this Easement. For the purposes of this Easement, **Agricultural Activities**, **Forest Management Practices** and the seasonal leasing of hunting, trapping and fishing rights shall not be considered commercial uses. However, to qualify this Easement for treatment under §2031(c)(8)(B) of the Code, any use of the Protected Property for more than a de minimus use for a commercial recreational activity is prohibited.

(F) Services. Construction of water wells, septic systems, and utility services, is limited to serve the allowed uses in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, and subject to all applicable governmental laws and regulations.

Fuel storage tanks are limited to aboveground or underground gaseous (not liquid) fuel storage tanks and/or aboveground liquid fuel storage tanks to serve the allowed uses in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, subject to all applicable governmental laws and regulations.

(G) Roads and Driveways. Roads and driveways shall be limited to those required to facilitate the uses permitted by this Easement, provided there shall be no road or driveway constructed or covered with **Impervious Surface**. Maintenance of driveways, roads and roadside ditches shall be limited to standard practices for non-paved roads.

(H) Landscaping. Landscaping shall be limited to the management of vegetation associated with the uses allowed by this Easement, including but not limited to, mowing, pruning, trimming, and gardening. Structural elements of landscaping, including but not limited to walkways and patios, shall be subject to **Impervious Surface** restrictions and limitations as provided for in this Easement.

(I) Lighting. There shall be no exterior lighting of which the light source is visible from off the Protected Property at ground level; lights shall employ an opaque shield so as to prevent direct visibility of the light source from off the Protected Property. The purpose of this provision is to allow lighting on the property for safety and security and to minimize the impact of lighting on the relatively natural and scenic views of the Protected Property.

(J) Signs. Signs visible from off the Protected Property shall be limited to a maximum of eight (8) square feet in size, individually. Signs shall be placed so as to minimally impact the scenic view as seen from any public roadway or waterway.

(K) Archeological and Paleontological Excavations. **Grantor** shall give **Notice** to **Grantee** prior to undertaking archeological or paleontological excavation. Any archeological or paleontological site shall, upon completion of any excavation, be returned to, or as close as possible to, its previous state, unless the site is to be maintained in an excavated condition for interpretive purposes related to education.

(L) Forestry Uses. A **Forest Management Plan** is required for the Protected Property when deemed appropriate by the **Grantee**. Forestry Uses are limited to those **Forest Management Practices** defined in the **Forest Management Plan**, or upon **Approval** from **Grantee**. **Grantor** shall provide **Notice** to **Grantee** of timber harvests.

Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(M) Agricultural Uses. **Agricultural Activities** are restricted to the recommended or accepted practices currently in use at the time of implementation, recommended by the South Carolina Cooperative Extension Service, the United States Natural Resources Conservation Service, their successors or other entities mutually acceptable to the **Grantor** and **Grantee**. **Grantor** and **Grantee** recognize that changes in agricultural technologies, including accepted management practices, may result in an evolution of **Agricultural Activities**. Such evolution shall be permitted so long as it is consistent with the Purpose.

(N) Rural Recreational Uses. Hunting, shooting, trapping, fishing, tennis and equine activities are permitted.

(O) Significant Trees. There shall be no activities that endanger the health or survival of **Significant Trees** without **Approval**.

(P) Pond(s). Pond(s) shall be limited in size to three (3) acres in the aggregate, shall be subject to prior **Approval** from the **Grantee**, and shall be in compliance with the Purpose as stated in Paragraph 1 and with all applicable local, state and federal statutes and regulations. The sale of extracted soil, sand, gravel or other materials produced in connection with the enlargement or construction of pond(s), or any other permitted or non-permitted use, is strictly prohibited in accordance with Paragraph 5(E) Commercial Uses and Paragraph 5(R) Mining.

(Q) Impoundment(s). **Grantor** reserves the right to create, improve, repair, replace or maintain new or existing and/or historic wetland impoundments, green tree reservoirs, dikes, ditches and water control structures, subject to **Approval** and all applicable local, state and federal statutes and regulations. Impoundments are recognized by the **Grantor** and **Grantee** as beneficial to waterfowl and other wetland dependent plants and animals.

(R) Mining. Mining and recovery of any oil, gas or minerals are restricted to extraction methods in accordance with Code §170(h)(5)(B) prohibiting surface mining provided that following the mining activity, the site is returned to, or as closely as possible to, its previous state.



(S) Topography and Hydrology. There shall be no adverse material alteration of the topography or hydrology, unless otherwise provided for in Paragraphs 4 or 5.

(T) Refuse. There shall be no placing of refuse on the Protected Property of vehicle bodies or parts or refuse not generated on the Protected Property. Temporary piles for collection of refuse generated on the Protected Property established between regular removals are permitted provided such piles do not contain hazardous substances, pollutants, or wastes and do not impair the Conservation Values of the Protected Property.

