



**The Town of Hilton Head Island**

**Regular Town Council Meeting**

**July 19, 2016**

**4:00 P.M.**

**BENJAMIN M. RACUSIN COUNCIL CHAMBERS**

**REVISED AGENDA**

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**As a Courtesy to Others Please Turn Off/Silence All Mobile Devices During  
the Town Council Meeting**

- 1) Call to Order**
- 2) Pledge to the Flag**
- 3) Invocation**
- 4) FOIA Compliance** – Public notification of this meeting has been published, posted and distributed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 5) Proclamations and Commendations**
  - a. Parks and Recreation Month
- 6) Approval of Minutes**
  - a. Town Council Meeting, June 21, 2016
- 7) Report of the Town Manager**
  - a. Design Review Board Semi-Annual Update – Jake Gartner, Chairman
  - b. Board of Zoning Appeals Semi-Annual Update – Glenn Stanford, Chairman
  - c. Land Acquisition Update
  - d. Town Manager's Items of Interest
    - (1) Town News
    - (2) Noteworthy Events
- 8) Reports from Members of Council**
  - a. General Reports from Council
  - b. Report of the Intergovernmental Relations Committee – Bill Harkins, Chairman
  - c. Report of the Community Services Committee – Kim Likins, Chairman
  - d. Report of the Public Planning Committee – Tom Lennox, Chairman
  - e. Report of the Public Facilities Committee – David Ames, Chairman
  - f. Report of the Public Safety Committee - Marc Grant, Chairman
  - g. Report of the Finance and Administrative Committee - John McCann, Chairman
  - h. Report of the Circle to Circle Committee - Tom Lennox, Town Council Liaison

**9) Unfinished Business**

None

**10) New Business**

**a. Consideration of a Recommendation – Beaufort County Storm Water Agreement**

Consideration of a Recommendation that Town Council amend the Town's Storm Water Management and Utility Intergovernmental Agreement (IGA Agreement) with Beaufort County.

**b. First Reading of Proposed Ordinance 2016-11**

First Reading of Proposed Ordinance 2016-11 of the Town Of Hilton Head Island adopting the 2016 Beach Management Plan; and to provide for severability and an effective date.

**11) Appearance by Citizens**

**12) Executive Session**

**a. Land Acquisition**

Discussion of negotiations incident to the proposed sale, lease or purchase of property:

- (1) related to a potential cell tower placed at Islanders' Beach Park.
- (2) related to the expansion of Island Recreation Center.
- (3) related to the acquisition of easements and rights of way in the Pope Avenue/New Orleans Road Intersection Area.

**b. Contractual Matters**

Discussion of negotiations incident to:

- (1) a proposed contractual arrangements with the Municipal Judge.
- (2) the location of temporary Fire Station 2.
- (3) proposed renewal of the Heritage Classic Foundation/Town of Hilton Head Island agreement.

**13) Possible actions by Town Council concerning matters discussed in Executive Session**

**a. Consideration of a Recommendation – Municipal Judge**

Consideration of a Recommendation that Council consider the renewal of a contract with Municipal Judge, Maureen Coffey, for a 2 year term.

**b. First Reading of Proposed Ordinance 2016-20**

First Reading of Proposed Ordinance 2016-20 of the Town of Hilton Head Island, South Carolina, authorizing the execution of a lease with Diamond Towers IV LLC, for property owned by the Town of Hilton Head Island, South Carolina, known as a portion of the Islander's Beach Park Tract, and authorizing the execution of two easements in favor of Diamond Towers IV LLC, encumbering town owned land, known as a portion of the Islander's Beach Park Tract, pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2012), and Sec. 2-7-20, Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

**c. Consideration of a Resolution – License Agreement Fire Station 2**

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of a license agreement with Marriott Ownership Resorts, Inc. for the purpose of utilizing certain real property owned by Marriott Ownership Resorts, Inc. for use as a temporary fire station.

**d. Consideration of a Resolution – BCSD Lease w Island Rec**

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of a lease and facility use agreement with the Beaufort County School District Board of Education and Hilton Head Island Recreation Association for the purpose of leasing certain real property owned by Beaufort County School District Board of Education and to be used and operated by the Hilton Head Island Recreation Association.

**e. Consideration of a Resolution – Pope Avenue/Office Park Road/New Orleans Road Intersection Improvement Project**

Consideration of a Resolution of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing condemnation, pursuant to S.C. Code Section 28-2-10, *et seq.*, of easement rights and right of way ownership over portions of parcels at the intersection of Office Park Road, New Orleans Road and Pope Avenue on Hilton Head Island to facilitate the Town of Hilton Head Island's Pope Avenue – Office Park Road – New Orleans Road Intersection Improvements Project.

**f. Consideration of a Recommendation – Heritage Classic Foundation**

Consideration of a Recommendation that Town Council consider entering into an agreement with the Heritage Classic Foundation (Heritage).

**14) Adjournment**

# Proclamation

BY  
THE TOWN OF HILTON HEAD ISLAND

***WHEREAS**, parks and recreation programs are an integral part of communities throughout this country, including Hilton Head Island, South Carolina; and*

***WHEREAS**, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and*

***WHEREAS**, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and*

***WHEREAS**, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and*

***WHEREAS**, parks and recreation areas are fundamental to the environmental well-being of our community; and*

***WHEREAS**, parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and*

***WHEREAS**, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and*

***WHEREAS**, the Town of Hilton Head Island, South Carolina recognizes the benefits derived from parks and recreation resources.*

***NOW, THEREFORE, I, David Bennett, Mayor of the Town of Hilton Head Island, do hereby proclaim the month of July, 2016 as***

## **PARKS AND RECREATION MONTH**

***IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused this seal of the Town of Hilton Head Island to be affixed this Nineteenth day of July, in the Year of our Lord, Two Thousand and Sixteen.*

*David Bennett, Mayor*  
Attest:

*Victoria L. Pfannenschmidt, Town Clerk*

**THE TOWN OF HILTON HEAD ISLAND**  
**REGULAR TOWN COUNCIL MEETING**

**Date:** Tuesday, June 21, 2016

**Time:** 4:00 P.M.

**Present from Town Council:** David Bennett, *Mayor* Bill Harkins, *Mayor Pro Tem*; David Ames, Marc Grant, Tom Lennox, Kim Likins, John McCann, *Council Members*

**Present from Town Staff:** Steve Riley, *Town Manager*; Greg DeLoach, *Assistant Town Manager*; Charles Cousins, *Director of Community Development*; Brad Tadlock, *Fire Chief*; Brian Hulbert, *Staff Attorney*; Susan Simmons, *Director of Finance*; Tom Fultz, *Director of Administrative Services*; Ed Boring, *Deputy Fire Chief – Support Services*; Jeff Buckalew, *Town Engineer*; John Troyer, *Deputy Finance Director*; Erica Madhere, *Finance Administrator*; Derrick Coaxum, *Assistant Facilities Manager*; Melissa Cope, *Systems Analyst*; Cindaia Ervin, *Finance Assistant*; Vicki Pfannenschmidt *Executive Assistant*

**Present from Media:** Teresa Moss, Island Packet

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**1) CALL TO ORDER**

Mayor Bennett called the meeting to order at 4:00 p.m.

**2) PLEDGE TO THE FLAG**

**3) INVOCATION**

**4) FOIA Compliance** – Public notification of this meeting has been published, posted and distributed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

**5) Proclamations and Commendations**

**a. Civil Air Patrol Week**

Major Crystall Eudy, Squadron Commander and Captain Mitchell Brach were present to accept the proclamation.

**b. Beaufort County School District Character Education Student of the Month**

- Hilton Head Island Early Childhood Center

Jaxson Payne – Kindergarten

Kim Bratt, Principal of Hilton Head Island Early Childhood Center gave remarks concerning Jaxson Payne. Jackson was present to accept the award.

**6) Approval of Minutes**

**a. Town Council Special Meeting, May 31, 2016**

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the May 31, 2016 Special Town Council meeting were approved by a vote of 6-0-1. (Mrs. Likins abstained as she was not present at the meeting.)

**b. Town Council Meeting/Public Hearing, June 7, 2016**

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the June 7, 2016 regular Town Council Meeting and Public Hearing were unanimously approved by a vote of 7-0.

**c. Town Council Special Meeting, June 14, 2016**

Mr. Harkins moved to approve. Mr. McCann seconded. The minutes of the June 14, 2016 Special Town Council meeting were unanimously approved by a vote of 7-0.

**7) Report of the Town Manager**

**a. Town Manager's Items of Interest**

Mr. Riley reported on the items of interest listed below.

(1) Town News

(2) Noteworthy Events

**8) Reports from Members of Council**

**a. General Reports from Council**

Mr. Ames stated he attended the Mitchelville Juneteenth Celebration. He added that it was extremely educational, well-attended and encouraged all citizens to become citizens of Mitchelville for the cost of \$18.62.

Mrs. Likins acknowledged the passing of one of her constituents, Joe Fromme, who was 92 years young. She said he retired and moved to Hilton Head Island in 1991 and had a trademark smile and always greeted everyone by saying "Cheers".

**b. Report of the Intergovernmental Relations Committee – Bill Harkins, Chairman**

No report.

**c. Report of the Community Services Committee – Kim Likins, Chairman**

Mrs. Likins reported the Venue Committee met the previous week and had an excellent meeting with team updates/presentations and have begun to invite their community organizational speakers to upcoming meetings. She stated they heard from the World Affairs Council and Greg Russell did a presentation regarding the musicians and entertainers on the Island.

Mrs. Likins asked Council for support to release the Request for Qualifications (RFQ) for consultants for the Venue Committee. She explained it needed to be done as to meet the timeline for the annual Town Council Workshop. It was the consensus of Town Council to proceed with the release the RFQ.

Mrs. Likins stated the Arts and Cultural summer public relations plan has been finalized and she placed a copy in the Council mail slots. She noted the firm would be on-site on Thursday and asked Council to review and provide input prior to the meeting.

**d. Report of the Public Planning Committee – Tom Lennox, Chairman**

Mr. Lennox stated there was a special meeting held on June 16 and held a video conference call with the Orton Family Foundation representatives and discussed the development of a community vision and how they have worked with communities nationwide. He explained they are a technical foundation that gives assistance free of charge. He said the next scheduled meeting is June 22 and the agenda item will be single phased communication.

**e. Report of the Public Facilities Committee – David Ames, Chairman**

No report.

**f. Report of the Public Safety Committee - Marc Grant, Chairman**

No report.

- g. Report of the Finance and Administrative Committee - John McCann, Chairman**

No report.

- h. Report of the Circle to Circle Committee - Tom Lennox, Town Council Liaison**

Mr. Lennox commended Jim Gant and his leadership of the Committee. He stated the input from the forums has been analyzed and recommendations were submitted to the Planning Commission on June 15 and will come forward to Council for review and consideration.

## **9) Unfinished Business**

### **a. Second Reading of Proposed Ordinance 2016-18**

Second Reading of Proposed Ordinance 2016-18 to amend Title 4 Finance and Taxation of the Municipal Code of the Town of Hilton Head Island, South Carolina by amending Chapter 12 (Allocation of South Carolina Accommodations Tax Revenues), Section 4-12-20 Management of the Special Fund for Tourism Promotion; and provide for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

### **b. Second Reading of Proposed Ordinance 2016-16**

Second Reading of Proposed Ordinance 2016-16 to amend Title 16, "The Land Management Ordinance," of the Municipal Code of the Town of Hilton Head Island, South Carolina, by amending Section 16-1-107, the Official Zoning Map with respect to those certain parcels identified as Parcels 118, 227, 30, 4D, 149E, 149B, 149D and 149 on Beaufort County Tax Map 7, to rezone the parcels from RM-8 (Moderate Density Residential) zoning district to the MS (Main Street) Zoning District; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

### **c. Second Reading of Proposed Ordinance 2016-19**

Second Reading of Proposed Ordinance 2016-19 to amend Title 4 (Finance and Taxation) of the Municipal Code of the Town of Hilton Head Island, South Carolina by renaming Title 4; creating within Title 4 a new Chapter 11 (Road Usage Fee) which establishes a road usage fee; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. Rochelle Williams and Randy Tardy commented on the fee. The motion was unanimously approved by a vote of 7-0.

### **d. Second Reading of Proposed Ordinance 2016-09**

Second Reading of Proposed Ordinance 2016-09 to raise revenue and adopt a budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2017; to establish a property tax levy; to establish funds; to establish a policy for acquisition of rights of way and easements; and providing for severability and an effective date.

Mr. Harkins moved to approve. Mr. McCann seconded. Mr. Ames expressed reservations regarding the line item funding \$300,000 to Hilton Head Plantation over a period of three years. He stated he felt there was no real evidence of a threat to storm water drainage as presented and he spoke with the Town Engineer who shares his view. Mr. Ames stated he felt it was not sure that the issue had been discussed in depth and expressed concern about

setting a precedent. He added that there is a need to engage Town Staff and the appropriate committee to review prior to dispersing funds. Mrs. Likins emphasized her support for the funding derives from the storm water drainage issues. Mr. Harkins emphasized the need to assist due to the vulnerability of the storm water system drainage and the potential damage to the marsh due to salt water intrusion. Mayor Bennett expressed his concern about the lack of the process for analyzing whether or not there is an issue or legal basis for providing funding. He stated the Town Engineer was not even consulted or invited to participate regarding the determination. He noted he is fine with leaving the funds in the budget but suggested Mr. Liggett work in conjunction with the appropriate committee to analyze and report back to Town Council with a recommendation on how to move forward.

Ray Pittman, of Pittman Engineering conducted a presentation regarding the need for assistance and funding and the potential threat to the marsh. Mr. Kristian explained that Hilton Head Plantation was asking for a little help and was not asking for the Town to take over beach maintenance. Mr. Ames asked if this was a one-time request or a precedent that the Town will be obligated to make this contribution in the future. Mr. Kristian stated that he believed at this point and time it is a one-time contribution. After further discussion, Mr. Ames moved that the line item be retained as is, with a proviso that the process go back to staff and the appropriate committee and present its recommendation back to Town Council. Mrs. Likins seconded for discussion.

A number of residents expressed their support and/or concerns regarding the subject.

The original motion regarding second reading of the budget was unanimously approved by a vote of 7-0.

Mr. Ames' motion regarding retaining the line item with a proviso was defeated by a vote of 2-5. (Mr. Harkins, Mrs. Likins, Mr. Grant, Mr. McCann and Mr. Lennox were opposed.)

## **10) New Business**

### **a. Consideration of a Recommendation –Accommodations Tax Advisory Committee**

Consideration of a Recommendation from the Accommodations Tax Advisory Committee for the Chamber of Commerce Visitor and Convention Bureau's proposed 2016-17 "30 Percent" Budget.

Mr. Harkins moved to approve. Mr. McCann seconded. The motion was unanimously approved by a vote of 7-0.

### **b. Consideration of a recommendation from the Finance and Administrative Committee that Town Council notify the Hilton Head Island-Bluffton Chamber of Commerce (Chamber) that in accordance with paragraph 6 of the contract for professional services (contract, effective December 1, 2015 between the Town and the Chamber), that it is the desire of this council that the Town shall notify the Chamber during November 2019 that it intends to terminate the contract and follow state law section 6-4-10 and the Town's procurement code in the selection of its designated marketing organization.**

Mr. Harkins moved to approve. Mr. McCann seconded. Mr. Lennox suggested to amend the motion to add wording after "it intends to terminate the contract" to read "it intends to terminate the contract upon the expiration of the original term". Mr. Hulbert explained there is not legal need for the addition but it does make the intention more clear. Mr. Harkins asked Mr. Hulbert if there was, in existence, a five year contract. Mr. Hulbert confirmed the contract was for five years and this does not terminate the contract early. Mr. Harkins asked that it be reflected in the minutes this is not a termination of the contract in November of

2019. All of Council was in agreement to add the suggested wording to the motion.

Randy Tardy asked what happens if the Chamber doesn't do anything for the next five years. Mayor Bennett explained that within the contract there were performance standards. The amended motion was approved by a vote of 7-0.

**c. Discussion by Town Council of a recommendation to encourage the Hilton Head Island Economic Development Corporation (HHIEDC) to undertake the necessary steps to dissolve itself and transfer HHIEDC assets to the Town of Hilton Head Island.**

Mr. Harkins moved to encourage the Hilton Head Island Economic Development Corporation (HHIEDC) to undertake the necessary steps to dissolve itself and transfer HHIEDC assets to the Town of Hilton Head Island. Mr. McCann seconded. Mr. Harkins noted that Council is at a point and time where they are focusing on a visioning process and the HHIEDC has done a great deal on work on behalf of the Town and this should not be viewed with any prejudice and Council is grateful for what they did accomplish. Don Kirkman stated the dissolution is a legal matter and will be determined by the governing body of the organization. He stated the board will meet on Friday and invited Council to attend the meeting. Mr. Kirkman said they will review the legal aspects of dissolution and explained the staff has working with Town Staff to identify potential expenses and liabilities that will extend beyond June 30. He suggested the officers and directors liability insurance policy be renewed and it can be cancelled upon the actual dissolution date. He also requested documentation that the Town will be responsible for the obligations going forward during the dissolution process. Mr. Riley confirmed the Town will do what is needed in the correct manner as soon as the HHIEDC Board agrees to dissolve. Mayor Bennett thanked Mr. Kirkman for his efforts noting he is a man of integrity. The motion was unanimously approved by a vote of 7-0.

**11) Appearance by Citizens**

Rochelle Williams addressed Council regarding the condition of Green Shell Park.

Tai Scott addressed Council regarding Gullah Geechee Catering.

**12) Executive Session**

Mr. McCann moved to reschedule the Executive Session for discussion regarding the Town Manager Performance Evaluation Process until dates are scheduled for Council members. Mr. Harkins seconded. The motion was unanimously approved by a vote of 7-0.

**13) Possible actions by Town Council concerning matters discussed in Executive Session**

There was no Executive Session per the motion above.

**14) Adjournment**

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Vicki L. Pfannenschmidt  
Executive Assistant/Town Clerk

Approved:

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David Bennett, Mayor

**TO:** Town Council  
**FROM:** Susan M. Simmons, Director of Finance  
**VIA:** Stephen G. Riley, Town Manager  
**DATE:** June 30, 2016  
**RE: Land Acquisition Update**

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**Available Funding – FYE June 30, 2016**

The Town's Land Acquisition Program has the following available funds at June 30, 2016.

2010 GO Referendum Bonds	\$1,546,156
Sale of Land Account	<u>4,210,845 *</u>
Total	<u>\$5,757,001</u>

- \* Significant transactions between January 1 and June 30, 2016:  
Return of the Sale of Pineland Station Net Proceeds from HHIEDC  
(HHI Economic Development Corporation)

Land and Park transactions related to the Shelter Cove Park and Development Agreement are **not** reflected above. GO Bonds will be issued in FY 2016 for the Town's portion of the park costs.

# **LAND ACQUISITION PROGRAM UPDATE SINCE FEBRUARY 2016**

## **LEGALLY CLOSED PROPERTY TRANSACTIONS**

- ❖ **Second land exchange between the Town and Shelter Cove II, LLC closed on April 19, 2016-even exchange of 4.45 acres.**

## **SOLD PROPERTIES ANNOUNCED**

- ❖ **Sold .59 of an acre to PWK Enterprises of the RBC Real Estate Office Property (Map No. 94-located adjacent to Adventure Cove) for \$50,000.**



## ITEMS OF INTEREST

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### JULY 19, 2016

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#### Town News

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There will be a Public Hearing at 5:00pm on August 16th in the Benjamin M. Racusin Council Chambers of Hilton Head Island's Town Hall located at One Town Center Court, Hilton Head Island, South Carolina to consider a proposed Ordinance to adopt the 2016 Beach Management Plan.

**Contact:** Shawn Colin, Deputy Director of Community Development, at [shawnc@hiltonheadislandsc.gov](mailto:shawnc@hiltonheadislandsc.gov) or 843-341-4696.

There will be a Public Hearing at 5:30pm on August 16th in the Benjamin M. Racusin Council Chambers of Hilton Head Island's Town Hall located at One Town Center Court, Hilton Head Island, South Carolina to consider a proposed Ordinance to adopt the Beaufort County Hazard Mitigation Plan 2015 Update.

**Contact:** Shawn Colin, Deputy Director of Community Development, at [shawnc@hiltonheadislandsc.gov](mailto:shawnc@hiltonheadislandsc.gov) or 843-341-4696.

Deputy Chief Ed Boring has been re-conferred the "Chief Fire Officer" (CFO) designation from the Commission on Professional Credentialing. The designation is awarded to individuals that have demonstrated the requisite knowledge, skills, and abilities required for the fire and emergency services profession. Deputy Chief Boring received the Chief Fire Officer designation in 2013 and on-going designation is required every three years to promote continuous professional development.

The Commission on Professional Credentialing is an entity of the Center for Public Safety Excellence, and uses a third-party peer review model to evaluate candidates seeking professional credentialing offered by the Center for Public Safety Excellence.

**Contact:** Brad Tadlock, Fire Chief at [bradt@hiltonheadislandsc.gov](mailto:bradt@hiltonheadislandsc.gov) or 843-682-5153

Battalion Chief Joheida Fister recently received the International Code Council (ICC) - Fire Marshal Certification. The Fire Marshal Certification process consists of a written exam covering Fire & Life Safety Education, Fire Investigation, Media and Public Relations, and Data Analysis. The candidate must also hold current certifications as a Fire Inspector I, Fire Inspector II, Fire Plans Examiner, and have passed the ICC Legal and Management and Technology exam. Battalion Chief Fister is one of only three ICC Certified Fire Marshal's in the State of South Carolina and one of 157 in the United States.

**Contact:** Brad Tadlock, Fire Chief at [bradt@hiltonheadislandsc.gov](mailto:bradt@hiltonheadislandsc.gov) or 843-682-5153

# Noteworthy Events

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Some of the upcoming meetings at Town Hall:

- Accommodations Tax Advisory Committee – July 20, 2016, 9:00 a.m.
- Planning Commission – July 20, 2016, 3:00 p.m.
- Venue Committee – July 22, 2016, 9:00 a.m.
- Design Review Board – July 26, 2016, 1:15 p.m.
- Construction Board of Adjustments and Appeals, July 26, 2016, 5:30 p.m.
- Public Safety Committee – August 1, 2016, 10:00 a.m.
- Finance and Administrative Committee – August 2, 2016 - CANCELLED
- Town Council – August 2, 2016 – CANCELLED
- Planning Commission – August 3, 2016, 9:00 a.m.
- Venue Committee – August 3, 2016, 4:00 p.m.
- Public Planning Committee – August 4, 2016, 3:00 p.m.
- Community Services Committee – August 8, 2016, 9:00 a.m.
- Design Review Board – August 9, 2016, 1:15 p.m.
- Finance and Administrative Committee – August 16, 2016, 2:00 p.m.
- Town Council Meeting – August 16, 2016, 4:00 p.m.
- Public Hearing – Beach Management Plan – August 16, 2016, 5:00 p.m.
- Public Hearing – Beaufort County Hazard Mitigation Plan 2015 Update, 5:30 p.m.

(Additional meetings may be scheduled and all meetings are subject to change and/or cancellation. Please visit the Town of Hilton Head Island website at [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov) for Committee meeting dates and agendas.

## 2016 Hilton Head Island Events

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4 <sup>th</sup> Thursdays thru October 27, 2016 5:00pm-9:00pm	Carolina Dreamers Car Club Show	Shelter Cove Community Park
Tuesdays thru August 9, 2016 4:30pm-10:00pm	Community Market & Summer Jams Island Recreation Association	Shelter Cove Community Park
Tuesdays Thru August 16, 2016 5:00pm-10:00pm	HarbourFest 2016	Shelter Cove Harbour
Thursdays Thru August 11, 2016 9:00pm-10:30pm	Movies in the Park	Shelter Cove Community Park
Fridays Thru August 26, 2016	Sunset Celebrations	Shelter Cove Community Park



# TOWN OF HILTON HEAD ISLAND

## *Public Projects and Facilities Management Department*

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**TO:** Stephen G. Riley, ICMA-CM, Town Manager  
**VIA:** Scott Liggett, PE, Dir. of Public Projects & Facilities / Chief Engineer  
Jeff Buckalew, PE, Town Engineer  
**FROM:** Bryan McIlwee, PE, Asst. Town Engineer / Stormwater Manager  
**CC:** Brian Hulbert, Staff Attorney

**DATE:** July 1, 2016  
**SUBJECT:** Amendment of the Stormwater Management and Utility Intergovernmental Agreement with Beaufort County

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### **Recommendation:**

Staff recommends Town Council amend the Town's Storm Water Management and Utility Intergovernmental Agreement (IGA Agreement) with Beaufort County. On June 27, 2016, the Public Facilities Committee voted unanimously to forward this recommendation to Town Council.

### **Summary:**

This intergovernmental agreement must be amended to reference the current Beaufort County Stormwater Rate Study report, adjust scheduling deadlines related to the change in the date of the annual tax billing by the County Assessor's office, as well as the County's desire to have a uniform agreement between itself and each of the municipalities. A summary of the changes is provided in an attachment.

### **Background:**

The Town of Hilton Head Island entered into a Storm Water Management and Utility Intergovernmental Agreement with Beaufort County in 2001 and this was amended in 2011. The agreement defines the roles, responsibilities and financial relationship between the County and the Town with respect to the establishment, administration, and operation of the Beaufort County Stormwater Utility.

Beaufort County Council recently adopted the recommendations of the Beaufort County Stormwater Rate Study. This impacts the current Intergovernmental Agreement as it makes specific reference to the new Rate Study, the Town's chosen rate structure, the dates, and the method in which the management fee is determined.

**Town of Hilton Head Island and Beaufort County**  
**Revised Storm Water Management and Utility Agreement**  
**General Summary of Revisions**  
**June, 2016**

INSERTION

~~DELETION~~

REVISION	EXPLANATION
<b>ARTICLE 1 - TITLE AND PURPOSE</b>	
REVISE Section 1.02 <i>References to County Ordinances</i>	Updated reference to new County ordinance and added language regarding staff committee recommendations on future IGA amendments: <u>“The Beaufort County Stormwater Implementation Committee (SWIC) will review this Agreement for any needed revisions upon future amendments to Chapter 99 of the County Ordinance. Amendments to Chapter 99 shall become binding to this Agreement upon SWIC review and revisions to this Agreement, if deemed necessary.”</u>
<b>ARTICLE 2 – DEFINITIONS</b>	
REVISE Section 2.03 <i>County Wide Stormwater Management Study (and Implementation Guide)</i>	Revised article name and added language referencing the new County wide stormwater management plan: <u>“In 2016, the County and Town of Hilton Head Island entered into agreement to update the Master Plan, said document being referred to as the “Beaufort County Stormwater Management Implementation Guide”.</u> <u>Future amendments of the Plan/Guide shall be incorporated by reference once agreed upon by the Beaufort County Stormwater Implementation Committee (SWIC).”</u>
REVISE Section 2.04 <i>Cost of Service Analysis and Rate Study</i>	Updated reference to the 2015 Beaufort County Stormwater Utility Rate Study
REVISE Section 2.05 <i>Stormwater Utility User Fees</i>	Added to the definition of SWU User Fee, based on the 2015 Rate Study: <u>“These fees will be calculated based upon the residential category for a parcel and/or the nonresidential parcel's impervious area and/or a parcel's gross area and an administrative fee, depending on the applicable Utility Rate Structure, as pursuant to the provisions of the Beaufort County Ordinance listed in Section 1.02.”</u>
REVISE Section 2.06 <i>Stormwater Utility User Fee;</i>	Revised to reference Option A of the 2015 Beaufort

<i>Single Family Unit Rate (SFU).</i>	County Stormwater Utility Rate Study.
<i>ADD Section 2.07 Stormwater Utility User Fee; Administrative fee</i>	New section defining the administrative fee for Option A, C, and E per the 2015 Beaufort County Stormwater Utility Rate Study
<i>ADD Section 2.08 Stormwater Utility User Fee; Countywide Infrastructure Fee (CWI)</i>	New section defining the Countywide Infrastructure Fee for the maintenance cost of the county owned infrastructure
<i>ADD Section 2.09 Stormwater Utility User Fee; Gross Area fee (GA)</i>	New section defining the Gross Area fee per Option C or E of the 2015 Beaufort County Stormwater Utility Rate Study
<i>ADD Section 2.10 Stormwater Utility User Fee; Impervious Area fee (IA)</i>	New section defining the Impervious Area fee per Option C or E of the 2015 Beaufort County Stormwater Utility Rate Study
<i>DELETE Section 2.10 Stormwater Utility User Fees</i>	Deleted Section 2.10 of the old IGA
REVISE Section 2.16 Stormwater Utility	Revised language: “The administrative <del>organization</del> <u>section of the County’s Stormwater Department</u> created for the purposes of planning, designing, overseeing, funding, building, and maintaining Stormwater Infrastructure, either directly or through cooperative arrangements with other governmental bodies; and for administering and managing Stormwater Management throughout Beaufort County.”
<b>ARTICLE 3 – TERM OF THIS AGREEMENT</b>	
REVISE Section 3.01 <i>Initial Term of this Agreement</i>	Revised language: The Initial Term of this Agreement shall be for a period of ten (10) years, commencing on the date <del>of the execution hereof</del> <u>Agreement is signed by both the Town and the County, whichever comes last.</u>
<b>ARTICLE 4 - FINANCE AND FUNDING</b>	
REVISE Section 4.00 <i>Financial and Funding Relationship.</i>	Revised language: The Town shall provide the County with its Stormwater Utility User Fee <del>collection</del> <u>Rate</u> for its <u>upcoming</u> fiscal year prior to <del>August 15</del> <u>June 30</u> each year of this Agreement. This will be in the form of a letter to the County Administrator from the Town Manager. <del>The Town shall also provide to the County an annual report of its stormwater fee expenditures for each fiscal year. This report shall be delivered by September 1 each year this Agreement is in effect.</del> <u>In the event the Town fails to submit this letter in accordance with Article 4 of this Agreement, the previous year’s rate shall apply. The Town shall also provide to the County an annual report of its stormwater fee expenditures from the previous fiscal year. This report shall be delivered by September 30, or as soon as</u>

	<u>the previous fiscal year's financial records are complete, each year this Agreement is in effect.</u>
REVISE Section 4.01 <i>Use of Revenue</i>	<p>Added language regarding the administrative fee stating <u>"The billable unit shall be either a Per Account charge or a charge per SFU, depending on the applicable Utility Rate Structure."</u></p> <p>Deleted language in reference to FY12 fee of \$2.80 per SFU base rate administrative fee.</p> <p>Revised required dates associated with the Utility budget proposal from March 1 to February 15 and Town acceptance of the Utility budget from April 15 to April 1.</p>
<b>ARTICLE 6 – STORM WATER ORDINANCES AND DEVELOPMENT STANDARDS</b>	
REVISE Section 6.00 <i>Applicable Standards</i>	Revised entire section to standardize language between all of the municipalities regarding hydrologic and hydraulic engineering and design standards.
REVISE Section 6.02 <i>Regulatory Obligations of the <u>County and Town</u></i>	Revised entire section to standardize language between all of the municipalities regarding State and Federal standards regarding stormwater management, erosion and sedimentation, pollution control and flooding
REVISE Section 6.03 <i>Plan Review and Site Inspection</i>	Revised second paragraph to standardize language between all of the municipalities regarding inspection of construction and post-construction activities
<b>ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE</b>	
REVISE Section 7.00 NPDES Compliance	Added language to make reverence to the Town and County's designation by the State of South Carolina for compliance with the NPDES Permit
REVISE Section 7.01 Roles and Responsibilities	Added language regarding ability of the Town and County to "co-permit" or share MS4 permitting responsibilities on specific Minimum Control Measures CM – via Other Agreements
<b>ARTICLE 9- OTHER AGREEMENTS</b>	
ADDED Section <u>9.03 Funds Distribution</u>	New section stating how compensatory SWU funds associated with work under "Other Agreements" are to be distributed, either by invoice or as part of the Per Account Administrative Fee collected by County

A STORMWATER MANAGEMENT AND UTILITY

INTERGOVERNMENTAL AGREEMENT

BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

DATED: \_\_\_\_\_

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WHEREAS, this Agreement is made on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, for the purpose of establishing the terms and conditions of the participation by the Town in a county-wide stormwater utility, which utility shall be operated by the County.

#### ARTICLE 1 - TITLE AND PURPOSE

1.00 *Title:* This intergovernmental agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina, shall be known as the “Stormwater Management and Utility Agreement Between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina.”

1.01 *Purpose:* This Agreement is made for the purpose of defining the roles, responsibilities and financial relationship between the County and the Town with respect to the establishment, administration and operation of the Beaufort County Stormwater Utility, which includes the following:

- (a) Establishment of rates;
- (b) Use of revenue;
- (c) Acquisition of existing stormwater infrastructure;
- (d) Construction of new stormwater infrastructure;
- (e) Maintenance of stormwater infrastructure;
- (f) Operation of stormwater infrastructure;
- (g) Regulation and use of stormwater infrastructure; and,
- (h) Enhancement of water quality.

1.02 *References to County Ordinances:* This Agreement hereby incorporates by reference Beaufort County, South Carolina, Ordinance 2015-24 regarding the establishment of a Stormwater Utility. The Beaufort County Stormwater Implementation Committee (SWIC) will review this Agreement for any needed revisions upon future amendments to *Chapter 99* of the County Ordinance. Amendments to *Chapter 99* shall become binding to this Agreement upon SWIC review and revisions to this Agreement, if deemed necessary. In the case of any conflict between the provisions of the Ordinances and this Agreement, the provisions of this Agreement shall control.

## ARTICLE 2 - DEFINITIONS

2.00 *Definitions:* When used in this “Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina,” the following words shall have the meanings set forth in this Article 2:

2.01 *Agreement:* This Stormwater Management and Utility Agreement between Beaufort County, South Carolina, and the Town of Hilton Head Island, South Carolina.

2.02 *County:* Beaufort County, South Carolina.

2.03 *County Wide Stormwater Management Study (and Implementation Guide):* The study conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County. This became the Beaufort County Stormwater Master Plan dated February 20, 2006. In 2016, the County and Town of Hilton Head Island entered into agreement to update the Master Plan, said document being referred to as the “Beaufort County Stormwater Management Implementation Guide”. Future amendments of the

Plan/Guide shall be incorporated by reference once agreed upon by the Beaufort County Stormwater Implementation Committee (SWIC).

2.04 *Cost of Service Analysis and Rate Study:* The study was conducted by the County and Town which was adopted by County Council on August 24, 2015 and submitted by the Study consultant to the Town of Hilton Head Island on April 20, 2016 to determine an equitable and appropriate rate structure for Stormwater Utility User Fees within all areas of the County, so that fees charged by the Stormwater Utility will be in compliance with provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010).

2.05 *Stormwater Utility User Fees:* Stormwater Utility User Fees shall mean the service fee imposed pursuant to this article for the purpose of funding costs related to stormwater programs, services, systems, and facilities. These fees will be calculated based upon the residential category for a parcel and/or the nonresidential parcel's impervious area and/or a parcel's gross area and an administrative fee, depending on the applicable Utility Rate Structure, as pursuant to the provisions of the Beaufort County Ordinance listed in Section 1.02.

2.06 *Stormwater Utility User Fee; Single Family Unit Rate (SFU).* Per "Option A" of the 2015 Utility Rate Study, the single-family unit fee rate shall be defined as the impervious area measurements obtained from a statistically representative sample of all detached single-family structures within Beaufort County. The representative value will be 4,906 square feet

2.07 *Stormwater Utility User Fee; Administrative fee.* For "Option A" rate structures, the Administrative fee is a portion of the SFU and determined per Section 4.01 of this Agreement. Per "Option C or E" of the 2015 Utility Rate Study, the Administrative fee is a fixed cost per billable account and includes costs to the Utility not directly applicable to the improvements of

the property, such as administrative costs, public education and outreach, and water quality monitoring. For “Option C or E” rate structures, the Administrative fee is determined per Section 4.01 of this Agreement.

2.08 *Stormwater Utility User Fee; Countywide Infrastructure Fee (CWI).* Per the 2015 Utility Rate Study, the countywide infrastructure fee is based on GIS data obtained per Article 8 herein. It is a fee applicable to each Town for the operation and maintenance cost of the county owned infrastructure defined in Section 5.07, collected and paid directly to the County.

2.09 *Stormwater Utility User Fee; Gross Area fee (GA).* Per “Option C or E” of the 2015 Utility Rate Study, the Gross Area fee is calculated from the area in acres of a parcel of land as measured from GIS data obtained per Article 8 herein.

2.10 *Stormwater Utility User Fee; Impervious Area fee (IA).* Per “Option C or E” of the 2015 Utility Rate Study, the Impervious Area fee is based on impervious area measurements calculated in the same manner as the SFU.

2.11 *NPDES:* The National Pollutant Discharge Elimination System stormwater regulatory program established by the United States Environmental Protection Agency to address pollutants in stormwater discharged to waters of the United States. Phase II of this regulatory program impacts communities under 100,000 in population, small construction sites between one acre and five acres, and industrial sites owned and operated within communities under 100,000 population.

2.12 *Public Stormwater:* Stormwater runoff which is conveyed through a public drainage easement or public road right of way, and/or which some portion is generated from a public road right of way.

2.13 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, post-construction best management practices (BMPs), or the like, or any combination of them, used or useful in the collection and disbursement of storm and surface water, or the control of flooding. As used herein, Stormwater Infrastructure does not include drainage systems or facilities that are not publicly owned, and which do not carry public stormwater.

2.14 *Stormwater Management:* Control of storm and surface water, erosion, stormwater quality protection and flooding through the use of Stormwater Infrastructure, and the creation and enforcement of development standards related to storm and surface water.

2.15 *Stormwater Management Plan:* The plan(s) developed by the County and Town that addresses planning, design and construction of capital improvements to the Stormwater Infrastructure; acquisition of real property or interests in real property for the purposes of Stormwater Management; maintenance and repair of Stormwater Infrastructure; regulation of the use of Stormwater Infrastructure; acquisition of equipment and other assets; regulation of impacts including any that may be mandated under the NPDES Phase II regulations, contracting with engineering, financial, legal, construction and other professionals for services in support of the Stormwater Utility, emergency preparedness related to storms and hurricanes, acquisition or construction of Stormwater Infrastructure, or any other functions required, useful or prudent for a program of Stormwater Management.

2.16 *Stormwater Utility:* The administrative section of the County's Stormwater Department created for the purposes of planning, designing, overseeing, funding, building, and maintaining Stormwater Infrastructure, either directly or through cooperative arrangements with other

governmental bodies; and for administering and managing Stormwater Management throughout Beaufort County.

2.17 *Town:* Town of Hilton Head Island, South Carolina.

### ARTICLE 3 - TERM OF THIS AGREEMENT

3.00 *Term of This Agreement:* The term and duration of this Agreement shall be as follows in this Article 3.

3.01 *Initial Term of this Agreement:* The Initial Term of this Agreement shall be for a period of ten (10) years, commencing on the date the Agreement is signed by both the Town and the County, whichever comes last.

3.02 *Periodic Review of this Agreement:* The Beaufort County Stormwater Implementation Committee (SWIC) shall conduct periodic review of this Agreement to insure that it remains current with the state of the art stormwater management and practices applicable to coastal areas and shall provide recommendations for updates to the agreement if necessary.

3.03 *Extension of this Agreement:* The term of this Agreement may be extended at any time by the mutual agreement of the parties hereto, or upon the expiration of the initial ten (10) year term set forth in Article 3.01 above.

3.04 *Termination of this Agreement:* This Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article shall only be effective on the final day of any given County fiscal year. The written notice of termination shall be provided by the party terminating the Agreement no less than one hundred eighty (180) days prior to the date the termination will be effective.

3.05 *Effect of Termination:* Upon termination of this Agreement under any provision of this Article 3, or otherwise, all rights and obligations of any party hereto, specifically including but not limited to the right of the County to charge Stormwater Utility User Fees to property owners in the Town, shall immediately end.

3.06 *Conveyance of Assets:* Upon termination of this Agreement under any provision of this Article 3, the County shall convey to the Town all of its right, title and interest in any Stormwater Infrastructure, including any stormwater easements, within the municipal limits of the Town. However, this shall not include Stormwater Infrastructure on County owned parcels or County road rights of way (otherwise known as Countywide Infrastructure, CWI, as defined in Section 5.07) within the limits of the Town.

3.07 *Rebate of User Fees:* Upon termination of this Agreement under any provision of this Article 3, the County shall return to the Town any collected but unspent or unobligated Stormwater Utility User Fees collected from within the Town Limits.

#### ARTICLE 4 – FINANCE AND FUNDING

4.00 *Financial and Funding Relationship:* The Town shall provide the County with its Stormwater Utility User Fee Rate for its upcoming fiscal year prior to June 30 each year of this Agreement. This will be in the form of a letter to the County Administrator from the Town Manager.

In the event the Town fails to submit this letter in accordance with Article 4 of this Agreement, the previous year's rate shall apply. The Town shall also provide to the County an annual report of its stormwater fee expenditures from the previous fiscal year. This report shall be delivered

by September 30, or as soon as the previous fiscal year's financial records are complete, each year this Agreement is in effect.

4.01 *Use of Revenue:* In accordance with the provisions of S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310 (Supp. 2010), all Stormwater Utility User Fees collected within the Town, less an administrative fee, shall be returned to the Town. The administrative fee is to be calculated as a fixed dollar amount for each unit billed and collected by the Stormwater Utility. The billable unit shall be either a Per Account charge or a charge per SFU, depending on the applicable Utility Rate Structure. The Utility shall define its administrative costs each year during the annual budget process. The Beaufort County Stormwater Implementation Committee (SWIC) shall conduct annual reviews of the Utility's administrative budget and recommend to the municipalities and County any changes to the amount billed per Account or SFU and the SWIC and Utility shall provide the Town an itemized proposal and a written explanation for adjustments for the administrative services and deliverables to be provided in the coming fiscal year. This proposal shall be submitted to the Town by February 15 of each calendar year. The Town shall provide a written recommendation of acceptance to the Utility by April 1 of the same year. Once agreed upon, this shall serve as the basis for the annual administrative fee to be calculated per Town Account or SFU, and included in each entity's annual budget.

- (a) The administrative fee shall be used by the County to defray the County's administrative costs in managing the Stormwater Utility.
- (b) The Town shall use Stormwater Utility User Fees to provide Stormwater Management within the Town, including, but not limited to:

- (i) The acquisition, design, construction, and maintenance of Stormwater Infrastructure, or repayment of bonded indebtedness issued to fund construction of Stormwater Infrastructure, in so far as the law and covenants of the bonds allow, or for repayment to the Town for general fund or other funds spent by the Town to fund Stormwater Management activities;
- (ii) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of the Town;
- (iii) Maintenance of Stormwater Infrastructure by the Town and its contractor(s,) or by direct services of the Stormwater Utility. Charges for services by the Stormwater Utility; shall be negotiated and approved by the County and the Town, as is provided in Articles 4.03, 4.05(a), 5.05, and 5.07 below; The Town shall have the right of non-exclusive use of direct maintenance services, and there shall be no minimum dollar amount required to be spent annually by the Town on any services provided by the Stormwater Utility;
- (iv) Plan review and site inspections related to compliance with stormwater ordinances and standards for development within the Town as set forth in Articles 4.05, 4.06 and 4.07 below;
- (v) NPDES Phase II permit compliance;
- (vi) Payment of bond indebtedness or repayment of funds borrowed

from the general fund or any other fund for the purpose of funding Stormwater Management projects or activities; and,

(vii) Any other services related to Stormwater Management.

4.02 *Further Agreements Authorized:* The Town and the County may negotiate and enter into agreements to share costs and responsibilities related to NPDES permit compliance. Such agreements and cost allocations shall be reflected in each entities annual budget and must be authorized by the Town Council and County Council.

4.03 *Cost of Services:* If the Town chooses to utilize the direct services of the Stormwater Utility, however described, they shall be accounted for at the County's actual cost of the equipment, materials, and personnel utilized in the delivery of the services.

4.04 *Setting of Stormwater Utility User Fee Rate (Per Account, IA, GA, and SFU's):* The Town shall be responsible each year for setting the Stormwater Utility User Fee Rate to be assessed on parcels within the Town. The Stormwater Utility User Fee rate shall be set in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation.

4.05 *Plan Review and Site Inspection:* For all activities that constitute development within Town limits, the Town will provide review of plans and site inspections to ensure compliance with applicable laws, ordinances and regulations related to storm and surface water, erosion control and flooding.

4.06 *Coordination of Services:* The Town shall identify a representative of its staff to serve as the contact person and coordinator for Stormwater Management Services, including services

provided by the County within the Town, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, facilitating access within any planned or future Planned Unit Developments within the Town, and advising the County on site-specific conditions within the Town.

#### ARTICLE 5 – ADMINISTRATION OF STORMWATER UTILITY

5.00 *Stormwater Utility:* The County has established a Stormwater Utility that administers funds and conducts a Stormwater Management program throughout the County.

5.01 *Stormwater Management Plan:* The County and Town shall have the responsibility to develop and maintain a Stormwater Management Plan to be administered by the Beaufort County Stormwater Implementation Committee (SWIC).

5.02 *Relationship of Plan to Agreement:* The Stormwater Management Plan developed and maintained by the Beaufort County Stormwater Implementation Committee (SWIC) shall incorporate the obligations of the County and Town under this Agreement. In the case of any conflict between the provisions of the Stormwater Management Plan and this Agreement, the provisions of this Agreement shall control.

5.03 *Stormwater Utility User Fees:* The Stormwater Utility shall bill and collect parcel based Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to any intergovernmental agreements, including this Agreement, and may also apply for, acquire and use any other funding from any public or private source in support of the Stormwater Management Plan as allowed by law.

5.04 *County Responsibilities:* The County, through the Stormwater Utility, shall have the following responsibilities:

(a) *Collection and Distribution of Fees:* Stormwater Utility User Fees within the Town limits shall be charged and collected by the County in accordance with the provisions of Article 4.0 of this Agreement; the Stormwater Utility User Fees shall be collected in accordance with S. C. Code Ann. 48-14-120(C) (Supp. 2010), and S. C. Regs. 72-310(G) (Supp. 2010), or any other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees; the County shall distribute the Town's Stormwater Utility User Fees less the County administrative costs as defined in Article 4.01, in the same manner as ad valorem taxes are distributed for each year this Agreement is in effect;

(b) *Provision of Services:* Provision of the services required under this Agreement.

(c) *Budgeting and Expenditure:* Setting the budget for the Stormwater Utility, and spending the revenues in accordance with any applicable ordinances or agreements, including this Agreement;

(d) *Administrative Activities:* Managing all administrative activities of the Stormwater Utility, including but not limited to, fee assessment, collection and distribution, maintenance of accounting records, maintenance of stormwater data, implementation of the master plan, acquisition of easements, coordination with other agencies, reporting to the Stormwater Utility Board;

(e) *Accounting:* Maintaining an accounting of revenues and expenditures on a jurisdictional or geographic basis, as may be set or described under any applicable ordinance or agreement, including this Agreement, the County shall provide the Town with an itemized annual accounting of all Stormwater Utility User Fees within the Town limits in the form of a budget report, including but not limited to: how parcel fees were determined, calculated, and assessed; total fees collected; total Administrative costs retained by the County; total fees in arrears, on which parcels and the status of the collection attempt(s) on such parcels; fee credits applied for; fee credits paid; and fees that required adjustment since the last billing. This budget report shall be parcel based and provided to the Town annually prior to February 1<sup>st</sup> throughout the term of this agreement as an electronic document compatible with the most current version of Microsoft Office. The County shall also maintain an annual accounting of all administrative costs associated with operating the Utility. Either the Town or County, at the sole expense of the requesting jurisdiction, may request a professional audit of any of the budget reports;

(f) *Operation and Maintenance:* At the direction and approval of the Town, provide for the operation and maintenance of Stormwater Infrastructure within the Town; and,

5.05 *Delivery of Services:* The County shall coordinate the delivery of services hereunder through the Town Manager or his designee, via a Job Order Process as agreed to by the Town and County. All delivery of County services upon parcels within the Town limits shall be

approved in writing by the Town before any work is performed or any funds may be returned to the County, and all delivery of stormwater infrastructure services within County Rights of Ways shall be coordinated with the Town.

5.06 *Coordination with Other Jurisdictions:* From time to time a need for coordination between all incorporated jurisdictions within the County and the County may occur, and it shall be the responsibility of the County to facilitate such coordination. The County will work with designated representatives from all jurisdictions within the County to ensure effective communication regarding issues impacting the Stormwater Infrastructure and the Stormwater Management Plan.

5.07 *Qualifications and Extents of Service:* Stormwater infrastructure in public road Rights of Ways, whether State, County or Municipal, shall be maintained by the road owner, as these areas are exempt from Stormwater Utility User Fees per Section 99-109 (b) of the County Ordinance. The Town shall retain the right to determine the qualifications for, extent of, and level of service required to maintain the Stormwater Infrastructure within the limits of the Town, with the exception of County and State road Rights of Way, which shall be designed and maintained in accordance with their current standards.

5.08 *Fee Credits:* The Town shall have the authority to review and comment on all County stormwater fee credit applications requested upon parcels within the Town limits prior to such adjustments being made.

5.09 *Easements:* The Town and County will allow mutual blanket encroachments upon each other's existing easements, but only to enable the Town and/or County to perform stormwater utility related work within the limits of the Town.

