



**County Council of
Beaufort County
Planning Commission
Meeting**

Chairman
ED PAPPAS

Vice Chairman
RANDOLPH STEWART

Commission Members
KEVIN HENNELLY
CAROLINE FERMIN
CECILY MCMILLAN
DANIEL RIEDEL
FRANK DUCEY
ARMIN WAHL
GAIL MURRAY

County Administrator
ERIC GREENWAY

Staff Support
ROBERT MERCHANT

Administration Building
Beaufort County Government
Robert Smalls Complex
100 Ribaut Road

Contact
Post Office Drawer 1228
Beaufort, South Carolina 29901-1228
(843) 255-2140
www.beaufortcountysc.gov

Planning Commission Agenda

Monday, June 6, 2022 at 6:00 PM

Council Chambers

County Administration Building, 100 Ribaut Road, Beaufort, SC

ALL OF OUR MEETINGS ARE AVAILABLE FOR VIEWING ONLINE AT WWW.BEAUFORTCOUNTYSC.GOV AND CAN ALSO BE VIEWED ON HARGRAY CHANNELS 9 AND 113, COMCAST CHANNEL 2, AND SPECTRUM CHANNEL 1304.

[MEETING LINK:](#)

Meeting number (access code): 160 785 5151
Passcode: PLANNING

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. FOIA – PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT
4. APPROVAL OF MINUTES – April 4, 2022
5. APPROVAL OF AGENDA
6. CITIZEN COMMENTS – NON-AGENDA ITEMS
(Comments are limited to 3 minutes.)

ACTION ITEMS

7. **TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC):** SECTION 4.1.330 (ECOTOURISM) TO CLARIFY GUIDING PRINCIPLES FOR ECOTOURISM DEVELOPMENT AND ESTABLISH BASE SITE AREA CALCULATIONS FOR ECOTOURISM DEVELOPMENT.
8. **ZONING MAP AMENDMENT/REZONING REQUEST** FOR 94.47 ACRES (R600 008 000 0016 0000 AND R600 008 000 0001 0000) KNOWN AS THE COOLER TRACT LOCATED ACROSS THE INTERSECTION OF OKATIE HIGHWAY (SC 170) AND LOWCOUNTRY DRIVE (SC 462) FROM T2 RURAL TO C3 NEIGHBORHOOD MIXED USE AND C5 REGIONAL CENTER MIXED USE DISTRICTS.

DISCUSSION ITEMS

9. CHAIRMAN'S REPORT
10. ADJOURNMENT



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Planning and Zoning Department
Beaufort County Government Robert Smalls Complex
Physical: Administration Building, Room 115 100 Ribaut Road
Mailing: Post Office Drawer 1228, Beaufort, SC 29901-1228
Phone: 843-255-2140 / FAX: 843-255-9432

The regular meeting of the Beaufort County Planning Commission (hereinafter “Commission”) was held in Council Chambers on Monday, April 4, 2022 at 6:00 p.m.

MEMBERS PRESENT:

Mr. Ed Pappas, Chairman
Mr. Kevin Hennelly
Ms. Cecily McMillan
Mr. Dan Riedel
Mr. Armin Wahl

MEMBERS ABSENT:

Mr. Randolph Stewart, Vice Chairman
Mr. Frank Ducey
Dr. Caroline Fermin
Ms. Gail Murray

STAFF PRESENT:

Mr. Robert Merchant, Planning and Zoning Director
Mr. Mark Davis, Planning and Zoning Deputy Director
Ms. Juliana Smith, Long Range Planner
Ms. Chris DiJulio-Cook, Senior Administrative Specialist

CALL TO ORDER: Chairman Ed Pappas called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE: Chairman Pappas led those assembled in the pledge of allegiance.

REVIEW OF MEETING MINUTES: Chairman Pappas asked for a motion to approve the January 3, 2022 minutes. Ms. Cecily McMillan made a motion, seconded by Mr. Armin Wahl, to accept the minutes as written. There was unanimous support for the motion.

AGENDA REVIEW: Mr. Pappas asked if there were any comments or additions to the agenda. There were none.

CITIZEN COMMENTS: Chairman Pappas asked if there were any non-agenda citizen comments.

Mr. Tony Criscitiello read a prepared statement and ended with a request that the Planning Commission resubmit their recommendation, regarding Bindon Plantation, to the Natural Resources Committee.

Chairman Pappas said he would make Mr. Criscitiello’s letter part of the meeting’s record. He stated he would not take further action without the approval of the other commissioners. There were no further comments.

Mr. Criscitiello did not forward a copy of his prepared statement to be included with the minutes of this meeting.

ACTION ITEMS:

Ms. Juliana Smith and Mr. Mark Davis explained that all of the items on the agenda were staff-driven amendments to tighten up loopholes or clarify issues within the current code.

TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): APPENDIX A.13.40 (PERMITTED ACTIVITIES) AND APPENDIX A.13.50.D (GUEST HOUSES) TO AMEND THE GUEST HOUSE DEFINITION AND CLARIFY MINIMUM LOT REQUIREMENTS FOR GUEST HOUSES LOCATED IN THE MAY RIVER COMMUNITY PRESERVATION DISTRICT.

After some discussion, Mr. Armin Wahl made a motion to accept the proposed changes with a modification to the language about lot size. Mr. Kevin Hennelly seconded the motion. The motion passed unanimously.

TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): SECTIONS IN DIVISION 3.2 (TRANSECT ZONES) AND SECTIONS IN DIVISION 3.3 (CONVENTIONAL ZONES) TO CORRECT CONFLICTING PARKING STANDARDS.

Based on the information provided, Mr. Hennelly made a motion to adopt the proposed changes. Ms. Cecily McMillan seconded the motion. There was unanimous support for the motion.

TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): SECTION 6.1.40.G (BASE SITE AREA CALCULATIONS) TO CLARIFY THAT NATURAL WATER BODIES INCLUDE WETLANDS.

Mr. Wahl made a motion to approve the proposed changes. Mr. Dan Riedel seconded the motion. The motion passed unanimously.

TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): SECTION 4.1.330 (ECOTOURISM) TO CLARIFY GUIDING PRINCIPLES FOR ECOTOURISM DEVELOPMENT AND ESTABLISH BASE SITE AREA CALCULATIONS FOR ECOTOURISM DEVELOPMENT.

After much discussion, Mr. Wahl made a motion to send the amendment back to the Planning Department Staff to make edits to the proposed changes. Ms. McMillan seconded the motion. The vote was unanimous to have Planning Staff edit the proposed amendments.

TEXT AMENDMENT TO THE COMMUNITY DEVELOPMENT CODE (CDC): SECTION 5.11.100.F.1 (TREE REMOVAL ON DEVELOPED PROPERTIES) TO ESTABLISH A TIME PERIOD AFTER CONSTRUCTION FOR WHEN TREE REMOVAL ON SINGLE-FAMILY RESIDENTIAL LOTS CAN BE APPLIED.

Ms, Smith outlined the issue with the current code as written and explained the need for the change. Mr. Reidel made a motion to approve the changes, as proposed. Mr. Hennelly seconded the motion. The motion passed unanimously.

CHAIRMAN'S REPORT:

Chairman Pappas welcomed Mr. Daniel Riedel to the Planning Commission.

ADJOURNMENT: Chairman Pappas, with no further business to discuss, adjourned the meeting at 7:11 p.m.

SUBMITTED BY: Chris DiJulio-Cook
Planning & Zoning Senior Administrative Specialist

Ed Pappas
Beaufort County Planning Commission Chairman

Date: _____



MEMORANDUM

TO: Beaufort County Planning Commission
FROM: Juliana Smith, Beaufort County Planning and Zoning Department
DATE: June 6, 2022
SUBJECT: Proposed Text Amendments to Section 4.1.330 (Ecotourism)

STAFF REPORT:

A. BACKGROUND: In November 2021, Beaufort County Council adopted the 2040 Comprehensive Plan. As a result, staff have been reviewing the Community Development Code (CDC) for necessary amendments. During our review, staff have identified necessary major and minor corrections to the CDC to improve and clarify its standards, including changes to the County's ecotourism standards.

Proposed changes to Section 4.1.330 (Ecotourism) were first brought before the Beaufort County Planning Commission during their April 4th, 2022 meeting. The original revisions clarified the intent of the Ecotourism use, which is allowed as a Special Use in T1 Natural Preserve and a Conditional Use in T2 Rural, T2 Rural Neighborhood, T2 Rural Neighborhood Open, and T2 Rural Center. It also replaced the reference to the Ecotourism Society's (TES) standards with actual standards to guide Ecotourism projects in the County. Finally, the original amendment directly referenced base site area calculations for ecotourism projects to prevent artificially inflated densities. At that time, the Commissioners voted unanimously to send the proposed changes back to staff to create more specific and measurable standards. Staff have made modifications to the changes in order to address the Commission's comments.

B. SUMMARY OF PROPOSED REVISIONS: Based on the discussion held during the April 4th, 2022 Planning Commission meeting, staff has made further revisions to Section 4.1.330 (Ecotourism). The new changes include:

- Directly referencing the definition of Ecotourism as outlined in Table 3.1.70 (Land Use Definitions) to provide consistency and reinforce expectations. Ecotourism is defined as follows in Table 3.1.70 (Land Use Definitions):

Organized, educational and mainly outdoor recreation with or without lodging that invites participants to learn about and promote ecological preservation, conservation, and sustainability. This use shall include at least two of the following characteristics:

- 1. Located near or within a wilderness setting, park, or protected area;*
- 2. Interpretive educational program with or without guides;*
- 3. Outdoor activities; or*
- 4. Cultural experiences.*

- Clarifying standards for the required operational plan to include specific information, as applicable, such as emergency response plans, how utilities are provided, etc.
- Updating the lodging allowances included in ecotourism to better reflect the intention of the special and conditional ecotourism use.
- Refining the ecotourism principles to produce specific, measurable outcomes.