(U) Adverse or Inconsistent Uses. There shall be no other use or activity that is inconsistent with the Purpose of this Easement as stated in Paragraph 1.

6. Third Party Activities. The **Grantor** shall keep the **Grantee** reasonably informed as to activities being conducted on the Protected Property which are within the scope of this Easement and as to the identity of any third parties who are conducting or managing such activities. The **Grantor** shall ensure that all third parties who are conducting activities relating to permitted uses of the Protected Property are fully and properly informed as to the restrictions and covenants contained within this Easement which relate to such uses, including without limitation, the provisions of this Paragraph and of Paragraphs 4 and 5.

7. Grantee's Remedies. If **Grantee** determines that **Grantor** is in violation of the terms of this Easement or that a violation is threatened, the **Grantee** shall notify the **Grantor** of the violation (hereinafter, "First Notice") and request voluntary compliance. In the event that voluntary compliance is not agreed upon within ninety (90) days of receipt of First Notice, the **Grantee** shall give written notice to **Grantor** of such violation (hereinafter, "Second Notice") and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, to restore the portion of the Protected Property so injured.

If **Grantor** fails to cure the violation within sixty (60) days after receipt of Second Notice thereof from **Grantee** (or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, if **Grantor** shall fail to begin curing such violation within said sixty (60) day period, or shall fail to continue diligently to cure such violation until finally cured), **Grantee** may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of the Conservation Values, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting **Grantor's** liability therefore, **Grantee**, in its sole discretion, may either apply any damages recovered to the cost of undertaking any corrective action on the Protected Property or may apply any damages recovered towards activities relating to monitoring and enforcing compliance with the terms of this Easement and other similar conservation easements.

If **Grantee**, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, **Grantee** shall give

immediate notice of the circumstances to **Grantor**, as described in Paragraph 21, and may immediately pursue its legal and equitable remedies under this Paragraph without waiting for the period provided for cure to expire. **Grantor** agrees that if such emergency arises, **Grantee** may obtain injunctive relief without the necessity of posting a bond.

**Grantee's** rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. **Grantor** agrees that if **Grantee's** remedies at law for any violation of the terms of this Easement are inadequate, the **Grantee** shall be entitled to seek the injunctive relief described in this Paragraph, both prohibitive and mandatory in addition to such other relief to which **Grantee** may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, and without the necessity of posting a bond. **Grantee's** remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. Costs of Enforcement. If **Grantee** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantee** in enforcing the terms of this Easement against **Grantor**, including without limitation, costs of suit (which includes reasonable attorneys' fees), and any reasonable costs of restoration necessitated by **Grantor's** violation of the terms of this Easement, shall be borne by **Grantor**. If **Grantor** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantor**, including without limitation **Grantor's** cost of the suit (which includes reasonable attorneys' fees) shall be borne by **Grantee**.

9. Discretionary Consent. If, owing to unforeseen or changed circumstances, any of the uses or activities prohibited under this Easement are deemed desirable by both **Grantor** and **Grantee**, **Grantee** may, in its sole discretion, give **Approval** for such uses or activities, subject to such limitations as it deems necessary or desirable and provided that **Grantee** may give **Approval** only if **Grantee** determines that such activities (i) are consistent with the Purpose of this Easement, (ii) will not adversely affect the qualification of this Easement as a "qualified conservation contribution" under any applicable laws, including §§170(h) and 2031(c) of the Code or the Act, and (iii) will not adversely affect the "tax exempt" status of the **Grantee** under any applicable laws, including §501(c)(3) of the Code and Treasury Regulations promulgated thereunder. Furthermore, **Grantee** and **Grantor** have no right or power to agree to any use or activity that would result in the termination or extinguishment of this Easement.

10. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the reasonable discretion of the **Grantee**, and any forbearance by **Grantee** to exercise its rights under this Easement in the event of any breach of any terms of this Easement by **Grantor** shall not be deemed or construed to be a waiver by **Grantee** of such term or of any subsequent breach of the same or any other term of this Easement or of any of **Grantee's** rights under this Easement. No delay or omission by **Grantee** in the exercise of any right or remedy upon any breach by **Grantor** shall impair such right or remedy or be construed as a waiver.

11. Grantor's Environmental Warranty. The **Grantor** warrants that **Grantor** has no knowledge of the existence or storage of hazardous substances, pollutants, or wastes on the Protected Property or a release or threatened release of hazardous substances, pollutants or

wastes on the Protected Property and promises to defend and indemnify the **Grantee** against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.

12. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle **Grantee** to bring any action against **Grantor** for any injury to or change in the Protected Property resulting from causes beyond **Grantor's** control, including trespass, fire, hurricane, flood, storm and earth movement, or from any prudent action taken by **Grantor** under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

13. Access. No right of public access to any portion of the Protected Property is conveyed by this Easement, except as expressly provided herein.