## ARTICLE 6: STORMWATER ORDINANCES AND DEVELOPMENT STANDARDS

6.00 *Applicable Standards:* The current hydrologic and hydraulic engineering and design standards of the County and Town shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the County and Town, respectively, unless superseded by the hydrologic and hydraulic engineering and design standards of the State, as may be required for specific work performed in State rights of way. In all cases, the County or Town standards shall prevail within the applicable jurisdiction unless determined to be less stringent than State standards.

6.01 *State or Federal Laws or Regulations:* The Town and the County shall at all times comply with any applicable State or Federal Laws or regulations relating to Stormwater Management, Stormwater Infrastructure, erosion control or pollution.

6.02 *Regulatory Obligations of the County and Town:*

The County and Town shall adopt and enforce ordinances and development standards as necessary to comply with State and Federal standards regarding stormwater management, erosion and sedimentation, pollution control, and flooding. Minimum water quality controls in jurisdictions shall be protective enough to reach and maintain state designated water uses.

6.03 *Plan Review and Site Inspection:* The Town and County shall be responsible for the review and approval of all development plans within their respective jurisdictions, to ensure that all applicable regulations pertaining to construction site erosion, sedimentation, and pollution control as well to post-construction stormwater quantity and quality control are met.

The County and Town shall be responsible for providing inspections during construction of all County and Town owned stormwater systems, respectively. The County and Town will continue its practice of inspection and review of privately owned stormwater systems during construction and upon completion to ensure that construction conforms with the approved development stormwater plan.

#### ARTICLE 7 – NPDES MS4 PHASE II PERMIT COMPLIANCE

7.00 *NPDES Compliance:* In 2015, Beaufort County, the Town of Hilton Head Island, and the Town of Bluffton were designated by the State of South Carolina for compliance with the NPDES Program. the County and Town shall be responsible for the development of the NPDES MS4 Phase II permit application, the development of Best Management Practices required by the permit, and the implementation of the program of Best Management Practices set forth in the permit. Should the Town of Port Royal or the City of Beaufort be designated by the State of South Carolina for compliance with the NPDES program, the provisions of this section shall also apply to the Town.

7.01 *Roles and Responsibilities:* The Town and County shall hold separate NPDES MS4 Phase II permits and shall each be responsible for maintaining compliance with their respective permit requirements. The Town may request to “co-permit” or share MS4 Phase II permitting with the County or another Town or City, as allowed by Article 9 of this Agreement, as allowed by State law, and as encouraged in the State of South Carolina General Permit for MS4 Phase II communities.

7.02 *Coordination of Activities:* It is expected that some aspects of NPDES MS4 Phase II

requirements will lend themselves to coordination and cooperation between the Town and the County. In such instances, coordination between the Town and the County shall be on the basis of a specific Minimum Control Measure (MCM) and shall be established by a separate written agreement that specifies the objectives, product deliverables, schedules, funding distribution, and the roles and responsibilities of each party in addressing these measures.

7.03 *Annual Reporting:* The Town and County will each be responsible for preparing an annual report documenting the activities undertaken in support of NPDES MS4 Phase II permit requirements during the previous year and submitting the report to the South Carolina Department of Health and Environmental Control.

7.04 *Permit Related Costs:* All costs related to the NPDES MS4 Phase II permit shall be borne by the permit holder. In instances where the Town and County coordinate to meet permit requirements, costs may be shared on a basis that is detailed in a separate written agreement.

## ARTICLE 8 – DATA ACQUISITION AND MANAGEMENT

8.00 *Roles and Responsibilities:* The Town and County shall each be responsible for acquiring and maintaining data sets that are relevant to Stormwater Management in their respective jurisdictions.

8.01 *Cost Sharing:* Cost sharing agreements for data acquisition may be made between the Town and County on a project-specific basis. The terms and details of any cost sharing agreement shall be detailed in a separate written agreement between the Town and County.

8.02 *Data Sharing:* The Town and County shall share acquired data at the request of the other. In such instances the Town and County will agree to abide by each entity's current data

distribution policy.

8.03 *Data Types:* Types of data that the Town and County will acquire, maintain, and may share include but are not limited to, GIS data, aerial photography, LIDAR data, water quality monitoring data, stream gage data, financial and accounting data.

## ARTICLE 9 – OTHER AGREEMENTS

9.00 *Scope and cost sharing:* From time to time various projects may be shared in scope and/or cost between the County and the Town, or the County and multiple Municipalities within the County via Memos of Agreement, Memos of Understanding, Contracts, and/or Joint Resolutions.

9.01 *Agreement Recommendations:* The Beaufort County Stormwater Implementation Committee (SWIC) shall be the vehicle whereby agreements of project scope and cost sharing between the County and multiple Municipalities within the County are reviewed and recommended to the Municipalities and County. It is understood that the Beaufort County Stormwater Implementation Committee shall have no authority to financially commit the Town or County to any project of any type and only will provide technical recommendations for such projects. For agreements solely between the Town and the County, the Beaufort County Stormwater Implementation Committee (SWIC) review is not required.

9.02 *Agreement approvals:* Other agreements between the County and the Town must be approved by the Town Council and the County Council or their designees.

9.03 *Funds Distribution:* These Agreements will define how funds are distributed, either by invoice or as part of the Per Account Administrative fee collected by the County.

## ARTICLE 10 - MISCELLANEOUS

10.00 *Provisions Applicable to This Agreement:* The following general provisions are applicable to this Agreement:

10.01 *Binding Effect:* This Agreement shall inure to the benefit of and shall be binding upon the Town and County and their respective successors and assigns, if any are permitted hereunder.

10.02 *Amendment, Changes and Modifications:* Except as otherwise provided herein, this Agreement may not be effectively amended, changed, modified or altered without the written consent of the Town and the County.

10.03 *Severability:* In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10.04 *Execution in Counterparts:* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.05 *Applicable Law:* This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

10.06 *Captions:* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

10.07 *Plural/Singular:* Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

10.08 *No Third Party Beneficiaries:* The Town and the County hereto affirmatively represent that this Agreement is made solely for the benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties and their respective successors and assigns hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

10.09 *Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, via electronic mail, or mailed by regular first class mail, postage prepaid (in such case, delivery shall be deemed complete upon mailing), addressed as follows, or to such other place as may be designated in writing by the parties.

To the Town:	THE TOWN OF HILTON HEAD ISLAND
	Stephen G. Riley, Manager
	One Town Center Court
	Hilton Head Island, SC 29928
To the County:	BEAUFORT COUNTY, SOUTH CAROLINA
	Gary Kubic, Manager
	Post Office Box 1128
	Beaufort, SC, 29902

10.10 *No Waiver:* No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to thereafter demand strict compliance with the terms of this Agreement.

10.11 *Further Assurances and Corrective Documents:* The Town and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The Town and the County agree that each shall, upon request, execute and deliver such other or corrective documents as may be reasonably determined to be necessary to carry out this Agreement and each of the provisions hereof.

In Witness Whereof, The Town of Hilton Head Island, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this \_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESSES:

THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_, Town Manager

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

\_\_\_\_\_

By: \_\_\_\_\_

Paul Sommerville, Chairman

\_\_\_\_\_

Attest: \_\_\_\_\_

Gary Kubic, County Administrator



## TOWN OF HILTON HEAD ISLAND

### *Community Development Department*

<b>TO:</b>	Stephen G. Riley, ICMA~CM, Town Manager
<b>FROM:</b>	Shawn Colin, <i>Deputy Directory of Community Development</i>
<b>VIA:</b>	Charles Cousins, <i>Directory of Community Development</i>
<b>DATE:</b>	June 23, 2016
<b>SUBJECT:</b>	Beach Management Plan Adoption

### **RECOMMENDATION**

The Public Planning Committee recommends Town Council adopt the Town of Hilton Head Island Beach Management Plan as an appendix to the Town's Comprehensive Plan. On May 5, 2016 the Public Planning Committee voted unanimously to forward the plan to Town Council with this recommendation.

On April 6, 2016 the Planning Commission voted to recommend that Town Council adopt the Town of Hilton Head Island Beach Management Plan as an appendix to the Town's Comprehensive Plan.

### **BACKGROUND**

In 1977 the South Carolina Tidelands and Wetlands Act was enacted by the State of South Carolina to protect coastal resources from unwise development. This Act did not provide adequate jurisdiction to the state's coastal management agency. Consequently, unwise development had jeopardized the stability of the beach and dune system, accelerating erosion and endangering adjacent property. So, the law was amended in 1988 to adopt the South Carolina Beachfront Management Act, which outlined eight beach policies described below. This Act required local governments of the State's beachfront localities to develop comprehensive beach management plans consistent with these policies and to update them every five years.

#### **State Beachfront Management Act Policies:**

1. Protect, preserve, restore, and enhance the beach/dune system;
2. Create a comprehensive, long-range beach management plan and require local beach management plans for the protection, preservation, restoration, and enhancement of the beach/dune system, each promoting wise use of the state's beachfront to include a gradual retreat from the system over a forty-year period;
3. Severely restrict the use of hard erosion control devices and encourage the replacement of hard erosion control devices with soft technologies which will provide for the protection of the shoreline without long-term adverse effects;
4. Encourage the use of erosion-inhibiting techniques which do not adversely impact the long-term well-being of the beach/dune system;
5. Promote carefully planned nourishment as a means of beach preservation and restoration where economically feasible;
6. Preserve existing public access and promote the enhancement of public access for all citizens including the handicapped and encourage the purchase of lands adjacent to the Atlantic Ocean to enhance public access;
7. Involve local governments in long-range comprehensive planning and management of the beach/dune system in which they have a vested interest; and

8. Establish procedures and guidelines for the emergency management of the beach/dune system following a significant storm event.

These policies are implemented through a variety of mechanisms at the state and local levels, including through the local comprehensive beach management plans.

The Act specifies ten components that local beach plans must contain. Once these plans are submitted by a beachfront locality to DHEC OCRM, a Beach Management Committee, comprised of the State's technical review staff, evaluates the plan. When the plan is found to be satisfactory and has been adopted by the local government, the Beach Management Committee makes a final recommendation for approval to the DHEC OCRM Deputy Commissioner, who formally approves the local beach management plan and it is incorporated into the State's management plan.

The Town's first Beach Management Plan was adopted by Town Council on June 17, 1991. In 2008, this plan underwent a comprehensive update that was approved by the State and adopted as an appendix to the Town's Comprehensive Plan, which was later amended by the Town and approved by the State on March 1, 2011 to address changes related to public beach parking for beach renourishment funding. The purpose of this draft is to address updates to the 2008 plan and to reorganize the plan based on guidelines that have been developed by the State for the organization of all local plans.

## **SUMMARY**

The purposes of the Town of Hilton Head Island's Beach Management Plan are to:

- ♦ Fulfill the State-mandated requirement for a local beach management plan;
- ♦ Provide guidance for ordinances and actions that protect and preserve the beach and dunes;
- ♦ Provide guidance for local ordinances and actions that regulate development near the beach and dunes;
- ♦ Provide guidance and goals for future beach access;
- ♦ Provide guidance for beach management and maintenance; and
- ♦ Provide goals for future protection, preservation and regulation of the beach and dunes system.

At a minimum, State law requires that the Plan must contain all of the following:

### **1. An inventory of beach profile data and historic erosion rate data for each standard erosion zone and inlet erosion zone;**

This information is used by DHEC OCRM to establish the beachfront baseline which is located on the crest of the primary dune. The plan contains data on erosion rates that are measured at 45 DHEC Beach Control Monuments along the Island's beachfront. This data is also used to establish historic erosion rates that determine where the 40 year setback should be located. The purpose of the baseline and setback is to implement the State's 40 year retreat policy, which is discussed in more detail below. . (Refer to pages 46-47.)

### **2. An inventory of public beach access and attendant parking along with a plan for enhancing public access and parking;**

In 1998, the Beach Management Plan was amended by the Town and approved to include a Beach Access Plan, which outlined a plan to construct a total of 1,400 public parking spaces by December 2008. The Town has met this revised obligation. (Refer to pages 33 & 34.)

### **3. An inventory of all structures located in the areas seaward of the setback line;**

All structures located along the DHEC OCRM setback line are inventoried in an appendix to the plan to determine the number of structures that exist within this area in the Town. At the time of this inventory there were 204 habitable structures existing seaward of the DHEC OCRM setback.

### **4. An inventory of turtle nesting and important habitats of the beach/dune system and a protection and restoration plan if necessary;**

The importance of barrier islands as habitat for plants and animals is significant. Many animals are dependent on smaller prey available on open beach habitats as part of complex food webs. Some animals also require the sands of primary dunes on barrier islands for nesting sites and are unable to successfully reproduce without access to this habitat. In the water, nearshore subtidal bars and sand flats can support large numbers and species of marine invertebrates and fish that cannot thrive in the open ocean. Long-term or permanent alteration to these habitats can affect the type, health, and vitality of the marine plants and animals.

In order to help protect one of these important species, sea turtle monitoring has been an ongoing program of the Coastal Discovery Museum since 1984 (funded by the Town since 1989). This program surveys and inventories sea turtle nests which provides information on nesting activity and hatchling success rate. This information as well as information on other important species is included in the plan. (Refer to Pages 26-32.)

### **5. A conventional zoning and land use plan for the area seaward of the setback line;**

The Town's Official Zoning Map has been included along with a description of beachfront development regulations. In addition to this conventional zoning plan the Town also has designated a Coastal Protection Area and a Transition Area as Overlay Zoning Districts included in the Town's Land Management Ordinance to better protect the dunes system from encroaching development. (Refer to Section 2.3 starting on page 19.)

### **6. An analysis of beach erosion control alternatives, including renourishment;**

Prior to the initiation of beach restoration through nourishment, different types of hard structures were implemented for shore stabilization by the private sector (*i.e.* homeowners, developers, hotels, P.O.A.'s, etc.). These structures have typically consisted of groins and seawalls or bulkheads. For the purpose of evaluation, two basic types of shoreline stabilization techniques are discussed in the plan: hard and soft shoreline treatments.

Rather than these hard structures, the principal means of shore stabilization embraced by the Town of Hilton Head Island Shoreline Management Plan is beach nourishment, a restorative "*soft*" structure which provides for improved shorefront conditions suitable for recreation, protection of upland development or infrastructure, as well as environmental enhancement. (Refer to Section 5 starting on page 59.)

### **7. A drainage plan for the area seaward of the setback;**

Drainage outfalls along the beachfront do not exist in the Town and the Town Code prohibits any future development from directly discharging storm water onto the beach. The beachfront areas of the Island can be divided into 6 major natural drainage basins, none of which drain to outfall structures on the

beach. In general, stormwater is carried from the beachfront areas to the adjacent inland bodies of water.

In 1995, the Town completed The Island Wide Drainage Study. Since then, all 17 projects have been implemented. Currently stormwater studies are being conducted for individual watersheds to develop drainage inventories, flood models, water quality models and lists of potential capital improvement projects. (Refer to Section 3 starting on page 41.)

**8. A post disaster plan including provisions for cleanup, maintaining essential services, protecting public health, emergency building ordinances, and the establishment of priorities;**

The Town developed a Post-Disaster Plan in 1991 to guide its citizens and post-disaster operations. The plan was incorporated into the Town's Comprehensive Plan in 1999. In 2003, the Town prepared a Comprehensive Emergency Management Plan (CEMP), of which, Volume IV represents the Town's Recovery Plan and establishes the Town's recovery policies and schedule that detail the Town's pre-event responsibilities and recovery actions. The Town works with all appropriate agencies, in advance of a disaster (if predictable) and after, to minimize potential injury and damage, and to expedite recovery and redevelopment. The Beaufort Hazard Mitigation Plan that was last updated in 2009 is an appendix to the Beach Management Plan. It addresses unincorporated Beaufort County, the City of Beaufort, the Town of Bluffton, the Town of Hilton Head Island and the Town of Port Royal. (Refer to Section 4.2.2, Section 4.2.3.)

**9. A detailed strategy for achieving the goals of the State's Beachfront Management Act by the end of the forty-year retreat period, which shall consider relocating buildings, removal of erosion control structures, and relocation of utilities;**

The South Carolina Beachfront Management Act requires that local plans include a 40 year retreat policy that considers relocation of buildings, removal of erosion control structures and relocation of utilities. When the Town's Beach Management Plan was first adopted in 1991, the State was in the process of drafting their own policy, and provided little direction to the Town at that time. In 1992, the Town amended its original Beach Management Plan to include a 40 Year Retreat Policy which stated to:

- Locate development landward of the DHEC OCRM Setback line to the extent possible;
- Adopt various growth management techniques and procedures to reduce development levels;
- Retain open space seaward of the DHEC OCRM Setback line to the extent possible;
- Utilize land acquisition; and
- Address retreat during redevelopment scenarios after a disaster.

With the adoption of this updated Beach Management Plan, this Policy continues to be in effect. The Town's zoning, density and design standards mentioned previously help fulfill this policy.

To accompany the above Retreat Policy, this Beach Management Plan details an additional Policy on beach renourishment as part of the 40 Year Retreat Policy. Beginning in 1990, the Town embarked on an ambitious renourishment program with an ongoing maintenance program. As a result of these projects, portions of the beach and dunes system have been enhanced, thereby resulting in expanded areas subject to development pressures by construction that is not in the public interest and not in accordance with retreat policies and goals of the State and the Town. In a few instances, DHEC OCRM has designated a newly formed embryonic dune as the new primary dune, allowing development on the landward, and sometimes larger, dune. Because of this, there have been petitions to the DHEC OCRM to move the baseline further seaward, increasing the potential for loss of the larger dunes system. In addition, DHEC OCRM re-examines the possibility of relocating the baseline every 8-10 years, possibly seaward. This would further encourage development on top of the larger dunes system.

It is not and has not been the intent of the Town to encourage or permit development to move seaward as a result of the Town's beach renourishment projects and efforts, or to support any effort to move the DHEC OCRM established baseline seaward, where such effort to relocate the baseline is based in whole or in part on the existence of new dunes and/or new beach areas formed as a result of the Town's beach renourishment projects and efforts, or by other private efforts. (Refer to page 48-50.)

**10. A detailed strategy for achieving the goals of preserving existing public access and the enhancement of public access to assure full enjoyment of the beach by all residents of the State of South Carolina.**

The Town owns 8 beach parks with a total of over 1400 parking spaces. Additionally, there are over 150 other privately-owned beach access points (neighborhoods, hotels, condominiums and beach clubs). Most of these private access points are located in gated communities and are accessible to their residents and visitors. With over 70% of the land on Hilton Head Island in gated communities, and near build-out conditions of the Island, there are very few parcels remaining next to or adjacent to the ocean that could be purchased by the Town and developed into a beach park. It is therefore critical for the Town to coordinate with private property owners during redevelopment of commercial areas to allow beach access for the public on their oceanfront areas and to protect existing access locations.

**ATTACHMENTS**

- A. Proposed Ordinance 2016-11
- B. Revised Beach Management Plan

Please contact me at (843) 341-4696 or at [shawnc@hiltonheadislandsc.gov](mailto:shawnc@hiltonheadislandsc.gov) with any questions.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND**

**ORDINANCE 2016-**

**PROPOSED ORDINANCE 2016-11**

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND  
ADOPTING THE 2016 BEACH MANAGEMENT PLAN; AND TO  
PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in November of 2008, Town Council adopted the Beach Management Plan as an Appendix to the Town of Hilton Head Island Comprehensive Plan, and addressed the needs for management of the Island's shoreline and the provision of public access to the beach, including an inventory of public access locations and parking; and

**WHEREAS**, the Beach Management Plan was amended in March of 2011 to address changes related to public beach parking for beach renourishment funding; and

**WHEREAS**, the Town of Hilton Head Island Comprehensive Plan is required to be adopted in accordance with Section 6-29-520, and 6-29-530 of the Code of Laws of South Carolina; and

**WHEREAS**, the Town Council of the Town of Hilton Head Island wishes to be in compliance with the Coastal Zone Management Act which mandates the Town's Beach Management Plan which has a definition of full and complete public beach access; and

**WHEREAS**, on April 6, 2016, the Planning Commission approved a resolution recommending adoption of the 2016 Beach Management Plan to the Town Council of the Town of Hilton Head Island; and

**WHEREAS**, on May 5, 2016, the Public Planning Committee of Town Council held a meeting at which time a presentation was made by staff on the 2016 Beach Management Plan, and thereby recommended adoption to Town Council; and

**WHEREAS**, on August 16, 2016, the Town Council held a public hearing to receive comments on the amendments to the 2016 Beach Management Plan, and Town Council now desires to adopt these amendments.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE  
TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SC; AND IT IS  
ORDAINED BY SAID AUTHORITY OF THE SAID COUNCIL:**

**Section 1. Adoption.** The 2016 Beach Management Plan is hereby adopted as shown in Attachment A pursuant to Article 2 of Chapter 1 of Title 16 (adopted July 21, 1998) of the Municipal Code of the Town of Hilton Head Island, South Carolina and Sections 629-510, 6-29-520, and 6-29-530 of the Code of Laws of South Carolina.

**Section 2. Severability.** If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holdings shall not affect the validity of the remaining portions thereof.

**Section 3. Effective Date.** This Ordinance shall be effective upon adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED, AND ADOPTED, BY THE TOWN COUNCIL OF  
THE TOWN OF HILTON HEAD ISLAND THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2016.**

\_\_\_\_\_  
David Bennett, Mayor

**ATTEST:**

\_\_\_\_\_  
Victoria Pfannenschmidt, Town Clerk

**Public Hearing:** \_\_\_\_\_

**First Reading:** \_\_\_\_\_

**Second Reading:** \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory M. Alford, Town Attorney

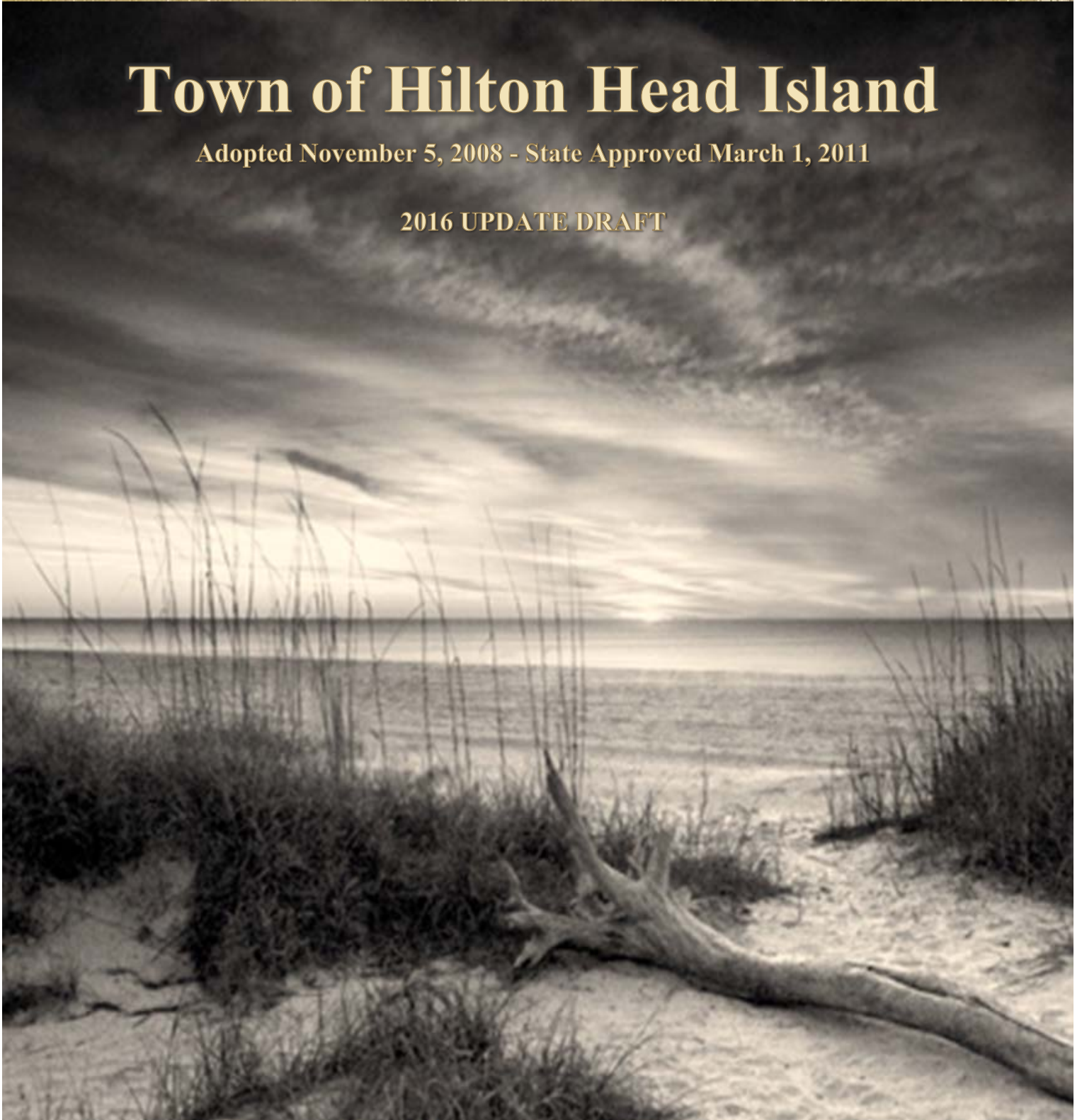
Introduced by Council Member: \_\_\_\_\_

# *Beach Management Plan*

## **Town of Hilton Head Island**

**Adopted November 5, 2008 - State Approved March 1, 2011**

**2016 UPDATE DRAFT**





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## EXECUTIVE SUMMARY

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The United States Congress recognized the importance of meeting the challenge of continued growth in coastal areas by passing the Coastal Zone Management Act (CZMA) in 1972. This law established the guidelines of a state-federal partnership program to comprehensively manage coastal resources and was authorized in South Carolina in 1977 under South Carolina's Coastal Tidelands and Wetlands Act (CTWA) with the goal of achieving a balance between the appropriate use, development, and conservation of coastal resources in the best interest of all citizens of the state. The South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (DHEC OCRM) is the designated coastal management agency for the State of South Carolina and is responsible for the implementation of the Coastal Management Program in conjunction with the National Oceanic Atmospheric Administration (NOAA) and coastal communities.

In 1988, the State of South Carolina adopted the South Carolina Beachfront Management Act, which gives the State authority over the direct regulation of impacts to coastal resources within the critical areas of South Carolina's coastal waters, tidelands, beaches and beach dune systems; and indirect certification authority over federal actions and state permit decisions within the eight coastal counties. This law is complex and requires the use of scientific studies of coastal processes to establish precise building setback lines along the coast based on historic erosion rates. In addition, the Act adopts a policy of retreat for development away from the erosional beach and requires oceanfront counties and municipalities to prepare local comprehensive beach management plans in coordination with DHEC OCRM that become part of the State's management plan upon approval. These plans must be updated every 5 years.

This Beach Management Plan was prepared in compliance with the South Carolina Beachfront Management Act and was adopted as part of the Town's Comprehensive Plan. It contains all the following:

- ✓ an inventory of beach profile data and historic erosion rate data for each standard erosion zone and inlet erosion zone;
- ✓ an inventory of public beach access and attendant parking along with a plan for enhancing public access and parking;
- ✓ an inventory of all structures located in the areas seaward of the setback line;
- ✓ an inventory of turtle nesting and important habitats of the beach/dune system and a protection and restoration plan if necessary;
- ✓ a conventional zoning and land use plan for the area seaward of the setback line;
- ✓ an analysis of beach erosion control alternatives, including renourishment;
- ✓ a drainage plan for the area seaward of the setback;
- ✓ a post disaster plan including provisions for cleanup, maintaining essential services, protecting public health, emergency building ordinances, and the establishment of priorities;



- ✓ a detailed strategy for achieving the goals of this chapter by the end of the forty-year retreat period, which shall consider relocating buildings, removal of erosion control structures, and relocation of utilities;
- ✓ a detailed strategy for achieving the goals of preserving existing public access and the enhancement of public access to assure full enjoyment of the beach by all residents of the State of South Carolina.

Through this plan the following shoreline retreat policies and beach management needs, goals and implementation strategies are adopted:

### **Beach Management Needs, Goals and Implementation Strategies**

#### ***1. Shoreline Retreat***

*Need 1: The Town should investigate methods to continue to protect existing beach/dune features and those features resulting from renourishment projects from development and redevelopment pressures.*

**Goal 1.1: Have a well maintained beach and dunes system that helps to preserve and protect the Island's manmade and natural resources and provides for a sound economic base; the Town does not support movement of the baseline or any other action that would result in encroachment of development into the dunes system or seaward of the baseline that was established in 1999.**

**Goal 1.2: Continue to Protect and Enhance the Beach/Dune System through the regulation of beachfront development.**

#### ***Implementation Strategies:***

- A. The Town should continue to implement its Capital Improvement Program and Land Acquisition Program to develop, renovate, or expand its beach parks.
- B. Continue to hold densities along the beachfront to their current levels or below.
- C. Continue to amend and enforce the LMO and Municipal Code to protect the established dunes systems on our beachfront, to provide for re-establishment of the dunes systems during redevelopment, and to provide for redevelopment scenarios after a natural disaster.
- D. Work with DHEC OCRM during the update of the Town's Local Comprehensive Beach Management Plan when designated by the State and to review, as requested, public petitions to



move the Baseline on individual properties to ensure compatibility with this Plan. It is the policy of the Town of Hilton Head Island that the baseline not be moved seaward.

- E. Continue to promote environmental education programs and standards that stress protection of fragile areas and wildlife.
- F. Coordinate with the Chamber of Commerce in tourism efforts to promote our beach.
- G. Work to revise state legislation for enhanced protection of the beach and dunes system which should include an effective retreat policy in addition to considering renourishment efforts when determining baseline locations to prevent movement of the baseline further seaward as a result of renourishment.
- H. Provide input to DHEC OCRM during the update of the State's Beach Management Plan to help ensure that the DHEC OCRM Baseline does not move further seaward along the Town of Hilton Head Island shoreline.
- I. Work with the State to receive beach renourishment funds in the event the Town does not have local funding to renourish.

## **2. Beach Access**

*Need 2: With the large majority of oceanfront land under private ownership, the Town should seek ways to work with developers to allow for public beach access in redeveloped sites, and to work with Property Owners Associations to protect accesses that currently exist.*

**Goal 2.1: Have adequate public beach access at Town-owned sites and seek innovative solutions to provide additional beach access for the public in privately owned neighborhoods and commercial areas.**

### ***Implementation Strategies:***

- A. The Town should continue to implement its 10 year Capital Improvement Program to develop, renovate, or expand its beach parks.
  - B. Continue to work with oceanfront developments to provide public access to the beach during redevelopment. Also work with neighborhood associations to protect neighborhood access points.
  - C. Develop methods of increasing public awareness concerning beach access points through better access signage, informational kiosks, directional signage and brochures.
-



### **Town of Hilton Head Island's Shoreline Retreat Policy**

The State's Beach Management Act requires local plans to include a 40 year retreat policy that should consider relocation of buildings, removal of erosion control structures and relocation of utilities. When the Town's Beach Management Plan was first adopted in 1991, the State was in the process of drafting their own policy, so very little direction was received at that time. In 1992, the Town amended its original Beach Management Plan to include a 40 Year Retreat Policy which stated:

1. Locate development landward of the Setback line to the extent possible;
2. Adopt various growth management techniques and procedures to reduce development levels;
3. Retain open space seaward of the Setback line to the extent possible;
4. Utilize land acquisition; and
5. Address retreat during redevelopment scenarios after a disaster.

With the adoption of this Beach Management Plan, this Policy continues to be in effect. The Town's zoning, density and design standards help fulfill this policy along with other techniques mentioned in the next Section.

To accompany the above Retreat Policy, this Plan details an additional Policy on beach renourishment as part of the 40 Year Retreat Policy. Beginning in 1990, the Town embarked on an ambitious renourishment program with an ongoing maintenance program of sand fencing and native plantings. As a result of these beach renourishment and maintenance projects, portions of the beach and dunes system have been enhanced, thereby resulting in expanded areas that are subject to development pressures by construction that is not in the public interest and would not be in accordance with retreat policies and goals of the State of South Carolina and the Town of Hilton Head Island. In a few instances, the DHEC OCRM has designated a newly formed embryonic dune as the new primary dune, allowing development on the landward, and sometimes larger, dune. There have been petitions to the state administrative law judges to move the DHEC OCRM Baseline further seaward, in accordance with SC. Code Section 48-39-280 (A) (4) increasing the number of areas for loss of the larger dunes system. In addition, the DHEC OCRM is also required under Section 48-39-280 (C) to revise the Baseline every eight to ten years, which could possibly result in moving the line seaward. This would further encourage development on top of the larger dunes system.

It is not and has not been the intent of the Town to encourage or permit development to move seaward as a result of the Town's beach renourishment projects and efforts, or to support any effort to move the DHEC OCRM baseline established by the DHEC OCRM seaward, where such effort to relocate the baseline is based in whole or in part on the existence of new dunes and/or new beach areas formed as a



result of the Town's beach renourishment projects and efforts, or by other private efforts. The Town's intent in pursuing the renourishment program is:

- ✓ To protect, preserve, restore, stabilize and enhance the beach/dune system through beach renourishment and other appropriate means, to provide for the protection of life and property, and to act as a buffer from high tides, storm surge, hurricanes, and erosion;
- ✓ To prohibit development from moving seaward onto new dunes or beach areas formed as a result of the Town's beach renourishment projects and efforts;
- ✓ To provide an important basis for a tourism industry that generates annual revenue for the State of South Carolina and the Town;
- ✓ To provide habitat for numerous species of plants and animals which are threatened or endangered, or which may become threatened or endangered as a result of the loss of the beach/dune system;
- ✓ To provide habitat for beach/dune system vegetation that is unique and extremely important to the vitality and preservation of the system; and
- ✓ To create a recreational beach at high tide.



# 1 – INTRODUCTION

## 1.1 PURPOSE

Local comprehensive beach management plans are an important and effective management tool for local governments to develop strategies for managing and protecting coastal resources. In South Carolina, if a local government wishes to participate in the state funding programs available for beach renourishment or other grant programs, the governing body must adopt and enforce a Local Comprehensive Beachfront Management Plan that is consistent with the South Carolina Beachfront Management Act. Section 48-39-350 of the South Carolina Code of Laws required local governments to prepare a local comprehensive beach management plan by July 1, 1991. This plan is to be updated at least every five years following its approval by the State of South Carolina.

The purpose of the Town of Hilton Head Island's Beach Management Plan is to:

- ✓ Fulfill the State-mandated requirement for a local beach management plan;
- ✓ Provide guidance for ordinances and actions that protect and preserve the beach and dunes;
- ✓ Provide guidance for local ordinances and actions that regulate development near the beach and dunes;
- ✓ Provide guidance and goals for future beach access;
- ✓ Provide guidance for beach management and maintenance; and
- ✓ Provide goals for future protection, preservation and regulation of the beach and dunes system.

## 1.2 HISTORY OF PLAN APPROVALS AND REVISIONS

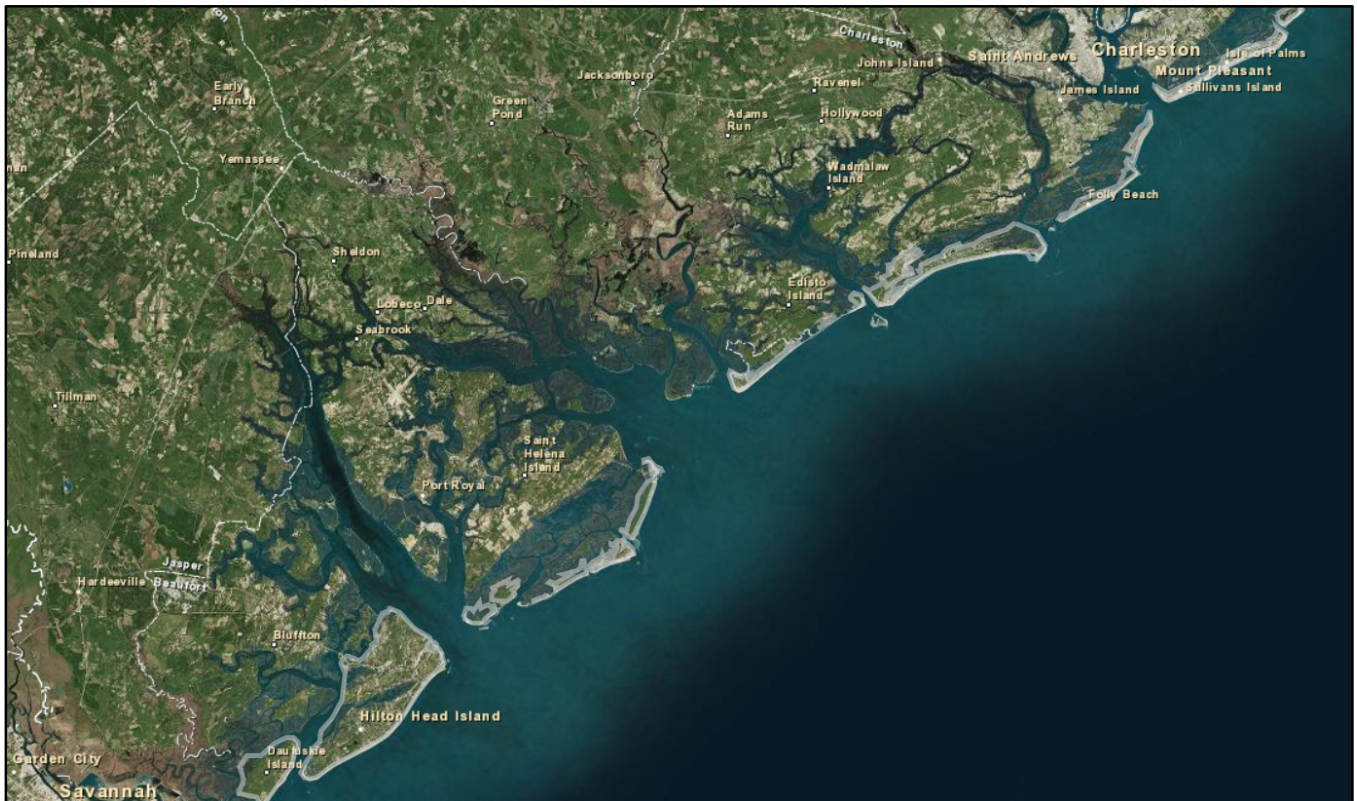
The Town's first Beach Management Plan was approved by the South Carolina Coastal Council (SCCC; now known as South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management - DHEC OCRM) and was adopted by Town Council on June 17, 1991. In 1992, the Plan was amended by Town Council and approved by the State to include a 40 Year Retreat Policy. Additional Plan modifications were adopted by Town Council including amendments to the public access improvement section, changing the number of beach access parking spaces and the implementation schedule of the Plan. The Beach Management Plan was also adopted as part of the Town's Comprehensive Plan in 2004 and 2010. Since initial adoption, the Plan has been reviewed by the State in 1992, 1995, 1998 and 2001. In 2009 a complete update of the plan was approved and minor modifications to beach parking were approved in 2011, which were also adopted as an appendix to the Town's Comprehensive Plan.



### 1.3 OVERVIEW OF HILTON HEAD ISLAND

Hilton Head Island is located along the Atlantic Coast in Beaufort County, South Carolina. The Island is located about 22 miles northeast of Savannah, Georgia, and 15 miles south of Beaufort, South Carolina. It occupies a land area of approximately 23,000 acres or 54 square miles, with approximately 34.4 square miles of high ground, and is approximately 12 miles long and 5 miles wide, making it the largest oceanfront island on the Atlantic seaboard between New York and Florida. It is bounded on the northeast by Port Royal Sound, Calibogue Sound to the southwest, and Skull Creek, part of the Atlantic Intracoastal Waterway, to the north.

**FIGURE 1: HILTON HEAD ISLAND LOCATION**



Source: DHEC OCRM (<http://gis.dhec.sc.gov/shoreline/>)

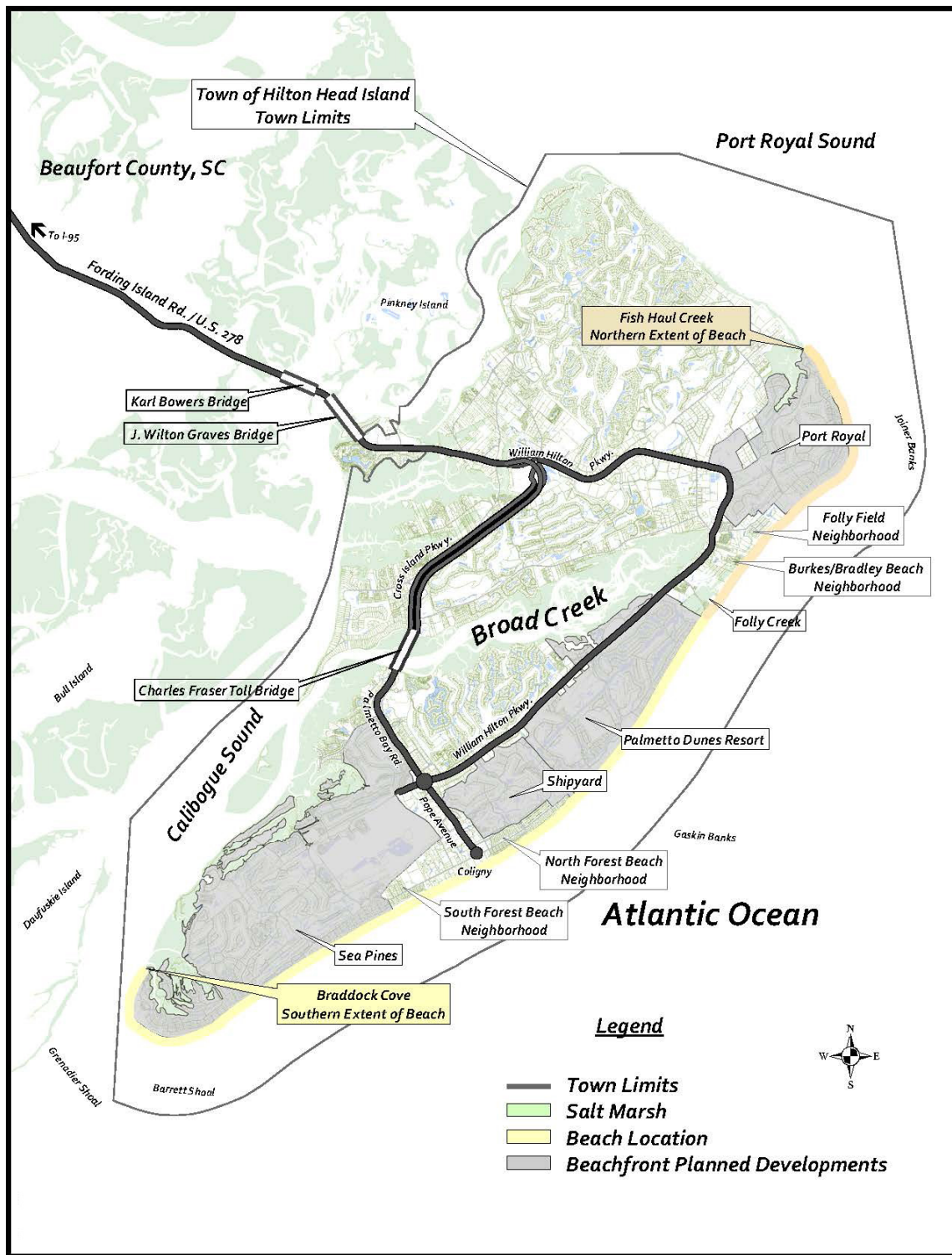
The Island's southeast shoreline faces the Atlantic Ocean and has a beach that stretches 13 miles from Braddock Cove in the south to Fish Haul Creek in the north. The beach runs uninterrupted except for a small tidal inlet located mid-island, called the Folly. Historically, the Island has had a wide, sandy beach to the north and south and a narrow, recreational beach mid-island at low tide. A seven mile tidal inlet, Broad Creek, runs diagonally across the Island and opens into Calibogue Sound. The island is relatively flat with a maximum elevation of twenty-four feet in limited places. The average tidal range along the island can be between six and thirteen feet.



Access to the Island is provided by U.S. 278 over two toll-free bridges, Graves Bridge and Karl Bowers Bridge. William Hilton Parkway (US 278 Business) and the Cross Island Parkway (US 278) serve as the Island's primary roadways. The Fraser Bridge spans across Broad Creek to connect the Cross Island Parkway with William Hilton Parkway on the south end of the Island. All other roads connect these roads, making them the life line connecting area residents and visitors to local residential, business and recreational areas. From its beginnings as a rich and abundant agrarian community to its current status as a distinguished resort and retirement community, Hilton Head Island has become known for its unique island character which integrates high quality design in the built environment with the superior natural beauty of the Island's beaches, extensive wetlands, diverse wildlife and natural landscape. Currently, approximately 70% of the Island has been developed as a part of master planned communities, also referred to as Planned Unit Developments (PUDs), which contribute significantly to the unique character and demographic composition of the Island. These PUDs reflect a tradition of planned street patterns, dwelling sites, and locations for public and institutional activities adapted to a modern resort concept that has become unique to Hilton Head Island.



**FIGURE 2: ISLAND DESCRIPTION**





## 1.4 CURRENT BEACH MANAGEMENT ISSUES

### Development Issues

One of the most significant threats to the shoreline of Hilton Head Island is from continuous development pressure to construct as closely to the dunes system as possible, and in some cases, to build on older, more well-established dunes that are located outside of any required setbacks. With the Island approaching build-out, older developments are renovating or redeveloping with larger building footprints that push ever closer to the dunes system and beach. Some recent development and redevelopment projects have even petitioned the State to move the DHEC OCRM line further seaward in order to create more land on which to build.

There are also several vacant parcels of land seaward of existing developments that usually encompass the dunes system, known as strand blocks. These parcels have historically been owned by property owners' associations. Some of these have been sold to developers who wish to develop the parcels. This endangers the existing dunes system and causes the landward parcels, which were marketed as oceanfront, to no longer have a view of or direct access to the beach. Furthermore, the economic, societal and safety risks that result from such development are of great concern to the Town.

### Environmental Issues

The Town also faces various environmental concerns in relationship to the management of its shoreline. Erosion of the beach is ongoing at some locations and has prompted a very ambitious and expensive renourishment program by the Town. The Town of Hilton Head Island has spent over \$50 million in beach renourishment projects from 1990-2012 resulting in a wider, higher and more robust beach configuration suitable for both active and passive use opportunities at all stages of the tide. Currently, a large scale renourishment project is planned for this year that is estimated to cost approximately \$50 million dollars. Constant monitoring is undertaken and a continuous local funding source has been established for renourishment. The potential for negative impacts from global warming and rising sea levels will require the Town to continue to evaluate the feasibility of renourishment as its primary shoreline management technique and plan accordingly.

In addition to beach renourishment, shoreline stabilization has also been performed in seven locations through the use of hard structures, such as groins, revetments and bulkheads. Some of these efforts were undertaken by homeowners, developers, hotels or property owners associations; however, the Town must evaluate issues such as liability, ownership, maintenance, cost and permit matters to determine the future role of the Town and the public's interest in these structures in relationship to overall shoreline management.

The protection and enhancement of the dunes system and its vegetation, as a part of an overall approach to beach management, is an extremely important issue for the Town. This area helps to protect life and



property by serving as a storm barrier and habitat for numerous species of plants and animals, some of which are threatened or endangered. As the number of beachgoers and activities on the beach increases, more demand will be placed on these important resources. Additionally, the protection of critical habitats, such as tidal inlets and creeks, like the Folly, as well as Fish Haul Creek, are also concerns.

### *Beach Access*

There are very few undeveloped beachfront parcels remaining on the Island. This makes preservation and enhancement of any current beach parking and access location critical. Redevelopment projects also offer the opportunity to secure additional easements open to the general public. Prior to the incorporation of the Town in 1983, public access to the beach was provided by more informal access areas. People often parked along the sides of roadways or on undeveloped properties to access the beach. As the Island has continued to develop, additional parking and access areas have been developed by the Town and the other beachfront developments for visitors and residents of the Island. The Town has constructed eight public beach parks. Other private developments contain a total of seven beach parks that serve thousands of visitors and residents of the Island.

### *Water Quality*

It is important to maintain a high level of beach water quality to protect the natural functions (i.e. chemical, biological and physical) and recreational opportunities (i.e. swimming, fishing, wading, boating). To support this, the Town of Hilton Head Island directs all drainage away from the beach area. Moreover, storm water quality is monitored at 16 locations twice a month on Hilton Head Island. DHEC OCRM monitors locations throughout the recreational swimming season, designated as April 15 through October 15. The Town of Hilton Head Island has documented less than 5 advisories in the past two years; overall, beach water quality is very good. In order to ensure that this does not change, the Town must continue to monitor water quality and make any necessary changes as a result of test indications.

### *Hurricane and Storm Damage*

As a coastal community, the potential for hurricanes and the associated impacts must be considered. In addition to the Town's efforts to maintain adequate storm protection through the continuation of beach renourishment, dune refurbishment and maintenance of selected shoreline protection structures, disaster recovery and response are being addressed. Since 2003, the Town has an adopted post-disaster recovery plan that will be implemented after experiencing the effects of a major storm event. This plan was recently updated. In relationship to beach management recovery efforts, issues for the Town include the recovery and disposition of overwash sand, damage assessment of structures and the permitting process for oceanfront properties. A later chapter will discuss planning efforts currently underway in regard to these issues.