C. STAFF RECOMMENDATION: Staff recommends approval.

D. ATTACHMENTS: Revised Community Development Code Section 4.1.330 (Ecotourism)

4.1.330 Ecotourism

Ecotourism shall meet the definition of ecotourism as stated in the Recreation, Education, Safety, Public Assembly section of the Land Use Definitions table in Section 3.1.70 and shall comply with the following:

- A. Applications shall include a site plan whose design incorporates the building, structures, and amenities into the natural and scenic qualities of the area in a complimentary fashion.
- B. An operational plan shall indicate that this use will enhance the ecotourism experience of intended users in regard to the related wilderness setting, interpretive educational programs, wildlife viewing opportunities, outdoor activities, parks/protected areas, and/or cultural experiences. An operational plan shall also include, at a minimum, information about access to the site, on and off-site parking for guests and employees, the number and type of jobs and associated wages created, housing for employees, how supplies will be staged and delivered, hours of operation, emergency response plans, how emergency services will be provided, how utilities will be provided, how solid waste will be disposed of, the number and type of amenities provided, and how the operation will adaptively respond to sea level rise. Additional information may be required through a Community Impact Statement as determined by the Director and as described in Appendix A.1.30.
- C. The maximum floor area ratio for each development shall be 0.1. Base Site Area shall be calculated per Section 6.1.40.G.
- D. An open space ratio of (at least) 85% shall be required for the entire property.
- E. Impervious surface shall not exceed 8% for the entire property.
- F. There shall be a 3-acre minimum site size for this use.
- G. Lodgings are permitted with this use and include cabins, inns, B&Bs, historic properties, and small hotels. Hotel uses shall be limited to no more than 50 units per development, 8 units per building, 24 guest rooms and a maximum height of 2 stories.
- H. Operators of ecotourism uses shall adhere to the following stewardship, research, and education principles promoted by The Ecotourism Society (TES) and shall address in their application how they will adhere to them:
 - Provide benefits for local ecosystems via research, conservation, educational awareness, etc.
 - Generate financial benefits for local people via jobs, grants, community investment, etc.
 - Deliver interpretative experiences to visitors that help raise awareness and sensitivity to local environmental and cultural climates.
 - Design, construct, and operate low-impact eco-tours, activities, and facilities.



MEMORANDUM

TO: Beaufort County Planning Commission

FROM: Robert Merchant, AICP, Beaufort County Planning and Zoning Department

DATE: May 31, 2022

SUBJECT: Zoning Map Amendment/Rezoning Request for 97.47 acres (R600 008 000 0625 0000, R600 008 000 0016 0000, and R600 008 000 0001 0000) at the Intersection of Okatie Highway (SC 170) and Lowcountry Drive (SC 462) from T2 Rural to C3 Neighborhood Mixed Use and C5 Regional Center Mixed Use Districts

STAFF REPORT:

A. BACKGROUND:

Case No.	CDPA-000019-2022
Owner/Applicant:	Richard Varn Cooler, Cooler Corner LLC
Property Location:	Located at the Intersection of Okatie Highway (SC 170) and Lowcountry Drive (SC 462)
District/Map/Parcel:	R600 008 000 0625 0000, R600 008 000 0016 0000, and R600 008 000 0001 0000
Property Size:	97.47 acres
Current Future Land Use Designation:	Rural with Hamlet Place Type
Current Zoning District:	T2 Rural
Proposed Zoning District:	C3 Neighborhood Mixed Use (67.5 acres) C5 Regional Center Mixed Use (26.97 acres)

B. SUMMARY OF REQUEST: The applicant seeks to change the zoning of three parcels making up a total of 97.47 acres at the corner of Okatie Hwy and Lowcountry Drive. The property is currently zoned T2 Rural (see attached map). The applicant seeks C5 Regional Center Mixed Use zoning in the front of the property and C3 Neighborhood Mixed Use zoning in the rear. The property is surrounded on three sides by the Oldfield Planned Unit Development. The

applicant intends to accompany this rezoning with a Development Agreement, which is attached to the application. While the Development Agreement is not required to be reviewed by the Planning Commission, staff has provided a review of this document as it provides a clearer picture of the character of development proposed for this site.

- C. EXISTING ZONING:** The lot is currently zoned T2 Rural (T2R), which permits residential development at a density of one dwelling unit per 3 acres. Under this zoning, 32 dwelling units would potentially be permitted on this lot. T2 Rural also permits very limited non-residential uses.
- D. PROPOSED ZONING:** The CDC defines the Regional Center Mixed Use district as “The Regional Center Mixed Use (C5) district provides for a full range of retail, service, and office uses. The Zone's intensity accommodates regional and community commercial and business activities. Uses include large, commercial activities that serve the entire County and highway-oriented businesses that need to be located on major highways.” The proposed 26.97 acres of C5 could potentially yield up to 434,000 square feet of commercial space or 404 multi-family dwelling units, or a combination thereof. The Comprehensive Plan supports regional commercial land uses in two locations in the County, along US 278 between McGarvey’s Corner and the bridge to Hilton Head Island, and in northern Beaufort County at the intersection of Robert Smalls Parkway and Parris Island Gateway. The proposed C5 district at this location does not adhere to the Beaufort County Comprehensive Plan future land use map.

The CDC defines the Neighborhood Mixed Use district as “The Neighborhood Mixed Use (C3NMU) district provides for high quality, moderate-density residential development, with denser areas of multi-family and mixed-use development to provide walkability and affordable housing options. The design requirements provide a suburban character and encourage pedestrian, as well as automobile, access.” The proposed C3NMU area on this property would allow for a conventional subdivision with a density of 2.6 dwelling units per acre.

- E. COMPREHENSIVE PLAN FUTURE LAND USE MAP:** The Beaufort County Comprehensive Plan specifically addresses development along the SC 170 corridor. The plan calls for careful coordination between Jasper County and the City of Hardeeville on a shared vision for the corridor. The plan calls for a corridor with walkable mixed-use nodes at major intersections, natural buffers between the road and development, compatible land uses across jurisdictions, and safer, better-managed traffic. The plan designates this site as a “hamlet”, a walkable community with moderate residential density and a small commercial core. This vision could either be achieved with the C3 zoning across the entire site and the utilization of the Traditional Community Plan (Article 3, Division 2.3) option; or by utilizing the Place Type Overlay rezoning option in Section 3.4.80 of the Community Development Code.

- F. TRAFFIC IMPACT ANALYSIS (TIA):** According to Section 6.3.20.D of the CDC, *“An application for a rezoning shall include a TIA where the particular project or zoning district may result in a development that generates 50 trips during the peak hour or will change the level of service of the affected street.”* In 2019, the applicant hired Ridgeway Traffic Consulting to do a traffic study, which is attached. Bihl Engineering is reviewing the study on behalf of the County and will provide comments at the June 6 Planning Commission Meeting.
- G. SCHOOL CAPACITY IMPACTS:** The School District has been given a copy of this proposed amendment. The School District does not have excess capacity to address the potential increase in the number of students in southern Beaufort County. In this immediate area, the School District is already facing the need to absorb the students that will result from the 711 dwelling units in River Oaks and Malind Bluff into Okatie Elementary School.
- H. PROPOSED DEVELOPMENT AGREEMENT:** The applicant is seeking to enter into a Development Agreement with Beaufort County concurrently with the proposed adoption of this zoning amendment. South Carolina authorizes the use of Development Agreements (Chapter 31, Section 6-31-10 of the SC Code of Laws) to encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation to provide a private developer with certainty and predictability (Section 6-31-10(6)). In turn, local governments benefit from development agreements with such provisions as affordable housing, design standards, on and off-site infrastructure and other improvements. These public benefits may be negotiated in return for the vesting of development rights for a specific period (Section 6-31-10(4)). Development Agreements are also required to implement the Comprehensive Plan and have a finding that the development permitted or proposed is consistent with the local government's Comprehensive Plan and land development regulations (Section 6-31-60(&))

It is Planning Staff’s position that the draft Development Agreement does not meet the requirements of the South Carolina Local Government Development Agreement Act. While it seeks to vest local zoning and development standards for the developer, it provides no benefit to Beaufort County that would not be provided in the absence of this agreement. Furthermore, the draft agreement reduces zoning and development standard requirements in favor of the developer which are in direct conflict with the Beaufort County Comprehensive Plan and the Community Development Code (CDC). The table below provides a comparison of the standards in the CDC and the proposed modifications the development agreement would impose:

CDC Standards	Proposed Development Agreement Modifications
C5 – Regional Center Mixed-Use Standards	
Floor Area Ratio - 0.37 – yields up to 434,000 sf	Commercial Square Footage capped at 20,000 sf
Multi-Family – 15 du per acre – up to 404 units	Multi-Family – 15 du per acre – up to 404 units
C3 – Neighborhood Mixed-Use Standards	
Minimum lot size – 10,890 sf	Minimum lot size – 5,750 sf
Minimum lot width – 70 feet	Minimum lot width – 50 feet
Front yard setback – 30 feet	Front yard setback – 20 feet
Side yard setback – 10 feet	Side yard setback – 5 feet
Rear yard setback – 50 feet	Rear yard setback – 15 feet
Gross Density – 2.6 dwelling units per acre	Gross Density – 2.92 dwelling units per acre
Other Standards	
Existing Forest Preservation (Section 5.11.90.A) – site survey required - protection of 65% of maritime forests, 45% of mature upland forests and 20% of young upland forest	Existing Forest Preservation - exempt
Street Block Design (Section 2.2.40) – C3 block layout is limited to a face length of 1000 feet and a perimeter length of 2,400 feet	Street Block Design – exempt
Alleys (Section 2.2.40.F) – required when average lot width is less than 55 feet.	Alleys - exempt
Thoroughfare Standards (Division 2.9) – Appropriate transect based road cross-sections for the density and character of development	Swale drainage with no raised curb and gutter system
Stormwater – All development must adhere to the Community Development Code and the SOLOCO Stormwater Manual in addition to all applicable Federal and State Requirements	Stormwater – Language is unclear but only specifically refers to Federal and State requirements.
Building Codes – All houses require a Certificate of Occupancy prior to being utilized including model homes.	Building Codes – Model homes exempt from required utilities.

Below are Staff comments/concerns on the proposed Development Agreement modifications:

- Commercial Square Footage Reduction: While the reduction in potential commercial square footage from 434,000 sf to 20,000 sf may appear as a great benefit to the County, this reduction is in part a result of a proposed zoning district – C5 – which is not appropriate in this location to begin with. It is also very likely that the developer intends to use the front portion of the property for a non-commercial use, such as multi-family.
- Alterations to C3 Lot and Setback Standards: While some reduction and flexibility in minimum lot size may potentially provide for better site planning and clustering around

wetlands and natural features, the CDC already has provisions for smaller lots for the C3 district with the Traditional Community Plan option. The Traditional Community Plan allows for smaller lots and higher density as long as the development meets design standards appropriate for small lot development, such as smaller blocks, alleys, adequate sidewalks, on-street parking, and porches. These standards are meant to promote walkability by reducing conflicts between vehicles and pedestrians, which increase with greater lot density. The draft development agreement effectively creates a new zoning district that is not consistent with the standards in the Community Development Code.