14. Costs, Liabilities, and Taxes. **Grantor** retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including, but not limited to, clean up or remediation costs due to chemical contamination and payment of taxes. Furthermore, if the **Grantor** maintains general liability insurance coverage for the Protected Property, **Grantor** will be responsible for such costs.

Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of wrongful or negligent activities of the indemnifying party on the Protected Property.

15. Transfer Fee. There shall be assessed by the **Grantee** a transfer fee equal to one (1) percent of the sales price and/or other consideration paid in connection with the transfer of any freehold or fee simple interest in the Protected Property, including but not limited to any conveyance by warranty deed, limited warranty deed, or quitclaim deed, sale, mortgage foreclosure, or conveyance in lieu of foreclosure. The transfer fee shall be paid to the **Grantee** on the date of the closing of the transfer.

Exemptions from assessment of transfer fee:

- (A) The sale of timber rights or products produced from permitted **Forest Management Practices** and/or permitted **Agricultural Activities** of such Protected Property.
- (B) Any transfer subsequent to the conveyance of this Easement:
  - I. Without consideration, or
  - II. To a spouse, a lineal descendant, an ancestor or ancestors, a spouse of a lineal descendent (collectively, "Immediate Family Members"), or
  - III. To or from a trust whose beneficiaries or presumptive beneficiaries are the **Grantor** or an Immediate Family Member, or both, or
  - IV. To an entity at least 50% of the equity interest of which is owned by **Grantor** or an Immediate Family Member, or

- V. If the **Grantor** of this Easement is a corporation, limited liability company or a partnership, to an owner/partner/member of such entity or to an Immediate Family Member thereof, or
  - VI. To a charitable organization which is tax exempt under §501(c)(3), or
  - VII. Any transfer under a will, or
  - VIII. Any transfer implemented or effected by court order, except foreclosure, or
  - IX. Any transfer that corrects, modifies, or confirms a transfer previously made.
- (C) If a creditor purchases the Protected Property at a foreclosure sale or takes title to the Property in lieu of foreclosure, the transfer fee shall be due and paid at the time the creditor takes title. The transfer fee shall be based on the total bid for the Protected Property if purchased at a foreclosure sale or on the amount of the accrued indebtedness if the creditor accepts a deed in lieu of foreclosure. An additional transfer fee shall be due if the creditor who takes title through foreclosure or a deed in lieu of foreclosure sells the Protected Property for an amount higher than the amount subject to the transfer fee at the time the creditor took title; the additional transfer fee due shall be based on the additional amount alone, not the entire sales price. Creditor for purposes of this Paragraph shall include an assignee of the creditor who purchases the Protected Property at a foreclosure sale or takes a deed in lieu of foreclosure.

An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property plus boot, if applicable, received at the time of such transfer. Market value of the Protected Property shall be determined by agreement of the **Grantor** and the **Grantee**, or in the absence of such agreement by a Member Appraisal Institute (MAI) appraiser selected by the **Grantee**, whose appraisal fee shall be paid by the **Grantee**.

**Grantor** grants **Grantee** a lien against the Protected Property for all or any part of the transfer fee that is unpaid at the time of the conveyance or assignment triggering the transfer fee. **Grantee**'s lien shall be subordinate to this Easement and to the lien of any first mortgage on the Protected Property. **Grantee** shall have the right to record a notice of lien for such unpaid transfer fee. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina. **Grantee** may require the **Grantor** and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence.

16. Extinguishment, Condemnation and Fair Market Value. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. As required by §1.170A-14(g)(6)(ii) of the Treasury Regulations, in the event of any extinguishment or termination of this Easement, any sale, exchange, or involuntary conversion of the Protected Property entitles **Grantee** and Beaufort County to a percentage of the gross sale proceeds, minus any amount attributable to the value of improvements made after



the date of this Easement and allowed under this Easement, which amount shall be reserved to **Grantor**, equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Protected Property established as of the date donated.

If all or a part of the Protected Property is taken by exercise of the power of eminent domain, **Grantor** and **Grantee** shall be respectively entitled to compensation in accordance with applicable law and as provided in this Paragraph. **Grantor** and **Grantee** and Beaufort County shall divide the net proceeds after the payment of all expenses of the condemnation (minus any amount attributable to the value of improvements made after the date of grant of this Easement and allowed under this Easement, which amount shall be reserved to **Grantor**) in accordance to the ratio of the appraised value of this Easement to the fair market value of the Protected Property unrestricted by the Easement established as of the date conveyed.