### *Social Issues*

The increasing popularity of the beach has resulted in more intense use of the beach for recreational and commercial purposes. In addition to the increasing numbers of beach goers, commercial companies are marketing the beach as a location for special events, such as weddings, parties, fitness programs, animal training, racing events, religious services, and even movies. The Town must ensure that these events do not interfere with any other franchise agreements that currently exist for beach areas and that other codes are not violated. This requires increased efforts by Town staff and other enforcement agencies.

**FIGURE 3: HILTON HEAD ISLAND RECREATIONAL BEACH**





## 2 - INVENTORY OF EXISTING CONDITIONS

### 2.1 GENERAL CHARACTERISTICS OF THE BEACH

Hilton Head Island is a compound barrier island formed by the advancing and falling sea during which sediment was deposited and leveled a number of times. The northern portion is a core of marine sediments deposited during periods of higher sea level caused by melting of continental ice sheets in the early Pleistocene epoch (1 million- 10,000 years ago). This area generally extends from Skull Creek, east to Port Royal Sound and Fish Haul Creek, and west to Brams Point following the western bank of Broad Creek. Much of the land area east and southeast of Broad Creek is a “fringe” of marine sediments. Fine sand was pushed inland by the rising sea level, caused by another time of warming and thawing of ice during the Holocene Period of the Pleistocene Epoch. The approximate foot shape of Hilton Head Island is typical of barrier islands on the “mesotidal” shoreline, in the interior of the Georgia Bight. Islands in this area are wider than other barriers, strongly influenced by tides (2-4 meters in range), shaped by waves and currents, and develop ebb-tidal deltas such as Joiner Bank (Port Royal Sound) and Barrett Shoals (Calibogue Sound).

The existing conditions along the shoreline of Hilton Head Island are the result of natural erosion patterns and various shoreline stabilization efforts. Historically, wide, sandy beach areas generally occur along portions of the Island’s shoreline, indicating areas of accretion. Accretion is the gradual buildup of sediment that results in an increase in the size of the beach. Other areas of the Island’s shoreline have been more vulnerable to erosion and have a narrower beach area. Typically a wide, sandy beach occurs on the northern and southern ends of the Island with a narrower beach occurring mid-island. Ongoing erosion has been continually mitigated by beach renourishment projects.

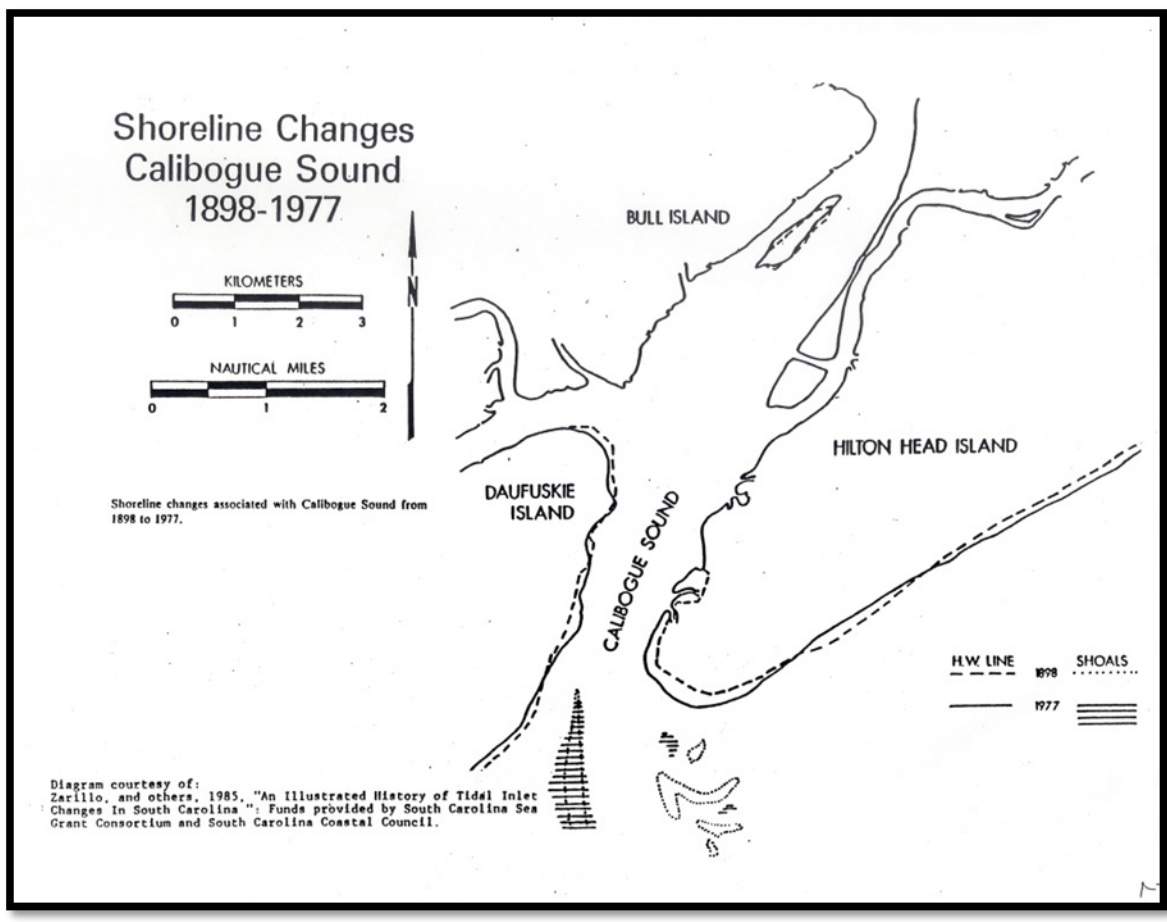
According to Section 8-1-112 of the Town’s Municipal Code, the beach extends from Fish Haul Creek to Braddock Cove, from the first property line into the water 75 yards from the low water mark. The surface material of the beach contains a mix of silica sand, or quartz sand and shell fragments, which is typical of other shorelines along this area of the coast and has a light brown appearance. The native sand is approximately 0.16mm in size.

Along the shoreline, the existing dunes system varies in depth and height. This system is defined by the Town of Hilton Head Island’s Municipal Code as “one or a series of hills or ridges of wind-blown sand or one or a series of hills or ridges of sand resulting directly or indirectly from restoration or beach renourishment, all of which may or may not be anchored by vegetation and is in the vicinity of the beach.” The average dune height is approximately six feet, with heights ranging from three to twelve feet.

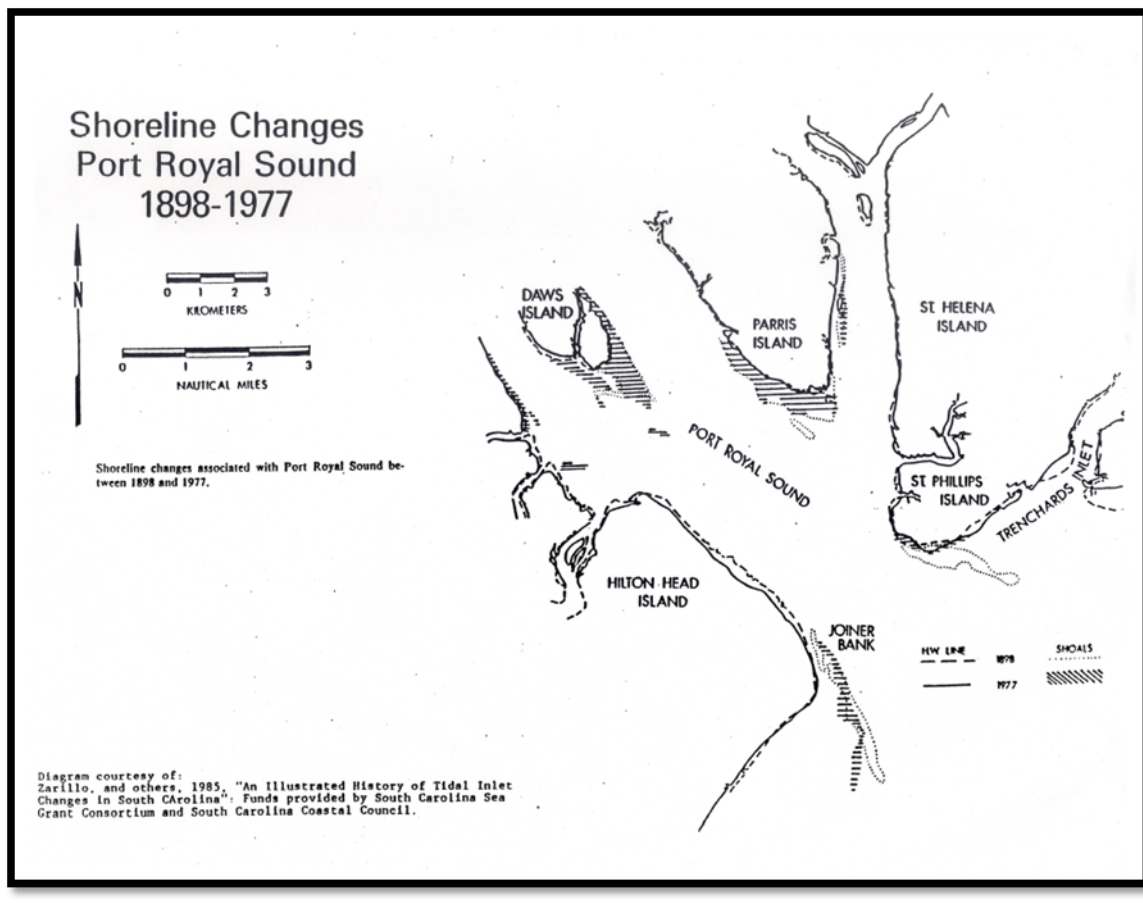


Calibogue Sound lies between Hilton Head Island to the west and Bull Island and Daufuskie Island to the east. It is the southernmost embayment in South Carolina. This Sound floods and drains extensive salt marshes landward of Hilton Head and Daufuskie Islands. A large intertidal shoal, Grenadier Shoal, has remained stable on the west side of Calibogue Sound for all of the 20<sup>th</sup> century. It lies seaward of Daufuskie Island and to the southwest of the main channel (See Figure 4- Shoreline Changes, Calibogue Sound 1898-1977). Eastward of this channel the shoals are more short-lived. They result from the littoral transport of sediment eroded from the central portion of Hilton Head Island. The accumulation of these shoals at the southwest corner of Hilton Head Island is the first step in forming the ebb tidal delta of Calibogue Sound.

**FIGURE 4 – SHORLINE CHANGES CALIBOGUE SOUND 1898-1977**



**FIGURE 5: SHORELINE CHANGES CALIBOGUE SOUND 1898-1977**



## 2.2 GENERAL LAND USE PATTERNS

Hilton Head Island is known for its incredible natural beauty and a sense of harmony between the natural and built environment. Over 70% of Hilton Head Island has been developed with master planned communities, which occupy the majority of the Island's shoreline. These beachfront planned developments include Sea Pines, Palmetto Dunes, Port Royal, and a small portion of Shipyard. In general, these developments are largely single family developments with some multi-family and resort areas along the beach. Other beachfront areas include South and North Forest Beach, Folly Field, Singleton, and Bradley Neighborhoods. (See Figure 2: Hilton Head Island Description.)

According to the 2010 Census, there are approximately 37,099 permanent residents on the Island. Census data also indicates that the Island's population consists of a higher percentage of older adults and retirees with a median age of 50.9 and average income of \$70,041. The racial composition of Island residents is predominately white, 75.2% with an average household size of 2.3 people. The beach and associated amenities drive the Island's economy and contribute significantly to the economic vitality of the region



supported by the Island's tourism industry support the Island's tourism industry, which drives the Island's economy and contributes significantly to the economic vitality of the region (See Figure 2 - Island Description).

### **2.2.1 Beach Uses**

In the past 25 years, the beach at Hilton Head Island has gone from an area where only a few beach walkers, sunbathers, and swimmers frequented, to an area with more varied activities. The primary uses of the beach include the traditional uses of walking, wading, swimming and sunbathing. The Town contracts with a private company, Shore Beach Services, to provide life guard services during certain times of the year. This service also includes litter patrol, including recycling, and beach rental items. Other activities that have become popular are fishing, surfing, kiting, volleyball, sailing, bocce ball and other beach games. The beach is also used for special events such as weddings, parties, fitness program locations, animal training locations, racing events, religious services, and even movies.

### **2.2.2 Benefits and Values of the Beach**

Natural habitats and resources are also recognized for the economic benefits that they provide. Protection of natural resources is identified in the Town's Comprehensive Plan as essential to maintaining the high quality of life on Hilton Head Island. Residents indicate that the attributes of coastal ecosystems, including marshes, mature trees, marine waters, and sandy beaches influenced their decision to purchase property on Hilton Head Island. In addition, the accessible ocean beach is a predominant factor in the local tourism and vacation rental economy. Eco-tourism has also increased as an economic market around Beaufort and on Hilton Head Island.

Hilton Head Island's shoreline is a diverse and productive ecosystem that serves as a critical link between the water and the land. The sandy beach and dunes system serves as the Island's first line of protection from the high winds and waves associated with storm activities and turbulent seas. This area also supports a rich web of life including animals like worms, clams, shrimp and crabs that in turn attract predators such as seabirds, which depend on sandy beaches for their foraging activities. The beach provides critical nesting habitat for several species of birds and animals, particularly the threatened loggerhead sea turtle. Recreational opportunities such as fishing, swimming, beachcombing, bird-watching, and sunbathing are also provided by the beach and contribute significantly to the success of the multi-million dollar tourism industry on the island.

According to the Hilton Head Island-Bluffton Chamber of Commerce, the Island hosts approximately 2.4 million annual visitors with the beach and its associated amenities being the most important reason for choosing Hilton Head Island (Hilton Head Island Visitor Profile and Conversion Study, 2010). According to this same study, travel parties reported spending an estimated \$2,726 per trip during week-long trips to



the Island. In order to help maintain the recreational quality of the beach associated with this industry, the Town of Hilton Head Island exercises beach renourishment as its primary means of shoreline management, which is anticipated to be needed every seven years.

The primary source of funding for these renourishments is a 2% local Accommodations Tax levied on short term rentals, hotels and motel accommodations, which provided \$5.3 million last year in funding dedicated to beach renourishment and related monitoring, dune refurbishment, maintenance and operations, and new beach parks and beach access facilities. It is anticipated that this source of funding will remain a viable option in future years. This document contemplates this and other issues surrounding the continuation of the Town's Beach Management Program and other alternatives for shoreline management, including shoreline retreat. The Town adopted special zoning districts along the beachfront to prevent development from moving further seaward, which is discussed in more detail in the Land Use Development and Zoning section.

The economic impact of the coastal areas has also been recognized by DHEC OCRM in a report that was issued in October of 2002. According to this report, 22% of the state's economy is a result of the output of revenues from coastal areas. This report also indicated that a quarter of the state's population growth in the last 10 years has occurred in the eight coastal counties. One in every three new private jobs during the past decade has been created along the coast and when compared to other areas of the State the average income in coastal areas is higher (Henry, M.S. & Barkley, D.L. 2002. The Contribution of the Coast to the South Carolina Economy. Clemson University Regional Economic Development Research Laboratory).

## **2.3 BEACHFRONT DEVELOPMENTS AND ZONING**

The Town's Land Management Ordinance, in Chapter 3 (Zoning Districts) provides for the establishment of certain base and overlay districts for the purpose of guiding development in accordance with existing and future needs and in order to protect, promote and improve the public health, safety, morals, convenience, order, appearance, prosperity and general welfare. Of these zones, a large portion of the beachfront area is zoned PD-1 (Planned Development Mixed-Use District). Sea Pines and Port Royal Master Plans specifically identify much of their beachfront area as 'open space.' To change this land use, it typically would require a vote of the majority of property owners as this property is typically owned by the POA. Such a change would then require a rezoning by Town Council.

Other areas along the beach are classified into different zones. The designation of 'open space' along the beach is not specifically identified in these other zones as it is in the PD-1 zone. In some instances, this has led to certain parcels "(strand blocks)" being sold to developers who are looking into the possibility of developing these parcels. These strand blocks typically contain remnants of the dunes system that lie



landward of the primary dune. Development of these areas would therefore destroy the remaining dunes system. The Town is taking steps to prevent this, as described later in the Shoreline Retreat Policy Section.

Density in the zoning districts is limited, in part to protect and preserve the beach and dunes system. The PD-1 zoning districts are typically 2 or fewer units/acre. The beachfront zones which allow the most density are the Coligny Resort District, for which the allowable density is undefined. It is limited by applicable design and performance standards such as height and parking. The Resort Development District allows 16 dwelling units per acre.

The following is a listing and brief description of the character and purpose of each of the beachfront zoning districts (See Figure 6 - Zoning District Map.)

- **PD-1 (Planned Development Mixed-Use District):**  
The purpose of the Planned Development Mixed-Use (PD-1) District is to recognize the existence within the Town of certain unique Planned Unit Developments (PUDs) that are greater than 250 acres in size. Generally, these PUDs have served to establish the special character of Hilton Head Island as a high quality resort and residential community. It is the intent in establishing this district to allow the continuation of well planned development within these areas. In limited situations, some commercially planned portions of PUDs are placed within other base districts to more specifically define the types of commercial uses allowed.
- **RSF-6 Residential Single-Family-6 District:**  
The purpose of the Residential Single-Family-6 (RSF-6) District is to primarily accommodate single-family dwellings at densities ranging up to six units per acre. It is intended to discourage any use that would substantially interfere with the development of single-family dwellings or would be detrimental to the quiet residential nature of single-family neighborhoods. The district also accommodates agricultural uses and parks as permitted uses.
- **RM-8 Moderate Density Residential District:**  
The purpose of the Moderate Density Residential (RM-8) District is to allow the development of residential uses at densities up to eight dwelling units per net acre. The district allows a variety of residential uses, along with uses that support neighborhoods. The district is intended to discourage development that would substantially interfere with, or be detrimental to, moderate residential character.
- **Coligny Resort District:**  
The purpose of the Coligny Resort (CR) District is to recognize and promote further investment in the area near Coligny Circle as an activity center and a core high-energy and visitor oriented resort destination that encourages people to live, work, and recreate within the district. The district is intended to accommodate relatively high-intensity commercial, office, residential, and mixed-use development that is pedestrian oriented and human-scale. It is also intended to promote development



that integrates civic and public gathering spaces and connects to such places in nearby developments and public places.

- **RD (Resort Development District):**

It is the purpose of the Resort Development (RD) District to provide for resort development in the form of multifamily development, bed and breakfasts, and resort hotels. It is also the purpose of this district to provide for commercial development aimed at serving the island visitor.

- **PR (Parks and Recreation District):**

The purpose of the Parks and Recreation (PR) District is to accommodate and manage the land uses allowed on publicly held land used for active or passive recreation purposes, or publicly owned land preserved in its natural state for public enjoyment. Development in this district shall be allowed and designed to minimize, as much as possible, its impact on both the natural environment and the community.

- **CON (Conservation District):**

The purpose of the Conservation (CON) District is to preserve and protect environmentally sensitive tidal wetland and beachfront lands subject to natural hazards by ensuring these areas only accommodate very low intensity development that minimally disrupts natural features or systems (either temporarily or permanently). The upland boundary of this district corresponds to the OCRM Critical Line and therefore is approximately coterminous with all tidal wetlands and the upland boundary of the beach, as defined in Section 8-1-112 of the Municipal Code, and extends outward to the Town jurisdictional boundary, as identified in Section 2-1-20 of the Municipal Code.

- **FF-NC-O Folly Field Neighborhood Character Overlay District:**

The purpose of the Folly Field Neighborhood Character Overlay (FF-NC-O) District is to protect the single-family residential character of the district and in particular the development and redevelopment of lots within the district. All new development and changes to existing development in the district are subject to the overlay district regulations in addition to those listed in Sec. 16-3-104.C, Residential Single-Family-5 (RSF-5) District.

- **FB-NC-O Forest Beach Neighborhood Character Overlay District:**

The purpose of the Forest Beach Neighborhood Character Overlay (FB-NC-O) District is to protect the single-family residential character of the district and in particular the development and redevelopment of lots within the district. All new development and changes to existing development in the district are subject to the overlay district regulations in addition to those listed in Sec. 16-3-104.C, Residential Single-Family-5 (RSF-5) District.

- **HH-NC-O Holiday Homes Neighborhood Character Overlay District:**

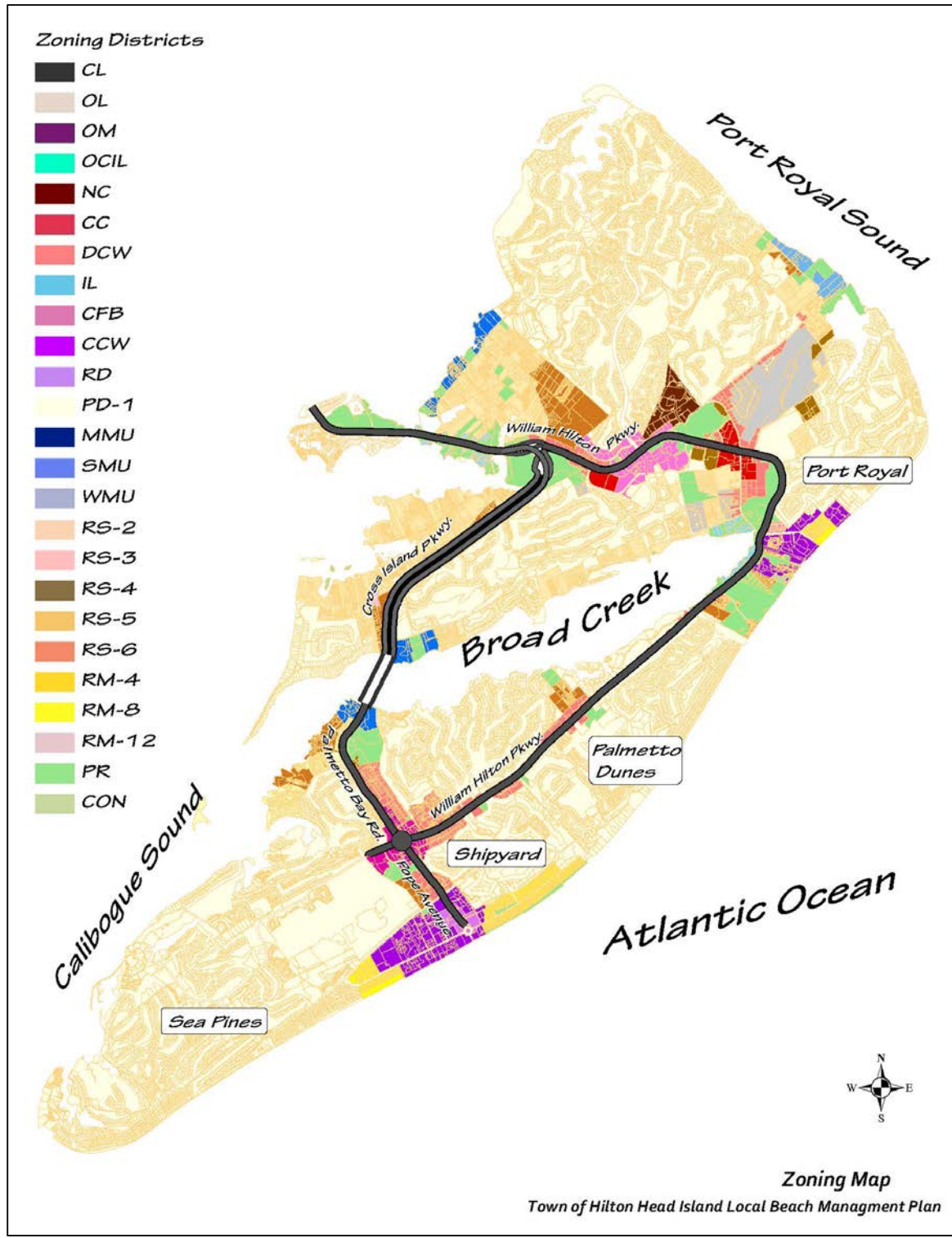
The purpose of the Holiday Homes Neighborhood Character Overlay (HH-NC-O) District is to protect the single-family residential character of the district and in particular the development and redevelopment of lots within the district. All new development and changes to existing development are subject to the overlay district regulations, in addition to those listed in Sec. 16-3-104.D, Residential Single-Family-6 (RSF-6) District. Existing nonconforming structures and site features



may be expanded as long as the site complies with certain standards for the required floor area ratio (FAR) and maximum impervious cover.



**FIGURE 6 – ZONING MAP**





Zoning regulations for beachfront areas adjacent to these PUD's are based on their individual master plans as part of the Planned Development Mixed Use Zoning District (PD-1) within the Town. In addition to these regulations, the Town's Land Management Ordinance requires that developments along the beach comply with special zoning districts.

**Table 1: Major Beachfront Planned Developments**

<i>Sea Pines Plantation:</i> 4,694 acres 5,890 residential units maximum permitted (includes both single family and multi-family)
<i>Shipyard:</i> 726.3 acres 279 single family lots <u>1,588 multi-family/hotel units</u> 1,867 units total
<i>Palmetto Dunes:</i> 1839 acres 1,231 single family <u>3,653 multi-family</u> 4,884 total units
<i>Port Royal:</i> 1,254 acres 1,021 single family lots/homes <u>1,032 multi-family</u> 2,053 total units

*Town of Hilton Head Island, 2007*

The following is a summary of the private covenants and restrictions that apply to each of the beach-front planned developments moving south to north along the Island's shore.

*Sea Pines*

Setbacks and other restrictions for properties in this PUD are outlined in the "Guidelines and Procedures for Design and Construction of Single Family Residences" (November 1991).



Owners of oceanfront lots are strongly encouraged to locate new homes as far from the beach as possible. Thus, the Sea Pines Architectural Review Board (ARB) has established a setback from the oceanfront property line for all vertical construction of 50 feet or 25 percent of the lot depth, whichever is greater. The ARB reserves the right, depending on special circumstances on a case-by-case basis, to approve variances from this setback guideline. The ARB also applies several aesthetic and natural setting considerations as it reviews proposed beachfront projects.

Setback requirements for pools and spas are also outlined in the guidelines for beachfront lots the decks of “in-ground” and “above-ground” pool and spa units, including decking, are considered “vertical” structures and are thus subject to the minimum 50 foot setback from the beachfront property line.

Persons who believe these regulations are unfair, inconsistent with past practices, or fail to consider all relevant facts and information may formally request the matter be reviewed and reconsidered again by the ARB via an appeal or variance. The Guidelines and Procedures outline the process for such appeals or variances.

#### *Shipyard*

This development has very limited beachfront area, which is currently developed with a hotel and beach club for visitors and residents of the development. Beachfront setbacks for the development are not mentioned within the Shipyard ARB guidelines or restrictive covenants, so the Town’s setbacks apply that are further described in Section 4.2.4, Beachfront Development Regulations.

#### *Palmetto Dunes*

Setback requirements for this development are outlined in its “Architectural Review Board Policies, Procedures and New Construction Guidelines” (March 2005). This outlines the beachfront setback requirements as generally being 50 feet from the beachfront. Pools and their surrounding decks have a setback of 20 feet. Variances from these setbacks may also be sought from the Architectural Review Board.

#### *Port Royal*

Setbacks in this PUD are outlined in the “Port Royal Plantation Plans Approval Board Guidelines and Procedures” (November, 2005). Property line setback regulations require that no vertical construction shall be closer than 50 feet from a property line adjoining a golf course, lagoon, ocean, dune area or marsh. Variances and appeal procedures area also included.



### **2.3.1 Beachfront Structural Inventory**

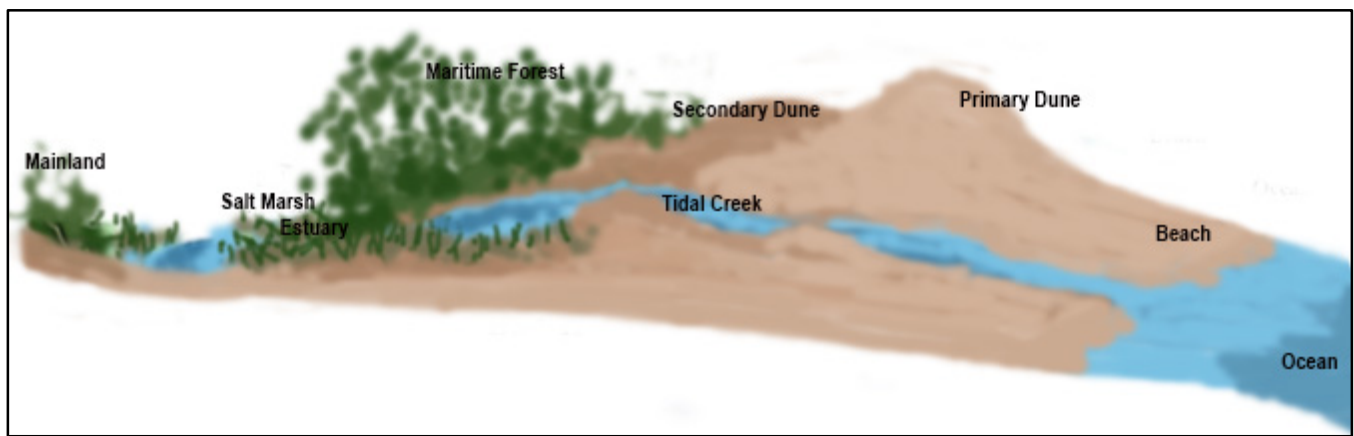
Section 48-39-350(A) (3) of the Beachfront Management Act requires all communities to include an inventory of all structures located seaward of the DHEC OCRM setback line as part of their local beach management plan. This inventory was conducted using the Town's GIS system and can be found in Appendix A.

Structural inventory guidelines required by the state are as follows:

- If any portion of a structure is seaward of the setback line document the distance seaward the structure is located.
- Commercial structures are considered habitable structures;
- Count all detached structures as separate buildings (decks, boardwalks, pools, etc.); and
- An erosion control structure which covers more than one tax parcel should be counted as a separate structure for each parcel.

## **2.4 NATURAL RESOURCES AND ECOLOGICAL HABITATS**

**FIGURE 7: BARRIER ISLAND ENVIRONMENTS**



A main concern in managing South Carolina's ocean beaches is the protection and conservation of coastal natural resources and ecological habitats. As part of a coastal barrier island, the Hilton Head Island beachfront exhibits a variety of natural resources due to the diversity of ecotypes and habitats that occur. The interaction between shifting terrestrial sand dune and beach habitats, shallow coastal waters, and the open ocean result in a dynamic landscape that is used by various organisms.

Three terrestrial habitats are found around the Hilton Head Island beachfront, namely the beach community, maritime shrub thickets, and maritime forest. Maritime forests are upland communities



typified by live oak, cabbage palmetto, and loblolly pine. Small remnant patches of this habitat are scattered throughout the island. Maritime shrub thicket communities commonly grow in older dunes, behind the primary dunes, and include salt tolerant shrubs such as wax myrtle, yaupon holly, and red cedar. Finally, the beach community generally includes the open beach and dune habitats, as well as the foreshore zone that is frequently inundated by the tides. Each ecological community provides benefits to plants and animals that use the habitat to forage, as shelter for nesting or for a combination of these uses.

The zone of dunes extends from the seaward edge of the beach berm to the seaward edge of the maritime forest tree line. Dunes on Hilton Head Island are relatively small due to the lack of strong, direct winds. Dunes form when wind-blown sand lodges against an obstacle. Native plants, including sea rocket, seaside pennywort, morning-glory species, beach pea, dune sandbur, sea oats, seaside panicum, camphorweed, yucca species, wax myrtle and yaupon, are resistant to blowing salt and stabilize the dunes with their roots. The typical “dune field” has five zones:

- Sea wrack: Debris, primarily dead spartina grass, deposited by high tides.
- Embryo dune: Sand that collects in the sea wrack.
- Foredune: The seaward dune that is stabilized by plants.
- Interdune troughs: Low areas between dune ridges.
- Back dunes: One or more dunes landward of the foredune populated by common seaside grasses, shrubs and stunted trees.

The importance of barrier islands as habitat for plants and animals is significant. Many animals are dependent on smaller prey available on open beach habitats as part of complex food webs. Some animals also require the sands of primary dunes on barrier islands, such as at Hilton Head Island, for nesting sites and are unable to successfully reproduce without access to this habitat. In the water, nearshore subtidal bars and sand flats can support large numbers and species of marine invertebrates and fish that cannot thrive in the open ocean. Long-term or permanent alteration to these habitats can affect the type, health, and vitality of marine plants and animals.

Natural habitats and resources are also recognized for the social and economic benefits that they provide. Protection of natural resources is identified in the Town’s Comprehensive Plan as essential to maintaining the high quality of life on Hilton Head Island. Residents indicate that the attributes of coastal ecosystems, including marshes, mature trees, marine waters, and sandy beaches influenced their decision to purchase property on Hilton Head Island. In addition, the accessible ocean beach is a predominant factor in the local tourism and vacation rental economy. Eco-tourism has also increased as an economic market around Beaufort and on Hilton Head Island.

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**FIGURE 8: THE FOLLY TIDAL CREEK ESTUARY**

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Several natural resource protection efforts have been achieved and continue for the Town of Hilton Head Island.

- **Beach nourishment:** Conducted in 1990, 1997, 1999 (emergency work at South Beach) and, 2007 and 2012. This created a suitable nesting habitat for sea turtles along miles of previously eroded and/or reveted beach. It protects the sand dune habitat, promotes native plant and animal species that depend upon it and protects the shoreline from destruction by erosion. Approximately 8 miles of beach have been renourished.
- **Dune rebuilding/revegetation:** Sand fencing and native beach plants are routinely installed to help enhance the restoration of dune habitat previously destroyed by erosion.
- **Sea Turtle Protection Ordinance:** Established in 1990, this ordinance helps protect nesting sea turtles and emerging hatchlings by reducing disorientation caused by artificial lights shining onto the nesting beach. Prior to each season, the Town and the Coastal Discovery Museum use the media and informational brochures to advertise the ordinance. Town Code Enforcement Officers patrol the beaches regularly at night throughout the season to ensure compliance.
- **Sea turtle monitoring:** This has been an ongoing program of the Coastal Discovery Museum since 1984 (funded by the Town since 1989) that surveys and inventories sea turtle nests which provides information on nesting activity and hatchling success rate. The Town has been accurately mapping the nests since 1999 using GPS technology. Educational benefits are afforded to the general public through opportunities for



- participation in the program, staff lectures and the distribution of a brochure written by the Town that gives information on sea turtle life history, states the regulations protecting them and gives contact numbers to report violations. (See Figure 10: Sea Turtle Nesting Densities.)
- **Tree protection ordinance:** Established in 1986, this ordinance protects native vegetation. Through the tree approval process, parcels are examined prior to development to ensure trees are marked for removal according to the approved site plan. Applicants are also encouraged to protect non-tree understory plants and are required to replant native trees similar to those removed if the post-development site no longer meets ordinance standards.
  - **Wetland protection ordinance:** Established in 1986, this protects both salt and freshwater wetlands through the use of setbacks and buffers. Mitigation in-kind and on-site or - at another location on the Island is required for any wetland alteration. Monitoring the success of the mitigation is required for three years, with written reports required every six months and corrective action taken as necessary.
  - **Design Review Board:** Established in 1987, this board reviews development projects along major roads, conservation districts, and waterfront areas (including beaches). It requires vegetated buffers (natural preferred) along waterfronts; reviews landscape plans to insure that a post-development site is adequately vegetated and encourages the use of native plant materials.
  - **Land Acquisition Program:** Established in 1990, this program allows the Town to purchase properties for a variety of reasons, including beachfront and environmentally sensitive lands. The Town now owns over 1,312 acres. Most undeveloped beachfront property outside of the gated communities is now owned by the Town.
  - **Town Staff:** An Environmental Planner and Sustainable Practices Coordinator have been hired since the initial adoption of the Town's Beach Management Plan. The Environmental Planner reviews site plans (including beachfront). The Sustainable Practices Coordinator prepares educational material such as brochures, performs biological monitoring, works to insure the Town is green in all its operations, implements the Town's Sustainability Plan (Green Blueprint) and performs other natural resources functions for the Town. The Codes Enforcement Officer is responsible for tree and wetland protection, including beachfront codes enforcement.
  - **Water Quality Monitoring:** DHEC manages the water quality monitoring program for the Island's monitoring and testing of the beachfront for enterococcus.

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### **2.4.1 Threatened and Endangered Species**

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The following is a listing of Endangered and Threatened Species, and species of Special Concern that use the beachfront, followed by a map (Figure 9—Piping Plover Critical Habitat) of the only known beachfront critical habitat on the Island for the piping plover.

***Table 2: Endangered and Threatened Species, and  
Species of Special Concern Using Hilton Head Island Beach***

<b><i>Name</i></b>	<b><i>Status</i></b>	<b><i>Habitat/Activity</i></b>
Loggerhead Sea Turtle	Threatened, FS	Beaches (nesting)
Green Sea Turtle	Threatened, FS	Beaches (nesting)
Kemps-Ridley Sea Turtle	Endangered, FS	Nearshore waters (Foraging)
Leatherback Sea Turtle	Endangered, FS	Beaches (nesting)
Eastern Brown Pelican	Species of Special Concern, S	Beaches
Least Tern	Threatened, S	Beaches, Dunes (nesting)
Wilson's Plover	Threatened, S	Beaches, Dunes (nesting)
Piping Plover	Threatened, F	Beaches
Red Knot	Threatened, S	Intertidal Flats(Wintering)
	Threatened, F	Beaches, Intertidal Flats (Wintering)
Island Glass Lizard	Species of Special Concern, S	Dunes
Seabeach Amaranth	Species of Special Concern, F	Dunes (Plant)
	Threatened, S	

F—Federally Protected Species

S— State Protected Species

Source: USFWS and Town of Hilton Head Island, 2014



**FIGURE 9: PIPING PLOVER CRITICAL HABITAT**

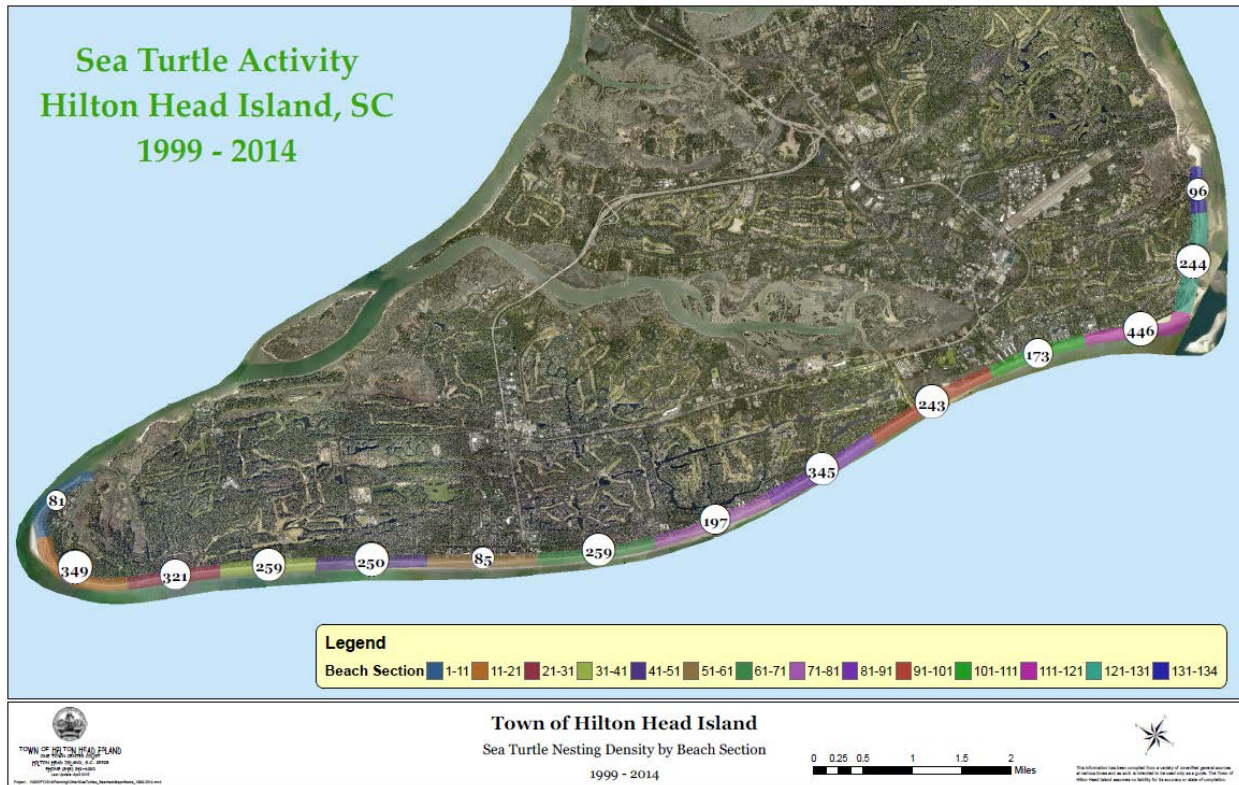


Source: U.S. Fish and Wildlife Service



## 2.4.2 SEA TURTLE NESTING

**FIGURE 10 – SEA TURTLE ACTIVITY 1999-2014**





## 2.5 EXISTING PUBLIC ACCESS AND MAP

In 1989, the Town of Hilton Head Island received a \$6,200,000 grant from the State of South Carolina (of which \$2,500,000 was received from SCCC) for a beach renourishment project. As part of this agreement, the Town committed to providing between 2,000-3,000 beach parking spaces on the Island, with all of the facilities being within 1,000 feet of public beach access points.

The Town's original 1991 Beach Management Plan detailed public access parks, undesignated private parking areas, privately-owned beach access points (hotels, condominiums and beach clubs), neighborhood access points, future public beach parks and facilities, and emergency vehicular access points. This was approved by the State and included a commitment of 2,000-2,500 parking spaces.

In 1998, the Beach Management Plan was amended by the Town and approved by South Carolina Department of Health and Environmental Control to include a Beach Access Plan, which outlined a plan to construct a total of 1,400 public parking spaces by December 2008, reducing the previous 2,000-2,500 parking spaces in the earlier plan. This plan included the construction of spaces that could be reserved for Island residents and property owners; however, such spaces are not counted when the State designates "full and complete public access" areas on the beach, which can impact grant eligibility. Currently, the Town has 1,454 beach parking spaces, of which 1,062 are open to the general public of the State, so they do not meet the requirements to be considered in the calculation of the areas that are considered "Full and Complete Public Access" by the State, in accordance with the State's Beachfront Management Act. However, these spaces are recognized by DHEC OCRM for the purpose of meeting the previous 1990 grant requirement. Currently, the Town has met this revised obligation.

Figure 11: Town-owned Beach Parks and Parking, shows the location of Town-owned beach access and parking areas. Table 3 details the existing number of public parks owned by the Town of Hilton Head Island with their facilities.

Figure 12: Neighborhood Beach Access and Parking, shows the location of neighborhood beach access and parking. These facilities are provided by the PUD's and neighborhood associations and are used by thousands of Island residents and visitors. There are a total of 107 neighborhood beach access locations, eight of which have parking areas, which are used predominately by visitors and residents within the gated community in which they are located.

Figure 13: Private Beach Access and Parking, shows the location of private and multifamily beach access points and parking locations. These facilities are provided by hotels and condominium complexes. There are a total of 59 private access locations with parking on the Island.



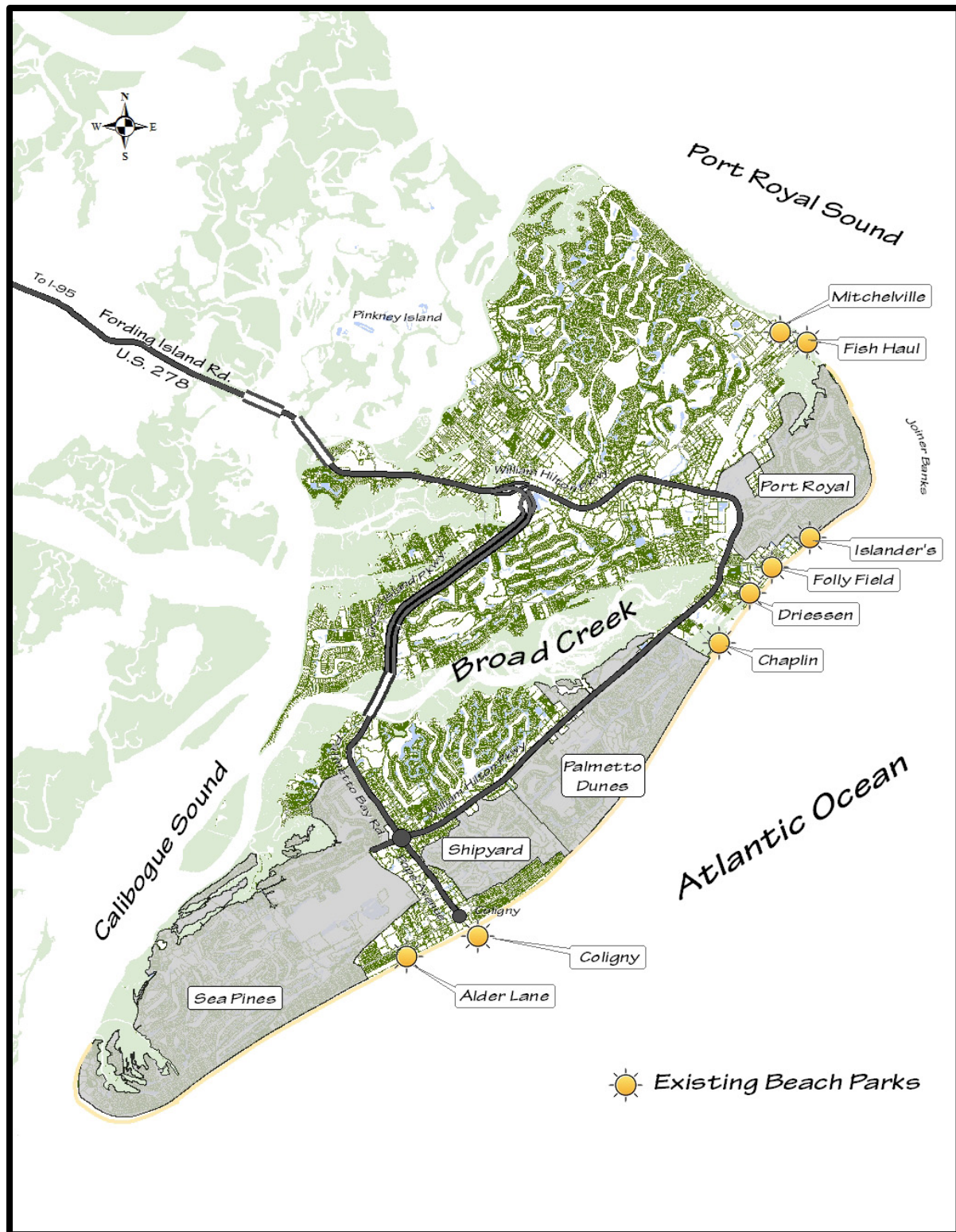
***Table 3: Existing Town-Owned Beach Parks and Parking***

	Handicapped access	Boardwalk	Restrooms	Trash receptacles	Showers	Bike Racks	Drinking Fountain	Life guards/ rentals	Picnic pavilion	Natural trails	Sitting Deck	Viewing scope	Emergency Access	Historical Marker	Public Parking Spaces	Notes
Alder Lane Access	✓	✓	✓	✓	✓	✓	✓	✓							23*	
Coligny Area	✓		✓	✓	✓	✓	✓	✓			✓	✓	✓		522*	Parking breakdown: Coligny Circle Lot: 12 Paved Lot: 430 Unpaved: 80
Chaplin Park & Burkes Beach Road			✓	✓	✓	✓	✓	✓		✓			✓		258*	Parking breakdown: Burkes Beach Road: 13 w/in 1000' Chaplin Park: 110 w/in 1000' Castnet: 135 via shuttle
Driessen Beach Park	✓	✓	✓	✓	✓	✓	✓	✓	✓						179* 28	28 Spaces for Island Beach Pass Holders (Residents and Property Owners)
Folly Field Park	✓	✓	✓	✓	✓	✓	✓	✓							55*	
Islanders Beach Park	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓		25* 131	131 Spaces reserved for Island Beach Pass Holders (Residents and Property Owners)
Fish Haul Park	✓		✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	47	
Mitchelville Beach Park & Barker Field	✓	✓	✓	✓		✓	✓				✓	✓		✓	186	101 at Mitchelville Beach Park and 85 via boardwalk at Barker Field

\*Parking contributing to full and complete public access.