- Elimination of Forest Preservation Requirements: The proposed development agreement eliminates adherence to the forest preservation standards in Section 5.11.A. These standards require a natural resources survey and preservation of a percentage of certain forest types. This proposed waiver is contradictory to the County's Comprehensive Plan, which places great value in conserving and restoring natural habitats.
- Thoroughfare Standards: The proposed development agreement reduces the minimum road construction standards associated with smaller lot development by proposing swales instead of typical curb and gutter with road inlets and stormwater pipes. Swale drainage is typically used in less dense, larger lot suburban and rural style development that have wider lots and deeper front setbacks from the road. The proposed swale drainage in combination with small/narrow lots will require pipes under each front-loaded driveway that are in close proximity to each other with very tight grading in the front yards. This is not considered good engineering and lends itself to drainage issues and poor walkability through the neighborhood.
- Stormwater Standards: The language in the draft development agreement addressing stormwater standards is vague and could be interpreted to mean that this development is only required to meet state and federal requirements.

I. STAFF RECOMMENDATION:

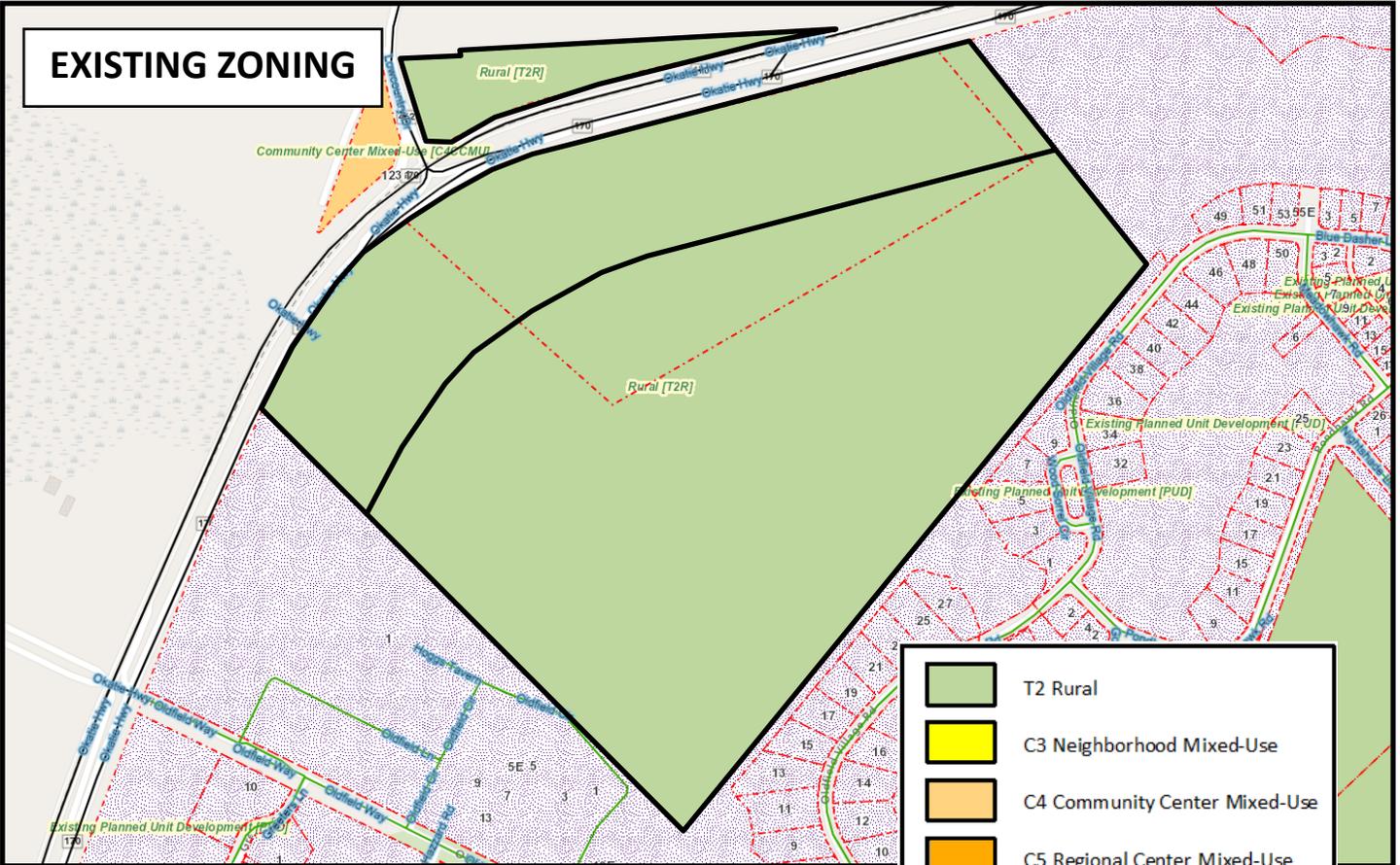
1. Proposed Zoning Amendment: Staff recommends denial of the proposed zoning amendment as submitted, specifically the choice of C5 Regional Center Mixed Use along the front 26.97 acres. At minimum, Staff recommends the applicant revise the application to apply the C3 district to the entire site and not include a supplemental development agreement. This would allow the utilization of the Traditional Community Plan (Article 3, Division 2.3) option so that the applicant could achieve the desired mix of commercial, multi-family, and small-lot single family residential. Alternatively, and supported more by staff, the application to upzone the property should utilize the Place Type Overlay rezoning option in Section 3.4.80 of the Community Development Code. This would provide both the applicant and the County greater predictability in the type and quality of development of this site.

2. Proposed Development Agreement: It is staff's position that the draft development agreement that accompanies this application does not meet the requirements of the South Carolina Local Government Development Agreement Act, which requires agreements to be consistent with the Comprehensive Plan and land development regulations. Additionally, the development agreement provides no benefit to the County that would be provided in the absence of this agreement. The development agreement alters the C3 zoning district to the extent that it creates a new zoning district that is in direct conflict with the Beaufort County Comprehensive Plan and the Community Development Code (CDC). It is staff's position that these alterations to the C3 zoning district are unnecessary because of the Traditional Community Plan option. This option allows for smaller lots and higher density as long as development meets design standards appropriate for small lot development, such as smaller blocks, alleys, adequate sidewalks, on-street parking, porches, and some residential design standards. These standards are meant to promote walkability by reducing conflicts between vehicles and pedestrians which increase with greater lot density.

J. ATTACHMENTS

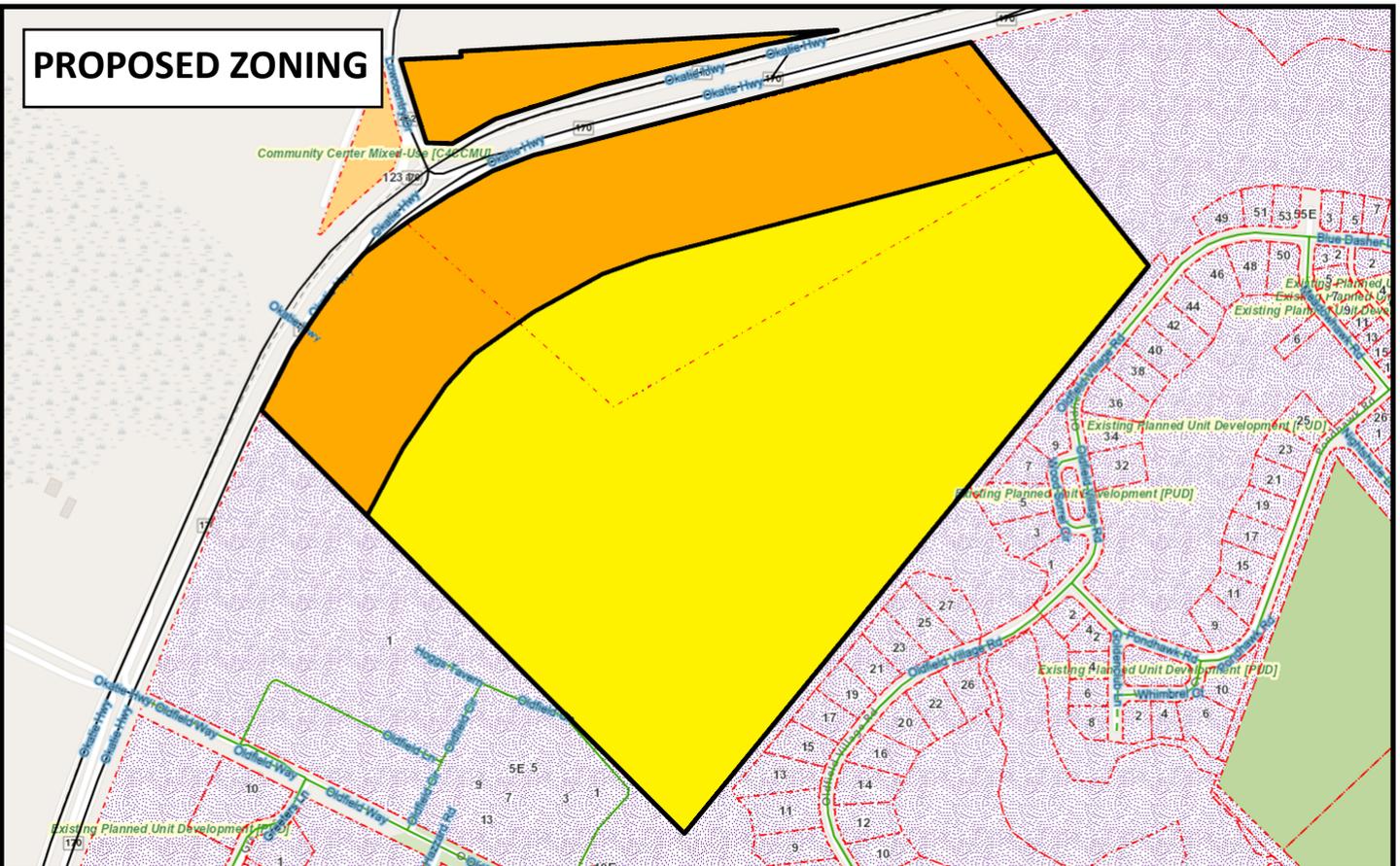
- Zoning Map (existing and proposed)
- Location Map
- Application
- Draft Development Agreement

EXISTING ZONING



	T2 Rural
	C3 Neighborhood Mixed-Use
	C4 Community Center Mixed-Use
	C5 Regional Center Mixed-Use
	Planned Unit Development

PROPOSED ZONING



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **DEVELOPMENT AGREEMENT**
)
) **(COOLER TRACT)**

This Development Agreement ("Agreement") is made and entered this ____ day of _____, 2021, by and between Cooler's Corner, LLC ("Owner" of the Cooler Tract) and the governmental authority of Beaufort County, South Carolina ("County").