For the purpose of the above Paragraphs, the parties hereto stipulate that the value of this Easement and the value of the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. The percentage interests shall be determined by the ratio of the value of this Easement to the value of the Protected Property, without reduction for the value of this Easement. All such proceeds received by **Grantee** shall be used in a manner consistent with **Grantee's** mission. This provision is not intended to violate the provision required by Code §170(h)(2)(C) that requires this Easement to be granted in perpetuity.

17. Limitations on Amendment. If unforeseen circumstances arise, including any change or modification to state or federal laws or regulations especially as they relate to the Code, under which an amendment to, or modification of, this Easement would be appropriate to clarify any ambiguities or to maintain or enhance the Conservation Values, **Grantor** and **Grantee** may, by mutual written agreement, jointly amend this Easement; provided that no amendment shall be allowed that will adversely affect the eligibility of this Easement as a “qualified conservation easement” or “qualified conservation contribution” under any applicable laws, including §§170(h) and 2031(c) of the Code. No amendment shall be allowed which would adversely affect the “tax exempt” status of the **Grantee** under any applicable laws, including §501(c)(3) of the Code and Treasury Regulations promulgated thereunder. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements that would interfere with the essential scenic quality of the land (if applicable) or with any governmental conservation policy that is being furthered by this Easement donation (if applicable) and as stated in §1.170A-14(d)(4)(v) of the Treasury Regulations, shall not permit any impairment of the Conservation Values. **Grantor** and **Grantee** agree to reasonable consideration of any such proposed amendment, however, neither **Grantor** nor **Grantee** shall be bound to agree to any amendment. Any such amendment shall be recorded in the official land records of Beaufort County, South Carolina.

18. Assignment. The benefits of this Easement shall not be assignable by the **Grantee**, except if as a condition of any assignment, (i) the **Grantee** requires that the terms and conditions of this Easement continue to be carried out in full as provided herein, (ii) the assignee has a commitment to protect the Purpose and the resources to enforce the restrictions contained herein, and (iii) if the assignee, at the time of assignment, qualifies under §170(h) of the Code, and

applicable Treasury Regulations promulgated thereunder, and under State of South Carolina law as an eligible donee to receive this Easement directly. In the event that **Grantee** ceases to exist or exists but no longer as a tax-exempt, nonprofit corporation, qualified under §§501(c)(3) and 170(h)(3) and not a private foundation under §509(a) of the Code, then this Easement shall be assigned to a tax-exempt, nonprofit organization, qualified under §§501(c)(3) and 170(h)(3) and not a private foundation under §509(a) of the Code, which has a mission of protecting open lands or natural resources in the South Carolina Lowcountry.

19. No Extinguishment Through Merger. **Grantor** and **Grantee** herein agree that should **Grantee** come to own all or a portion of the fee interest in the Protected Property, (i) **Grantee** as successor in title to **Grantor** shall observe and be bound by the obligations of **Grantor** and the restrictions imposed upon the Protected Property by this Easement; (ii) this Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (iii) **Grantee** as promptly as practicable shall assign the **Grantee** interests in this Easement of record to another holder in conformity with the requirements of this Paragraph 19. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this Paragraph 19 and shall contain language necessary to continue it in force. Further, no deed, transfer, or assignment shall be effective if it will result in merger, until a like conservation easement has been granted to avoid merger.

20. Transfers. **Grantor** agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which **Grantor** transfers any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. The **Grantor** shall give the **Grantee Notice** of any change of possession, ownership or control of the Protected Property within thirty (30) days of such change, including without limitation notice of any transfer, lease, or sale of all or a part of the Protected Property. The failure of **Grantor** to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

21. Communication. All **Requests for Approvals** shall be in writing and shall be deemed sufficiently given or rendered only when acknowledged in writing by **Grantee**. All **Notices** and other communications to **Grantee** may be communicated by United States Postal Service first class mail, hand courier, electronic mail or facsimile, and shall be deemed sufficiently given or rendered and effective only when acknowledged in writing by **Grantee**. All such correspondence and communications shall be addressed as follows:

If to **Grantor**:

[Owner Contact Information]  
c/o Dukes Real Estate Company  
P. O. Box 532  
Beaufort, SC 29901

If to **Grantor**'s Attorney:

James Kuyk  
Grant & Kuyk, PC  
P. O. Box 395  
Charleston, SC 29402  
[jimkuyk@gk-law.com](mailto:jimkuyk@gk-law.com)

If to **Grantee**:

Beaufort County Open Land Trust  
P. O. Box 75  
Beaufort, SC 29901  
Attn: Executive Director

or to such other person or place as a party may designate by correspondence as aforesaid. Correspondence by mail or overnight courier service shall be deemed given on the date of receipt as shown on the return receipt, or receipt or records of the courier service, as the case may be. In the event any such correspondence is mailed via the United States Postal Service or shipped by overnight delivery service to a party in accordance with this Paragraph and is returned to the sender as undeliverable, then such correspondence shall be deemed to have been delivered or received on the third day following the deposit of such correspondence in the United States Mail or the delivery of such correspondence to the overnight delivery service. **Grantor** has the responsibility of promptly notifying **Grantee** of **Grantor**'s current address and other contact information. **Grantor** shall promptly notify **Grantee** of (i) any changes of **Grantor**'s address or other changes in **Grantor**'s contact information, and (ii) the name, address, and contact information of any transferee of the Protected Property if **Grantor** conveys the Protected Property. Any communications or Correspondence by **Grantee** to or with **Grantor** sent to the last address provided by **Grantor** shall be deemed sufficient to provide notice to **Grantor**.

22. Recordation. **Grantor** or **Grantee** shall record this instrument in timely fashion in the Register of Deeds Office for Beaufort County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.

23. Effective Date. **Grantor** and **Grantee** intend that the restrictions arising hereunder take effect on the day and year this Easement is recorded in the Register of Deeds Office for Beaufort County, South Carolina, after all required signatures have been affixed hereto.

24. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of South Carolina.

25. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of this Easement to uphold the Purpose as stated in Paragraph 1. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid should be favored over any interpretation that would render it invalid.

26. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

27. Entire Agreement. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and inure to, the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Protected Property. All terms used in this Easement, regardless of the

number or gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Easement, any Paragraph, Subparagraph, or clause herein may require as if such terms had been fully and properly written in such number or gender.

TO HAVE AND TO HOLD the Easement interests herein described unto **Grantee** forever.

By execution of this Easement, the **Grantee** accepts this Easement and the rights and obligations recited herein.

**GRANTOR** HEREBY WARRANTS and represents that the **Grantor** is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except existing easements of record and prescriptive easements, if any, and that the **Grantee** shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

IN WITNESS WHEREOF, **Grantor** and **Grantee** have set their hands to duplicate original copies of this Easement under seal on the day and year first above written.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.





STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF CHARLESTON    )        ACKNOWLEDGMENT

The foregoing instrument was acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2020, before me the undersigned Notary, and I do hereby certify that the above named duly authorized officers of the **Grantee** personally appeared before me and acknowledged the due execution of the foregoing instrument.

\_\_\_\_\_  
(Signature of Notary)  
Notary Public for the State of South Carolina  
My commission expires: \_\_\_\_\_

DRAFT

EXHIBIT A

Legal Description and Derivation of Protected Property

TO BE PROVIDED BY GRANTOR

Beaufort County DMP#: R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (Excluding salt marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000 (Excluding salt marsh), R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000.

**Grantee's Address:** P. O. Box 75  
Beaufort, SC 29901

EXHIBIT B

TO BE PROVIDED BY OPEN LAND TRUST

DRAFT



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**AGREEMENT TO SELL AND  
PURCHASE CONSERVATION  
EASEMENT**

**THIS AGREEMENT TO SELL AND PURCHASE CERTAIN DEVELOPMENT RIGHTS THROUGH A PURCHASED CONSERVATION EASEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between DUKES REAL ESTATE COMPANY (the "Seller") and the BEAUFORT COUNTY, a subdivision of the State of South Carolina (the "Purchaser"); hereinafter collectively referred to as the "Parties".

**WITNESSETH:**

**WHEREAS**, the Parties hereto have had preliminary discussions with regard to the sale and purchase of certain development rights of real property located on St. Helena Island in Beaufort County, South Carolina, and it is their desire to document their understandings with respect to said development rights.

**NOW THEREFORE**, in consideration of the premises and of the mutual promises and covenants herein contained the Seller and Purchaser agree as follows:

1. **Development Rights of Real Property.** The Seller agrees to sell and the Purchaser agrees to purchase certain development rights on real property with the address of 1792 Seaside Road, St. Helena Island, South Carolina 29920, also currently identified as DMP#s R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000, commonly known as Longwood and as further described in Exhibit A attached hereto and incorporated herein by reference, (the "Development Rights").

2. **Consideration / Purchase Price.** The purchase price of the Development Rights shall be THREE HUNDRED AND SIXTY THOUSAND AND XX/100 Dollars (\$360,000.00) (the "Purchase Price").

As additional consideration, the Seller shall make a charitable gift to the Purchaser of (a) the difference between the Purchase Price and the fair market value of the Property as of the Closing Date and as determined by an independent qualified appraiser. Seller acknowledges that Purchaser and/or its agents shall not take a position on either the value or the tax deductibility of any charitable donation value claimed by the Seller as a result of this transaction. Should Seller choose to file for federal and/or state charitable donation benefits for this transaction, Seller must provide a qualified appraisal of the Property to Purchaser and allow five (5) business days for Purchaser's review. Purchaser agrees to work in good faith with Seller to provide required documentation; however, Purchaser

reserves the right to refuse to provide a gift acknowledgement letter or to execute Seller's IRS Form 8283 if Purchaser has significant concerns about the appraisal value or the tax deduction.