**FIGURE 11 – EXISTING BEACH PARKS WITH PARKING**



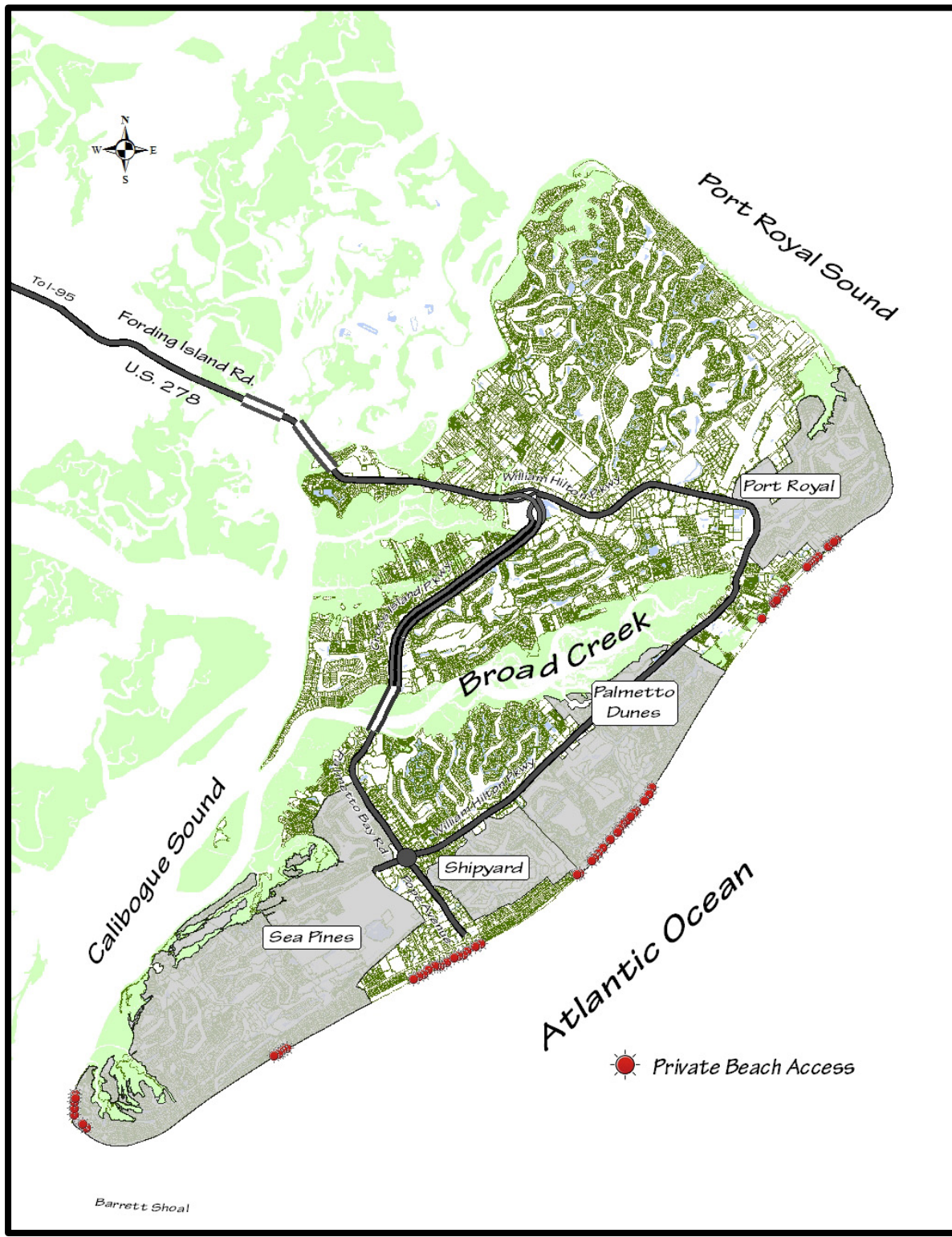


**FIGURE 12 – NEIGHBORHOOD BEACH ACCESS AND PARKING LOCATIONS**





**FIGURE13 – PRIVATE BEACH ACCESS**





### **FULL AND COMPLETE PUBLIC ACCESS**

DHEC OCRM classifies areas along the beach that are considered to offer full and complete public access, which is defined based on the criteria shown in Table 4 below. This classification is factored into the review of some State grants.

***Table 4:***  
***DHEC-OCRM Public Beach Access Facility Classification***  
***(SCCC, 1995)***

<b>Type of Facility</b>	<b>Distance on either side of Access Point which will be considered as having Full and Complete Access</b>	<b>Minimum Facilities</b>
<b>Public Access Point</b>	<b>1/8 Mile</b>	<b>Trash Receptacle, Walkover/Improved Surface Access; Signage; On-Street Parking For 6 Vehicles</b>
<b>Local Public Access Park</b>	<b>1/4 Mile</b>	<b>As Above, Parking For 10 Vehicles</b>
<b>Neighborhood Public Access Park</b>	<b>1/2 Mile</b>	<b>As Above, Showers, Restrooms, Parking For 25 Vehicles</b>
<b>Community Public Access Park</b>	<b>3/4 Mile</b>	<b>As Above, Showers, Handicapped Access; Parking For 75 Vehicles</b>
<b>Regional Public Access Park</b>	<b>1 Mile</b>	<b>As Above, Parking For 150 Vehicles And Greater</b>

On Hilton Head Island, the number and distribution of public access points are excellent. Sufficient access points, signage, facilities and parking exist to classify approximately 20% of the Hilton Head Island beach as having full and complete access per the State guidelines (SCCC, 1995; see Table 4). DHEC OCRM recognizes that full and complete public access is provided in two main areas along approximately 3.9 miles of the 13-mile beach (see Figures 14 and 15):

1. from a point ½ mile (2,640 feet) northeast of the public beach access at Islanders Park to a point ¾ mile (3,960 feet) southwest of the public beach access at Chaplin Park; and



2. from a point 1 mile (5,280 feet) northeast of the public access point at Coligny Beach park to a point ¼ mile (1,320 feet) southwest of the public beach access at Alder Lane.

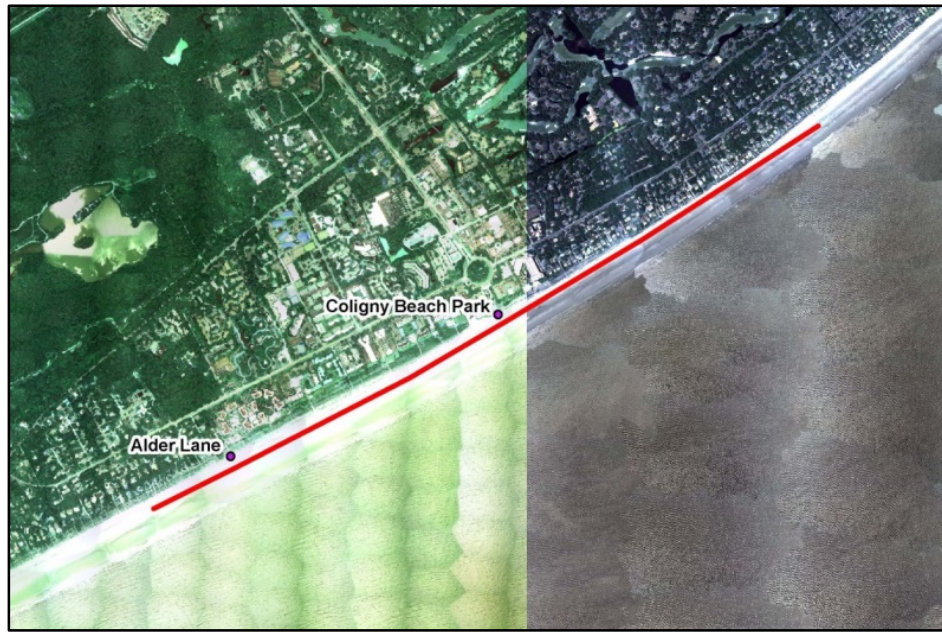
While Mitchelville and Fish Haul Parks provide significant public access and parking, both parks are located outside of the extent of the state ocean beachfront jurisdiction. These parks are noted as providing public access and parking but are not included in calculations related to “full and complete public access”. DHEC OCRM does not recognize these parks as providing “full and complete public access” in accordance with the State Beachfront Management Plan.

The majority of public parking associated with the Town-owned public beach access points is located within 1,000 feet of the accesses. Only one beach parking location is in excess of 1,000 feet. Shuttle service is available for this location if the need arises. Establishing public parking closer to the beach would be infeasible due to infrastructure and development constraints. Based on these considerations, DHEC OCRM has agreed to allow public parking located greater than 500 feet away from the sand beach to be a factor in classifying these sections of Hilton Head Island’s beach as achieving “full and complete” public access in accordance with the guidelines established in the State Beachfront Management Plan.

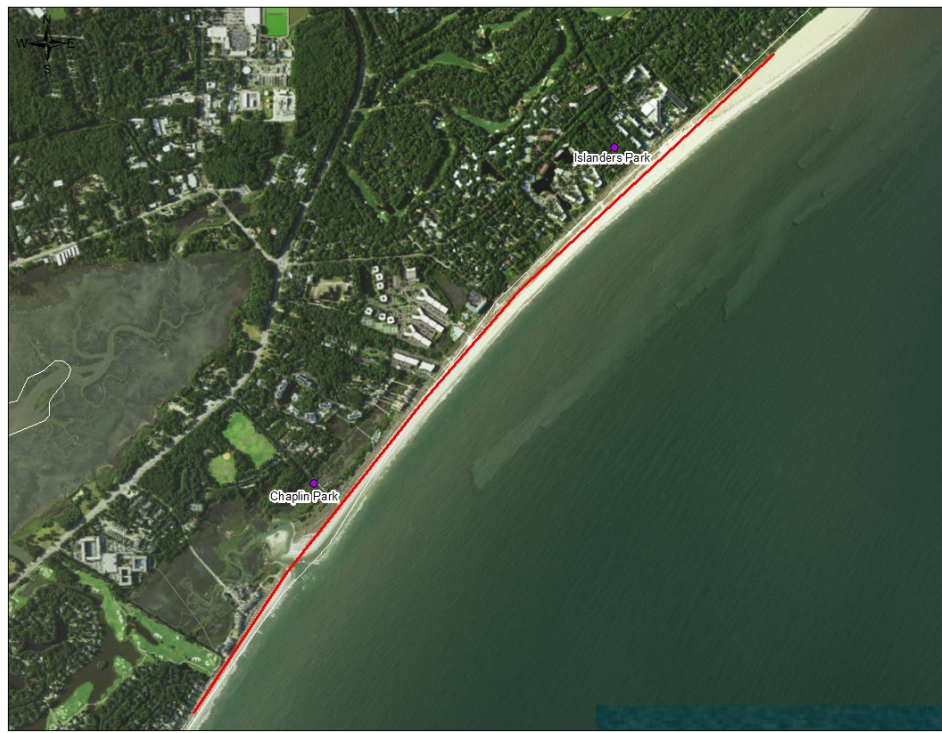
Signage indicating the public access points, as well as local beach regulations is located at each of the Town’s public beach access points. In addition, dog waste collection and disposal containers are located at many of the public access points, as well as recycling collection bins.



**FIGURE 14: ALDER LANE AND COLIGNY-FULL AND COMPLETE ACCESS AREA**



**FIGURE 15: CHAPLIN TO ISLANDER'S-FULL AND COMPLETE ACCESS AREA**





## 3 - BEACHFRONT DRAINAGE PLAN

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The Town of Hilton Head Island does not have any existing drainage outfalls along the beachfront (either natural or anthropogenic) and Section 16-5-602 of the Town Code prohibits any future development from directly discharging storm water onto the beach.

The beachfront areas of the Island can be divided into 6 major natural drainage basins none of which drain to outfall structures on the beach (see Figure 16: Hilton Head Island Watersheds). In all of the drainage basins, the most common methods of conveyance are lagoons, swales, and pipes. In general, storm water is carried from the beachfront areas to the adjacent inland bodies of water. There are no significant grade differences on the island, necessitating the use of four pump stations during heavy rains to protect against flooding. They are located at Lawton Creek in Sea Pines, Cordillo Parkway in Shipyard, Broad Creek in Wexford and Jarvis Park.

The southernmost portion of the Island drains into Baynard Cove and Braddock Cove which in turn drain into Calibogue Sound. To the north, the second basin in Sea Pines Resort and South Forest Beach drains into Lawton Canal which is pumped toward Calibogue Sound.

The North Forest Beach area drains through the lagoons of Shipyard Plantation. A pump station was constructed in 2004 to help push the water through the lagoon system. Then the stormwater runs under William Hilton Parkway via a pipe through a canal in Wexford Plantation and is pumped into Broad Creek.

The Palmetto Dunes drainage basin contains approximately 11 miles of canals, which carry the storm water under William Hilton Parkway and into Broad Creek.

Storm water from the Folly Field basin is transported to the Folly, the Island's only tidal inlet to the Atlantic Ocean. The Folly is made up of several meandering creeks which accept runoff and carry it to the Ocean.

The northernmost drainage basin is Port Royal Plantation. The storm water from this basin is carried via a large drainage ditch to Broad Creek.

Overall, the effectiveness of the beachfront drainage systems is good. An inherent problem with Hilton Head Island is the lack of elevation (See Figure 17: Hilton Head Island Elevations). The vast majority of land being drained has an elevation of less than 10 feet. Therefore a common problem is capacity of the systems to convey runoff during an intense storm of short duration.

In 1995, the Town completed The Island Wide Drainage Study. Since then, all projects have been implemented.



1. Palmetto Hall Outfall Improvements (partnership) 1995
2. Lawton Canal Pump Station upgrades (partnership) - 1997
3. Jarvis Creek Pump Station - 1999
4. South Forest Beach Phase I - 2000
5. William Hilton Parkway, Culvert at Wendy's - 2000
6. Gum Tree Area – 2000
7. South Forest Beach Phase II – 2001
8. Pineland Mills Shops - 2001
9. North Forest Beach Phase 1 - 2003
10. North Forest Beach Wexford Pump Station - 2004
11. North Forest Beach Phase II - 2004
12. Ashmore Tract – 2003
13. Folly Field -2004
14. Northridge – 2006
15. Beach City Road / Airport – 2006
16. Lawton Canal Pump Replacement (partnership) – 2006
17. Club Course Drainage Project (partnership) – 2007/8

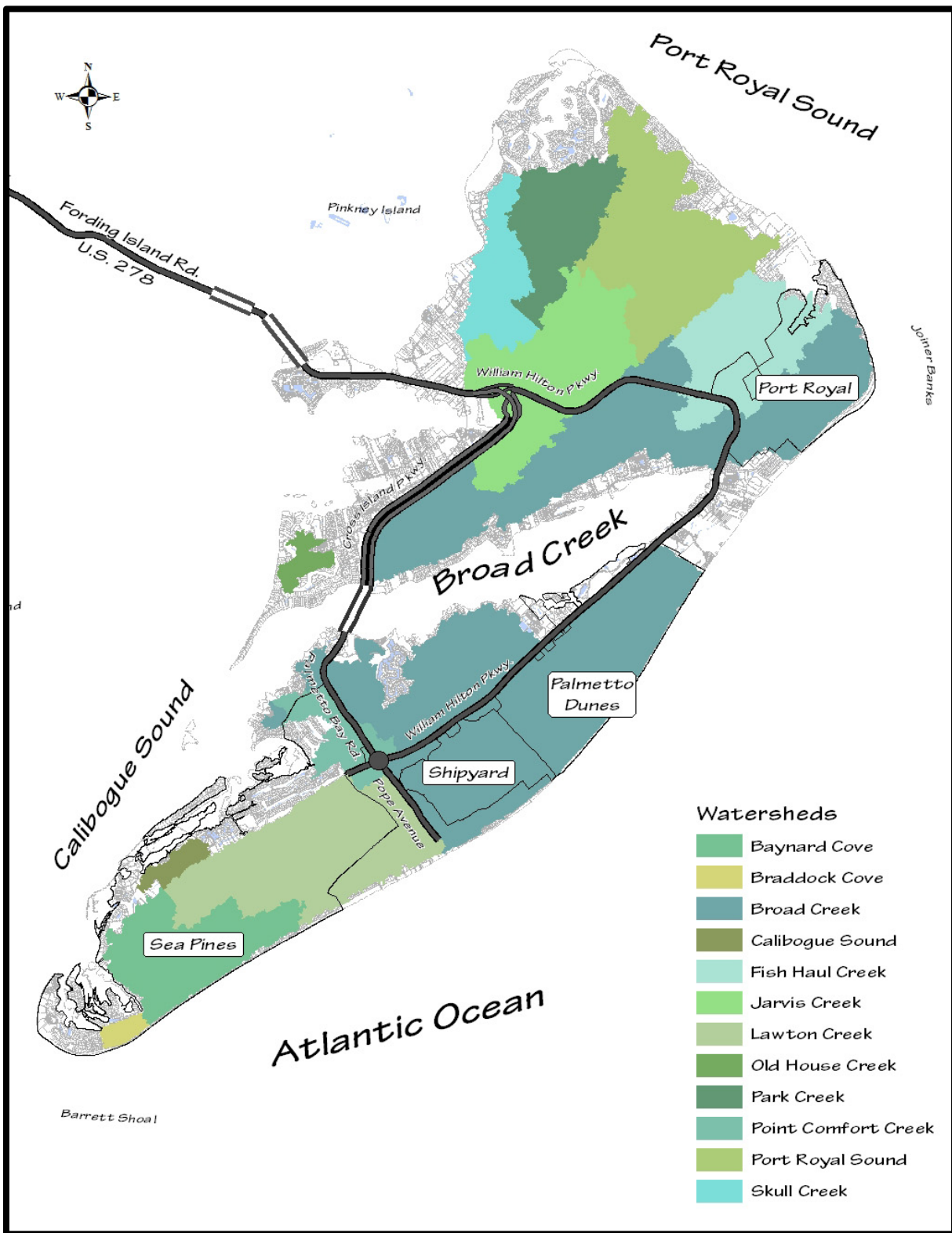
In terms of estimated life, the existing drainage systems are expected to remain in place well beyond a 20-year horizon. Build-out is substantially complete in these beachfront areas. The drainage systems in place should adequately handle future conditions since minimal new development can occur.

Cleaning, dredging and maintaining the existing drainage system is a foremost priority. The Beaufort County Stormwater Utility collects \$3.56 million dollars yearly from the Town. The Town provided 5% (\$91,992) last year to the Utility for administrative overhead. The Utility returns the entire \$3.56 million of fees (minus the administrative overhead) for the Town to use for drainage infrastructure maintenance and debt service on a \$17 million SWU Revenue Bond.

The Town also monitors water quality at 18 sites Island-wide. This project was initiated in 1999 in an effort to monitor stormwater drainage improvements. The Town currently tests for dissolved oxygen, pH, salinity, temperature, turbidity, nitrate, total phosphates, fecal coliform, total kjeldahl nitrogen, and ammonia.

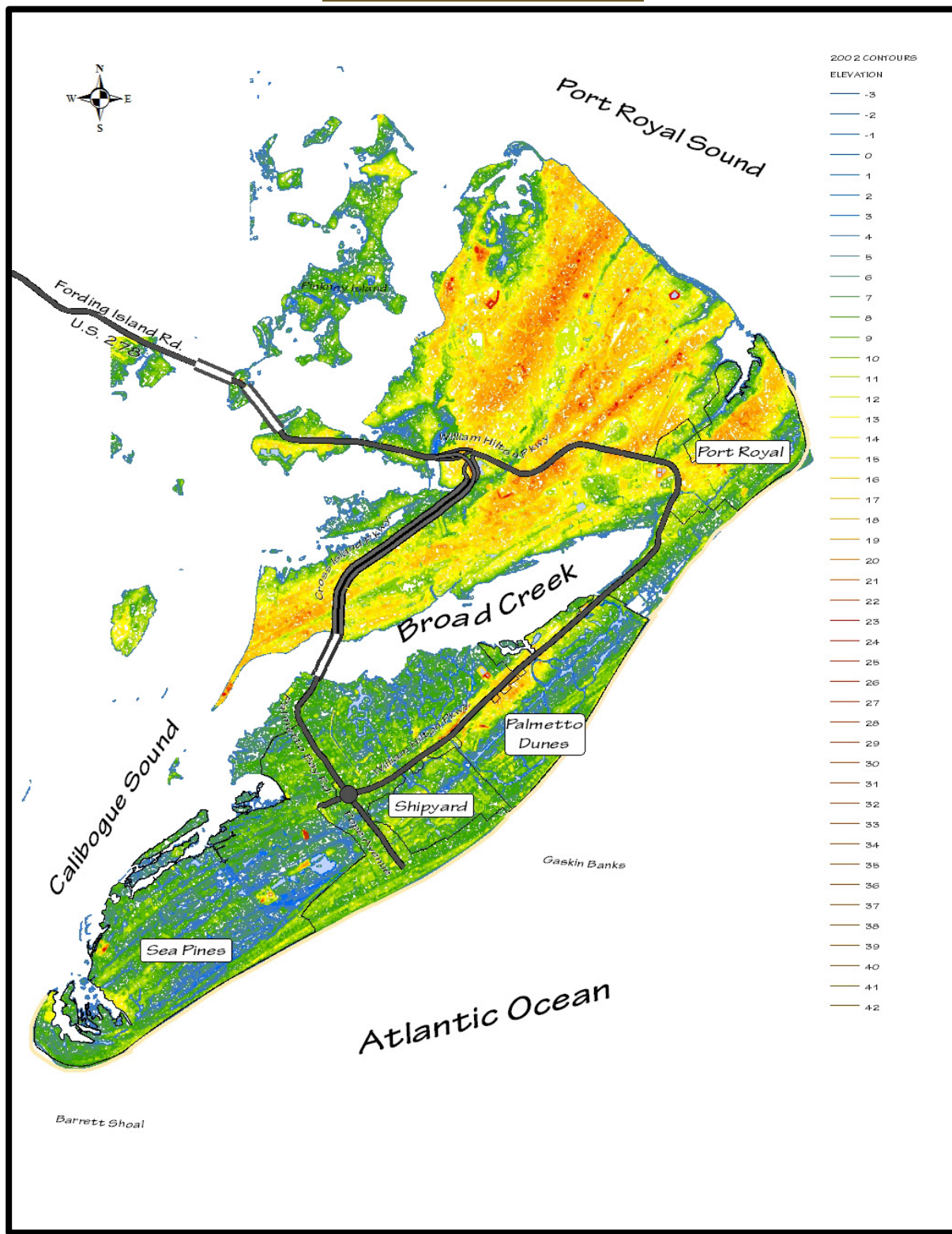
Stormwater studies are being conducted for individual watersheds to develop drainage inventories, flood models, water quality models and lists of potential capital improvement projects.

#### **FIGURE 16 - WATERSHEDS**





**FIGURE 17 – ELEVATIONS**





## 4 - BEACH MANAGEMENT & AUTHORITIES

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The Public Trust Doctrine provides much of the basis for the management of public lands and waters in the United States. The Public Trust Doctrine is an example of common law, meaning rules derived from the traditional laws of England in the Middle Ages that were based on custom and precedent rather than legislative action. Common law often addresses issues of access, fairness, commerce, and land uses. The Public Trust Doctrine established that public trust lands, waters, and living resources are held in trust by the State for the benefit of all citizens. It also created the right of the people to fully enjoy public trust lands, waters, and living resources for a multitude of public uses. Finally, the doctrine established responsibilities for the State when managing these public trust resources, and set limitations on the ways government, public, and private owners can use public trust resources.

In the coastal zone, the Public Trust Doctrine covers navigable waters and lands that are subject to the ebb and flow of the tide, including tidal marshes and oceanfront beaches. While each state is able to implement the Public Trust Doctrine according to its own views of justice and policy, the core principles are the same throughout the country. These principles, and the responsibility they establish for the state, are at the heart of many of the state's coastal laws, regulations, and policies. In many states, including South Carolina, the jurisdiction of the Public Trust Doctrine on the beach and navigable waters of the ocean extends landward to the mean high water line. Generally, the Public Trust Doctrine protects the right of the public to pass along the shoreline up to the mean high water line and utilize the space for fishing, navigation or recreation. The Public Trust Doctrine does not authorize the public to trespass on upland private property in order to access the beach. However, the doctrine does help preserve and protect the right of the public to access and utilize the beach

In South Carolina, as with much of the United States, the Public Trust Doctrine has been at the center of numerous court cases and deliberations and will likely continue to be. This doctrine is at the core of the philosophy of coastal zone management and should be recognized and considered by the government, private landowners, and the public at large in the course of decision-making along the beach. Numerous federal and state agencies have responsibility or authority for assisting beach management on Hilton Head Island. A summary and description of the agencies with regulatory or management authority relevant to beach management in the Town of Hilton Head Island can be found as Appendix E to this plan.



## 4.1 STATE AUTHORITIES

### **4.1.1 Overview of State Policies (Beachfront Management Act)**

Refer to Appendix E on regulatory agencies.

### **4.1.2 Beachfront Setback Area**

The State of South Carolina established a forty-year policy of retreat as part of the Beachfront Management Act. DHEC OCRM, as the steward of the State's coastal resources, is responsible for implementing this policy. The implementation is derived from a baseline established by DHEC OCRM which runs parallel to the shoreline on oceanfront beaches. The baseline is evaluated and redrawn by DHEC OCRM every eight to ten years and, as directed by the Beachfront Management Act, stretches of beach are divided into standard erosion zones and inlet erosion zones based on their erosion characteristics.

The baseline for a standard erosion zone is established at the location of the crest of the primary oceanfront sand dune in that zone. If the shoreline in a standard erosion zone had previously been altered naturally or artificially by the construction of erosion control or other anthropogenic structures, the baseline is established where the crest of the dunes would be had the disturbance not occurred.

The baseline for inlet erosion zones is determined differently for inlets that are stabilized by jetties, groins or other structures, and inlets that are not stabilized. For unstabilized inlets, DHEC OCRM establishes the baseline at the most landward point of erosion at any time during the past forty years. For inlet zones that are stabilized by jetties, groins, or other structures, DHEC OCRM establishes the baseline at the location of the crest of the dune, and not at the location that the dunes would be had the inlet remained unstabilized.

All baseline decisions are determined by DHEC OCRM, founded on the best scientific and historical data available. In determining the baseline location for inlet erosion zones, DHEC OCRM must consider historical inlet migration, inlet stability, channel and ebb tidal delta changes, the effects of sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration projects on inlet sediment budgets.

The second part of implementing the forty-year retreat policy at the State level is the setback line. The setback line is a boundary established by DHEC OCRM that is landward of the established baseline at a distance equal to forty times the average erosion rate, and not less than twenty feet.

No new construction is permitted seaward of the baseline, with the exception of wooden walkways not more than six feet wide, wooden decks no larger than 144 square feet, public fishing piers, golf courses, normal landscaping, pools that were located landward of existing functioning erosion control structures,



groins built before 1988, or structures permitted by a DHEC OCRM special permit. A DHEC OCRM permit is required for all of the above actions except for the construction of wooden walkways not more than six feet wide.

Construction within the State setback line is restricted in order to implement the State forty-year retreat policy. Construction, reconstruction, or alterations between the State baseline and setback lines are governed as habitable structures, erosion control devices, and swimming pools. All other construction between the baseline and setback lines requires a permit from DHEC OCRM. New habitable structures built between the baseline and setback line may not exceed five thousand square feet of heated space, be located as far landward on the property as possible, and not incorporate any erosion control structure or device as part of the integral habitable structure. No part of the building may be constructed seaward of the baseline or on the primary sand dune. The applicant must certify to DHEC OCRM in writing that these conditions are accurate, and submit a drawing that shows the footprint of the structure on the property, a cross section of the structure, and the structure's relation to property lines and setback lines which may be in effect.

Owners may replace habitable structures permitted within the setback that have been destroyed beyond repair by natural causes after notifying DHEC OCRM. The owner must certify that the total square footage of the replaced structure seaward of the setback line is not greater than the original square footage beyond the setback line, the replaced structure is no further seaward than the original structure, and is constructed as far landward as possible, considering local zoning and parking requirements.

No new erosion control devices are allowed seaward of the setback line except to protect a public highway which existed prior to the enactment of the Beachfront Management Act. Erosion control structures that existed before 1988 may not be repaired or replaced if destroyed more than fifty percent above grade. DHEC OCRM is responsible for assessing the damage to erosion control devices and structures, as well as habitable structures, to determine the extent of damage following hurricanes or other events.

Finally, no new pools are permitted to be constructed seaward of the setback line, unless they are located as landward as possible of an existing, functional erosion control device. Pools that existed prior to 1988 may be repaired or replaced, if destroyed beyond repair, if the owner in writing certifies to DHEC OCRM that it is moved as far landward as practical, it is rebuilt no larger than the destroyed pool, and is constructed in such a manner that cannot become or act as an erosion control device. DHEC OCRM may issue a special permit for all other construction or alteration between the setback line and baseline.

### **Town of Hilton Head Island's Retreat Policy**

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The South Carolina Beachfront Management Act requires that local plans include a 40 year retreat policy that considers relocation of buildings, removal of erosion control structures and relocation of utilities. When the Town's Beach Management Plan was first adopted in 1991, the State was in the process of drafting their own policy, and provided little direction to the Town at that time. In 1992, the Town amended its original Beach Management Plan to include a 40 Year Retreat Policy which stated:

1. Locate development landward of the DHEC OCRM Setback line to the extent possible;
2. Adopt various growth management techniques and procedures to reduce development levels;
3. Retain open space seaward of the DHEC OCRM Setback line to the extent possible;
4. Utilize land acquisition; and
5. Address retreat during redevelopment scenarios after a disaster.

With the adoption of this 2008 Beach Management Plan, this Policy continued to be in effect. The Town's zoning, density and design standards mentioned previously help fulfill this policy along with other techniques outlined in the next Section.

To accompany the above Retreat Policy, this Beach Management Plan details an additional Policy on beach renourishment as part of the 40 Year Retreat Policy. Beginning in 1990, the Town embarked on an ambitious renourishment program with an ongoing maintenance program. As a result of these projects, portions of the beach and dunes system have been enhanced, thereby resulting in expanded areas subject to development pressures by construction that is not in the public interest and not in accordance with retreat policies and goals of the State and the Town. In a few instances, DHEC OCRM has designated a newly formed embryonic dune as the new primary dune, allowing development on the landward, and sometimes larger, dune. Because of this, there have been petitions to the DHEC OCRM to move the Baseline further seaward, increasing the number of areas for loss of the larger dunes system. In addition, DHEC OCRM re-examines the possibility of relocating the Baseline every 8-10 years, possibly seaward. This would further encourage development on top of the larger dunes system.

It is not and has not been the intent of the Town to encourage or permit development to move seaward as a result of the Town's beach renourishment projects and efforts, or to support any effort to move the DHEC OCRM established baseline seaward, where such effort to relocate the baseline is based in whole or in part on the existence of new dunes and/or new beach areas formed as a result of the Town's beach renourishment projects and efforts, or by other private efforts. The Town's intent in pursuing the renourishment program is:

1. To protect, preserve, restore, stabilize and enhance the beach/dune system through beach renourishment and other appropriate means, to provide for the protection of life and property, and to act as a buffer from high tides, storm surges, hurricanes, and erosion;



2. To prohibit development from moving seaward onto new dunes or beach areas formed as a result of the Town's beach renourishment projects and efforts;
3. To provide an important basis for a tourism industry that generates annual revenue for the State of South Carolina and the Town;
4. To provide habitat for numerous species of plants and animals which are threatened or endangered, or which may become threatened or endangered as a result of the loss of the beach/dune system;
5. To provide habitat for beach/dune system vegetation that is unique and extremely important to the vitality and preservation of the system; and
6. To create a recreational beach at high tide.

In support of this, the Town adopted two overlay zoning districts along the beachfront for the purpose of limiting the seaward migration of development as a result of renourishment.

- CPA-O Coastal Protection Area Overlay District

The purpose of the Coastal Protection Area Overlay (CPA-O) District, in conjunction with the Transition Area Overlay (TA-O) District, is to eliminate the potential for seaward migration of the built environment along the Island's beachfront to the greatest extent possible. This environmentally sensitive area:

- i. Protects life and property by serving as a storm barrier;
- ii. Provides an important basis for a tourism industry that generates annual tourism industry revenue;
- iii. Provides habitat for numerous species of plants and animals that are important to the natural functioning of the beach and dune system, or that are threatened or endangered; and
- iv. Provides beach and dune system vegetation that is unique and extremely important to the vitality and preservation of the barrier island environment.

- TA-O Transition Area Overlay District

The purpose of the Transition Area Overlay (TA-O) District, in conjunction with the Coastal Protection Area Overlay (CPA-O) District, is to eliminate the potential for seaward migration of the built environment along the Island's beachfront as well as protect the area between existing construction and the mean high water mark, to the greatest extent possible. This environmentally sensitive area:

- i. Protects life and property by serving as a storm barrier;
- ii. Provides an important basis for a tourism industry that generates annual tourism industry revenue;
- iii. Provides habitat for numerous species of plants and animals that are important to the natural functioning of the beach and dune system, or that are threatened or endangered; and
- iv. Provides beach and dune system vegetation that is unique and extremely important to the vitality and preservation of the barrier island environment.





## 4.2 LOCAL GOVERNMENT AND AUTHORITIES

### 4.2.1 Municipality's Comprehensive Plan

The Town's first Comprehensive Plan was adopted in 1985. This was revised and adopted in 1990, 1996, 2000, and 2004. The plan was then rewritten and adopted in 2010 and was updated in 2012. The Comprehensive Plan is a continuing planning program for the physical, social and economic growth, development and redevelopment of the Island. The original 1991 Town Beach Management Plan was adopted as part of the Town's Comprehensive Plan. The plan approved in 2009 was a revision and update of the previous 1991 Beach Management Plan and was adopted as an Appendix to the Town's Comprehensive Plan.

Other Elements of the Comprehensive Plan promote protection and preservation of the beach and dune systems. The Natural Resources Element describes the Island's beach systems and coastal dunes, as well as the endangered, threatened and rare plant communities and species. It also lists goals and strategies for continued research and monitoring of natural resources; improvement of water quality and reduction of pollutants; development and implementation of a wildlife protection plan; continued land acquisition to further protect sensitive and endangered environments; creation of view corridors; promotion of environmental education programs; and incorporation of environmental protection into development projects. The Land Use Element describes goals and strategies for reduction of allowable density to ensure that development does not create adverse impacts on natural resources and encourages incentives and voluntary compliance with the 40 year setback zones. The Recreation Element provides strategies for park development and guidelines for the continued creation or expansion of public beach parks and beach accesses.

### Regional Planning Efforts

In 2006, the Town of Hilton Head Island adopted by resolution the Southern Beaufort County Regional Plan. In relationship to Beach Management, this plan recommended that the participating local governments adopt the same regulations, if possible. As part of the implementation of this plan, a regional Natural Assets Working Group was formed which compiled a list of baseline standards that should be adopted by the applicable participating local governments and also be made available to the region. These included such recommendations as uniform dune/dune system definition, protection of more than just the primary dune, protection of all dune plants, reasonable dune plant pruning, re-establishment of dunes systems by redevelopments, restriction of structures in dune systems and buffer areas, uniform lighting standards for protection of wildlife, and standards for violations. These recommended suggestions have been reviewed by the Regional Plan's Implementation Committee.



#### **4.2.2 Municipality's Hazard Mitigation Plan**

In 2004, the Town adopted the Beaufort County Hazard Mitigation Plan which replaced earlier mitigation plans. It was updated in 2009 and identifies natural hazards to the Island, contains a vulnerability assessment, and gives goals to continue periodic beach renourishment. A Disaster Recovery Commission was formed that worked on the implementation of the 2003 Recovery Plan. This Plan will be discussed in more detail below.

#### **4.2.3 Municipality's Disaster Preparedness and Evacuation Plan**

The Town developed a Post-Disaster Plan in 1991 to guide its citizens and post-disaster operations. The plan was incorporated into the Town's Comprehensive Plan in 1999. In 2003, the Town prepared a Comprehensive Emergency Management Plan (CEMP), which was updated in 2014. According to this plan, Recovery is defined as actions taken in the long term after the immediate impact of the disaster has passed to stabilize a community and to restore some semblance of normalcy.

The Town's Disaster Recovery Plan is designed to supplement the Town's Emergency Operations Plan – Basic Plan (EOP – Basic Plan), and identify agencies to provide assistance to disaster victims in conjunction with Federal, State and County governments and coordinate emergency recovery activities. This plan provides local emergency management personnel with operational guidance in order to effectively manage recovery activities in the aftermath of a major or catastrophic disaster or emergency. The Town works with all appropriate agencies, in advance of a disaster (if predictable) and after, to minimize potential injury and damage, and to expedite recovery and redevelopment.

The organization of the Town's recovery activities is consistent with the concepts of the Incident Management System (IMS) and Integrated Emergency Management System (IEMS). Storm recovery is divided into short-term phases, which begins during the response phase of an emergency and can last up to six months, and long-term recovery which focuses on restoring the community to pre-disaster condition or better. The Town's recovery activities and programs are grouped into 22 Recovery Functions (RF) including, Recovery and Redevelopment (RF1), Continuation of Government (RF3), Damage Assessment and Impact Analysis (RF 9), Emergency Permits and Inspections (RF 13), and Mitigation (RF 19).

In the event of a hurricane threat, the Town will activate all or part of the Town Emergency Operation Center (EOC).

#### **Cleanup**

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The purpose of the Debris Management Plan is to effectively manage debris generated by natural and man-caused disasters and contains the following policies:

1. First focus debris removal efforts on clearing of major transportation routes and roadways into damaged areas to allow for the movement of emergency vehicles, personnel, equipment and supplies.
2. Remove debris in affected areas to prevent the development and spread of vector-based epidemiological agents and general sanitation problems.
3. Conduct disposal activities with health and environmental concerns being the foremost consideration.

#### Maintaining essential services

The repair and restoration of public infrastructure, services and buildings after a disaster will be completed for the purpose of returning public infrastructure and the Town's services to pre-event levels or better. Restoration of utility services is critical to the success of both short and long-term recovery programs. Complete utility restoration could take months. Initial roadway clearance will push debris to the right-of-ways, providing access to underground cables. Restoration of the commercial power supply will be the pacing activity for reestablishing water and sewer systems, and the restoration of power will be passed by the clearance of debris along the transmission line rights-of-way.

Damage to transportation systems will influence the accessibility of disaster relief services and supplies. Restoration of transportation systems is designed to make sure that the Town (service, equipment, facilities, etc.) can facilitate the movement of emergency personnel, vehicles, equipment and supplies.

Restoration of electrical services and communication systems will begin as soon as major transportation routes are cleared of debris to allow emergency vehicles and crews to enter the disaster area.

#### Protecting public health

The Town will also work to identify the threats to public health during the recovery period and to provide remedies. It is the policy of the Town that the continuation of public health functions and control of environmental factors related to public health is essential following a disaster to prevent the outbreak of disease and to monitor the spread of vectors associated with the disaster itself.

#### Emergency Building Ordinances

After a disaster the Town will provide an emergency permitting plan to streamline the permitting process on Hilton Head Island, which will include coordination with DHEC OCRM regarding the permitting for reconstruction of any oceanfront structures. This process will include determining whether repair or



reconstruction of damaged structures will be allowed and under what conditions, coordinating and streamlining the Town's permitting processes, and implementing a system to verify that repairs/redevelopment comply with all applicable codes and laws.

### Mitigation

In 1999, the Town developed a Flood Hazard Mitigation Plan. It was one of the first mitigation plans in the nation to be officially incorporated into a Town's Comprehensive Plan—a concept now embraced by the American Planning Association through their *Planning Advisory Series*, and FEMA, through the *Disaster Mitigation Act of 2000 (DMA) regulations*. In 2004, the County joined with its municipalities to create the *Beaufort County Hazard Mitigation Plan*, which was adopted by the Town as part of its Comprehensive Plan. This Plan was updated in 2009 and outlines hazard identification, vulnerability assessment, community mitigation capability assessment, goals and objectives, and hazard mitigation projects and Action Plan.

As mentioned in this Plan, floodplain management and development policies and procedures are in good order and contribute to the Town's commendable Community Rating System (CRS) rating of 5, which provides a 25% reduction in the cost of flood insurance to the more than 30,000 policyholders. This represents an approximate annual savings of \$5.5 million.

### **4.2.4 Beachfront Development Regulations**

The Town's Land Management Ordinance (LMO) is a set of laws that regulate land use and development activity within the Town. It has several sections that regulate development activity on the beach and dune system.

Development review and site design standards for all development on Hilton Head Island are regulated in LMO Chapter 2, 3, 4, 5 and 6. This includes regulations on density, buffers, setbacks, aesthetics, landscaping, tree protection, wetland alteration, traffic circulation, open space standards, street and pathway standards, parking and loading standards, stormwater management standards, lighting, flood zone standards, fire protection water supply and utility standards.

Other local setbacks exist regarding adjacent use and adjacent street setbacks in LMO:

Chapter 5: Adjacent Use Setbacks (for Single family, Multifamily/Recreational, Institutional/Commercial, and Industrial/Utility) and adjacent street setbacks (Single family detached and other uses) in areas outside the beachfront PUD's are governed by Chapter 5 of the LMO. Required setbacks for development shall be determined according to the relationship of the proposed use to the existing contiguous use on each property adjacent to the development. For purposes of determining the appropriate setback distance where the adjacent property is vacant, it shall be classified as the use which would require the greatest setback



allowed by right in that district. As mentioned previously, the PUD's also contain their own adjacent use and street setback requirements.

One consequence of this setback restriction may be that the buildable area of a parcel of land is diminished. The State has attempted to overcome this limitation by adopting a policy encouraging buildings to be located as far landward as practical. However, once the local setbacks required by the Town and/or a local architectural review board are included, the buildable size of the parcel may be even further diminished. A local avenue of relief for landowners who find themselves in this dilemma exists in the form of a variance required from local setback requirements. The Town's Board of Zoning Appeals determines whether to grant the variance based on those findings dictated in the State enabling legislation which requires consideration of the Town's Comprehensive Plan and therefore the Beach Management Plan.

LMO Chapter 6: (Natural Resource Protection) contains regulations designed to promote the protection and stabilization of existing beaches.

Before development plan approval is granted, it must meet the following general standards:

- Will not result in the removal or diminution of the amount of sand, silt, shell, sediment or other geologic components of any beach, or interfere with natural patterns of wind and water movement of sand, silt, shell, sediment or other beach components, except for maintenance of any structures causing these effects which were existing prior to the enactment of this Title;
- Will not result in the direct discharge of stormwater onto any beach;
- Will not result in the discharge of treated or untreated sewage or other human waste from land or waterborne sources, with the exception of advanced treated effluent irrigation systems approved by the SCDHEC;
- Will not result in the direct or indirect removal, destruction, depletion or digging out of vegetation which contributes to beach stability;
- Will minimize any interference with the natural use of the beach for feeding, foraging, resting, nesting and breeding by indigenous and migratory birds, shellfish, marine fishes, sea turtles and other wildlife. Such interference shall include the destruction or diminution of organisms or material upon which wildlife feed;
- Will not interfere with the customary rights of the public for access to and use of the active beach; and
- Will not remove, alter or destroy any beach protection structure, such as walls or revetments, unless specifically authorized by an appropriate development plan approval or building permit.

#### **4.2.5 Regulations on Beach and Shoreline Protection**



The Town's Municipal Code defines a dunes system as one or a series of hills or ridges of wind-blown sand or one or a series of hills or ridges of sand resulting directly or indirectly from restoration or beach renourishment, all of which may or may not be anchored by vegetation (e.g., sea oats) and is in the vicinity of the beach. Damage to or development of this dune system is not in the public interest and would not be in accordance with retreat policies of the State of South Carolina and the Town of Hilton Head Island. Furthermore, the Town wishes to protect, preserve, restore, and enhance the beach/dune system for the protection of life and property so it acts as a buffer from high tides, storm surge, hurricanes, and erosion.

In 2006, Town Council adopted an amendment to the Municipal Code Title 8 which strictly regulated the South Forest Beach area by establishing a Critical Storm Protection and Dune Accretion Area along the beach between the State-mandated Setback Line and the actual line of habitable existing construction. The Town determined that dunes systems exist in this area between the OCRM Setback Line and the line of existing construction that could be developed. Therefore, in 2006, Town Council adopted a Resolution and Ordinance to create and define the Landward Barrier Line, define and designate a Critical Storm Protection and Dune Accretion Area and Transition Area, and limit the type of construction activities within these areas. These provisions were expanded and ultimately incorporated into the Town's Land Management Ordinance natural resource protection requirements referenced above when it was rewritten as the CPA-O and TA-O overlay zoning districts that help to protect the dunes and oceanfront properties by protecting the dunes and limiting the intensity of uses in these areas, which are included as an appendix to this plan.

The activities and uses permitted and prohibited in the CPA-O District are as follows:

All development is prohibited in the CPA-O District except the following permitted uses and activities:

- Boarded pathways as perpendicular to the beach as practical and not larger than six feet in width and their associated wooden deck not larger than 144 square feet (must comply with Sec. 16-6-103, Beach and Dune Protection);
- Beach renourishment;
- Emergency vehicular beach access; and
- Permitted beach maintenance activities such as sand fencing, re-vegetation with native plant material and erosion control.
- All activities and uses in the CPA-O District must also comply with all current local, State and federal laws.

The activities and uses permitted in the TA-O District are as follows:



- In addition to the activities and uses permitted in the CPA-O District (see Sec. 16-3-106.L.3), the TA-O District may include any uses that do not require enclosed space to operate. These activities and uses include, but are not limited to, swimming pools, boardwalks, fire pits, decks, required drainage improvements, and necessary utilities.
- The activities and uses in the TA-O District shall be located as far landward as possible. Activities or uses in the TA-O District shall be accessory activities or uses to the development to which they are directly seaward.
- Development in the TA-O District shall conform to the standards for impervious cover and open space for the underlying base zoning district.
- Activities or uses in the TA-O District shall not be on or in any part of a dune or dune system.

#### **4.2.6 Other Regulations on Beach Management**

Chapter 6 of the LMO also describes general standards, beach nourishment and erosion control standards, beach access standards, and dune protection standards.

- Standards for beach nourishment and erosion control detail requirements for fill materials; the use of natural features of the beach and dune system over artificial structures; limited approval of erosion control structures; interference with existing or planned public access to the beach; and timing of beach nourishment or construction of control structures.
- Beach access standards regulate elevated walkways; vehicular access to the beach; general public interest in development applications (such as the need for land acquisition for public use); and prohibitions on development adjacent to the beach that would cause net loss of any officially designated beach access. Beach access will be discussed later in more detail.
- Dune protection standards prohibit development on dunes with certain exceptions; prohibit primary dune destruction, disturbance or alteration with exceptions; restrict elevated walkways; allow vegetation planting and construction of wood, sand and wire fences; and prohibit removal, alteration or destruction of any dune protection structure. It also outlines when restoration or stabilization of existing dunes and creation of new dunes may be required for new developments and redeveloping properties.

Title 8 of the Town of Hilton Head Island Municipal Code is the Town's Beach Ordinance. It covers activities which are prohibited or regulated on the beach, defines Designated Areas, and regulates enforcement. In order to ensure the public health, safety and welfare of individuals using the beach, the following activities are regulated or prohibited by the Town's Municipal Code:

- Prohibited: vehicles, para-sailing, glassware, horses on the beach, interfering with marine life and wildlife, indecent exposure, disorderly conduct, unauthorized wearing of lifeguard emblems, littering, possession or consumption of alcoholic beverages, and open containers.



- Regulated: operation of motorized watercraft, sand sailing, kites, sleeping on the beach, animals, shark fishing, fires, firework discharge, disturbing the public peace, and franchising commercial activities on the beach.

In addition, the Town contracts with two organizations for beach safety; the Beaufort County Sheriff's Office to provide law enforcement and security on the beach and Shore Beach Services to provide a patrol boat and rescue jet skis, life guards (9:00 a.m.-5:00 p.m. from Memorial Day weekend through Labor Day weekend), litter patrol, and beach rental items (chairs, umbrellas, paddleboats, sailboats, fun cycles, sailboards, etc.) Beach markers were also installed as part of the Sea Turtle Program every 0.1 miles along the beachfront. These markers are used to help identify beach access points.

The Town of Hilton Head Island is proactive on educating the public on the accessibility of its beaches. This includes information on access locations, parking rules, swimming areas, beach rules, pathways, and beach renourishment. In addition, the Town's Facilities Management Division operates and maintains the beach parks, including overseeing contracts for life guards, boat rentals, and litter patrol; collecting beach fees; park security; and public relations. Kiosks are being installed at several parks, and beach rule signs have been posted at every public access point. In addition, South Carolina Department of Transportation signs assist in directing beach-goers to the various parks.

Brochures and other information locations produced or funded by the Town include:

- Island Pathways Brochure
- Island Parks Brochure
- Beach Renourishment Brochure
- Resident and Visitor Guide to Hilton Head Island's Beaches
- EcoMap (funded with Southeastern Ecological Institute)
- Sea Turtle Information Brochure
- Website [www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

## 5 - EROSION CONTROL & MANAGEMENT

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When the Town was incorporated in 1986, the need for a beach management strategy was also identified. A Shore Protection Task Group was created, along with a semi-annual beach monitoring program. The beach monitoring results revealed areas of highly erosional shoreline and sediment deficits that placed upland areas at risk along certain areas of the beach. The Town evaluated alternatives including no action and encouraging individual property owner's to protect their properties from potential beach erosion impacts. This led to the identification of an initial program philosophy of restoring and maintaining the entire beach system with a comprehensive approach and a program was developed by the Town that included comprehensive beach restoration, comprehensive beach monitoring, strategic use of shoreline



stabilization structures to improve performance/increase longevity of beach nourishment, use of near-island sand sources, as available, and attempts to control seaward advancement of development and protect beach/dune resources. The benefits of this program include:

- Recreational – Provides/maintains recreational amenity for visitors and residents of the Island.
- Storm/Erosion Protection – Provides/maintains buffer between the ocean and upland.
- Environmental – Maintains beach habitat for turtles, birds, etc.
- FEMA Benefits – Can help decrease storm damage.