WHEREAS, the Cooler Tract, as described in Exhibit A hereto, is located in Beaufort County, South Carolina; and,

WHEREAS, the legislature of the State of South Carolina has enacted the "South Carolina Local Government Development Agreement Act," (the "Act") as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and,

WHEREAS, the Act recognizes that "The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and,

WHEREAS, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

DRAFT

WHEREAS, the Act further authorizes local governments, including county governments, to enter Development Agreements with Owner(s) to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

WHEREAS, Owner of the Cooler Tract has acquired approximately 94.46 acres, generally known as the Cooler Tract (located in Beaufort County), and proposes to develop, or cause to be developed therein, a mixed use community of residential and potential commercial uses, as further described herein; and,

WHEREAS, the County seeks to protect and preserve the natural environment and to secure for its citizens quality, well planned and designed development and a stable and viable tax base; and,

WHEREAS, the County finds that the program of development proposed by Owner for this Property is consistent with the County's comprehensive land use plan; and will further the health, safety, welfare and economic well being of the County and its residents; and,

WHEREAS, the program for development of the Property presents an unprecedented opportunity for the County to secure quality planning and growth to protect the environment and strengthen and revitalized the tax base; and,

WHEREAS, this Development Agreement is being made and entered between Owner and the County, under the terms of the Act, for the purpose of providing assurances to Owner that it may proceed with its development plan under the terms hereof, as hereinafter defined, consistent with its approved Zoning Regulations, (as hereinafter defined) without encountering future changes in law which would materially affect the ability to develop under the plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the County, and for the purpose of providing certain funding and funding sources to assist the County in meeting the service and infrastructure needs associated with the development authorized hereunder;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both the County and Owner by entering this Agreement, and to encourage well planned development by

Owner, the receipt and sufficiency of such consideration being hereby acknowledged, the County and the Owner hereby agree as follows:

I. **INCORPORATION.**

The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

II. **DEFINITIONS.**

As used herein, the following terms mean:

"Act" means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; incorporated herein by reference.

"Adjacent Land" shall mean any real property adjacent to the Exhibit A property.

"Adjustment Factor" shall mean 3% per annum, simple interest.

"Agreement" shall mean this Development Agreement as amended by the County and Owner in writing from time to time.

"Property" means those certain tracts of land described on **Exhibit A**, as may be amended with the Agreement of the County and Owner.

"Association" shall mean one (1) or more property Owners' associations established to maintain portions of the Property.

"BJWSA" shall mean the Beaufort/Jasper Water and Sewer Authority, its successors or assigns.

"County" shall mean Beaufort County, South Carolina.

"Developer" means Owner and all successors in title or lessees of the Owner who undertake Development of the Property who are transferred in writing from the Owner portions of the Owner's Development Rights.

"Development" means the development of portions of the Property as contemplated in the Zoning Regulations.

"Development Rights" means Development undertaken by the Owners or Developers in accordance with the Zoning Regulations and this Development Agreement.

"Owner(s)" means Cooler's Corner, LLC as to the Cooler Tract, its corporate successors and any assignee, whereby such interest is assigned in writing.

"Term" means the duration of this agreement as set forth in Section III hereof.

"Zoning Regulations" means the rezoning of the Cooler Tracts as approved on the same date hereof, which approvals rezone Parcel A of the Cooler Tracts to C-3 Zoning District, and which rezone Parcel B of the Cooler Tracts to C-5 Zoning District, all as set forth in the now current version of the Beaufort County Community Development Code, with the modifications to said zoning districts and development standards that are set forth in Exhibit C hereto, which is incorporated herein. The boundaries of Parcel A and Parcel B of the Cooler Tracts are set forth and delineated in Exhibit B hereto, which is incorporated herein. In the event of any conflict between the terms and development standards of this Development Agreement, including all Exhibits hereto, and the terms of the Beaufort County Community Development Code, the terms and standards of this Development Agreement shall control.

III. **TERM.**

The term of this Agreement commenced on the date this Agreement was executed and recorded by the County and Owner and terminates Five (5) years thereafter. This is the maximum initial term permitted by law for the Property. The parties agree to extend the initial term by an additional five years, provided that both parties are in substantial compliance herewith. If one of the Owners is in default hereunder, the other Owner or separate Developer shall be entitled to extend the term as to that Owner's or Developer's property, notwithstanding the other Owner's default.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with the Zoning Regulations and this Agreement. The County shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations and this Agreement.

V. CHANGES TO ZONING REGULATIONS.

The Zoning Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of the respective Owner except in accordance with the procedures and provisions of Section 6-31-80(B) of the Act, which Owner shall have the right to challenge.

1. The respective Owner(s) shall be required to notify the County, in writing, as and when Development Rights or Owner Rights are transferred to any other party, in whole or in part. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of residential units and/or commercial square footage or acreage, as applicable, subject to the transfer. Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be required to file with the County an acknowledgment of this Agreement and a commitment to be bound by it.

2. The Owners and Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities, earthwork and similar amenities which exist from time to time, and facilities existing at the date of this Agreement will be served by potable water and sewer prior to occupancy, except as otherwise provided herein for temporary use, temporary being defined as one year or less. Septic tanks and/or wells may be allowed with the permission of BJWSA where there is a specific finding that such use for specific portions of the Property will comply with the overall environmental standards.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as **Exhibits D**, or as may be amended by Owners or Developers in the future to reflect actual market absorption. Exhibit D separately depicts the expected development schedule for both Parcel A and Parcel B of the Cooler Tracts. Pursuant to the Act, the failure of the Owners and any Developer to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owner's and Developer's good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner(s) / Developer(s) in the future, shall not be considered a material amendment or breach of this Agreement.

VII. USE AND DENSITY.

The maximum residential density and maximum commercial use density of the Cooler Tracts are set forth below, as supplemented by the Zoning Regulations. Density may be transferred from one Parcel to the other Parcel only with the consent of all relevant Owners and the County, pursuant to any required future approval.

A. Cooler Tract Parcel A. The Cooler Tract Parcel A is hereby approved for a maximum density of 170 residential units, which can be any type of residential unit allowed under the Zoning Regulations, as said regulations are set forth hereunder for C-3 zoning, together with any related and accessory uses.

B. Cooler Tract Parcel B. The Cooler Tract Parcel B is hereby approved for uses and densities as set forth for C-5 Zoning under the Beaufort County Community

Development Code. Owners and Developers shall restrict allowed commercial development to 20,000 square feet within Parcel B.

VIII. RESTRICTED ACCESS

The Owners and/or each Developer shall have the right (but not the obligation) to create restricted access communities within the Property.

IX. EFFECT OF FUTURE LAWS.

Owners and Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms of this Agreement for the entirety of the Term. Future enactments of, or changes or amendments to the County ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of Section 6-31-80 (B) are followed, which Owners shall have the right to challenge. No future moratorium on development approvals or building permit issuance shall apply to the Property, so long as that Owner's Property is in compliance with this Development Agreement. Notwithstanding the above, the Property will be subject to then current fire safety standards and state and/or federal environmental guidelines and standards of general application.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, or any ad valorem tax of general application throughout the County, found by the County Council to be necessary to protect the health, safety and welfare of the citizens of the County.

X. INFRASTRUCTURE AND SERVICES

The County and Owner recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owners and Developers, and many other necessary services will be provided by other governmental or quasi-governmental entities,

and not by the County. For clarification, the parties make specific note of and acknowledge the following:

A. Private Roads. All roads within the Property shall be constructed by the respective Owners, Developers or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities. Except as provided in this Agreement, the County will not be responsible for the construction of any private roads within the Property, unless the County specifically agrees to do so in the future.

B. Public Roads. All public roads outside the Property that serve the Property are under the jurisdiction of the State of South Carolina or other governmental entities regarding access, construction, improvements and maintenance. Owner acknowledges that it must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads.

C. Potable Water. Potable water will be supplied to the Property by BJWSA or some other legally constituted public or private provider allowed to operate in the County. The County shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property unless the County elects to provide such services with the agreement of the applicable utility authority then providing such service to the Property. Owners will construct or cause to be constructed all related infrastructure improvements within their respective Property, which will be maintained by it or the service provider as provided in any utility agreement between Owner(s) and the service provider.

D. Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by BJWSA or some other legally constituted public or private provider allowed to operate in the County. The County will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the County elects to provide such service with the agreement of the applicable utility authority then providing such service to the Property. Nothing herein shall be construed as precluding the County from providing sewer services to its residents in accordance with applicable provisions of law. Owner(s) will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider as provided in any utility agreement between Owner(s) and the service provider.

E. Use of Effluent. Owner(s) agrees that treated effluent will be disposed of only in such manner as may be approved by DHEC and the BJWSA.

F. Police Services. County shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County.

G. Fire Services. The parties hereto recognize that the Cooler Tracts are and will continue to be located in Beaufort County, South Carolina, and that the Property is within an area historically served by the Bluffton Fire District, and will continue to be serviced by the Bluffton Fire District

H. Sanitation Services. County shall provide sanitation and trash collection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County.

I. Recreation Services. County shall provide recreation services to the Property on the same basis as it provided to other similarly situated residents and businesses in the County.

J. Library Services. Such services are now provided by Beaufort County, regarding the Cooler Tracts, and shall continue to be provided to the Cooler Tracts on the same basis as other similarly situated residents and businesses within the County.