3. **Conveyance of Development Rights by Grant of Conservation Easement / Title.** The Development Rights to the above described Property shall be conveyed to the Beaufort County Open Land Trust by Seller's Grant of Conservation Easement attached hereto and incorporated herein by reference as Exhibit B. Seller agrees to convey the Development Rights by Grant of Conservation Easement by marketable title, free and clear of all liens and encumbrances whatsoever and those agreed upon to be assumed by Purchaser (the "Permitted Exceptions"). Purchaser shall have the responsibility to examine the title to the Property. Purchaser shall notify Seller in writing of any title defects during the Inspection Period. Seller shall have twenty (20) days from the date of such notification in which to cure such defects at its own expense or to decline to cure such defects noted by Purchaser. Seller shall notify Purchaser in writing of Seller's election to cure or decline to cure such defects noted by Purchaser within ten (10) days of receipt of Purchaser's notice. Purchaser shall then have five (5) days from the date of Seller's notice within which to notify Seller of Purchaser's termination of this Agreement for lack of sufficient cure to such defects. Absent Seller's receipt of notice from Purchaser within said five (5) day period, all of Purchaser's outstanding defects shall be deemed Permitted Exceptions, and the Closing shall be held on or before the date provided for Closing in this Agreement.

4. **Plat.** Purchaser shall at its sole cost and expense engage a surveyor licensed in South Carolina to prepare a Boundary Plat of the Property (the "Plat"), which shall be certified to Purchaser and the title insurers.

5. **Inspection.** Purchaser hereby acknowledges and agrees that Purchaser has or will thoroughly inspect and examine the property prior to closing. Purchaser is responsible for obtaining inspection reports from qualified professionals to assess the Property.

a) **Inspection Period.** It is understood by the Parties that this Agreement is subject to a due diligence period until 5:00 P.M. on May 30, 2020. For that reason the Parties have agreed as follows:

Purchaser may cancel this contract at any time prior to May 30, 2020 (the "Inspection Period"). Purchaser shall notify Seller in writing of its desire to cancel this Agreement. This Agreement shall be cancelled immediately upon Seller's receipt of written cancellation notice as set forth in this Section, and neither party shall have any further obligations hereunder.

b) **Right of Access for Inspection.** Purchaser and/or its agents shall have the privilege of going upon the Property at any time during the existence of this Agreement to inspect, examine, survey and to make test borings, soil boring tests and any other tests which the Purchaser may deem necessary, at Purchaser's expense. Purchaser assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under Agreement.

6. **Closing.** The Closing occurs when Purchaser transfers the Purchase Price to Seller and Seller conveys the Development Rights by Grant of Conservation Easement to Purchaser.

a) Closing. The Closing shall occur thirty (30) days subsequent to the due diligence period ("Closing Date") at the offices of Purchaser's attorney, or on such other date, place and/or time as the Parties may mutually agree.

b) Closing Costs and Prorations. All current real estate taxes, assessments, dues and other proratable items, if any, shall be apportioned pro rata on a per diem basis as of the date of closing. All taxes for any years prior to 2020 shall be the responsibility of the Seller. Seller shall be responsible for paying the South Carolina recording fee (formerly referred to as documentary stamps), transfer tax to be affixed to the deed and related transfer documents, if any such fee or tax be applicable to this transaction. Purchaser shall be responsible for any other fees for recording the deed and for any of its financing costs. Each party shall be responsible for its own legal fees.

7. **Brokerage Fees.** Seller represents that the Property is not subject to a listing contract with any real estate broker. Purchaser shall be responsible for any real estate commissions owed for real estate services provided to Purchaser. The Parties agree to indemnify and hold each other harmless from any claim of commission by others arising by, through or on account of the acts of the Parties.

8. **Seller's Delivery of Documentation.** Seller shall deliver to Purchaser at or before the Closing (at such times as Purchaser may reasonably request) all of the following documents, the delivery and accuracy of which shall be a condition to Purchaser's obligation to consummate the purchase and sale herein contemplated:

a) Grant of Conservation Easement. A grant of conservation easement to the Beaufort County Open Land Trust substantially in form and substance to that shown in Exhibit B and counsel for Purchaser, conveying certain development rights to the Property, free and clear of all liens, encumbrances, easements and restrictions of every nature and description, except those Permitted Exceptions referenced herein.