This program has been highly successful. The performance of nourishment projects has far exceeded program expectations and there have been island-wide improvements in beach and dune conditions.

**FIGURE 18: HILTON HEAD ISLAND BEACH EROSION NEAR PORT ROYAL SOUND**



## 5.1 SHORELINE CHANGE ANALYSIS

The Beachfront Management Act defines three types of shoreline zones. A standard erosion zone is a segment of shoreline which is not directly influenced by the inlet or associated shoals. An unstabilized inlet erosion zone is a segment of shoreline along or adjacent to a tidal inlet which is directly influenced by the inlet and its associated shoals and which is not stabilized by jetties, terminal groins or other structures. A stabilized inlet erosion zone is a segment of shoreline along or adjacent to a tidal inlet which is directly influenced by the inlet and its associated shoals and which is stabilized by jetties, terminal groins or other structures.



In accordance with the Beachfront Management Act, Hilton Head Island is divided into 3 inlet erosion zones and 2 standard erosion zones. These zones are defined and described from south to north according to the numbering system of the State's beach monitoring network. The location of each monitoring monument and zone designation is shown in Figure 19 - Beach Control Monuments & Erosion Rate Zones. Each of the inlet zones are unstabilized by terminal groins, jetties or other types of shoreline armor.

### **5.1.1 Beach Profiles**

There are 45 beach monitoring stations on Hilton Head Island that were surveyed in March 2014. Stations 1400-1406 show a low-lying dune field hundreds of feet wide at the southwest end of the island. Profiles at stations 1409-1436 in Sea Pines and South Forest Beach show a well-established dune field, with crests of 12-15 ft., and a wide high-tide sand berm. Stations 1437-1448 in North Forest Beach and Shipyard Plantation exhibit a similar beach profile with a wide beach and a dune crest peaking at 15 ft. At stations 1451 and 1454 in the southern end of Palmetto Dunes, the dune field becomes even wider, and stations 1456-1466 in the remaining section of Palmetto Dunes also have a mature dune field and wide dry-sand beach. In many places three distinct rows of sand dunes have formed seaward of the oceanfront houses. Stations 1468 and 1469 at Singleton Beach and also station 1472 on the other side of The Folly at Burkes Beach all have a wide dune field and dry-sand beach.

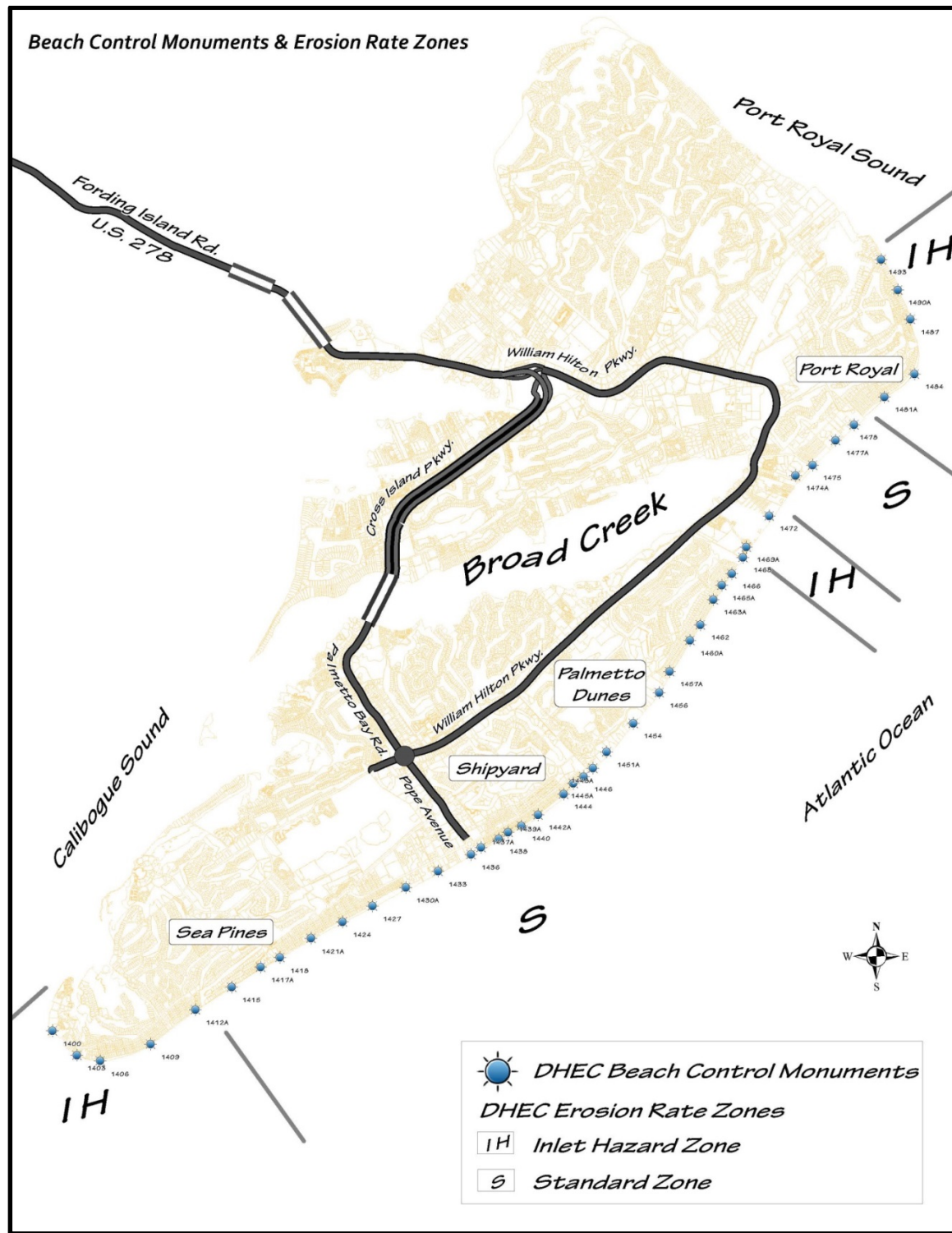
Stations 1474-1478 are located on Bradley Beach and Folly Field Beach. At stations 1474-1477 the dune field remains wide but becomes narrower and flatter at station 1478. The area to the northwest, where stations 1481 and 1484 are located in Port Royal Plantation, became highly erosional around 10 years ago. At that time an offshore sand shoal called Joiner Bank had dissipated, resulting in higher-energy waves reaching the shoreline and causing extreme erosion. The Town of Hilton Head Island responded to this situation by constructing a groin and a beach renourishment project here in 2011. The project has stabilized the beach, and the most recent profile data shows a 300-ft wide shelf of dry sand seaward of the vegetation line.

Stations 1487-1493 are located in Port Royal Plantation, along the Port Royal Sound shoreline up to Fish Haul Creek. Profiles here show a wide beach with a low-lying dune field, and the offshore portion of the profiles also show massive sand bars associated with the channels of Port Royal Sound. Station 1496, on the inland side of Fish Haul Creek, is far enough into Port Royal Sound to be out the state's beachfront jurisdiction. This is a typical estuarine shoreline, with a minimal sand beach.

Beach profile and volume over time graphs for representative monuments of each erosion zone are provided in Figures 20-27.

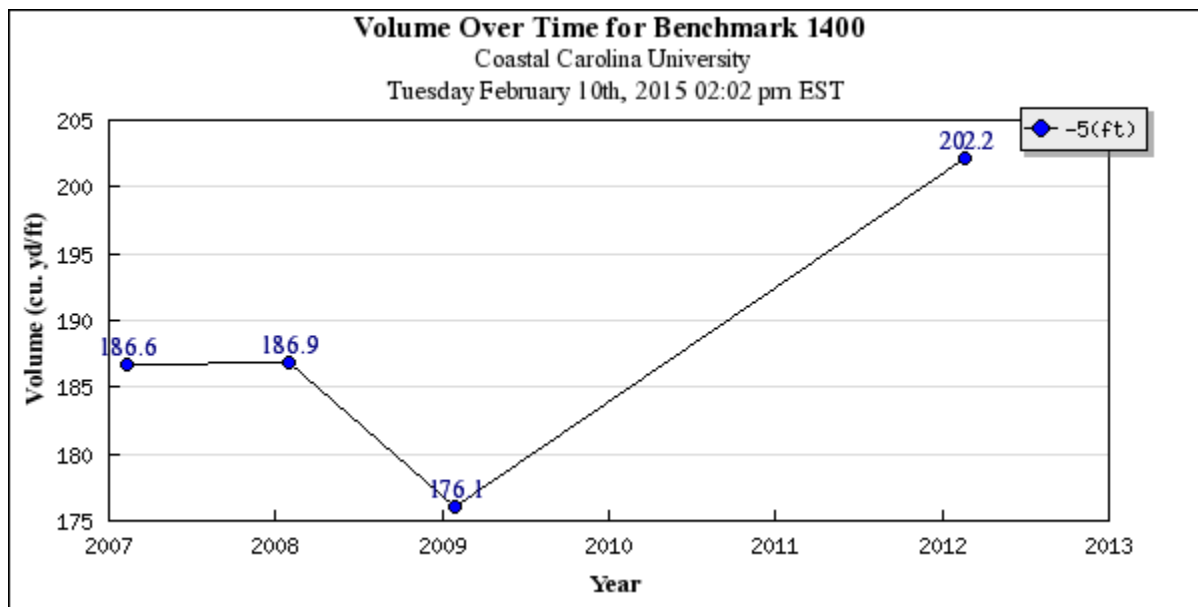
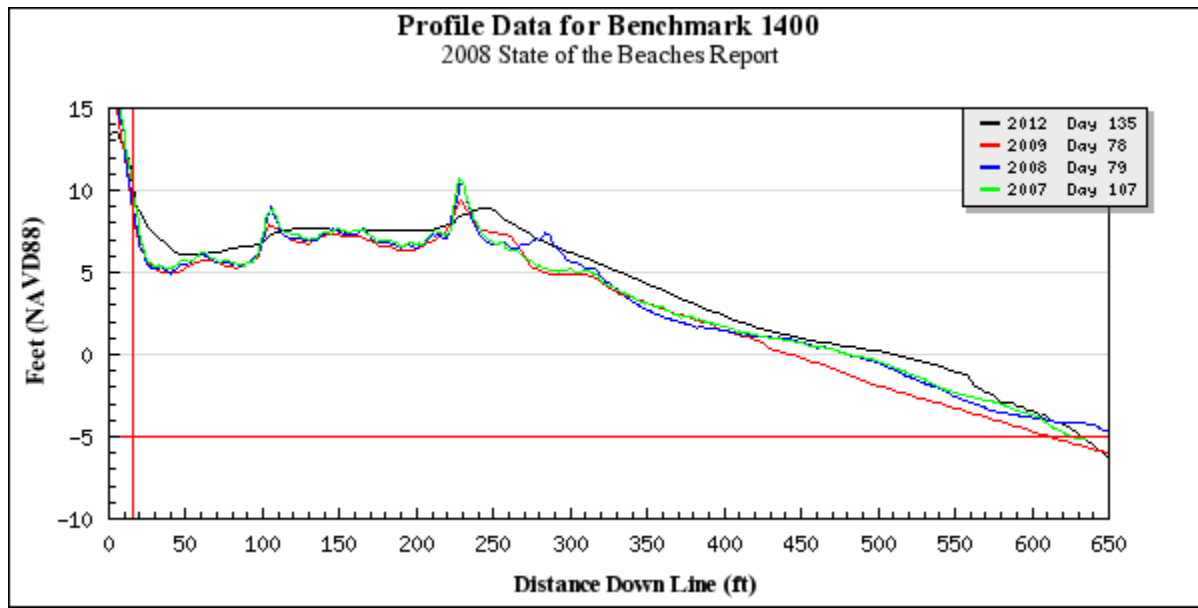


**FIGURE 19 - BEACH CONTROL MONUMENTS & EROSION RATE ZONES**



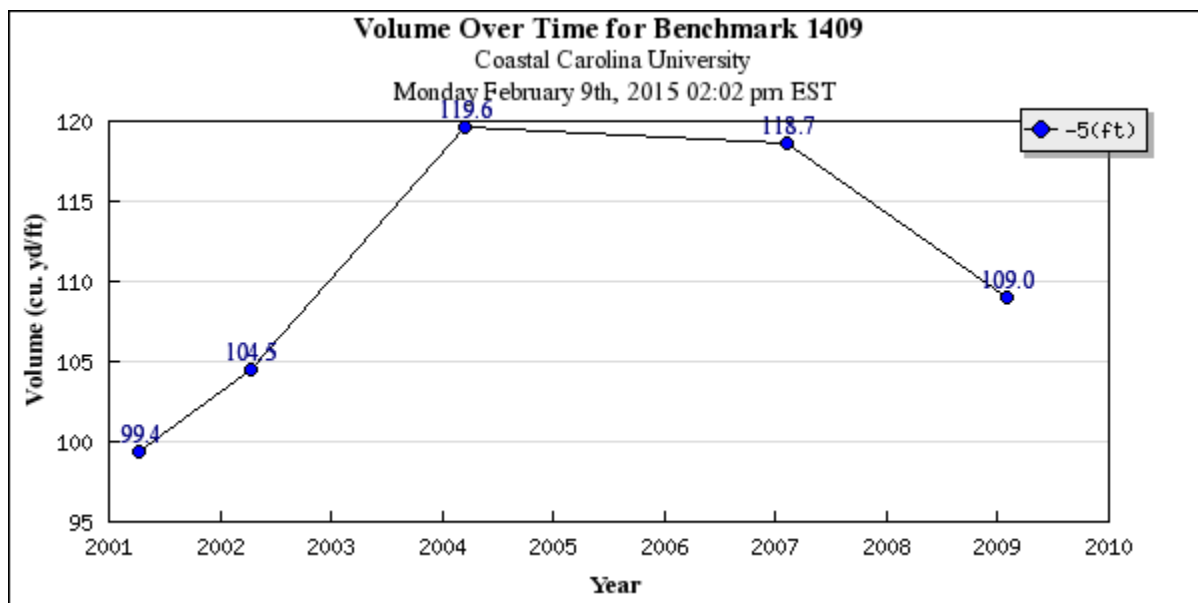
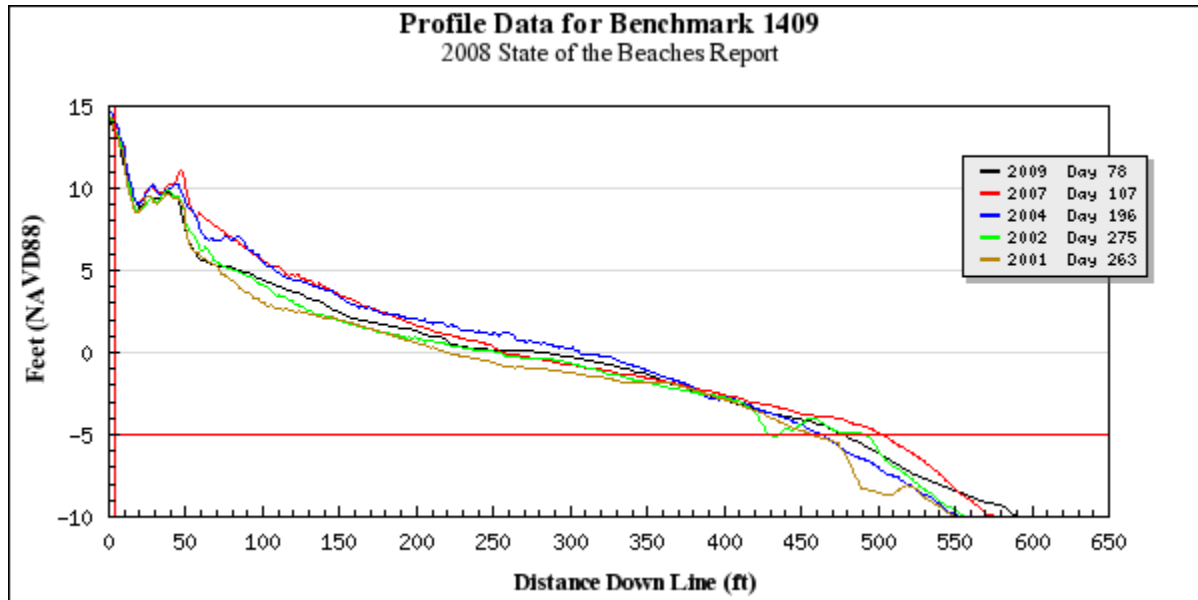


**FIGURE 20: BEACH CONTROL MONUMENT 1400**



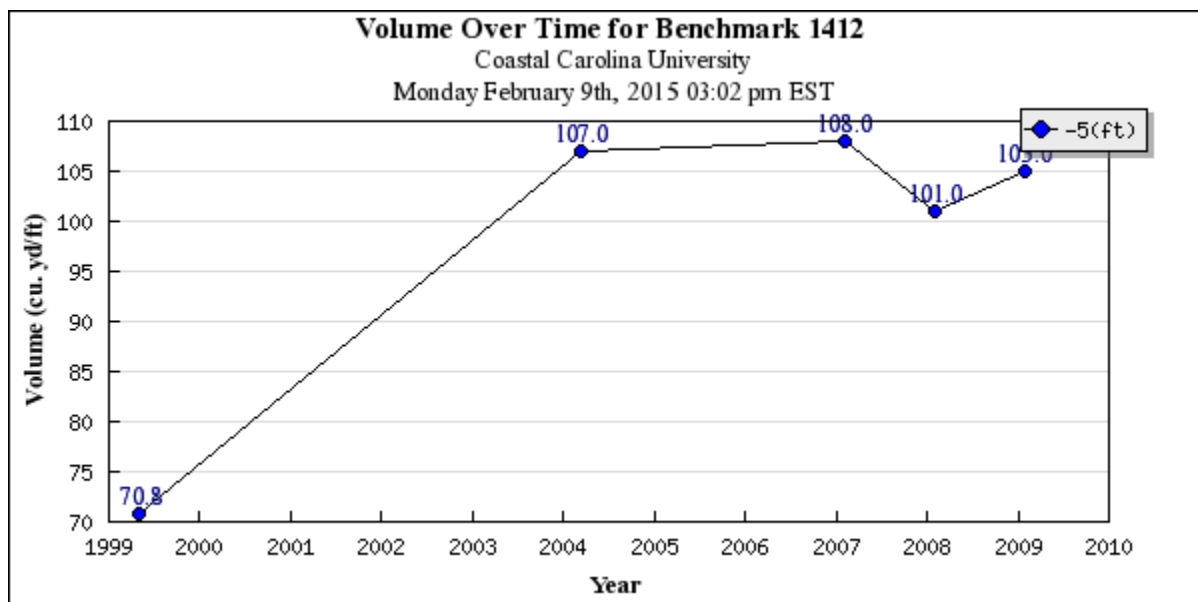
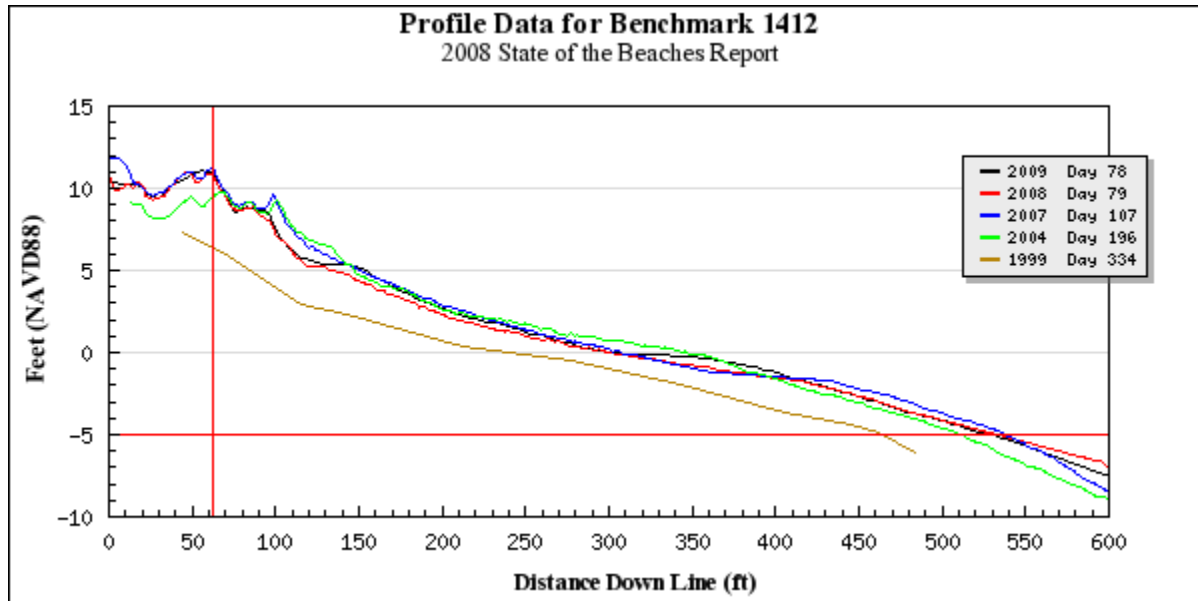


**FIGURE 21: BEACH CONTROL MONUMENT 1409**



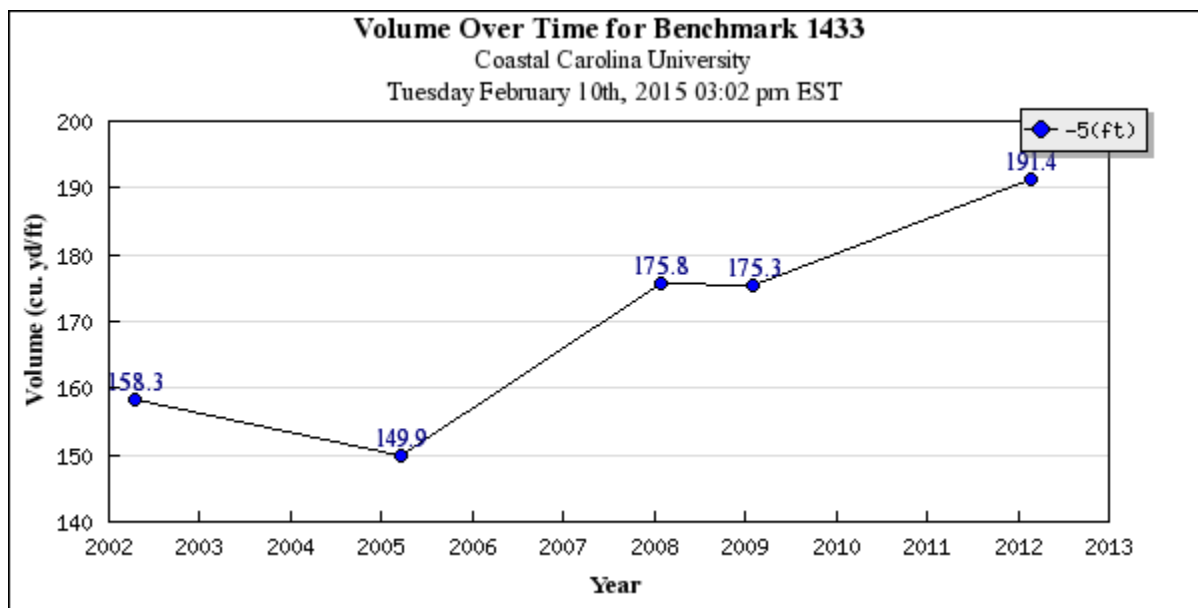
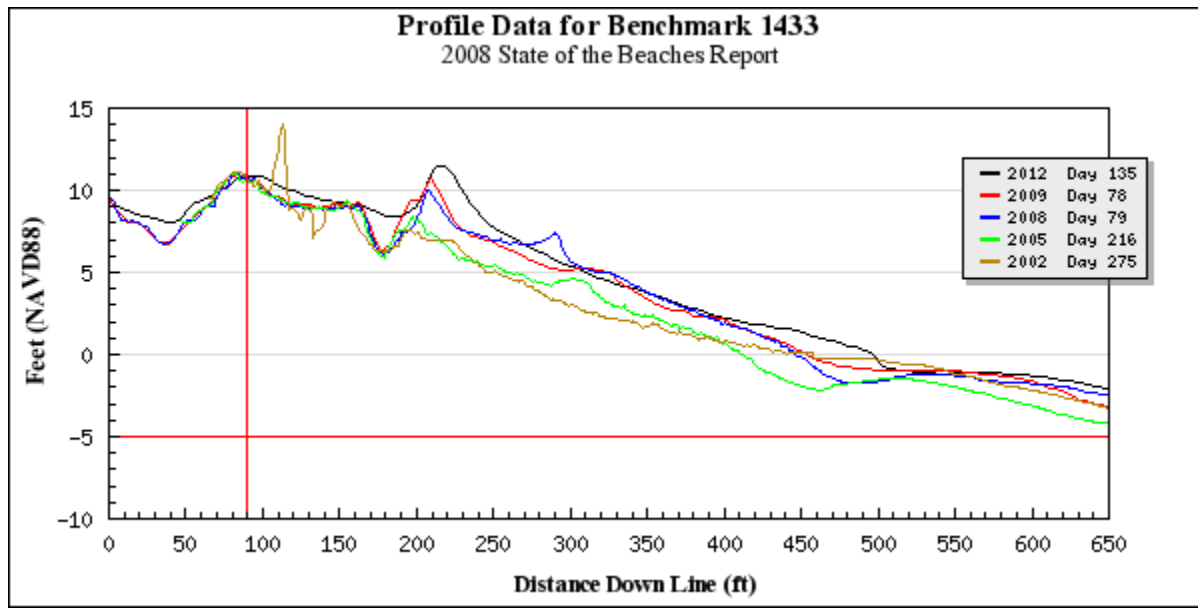


**FIGURE 22: BEACH CONTROL MONUMENT 1412**



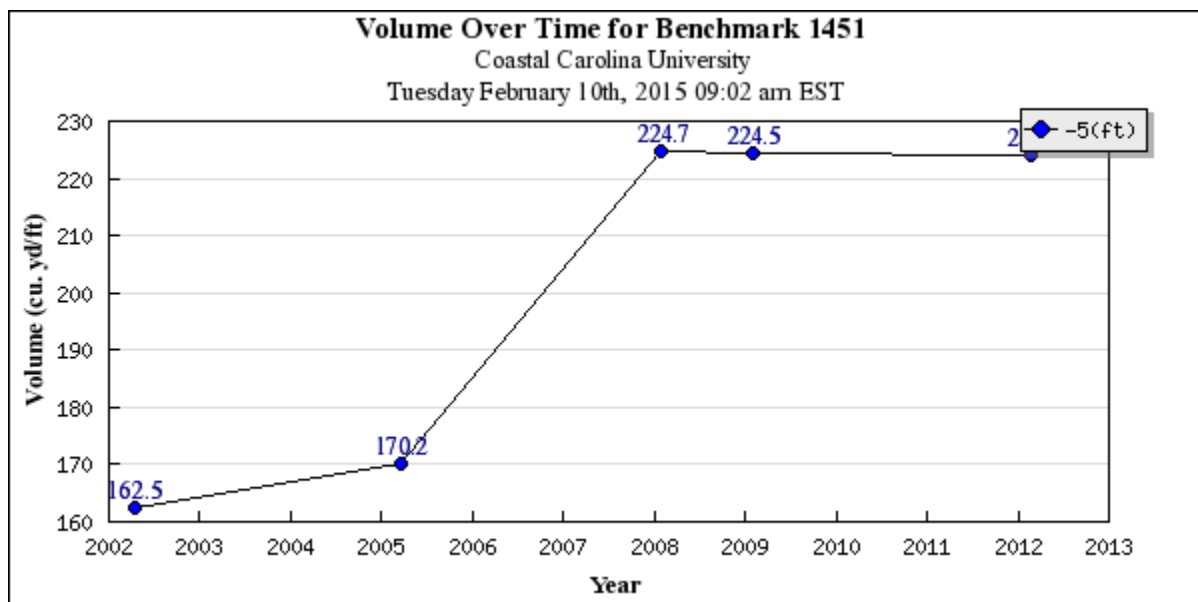
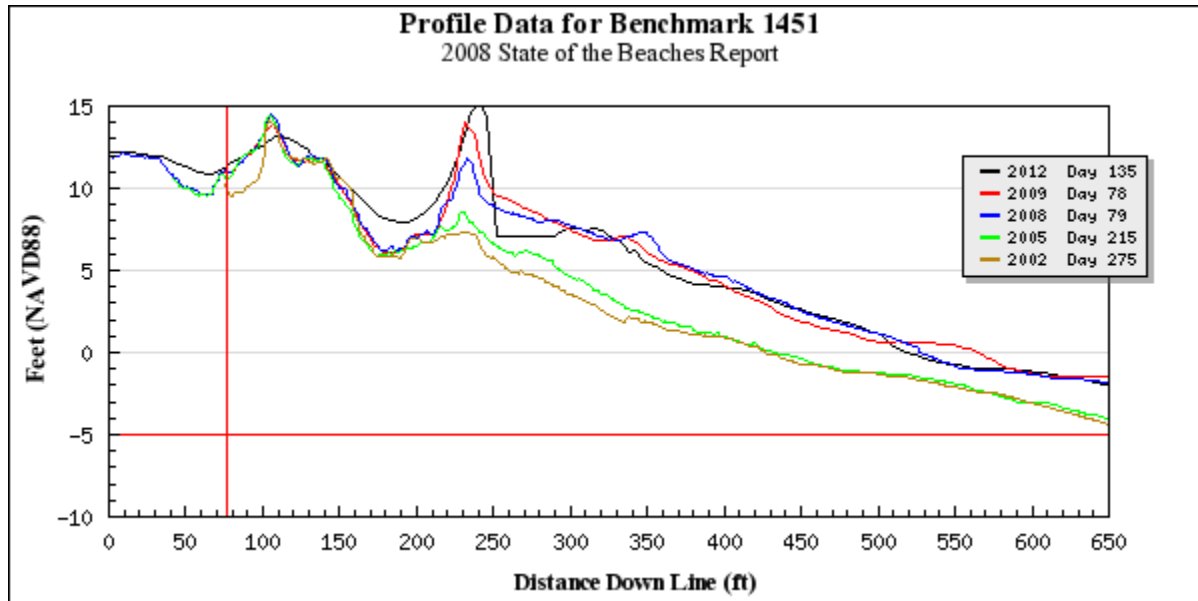


**FIGURE 23: BEACH CONTROL MONUMENT 1433**



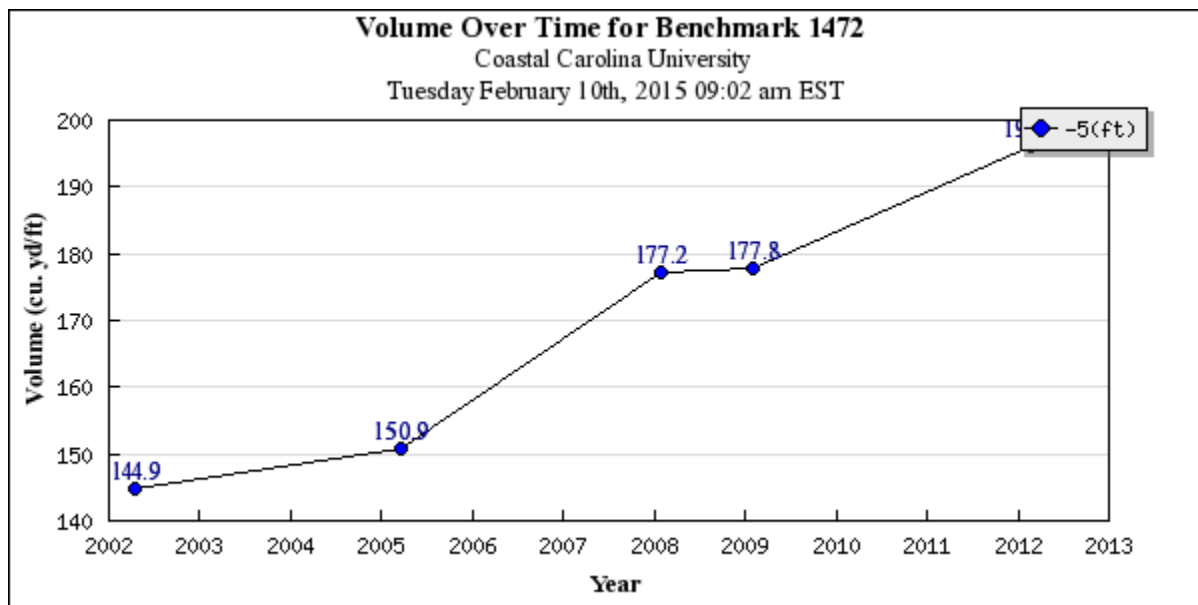
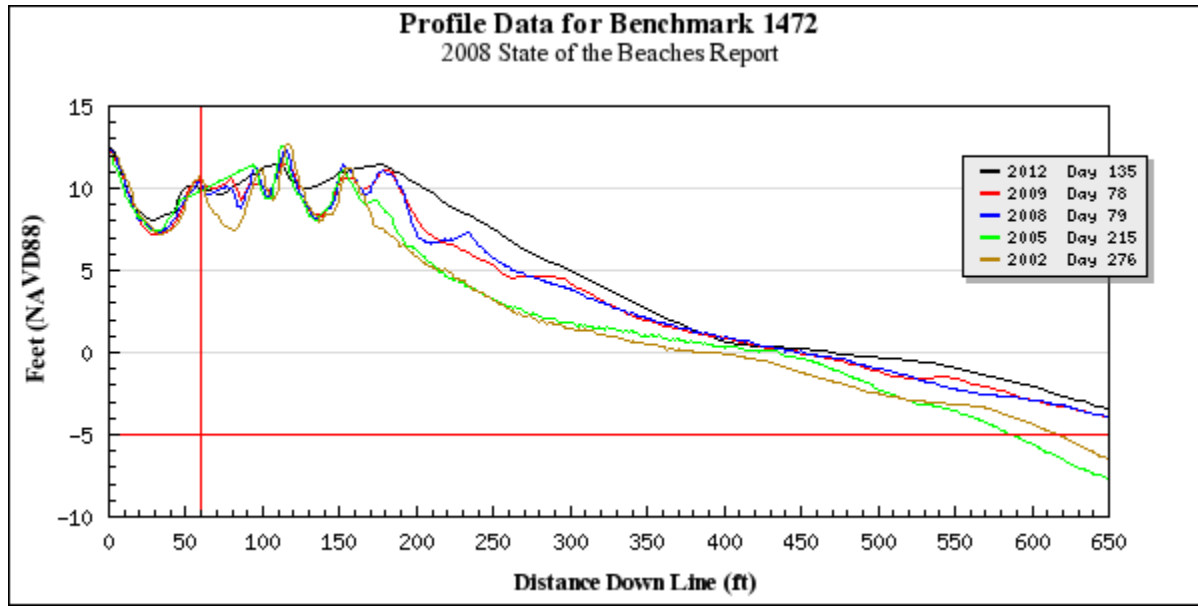


**FIGURE 24: BEACH CONTROL MONUMENT 1451**



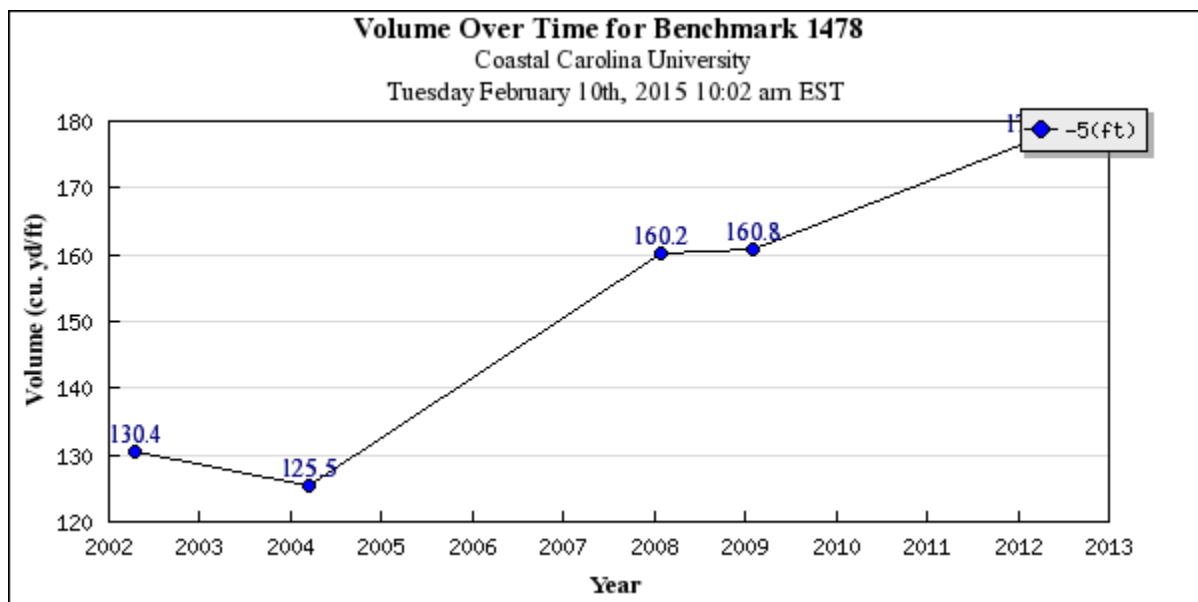
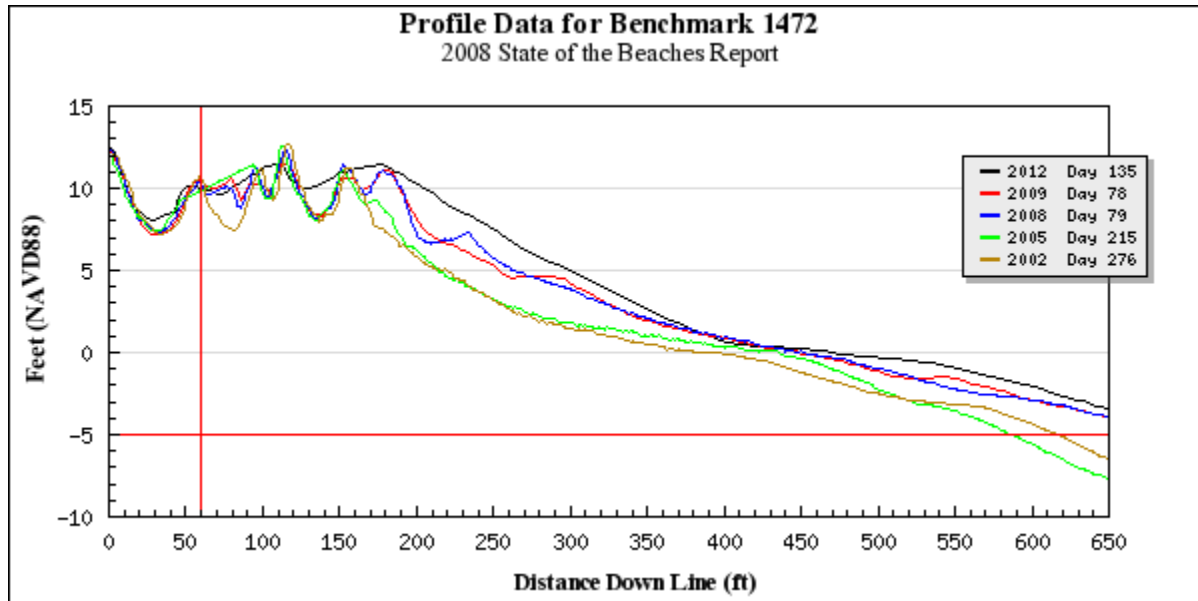


**FIGURE 25: BEACH CONTROL MONUMENT 1472**



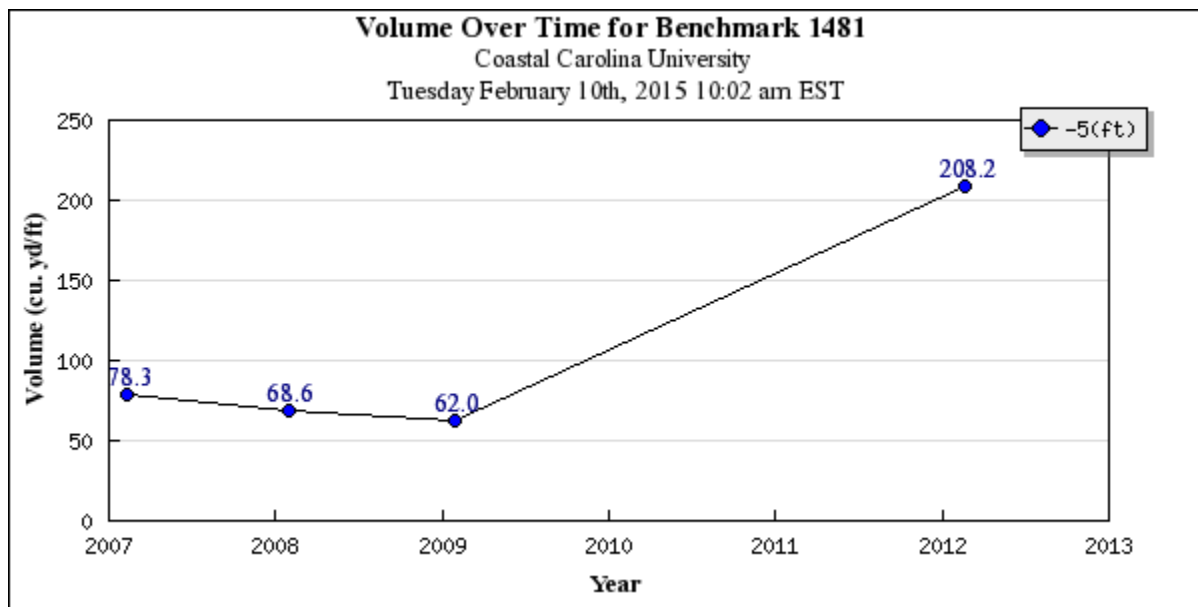
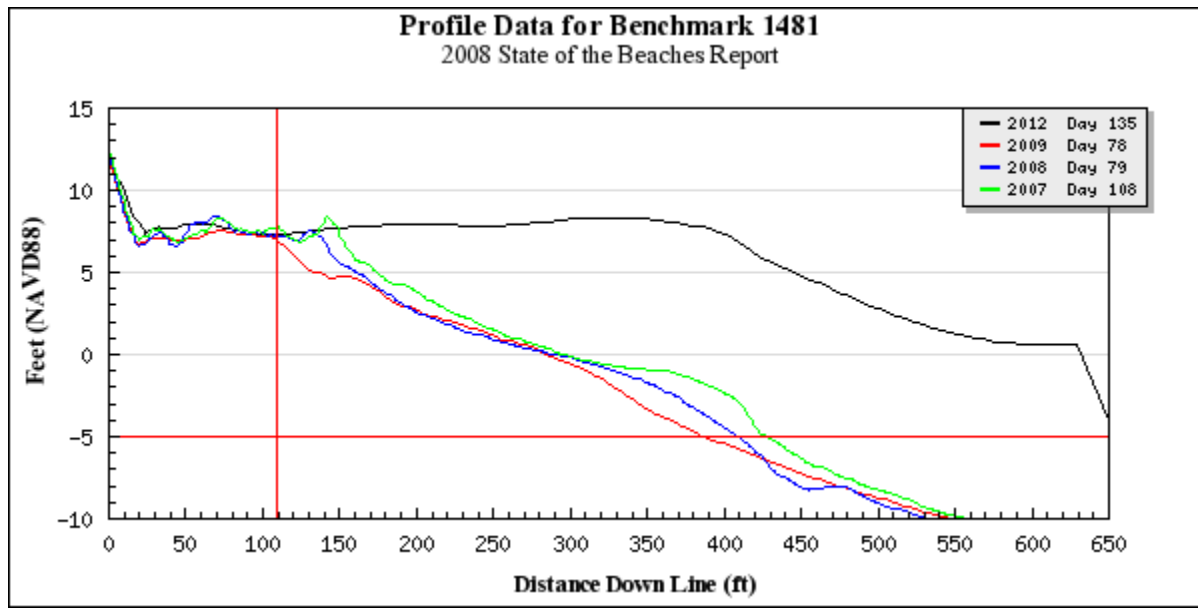


**FIGURE 26: BEACH CONTROL MONUMENT 1478**





**FIGURE 27: BEACH CONTROL MONUMENTS 1481**





### **5.1.2 Long Term Erosion Rates and Shoreline Change**

Hilton Head Island can be divided into five geomorphologic reaches, which are each discussed below:

The portion of Sea Pines Plantation bordering on Calibogue Sound is an unstabilized inlet zone, subject to the influence of the Sound and tidal processes. This section of shoreline is historically accretional.

The second zone on Hilton Head is a 10 mile-long standard zone that extends from station 1412 in Sea Pines Plantation to station 1469 just south of the Folly. This area includes South Forest Beach, North Forest Beach, and Palmetto Dunes. Long-term shoreline change rates vary in this zone. They are generally accretional for the area south of Coligny Circle and also north of Coligny Circle up to Lark St. Beyond Lark Street the beach becomes erosional up to Singleton Swash, with the rate of erosion increasing with distance from the Circle and reaching a maximum of -7 ft. per year in Palmetto Dunes.

The third zone on Hilton Head is a 2,200-ft long unstabilized inlet zone, located on either side of the Folly. Stations 1468, 1469 and 1472 are the monitoring stations in this reach, which historically was very dynamic because of the inlet channel. However, a small jetty constructed on the south side of the Folly in 1997 has helped stabilize this region. Long-term erosion rates here are around -6 ft. per year.

The fourth zone is a 1.3 mile-long standard zone that extends from just north of Burke's Beach Road to the Westin Hotel and includes stations 1474 through 1478. Long-term shoreline change rates here are stable to -3 ft. per year of erosion.

The fifth zone is an unstabilized inlet zone that includes all of the Port Royal Plantation shoreline. Survey stations 1481 through 1496 are located here. Stations 1481 and 1484 on the Atlantic Ocean shoreline are accretional on decadal time scales, but experienced extreme erosion in recent years. A new groin was built here in 2011 to stabilize the beach. Stations 1487-1496, on the Calibogue Sound shoreline, have long-term erosion rates of -1 to -5 feet per year.

The long-term erosion rates adopted by the State are shown in Table 5.



**Table 5:**  
**2015 Annual Erosion Rates for Current Beachfront Baseline**  
**DHEC-OCRM,**

Station	Erosion Rate (ft./yr.)	Station	Erosion Rate (ft./yr.)	Station	Erosion Rate (ft./yr.)	Station	Erosion Rate (ft./yr.)
1400	20.80	1433	3.90	1454	-4.76	1475	-1.71
1403	11.29	1436	3.71	1456	-5.45	1477A	-0.59
1406	10.43	1437A	3.58	1457A	-5.94	1478	0.69
1409	S/A	1438	2.99	1460A	-6.17	1481A	0.69
1412A	S/A	1439A	2.89	1462	-6.69	1484	1.94
1415	S/A	1440	2.30	1463A	-6.59	1487	-0.36
1417A	S/A	1442A	0.89	1465A	-6.33	1490A	-0.33
1418	S/A	1444	-0.95	1466	-6.23	1493	-2.00
1421A	S/A	1445A	-1.80	1468	-5.84		
1424	2.20	1446	-2.30	1469A	-5.64		
1427	3.97	1448A	-2.76	1472	-4.69		
1430A	4.17	1451A	-3.02	1474A	-2.72		

## 5.2 BEACH ALTERATION INVENTORY

Although the Town's preferred approach to shoreline stabilization is beach renourishment, historic efforts to stabilize the Island's shoreline have resulted in structures being installed by various entities at six locations along the Island's shoreline.

### Existing Shoreline Stabilization Structures

#### *South Beach Groins:*

Seven shore-stabilizing structures presently exist along the southern extremity of the Island within Sea Pines. Six of these structures constitute the groin field found along South Beach's ocean-facing shoreline, while the seventh structure is a terminal groin commonly called the Land's End Groin, located immediately adjacent to the Braddock Cove tidal creek. These structures were installed during the late 1960's and 1970's by Sea Pines Company.

#### *North Forest Beach Armoring:*

In conjunction with the development of this residential area in the 1960's and prior to the adoption of the S. C. Beachfront Management Plan and DHEC OCRM setback line in the 1980's, over a mile of various forms of armoring was constructed along the North Forest Beach shoreline by property owners. Typical types of armoring ranged from walls, to granite rip rap and concrete rubble, most of which was placed in



an undesigned fashion on an as-needed basis. As a result of the Town's renourishment efforts, this zone of shoreline hardening has been effectively isolated from normal day to day wave and tide impacts by beach fill projects conducted in 1990 and 1997. Since the section of central Hilton Head Island shoreline extending from North Forest Beach to the present day Marriott Hotel naturally experiences the most erosional stress, it is deemed to be an important trigger for beach restoration activities.