K. Emergency Medical Services (EMS). EMS services to the Cooler Tracts shall be provided on the same basis as for other property within the County.

L. Drainage System. All stormwater runoff, treatment and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations and Best Management Practices then current. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed by the respective Owners or the Association. The County will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment and drainage system within the Property.

1. **Storm Water Quality.** Protection of the quality in nearby waters and wetlands is a primary goal of the County. The Owners shall be required to abide by all provisions of federal and state laws and regulations, now or in the future, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors for the handling of storm water, provided that such future regulations shall only apply to future development on the Property which has not been permitted and/or developed at the time such regulations are adopted.. Further provisions regarding Storm Water are included within the Zoning Regulations for this Project.

XI. DEVELOPMENT FEES

Special Development Fees were set forth under many past Beaufort County Development Agreements to offset capital expenditures and other costs associated with new development activity. In recent years, Beaufort County has adopted, and subsequently expanded, Impact Fees of general application, which do not depend on Development Agreement provisions. These Beaufort County Impact Fees have been adopted pursuant to Chapter 82 of the Beaufort County Code of Laws.

Owner(s) and Beaufort County hereby agree that the adopted Impact Fees, and the related terms and conditions of Chapter 82, shall apply fully to all applicable development activity within both Parcel A and Parcel B of the Property, with any applicable fees to be payable at the time of building permit issuance. Future amendments and modifications to Chapter 82 shall also apply to the Property, so that the Property subject to this Development Agreement shall be subject to the same Impact Fees and related regulations as other property similarly situated in unincorporated Beaufort County, both now and in the future. No additional fees are adopted hereunder to apply within the Property.

XII. PERMITTING PROCEDURES:

1. The County agrees to allow the Developer the ability to permit and construct model homes without utilities (i.e., “dry models”) and to relocate the models as necessary within each subdivision.

2. The County agrees that the Owner(s) and/or any Developer is not required to phase development but shall have the right to do so.

3. The County agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the UDO as modified by the terms hereof. County may not give final approval to any submission and will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews.

4. Signage for the Project is governed by the provisions of the Zoning Regulations.

5. The County acknowledges that the Developer shall have an internal set of architectural guidelines and will employ an architectural review board, and which shall be administered by the Developer and/or the Association, and which guidelines may be modified in the future at the discretion of Developer to meet market conditions.

6. The County agrees to allow plat recording with a bond prior to completion of infrastructure development and to issue building permits and permit sale of lots prior to completion of such bonded infrastructure; in accordance with the Zoning Regulations.

7. The County agrees that the Property is approved and fully vested for intensity, density, development fees, uses and height. The County may not impose additional development obligations or regulations in connection with the Owner(s)ship or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which the Owner(s) shall have the right to challenge.

8. Roadways (public or private) may utilize swale drainage systems and are not required to have raised curb and gutter systems, provided that pedestrian and non-vehicular pathways or sidewalks are provided in order to provide interconnectivity between interior subdivisions, commercial or institutional areas and public gathering areas. Roadway cross

sections utilizing swale drainage will be designed, constructed and maintained to meet BMP standards (imposed by regulatory agencies) for stormwater quality. Roadway cross sections will be reviewed at time of proposed construction of such Roadway based upon engineering and planning standards consistent with the Zoning Regulations prepared by Developer, subject to the approval of the County planner.

All plan review fees shall be consistent with the fees charged generally in the County.

XIII. DEVELOPER ENTITLEMENTS:

County acknowledges that Developer is vested with the following items:

1. The County will, to the extent available, promote public transportation which exists within the County to service the Property.
2. All drainage systems constructed within the Project shall be owned and maintained by one (1) or more Association(s) which may be established for various portions of the Property and the County shall have no responsibility for the construction, operation or maintenance of such systems.
3. On-site burning will be permitted within the Property upon obtaining applicable permits.
4. The County agrees to cooperate with the Owner(s) and each Developer with county, state and federal roadway permitting in connection with the Development of portions of the Property.
5. County services, including, but not limited to, police, sanitation, and other governmental services shall be supplied to the Property in the same manner and to the same extent as provided to other properties within the County.

XIV. COMPLIANCE REVIEWS.

As long as Owner(s) own any of the Property, Owner(s) or their designees, shall meet with the County, or its designee, at least once, per year, during the Term to review Development completed by Owner(s) in the prior year and the Development anticipated to be commenced or completed by Owner(s) in the ensuing year. The Owner(s), or its designee, shall provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, the number

of certificates of occupancy issued in the prior year, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. The Owner(s), or its designee, shall be required to compile this information within a reasonable time after written request by the County.

XV. DEFAULTS.

The failure of the Owner(s), Developer or the County to comply with the terms of this Agreement not cured within thirty (30) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches or a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such breach within such thirty [30] day period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance; provided however no termination of this Agreement may be declared by the County absent its according the Owner(s) and any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Agreement. For purposes of defaults hereunder, the two properties (Cooler Parcels A and B) shall be considered independent of one another.

XVI. MODIFICATION OF AGREEMENT.

This Agreement may be modified or amended only by the written agreement of the County and the Owner(s); such written agreement may be by resolution or ordinance at the County's sole discretion. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

DRAFT

This Agreement may be modified or amended as to a portion of the Property only by the written agreement of the County and the Owner(s) of said portion of the Property. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate, or effect an abandonment of this Agreement in whole or in part unless such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

If an amendment affects less than all the persons and entities comprising the Property Owner(s), then only the County and those affected persons or entities need to sign such written amendment. Minor modifications to a site plan or to development provisions may be made without a public hearing or amendment to applicable ordinances. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment, and such approval or consent shall be in writing and signed by the affected parties. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

The Zoning Regulations are not intended to be rigid, exact site plans for future development. The location of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, as long as the maximum densities set herein and the general concept of environmentally sensitive residential and commercial developments suggested by the Zoning Regulations are followed and respected. Such variations are to be considered minor and will be approved at the staff review level.

XVII. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid,

DRAFT

registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to the County at:

With Copy To:

And to the Owner(s) of the Cooler Tract at:

With Copy To: Law Office of Lewis J. Hammet, PA
301 Central Avenue, Suite A389
Hilton Head, South Carolina, 29926

And to Village Park, LLC at: 4454 Bluffton Park Crescent, Suite 101
Bluffton, South Carolina 29910

XVIII. ENFORCEMENT.

Any party hereto shall have the right to enforce the terms, provisions and conditions of this Agreement (if not cured within the applicable cure period) by any remedies available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with said enforcement.

XIX. GENERAL.

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as

may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by the Owner(s) and Developer(s) and the County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the County may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner(s), developers and the County each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

B. Estoppel Certificate. The County, the Owner(s) or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

(1) that this Agreement is in full force and effect,

(2) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

(3) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

(4) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the County and the Owner(s) relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

D. **No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between the County, the Owner(s) or any Developer or to render such party liable in any manner for the debts or obligations of another party.

E. **Exhibits.** All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

F. **Construction.** The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

G. **Assignment.** Subject to the notification provisions hereof, Owner(s) may assign its rights and responsibilities hereunder to a subsidiary or sister company, or subsequent land Owner(s) and Developers.

H. **Governing Law.** This Agreement shall be governed by the laws of the State of South Carolina.

I. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

J. **Agreement to Cooperate.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

K. **Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict the County's right and power of eminent domain under the laws of the State of South Carolina.

L. **No Third Party Beneficiaries.** The provisions of this Agreement may be enforced only by the County, the Owner(s) and Developers. No other persons shall have any rights hereunder.

XX. STATEMENT OF REQUIRED PROVISIONS

A. **Specific Statements.** The Act requires that a development agreement must include certain mandatory provisions, pursuant to Section 6-31-60 (A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60 (A) for the required items:

1. **Legal Description of Property and Legal and Equitable Owner(s)s.** The legal description of the Property is set forth in **Exhibit A** attached hereto. The present legal Owner of the Property is Cooler's Corner, LLC.
2. **Duration of Agreement.** The duration of this Agreement shall be as provided in Article III.
3. **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development – related standards, are contained in Zoning Regulations, as supplemented and modified by this Agreement.
4. **Required Public Facilities.** The utility services available to the Property are described generally above regarding water service, sewer service, cable and other telecommunication services, gas service, electrical services, telephone service and solid waste disposal. The mandatory procedures of the Zoning Regulations will ensure availability of roads and utilities to serve the residents on a timely basis.

- 5. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** All requirements relating to land transfers for public facilities, if any, are set forth in Article XI above. The Zoning Regulations described above, and incorporated herein, contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the important provisions set forth in this Agreement.
- 6. Local Development Permits.** The Development standards for the Property shall be as set forth in the Zoning Regulations. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. Building Permits must be obtained under applicable law for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and Army Corps of Engineers, when applicable, prior to any impact upon freshwater wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner(s), its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided hereunder.
- 7. Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Zoning Regulations and permitted under this Agreement is consistent with the Comprehensive Plan and with current land use regulations of the County, which include the ability to enter into Development Agreements.
- 8. Terms for Public Health, Safety and Welfare.** The County Council finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations and existing laws.
- 9. Historical Structures.** Any cultural, historical structure or sites will be addressed through applicable federal and state regulations the permitting

DRAFT

process at the time of development, as required by applicable state regulations. No such structures or sites are known to exist.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

SIGNATURES AND ACKNOWLEDGMENTS BEGIN ON THE FOLLOWING PAGE

WITNESSES:

Cooler's Corner, LLC

_____ By: _____

_____ Its: _____

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF BEAUFORT)

I HEREBY CERTIFY, that on this ____ day of _____, 2021, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of the County of Beaufort, South Carolina, who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____

Its: _____

STATE OF SOUTH CAROLINA.

)

)

ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

I HEREBY CERTIFY, that on this ____ day of _____, 2021. before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of the County of Beaufort, South Carolina, who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT A
TO DEVELOPMENT AGREEMENT
PROPERTY DESCRIPTION OF COOLER PROPERTY

All that certain piece and parcel of property containing 2.81 acres, more or less, located in Beaufort County, South Carolina, being labeled as Parcel B on a plat prepared by TGS Land Surveying, executed by Thomas G. Stanley, Jr., S.C.P.L.S. 18269, said plat being dated June 15, 2007, and recorded July 20, 2007 in Book 120 at Page 180, in the Office of the Beaufort County, South Carolina Register of Deeds.