9. **Conditions Precedent.** Notwithstanding anything to the contrary stated herein, the obligations of Purchaser to purchase the property are expressly made subject to the Seller's representation that as of the Closing Date the warranties and representations of Seller shall be true and correct. The foregoing conditions are for the sole benefit of and may be waived by Purchaser by written notice to Seller.

10. **Default.** If Purchaser or Seller fails to perform any provision of this Agreement, the other party may elect to seek any remedy provided in equity (but not at law for money damages) as a result of such failure to perform, including an action for specific performance of Seller's obligations under this Agreement, or terminate this Agreement with a five (5) day written notice. If terminated, both Parties agree to cooperatively pursue their obligations set forth herein in good faith.

11. **Notices.** Any notice, communication, request, approval or consent which may be given or is required to be given under the terms of this Agreement shall be in writing and shall be transmitted (1) via hand delivery or express overnight delivery service to the Seller or the Purchaser, (2) via facsimile with the original to follow via hand delivery or overnight delivery service, or (3) via e-mail, provided that the sending party can show proof of delivery, as the case may be, at the addresses/numbers set forth below:

TO PURCHASER:                    Beaufort County Open Land Trust  
    Attn: Barbara G. Holmes  
    Post Office Box 75  
    Beaufort, SC 29901  
    E-mail: barbara@openlandtrust.com  
    (843) 521-2175

Copy to:                            Beaufort County  
    Post Office Box 1228  
    Beaufort, SC 29901  
    Attn: Kurt Taylor, Beaufort County Attorney  
    Email: [kurt.taylor@bcgov.net](mailto:kurt.taylor@bcgov.net)  
    (843) 255-2025

    Thomas A. Bendle, Jr.  
    Howell, Gibson and Hughes PA  
    Post Office Box 40  
    Beaufort, SC 29901  
    (843) 522-2400  
    [tbendle@hgpha.com](mailto:tbendle@hgpha.com)

TO SELLER:                        Dukes Real Estate  
    Attn: \_\_\_\_\_, Counsel  
    E-mail:

12. **Assignment by Purchaser.** Purchaser shall have the right to assign this Agreement to a related entity by giving Seller notice of such assignment (which shall include the name and address of the Assignee) together with an executed counterpart of the assignment wherein such Assignee assumes the performance of all of the terms and conditions of this Agreement on the part of the Purchaser to be performed.

13. **Condemnation.** In the event that at the time of Closing all or any part of the Property is acquired, or is about to be acquired, by authority of any governmental agency in the exercise of its power of eminent domain or by private purchase in lieu thereof (or in the event that at such time there is any threat or imminence of any such acquisition by any such governmental agency), Purchaser shall have the right, at its option, to terminate this Agreement and recover its deposit hereunder, or to purchase only so much of the Property

not condemned or under threat of condemnation, in which event the purchase price and terms shall be adjusted accordingly.

14. **No Joint Venture.** It is understood and agreed between the Parties hereto that this is an agreement for the sale of real estate and is in no way to be considered a joint venture between Seller and Purchaser. It is further understood and agreed that Purchaser is assuming no liabilities, whether fixed or contingent, of Seller, and that this is a purchase of real estate assets.

15. **Entire Agreement.** This Agreement incorporates any and all prior agreements, convenenants, and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this agreement. No prior agreement or understandings, verbal or otherwise, of the Parties or their agenhts shall be valid or enforceable unless embodied in this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

17. **Severability.** If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall contrinute to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

18. **Amendment.** This Agreement cannot be amended orally or by a single party. No amendment or change to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.

19. **Authority.** Each individual and entity executing this Agreement hereby represents and warrants that he, she or its has the capacity set forth on the signature pages hereof with full power ane authority to bind the party on whose behalf he, she or it is executing this Agreement to therms hereof.

20. **Governing Law.** The laws of the State of South Carolina shall govern the interpretation, validity, performance and enforcement of this Agreement, and, of any personal guarantees given in connection with this Agreement.

21. **Time is of the Essence.** The time and dates specified in this Agreement shall be enforced; however, the time and dates may be modified for reasonable cause when both Parties agree in writing to a reasonable extension.

**IN WITNESS WHEREOF**, and in acknowledgement that the Parties hereto have read and understood each and every provision hereof, the Parties have caused this Agreement to be executed on the date first written above.



WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

PURCHASER:

**BEAUFORT COUNTY**

\_\_\_\_\_  
By: Ashley Jacobs  
Its: County Administrator

IN WITNESS WHEREOF, the Seller herein has caused this Agreement to be duly executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESSES:

**DUKES REAL ESTATE**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exhibit "A"

**PROPERTY DESCRIPTION**

[updated property description needed]

Beaufort County DMP#s:

Exhibit "B"

**GRANT OF CONSERVATION EASEMENT**

# Acquisition of Longwood PDR For Approval Recommendation



1



- 227 acres, T2 Rural Zoning
- 42 acres marsh
- Road frontage Lands End Road, Seaside Road

2

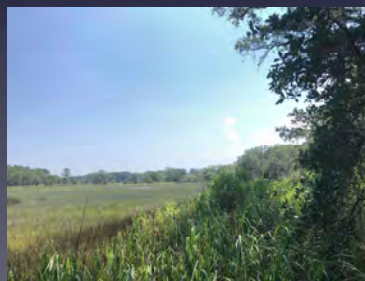
## Longwood Proximity to Protected Properties



3

### Rural Lands Criteria – Score 5.8

- Virtually all upland acreage is USDA-designated prime soils
- Proximity to protected properties
- Adjacent to other large acreage tracts with strong potential for conservation transactions
- Strong funding leverage through bargain sale transaction
- Water quality protection – Ranked as highest priority on Port Royal Sound Mapping Initiative for Water Quality Priority and Flooding Priority (areas for future marsh migration)



4



## Conservation Easement Terms Negotiated

Subdivision	No more than 3 different owners
Impervious Surface	24,000 s.f. maximum
Building Areas	3, each no larger than 5 acres
Residential Structures	6
Docks	Interior only, not on Tombee Creek
Road and Creek Buffers	100 feet structure setback



5

## Future Cost Considerations for County

Reduction in property tax revenue

< \$ 525/year >

No other future costs, BCOLT does monitoring



6

## Transaction Outline – Longwood PDR

Appraised Value of Development Rights	\$720,000
Negotiated purchase price	<b>\$360,000</b>
Negotiated price per acre:	<b>\$1,600/acre</b>

*Property will continue to be owned by the property owner subject to the terms of the conservation easement*

## Today's Natural Resources Committee Decision – Longwood

Recommend project to County Council  
for purchase of development rights?

**RESOLUTION 2020/\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE NECESSARY DOCUMENTS FOR THE PURCHASE OF CERTAIN DEVELOPMENT RIGHTS ON APPROXIMATELY 227 ACRES OF REAL PROPERTY KNOWN AS TAX MAP SERIAL NUMBERS TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000 AND ALSO KNOWN AS LONGWOOD.**

**WHEREAS**, Seller wishes to sell and buyer wishes to buy certain development rights on real property identified as TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000 also known as Longwood, approximately 225 upland acres located in Northern Beaufort County on St. Helena Island; and

**WHEREAS**, the purchase of development rights through a conservation easement on Longwood has been demonstrated to meet the Rural Lands Criteria of the Rural and Critical Lands program; and

**WHEREAS**, the proposal to purchase the development rights on Longwood is for a purchase price of \$360,000.00 which is below the appraised value of \$720,000.00; and

**WHEREAS**, the proposed purchase of the development rights on Longwood was presented to the Rural and Critical Land Preservation Board (RCLPB) at the February 13, 2020 meeting and the RCLPB unanimously recommended approval of the purchase; and

**WHEREAS**, the proposed purchase of certain development rights on Longwood was presented to the Natural Resources Committee at its April 6, 2020 meeting at which time the Committee **unanimously** recommended approval to County Council using Rural and Critical Lands program land acquisition funds; and

**WHEREAS**, the project proposal and essential terms for the purchase of certain development rights on Longwood through a purchased conservation easement are included in the attached Project Summary Sheet, Purchase Agreement and Grant of Conservation Easement and

provides for a purchase of the development rights on approximately 227 acres at a price 50% below fair market value; and

**WHEREAS**, County Council finds that it is in the best interest of the citizens and residents of Beaufort County for the County Administrator to execute the necessary documents for the purchase of development rights on Longwood.

**NOW, THEREFORE, BE IT RESOLVED** that Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute any and all documents necessary and consistent with the attached terms of agreement for the purchase of **TMS# NUMBERS R300 035 000 0138 0000, R300 035 000 0139 0000, R300 035 000 0140 0000, R300 035 000 0141 0000, R300 035 000 0142 0000, R300 035 000 0143 0000, R300 035 000 0144 0000, R300 035 000 0145 0000, R300 035 000 0146 0000, R300 035 000 0147 0000, R300 036 000 0001 0000 (excluding marsh), R300 036 000 0066 0000, R300 036 000 0067 0000, R300 036 000 0068 0000, R300 036 000 0069 0000, R300 036 000 0070 0000, R300 036 000 0071 0000, R300 036 000 0072 0000, R300 036 000 0075 0000, R300 036 000 0076 0000 and R300 036 000 0077 0000** also known as Longwood on St. Helena Island in Beaufort County, South Carolina.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: \_\_\_\_\_  
Joseph Passiment, Chairman

ATTEST:

\_\_\_\_\_  
Sarah W. Brock, Clerk to Council