*Marriott Hotel Sloping Concrete Revetment with Seawall:*

The existing Marriott Hotel complex (formerly the Hyatt Hotel) is an example of the placement of a major habitable shorefront structure at the natural dividing point along Hilton Head Island's littoral system. A massive sloping concrete revetment with seawall was constructed in conjunction with and upland of the original project, clearly acknowledging that the hotel complex would be subjected to wave and tide impacts. However, what may not have been realized was the magnitude for potential chronic shoreline recession at that location. A Littoral Transport Study of the island's oceanfront shoreline (Olsen, June, 1996) confirmed that the natural dividing point for littoral transport lies in the vicinity of the hotel and that phenomenon has been partially responsible for increased background erosion rates measured at that location. Although two previous beach renourishment projects have overtly sought to both reduce erosion vulnerability at the Marriott hotel site and to maximize post-construction beach widths sufficient to address high intensity recreational demand, it is recognized that a comprehensive solution is neither practical nor cost-effective seaward of the hotel complex. It is acknowledged that erosion of this area will occur faster than other areas along the shoreline; however due to the specific nature of this area, such an occurrence will not be used as the trigger for a large scale renourishment, like erosion in the North Forest Beach area.

*Folly Terminal Groin:*

A relatively short rock terminal groin was built along the west side of the small tidal inlet known as the Folly, as part of the 1997 renourishment project. The primary purpose of the structure was to allow beach restoration operations to occur in close proximity to the Folly (westward of the inlet only) without increasing the probability of closure due to project induced shoaling. DHEC OCRM permits for beach nourishment on Hilton Head Island, require that the Folly "must be kept in an open and flowing condition" since the tidal inlet is connected to a small isolated estuarine area deemed to be an important environmental resource. Accordingly, maintenance of the groin structure at its current location and approximate existing configuration is an important mechanism for minimizing fill impacts at this location of the island. Conversely, the eastern limit of the Folly has remained unstabilized and beach fill operations at that location are not allowed to encroach toward the inlet.

*Port Royal Plantation Groin Field:*

Along the Port Royal Shoreline, 17 shore perpendicular groins and two shore parallel rock revetments were constructed between 1969 and 1974. The 17 groins were constructed of varying mixes of small, medium and large granite stone. Some groins included concrete rubble. The two remaining groins, located



at the southeastern most section of the Port Royal Sound shoreline, were constructed of palm tree trunks combined with granite stone. It is estimated that these two structures were constructed around 1960. The groins' lengths vary from about 100 to 600 feet and the spacing between groins varies from approximately 165 to 850 feet.

*Town/SPA Breakwaters:*

As part of the 2006 Beach Renourishment Project, a new section of Port Royal Sound facing shorefront received limited beach fill to the northwest of Fish Haul Creek. As a complement to the small sand fill, six small rock detached breakwaters were constructed seaward of the limits of sand placement. The purpose of the rock breakwaters is to extend the life (and performance) of the very small isolated fill project. The structures are likewise intended to reduce sand migration from the fill towards Fish Haul Creek. Subsequent to rock placement, marsh vegetation was planted in the lee of each structure to further encourage long term natural stabilization along this shoreline which is at the transition point from sandy beach to an estuarine environment. It should be noted that this shore stabilization project is not located within the DHEC OCRM Beach/Dune Critical Area, but serves to more evenly distribute beach access points throughout the Island.

*Town/Port Royal Groin:*

A new section of Port Royal Sound facing the Atlantic shorefront received limited beach fill and a 700 foot long rubble mound terminal groin at the northeastern end of the project. The groin is low crested and mostly buried. The purpose of the rock breakwaters is to extend the life (and performance) of the small isolated fill project.

### **Beach Renourishment**

In 1980, United States Army Corps of Engineers (USACE) issued a permit for the deposition of 300,000 cubic yards of sand along approximately 14,000 linear feet of the beach to Sea Pines Company. The renourishment sand was transported from the permitted dredging project of Shelter Cove Marina, located mid-island on Broad Creek, as a result of its compatibility with existing beach front sand. A Palmetto Dunes Resort project was the only renourishment project on Hilton Head Island permitted by the USACE and certified by the South Carolina Coastal Council prior to 1990, and predates the incorporation of the Town.

In 1990, the Town of Hilton Head Island undertook a nourishment project that was jointly funded by the State and the Town. This project involved the placement and contouring of as much as 2.5 million cubic yards of compatible sand along 35,000 linear feet of the beach. This renourishment project covered an area of the beach from just north of the Westin Hotel to south of Coligny Circle, with a small area excluded around the Folly. The sand was excavated and placed by hydraulic dredge from two offshore borrow sites located at Joiner and Gaskin Banks.



In 1997, the Town performed another renourishment project located very similarly to the 1990 project; however, this project addressed an additional 1.5 mile segment along Port Royal Sound, the reconfiguration of a tidal channel and the installation of sand fencing and native vegetation to encourage dune formation and stabilization.

In 1999, another renourishment project was permitted for emergency work to renourish along the South Beach shoreline as the preferred solution to the localized erosion problem which was occurring at that time. This fill was placed over the South Beach groin field rather than maintaining the structures themselves.

In 2007, the Town finished a \$16.6 million project that was similar to the projects constructed in 1990 and 1997, with the exception of certain design refinements near the Marriott and along North Forest Beach. In addition, the Town elected an area near Fish Haul Creek along the shoreline of Port Royal Sound due to chronic erosion. This project placed about 2 million cubic yards of sand along 6.6 miles of Atlantic shorefront, from just south of Coligny Circle to just north of the Westin Hotel at Port Royal Plantation, 85,000 cubic yards of sand along 2,000 feet of the Port Royal Sound shoreline north of Fish Haul Creek at the Spa, and 42,000 cubic yards of sand along 1,500 feet of Atlantic Shorefront at South Beach. As with previous projects, the nourishment sand was excavated by hydraulic dredge from two offshore shoal features.

The 2011-12, beach renourishment project was a smaller scale project that built up the beach from just north of The Westin Resort to the Beach House in Port Royal Plantation. The 9.8 million dollar project included two principal parts: The placement of about 1.0 million cubic yards of sand along 1.0 miles of Atlantic shorefront and the construction of a 700 foot long rubble mound terminal groin at the northeastern end of the project. The groin is low crested and mostly buried.

The 2016 beach renourishment of the Atlantic oceanfront shoreline is expected to be similar to the projects constructed in 1990, 1997 and 2006 and is estimated to cost over \$20 million dollars, will also include sand placement along localized portions of previously restored shoreline in Port Royal Plantation and the area just north of Fish Haul Creek on Port Royal Sound.

The planned 2016 renourishment project will include four principal parts:

1. Placement of about 1.3 million cubic yards of sand along 5.5 miles of Atlantic Ocean shorefront from just South of Coligny Circle to The Folly tidal inlet at Singleton Beach,
2. Placement of about 0.5 million cubic yards of sand along 7,000 feet of the Atlantic Ocean and Port Royal Sound shorelines in northern Port Royal Plantation,
3. Placement of about 0.3 million cubic yards of sand along 5,000 feet of Atlantic Shorefront in southern Sea Pines near South Beach, and



4. Placement of up to 60,000 cubic yards of sand along 2,400 feet of the Port Royal Sound shoreline north of Fish Haul Creek in the vicinity of the Fish Haul Park, Mitchelville Beach Park and The Spa of Port Royal.



**FIGURE 28: 2016 BEACH RENOURISHMENT MAP**



**FIGURE 29: PRE-1990 SHORELINE AND 2006 PROJECT COMPLETION**



### 5.3 EROSION CONTROL ALTERNATIVES

Since about 1986 a fundamental tenet of the Town’s beach management strategy is that reliance upon “hard” structures should be minimized. Prior to the initiation of beach restoration through nourishment, different types of hard structures implemented for shore stabilization by the private sector (*i.e.* homeowners, developers, hotels, P.O.A.’s, etc.) have typically consisted of structures such as groins and seawalls or bulkheads. For the purpose of evaluation, two basic types of shoreline stabilization techniques have been considered: hard and soft shoreline treatments. In 2005, Olson and Associates prepared a white paper on shoreline stabilization structures that included the following evaluation of alternatives for both “hard” and “soft” erosion control techniques.

“Armoring consists of shoreline *hardening* through the application of bulkheads, seawalls or revetments.

- Bulkheads are vertical retaining walls designed to hold or prevent soil from sliding waterward.
- Seawalls are usually massive, vertical designed structures used to protect backshore areas from heavy wave action. In highly erosive conditions or exposed locations they may separate land from water.



- **Revetments** provide a sloping protective cover of erosion resistant material to protect a shorefront from waves and/or strong currents. They can be solid (*i.e.* sloping concrete for example), but most typically are comprised of a designed cross section of natural rock (like granite), or on less frequent occasions manmade type armor units.

Although armoring may be successful in limiting or reducing the extent of horizontal shoreline recession along a chronically eroding shorefront, it does *not* serve to alleviate deflation (*i.e.* vertical erosion) of the beach profile seaward. Hence, armoring is considered to be net impactive with respect to littoral processes. Most vertical armoring is highly reflective of incident wave energy; thereby further accentuating offshore sediment losses, in particular during storm events. For this reason, a sloping rock revetment (with a lower coefficient of reflectivity) is typically preferable over a vertical seawall or bulkhead in open coast environments.

**Groins** are one of the oldest and most common shore connected beach stabilization structures. Groins are structures typically constructed perpendicular to a shoreline in the zone of most active littoral transport across the beach profile. As such, groins are often designed to interrupt longshore transport in order to trap, or retain sand mobilized by waves or currents. Groins are often deployed as a field of structures in order to spatially affect a section of shorefront. At the terminus of a littoral cell, a single “terminal structure” may be used to anchor the beach, and/or limit the removal of sand from the shore into a navigational channel or the shoals of a tidal inlet.”

Rather than these hard structures, the principal means of shore stabilization embraced by the Town of Hilton Head Island Shoreline Management Plan should be beach nourishment, a restorative “*soft*” structure which provides for improved shorefront conditions suitable for recreation, protection of upland development or infrastructure, as well as global environmental enhancement. In the mid 1980’s the Town commissioned an “Erosion Assessment Study for Hilton Head Island” which was followed by an “Engineering Evaluation of a Beach Restoration Strategy for Hilton Head Island.” In addition to providing the technical rationale for beach nourishment, these two documents formed the basis for the Town’s initial and first request to use State funds for the purpose of beach nourishment in 1989.

Since that time, the Town has enacted a local “Beach Preservation Fee” which amounts to a 2% assessment on short-term rental accommodations. Rental to the same person or party of ninety (90) continuous days or more is not considered short term. The collection of this fee has allowed the Town to unilaterally fund subsequent beach renourishment projects, conduct semi-annual beach surveys and annual shoreline aerial photography, provide annual monitoring reports, acquire land, develop beach parks to enhance access, and install and maintain sand fencing and dune vegetation. The program generates approximately \$4 million per year. The Town of Hilton Head Island has spent \$50 million for beach renourishment projects between 1990 and 2012, and the Town’s Capital Improvements Program includes funding to continue providing beach re-nourishment and maintenance in future years.



The Town has undertaken large scale fill projects on its oceanfront beach in 1990, 1997 and 2006. Besides the creation of a wider, higher and more robust beach configuration suitable for both active and passive opportunities at all stages of the tide, the Town has also been able to initiate a wide array of additional beach and shoreline management functions. These efforts benefit the local population as well as the island's natural environment. Noteworthy accomplishments directly associated with the Town's existing management program include, but are not necessarily limited to the following areas:

1. A coincident program of dune and vegetation restoration,
2. Improved beach protection laws for existing shorefront development and future redevelopment,
3. Enhanced property values and concurrent ad valorem tax base,
4. Eligibility for unique post-disaster financial assistance from FEMA,
5. Acquisition of undeveloped oceanfront lands for purposes of improved public access and park creation,
6. Improved promotional opportunities and amenities for resorts, hotels, property management firms, etc.
7. Protection of the Folly and its unique estuarine environment,
8. Improved Federal Flood Insurance program compliance,
9. More effective regulation of inappropriate oceanfront development,
10. Enhanced habitat for birds and endangered sea turtles.
11. Semi-annual beach surveys and annual shoreline aerial photography are used for modeling erosion and accretion rates when studying the Island's renourishment needs.

**FIGURE 30: SAND FENCING**





**FIGURE 31: BEACH RENOURISHMENT RESULTS**





## 6 - NEEDS, GOALS AND IMPLEMENTATION STRATEGIES

With the adoption of the Land Management Ordinance and the Comprehensive Plan and appendices, including the Beach Management Plan, many of the Town's policies and goals on shoreline retreat are being met. However, continuous pressure from developers to move development toward the newly renourished beach is of grave and immediate concern to the Town.

***Need 1:** The Town should investigate methods to continue to protect the existing beach/dune features and those features resulting from renourishment projects from development and redevelopment pressures.*

***Goal 1.1:** Have a well maintained beach and dunes system that helps to preserve and protect the Island's manmade and natural resources and provides for a sound economic base; the Town does not support movement of the baseline or any other action that would result in encroachment of development into the dunes system or seaward of the baseline that was established in 1999.*

***Goal 1.2:** Continue to Protect and Enhance the Beach/Dune System through the regulation of beachfront development.*

### ***Implementation Strategies:***

- A. The Town should continue to implement its Capital Improvement Program and Land Acquisition Program to develop, renovate, or expand its beach parks.

### ***Achievements:***

- ✓ Town Council authorized the first phase of a comprehensive Shoreline Management Plan. The first element, an inventory and analysis of shoreline stabilization structures, has been completed.
- ✓ The Town has completed four major and one emergency beach renourishments since 1990, with another large scale project currently underway.
- ✓ Detached breakwaters were installed along parts of Port Royal Sound Shoreline.
- ✓ The Town has begun post 2007 project monitoring, studies on groins at Port Royal Plantation, South Beach, and the Spa area on Port Royal Sound.
- ✓ The Town contracted with Olsen Associates for studies on groins at Port Royal Plantation, South Beach, and the Spa area on Port Royal Sound.



- ✓ Semi-annual beach surveys are conducted and an annual monitoring report is prepared.
- ✓ Sea turtle monitoring continues on island beaches. Staff is mapping all nesting sites.
- ✓ A dedicated funding source has been established for beach renourishment in the form of a beach fee, derived from an additional two percent Local Accommodations Tax levied by Town Council. This source provides \$4 million each year, dedicated to beach renourishment and related monitoring, dune refurbishment, maintenance and operations, and new beach parks and beach access facilities.
- ✓ Completed a Port Royal beach erosion study.
- ✓ In accordance with continuing beach maintenance activities, shorebird monitoring is entering its seventh season. The Town's monitoring of threatened or endangered shorebirds is assisting federal and state agencies in the protection and recovery of those species.

B. Continue to hold densities along the beachfront to their current levels or below.

***Achievements:***

- ✓ The Town adopted *Resolution 2003-08*, that states: “to ensure that the intent of the ten Planned Unit Developments within the Town’s PD-1 District is not compromised, *the master plan caps for those Planned Unit Developments should be held at current levels or below* until the Comprehensive Plan review/revision process is completed and this resolution is incorporated into the same, unless it can be clearly demonstrated that such a change will result in a reduced impact on infrastructure and the natural resources of the Island.”
- ✓ A goal of the Land Use Element states: “*the reduction in allowable densities is preferred.*” The Town should “reduce allowable development densities to ensure that development and redevelopment do not create adverse impacts on the natural resources of the Island, and so, not place an unreasonable burden on the community’s infrastructure. Further, since 70% of the Town is within areas that were master planned, the “*master plan caps should be held at or below current levels* to ensure that the intent of those PUDs is not compromised” (*Comprehensive Plan 2004*).

C. Continue to amend and enforce the LMO and Municipal Code to protect the established dunes systems on our beachfront, to provide for re-establishment of the dunes systems during redevelopment, and to provide for redevelopment scenarios after a natural disaster.

***Achievements:***



- ✓ LMO Chapters 3 & 5 regulate growth management requirements regarding site design and density; LMO Chapter 6 regulates natural resources, including beach protection and preservation. These chapters address building location on the site and requirements for protection of beach/dunes systems and vegetation.
- ✓ Municipal Code Title 8 Chapter 1 regulates beach/dune use and activities. Municipal Code Title 8 Chapter 3 provides for Sea Turtle Protection.
- ✓ Town Council adopted the Recovery Plan in 2003, which was updated in 2014. The Disaster Recovery Commission was formed to work with staff to further research certain unresolved issues in the Recovery Plan.
- ✓ Town Council adopted the Coastal Protection Area and Transition Area Overlay Zoning Districts.
- ✓ The Town installed fences and plantings to support buildup and retention of dunes.

D. Work with DHEC OCRM during the update of the Town's Local Comprehensive Beach Management Plan when designated by the State and to review, as requested, public petitions to move the Baseline on individual properties to ensure compatibility with this Plan. It is the policy of the Town of Hilton Head Island that the baseline not be moved seaward.

***Achievements:***

- ✓ Beach Management Plan was first adopted in 1991 and amended in 1992 (inclusion of 40 Year Retreat Policy) and in 1998 (update of Beach Access section).
- ✓ This constitutes the update of the 2008 Beach Management Plan that was last amended in 2011. Town Staff coordinated heavily with OCRM Staff on its outline and content.

E. Continue to promote environmental education programs and standards that stress protection of fragile areas and wildlife.

***Achievements:***

- ✓ In 2001, USFWS identified critical wintering habitat for the Piping Plover along parts of the Island's shoreline.
- ✓ The Town supports the Loggerhead Sea Turtle Protection Program through funding.
- ✓ The Town provides brochures that addresses habitat on the beach.
- ✓ The Town conducted a habitat inventory near Fish Haul Creek in 2003.
- ✓ Ordinance enforcement is carried out by Town Codes Enforcement Officers, Facilities Management staff, Shore Beach franchise employees and BCSO deputies.



- ✓ Town Staff works with OCRM, DNR, the Coastal Discovery Museum, Clemson Extension, Lowcountry Estuarium and other partners to present public education programs on such topics as water quality, low impact development, wildlife and native beach plantings to both the general public and the development community.

F. Coordinate with the Chamber of Commerce in tourism efforts to promote our beach.

***Achievements:***

- ✓ ATAX grants are given to the Chamber for promotions.
- G. Work to revise state legislation for enhanced protection of the beach and dunes system which should include an effective retreat policy in addition to considering renourishment efforts when determining baseline locations to prevent movement of the baseline further seaward as a result of renourishment.
- H. Provide input to DHEC OCRM during the update of the State's Beach Management Plan to help ensure that the DHEC OCRM Baseline does not move further seaward along the Town of Hilton Head Island shoreline.
- I. Work with the State to receive beach nourishment funds in the event the Town does not have local funding to renourish.

**2. Beach Access**

*Need 2: With the large majority of oceanfront land under private ownership, the Town should seek ways to work with developers to allow for public beach access in redeveloped sites, and to work with Property Owners Associations to protect accesses that currently exist.*

**Goal 2.1: Have adequate public beach access at Town-owned sites and seek innovative solutions to provide additional beach access for the public in privately owned neighborhoods and commercial areas.**

***Implementation Strategies:***

- A. The Town should continue to implement its 10 year Capital Improvement Program to develop, renovate, or expand its beach parks.



***Achievements:***

- ✓ The Town owns 8 dedicated beach parks with over 1400 parking spaces.
- ✓ The Town has a dedicated funding source for land acquisition on the beach.
- ✓ The Town has spent \$ 171 million for land acquisition to acquire over 1150 1,300 acres, some for beach parks.
- ✓ The Town has renovated the Coligny Beach Park to open views to the ocean and to provide a better designed park.

- B. Continue to work with oceanfront developments to provide public access to the beach during redevelopment. Also work with neighborhood associations to protect neighborhood access points.

***Achievements:***

- ✓ LMO 16-6-304 provides the ability for the Town to “consider the need for beach access to meet the general public interest” while reviewing all development applications involving property adjacent to the beach. This allows Town Staff to recommend to Town Council purchasing the property for beach access.
- ✓ The Town has negotiated with beachfront developers to include emergency vehicle access in some of the new development along the beach (Marriott Oceanfront, Disney).

- C. Develop methods of increasing public awareness concerning beach access points through better access signage, informational kiosks, directional signage and brochures.

***Achievements:***

- ✓ The Town installed beach matting at Coligny, Driessen, Folly Field, Alder Lane, Mitchellville and Islander’s beach parks for access to the lower beach area by wheelchairs and other mobility devices used by disabled people to traverse the dry, soft sand.
- ✓ The Town installed GEOWEB to stabilize emergency accesses to the beach. Accesses are in the Coligny Beach Park, Islanders Park, Bradley and Burkes Beach Roads, Mitchellville and future Collier Beach Park.
- ✓ Staff worked with oceanfront beach developers to allow beach access emergency markers for location identification and installed them for efficient emergency vehicle access.
- ✓ The Fire & Rescue Master Plan recommends special emergency response vehicles be purchased in order to facilitate medical emergency response on the beach.



- ✓ The Town produced a Beach brochure and a Park Brochure detailing beach access locations and pathways to the beach.
- ✓ The Town coordinated with SCDOT for highway identification signs directing the public to beach parks.

# **MEMORANDUM**

**TO:** Town Council  
**FROM:** Stephen G. Riley, Town Manager  
**VIA:** Greg DeLoach, Assistant Town Manager  
**DATE:** June 28, 2016  
**RE:** **Municipal Judge Contract Renewal**

---

**Recommendation:** Staff recommends Council consider the renewal of a contract (proposed contract attached) with Municipal Judge, Maureen Coffey, for a 2 year term.

**Background:** Maureen Coffey has resided as the Town's Municipal Judge for over 15 years and she seeks renewal of her contract of employment with Town Council.

**Summary:** Under the Town Code, Town Council shall appoint a Municipal Judge. Mrs. Coffey seeks a 2 year term. The contract sets forth her term; duties and responsibilities; salary; and other general provisions.



# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

**TO:** Stephen G. Riley, ICMA~CM, *Town Manager*  
**FROM:** Charles Cousins, AICP, *Director of Community Development*  
**DATE:** July 6, 2016  
**SUBJECT:** First Reading of Proposed Ordinance 2016-20, Lease of Town Property at Islander's Beach Park on Folly Field Road

---

**Recommendation:** Staff recommends Town Council approve Proposed Ordinance 2016-20 authorizing the execution of a lease of Town property at Islander's Beach Park to Diamond Communications, LLC for the purpose of the erection and operation of a telecommunications tower.

**Summary:** AT&T has requested that the Town allow the construction and operation of a 140' high monopole telecommunications tower on the Town-owned Islander's Beach Park property on Folly Field Road. At AT&T's request, Diamond Communications, LLC would lease property from the Town for this purpose.

On May 23, 2016, the Public Facilities Committee recommended Town Council approve the request from AT&T to locate a telecommunications tower on the Town's Islander's Beach Park property with the following conditions.

1. The tower is a monopole style tower with a maximum height of 140'.
2. The antenna space from 120' to 130' is reserved for the Town's use at no charge.
3. No parking is removed as a result of the tower.

**Background:** The Town has previously worked with AT&T to locate telecommunications towers on Town property at Fire Station 7 on Marshland Road and on Jenkins Island. This tower would be similar to the monopole design that was approved for both of those sites and would help improve cellular service in the Folly Field/Port Royal areas.

The lease with Diamond Communications, LLC would have an initial term of five years, commencing on October 1, 2016 and would automatically be renewed for five successive five year renewal terms up to 30 years total. For each year of the initial term Diamond would pay \$13,800.00 along with a \$460.00 co-location fee for each tenant on the tower. At each renewal term the rates would increase by 15%. At no charge, Diamond would provide space for one antenna between 120-130' on the tower and sufficient space for housing any ground based equipment related to the antenna for use by the Town for fire and rescue or other emergency or municipal communications needs.

**AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE WITH DIAMOND TOWERS IV LLC, FOR PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, KNOWN AS A PORTION OF THE ISLANDER’S BEACH PARK TRACT, AND AUTHORIZING THE EXECUTION OF TWO EASEMENTS IN FAVOR OF DIAMOND TOWERS IV LLC, ENCUMBERING TOWN OWNED LAND, KNOWN AS A PORTION OF THE ISLANDER’S BEACH PARK TRACT, PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2012), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the Town of Hilton Head Island, South Carolina (“Town”), owns a parcel of real property known as the Islander’s Beach Park Tract; and

WHEREAS, Diamond Towers IV LLC, desires to construct and operate a telecommunications tower on a portion of this Town-owned property as described in, and pursuant to, that certain Communication Tower Ground Lease attached hereto as Exhibit “A”; and,

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to enter into a Communication Tower Ground Lease with Diamond Towers IV LLC for operation of a telecommunications tower on the Town's property, and also to execute and deliver easements providing Diamond Towers IV LLC with rights for parking and access, and with rights to install underground utilities on the Town’s property.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND ITS IS ORDAINED BY THE AUTHORITY OF THE SAID TOWN COUNCIL:**

**Section 1 - Execution, Delivery and Performance of Lease.**

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the “Communication Tower Ground Lease” in substantial conformance with the attached Exhibit

“A”; and

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the performance of the Town's obligations under the terms and conditions of the Lease.

**Section 2 - Execution, Delivery and Performance of Easements.**

(a) The Mayor and/or Town Manager are hereby authorized to execute and deliver the ingress/egress easement and the underground utility easement in substantial conformance with the attached Exhibits “B” and “C”; and,

(b) The Town Manager is hereby authorized to take such other and further actions as may be necessary to complete the performance of the Town's obligations under the terms and conditions of the Easements.

**Section 3 - Severability.**

If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

(SIGNATURE PAGE FOLLOWS)

**Section 4 - Effective Date.**

This Ordinance shall be effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED AND APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF  
HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2016.**

\_\_\_\_\_  
David Bennett, Mayor

ATTEST:

\_\_\_\_\_  
Victoria L. Pfannenschmidt, Town Clerk

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Gregory M. Alford, Town Attorney

Introduced by Council Member: \_\_\_\_\_

**COMMUNICATION TOWER GROUND LEASE**

**By and Between**

**THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**

**and**

**DIAMOND TOWERS IV LLC DATED AS**

**OF: \_\_\_\_\_, 2016**

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STATE OF SOUTH CAROLINA     )  
  )     COMMUNICATION TOWER GROUND LEASE  
COUNTY OF BEAUFORT            )

This Communication Tower Ground Lease is made by and between The Town of Hilton Head Island, South Carolina, One Town Center Court, Hilton Head Island, South Carolina, 29928, and Diamond Towers IV LLC, a Delaware limited liability company, with a mailing address of 820 Morris Turnpike, Suite 104, Short Hills, New Jersey 07078, and is dated as of \_\_\_\_\_, 2016.

## RECITALS

WHEREAS, The Town of Hilton Head Island, South Carolina, owns a parcel of real property located in the town limits of the Town Hilton Head Island, South Carolina, consisting of 14.9 acres, more or less, and which is known as a portion of the “Islander’s Beach Park Tract”; and,

WHEREAS, Diamond Towers IV LLC develops, erects, and maintains communications towers for the purpose of leasing space on the towers for telephone, wireless and other communications providers to install antennae; and,

WHEREAS, Diamond Towers IV LLC has requested a ground lease of space on the Islander's Beach Park Tract for the purpose of erecting, operating and maintaining a communications tower; and,

WHEREAS, the Town Council for The Town of Hilton Head Island, South Carolina, has determined that a communications tower on the Islander's Beach Park Tract will promote improved telephone, wireless and other communication services on Hilton Head Island, which is beneficial to and in the best interests of the citizens, residents and visitors on Hilton Head Island; and,

WHEREAS, the Town Council of The Town of Hilton Head Island, South

Carolina, is authorized to enter into leases of Town owned land under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2010), and § 2-3-30 and § 2-7-20, *Code of The Town of Hilton Head Island, South Carolina* (1983, as amended).

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), and the full and faithful performance of the obligations, conditions and covenants contained in this Communication Tower Ground Lease (hereinafter, the "Lease"), the receipt and sufficiency of which are acknowledged by the Parties hereto, The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), and Diamond Towers IV LLC (hereinafter, "DIAMOND"), agree as follows:

#### ARTICLE 1

1.01 *Islander's Beach Park Tract Property* : The Town is the owner of certain real property located within the town limits of the Town of Hilton Head Island, South Carolina, and which consists of 14.9 acres, more or less, lying at 92 Folly Field Road, which is known and described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, South Carolina, and shown and described on that certain plat entitled "A Recombination Plat of 14.114 Acres Lands of 'The Town of Hilton Head Island', A Section of Port Royal Plantation & Grasslawn Subdivision No. 1, Hilton Head Island, Beaufort County, South Carolina", dated November 11, 2002, prepared by Coastal Surveying, Inc., and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 90 at Page 153.

AND ALSO, all that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, South Carolina, known as a 66 foot right of way totaling 0.862 acres as shown on that certain plat entitled "A Plat of Blackberry Road, Huckleberry Road, and Sparkleberry Road, a Portion of Port Royal Plantation and Former Grasslawn Subdivision Number 1", prepared by Jerry L. Richardson, S.C.R.L.S. Number 4784, dated August 2, 1984, revised September 13, 1984 and further revised October 31, 1984, with said Plat being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 5, 1985 in Plat Book 32 at Page 249.

(hereinafter, the “Islander’s Beach Park Tract”).

1.02 *The Leased Property* : The real property leased by DIAMOND pursuant to this Lease is a portion of the Islander’s Beach Park Tract, and which is known and described as follows:

All that certain parcel of land, shown and described as “Proposed Lease Area”, and containing 5,353 square feet (0.1229 acres), having dimensions, metes and bounds as shown on the survey prepared by Point to Point Land Surveyors, G. Darrell Taylor, S. C. R. L. S. Number 28159, a copy of which is attached hereto as Exhibit “A” (hereinafter, the “Leased Property”).

1.03 *Subdivision of Leased Property* : DIAMOND shall obtain a subdivision approval from the Town so as to cause the Leased Property to be subdivided from the balance of the Islander’s Beach Park Tract. DIAMOND shall take such steps as are necessary to notify Beaufort County, South Carolina, of the subdivision of the parcel and to secure a separate tax parcel number from Beaufort County, South Carolina, for the Leased Property.

1.04 *Access Easement* : The Town shall grant to DIAMOND an easement for vehicular access to and from the Leased Property over the existing roadways located on the Islander’s Beach Park Tract, as the same may exist from time to time. The easement shall be a fixed-term easement, having a duration equal to the Initial Term and any Renewal Term of this Lease. The Easement will be in a form and substance as appears in Exhibit “B” hereto.

1.05 *Underground Utility Line Easement* : The Town shall grant to DIAMOND an easement extending from the Leased Property to the right of way of Folly Field Road for the purpose of installing underground electrical and communications lines

necessary for the operation of the Monopole Tower and the equipment utilized in connection therewith. The Town and DIAMOND will work together to identify a location for the underground utilities and will work with any utility providers to determine an acceptable location for the underground utilities and the Underground Utility Line Easement. The easement shall be an easement for a fixed term, having a duration equal to the Initial Term and any Renewal Term of this Lease. The Easement will be in a form and substance as appears in Exhibit "C" hereto.

**1.06 *Representations and Warranties of the Town* :** To the knowledge of the Town:

- (a) The Town has the full right, power and authority to execute this Lease;
- (b) There are no pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against the Town or which may otherwise affect the Leased Property;
- (c) The Town has not, in violation of any statute or regulation, disposed of or spilled any contaminants, oils, PCBs, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited by any federal, state or local government authority having jurisdiction over the Leased Property, on under or about the Leased Property.

**1.07 *DIAMOND Accepts the Property "As Is"* :** DIAMOND represents and warrants that it has examined the Leased Property, title to the Leased Property, and

any existing use restrictions on the Leased Property, and except as for those representations and warranties expressly set forth herein, DIAMOND accepts the Leased Property “as is”, and without recourse to or against the Town as to the title thereto, availability of water, sewer, electricity or telecommunication services, the nature, condition or usability thereof, or the uses to which Leased Property may be put. In no event shall the Town have any liability to DIAMOND for any defect in the Leased Property, or the title to the Leased Property, or conditions existing in, on, under, over or about the Leased Property or any limitation on the uses which may be made of the Leased Property, except to the extent that any such condition breaches an express representation or warranty made by the Town herein. DIAMOND accepts this limitation on the Town’s liability and acknowledges that this limitation of the Town’s liability is a material term of this Lease without which the Town would not have entered into this Lease.

1.08 *Limited Obligation of Town* : The Town shall not be required to furnish and has no obligation to furnish to DIAMOND any facilities or services of any kind, including, but not limited to, water, sewage disposal, sewage capacity, solid waste collection and disposal, recycling collection, electricity, light and power.

1.09 *Utilities and Other Services* : DIAMOND shall, at its sole cost and expense, arrange for the provision of any utilities needed by it or other services to the Leased Property. Any fees for reservation or use of utilities, or any other arrangements that must be made with the provider of any utility or any other service, shall be the sole responsibility of DIAMOND.

1.10 *Memorandum of Lease* : Simultaneously with the execution and delivery of

this Lease, the Parties will execute and deliver a Memorandum of Lease which DIAMOND may record in the public records for Beaufort County, South Carolina. The Memorandum of Lease will be in a form and substance as appears in Exhibit “D” hereto.

## ARTICLE 2

2.01 *Use Restrictions:* DIAMOND shall use the Leased Property for the following purposes, and no other:

(a) *Erection and Use of “Monopole” Tower :* DIAMOND may erect, maintain and operate a communications facility, including but not limited to the construction or installation and maintenance of one “monopole” telecommunications tower on the Leased Property (hereinafter the “Monopole Tower”), provided that DIAMOND secures the Town’s written approval for the plans for and design of the communications facility prior to commencing any installation or construction of any such communications facility, and thereafter erects the Monopole Tower, structural tower base, communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, one or more diesel generators, personal property and related improvements and facilities on the Leased Property, to facilitate the use of the Leased Property for the transmission and receipt of communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental to the transmission and receipt of communication

signals. DIAMOND may also utilize the Leased Property for the short term parking of service or other vehicles as the same may be needed to facilitate the construction, maintenance or operation of the Improvements authorized on the Leased Property in this Article 2.01 (hereinafter, the "Intended Use").

(b) *Height Restriction* : The Monopole Tower to be erected on the Leased Property shall have a maximum height of One Hundred Forty Five (145') Feet above the grade elevation of the Leased Property including all appurtenances such as the lightning rod, resulting in a tower structure with a maximum height of One Hundred Forty (140') feet above the grade elevation of the Leased Property, and a lightning rod with a maximum height of Four and One Half (4.5) feet affixed to the top of the tower structure.

(c) *Structures to House Equipment* : DIAMOND may erect structures to house electrical and communications equipment related to the operation of the communications equipment to be installed on the Monopole Tower, provided that DIAMOND secures the Town's written approval for the plans for and design of the structure or structures prior to commencing any installation or construction of any such structure, and provided that DIAMOND thereafter erects the structure or structures in conformity with the Town's written approval.

(d) *Fence* : DIAMOND may enclose the Leased Property with a fence, provided that DIAMOND secures the Town's written approval for

the plans for and design of the fence prior to commencing any installation or construction of any such fence, and provided that DIAMOND thereafter erects the fence in conformity with the Town's written approval.

(e) *Improvements to Leased Property* : The Monopole Tower, any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, or any other structure, and the fence permitted under this Article 2.01 are collectively referred to herein as the "Improvements".

(f) *Removal of Improvements* : The Improvements erected or installed on the Leased Property by DIAMOND shall be the personal property of DIAMOND and shall be removed from the Leased Property at the termination of this Lease, as is provided in Article 3.03 below.

2.02 *Permits* : It shall be the sole responsibility of DIAMOND to procure and pay for any required municipal, state, federal or other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction over the Leased Property with respect to DIAMOND's installation of the Improvements permitted under Article 2.01 above. The Town will provide "owner's authorizations" indicating the Town's consent to any permit being sought by DIAMOND where such "owner's consent" is required under any applicable permitting regulations. The delivery of such "owner's consent" by the Town shall not be deemed a waiver of any applicable development standard or zoning or other requirement.

2.03 *Mechanic's or Other Liens Prohibited* : DIAMOND shall not suffer or permit

any mechanic's lien or any other lien to be placed against the Leased Property arising out of any construction of Improvements permitted under Article 2.01, or the use or occupancy of the Leased Property by DIAMOND. In the event any such lien is filed, DIAMOND shall promptly cause the same to be discharged and removed of record, and shall further indemnify and hold the Town harmless from any costs or expenses, damages, suits or attorney's fees arising from the filing or enforcement of any mechanic's lien or any other lien affecting the Leased Property.

*2.04 Other Established Uses on Property:* DIAMOND acknowledges that the Leased Property is, as of the date of the commencement of this Lease, public property. Further, other uses are established on the Islander's Beach Park Tract, primarily being beach parking and access. DIAMOND acknowledges and accepts that the existing uses on the Islander's Beach Park Tract will continue at all times during any term of this Lease, and under no circumstance shall any act or occurrence resulting from the normal daily operations of any existing use on the Islander's Beach Park Tract be a breach of any term of this Lease or give rise to any claim or cause of action under the terms of this Lease. Under no circumstances shall ingress and egress to any existing use on the Islander's Beach Park Tract be blocked or impeded in any manner by DIAMOND.

(a) *Certain Restrictions Permitted :* The foregoing language of Article 2.04 notwithstanding, DIAMOND is permitted to restrict the public's access to the Leased Property during the Initial Term or any Renewal Term of this Lease, and may enclose the Leased Property with a fence, as is provided in Article 2.01(d) above.

(b) *Radio Frequency Interference* : The Town will not use, nor will the Town permit its tenants, licensees, invitees or agents to use, any portion of the Islander's Beach Park Tract in any way which creates Radio Frequency Interference with the Monopole Tower, or the communications equipment installed in connection with the Monopole Tower; provided, however, that any existing electric transmission lines, radio or other signal generating equipment being used as of the date of this Lease by the Town, its tenants, licensees, grantees, invitees or agents on or about the Islander's Beach Park Tract is exempt from this requirement. Radio Frequency Interference in violation of this Article 2.04(b) will be deemed to be a material breach of this Lease by the Town, and the Town will have the responsibility to terminate such Radio Frequency Interference immediately upon written notice thereof from DIAMOND. Notwithstanding anything to the contrary in this Lease, if the Radio Frequency Interference does not cease or is not rectified as soon as is possible, but in no event longer than twenty four (24) hours after delivery of DIAMOND's written notice to the Town, the Town acknowledges that continuing Radio Frequency Interference will cause irreparable injury to DIAMOND, and DIAMOND will have the right, in addition to any other rights it may have at law or in equity or under this Lease, to bring an action to enjoin the Radio Frequency Interference.

2.05 *Construction of Monopole Tower and Other Improvements* :

DIAMOND shall be solely responsible for the construction of the Monopole Tower and the other Improvements described in Article 2.01 above. In connection with the construction of the Monopole Tower and other Improvements, DIAMOND shall:

(a) *Notification to Town* : DIAMOND shall notify the Town in writing no less than five (5) days prior to the commencement of any activity related to the construction of the Monopole Tower and other Improvements on the Leased Property.

(b) *Schedule of Work* : The notification required under Article 2.05(a) shall include a schedule of the work to be performed. (c)

*Minimal Interference to Existing Uses* : DIAMOND acknowledges that the Leased Property is, as of the date of the commencement of this Lease, a portion of the Islander's Beach Park Tract and that other uses exist on the Islander's Beach Park Tract, primarily being wooded areas, parking, and the Islander's Beach Park. DIAMOND acknowledges and accepts that the existing uses shall continue during the Initial Term or any Renewal Terms of this Lease, and under no circumstance shall any act or occurrence resulting from the normal daily operations of the existing uses on the Islander's Beach Park Tract be a breach of any term of this Lease or give rise to any claim that the Town or any other party has interfered with the construction of the Monopole Tower or any other cause of action under the terms of this Lease. During the construction of the Monopole Tower, DIAMOND

shall take such steps to ensure that its activities do not unreasonably interfere with the normal daily operations of the existing uses on the Islander's Beach Park Tract. Under no circumstances shall ingress and egress to any existing use on the Islander's Beach Park Tract be blocked or impeded in any manner by DIAMOND.

2.06 *Application of Laws and Other Matters* : This Lease is made by the Town and accepted by DIAMOND subject to all existing ordinances, regulations, statutes, zoning ordinances and any restrictive covenants affecting the Leased Property which are now in force or which may be enacted in the future.

2.07 Intentionally Omitted.

2.08 *No Other Interest in Real Property Created* : Other than the leasehold interest and the ancillary easements as are expressly set forth herein, DIAMOND shall have no other interest in the Leased Property, nor any interest in any other part of the Islander's Beach Park Tract.

2.09 *Maintenance of Property and Compliance With Laws* : During the Initial Term and any Renewal Term of this Lease, DIAMOND shall, at its sole cost and expense, provide for the maintenance or upkeep of the Leased Property and the Improvements, and shall at all times comply with any and all applicable fire, building, health and sanitation codes as the same may from time to time be in effect.

2.10 *Rules, Regulations and Restrictions* : DIAMOND shall at all times during the Initial Term and any Renewal Term of this Lease, comply with the following:

- (a) *Maintenance of Leased Property and Improvements* : In keeping with the uses permitted on the Leased Property,

DIAMOND shall maintain the Leased Property and the Improvements on the Leased Property, in a sanitary condition, free of debris and trash, it being understood that no use shall be made or permitted of the Leased Property or any part thereof, nor any acts done, which will violate any statute, ordinance or regulation, or violate or make inoperative or otherwise impair any insurance policy at any time held by or in any way for the benefit of the Town pursuant to any provision of this Lease;

- (b) *Storage of Hazardous Substances Prohibited* : Other than fuel in the tank of the diesel generator(s) on the site, DIAMOND shall not, in violation of any applicable law or regulation, or the express provisions of this Lease, sell, or suffer or permit to be stored, kept, used or sold in, upon or about the Leased Property, or in any structure or building located on the Leased Property, any gasoline, distillate, any substance defined as a "Hazardous Substance" under any Federal, State or Local law, ordinance or regulation, or any other substance or material of an explosive, inflammable or radiological nature which may contaminate or endanger any part of the Leased Property, the Improvements, or any person on or about the Leased Property, or present any unusual fire, explosion or other damaging or dangerous hazard; and, DIAMOND shall, at its sole cost and expense, cause the removal and clean up of any hazardous substance allowed to

contaminate the Leased Property by DIAMOND;

- (c) *Compliance with Laws* : DIAMOND shall comply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Leased Property or DIAMOND's use thereof;
- (d) *Waste Dumping or Disposal Prohibited*: DIAMOND shall refrain from dumping, disposal, reduction, incineration or other burning of any trash, hazardous material or substance, papers, refuse or garbage of any kind in, on, or about the Leased Property, in violation of any applicable statute, regulation or ordinance, or this Lease;
- (e) *Waste Storage Prohibited* : DIAMOND shall refrain from storing any trash, garbage or hazardous material or substance on the Leased Property or in the Improvements, and DIAMOND shall not create or permit the creation of any health or fire hazard, in violation of any applicable statute, regulation or ordinance;
- (f) *Waste and Nuisances* : DIAMOND shall refrain from committing or suffering to commit any waste upon, or making any unlawful, improper or offensive use of, the Leased Property or the Improvements, or creating any public or private nuisance or act or thing in or upon the Leased Property the Improvements; provided, however, that the use of the Leased Property as a telecommunications facility as described in this

Lease shall not be considered to be a violation of this provision;

- (g) *Compliance with Restrictive Covenants :* DIAMOND shall maintain the Leased Property and the Improvements so as to achieve compliance with and remain in compliance with any restrictive covenants encumbering the Leased Property and all local ordinances promulgated by the Town of Hilton Head Island, South Carolina, or any other applicable law, rule, regulation or agreement concerning the Leased Property and the Improvements.

2.11 *Additional Rules :* In addition to the foregoing, DIAMOND shall at all times during the Initial Term or any Renewal Term hereof comply with all other reasonable rules and regulations which the Town may at any time or from time to time establish concerning the use of the Leased Property; provided however, that any such rule or regulation so made shall not be inconsistent with any part of this Lease, and shall not unreasonably interfere with DIAMOND's use and enjoyment of the Leased Property.

2.12 *DIAMOND Shall Obtain Town Business License :* During the Initial Term or any Renewal Term of this Lease, DIAMOND shall obtain a Town business license, and shall keep its business license current and valid.

### ARTICLE 3

3.01 *Initial Term :* The Initial Term of this Lease shall be for a period of five (5) years, commencing on \_\_\_\_\_, 2016 and ending on \_\_\_\_\_ (herein, the "Initial Term"), unless terminated sooner by

the Town under the provisions hereof.

(a) DIAMOND shall have a period of eighteen (18) months from the commencement date of this Lease to complete the construction of the Monopole Tower and other Improvements described in Article 2.01 above.

(b) In the event that DIAMOND does not complete the construction of the Monopole Tower and other Improvements described in Article 2.01 above within eighteen months from the commencement date of this Lease, then this Lease shall automatically terminate.

**3.02 *Renewal Terms* :** This Lease will automatically be renewed for up to five (5) successive five (5) year Renewal Terms, provided that DIAMOND is not in default of any of its obligations hereunder (herein, the "Renewal Term", or "Renewal Terms"). Unless DIAMOND gives notice of its intention not to renew this Lease within One Hundred Eighty (180) Days of the last day of the Initial Term or within One Hundred Eighty days of the last day of any Renewal Term, this Lease shall automatically renew for the subsequent five (5) year Renewal Term. Unless terminated sooner by DIAMOND or by the Town under the provisions hereof, this Lease and all Terms hereof will terminate on \_\_\_\_\_.

**3.03 *Restoration of Leased Property* :** At such time as this Lease is terminated, irrespective of the reason for the termination, DIAMOND shall, within thirty (30) days after the termination, remove all of its personal property from the Leased Property and the associated easements to a depth of three (3) feet below grade, and shall restore the Leased Property to its pre-existing condition, which is vacant, level,

grassed, undeveloped property.

#### ARTICLE 4

4.01 *Base Rent* : DIAMOND shall pay Base Rent to the Town during the Initial Term or any renewal Term of this Lease as follows:

(a) *Base Rent* : For each year of the Initial Term of this Lease, and any Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amounts set forth in Articles 4.01(a)(i)(ii)(iii)(iv)(v) and (vi) below. The Base Rent shall be paid to the Town annually, in advance, no later than January 15 of each year of the Initial Term of this Lease, or any Renewal Term of this Lease. The Base Rent shall be paid pro rata for any partial year, including the year that this Lease commences.

(i) *Initial Term Base Rent* : During the Initial Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Thirteen Thousand Eight Hundred and 00/100 (\$13,800.00) Dollars per year beginning on October 1, 2016, and continuing through September 30, 2021.

(ii) *First Renewal Term* : For each year of the First Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Fifteen Thousand Eight Hundred Seventy and 00/100 (\$15,870.00) Dollars per year; provided, however, that DIAMOND shall pay the increased Base Rent of Fifteen Thousand Eight Hundred Seventy and 00/100 (\$15,870.00) Dollars per year beginning on October 1, 2021.

(iii) *Second Renewal Term* : For each year of the Second Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Eighteen Thousand Two Hundred Fifty and 00/100 (\$18,250.00) Dollars per year; provided, however, that DIAMOND shall pay the increased Base Rent of Eighteen Thousand Two Hundred Fifty and 00/100 (\$18,250.00) Dollars per year beginning on October 1, 2026.

(iv) *Third Renewal Term* : For each year of the Third Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Twenty Thousand Nine Hundred Eighty-seven and 00/100 (\$20,987.00) Dollars per year; provided, however, that DIAMOND shall pay the increased Base Rent of Twenty Thousand Nine Hundred Eighty-seven and 00/100 (\$20,987.00) Dollars per year beginning on October 1, 2031.

(v) *Fourth Renewal Term* : For each year of the Fourth Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Twenty-four Thousand One Hundred Thirty-five and 00/100 (\$24,135.00) Dollars per year; provided, however, that DIAMOND shall pay the increased Base Rent of Twenty-four Thousand One Hundred Thirty-five and 00/100 (\$24,135.00) Dollars per year beginning on

October 1, 2036.

(vi) *Fifth Renewal Term* : For each year of the Fifth Renewal Term of this Lease, DIAMOND shall pay the Town Base Rent in the amount of Twenty-seven Thousand Seven Hundred Fifty-five and 00/100 (\$27,755.00) Dollars per year; provided, however, that DIAMOND shall pay the increased Base Rent of Twenty-seven Thousand Seven Hundred Fifty-five and 00/100 (\$27,755.00) Dollars per year beginning on October 1, 2041.

4.02 *Co-Location Fee* : For each year of the Initial Term of this Lease, and any Renewal Term of this Lease DIAMOND shall pay the Town a Co-Location Fee for each sub-lease, license or other co-location agreement entered into between DIAMOND and any third-party for space on the Monopole Tower and any other part of the Leased Property, excluding one "Anchor Tenant" and the Town (herein, "Additional Co-locator").

(a) *Co-Location Fee* : DIAMOND shall pay the Town a Co-Location Fee in the amounts set forth in Articles 4.02(a)(i)(ii)(iii)(iv)(v) and (vi) below. DIAMOND shall pay the Co-Location Fee yearly, in arrears, no later than January 15 of the following year. The initial payment of the Co-Location Fee shall be due with the first annual rent installment payable after the commencement date (as defined therein) of each sub-lease, license or other co-location agreement with an Additional Co-locator. In the event a sub-lease, license or other co-

location agreement with any Additional Co-locator expires or terminates, DIAMOND's obligation to pay the Co-location fee for such sub-lease, license or other co-location agreement shall terminate on the date of such termination or expiration. DIAMOND shall notify the Town in writing of such termination or expiration within fifteen (15) days of the date of such termination or expiration. Notwithstanding anything contained herein, no Co-Location fee shall be due for any sub-lease, license or other Co-Location agreement for any sub-lease or transfer to any subsidiary, parent or affiliate of New Cingular Wireless PCS, LLC ("AT&T"), if such sub-lease or transfer does not result in additional equipment on the Monopole Tower.