AND ALSO, All that certain piece and parcel of property containing 27.19 acres, more or less, located in Beaufort County, South Carolina, being labeled as Parcel A on a plat prepared by TGS Land Surveying, executed by Thomas G. Stanley, Jr., S.C.P.L.S. 18269, said plat being dated June 15, 2007, and recorded July 20, 2007 in Book 120 at Page 180, in the Office of the Beaufort County, South Carolina Register of Deeds.

AND ALSO, All that certain piece and parcel of property containing 64.46 acres, more or less, located in Beaufort County, South Carolina, being labeled as Parcel C on a plat prepared by TGS Land Surveying, executed by Thomas G. Stanley, Jr., S.C.P.L.S. 18269, said plat being dated June 15, 2007, and recorded July 20, 2007 in Book 120 at Page 180, in the Office of the Beaufort County, South Carolina Register of Deeds.

The above parcels are further described, respectively, as:

Tax ID Number: R600 008 000 0625 0000
Tax ID Number: R600 008 000 0016 0000
Tax ID Number: R600 008 000 0001 0000

EXHIBIT B
TO DEVELOPMENT AGREEMENT
ZONING DISTRICT DESIGNATIONS

Cooler Parcel A has been separately designated by the County as Zoning District C-3, as modified by the additional terms and standards contained in this Agreement and shown on Exhibit C hereto.

Cooler Parcel B has been separately designated by the County as Zoning District C-5, subject to any terms and modifications contained in this Agreement or as shown on Exhibit C hereto.

Attached hereto as Exhibit B is a drawing which depicts the location and zoning designations of both Parcel A and B, together with easement locations across Parcel B to access Parcel A from Highway 170, including the right to install entrance features and signage for Parcel A on the Parcel B property.

EXHIBIT C
TO DEVELOPMENT AGREEMENT
Zoning Regulations – Page 1 of 3

The Zoning Regulations are as set forth below:

1. The provisions contained in this Development Agreement.
2. The terms of the Community Development Ordinance of Beaufort County, in effect at the time of this Agreement, subject to any additions, changes, and modifications contained in this Agreement, and as shown on Exhibit C, page 2, hereto. The terms of the Community Development Ordinance are hereby modified as set forth herein, and further modified by necessary implications to approve the development plan and standards shown in Exhibit C, page 2, hereto, and reproduced for clarity on Exhibit C, page 3, hereof, whether expressly stated or not stated.

EXHIBIT C
TO DEVELOPMENT AGREEMENT
Zoning Regulations – Page 3 of 3

Community Development Ordinance Modifications and Requirements are as set forth below:

NEIGHBORHOOD MIXED-USE (C3NMU)
MODIFICATIONS & REQUIREMENTS (3.3.30)

(B.) Building Placement

Setbacks:

Front: 20' Minimum
Sides: 5' Minimum
(Main Building &
Ancillary Building)
Rear: 15' Minimum

Lot Size:

Lot Size: 5,750 SF Minimum
Width: 50' Minimum

Minimum Site Area:

Single-family & Duplex: 5,750 SF Minimum

(D.) Gross Density & Floor Area Ratio

Gross Density*

Single-family Detached: 2.92 DU/Acre

*Gross Density is the total number of dwelling units on a site divided by the gross acreage of the site.

Floor Area Ratio (No Changes)

REQUESTED EXEMPTIONS AND STANDARDS

1. This site shall qualify as exempt under 5.11.20.C. Exemptions from Natural Resources Survey.
2. This site shall be exempt from 5.11.90.A. Forests
3. Forest protection for both parcels shall including forests located within Wetland Preserves, Wetland Buffers, perimeter buffers, and other open (Excludes lots, Amenity Site, Stormwater BMPs, Active Open Spaces.)
4. Neighborhood Mixed Use (C3) Zoning applied to the +/- 67.5 Acres Parcel A (See attached Exhibit C)
5. The remaining Parcel B (+/-26.97 Acres) is proposed as Regional Center Mixed Use (C5RSMU) Zoning.
6. Open Space shall be a minimum +/- 30 Acres.
7. Block and road design standards are at the discretion of the owner.

REGIONAL CENTER MIXED-USE (C5RCMU)
MODIFICATIONS & REQUIREMENTS (3.3.50)

COMMERCIAL SQUARE FOOTAGE LIMITED TO A
TOTAL OF 20,000 SF FOR ALL OF PARCEL B.

EXHIBIT D
TO DEVELOPMENT AGREEMENT
DEVELOPMENT
SCHEDULE

Parcel A:

- 2022 - _____ residential dwelling units**
- 2023 - _____ residential dwelling units**
- 2024 - _____ residential dwelling units**
- 2025 - _____ residential dwelling units**
- 2026 - _____ residential dwelling units**

Parcel B:

- 2022 - No units or commercial expected**
- 2023 - To be determined based on market evaluations**
- 2024 - To be determined based on market evaluations**
- 2025 - To be determined based on market evaluations**
- 2026 - To be determined based on market evaluations**

Note: Parcel B shall be limited to 20,000 square feet of commercial development unless otherwise agreed by the parties in the future.

DRAFT

MEMORANDUM

TO: Heath Duncan, P.E., **Ward Edwards**

FROM: Mike Ridgeway, P.E., **Ridgeway Traffic Consulting, LLC**

DATE: December 20, 2019

**RE: Preliminary Traffic Summary: Cooler and Shining Ivory PDD
Hardeeville, South Carolina**

This memorandum has been prepared to present preliminary traffic findings related to a proposed rezoning for the Cooler and Shining Ivory PDD in unincorporated Beaufort and Jasper Counties. It is understood that additional study will be necessary related to permitting, etc. The purpose of this memorandum is to provide pertinent information as it relates to traffic planning as the project moves forward.

Project Description

The Cooler and Shining Ivory PDD totals ±136.4-acres and is an assembly of multiple parcels located in unincorporated Beaufort and Jasper Counties on both sides of Okatie Highway (SC170) at its intersection with Lowcountry Drive (SC462). The Cooler parcels are located in Beaufort County. 91.65 acres of the Cooler parcels are presently zoned Rural (T2R) and located on the south side of SC170. These parcels are bound by SC170 to the north and by the Oldfield Planned Unit Development on the other three sides. The remaining 2.81 acres of the Cooler property is located on a single parcel north of SC170 which is bound by Lowcountry Drive (SC426) to the west and the Beaufort-Jasper Academy for Career Excellence to the north. The property is currently undeveloped. The Shining Ivory parcels are located north of SC170 and are contiguous with the East Argent Planned Development District along their westernmost boundary. Two of the parcels totaling 1.18 acres are in Beaufort County and zoned Community Center Mixed Use (C4CCMU). The rest of the parcels are zoned Lowcountry Commerce Park PDD. **Figure 1** (Figures attached) presents the parcels being reviewed.

Existing Conditions

In order to determine the existing traffic volume flow patterns within the study area, manual turning movement counts were gathered for the weekday morning (7:00-9:00 AM) and evening (4:00 – 6:00 PM) peak time periods for the intersection of SC 170 at SC 462. The existing peak-hour traffic flow networks for the weekday AM and PM peak-hour periods are shown graphically in **Figure 2**. Count data sheets are attached with this memorandum.

As shown in Figure 2, traffic volumes are weighted heavily towards US 278 in the AM peak hour with significant westbound through volumes for SC 170 and southbound right-turn movements from SC 462 onto to SC 170. This pattern is reversed for the PM peak hour with dominant flow eastbound on SC 170 (towards Beaufort) and significant left-turns from SC 170 onto SC 462.

There are existing constraints for the intersection with the biggest issue being queuing that occurs for the eastbound left-turn movement during the PM, which is heavy and must yield to significant through volumes on SC 170. Traffic signal control is currently being planned for this intersection as discussed in the next section of this report.

Future Conditions and Anticipated Project Impacts

It is understood that a signal is currently being designed for the intersection of SC 170 at SC 462. It is understood that the existing geometry for the intersection will remain similar. Eastbound movements for SC 170 will maintain free-flow. Protected-permissive (flashing yellow arrow) control will be provided for the eastbound approach. Side Street movements for SC 462 will be provided a phase that will STOP westbound traffic to get left-turns to the median that will then utilize the existing acceleration lane and merge with eastbound traffic.

2024 Background Volumes

The existing traffic volumes were increased by a 6-percent annual rate based on historical growth in the area to develop 2024 background traffic volumes to evaluate the signalized intersection with and without a fourth approach leg that could be introduced with the Cooler Tract. The 2024 Background Traffic Volumes are shown in **Figure 3**.

Trip Generation and Distribution

Trip Generation estimates have been conducted for the Cooler Tract, which is the largest parcel reviewed and is located south of SC 170. Based on discussions with the development team, the following uses have been estimated as a logical development plan for the site:

300 Single-Family Detached Homes;
180 Apartments; and
50,000 square-feet (sf) of office space.

Table 1 summarizes the anticipated trip generation characteristics for the Cooler Tract.

Table 1
PROJECT TRIP GENERATION SUMMARY¹
Cooler Tract: Hardeeville, SC

Time Period	300			Total Trips (a+b+c)
	Single-Family Residences ² (a)	180 Apartments ³ (b)	50,000 SF Office Space ⁴ (c)	
AM Peak-Hour				
Enter	54	19	63	136
<u>Exit</u>	<u>164</u>	<u>64</u>	<u>10</u>	<u>238</u>
Total	218	83	73	374
PM Peak-Hour				
Enter	184	63	9	256
<u>Exit</u>	<u>108</u>	<u>37</u>	<u>50</u>	<u>195</u>
Total	292	100	59	451

¹ITE Trip Generation Manual, Tenth Edition.
²ITE Trip Generation Manual - LUC 210 - Single-Family Residential.
³ITE Trip Generation Manual - LUC 220 - Multi-Family Low Rise.
⁴ITE Trip Generation Manual - LUC 710 - General Office.

As shown, anticipated development on the Cooler Tract is estimated to generate 374 trips (136 entering, 238 exiting) during the AM peak hour and 451 trips (256 entering, 195 exiting) during the PM peak hour.

The Cooler Tract trips presented in Table 1 have been assigned to the fourth leg of the intersection of SC 170 at SC 462 based on the following percentages based on a review of existing traffic volumes:

- 55% to/from West on SC 170 (US 278/Bluffton);
- 35% to/from East on SC 170 (Beaufort); and
- 10% to/from North on SC 462.