(i) *Initial Term Co-Location Fee* : For each year of the Initial Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee of Four Hundred Sixty and 00/100 (\$460.00) Dollars per month for each Additional Co-Locator beginning on October 1, 2016, and continuing through \_\_\_\_\_.

(ii) *First Renewal Term Co-Location Fee*: For each year of the First Renewal Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee in the amount of Five Hundred Twenty-nine and 00/100 (\$529.00) Dollars per month for each Additional Co-Locator; provided, however, that DIAMOND shall pay the increased Co-Location Fee of Five Hundred Twenty-nine and 00/100 (\$529.00) Dollars per month for each Additional Co-

Locator beginning on \_\_\_\_\_.

(iii) *Second Renewal Term Co-Location Fee:* For each year of the Second Renewal Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee in the amount of Six Hundred Eight and 00/100 (\$608.00) Dollars per month for each Additional Co-Locator; provided, however, that DIAMOND shall pay the increased Co-Location Fee of Six Hundred Eight and 00/100 (\$608.00) Dollars per month for each Additional Co-Locator beginning on \_\_\_\_\_.

(iv) *Third Renewal Term Co-Location Fee:* For each year of the Third Renewal Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee in the amount of Six Hundred Ninety-nine and 00/100 (\$699.00) Dollars per month for each Additional Co-Locator; provided, however, that DIAMOND shall pay the increased Co-Location Fee of Six Hundred Ninety-nine and 00/100 (\$699.00) Dollars per month for each Additional Co-Locator beginning on \_\_\_\_\_.

(v) *Fourth Renewal Term Co-Location Fee:* For each year of the Fourth Renewal Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee in the amount of Eight Hundred Three and 00/100 (\$803.00) Dollars per month for each Additional Co-Locator provided, however, that DIAMOND shall pay the increased Co-Location Fee of Eight Hundred Three and

00/100 (\$803.00) Dollars per month for each Additional Co-Locator beginning on \_\_\_\_\_.

(vi) *Fifth Renewal Term Co-Location Fee* : For each year of the Fifth Renewal Term of this Lease, DIAMOND shall pay the Town a Co-Location Fee in the amount of Nine Hundred Twenty Three and 00/100 (\$923.00) Dollars per month for each Additional Co-Locator; provided, however, that DIAMOND shall pay the increased Co-Location Fee of Nine Hundred Twenty Three and 00/100 (\$923.00) Dollars per month for each Additional Co-Locator beginning on \_\_\_\_\_.

4.03 *Taxes and Other Expenses* : DIAMOND shall fully and promptly pay any and all taxes, fees, charges and costs and expenses of any nature related to the Leased Property, the Improvements, and DIAMOND's use and occupancy thereof. In the event that DIAMOND fails to pay any tax or other expense as required by this Article 4, the Town may, but without obligation to do so, at any time from time to time without notice, pay such tax or other expense, in which event DIAMOND shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 10 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to DIAMOND for such payment.

## ARTICLE 5

5.01 *Quiet Enjoyment* : The Town hereby covenants that DIAMOND shall have, during the Initial Term and any Renewal Term of this Lease, peaceable and quiet

possession of the Leased Property, and shall have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Town, except as expressly required or permitted by this Lease. The Town shall not interfere with the quiet use and enjoyment of the Leased Property by DIAMOND during the Initial Term or any Renewal Term of this Lease, so long as the Initial Lease Term or Renewal Lease Terms shall be in effect and all obligations of DIAMOND hereunder have been fulfilled.

## ARTICLE 6

6.01 *Required Property Insurance*: During the Initial Term and any Renewal Term hereof, DIAMOND shall keep the Improvements insured against loss or damage by fire, wind, flood (to the extent of any available federal flood insurance program) and all other perils as are typically insured against by commercial establishments operating in Beaufort County, South Carolina, to the extent of the value thereof. In the event of a casualty to any of the Improvements so insured, DIAMOND shall utilize the payments made under the policy to repair or replace the Improvements.

6.02 *Required Liability Insurance*: During the Initial Term and any Renewal Term of this Lease, DIAMOND shall maintain in full force a comprehensive general public liability insurance with minimum bodily injury, death and property damage limits, per occurrence, of THREE MILLION DOLLARS (\$3,000,000.00) insuring against any and all liability of DIAMOND or any tenant of DIAMOND with respect to their occupancy and use of the Leased Property and all of the Improvements , or arising out of the maintenance, use or occupancy thereof by DIAMOND or any tenant

of DIAMOND. In addition to all other coverages, and if available, such insurance policy or policies shall specifically insure the performance by DIAMOND of the hold harmless and indemnity provisions set forth in Article 6.05 of this Lease.

**6.03 *Policy Form:*** All policies of insurance provided for herein shall be issued by insurance companies with a general policyholders' rating not less than A, and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of South Carolina. The Town shall be named as an additional insured in any such policy. Such policies shall be for the mutual and joint benefit and protection of DIAMOND and the Town, and executed copies of such policies of insurance or certificates thereof shall be delivered to the Town within ten (10) business days after delivery of possession of the Leased Property to DIAMOND and thereafter within ten (10) business days of the issuance of any such policy, or within ten (10) business days of any request by the Town. All public liability and property damage policies shall contain a provision that the Town, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees or its property by reason of the negligence of DIAMOND. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by DIAMOND in like manner and to like extent. All public liability, property damage and other casualty shall be written as primary policies, not contributing with and not in excess of coverage which the Town may carry.

**6.04 *Failure of DIAMOND to Obtain Insurance:*** In the event that DIAMOND fails to procure and/or maintain any insurance required by this Article 6, or fails to

carry insurance required by law or governmental regulations, the Town may, but without obligation to do so, at any time from time to time without notice, procure such insurance and pay the premiums therefor, in which event DIAMOND shall repay the Town all sums so paid by the Town, together with interest thereon as provided in Article 10 hereof, and any incidental costs or expenses incurred by the Town in connection therewith, within ten (10) days following the Town's written demand to DIAMOND for such payment.

6.05 *Indemnification and Hold Harmless*: DIAMOND shall indemnify and hold the Town harmless from any claims for loss, damage or liability, including attorney's fees and costs incurred by the Town in responding to or defending any claim, arising out of or on account of any injury, death or damage to any person, or to the Leased Property of any person, arising from or in any manner relating to the use of the Leased Property by DIAMOND, or arising from any act or omission of DIAMOND with respect to the exercise of any of DIAMOND's rights hereunder; provided however, that Diamond shall not indemnify the Town for the Town's sole negligence and willful misconduct

## ARTICLE 7

7.01 *Sublease of Leased Property*: The Town acknowledges that DIAMOND will lease space for antennae on the Monopole Tower to be erected on the Leased Property, and that DIAMOND will sub-let portions of the Leased Property, for the installation of electrical and communications equipment and the structures to house the same.

(a) *DIAMOND's Tenants Bound by This Lease :* Any lease of space on the Monopole Tower or any sub-lease of any other portion of the Leased Property shall contain terms requiring any tenant to be bound by the Terms of this Lease, excepting the provisions of Article 4 hereof concerning the payment of rent from DIAMOND to the Town, and requiring the tenant to comply with all requirements hereof.

(b) *DIAMOND to Remain Bound by This Lease :* DIAMOND shall remain fully, directly and primarily bound by the terms and conditions of this Lease regardless of any lease of space on the Monopole Tower or any sub-lease of any part of the Leased Property.

7.02 *Reservation of Space on Monopole Tower for Town Use :* During the Initial Term and any Renewal Term of this Lease, DIAMOND shall provide the Town with space for one antenna on the Monopole Tower and sufficient space for housing any ground based equipment related to the antenna for use by the Town for fire and rescue or other emergency or municipal communications needs, as the same may be determined by the Town. If at any time after the date of this Lease, DIAMOND receives a request from a third party to co-locate at the 130' RAD center on the Monopole Tower ("RAD Offer"), DIAMOND shall immediately furnish the Town with a copy of the RAD Offer. The Town shall have the right, within twenty (20) days after it receives the RAD Offer, to sublet the 130' RAD center ("Right of First Refusal"). If the Town chooses not to exercise this Right of First Refusal or fails to provide written notice to DIAMOND within the twenty (20) day period, DIAMOND may sublet the 130' RAD center to such third party. If DIAMOND sublets the 130' RAD center

without complying with this Section, the sublet will be void. DIAMOND shall provide the space at no charge to the Town; provided, however, that the space and the terms of use of the space shall be governed by a separate license agreement executed by the Town and DIAMOND, in a form and substance similar to that set forth on the attached Exhibit "E". DIAMOND authorized contractors hired by the Town shall have access to the Leased Property, the Monopole Tower and any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, for purpose of installing, using and maintaining its antennae and associated electrical and communications equipment, in the same manner as any other party to whom DIAMOND enters into a sub-lease under the authority of Article 7.01 above.

*7.03 Reservation of Ground Space:* During the Initial Term and any Renewal Term of this Lease, DIAMOND shall provide the Town with up to ten (10) square feet of exterior Ground Space to accommodate the Town's ground equipment, in the location shown on Exhibit "F" should the need arise to serve the communications equipment to be installed on the Monopole Tower, such equipment to be described with more particularity in a separate license agreement executed by the Town and DIAMOND, which shall be in a form and substance similar to that set forth on the attached Exhibit "E"; provided, however, that in the event of any conflict between the terms of this Lease and the license agreement, the terms of this Lease shall control.

*7.04 Town Access to Leased Property :* Subject to the terms of a separate license agreement executed by the Town and DIAMOND, which shall be in a form and substance similar to that set forth on the attached Exhibit "E", the Town shall

have access to the Leased Property, the Monopole Tower and any structures built to house electrical or communications equipment related to the communications facilities on the Monopole Tower, for purpose of installing, using and maintaining its antenna and associated electrical and communications equipment, in the same manner as any other party to whom DIAMOND enters into a sub-lease under the authority of Article 7.01 above.

7.05 *Other Encumbrances Prohibited*: DIAMOND shall not grant any easements, licenses or rights-of-way or enter into any agreement which would in any way affect or encumber the title to the Leased Property; provided, however, that subleases or licenses made by DIAMOND under the authority of Article 7.01 above, are permitted.

## ARTICLE 8

8.01 *Notices*: All notices, certificates or other communications required hereunder shall be deemed Delivered when delivered in person, or mailed by regular first class mail, postage prepaid, addressed as follows, or to such other addresses as may be designated, in writing, by the Parties:

To the Town: TOWN OF HILTON HEAD ISLAND  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

To DIAMOND: Diamond Towers IV LLC  
Attn: Legal Department  
Re: Cell Site #410-365 Site Name: SC015 Hilton  
Head  
820 Morris Turnpike, Suite 104  
Short Hills, NJ 07078

With a copy to: Diamond Towers IV LLC  
Attn: Lease Administration  
Re: Cell Site #410-365 Site Name: SC015 Hilton

Head  
820 Morris Turnpike, Suite 104  
Short Hills, NJ 07078

## ARTICLE 9

9.01 *Events of Default Defined* : The following shall be Events of Default under this Lease:

(1) As To DIAMOND :

(a) *Failure to Observe Requirements* : The failure of DIAMOND or any tenant of DIAMOND to observe or perform any covenant, requirement, term, condition, obligation or agreement contained in this Lease, required to be observed or performed on its part, as follows:

(i) *Failure to Pay Rent or Other Money Due* : The failure to pay Rent or any other money due under the terms of this Lease for a period of thirty (30) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

(ii) *Failure to Observe any Other Requirement* : The failure to observe or perform any other covenant, requirement, term, condition, obligation or agreement contained in this Lease, for a period of sixty (60) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

(b) *Abandonment of Leased Property* : The abandonment of

the Leased Property by DIAMOND or the discontinuance of operations at the Leased Property by DIAMOND for a period of thirty (30) days.

(2) As to the Town :

(a) *Failure to Observe Requirements :* The failure of the Town to observe or perform any covenant, requirement, term, condition, obligation or agreement contained in this Lease, required to be observed or performed on its part, for a period of sixty (60) days after delivery of written notice from the Town specifying such failure and demand that it be remedied.

#### 9.02 *Remedies on Default :*

(a) *As to the Town :* Whenever any Event of Default described in Article 9.01(1)(a) or (b) of this Lease, shall have occurred and continues for a periods described in Article 9.01(1)(a)(i) and (ii), above, after Delivery of written Notice of Default from the Town Council to DIAMOND, or shall have occurred and continues for a periods described in Article 9.01(b), above, the Town shall have the right to terminate this Lease and shall give notice to DIAMOND to vacate the Leased Property. The Town may thereafter evict DIAMOND from the Leased Property and take possession thereof and also exercise all the rights and remedies provided herein.

(b) *As to DIAMOND :* Whenever any Event of Default described in Article 9.01(2) of this Lease, shall have occurred and continues for a periods described in Article 9.01(2)(a) above, after Delivery of written

Notice of Default from DIAMOND to the Town, DIAMOND may terminate this Lease by delivery of written notice thereof to the Town, and upon delivery of such written notice, DIAMOND shall have no further obligation or liability under this Lease.

9.03 *No Remedy Exclusive:* No remedy conferred upon or reserved to the Town or Diamond herein is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power and such right and power may be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Town or Diamond.

9.04 *Waivers:* In the event that any agreement contained herein should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other, further or subsequent breach hereunder.

9.05 *Discontinuance of Proceedings:* In case either Party hereto shall have proceeded to enforce any right under this Lease, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Town and DIAMOND shall be restored respectively to their several positions and rights hereunder and all rights, obligations, remedies and powers of the Town and DIAMOND shall continue as though no such proceeding had been taken.

9.06 *Agreement to Pay Attorney's Fees and Expenses:* In the event that either Party hereto shall default under any of the provisions hereof, and the non-defaulting

Party shall employ attorneys, or incur other expenses for the enforcement of the performance or observance of any obligation or agreement on the part of the defaulting Party hereto contained, the defaulting Party agrees that it shall pay, on demand, the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party in the enforcement of its rights hereunder.

9.07 *Force Majeure* : Upon thirty (30) days' written notice from DIAMOND to the Town that, because of changes in the laws or regulations governing the use of the Monopole Tower and the associated equipment, DIAMOND is unable to obtain, maintain, renew or reinstate any agreement, easement, permit, certificate, license, variance, zoning approval or any other approval which may be required from any federal, state or local authority necessary to the construction, maintenance and operation of the Monopole Tower or the Intended Use.

## ARTICLE 10

10.01 *Interest on Past Due Obligations* : Whenever under any provision of this Lease DIAMOND shall be obligated to make any payment or expenditure to the Town, or to do any act or thing, or to incur any liability whatsoever, and DIAMOND fails, refuses or neglects to perform as herein required, the Town shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf and at the cost and for the account of DIAMOND, and in such event the amount thereof with interest thereon as hereinafter provided shall be deemed due upon demand for payment thereof by the Town. Any amount due from DIAMOND to the Town under this Lease which is not paid when due shall bear interest at the lower of the rate of fifteen percent (15%) per

annum or the highest rate then allowed under any applicable usury laws of the State of South Carolina from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by DIAMOND under this Lease.

#### ARTICLE 11

11.01 *Binding Effect*: This Lease shall inure to the benefit of and shall be binding upon DIAMOND and the Town.

11.02 *Amendment, Changes and Modifications*: Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified or altered without written consent of both Parties hereto.

11.03 *Severability*: In the event that any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

11.04 *Execution in Counterparts*: This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.05 *Applicable Law*: This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

11.06 *Captions*: The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

11.07 *Recording*: The Parties hereto may record this lease, or a short form Memorandum thereof, in the Office of the Register of Deeds for Beaufort County,

South Carolina.

11.08 *No Agency*: The Parties hereto intend only to provide for a lease of real property as provided herein, and affirmatively state that no master/servant, principal/agent or employer/employee relationship is created by this Lease. Nothing herein created any relationship between the Town and DIAMOND other than that which is expressly stated herein. No employee, volunteer or agent of DIAMOND shall be considered an employee or agent of the Town for any purpose whatsoever and none shall have any status, right or benefit of employment with Town.

11.09 *Plural/Singular*: Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall be deemed to include the singular.

11.10 *No Third Party Beneficiaries*: The Town and DIAMOND affirmatively represent that this Lease is made solely for the benefit of the Parties hereto and not for the benefit of any third party who is not a signature party hereto. No party other than the signature parties hereto shall have any enforceable rights hereunder, or have any right to the enforcement hereof, or any claim for damages as a result of any alleged breach hereof.

## ARTICLE 12

12.01 *Sale of Islander's Beach Park Tract*: The Town may sell the Islander's Beach Park Tract or a portion of the Islander's Beach Park Tract to a third party, provided: (i) the sale is made subject to the terms of this Lease; and, (ii) if the sale does not include the assignment of the Town's full interest in this Lease, without requiring compensation from DIAMOND or any user of the Monopole Tower to be

paid to such purchaser, the purchaser must agree to perform any obligation of the Town under this Lease that the Town would no longer have the legal right or ability to perform following the sale.

12.02 *Assignment* :

(a) *By the Town* : The Town may assign this Lease in its entirety to any third party in conjunction with any sale of the Islander's Beach Park Tract in accordance with Article 12.01 of this Lease. The Town will not otherwise assign less than the Town's full interest in this Lease, without the prior written consent of DIAMOND.

(b) *By DIAMOND* : DIAMOND may assign this Lease without prior notice to or consent of the Town.

(SIGNATURE PAGES FOLLOW)

**In Witness whereof**, the Parties hereto, by and through their duly authorized officers, have set their hands and seals.

**WITNESSES:**

**THE TOWN OF HILTON HEAD  
ISLAND, SOUTH CAROLINA**

\_\_\_\_\_

By: \_\_\_\_\_  
David Bennett, Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_  
Stephen G. Riley, ICMA-CM  
Town Manager

**WITNESSES:**

**DIAMOND TOWERS IV LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Michael G. Brett  
Title: Chief Financial Officer

\_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF BEAUFORT                    )     UNIFORM ACKNOWLEDGMENT  
2011)     S.C. CODE ANN. § 30-5-30 (Supp.

I, the undersigned Notary Public, do hereby certify that David Bennett and Stephen G. Riley, personally appeared before me on this day and duly acknowledged the execution of the foregoing Communication Tower Ground Lease on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to Before Me on this \_\_\_\_  
Day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires:\_\_\_\_\_

STATE OF NEW JERSEY                    )  
  )  
COUNTY OF ESSEX                    )     UNIFORM ACKNOWLEDGMENT  
  )     S.C. CODE ANN. § 30-5-30 (Supp. 2011)

I, the undersigned Notary Public, do hereby certify that Michael G. Brett, Chief Financial Officer of Diamond Towers IV LLC, personally appeared before me on this day and duly acknowledged the execution of the foregoing Communication Tower Ground Lease on behalf of Diamond Towers IV LLC.

Sworn to Before Me on this \_\_\_\_  
Day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

**EXHIBIT "A"**

**LEASED PROPERTY**

PROPOSED LEASE AREA  
AT&T  
"SPARKLEBERRY"  
410-365

All that tract or parcel of land lying and being in Beaufort County, South Carolina and being more particularly described as follows:

To find the point of beginning, commence at a concrete monument found in the northeast corner of lands now or formerly owned by Andrick Deve Corp; thence, North 45°43'07" West, 25.69 feet to a point; thence running, North 44°32'27" East, 244.09 feet to a point; Thence 77.22 feet along the arc of a curve to the right, having a radius of 50.00 feet and being scribed by a chord bearing North 88°47'08" East, 69.77 feet, to a point; Thence, 73.05 feet along the arc of a curve to the right, having a radius of 573.38 feet and being scribed by a chord bearing South 43°19'12" East, 73.00 feet, to a point; Thence, South 39°40'13" East, 25.76 feet to a point; Thence, South 34°23'28" East, 88.20 feet to a point; Thence, 132.88 feet along the arc of a curve to the Left, having a radius of 365.18 feet and being scribed by a chord bearing South 44°48'55" East, 132.15 feet, to a point; thence, 41.82 feet along the arc of a curve to the right, having a radius of 25.00 feet and being scribed by a chord bearing, South 07°23'19" East, 37.11 feet to a point; thence, South 45°55'36" East, 15.00 feet to a point and the true POINT OF BEGINNING; Thence running, South 40°31'05" West, 67.40 feet to a point; Thence, North 46°34'48" West, 43.28 feet to a point; Thence, North 24°48'34" West, 46.60 feet to a point; Thence, North 44°26'07" East, 50.97 feet to a point; Thence, South 45°55'36" East, 82.24 feet to a point and the POINT OF BEGINNING.

Said tract contains 0.1229 acres (5,353 square feet) more or less, as shown in a survey prepared for AT&T by POINT TO POINT LAND SURVEYORS, INC dated February 22, 2016 and last revised February 26, 2016.

**EXHIBIT "B"**

**INGRESS AND EGRESS EASEMENT**

PROPOSED 30' INGRESS-EGRESS & UTILITY EASEMENT  
AT&T  
"SPARKLEBERRY"  
410-365

All that tract or parcel of land lying and being in Beaufort County, South Carolina and being more particularly described by the following centerline data:

To find the point of beginning, commence at a concrete monument found in the northeast corner of lands now or formerly owned by Andrick Deve Corp; thence, North 45°43'07" West, 25.69 feet to a point and the true POINT OF BEGINNING; Thence running, North 44°32'27" East, 244.09 feet to a point; Thence 77.22 feet along the arc of a curve to the right, having a radius of 50.00 feet and being scribed by a chord bearing North 88°47'08" East, 69.77 feet, to a point; Thence, 73.05 feet along the arc of a curve to the right, having a radius of 573.38 feet and being scribed by a chord bearing South 43°19'12" East, 73.00 feet, to a point; Thence, South 39°40'13" East, 25.76 feet to a point; Thence, South 34°23'28" East, 88.20 feet to a point; Thence 132.88 feet along the arc of a curve to the Left, having a radius of 365.18 feet and being scribed by a chord bearing South 44°48'55" East, 132.15 feet, to a point; Thence, 41.82 feet along the arc of a curve to the right, having a radius of 25.00 feet and being scribed by a chord bearing, South 07°23'19" East, 37.11 feet to the ENDING at a point.

As shown in a survey prepared for AT&T by POINT TO POINT LAND SURVEYORS, INC dated February 22, 2016 and last revised February 26, 2016.

**EXHIBIT "C"**

**UNDERGROUND UTILITY EASEMENT**

PROPOSED 30' INGRESS-EGRESS & UTILITY EASEMENT  
AT&T  
"SPARKLEBERRY"  
410-365

All that tract or parcel of land lying and being in Beaufort County, South Carolina and being more particularly described by the following centerline data:

To find the point of beginning, commence at a concrete monument found in the northeast corner of lands now or formerly owned by Andrick Deve Corp; thence, North 45°43'07" West, 25.69 feet to a point and the true POINT OF BEGINNING; Thence running, North 44°32'27" East, 244.09 feet to a point; Thence 77.22 feet along the arc of a curve to the right, having a radius of 50.00 feet and being scribed by a chord bearing North 88°47'08" East, 69.77 feet, to a point; Thence, 73.05 feet along the arc of a curve to the right, having a radius of 573.38 feet and being scribed by a chord bearing South 43°19'12" East, 73.00 feet, to a point; Thence, South 39°40'13" East, 25.76 feet to a point; Thence, South 34°23'28" East, 88.20 feet to a point; Thence 132.88 feet along the arc of a curve to the Left, having a radius of 365.18 feet and being scribed by a chord bearing South 44°48'55" East, 132.15 feet, to a point; Thence, 41.82 feet along the arc of a curve to the right, having a radius of 25.00 feet and being scribed by a chord bearing, South 07°23'19" East, 37.11 feet to the ENDING at a point.

As shown in a survey prepared for AT&T by POINT TO POINT LAND SURVEYORS, INC dated February 22, 2016 and last revised February 26, 2016.

**EXHIBIT "D"**

**MEMORANDUM OF LEASE**

After recording, return to:  
Legal Department  
Diamond Towers IV LLC  
820 Morris Turnpike, Suite 104  
Short Hills, New Jersey 07078

Site Name: \_\_\_\_\_

**Memorandum of Communication Tower Ground Lease**

This memorandum evidences that a lease ("Lease") was made and entered into by written Communication Tower Ground Lease dated \_\_\_\_\_, 201\_\_, between THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA ("TOWN") and DIAMOND TOWERS IV LLC, a Delaware limited liability company ("DIAMOND"), the terms and conditions of which are incorporated herein by reference.

Such Lease provides, in part, that TOWN leases to DIAMOND a \_\_\_\_\_ ft. x \_\_\_\_\_ ft. parcel ("Site") on the parent tract described in Exhibit "A" attached hereto and located at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_. The Site is described in Exhibit "B" attached hereto and on the site plan attached as Exhibit "B-1" attached hereto. The TOWN also grants easements ("Easements") for unrestricted rights of ingress and egress to and from the Site and to electric and telephone facilities, which are described in Exhibit "C" attached hereto. The term of the Lease and the Easements are for \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_, 20\_\_, which term is subject to \_\_\_\_\_ ( ) additional \_\_\_\_\_ ( ) year extension periods by DIAMOND.

TOWN has further granted to DIAMOND, during the term and any renewal terms of the Lease, the right of first refusal on the Site during the time, for the price, and on the terms and conditions contained in the Lease. The right of first refusal must be exercised on or before the date specified in the Lease.

This Memorandum of Communication Tower Ground Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum Communication Ground Lease and the provisions of the Lease, the provisions of the Lease shall control.

{ Signature page to follow }

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first above written.

**TOWN:**  
THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

---

By: Exhibit Only - Do not Sign

**DIAMOND:**  
DIAMOND TOWERS IV LLC, a Delaware  
limited liability company

---

By: Exhibit Only - Do not Sign

**\* Final Memorandum will have appropriate state notary blocks.**

**EXHIBIT “A” TO MEMORANDUM**

Legal Description of parent parcel

**EXHIBIT “B” TO MEMORANDUM**

Legal Description of Site

**EXHIBIT “B-1” TO MEMORANDUM**

Site Plan of Site

**EXHIBIT “C” TO MEMORANDUM**

Access and Utilities Easements

## EXHIBIT "E"

### ANTENNA SITE LICENSE AGREEMENT

**THIS ANTENNA SITE LICENSE AGREEMENT** ("License Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, between **Diamond Towers IV LLC**, a Delaware limited liability company ("Licensor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Licensee").

#### WITNESS:

- A. Licensor holds [a leasehold / a easement] interest in a certain parcel of property located at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_ (known as "\_\_\_\_\_"), more specifically described in Exhibit "A", attached hereto (the "Site").
- B. Licensor owns, operates and manages a communications tower erected on the Site (the "Tower").
- C. Licensee desires to obtain a license to install equipment on the Tower for use by Licensee for the purpose of a communications facility and to use certain designated space on the Site.

**NOW THEREFORE** the parties agree as follows:

1. Tower Use License: Licensor hereby licenses to Licensee space at the Site and on the Tower to install and operate the specific equipment at the locations and heights specifically described on Exhibit "B". Licensee shall use the space exclusively for its communications operations as permitted by this License Agreement, including only those frequencies listed on Exhibit "B" and shall not maintain or permit any nuisance or unsafe conditions on the Site or the Tower.

As part of this License, Licensor shall permit Licensee to [occupy/pour] a \_\_\_ foot by \_\_\_ foot (\_\_\_ ft. x \_\_\_ ft.) [area of land/concrete pad] ("Ground Space") at a location on the Site shown on Exhibit "B" and to place an unmanned equipment [cabinet/building] on such [land/pad] Ground Space.

2. Term of License: This License Agreement shall commence upon the earlier to occur of (a) the date Licensee commences installation of any of its equipment on the Site or (b) \_\_\_\_\_, 201\_ (the "Commencement Date"), and shall expire \_\_\_ (\_\_) years following the Commencement Date ("Initial Term").

3. Extension of Term: This License Agreement shall be automatically extended for \_\_\_ (\_\_) successive periods of \_\_\_ (\_\_) years each thereafter, without notice, unless Licensee shall have given Licensor written notice of termination at least one hundred twenty (120) days prior to the expiration of the then current term. All references to the term of this License Agreement shall include the Initial Term, and any extension thereof, as extended as provided herein. Licensee acknowledges that Licensor's interest in and to the Site, and the access to such Site, may be subject to, or otherwise governed by, the terms and conditions of a lease, license, easement, management or other similar agreement between a third party and Licensor (such agreement, as amended and/or replaced by other agreements from time to time, shall be referred to as the "Prime Agreement"). Licensee hereby acknowledges that the terms, conditions, provisions, and obligations of this License Agreement, shall be subject and subordinate to such Prime Agreement, and in the event of any conflict between the terms of such Prime Agreement and this License Agreement, the terms of the Prime Agreement shall control. In the event that Licensor does not possess an interest in and access to the Site due to the termination, expiration or cancellation of the Prime Agreement and any of its replacement agreements, for any reason, this License Agreement shall automatically terminate.

4. License Fee: For the rights herein granted by Licensor to Licensee in this License Agreement, Licensee shall pay as an annual license fee the amounts shown on Exhibit "C" ("License Fee(s)"), together with any State, County or local sales or use taxes applicable to Licensee's use of the Tower Ground Space as further provided in this License Agreement. License Fees and other amounts due to Licensor hereunder shall be paid [monthly/annually] in advance, to the remittance address listed in Section 23, on or before the first day of each calendar year during the term of this License Agreement. In the event the first or last month of the term shall commence or end on a date other than the first or last day of a calendar year, the License Fee shall be apportioned, and the apportioned License Fee and other amounts due to Licensor hereunder shall be paid in advance on the first day of the term commencing during the applicable partial calendar year or the first day of the partial calendar year, as appropriate. If any installment is not paid within ten (10) days after the due date, Licensee shall pay a late charge equal to one and one-half percent (1 1/2%) per month of the amount of the outstanding balance due Licensor. Late charges will be payable by Licensee on all outstanding amounts, including previously assessed late charges. The License Fee shall be increased by \_\_\_ percent (\_\_\_%) on each anniversary of the Commencement Date.

5. Installation of Licensee's Equipment: All installation, construction, removal, or relocation of Licensee's equipment shall be commenced only after Licensor has approved all plans and specifications in writing, which approval shall not be unreasonably withheld, conditioned or delayed, and Licensee shall comply with all of Licensor's reasonable requirements. Within fifteen (15) business days following the date Licensor receives the plans and specifications, Licensor shall provide notice to Licensee as to whether the plans and specifications have been approved or denied. If Licensor fails to respond within said fifteen (15) day period, Licensor's approval shall be deemed given. Only the equipment described on Exhibit B may be installed, and Licensor shall not be obligated to approve any installation, which, when considered with all other equipment installed on the Tower will cause the permitted windload for the Tower to be exceeded. Licensee may replace the equipment specifically described on Exhibit "B" with equipment which (i) does not take up additional space, capacity or weight; (ii) equipment that does not cause any interference prohibited by this License Agreement; (iii) is of the same size and design characteristics of the equipment specifically described on Exhibit "B"; (iv) that does not increase windloading on the Tower in excess of the level of windloading existing prior to installation of the replaced equipment; and (v) is designed to operate and function in a manner substantially equivalent to (and within the same general technical parameters of) the equipment specifically described on Exhibit "B". All work described herein shall be performed by Licensee at its sole cost and expense in good and workmanlike manner, free from faults and defects, and in compliance with all legal requirements utilizing only first class materials and supplies (unless otherwise permitted by the approved plans and specifications). Licensee shall be solely responsible for construction means, methods, techniques, sequences and procedure, and for coordinating all activities related to the work, and such work shall not interfere with the uninterrupted use of the Tower or the Site by other licensees. If interference with other licensees is caused by Licensee's installation work and cannot be reduced to levels reasonably acceptable to Licensor, then Licensee shall immediately cease all installation work upon receipt of written notice from Licensor, and Licensor shall have the right to terminate this License Agreement by giving Licensee ten (10) days prior written notice, unless such interference is satisfactorily reduced within such period. NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, IS MADE BY LICENSOR WITH RESPECT TO THE SUITABILITY OF THE TOWER AND THE SITE FOR LICENSEE'S OPERATIONS AND INTENDED USE THEREOF.

6. Licensor's Maintenance: Licensor shall make all necessary repairs and replacements at its expense, as well as alterations required by any governmental authority having jurisdiction over the Tower, unless the required repairs, replacements or alterations are solely required for the Licensee's communication equipment located on the Tower (or the Site), in which event Licensee shall make all necessary repairs, replacements and alterations as required at its expense. Licensor acknowledges that it, and not Licensee, shall be responsible for compliance with all Tower marking and lighting requirements which may be required by the Federal Aviation Administration ("FAA") or the Federal Communications Commission ("FCC"). Licensor shall indemnify and hold harmless Licensee from any fines or other liabilities caused by Licensor's failure to comply with such requirements. Further, should Licensee be cited by either the FCC or FAA because a Tower is not in compliance within the time frame allowed by the citing agency, and Licensor does not cure such non-compliance within thirty (30) days from notice by Licensee, then Licensee may terminate the License Agreement immediately upon notice to Licensor with no further obligation hereunder, or, at Licensee's option, cause the Tower to comply with FAA or FCC requirements

and Licensor shall be responsible for reimbursing Licensee for its actual, reasonable costs incurred to bring the Tower into compliance with FAA or FCC requirements within thirty (30) days of written request thereof.

7. Licensee's Maintenance: Licensee shall maintain its antenna and transmitting and other equipment in a good state of repair and operating condition, all in accordance with good engineering practices and applicable governmental rules and regulations. All maintenance work shall be performed in accordance with the requirements of Section 5 (except for pre-approval of plans and specifications) above and Licensee shall use qualified technicians who shall be subject to Licensor's prior written approval. If circumstances occur, or threaten to occur, from which Licensor may reasonably conclude that damage is likely to result to the property of Licensee, Licensor or the property of any other person, or that substantial threat to life will exist before agents of Licensee can be advised and respond, then Licensor, without notice to Licensee, may repair, maintain, de-energize, disconnect or dismantle any or all equipment and/or lines of Licensee and take any other action which in Licensor's reasonable discretion may appear necessary with respect to the property of Licensee, without any liability on the part of Licensor for any damage that such action may cause; provided, however Licensor shall provide notice to Licensee as soon as reasonably practical.

8. Access: Subject to the Prime Agreement, Licensee shall have non-exclusive, free access to the Tower, the Ground Space and equipment [cabinet/building], 24 hours a day, 7 days a week, for the purpose of installing its equipment and for the purpose of maintenance and repair over an access and utility easement more specifically set forth on Exhibit "A-1" ("Access Easement"). Licensor shall have a right of access, at all reasonable times, for examination, inspection, emergency repair or replacement of any of Licensee's equipment over the Access Easement as provided for in this License Agreement.

9. Interference: Prior to installation of its equipment, Licensee shall cause its engineers to conduct a frequency search in order to determine that its signal will not interfere with the radiating or receiving facilities of others already using the Tower at the time of Licensee's installation. Thereafter, Licensee will conduct its activities in accordance with sound electronic and engineering practices and will cooperate with other pre-existing licensees so as to prevent interference. In the event interference with pre-existing licensees is encountered, then Licensee will, at its sole cost and expense, take all steps necessary to promptly correct and eliminate such interference. If the Licensee does not correct the condition causing the interference within forty-eight (48) hours after receipt of notice from Licensor, then Licensor may turn off the electrical power to Licensee's equipment (except for intermittent testing during off-peak hours) until the condition causing the interference is corrected, or until Licensee establishes to Licensor's reasonable satisfaction that Licensee's equipment is not the cause of the interference. If the interference cannot be eliminated within thirty (30) days, Licensor may terminate this License Agreement on written notice to Licensee without further liability to Licensee, and Licensor shall have the right to disconnect and remove any equipment which is causing the interference. In the event that any other licensee, whose equipment has been installed on the Tower subsequent to Licensee's installation, is causing interference with Licensee's radio frequency activities, Licensor will use its best efforts to cause the other licensee to promptly correct the condition causing the interference. If the other licensee does not correct the condition causing the interference within forty-eight (48) hours after the receipt of notice from Licensee to Licensor, then Licensor will exercise the rights available to Licensor under the applicable lease or license agreement to eliminate the condition causing the interference. If the interference cannot be eliminated within thirty (30) days, Licensee may terminate this License Agreement on written notice to Licensor without further liability to Licensor. Interference shall be deemed to be any interference which violates the terms and conditions of transmitter licenses, and/or rules and regulations of the FCC, or as defined in the provisions of the recommended practices of the Electronics Industries Association then in effect.

10. Utilities: Licensee shall be responsible for furnishing and paying for all electricity and other utilities required by Licensee for the operation of its equipment. Licensee, at its sole expense, shall pay for the cost of a separate electricity meter.

11. Taxes: Licensee shall pay all taxes, including, without limitation, sales, use and excise taxes, and all fees, assessments and any other cost or expense now or hereafter imposed by any government authority in connection with Licensee's payments to Licensor, Licensee's equipment or Licensee's use of the Site. In addition,

Licensee shall pay that portion, if any, of the personal property taxes attributable to Licensee's equipment. Licensee shall pay as additional rent any increase in real estate taxes levied against the Site and Licensee's equipment attributable to the Licensee's use and occupancy of the Site. Payment shall be made by Licensee within fifteen (15) days after presentation of receipted bill and/or assessment notice which is the basis for the demand.

12. Liens: Licensee shall not permit any mechanic's, materialman's or other liens to stand against the Site or the Tower for any labor or material furnished to the Licensee in connection with work of any character performed on the Site or the Tower by or at the direction of Licensee. In the event that any notice of lien shall be filed or given, Licensee shall cause the same to be released or discharged within ten (10) business days of written notice from Licenser, and shall indemnify and hold Licenser harmless from and against any losses, damages, costs, expenses, fees, penalties, reasonable attorney's fees and legal expenses suffered or incurred by Licenser by reason of the filing of such claim or lien.

13. Licensee's Liability: Licensee shall be liable for any damage to the Tower or to any equipment located on the Tower arising out of or in connection with Licensee's use or occupancy of the Tower and Site and caused by the negligence or willful or intentional misconduct of its agents or employees. Licensee shall indemnify and hold Licenser harmless from and against any and all claims, demands and suits made or commenced by any party against Licenser for loss of life, personal injury, loss or damage to property, or other damage caused by the use of the Tower or Site by Licensee, its agents, or employees except to the extent caused by the negligence of Licenser. In no event shall Licensee be liable for consequential, incidental or punitive damages.

14. Licenser's Liability: Licenser shall be liable for any damage to the Tower or to any equipment located on the Tower arising out of or in connection with Licenser's use or occupancy of the Tower and Site caused by the negligence or willful or intentional misconduct of its agents or employees. Licenser shall indemnify and hold Licensee harmless from and against any and all claims, demands and suits made or commenced by any party against Licensee for loss of life, personal injury, loss or damage to property, or other damage caused by the use of the Tower or Site by Licenser, its agents or employees, except to the extent caused by the negligence of Licensee. In no event shall Licenser be liable for consequential, incidental, or punitive damages.

15. Insurance:

(a) Without in any way limiting Licensee's obligation to indemnify Licenser as set forth in Section 13 above, Licensee shall at all times during the Initial Term and any extension thereof, at Licensee's sole expense, maintain Workers Compensation insurance, in accordance with the legal requirements of the State in which the Site is located, covering all workers or employees of Licensee, and will require its contractors and subcontractors to maintain such insurance. Licensee shall maintain in full force and effect a commercial general liability insurance policy including premises/operations, completed operations, broad form property damage and bodily and personal injury, including death against claims caused by or occurring in conjunction with the operation of Licensee's business. Licenser shall be named as an additional insured on each policy and a certificate evidencing such coverage shall be issued by an insurance company qualified to do business in the State in which the Site is located, providing, in the aggregate, a minimum protection of not less than One Million Dollars (\$1,000,000) per occurrence. Each such certificate shall provide for not less than thirty (30) days prior written notice to Licenser of any proposed cancellation.

(b) Licenser shall at all times during the Initial Term and any extension thereof, at Licenser's sole expense, maintain Workers Compensation insurance, in accordance with the legal requirements of the State in which the Site is located, covering all workers or employees of Licenser, and will require its contractors and subcontractors to maintain such insurance. Licenser shall maintain in full force and effect a commercial general liability insurance policy including premises/operations, completed operations, property damage and bodily and personal injury, including death against claims caused by or occurring in conjunction with the operation of Licenser's business. Licensee agrees that Licenser may self-insure against any loss or damage which could be covered by such insurance.

16. Damage or Destruction: If the Tower shall, with or without the fault of Licensor, by any cause, be totally or partially destroyed or damaged so as to prevent use by Licensee of its space on the Tower, or a temporary facility provided by Licensor, for a period in excess of ninety (90) days, Licensee may terminate this License Agreement on written notice to Licensor, and upon such termination neither party shall have any further liability to the other. License Fees shall be abated for any period during which Licensee shall be unable to transmit or receive its signal because of the unavailability of the Tower or of a temporary facility provided by Licensor. Unless caused by the negligence or intentional acts of Licensor, Licensee shall have full risk of loss from and all causes for all of its equipment located on the Tower or the equipment [cabinet/building], or on the Site. In the event of any such damage or destruction which renders Licensee's facilities non-operable for a period reasonably expected to exceed five (5) days, Licensee shall have, and Licensor hereby grants to Licensee, the right to bring and maintain upon the Site such temporary communications facilities, to the extent permitted under the Prime Agreement, as Licensee shall reasonably determine are necessary to continue to operate Licensee's communications system and provided: (i) that such temporary facilities do not materially interfere with Licensor's or any other licensee's communications operations on the Site or the repair or replacement of the damaged facilities; (ii) that Licensee obtains all necessary permits and authorizations for the construction and operation of such temporary facilities; and (iii) that Licensee shall remove such temporary facilities within a reasonable period of time, which shall be no later than the earlier to occur of (a) the restoration of service to Licensee's facilities, or (b) termination of this License Agreement.

17. Eminent Domain: If the Tower, or equipment building, or any portion thereof in which Licensee's equipment is located, is taken by eminent domain, this License Agreement shall expire and the License Fee shall be apportioned to the date when the property is taken. Neither party shall be subject to any claims, actions or legal proceedings by the other party as a result of the taking by eminent domain.

18. Default: Should Licensee fail to pay, within five (5) days of written notice from Licensor, License Fees or any other amounts due Licensor hereunder, or fail to cure any breach of any other provision of this License Agreement after thirty (30) days written notice and demand, (provided, however, where such default cannot reasonably be cured within thirty (30) days, Licensee shall not be deemed to be in default under this License Agreement if Licensee commences to cure such default within said thirty (30) days and thereafter diligently pursues such cure to completion within ninety (90) days from the date of notice to Licensee), Licensor may terminate this License Agreement immediately, without further notice, and require Licensee to remove or cause to be removed all of Licensee's equipment. Licensee shall, in such event, remain liable for any and all costs incurred for removal of Licensee's antenna, transmission lines and associated equipment from the Tower and for removal of associated structures from the Site. Licensor shall not be liable for any damage to such equipment during its removal unless solely caused by its negligence or willful misconduct. Licensor shall further be entitled to such other remedies as may be available pursuant to applicable law, including damages for failure by Licensee to perform the unexpired term of this License Agreement. In the event of Licensor's failure to comply with any material provision of this License Agreement, which failure is not cured within thirty (30) days after receipt of written notice thereof from Licensee (provided, however, where any such default cannot reasonably be cured within thirty (30) days, Licensor shall not be deemed to be in default under this License Agreement if Licensor commences to cure such default within said thirty (30) days and thereafter diligently pursues such cure to completion within ninety (90) days from the date of notice to Licensor), Licensee may terminate this License Agreement without affecting its right to demand, sue for, and collect all of its damages arising out of Licensor's said failure to comply.

19. Surrender by Licensee: Within sixty (60) days of the expiration or termination of this License Agreement ("Removal Period"), Licensee, at its own cost and expense, shall completely remove or cause to be removed, all structures, including antennas and associated mounting brackets and transmission equipment, concrete foundations (only to below grade), fences and other associated structures, and restore the Tower and Site to their original condition, ordinary wear and tear and casualty loss excepted. Licensee shall pay License Fees and other amounts owed to Licensor at the then existing monthly pro-rated basis during the Removal Period, until such time as the removal of property and fixtures has been completed.

20. Assignment: Licensee shall not assign or sublease this License Agreement or any interest therein, and shall not encumber, hypothecate or otherwise give as security, this License Agreement without the prior written

consent of Licensor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Licensee may assign this License Agreement to a parent corporation or any of its majority controlled subsidiaries or affiliates upon written notice to Licensor. Any sublease, license or assignment of this License Agreement that is entered into by Licensor or Licensee shall be subject to the provisions of this License Agreement. Additionally, Licensee may, upon notice to Licensor, mortgage, or grant a security interest in this License Agreement and the Licensee's facilities, and may assign this License Agreement and the Licensee's facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "Secured Parties"). In such event, Licensor shall execute such consent to leasehold financing as may reasonably be required by Secured Parties. Licensor agrees to notify Licensee and Licensee's Secured Parties simultaneously of any default by Licensee and to give Secured Parties the same right to cure any default as Licensee, except that the cure period for any Secured Party shall not be fewer than ten (10) days after the receipt of the default notice.

21. Subordination: This License Agreement is subject to and subordinate at all times to the lien of existing and future Licensor mortgages on the Site, provided that the holder of such mortgage will not, for so long as Licensee shall not be in default under this License Agreement disturb the peaceful quiet enjoyment of the licensed Tower space or the Ground Space by Licensee. No instrument shall be necessary to effectuate this subordination, but Licensee agrees to execute and deliver such further instruments subordinating this License Agreement to the lien of all such Licensor mortgages as may be requested from time to time.

22. Estoppels: Within five (5) business days after written request, Licensee or Licensor, as applicable, shall deliver to the other, as applicable, or to any mortgagee or prospective purchaser of Licensor's or Licensee's interest, a certificate stating that: (i) Licensee or Licensor has entered into occupancy of the Tower and Site in accordance with the provisions of this License Agreement; (ii) this License Agreement is in full force and effect; (iii) Licensor or Licensee has performed the covenants, agreements or conditions required of Licensor or Licensee, if such be the case (and if such not be the case, then Licensee or Licensor shall list those covenants, agreements or conditions not so performed), and any other information reasonably requested by the Licensor, Licensee or such mortgagee.

23. Notice: All notices hereunder must be in writing and shall be deemed valid, if sent by certified mail return receipt requested, postage prepaid, or if sent by a nationally recognized courier providing proof of service, addressed as follows, or sent to any other address that the party to be notified may have designated to the sender by like notice:

Notices to: Diamond Towers IV LLC  
820 Morris Turnpike, Suite 104  
Short Hills, New Jersey 07078  
Attn: Legal Department

Remittances to: Diamond Towers IV LLC  
820 Morris Turnpike, Suite 104  
Short Hills, New Jersey 07078  
Attn: Contract Administration

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. Binding Agreement: This License Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

25. Governing Law: This License Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Site is located.

26. Attorney's Fees and Costs: In connection with any enforcement action or litigation arising out of this License Agreement, the prevailing party, whether Licensor or Licensee shall be entitled to recover all costs incurred including reasonable attorney's fees and legal assistant fees for services rendered in connection therewith, including appellate proceedings and post judgment proceedings.

27. Entire Agreement: This License Agreement represents the entire understanding and agreement between the parties and no agreements or representations, unless incorporated into this License Agreement shall be binding on any of the parties.

28. Waiver: Failure or delay on the part of the parties hereto to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

29. Severability: Should any provision of this License Agreement be deemed invalid or unenforceable by any court of competent jurisdiction, such invalidity shall not be construed to render any other provision invalid or unenforceable.

30. Memorandum: At the request of Licensee, Licensor agrees to execute a memorandum or short form of this License Agreement in recordable form, setting forth a description of the Site, and the term of this License Agreement for the purpose of giving public notice to third parties, which shall be in substantially the same form as the attached Exhibit D. Licensor agrees that Licensee may obtain title insurance on the leased premises. Licensor shall cooperate with Licensee's efforts to obtain such title insurance policy by executing documents or obtaining requested documentation as reasonably required by the title insurance company.

31. Hazardous Substances: Licensor represents and warrants that it has no knowledge of any substance, chemical, or waste (collectively, "Substance") on the Site or the surrounding property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Neither Licensor nor Licensee shall introduce or use any Substance on the Site or the surrounding property in violation of any applicable law. Licensor and Licensee each indemnifies the other against and holds the other harmless from any and all liability, damage, loss, expense, cost, penalty and fee, including consultant's fees and attorney's fees, resulting from any breach of any representation, warranty or agreement contained in this paragraph 31.

32. All equipment and communications facilities placed on the Tower or Site by Licensee shall remain the property of Licensee and will not be subject to any lien or encumbrance created or suffered by Licensor. Licensor waives all landlord's or similar liens in and to any property or equipment of Licensee (whether created by statute or otherwise).