The anticipated traffic related to the Cooler Tract is shown in **Figure 4**. These volumes were then superimposed on 2024 Background Traffic Volumes (Figure 3) to present 2024 Conditions with the Cooler Tract included. These volumes are shown in **Figure 5**.

Traffic Analysis

Capacity Analyses have been completed for the following scenarios:

2024 Background Conditions – which account for background traffic growth (6-percent annual), existing geometry and a traffic signal installed with protected-permissive phasing for eastbound SC 170; and

2024 Background Conditions PLUS Cooler Tract- which account for all background traffic volumes PLUS traffic related to the Cooler Tract and the following geometric/signal improvements that would be needed to accommodate a fourth approach leg to the intersection:

- Dedicated eastbound right-turn deceleration lane for SC 170 for entering movements to the Cooler Tract with a minimum of 200-ft. of storage and 200-ft. of taper;
- Dedicated westbound left-turn lane within the median of SC 170 for entering movements to the Cooler Tract with a minimum of 200-ft. of storage and 200-ft. of taper;
- A widened approach of SC 462 for a dedicated through lane for movements into the Cooler Tract from SC 462. This is necessary to ensure that the signal does not have to be split phased;
- A new northbound approach constructed with one entering lane and three exiting lanes for a separate left-turn lane, one through lane, and a separate right-turn lane. Left-turns for the new approach would need to align directly opposite the left-turn lane for southbound SC 462 for sight distance and through movements to/from SC 462 and Cooler Tract access would have to align.
- The traffic signal phasing would need to be modified to a standard four-legged intersection. A protected-permissive phase (flashing yellow arrow) would be needed for westbound SC 170 based on cross-product thresholds. Permissive phasing is recommended for SC 462 and Cooler Tract access to limit impacts on SC 170.

Table 2 presents a comparison of the capacity analyses for the two scenarios. Analyses sheets are attached with this memorandum.

Table 2
LEVEL OF SERVICE SUMMARY¹
Cooler Tract: Hardeeville, SC

<u>Signalized Intersection</u>	<u>Time</u> <u>Period</u>	<u>2024 CONDITIONS</u> <u>"T" INTERSECTION</u> <u>SIGNALIZED</u>		<u>2024 CONDITIONS</u> <u>4 LEGGED</u> <u>INTERSECTION</u> <u>SIGNALIZED</u>	
		<u>Delay^a</u>	<u>LOS^b</u>	<u>Delay</u>	<u>LOS</u>
		SC 170 at SC 462	AM	23.3	C
	PM	14.8	B	29.7	C

a. Delay in seconds-per-vehicle.
 b. LOS = Level-of-Service.

GENERAL NOTES:

1. For signalized intersections, Delay is representative of overall intersection.

As shown in Table 2, Future 2024 Conditions for the intersection of SC 170 at SC 462 are expected to be acceptable with the installation of traffic signal control as currently being planned.

The analyses indicate that the addition of traffic related to the Cooler Tract along with recommended geometry will still result in acceptable operations, however a drop in one service level is projected during the AM and PM peak hours. This is primarily due to the fact that the development would add a fourth “competing” approach to the intersection, which would require more time to service the anticipated volumes.

Additional Considerations

This memorandum has focused on anticipated needs for the intersection of SC 170 at SC 462 necessary to support development on the Cooler Tract. Servicing the Cooler Tract via new fourth leg to the existing intersection is logical to provide traffic signalized access to this significant development. A preliminary review of the recent SC 170 Access Management plan indicates an alternative plan for the SC 170 at SC 462 intersection with the elimination of left-turns from SC 462, which would become right-turns and then execute left-turns at a designated median location downstream. In the event that this plan moves forward, access for the Cooler Tract would have to be revisited with a scenario of only right-turns entering and exiting the site that would be distributed at median breaks east and west of the site.

The analyses within this report have focused on the Cooler Tract which is the largest parcel of the proposed annexed property. Regarding the parcels north of SC 170, access will have to be addressed as development plans are brought forward. The ultimate design for the SC 462 approach to SC 170 may dictate right-in/right-out control for the intersection of SC 462 at the service road located approximately 400-ft. north of SC 170. Opportunities for additional access to the north along SC 462 should be pursued.

Please call me at 803-361-9044 if you have any questions or comments.

Attachments

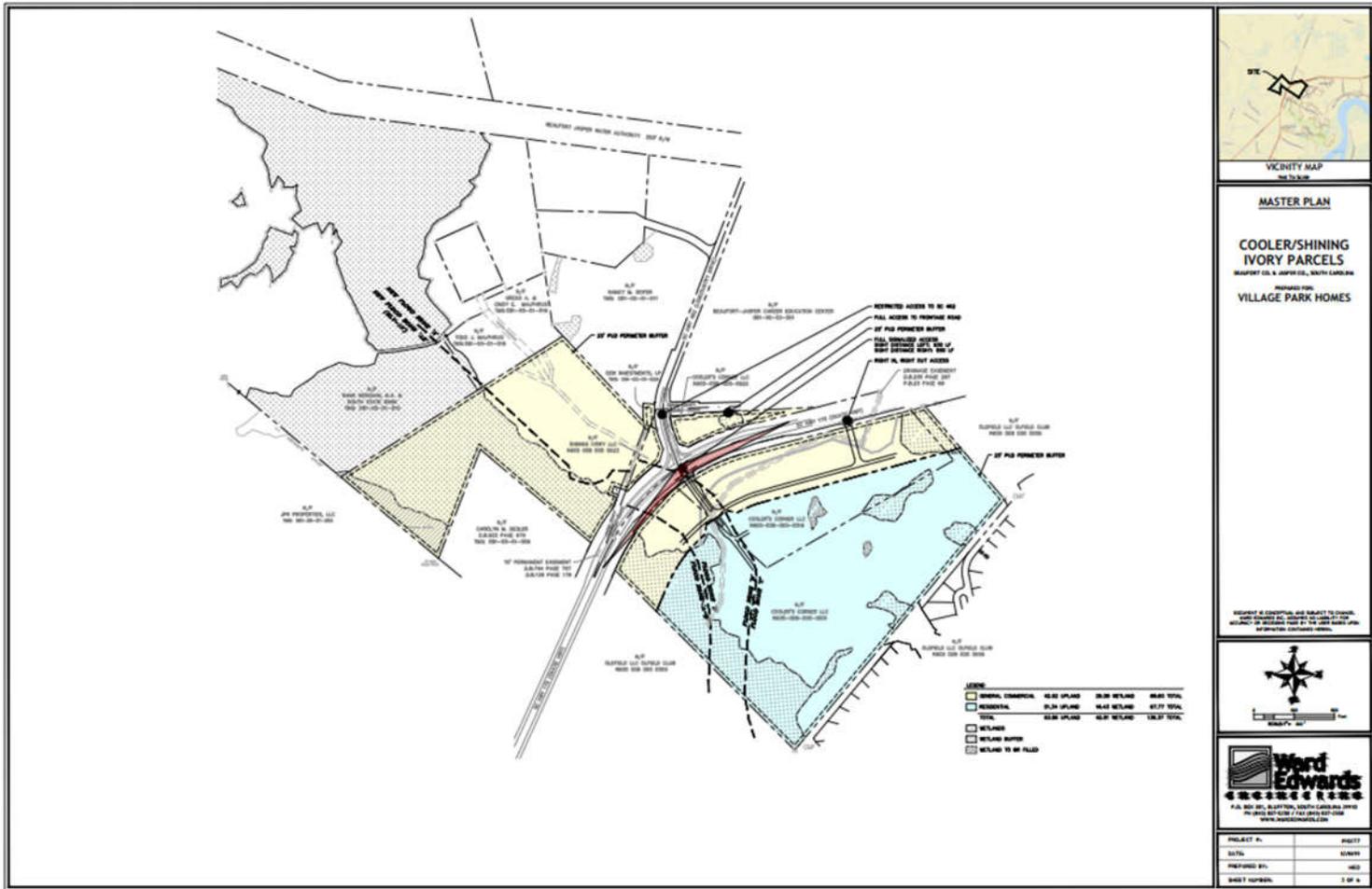
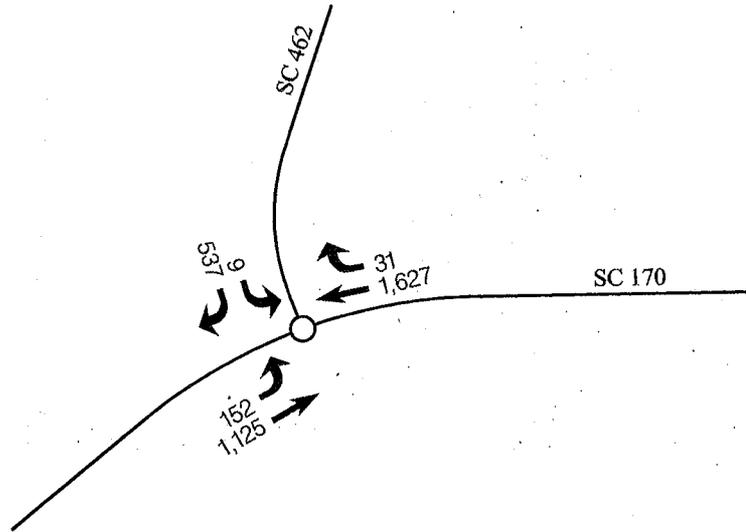


Figure 1
PARCEL LAYOUT
Cooler & Shining Ivory PDD: Hardeeville, SC

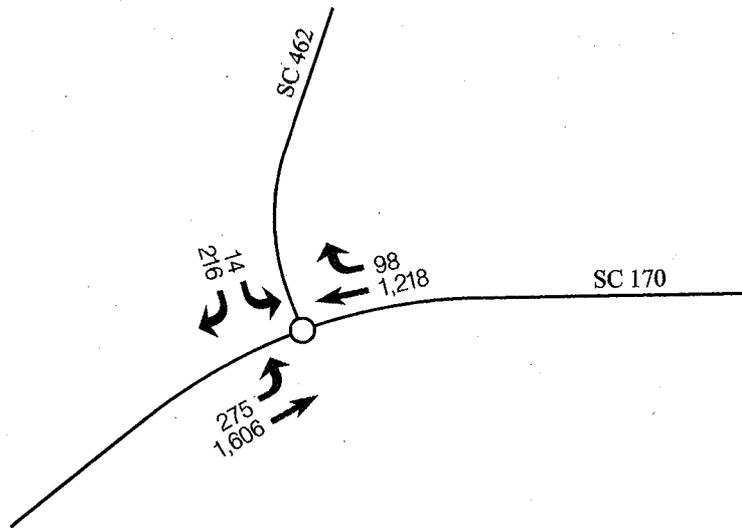


AM PEAK HOUR



NOT TO SCALE

PM PEAK-HOUR



LEGEND

○ = Unsignalized Intersection

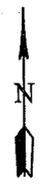
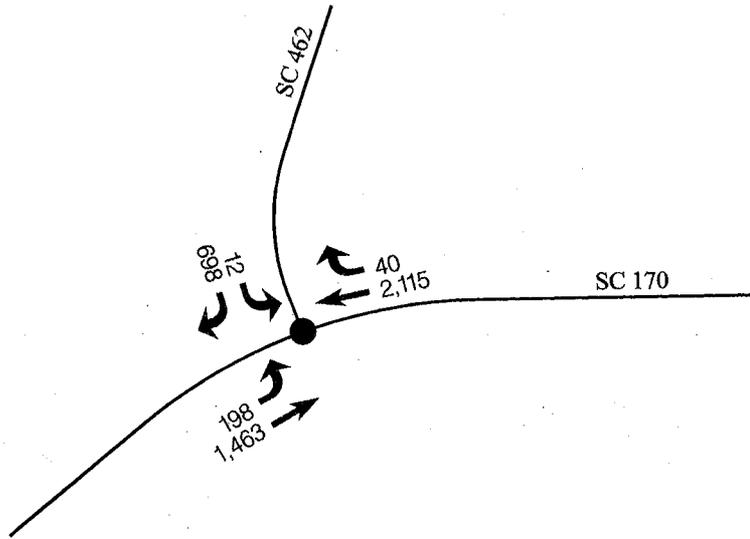
Figure 2

2019 EXISTING TRAFFIC VOLUMES

Cooler & Shining Ivory PDD: Hardeeville, SC

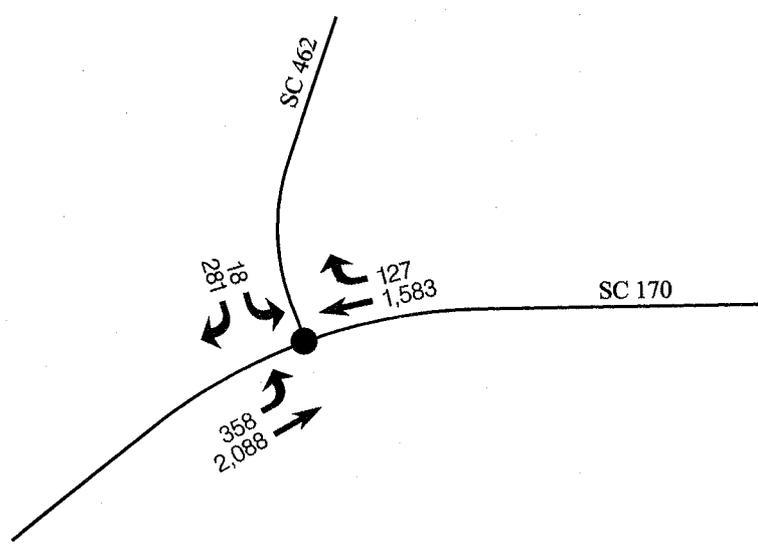
RIDGEWAY
TRAFFIC CONSULTING

AM PEAK HOUR



NOT TO SCALE

PM PEAK-HOUR



LEGEND

● = Signalized Intersection

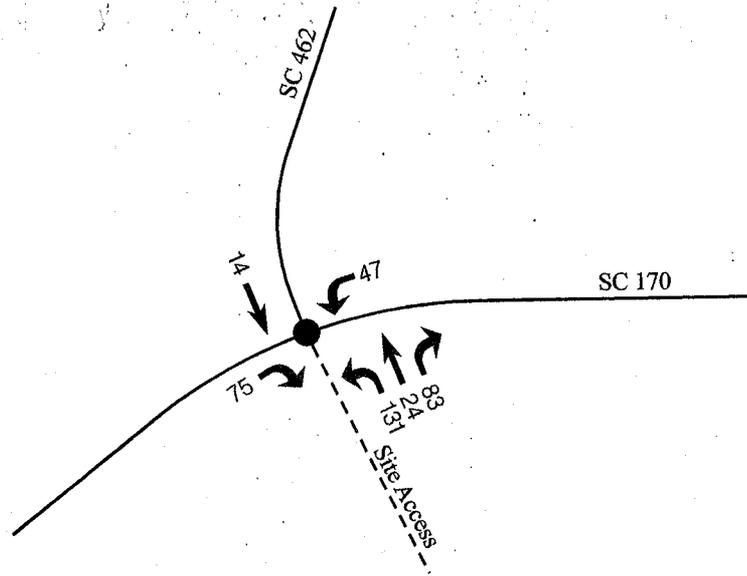
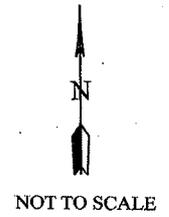
Figure 3

2024 BACKGROUND TRAFFIC VOLUMES

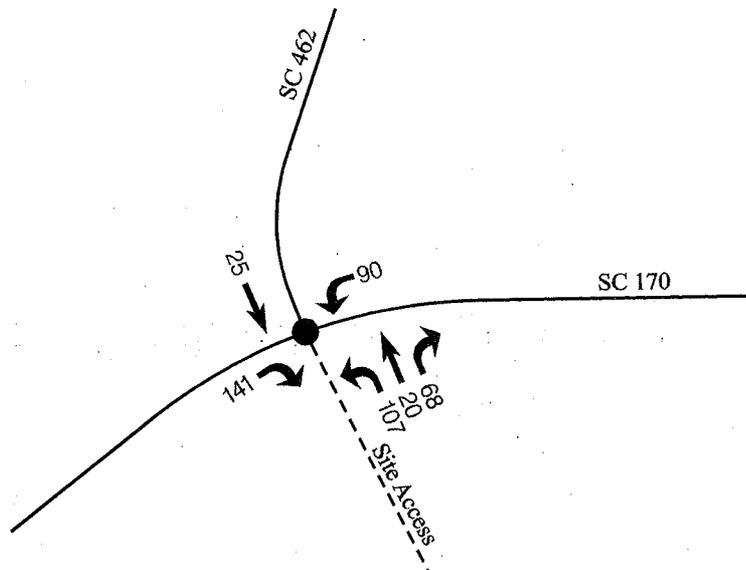
Cooler & Shining Ivory PDD: Hardeeville, SC



AM PEAK HOUR



PM PEAK-HOUR



LEGEND

● = Signalized Intersection

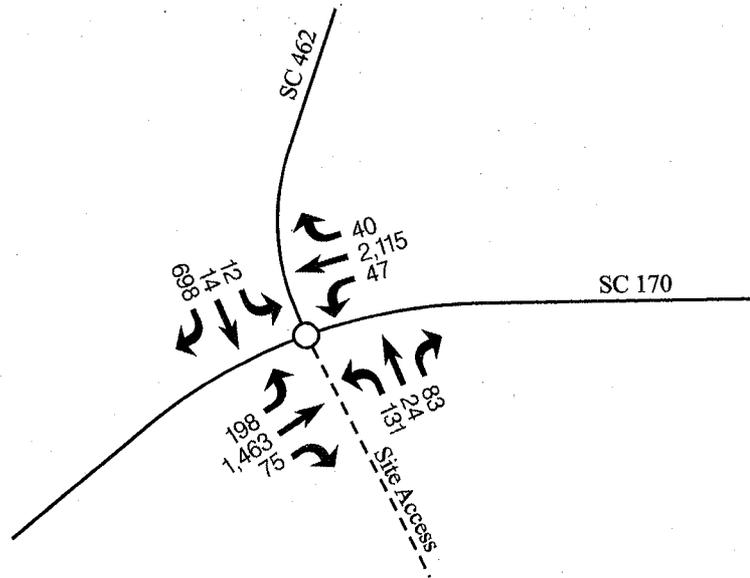
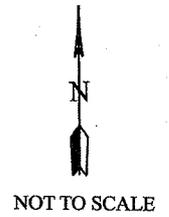
Figure 4

PROJECTED SITE TRAFFIC

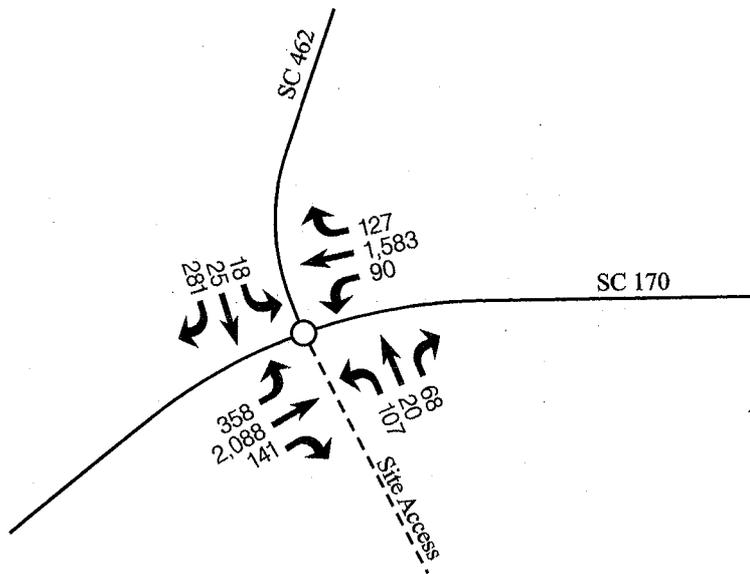
Cooler & Shining Ivory PDD: Hardeeville, SC

RIDGEWAY
TRAFFIC CONSULTING

AM PEAK HOUR



PM PEAK-HOUR



LEGEND

● = Signalized Intersection

Figure 5

2024 BACKGROUND PLUS COOLER TRACT

Cooler & Shining Ivory PDD: Hardeeville, SC

RIDGEWAY
TRAFFIC CONSULTING