[EXECUTIONS TO COMMENCE ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**LICENSOR:**

**Diamond Towers IV LLC**

a Delaware limited liability company

By: NOT FOR SIGNATURE  
Michael G. Brett, Chief Financial Officer

Date: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

a \_\_\_\_\_

By: NOT FOR SIGNATURE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “A”  
to Antenna Site License Agreement**

Description of Site

An approximate \_\_\_\_\_sq. ft. area described as follows:

**EXHIBIT “A-1”  
to Antenna Site License Agreement**

Description of Access Easement

**EXHIBIT “B”  
to Antenna Site License Agreement**

Page 1 of 2

Antenna and Equipment Description

**Frequencies:** TX:  
RX:

**Call Sign:**

**ANTENNAS AND CABLES – CABLE TO BE RUN ON OUTSIDE OF POLE**

Type	Quantity	RAD Height	Make / Model	Dimensions (Inches)	Weight (lbs.)	# of Cables	Cable Size	ERP (Watts)
<b>TOTAL</b>					<b>TOTAL</b>			

**OTHER TOWER MOUNTED EQUIPMENT**

Equipment Type	Quantity	Mounting Height	Make / Model	Dimensions (inches)	Weight (lbs.)

**OUTDOOR CABINET AND LICENSED GROUND SPACE**

- (1) Outdoor enclosure located on a 2 ft. x 2 ft. (4 sq. ft.) area of land located on the Site

**Exhibit “B”  
to Antenna Site License Agreement**

Page 2 of 2  
Site Plan

**EXHIBIT “C”  
to Antenna Site License Agreement**

License Fee Schedule

License fee escalation of \_\_\_\_percent (\_\_\_\_%) [annually/monthly]

[ANNUALLY/MONTHLY]

First [year/month] license fee

\$\_\_\_\_\_

## Exhibit D

### MEMORANDUM OF ANTENNA SITE LICENSE AGREEMENT

This Memorandum of Antenna Site License Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between **Diamond \_\_\_\_\_ LLC**, having a mailing address of 820 Morris Turnpike, Suite 104, Short Hills, New Jersey 07078 (hereinafter referred to as “[Landlord/Licensor/Sublicensor]”) and \_\_\_\_\_ a \_\_\_\_\_, having a mailing address of \_\_\_\_\_ (hereinafter referred to as “[Tenant/Licensee/Sublicensee]”).

1. [Landlord/Licensor/Sublicensor] and [Tenant/Licensee/Sublicensee] entered into a certain Antenna Site License Agreement (“Agreement”) on the \_\_\_\_ day of \_\_\_\_\_, 201\_, for the purpose of licensing to Licensee \_\_\_\_ ( ) square feet of ground space (“Licensed Ground Space”) at the Site to the extent necessary to enable Licensee to maintain, repair, replace (subject to the limitations set forth therein) and operate an unmanned equipment shelter and uses incidental thereto. All of the foregoing are set forth in the Agreement.
2. The initial license term will be \_\_\_\_ ( ) years (“Initial Term”) commencing on the Commencement Date of the Agreement, with \_\_\_\_ ( ) successive automatic \_\_\_\_ ( ) year extensions.
3. Licensor licensed to Licensee ground space located on the Site, which Site is described in Exhibit A annexed hereto. The location of the Licensed Ground Space on the Site is depicted in Exhibit B annexed hereto.
4. Licensor also granted to Licensee the use of non-exclusive access easement (“Access Easement”) to and from the Site, which is described in Exhibit C annexed hereto.
5. This Memorandum of Antenna Site License Agreement is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement. All capitalized terms not herein defined shall have the meaning ascribed to them in the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Antenna Site License Agreement as of the day and year first above written.

Licensor:  
**Diamond \_\_\_\_\_ LLC**  
A \_\_\_\_\_ limited liability company

Licensee:  
\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_  
NOT FOR SIGNATURE

\_\_\_\_\_  
NOT FOR SIGNATURE

Name: Michael G. Brett  
Its: Chief Financial Officer  
Date: \_\_\_\_\_

Name:  
Its:

Date: \_\_\_\_\_

**\* Final Memorandum will have appropriate state notary blocks.**

**EXHIBIT A**  
**TO MEMORANDUM OF ANTENNA SITE**  
**LICENSE AGREEMENT**

Description of the Licensed Ground Space

A \_\_\_ ft. x \_\_\_ ft. (\_\_\_ sq. ft.) area located on the Site described as follows:

**EXHIBIT B**  
**TO MEMORANDUM OF ANTENNA SITE**  
**LICENSE AGREEMENT**

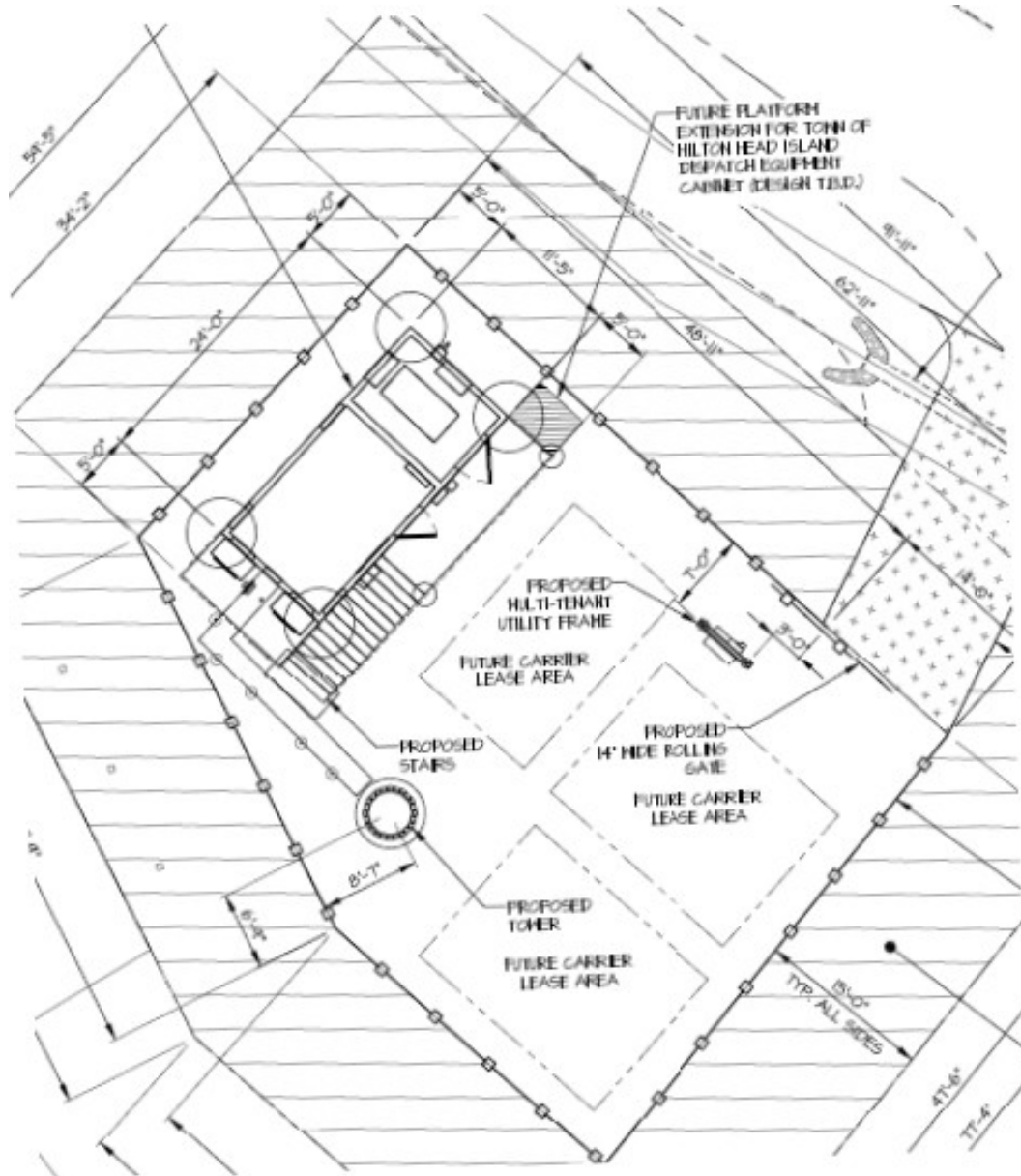
Site Plan

**EXHIBIT C**  
**TO MEMORANDUM OF ANTENNA SITE**  
**LICENSE AGREEMENT**

Description of Access Easement

## EXHIBIT "F"

### Town Ground Space Location



PROPOSED LEASE AREA  
AT&T  
"SPARKLEBERRY"  
410-365

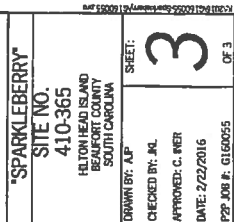
All that tract or parcel of land lying and being in Beaufort County, South Carolina and being more particularly described as follows:

To find the point of beginning, commence at a concrete monument found in the northeast corner of lands now or formerly owned by Andrick Deve Corp; thence, North 45°43'07" West, 25.69 feet to a point; thence running, North 44°32'27" East, 244.09 feet to a point; Thence 77.22 feet along the arc of a curve to the right, having a radius of 50.00 feet and being scribed by a chord bearing North 88°47'08" East, 69.77 feet, to a point; Thence, 73.05 feet along the arc of a curve to the right, having a radius of 573.38 feet and being scribed by a chord bearing South 43°19'12" East, 73.00 feet, to a point; Thence, South 39°40'13" East, 25.76 feet to a point; Thence, South 34°23'28" East, 88.20 feet to a point; Thence, 132.88 feet along the arc of a curve to the Left, having a radius of 365.18 feet and being scribed by a chord bearing South 44°48'55" East, 132.15 feet, to a point; thence, 41.82 feet along the arc of a curve to the right, having a radius of 25.00 feet and being scribed by a chord bearing, South 07°23'19" East, 37.11 feet to a point; thence, South 45°55'36" East, 15.00 feet to a point and the true POINT OF BEGINNING; Thence running, South 40°31'05" West, 67.40 feet to a point; Thence, North 46°34'48" West, 43.28 feet to a point; Thence, North 24°48'34" West, 46.60 feet to a point; Thence, North 44°26'07" East, 50.97 feet to a point; Thence, South 45°55'36" East, 82.24 feet to a point and the POINT OF BEGINNING.

Said tract contains 0.1229 acres (5,353 square feet) more or less, as shown in a survey prepared for AT&T by POINT TO POINT LAND SURVEYORS, INC dated February 22, 2016 and last revised February 26, 2016.





[illegible]

**STATE OF SOUTH CAROLINA**  
**COUNTY OF BEAUFORT**

)  
)  
)

**INGRESS AND EGRESS  
EASEMENT**

Know All Men By These Presents, that The Town of Hilton Head Island, South Carolina (hereinafter "Town"), for and in consideration of the Sum of One and 00/100 Dollar (\$1.00), the receipt and sufficiency of which is acknowledged, and in further consideration of the full and faithful performance of covenants and conditions expressed herein, does hereby grant, bargain and sell, and by these Presents does hereby grant, bargain and sell to Diamond Towers IV LLC (hereinafter "Diamond Tower"), a non-exclusive easement for a fixed term, across the below described real property (hereinafter, the "Easement"), for the purpose of:

Vehicular and pedestrian access to and from the Leased Property, being a 5,353 square foot area shown and described as "Proposed Lease Area" on that certain plat entitled "Easement Survey prepared by Point to Point Land Surveyors", dated February 22, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book \_\_\_\_\_ at Page \_\_\_\_\_ (hereinafter "Plat"), over that certain area described on the Plat as "C/L Proposed 30' Ingress-Egress & Utility Easement" located on real property described below and known as the Islander's Beach Tract, as the same may exist from time to time, for access to and from a communication facility as the same is described in the "Communication Tower Ground Lease" dated \_\_\_\_\_, 2016, by and between the Town and Diamond Tower.

This Easement is on, over and across that certain area described on the Plat as "C/L Proposed 30' Ingress-Egress & Utility Easement" on, over and across the real property owned by the Town of Hilton Head Island, South Carolina, known as the Islander's Beach Tract, and which is generally known and described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, South Carolina, and shown and described on that certain plat entitled "A Recombination Plat of 14.114 Acres Lands of 'The Town of Hilton Head Island', A Section of Port Royal Plantation & Grasslawn Subdivision No. 1, Hilton Head Island, Beaufort County, South Carolina", dated November 11, 2002, prepared by Coastal Surveying, Inc.,

and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 90 at Page 153.

AND ALSO, all that certain piece, parcel or lot of land, situate, lying and being on Hilton Head Island, South Carolina, known as a 66 foot right of way totaling 0.862 acres as shown on that certain plat entitled "A Plat of Blackberry Road, Huckleberry Road, and Sparkleberry Road, a Portion of Port Royal Plantation and Former Grasslawn Subdivision Number 1", prepared by Jerry L. Richardson, S.C.R.L.S. Number 4784, dated August 2, 1984, revised September 13, 1984 and further revised October 31, 1984, with said Plat being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on April 5, 1985 in Plat Book 32 at Page 249.

(hereinafter "Islander's Beach Tract").

The grant of this Easement is subject to the following terms and conditions:

1. The Town hereby reserves the right to use or convey the property which is subject to this Easement in any manner whosoever which does not interfere with Diamond Tower's use and enjoyment of the Easement.
2. The Town hereby reserves the right to change the location of the Easement. In the event that the Town chooses to exercise its right to change the location of the Easement, the Town shall give Diamond Tower ninety (90) days advance written notice prior to beginning any work to change the location of the Easement.
3. Diamond Tower shall restore any property disturbed or damaged by the exercise of Diamond Tower's rights hereunder to its pre-existing state.
4. The Town may alter the configuration of or relocate any paved or unpaved roadways on the Islander's Beach Tract from time to time as the Town may deem advisable in its discretion, and no such alteration or relocation by the Town shall be a breach of Diamond Tower's rights under this easement.
5. This Easement is for a fixed term, and shall remain valid and enforceable for such

period as the "Communication Tower Ground Lease" dated \_\_\_\_\_, 2016, by and between the Town and Diamond Tower shall remain in force. Unless sooner terminated under its terms, the "Communication Tower Ground Lease" shall expire on \_\_\_\_\_; provided, however, that upon termination of the "Communication Tower Ground Lease", for any reason, this Easement shall expire, and Diamond Tower agrees to execute and deliver to the Town a recordable document acknowledging termination of this Easement.

6. This easement is conveyed subject to all other easements, licenses and conveyances of record.

To have and to hold, all and singular, the rights, privileges and easements aforesaid unto the Town of Hilton Head, South Carolina, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Easement to be executed by their duly authorized officers on this \_\_\_\_ day of \_\_\_\_\_, 2016.

(SIGNATURE PAGES FOLLOW)

**WITNESSES:**

**DIAMOND TOWERS IV LLC**

\_\_\_\_\_

By:\_\_\_\_\_

\_\_\_\_\_

Its:\_\_\_\_\_

**THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA**

\_\_\_\_\_

By:\_\_\_\_\_  
David Bennett, Mayor

\_\_\_\_\_

Its:\_\_\_\_\_  
Stephen G. Riley, ICMA-CM  
Town Manager

STATE OF \_\_\_\_\_ ) UNIFORM ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_ ) S.C. CODE ANN. §30-5-30 (Supp. 2011)

I, the undersigned Notary Public do hereby certify that \_\_\_\_\_ personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of Diamond Towers IV LLC.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA ) UNIFORM ACKNOWLEDGMENT  
COUNTY OF BEAUFORT ) S.C. CODE ANNO. §30-5-30 (Supp. 2011)

I, the undersigned Notary Public do hereby certify that David Bennett and Stephen G. Riley personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

---

<b>STATE OF SOUTH CAROLINA</b>	)	
	)	<b>UNDERGROUND UTILITY LINE</b>
<b>COUNTY OF BEAUFORT</b>	)	<b>EASEMENT</b>

This Utility Easement is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between The Town of Hilton Head Island, South Carolina (hereinafter referred to as the "Grantor"), and Diamond Towers IV, LLC, a Delaware Limited Liability Company, having an address of 820 Morris Turnpike, Suite 104, Short Hills, New Jersey 07078 (hereinafter referred to as the "Grantee").

**WITNESSETH**

WHEREAS, the Grantor and Grantee have entered into that certain Communication Tower Ground Lease Agreement (hereinafter, "Agreement"), which contemplates the lease to the Grantor of a \_\_\_\_ acre portion of property located on Hilton Head Island, owned by Grantee, and known as Beaufort County Tax Map #: R510-009-000-0047-0000 (hereinafter, the "Property") for the purpose of erecting, operating and maintaining a communications tower; and,

WHEREAS, the Town of Hilton Head Island, South Carolina ("Town") has determined that a communications tower on the Islander's Beach Park Tract will promote improved telephone, wireless and other communication services on Hilton Head Island, which is beneficial to and in the best interests of the citizens, residents and visitors on Hilton Head Island; and,

WHEREAS, the Agreement provides that the Property shall be subject to an underground utility easement for the purpose of installing underground electrical and communications lines necessary for the operation of the Monopole Tower and the equipment utilized in connection therewith, in favor of the Grantee and its licensees, guests, invitees, successors and assigns,

extending from the Leased Property to the right of way of Folly Field Road; and,

WHEREAS, the Agreement also provides that the Grantor and Grantee shall work together to identify a location for the underground utilities and will work with any utility providers to determine an acceptable location for the underground utilities and the Underground Utility Line Easement; and,

WHEREAS, in accordance with the provisions of the Agreement, the Grantor desires to grant the Grantee a fixed-term underground utility line easement for installing underground electrical and communications lines, in favor of the Grantee and its licensees, guests, invitees, successors and assigns, over, across, and through the Property, having a duration equal to the Initial Term and any Renewal Term of the Agreement.

WHEREAS, The Easement is Five (5') Feet on either side of centerline of any underground electrical and communication lines (meaning fiber optic or metallic lines necessary for the operation of the Monopole Tower and the equipment utilized in connection therewith); and

NOW, THEREFORE, know all men by these presents, the Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and no other valuable consideration, has bargained, granted, and sold and by these presents does hereby bargain, grant, and sell to the Grantee, its successors and assigns, a Fixed-Term, non-exclusive Underground Utility Line easement for installing underground electrical and communications lines, over and across the following property:

All that certain parcel of land, shown and described as "Proposed Lease Area", and containing 4,900 square feet (0.1122 acres), having dimensions, metes and bounds as shown on the survey prepared by Point to Point Land Surveyors, Ronald McCann, S. C. R. L. S., a copy of which is attached hereto as Exhibit "A".(hereinafter, the "Leased Property").

A Portion of Beaufort County TMS#: R510-009-000-0047-0000

The easement is granted and accepted subject to the following terms:

1. Grantor hereby reserves the right to use or convey the property which is subject to this Easement in any manner whatsoever which does not interfere with the use and enjoyment of the Easement.

2. That Grantor hereby reserves the right to change the location of the within Easement from time to time, but solely at the expense of Grantor.

3. Grantor agrees that landscaping shall not be planted within Ten (10') Feet of any door or opening of electrical distribution equipment, or within the boundaries of the Easement.

4. Grantee acknowledges that any exercise of its rights under this Easement shall be governed by that certain "Communication Tower Ground Lease Agreement" by and between Grantor and Grantee, and which was approved by The Town of Hilton Head Island, South Carolina, in Ordinance \_\_\_\_\_.

5. Grantee shall restore any other part of Grantor's property that may be damaged as a result of Grantee's exercise of the rights granted hereunder to its pre-existing state.

6. This Grant of Easement shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

7. The WHEREAS clauses are hereby incorporated into this terms document as if fully set forth herein.

To have and to hold, all and singular, the rights, privileges, and easements aforesaid unto the Grantee, its successors and assigns, forever.

In Witness whereof, the parties hereto have caused the within Access Easement to be executed as of the date first above written.

SIGNED SEALED AND DELIVERED

TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA

\_\_\_\_\_  
*Signature of 1<sup>st</sup> Witness*

\_\_\_\_\_  
By: David Bennett, Mayor

\_\_\_\_\_  
*Signature of 2<sup>nd</sup> Witness (the Notary Public)*

\_\_\_\_\_  
Attest: Stephen G. Riley, ICMA-CM  
Town Manager

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT        )

ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that David Bennett and Stephen G. Riley personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

4)\_\_\_\_\_ (SEAL)

Signature of Notary Public for State of South Carolina

My Commission expires:\_\_\_\_\_

**(affix seal)**

DIAMOND TOWERS IV, LLC, a Delaware  
Limited Liability Company

1)By:\_\_\_\_\_

1)Its:\_\_\_\_\_

## ACKNOWLEDGMENT

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Signature of Notary Public for State of South Carolina  
My Commission expires: \_\_\_\_\_  
(affix seal)

**\*\* Instructions for Execution:**    *All signatures should be in blue ink.*  
    *ALL blanks must be filled in.*  
    *Grantor signs at line(s) 1)*  
    *Witness #1 signs at line 2)*  
    *Notary Public signs at line 3)*  
    *Notary Public signs at line 4) and affixes notary seal*

# **MEMORANDUM**

**TO:** Stephen G. Riley, ICMA-CM  
**FROM:** Julian Walls, Facilities Manager  
**DATE:** July 7, 2016  
**RE:** Temporary Fire Station Site License Agreement

---

## **Recommendation:**

Staff recommends the approval of the attached license agreement between Marriott Ownership Resorts, Inc. and the Town of Hilton Head Island for a temporary living quarter's site for Fire Station No. 2 replacement.

## **Summary:**

Attached is the proposed license agreement with the Marriott who owns a parcel of land that the Town wishes to use for temporary living quarters while the new station is being constructed. The term is for 17 months and the monthly expenses for the property are \$451.90 to cover property taxes, insurance and assessments.

## **Background:**

During the construction/replacement of Fire Station 2, temporary living quarters need to be established in and around the Fire Station's service area. Due to the lack of available living options in the area, a decision was made to place the temporary quarters upon a nearby parcel of land. In order to accomplish this, a license agreement is needed.

The selected site, which is located near the Sea Pines Center, is owned by the Marriott Ownership Resorts, Inc. and has been determined to suit the Town's needs during the new station's construction. (See attached map)

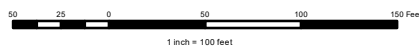


**Temporary  
Fire Station  
Two Location**



TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-4600  
Data Created:  
Project - map.mxd

# **Town of Hilton Head Island** **Temporary Fire Station Two Location**



The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or date of compilation or for any losses arising from the use of this map.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH MARRIOTT OWNERSHIP RESORTS, INC. FOR THE PURPOSE OF UTILIZING CERTAIN REAL PROPERTY OWNED BY MARRIOTT OWNERSHIP RESORTS, INC. FOR USE AS A TEMPORARY FIRE STATION.**

WHEREAS, the Town of Hilton Head Island, South Carolina (“Town”), is reconstructing/installing a new Fire Station Number 2, located in Sea Pines Plantation on Hilton Head Island; and

WHEREAS, in order to continue to fully serve the fire and emergency services needs of the community, the Town desires to operate a temporary fire station while Fire Station Number 2 is being reconstructed/installed; and

WHEREAS, the Town and Marriott Ownership Resorts, Inc. (“MORI”) desire to facilitate the Town’s use of certain real property owned by MORI for the purposes of a temporary fire station pursuant to the terms of that certain License Agreement attached hereto as Exhibit “1”; and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to execute the attached License Agreement for the aforementioned purposes.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS RESOLVED BY THE AUTHORITY OF THE SAID COUNCIL:**

1. The Mayor and/or Town Manager are hereby authorized to execute a License Agreement in substantially similar form as the document attached hereto as Exhibit “1”; and

2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the Town's obligations described in the Agreement to be executed by them, which is authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

\_\_\_\_\_  
**David Bennett, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Victoria L. Pfannenschmidt, Town Clerk**

**Approved as to Form:** \_\_\_\_\_  
**Gregory M. Alford, Town Attorney**

**Introduced by Council Member:** \_\_\_\_\_

**Ward:** \_\_\_\_\_

## **EXHIBIT 1**

## LICENSE AGREEMENT

**Hilton Head Island, Beaufort County, South Carolina**

Expenses: **Licensee shall pay all taxes, insurance, assessments, and similar charges associated with the Premises, currently totaling Four Hundred and Fifty One and 90/100 Dollars (\$451.90) per month. Licensee shall also pay all utility costs associated with use of the Premises, inclusive of any expenses associated with connection of such utilities.**

Notice to Licensee: **Stephen G. Riley, ICMA-CM, Town Manager  
The Town of Hilton Head Island, South Carolina  
One Town Center Court  
Hilton Head Island, SC 29928**

Notice to Licensor: **Marriott Ownership Resorts, Inc.  
6649 Westwood Boulevard  
Orlando, Florida 32821  
Attn: Asset Management**

In the event of any conflict between the foregoing Summary and the balance of this Agreement, the latter shall control.

**B. Description and Location of the Premises:**

Licensor has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Licensee, the right and license to enter into and upon the Premises subject, however, to the terms and conditions of this Agreement.

**ARTICLE 2  
TERM**

**A. Duration and Commencement:**

The initial term of this Agreement shall be for a period of Seventeen (17) months, commencing on August 1, 2016 (hereinafter sometimes referred to as the "Commencement Date"), and ending on December 31, 2017 (hereinafter sometimes referred to as the "Termination Date"). Licensee shall be permitted to access the property beginning July 1, 2016 to begin improvements upon the property and ready it for use as of the Commencement Date. The Licensee shall have up to sixty (60) days after the Licensee has vacated the Premises to restore the Premises to preoccupation condition pursuant to this Agreement.

**B. Right to Terminate:**

This Agreement may not be terminated except upon the written consent of Licensor and Licensee hereto, or in accordance with provisions set forth herein. After March 1, 2017, either party,

upon one hundred and eighty (180) days' advance written notice to the other party, may terminate this Agreement. Provided the terminating party is not in default hereunder, this Agreement shall terminate at the expiration of the one hundred and eightieth (180<sup>th</sup>) day after notice and, except as specifically set forth herein, the parties shall have no further liabilities hereunder.

C. Continuation of Agreement as Month to Month:

At the end of the Term, this Agreement will automatically convert to a month to month Agreement, unless either party has given thirty (30) days' advance written notice to terminate the Agreement. This Agreement shall automatically terminate upon the completion and occupancy of the new Fire Station Number 2 by the Hilton Head Island Fire Department.

**ARTICLE 3**  
**COSTS**

Licensee shall pay to Licensor all real property or other taxes, insurance premiums, assessments, and similar charges associated with the Premises, without prior demand therefore and without any deduction or setoff whatsoever, in the amount set forth in Article 1 above. Licensee shall also pay all utility costs associated with use of the Premises, inclusive of any expenses associated with connection of such utilities, as further described in Article 8. Unless otherwise provided for herein, any payment of these expenses shall be paid to Licensor at the address listed above in Article 1, except for payment of utility costs associated with use of the Premises, which shall be paid by the Licensee directly to the entity or person to whom the utility costs are owed. Such payments shall be paid in full, in advance on the 1<sup>st</sup> day of each month during the Term or any extension or renewal term of this Agreement.

Time is of the essence of the Licensee's ability to begin remodeling/preparing the Premises beginning July 1, 2016 for use as of the Commencement Date.

**ARTICLE 4**  
**POSSESSION OF PREMISES**

A. Acceptance of Premises:

Licensee shall, by entering into and occupying the Premises, be deemed to have accepted the Premises and personal property and fixtures thereon, and to have acknowledged that the same are then in the condition called for by this Agreement.

B. Surrender of the Premises:

Upon the expiration or sooner termination of the term of this Agreement, Licensee shall remove any of Licensee's personal property from the Premises. In the event Licensee shall fail to remove any of Licensee's personal property as provided herein, Licensor may, but is not obligated to, at Licensee's expense, remove all Licensee's personal property not so removed.

**ARTICLE 5**  
**USE OF THE PREMISES**

A. Permitted Uses:

Licensee acknowledges that the Premises shall be used by Licensee only for the operation of a temporary fire station while the current Fire Station Number 2 is being rebuilt and for no other purpose.

B. Rules, Regulations and Restrictions:

Licensee shall at all times during the term of this Agreement, at its sole cost and expense:

- (1) Furnish, install and maintain on the Premises any of Licensee's personal property deemed necessary by Licensee for the Licensee's use of the Premises;
- (2) Maintain the Premises, in a clean, neat, safe, sanitary and orderly condition, it being understood that no use shall be made or permitted of the Premises or any part thereof, nor any acts done, which will violate, make inoperative otherwise impair any insurance policy an any time held by or in any way for the benefit of Licensor pursuant to any provision of this Agreement;
- (3) Licensee shall, at its sole cost and expense, cause the removal and clean-up of any hazardous substance existing stored on the Premises or allowed to contaminate the Premises by Licensee;
- (4) Comply with all governmental rules, regulations, ordinances, statutes and laws now or hereafter in effect pertaining to the Premises or Licensee's use thereof;
- (5) Refrain from committing or suffering to be committed any waste upon, or any unlawful, improper or offensive use of, the Premises, or any public or private nuisance or act or thing upon the Premises or any structure or building on the Premises;
- (6) Maintain the Premises so as to achieve compliance with and remain in compliance with all local ordinances promulgated by the Town of Hilton Head Island, South Carolina, or any other applicable Federal, State or local statute, ordinance, law, rule or regulation concerning the Premises.
- (7) Provide at least thirty (30) days' advance written notice to adjacent residents, businesses and/or homeowner's associations of pending construction of Licensee improvements on the Premises.

## **ARTICLE 6**

### **REPAIRS AND MAINTENANCE**

Licensee acknowledges that Licensee shall be solely responsible for the cost of making any repairs to the Premises and any of the structural, electrical, plumbing or mechanical components for any improvements made by Licensee during the Term and any renewal term of this Agreement.

## **ARTICLE 7**

### **ALTERATIONS**

Licensee shall be permitted to make changes and alterations to the Premises. Plans for any changes or alterations, inclusive of any alterations to provide vehicular or pedestrian access to the Premises, shall be tendered to the Licenser prior to being made. No changes to the premises shall be made without plans being provided to Licenser at least fourteen (14) days in advance of commencement of such work for Licenser's review and written approval, which approval shall be in Licenser's sole discretion. If, during the Term hereof, any change, alteration, addition or correction shall be required by any law, rule or regulation of any governmental authority to be made in or to the Premises or any portion thereof, Licenser shall first give written consent thereto and any such change, alteration, addition or correction shall then be made by Licensee at Licensee's sole cost and expense. Notice is hereby given that no mechanic's, materialmen's or other lien sought to be taken on the Premises shall in any manner affect the right, title or interest of Licenser therein.

Notwithstanding the aforementioned requirement to provide Licenser with plans at least fourteen (14) days in advance of commencing construction, Licensee hereby informs the Licenser of the intent to make alterations or improvements to the Premises in substantial conformance with the attached **Exhibit "A"**. Unless otherwise agreed to in writing by Licenser, no improvements made to the Premises by the Licensee, including those shown on the attached **Exhibit "A"**, may remain with the Premises. After the Licensee has vacated the Premises, the Licensee shall have up to sixty (60) days to restore the Premises to preoccupation condition pursuant to this Agreement.

## **ARTICLE 8**

### **UTILITIES**

Licensee shall be responsible for installing, extending or connecting to the various utility lines servicing the Premises (i.e. electricity line(s), sewer line(s), water line(s), etc.), and Licensee shall be responsible for removing these utility lines and restoring the Premises to preoccupation condition, after Licensee has vacated the Premises, in accordance with Article 7. Licensee shall pay before delinquency, at its sole cost and expense, all charges for water, gas, heat, electricity, power, telephone service and all other charges for services or utilities, inclusive of any expenses associated with connection of such utilities, of whatsoever kind or nature used in, upon or about the Premises, or the structures and buildings on the Premises during the Term and any renewal term of this Agreement.

**ARTICLE 9**  
**LICENSEE CONTROL AND INSURANCE**

A. Licensee Control:

Licensee acknowledges that use of the Premises and any structure or building on the Premises is under the sole and exclusive control of Licensee during the Term of this Agreement.

B. Insurance:

Licensee covenants and agrees that from and after the delivery of the Premises by Licensor to Licensee, Licensee will carry and maintain, at its sole cost and expense (including the cost of all premiums, deductibles, retentions and all related costs and expenses), the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(1) Workers Compensation, Public Liability and Auto Liability:

(a) Commercial general liability insurance including coverage for bodily injury, death and property damage, personal and advertising injury with a limit, per occurrence, of ONE MILLION (\$1,000,000.00) DOLLARS, insuring against any and all liability of the insured with respect to said Premises, or arising out of the maintenance, use or occupancy thereof.

(b) Automobile liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with the Premises, for bodily injury and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) each accident.

(c) Workers' compensation insurance in statutory amounts, which complies with the applicable workers' compensation laws governing Licensee and all employees working for Licensee and Employer's Liability insurance of not less than Five Hundred Thousand Dollars (\$500,000) per accident, per disease each employee and per disease policy limit.

(2) Other Insurance:

For and during the Term and any renewal term of this Agreement, Licensee shall maintain in force property "all risk" insurance against loss or damage by fire, theft, water damage, wind, hail, flood and including all other perils insured under a standard "Special Cause of Loss" form for the replacement cost, covering all buildings, fixtures, improvements and other property controlled or owned by Licensee and located upon the Premises. Licensor shall not be liable for any loss or damage to property within the Premises including the real or personal property of Licensee

(3) Licensors Insurance:

Licensors shall have no responsibility to provide insurance coverage for Licensee or any property of Licensee.

(4) Policy Form:

All policies of insurance provided for herein shall be issued by insurance companies of recognized responsibility with a rating of not less than A-VIII, as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of South Carolina. Certificates of insurance shall be delivered to Licensors within ten (10) days after delivery of possession of the Premises to Licensee and thereafter within ten (10) days prior to the expiration of the term of each such policy. All policies shall contain a waiver of recovery and subrogation in favor of Licensors. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Licensee in like manner and to like extent. If commercially available, all policies of insurance required of Licensee must contain a provision that the company writing said policy will give to Licensors twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. In the event insurer will not provide such notice, then Licensee will provide such written notice to Licensors. The commercial general liability policy shall be written as primary insurance coverage, not contributing with and not in excess of coverage which Licensors may carry. Licensee hereby waives and shall waive its respective rights of recovery and its insurers' rights of subrogation for any loss or damage to Licensee or any third party, regardless of the cause of the loss or damage.

(5) Failure of Licensee to Obtain:

In the event that Licensee fails to procure and/or maintain any insurance required by this Article, or fails to carry insurance required by law or governmental regulation, Licensors may, but without obligation to do so, at any time or from time to time, and without notice, procure such insurance and pay the premiums therefore, in which event Licensee shall repay Licensors all sums so paid by Licensors, together with interest thereon as provided in Article 16 hereof, and any incidental costs or expenses incurred by Licensors in connection therewith, within ten (10) days following Licensors' written demand to Licensee for such payment.

**ARTICLE 10**  
**EMINENT DOMAIN**

A. Eminent Domain/Whole Taking:

In the event that the whole of the Premises is taken for public or quasi-public purposes by the government of the United States, the State of South Carolina, Beaufort County, or any government or power whatsoever, or should the whole of the Premises be condemned by any court, city, county, state or governmental authority or office, department or bureau of any city, county, state or United

States, then in any such event this Agreement shall terminate as of the date title to the Premises vests in the condemning authority. Any amounts paid by Licensee to Licensor for the part of the Term extending beyond the date on which title vests in the condemnor shall be refunded by Licensor to Licensee. Licensee shall not share in any condemnation awards.

B. Eminent Domain/Partial Taking:

In the event that a portion of the Premises shall become subject to the exercise of the right of eminent domain, or of seizure or appropriation of space in the same, by lawful authority under the right of eminent domain, Licensor and Licensee shall have the option to terminate this Agreement.

**ARTICLE 11**  
**DAMAGE AND RESTORATION**

A. Total or Partial Destruction:

In case the Premises are damaged by fire, explosion or other casualty or occurrence, then any such damage shall be promptly repaired by Licensee utilizing the proceeds of the insurance required under Article 9 above, or at Licensee's expense in the event such insurance is inadequate or not in effect.

**ARTICLE 12**  
**ASSIGNMENT OR SUBLETTING BY LICENSEE**

A. General Limitations:

Licensee may not, either voluntarily or by operation of law, assign this Agreement, or any interest in this Agreement.

B. Effect of Violation:

Any assignment of this Agreement, or any interest hereby created, or the Premises or any portion thereof, either voluntarily or involuntarily, whether by operation of law or otherwise, or any other action by Licensee in violation of the restrictions set forth in this Article shall be null and void and shall, at the option of Licensor, terminate this Agreement.

**ARTICLE 13**  
**DEFAULT BY LICENSEE**

A. Notice of Termination; Licensor's Options:

In the event that:

- (1) Licensee shall default in the payment of any sum of money required to be paid hereunder and such default continues for ten (10) business days after written notice thereof from Licensor to Licensee; or,
- (2) Licensee shall default in the performance of any other provision, covenant or condition of this Agreement required by Licensee to be kept and performed and such default continues for ten (10) business days after written notice thereof from Licensor to Licensee;

then in any such event (and in addition to all other rights and remedies it may have according to this Agreement or by law provided) Licensor, at its option, may declare the term of this Agreement ended and re-enter the Premises.

Pursuant to said right of re-entry, Licensor may, but shall not be obligated to, remove all property therefrom including but not limited to Licensee's property, and may, but shall not be obligated to, enforce any rights Licensor may have against said property, or store the same in any public or private warehouse or elsewhere at the cost and for the account of Licensee or the owners or owner thereof. If Licensor's right of re-entry is exercised following Licensee's vacating or abandoning the Premises, then Licensor may consider any personal property belonging to Licensee left on the Premises to have been abandoned also, in which case Licensor may dispose of all such personal property in any manner Licensor shall deem proper, including but not limited to removing and/or storing Licensee's personal property at Licensee's sole expense, and is hereby relieved by Licensee of all liability for doing so.

**B. Waiver of Default:**

The waiver by Licensor of any default or breach of any of the provisions, covenants or conditions hereof on the part of Licensee to be kept and performed shall not be a waiver of any preceding or subsequent breach by Licensee of any provision, covenant or condition of this Agreement.

**ARTICLE 14**  
**INSOLVENCY OF LICENSEE**

**A. Breach of Agreement:**

The filing by Licensee of any petition for relief under the provisions of the federal bankruptcy law, including any petition for reorganization, or the making by Licensee of a general assignment for the benefit of Licensee's creditors, or any action taken at the corporate or partnership level to authorize either of the foregoing actions, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of the Licensee, or any action taken or suffered to be taken by Licensee under any State insolvency law now or hereafter in effect, or should the Premises or any portion thereof be taken or seized under any levy, distraint or execution against Licensee, and the continuance of the same for a period of thirty (30) days, shall constitute a material breach of this Agreement by the Licensee and in such event Licensor may, at its option, terminate this Agreement upon ten (10) days' written notice to the Licensee.

B. Operation of Law:

It is understood and agreed that neither this Agreement, nor any interest herein or hereunder, shall pass by operation of law under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect, to any trustee, receiver, or assignee for the benefit of creditors, or to any other person whomsoever, with the express written consent of the Licensor. Any purported transfer in violation of this Article shall constitute a material breach of this Agreement by Licensee.

**ARTICLE 15**  
**LIENS**

A. Licensee Responsibility:

Licensee shall keep the Premises free and clear from any claims, liens, demands, charges, encumbrances or litigation arising directly or indirectly out of any use, occupancy or activity of Licensee, its agents and employees, or out of any work performed, material furnished or obligations incurred by Licensee, its agents and employees, in, upon, about or otherwise in connection with the Premises, and shall, except as hereinafter permitted in this Article, pay or cause to be paid for all work performed and material furnished to the Premises or Licensor's reversionary estate therein, and will keep the Premises free and clear of all mechanic's liens and materialmen's liens.

B. Contest of Liens:

If Licensee desires to contest any claim of lien, Licensee shall, within fifteen (15) days after the filing of the lien for record, furnish Licensor with cash security in the amount of the claim of lien, plus estimated costs and interest, or shall furnish Licensor with a bond of a responsible corporate surety in the same amount conditioned upon the discharge of the lien. Nothing contained herein shall prevent Licensor, at the cost and for the account of Licensee, from obtaining and filing a bond conditioned upon the discharge of such lien, in the event Licensee fails or refuses to furnish the same within said fifteen (15) day period.

C. Satisfaction of Liens:

Immediately upon entry of final judgment in any such action in which Licensee contests any such claim of lien, and if such judgment shall establish the validity of the lien, or any part thereof, and within fifteen (15) days after the filing of any lien for record which Licensee does not contest, Licensee shall fully pay and discharge such judgment or lien, as the case may be, and Licensee shall reimburse Licensor upon demand for any and all loss, damage and expense, including reasonable attorneys' fees, which Licensor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Licensor, at the cost and for the account of Licensee, from satisfying any such judgment or lien, as the case may be, in the event Licensee fails or refuses to satisfy the same as herein provided.

D. Notice to Licensor:

Should any claim or lien be filed against the Premises, or any action or proceeding be instituted affecting the title to the Premises, Licensee shall give Licensor written notice thereof as soon as Licensee obtains knowledge thereof.

#### **ARTICLE 16**

#### **INTEREST ON PAST DUE OBLIGATIONS**

Whenever, under any provision of this Agreement, Licensee shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Licensee fails, refuses or neglects to perform as herein required, Licensor shall be entitled but shall not be obligated to make any such payment or expenditure, or do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Licensee, and in such event the amount thereof with interest thereon as hereinafter provided shall be deemed additional rental hereunder and shall be added to and deemed a part of the next installment of Rent thereafter becoming due from Licensee to Licensor hereunder. Any amount due from Licensee to Licensor under this Agreement which is not paid when due shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate then allowed under the usury laws of the State of South Carolina from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Licensee under this Agreement.

#### **ARTICLE 17**

#### **FORCE MAJEURE**

Whenever a day is appointed herein on which, or a period of time is appointed within which, either party hereto is required to do or complete any act, matter or thing, other than payment of performance of a financial obligation hereunder, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lock-outs, embargoes, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, Acts of God or other causes beyond such party's reasonable control; provided, however, nothing contained in this Article shall excuse Licensee from the prompt payment of any charge required of Licensee hereunder except as may be expressly provided elsewhere in this Agreement.

#### **ARTICLE 18**

#### **SUBORDINATION**

Licensee agrees upon request of Licensor to subordinate this Agreement and its rights hereunder to the lien of any mortgage, ground lease, deed of trust, assignment of rights or any other encumbrance, together with any conditions, renewals, extensions or replacements hereof, now or hereafter placed, charged or enforced against the Licensor's interest in this Agreement and the and the Premises and to deliver (but without cost to Licensee) at any time and from time to time upon demand by Licensor such documents as may be required to effectuate such subordination, and in the event that Licensee shall fail, neglect or refuse to execute and deliver any such document within ten

(10) days after receipt of written notice so to do and the receipt by Licensee of the document to be executed by it, Licensee hereby irrevocably appoints Licensors, its successors and assigns, the attorney-in-fact of Licensee, to execute and deliver any and all such documents for and on behalf of Licensee; provided, however, that Licensee shall not be required to effectuate such subordination, nor shall Licensors be authorized to effect such subordination on behalf of Licensee, unless the mortgagee or beneficiary named in such mortgage, deed of trust or other encumbrance shall first agree in writing, for the benefit of Licensee, that so long as Licensee is not in default under any of the provisions, covenants or conditions of this Agreement on the part of Licensee to be kept and preformed, that neither this Agreement nor any of the rights of Licensee hereunder shall be terminated or modified or be subject to termination in modification, nor shall Licensee's use of the Premises be disturbed or interfered with, by any trustee's sale or by any action or proceeding to foreclose said mortgage, deed of trust or other encumbrances.

## **ARTICLE 19**

### **HOLDING OVER**

In the event Licensee shall hold over or remain in possession of the Premises with the consent of Licensors after the expiration of the stated Term of this Agreement, or any written extension or renewal term of this Agreement, any such holding over or continued possession shall create a month to month license only, upon the same terms and conditions as are herein set forth in Article 2(C) so far as the same are applicable.

## **ARTICLE 20**

### **LICENSEE CERTIFICATE**

Licensee agrees that at any time and from time to time during the term of this Agreement, and within ten (10) days after demand therefore by Licensors, to execute and deliver to Licensors or to any proposed mortgagee, trustee, beneficiary or purchaser, a certificate in recordable form certifying that this Agreement is in full force and effect, that the Agreement is unmodified, or if modified state any such modifications, and that there are no defenses or offsets thereto, or stating such defenses or offsets as are claimed by Licensee, and the date to which all rentals have been paid.

## **ARTICLE 21**

### **SALE OR ASSIGNMENT BY LICENSOR**

#### **A.     Sale or Assignment by Licensors Permitted:**

It is agreed that Licensors may, without notice to Licensee, at any time assign or transfer its interest as Licensors in and to this Agreement, or any part thereof, and may at any time sell or transfer its interest in the fee of the Premises, or its interest in and to the whole or any portion of the Premises.

#### **B.     Attornment:**

Licensee hereby agrees to attorn to the assignee, transferee or purchaser of Licensor under any provision of this Article from and after the date of notice to Licensee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Agreement were made, in the first instance, by and between Licensee and such assignee, transferee or purchaser.

In the event of the exercise of the power of sale under, or the foreclosure of, any deed or trust, mortgage or other encumbrance placed by Licensor against all or any portion of the Premises, Licensee shall upon demand attorn to the purchaser upon the effective date of any such sale or foreclosure of any such deed of trust, mortgage or other encumbrance, and shall recognize the purchaser or judgment creditor as the Licensor under this Agreement.

C. Transfer of Licensor's Obligations:

The term "Licensor" as used in this Agreement, so far as the covenants or obligations on the part of Licensor are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Premises, and in the event of any transfer or conveyance of Licensor's title to such fee, other than by way of security only, Licensor herein named, except as hereinafter provided (and in case of any subsequent transfers or conveyance, except by way of security only, the then grantor), shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Licensor contained in this Agreement thereafter to be performed, provided that any funds in the hands of such Licensor, or the then grantor, at the time of such transfer or conveyance in which Licensee has an interest shall be turned over to the transferee or grantor, and any amount then due and payable by Licensee to Licensor, or by the then grantor, under any provisions of this Agreement shall be paid to Licensee, it being intended hereby that the covenants and obligations contained in this Agreement on the part of Licensor to be kept and performed by it shall, subject as aforesaid, be binding on Licensor, its successors and assigns only during and in respect of their respective successive periods of ownership.

**ARTICLE 22**  
**QUIET POSSESSION**

Except as is provided hereunder, Licensor agrees that Licensee, upon paying the Rent and other payments herein required from Licensee, and upon Licensee's performance of all of the provisions, covenants and conditions of this Agreement on its part to be kept and performed, may quietly have, hold and enjoy the Premises during the term of this Agreement, without hindrance or interruption by Licensor or anyone lawfully or equitably claiming by, through or under any persons or parties whatsoever.

**ARTICLE 23**  
**NO PARTNERSHIP**

Anything contained herein to the contrary notwithstanding, Licensor does not in any way or for any purpose become a principal or partner of Licensee in the conduct of its business or otherwise, or a joint venturer or member of a joint enterprise with Licensee hereunder. The provisions in relation to work performed by Licensee within the Premises are included merely to facilitate

Licensor's maintaining architectural control, minimum standards of design and aesthetic value of the Premises.

**ARTICLE 24**  
**REMEDIES CUMULATIVE**

The various rights, options, elections and remedies of Licensor and Licensee, respectively, contained in this Agreement shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Agreement.

**ARTICLE 25**  
**ATTORNEY'S FEES**

Should either party hereto institute any action or proceeding at law or in equity to enforce or to interpret any provision hereof for damages or other relief by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to seek to receive from the losing party, in addition to allowable court costs, such amount as the court may adjudge to be reasonable as attorneys' fees for the services rendered the prevailing party in such action or proceeding, and such amount may be made a part of the judgment against the losing party.

**ARTICLE 26**  
**PARTIAL VALIDITY**

If any term, provision, covenant or condition of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**ARTICLE 27**  
**RECORDING OF AGREEMENT**

Neither this Agreement, nor a memorandum thereof, may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina without express written permission from the parties hereto.

**ARTICLE 28**  
**CAPTIONS, PRONOUNS AND INTERPRETATION**

A. Captions:

The captions appearing at the commencement of the Articles, Sections and Paragraphs hereof are descriptive only and intended for convenience in reference to this Agreement, and should there be any conflict or inconsistency between any such caption and the text of any such Article, Section or Paragraph at the head of which it appears, the text of the said Article, Section or Paragraph, as the

case may be, and not the caption, shall control and govern in the construction of the terms of this Agreement.

B. Pronouns:

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution or substitutions.

C. Interpretation:

(1) Law:

Except as may be expressly limited herein, the laws of the State of South Carolina, including statutes of limitation, shall govern the validity, construction and effect of this Agreement, and shall apply in all respects to any disputes or controversies arising out of or pertaining thereto.

(2) Covenants:

Whenever in this Agreement any words of obligation or duty are used in connection with either party, such words shall have the same force and effects as though framed in the form of express covenants on the part of the party obligated.

(3) Joint and Several Liability:

In the event either party hereto now or hereafter shall consist of more than one person, firm or corporation, then and in such event all such persons, firms or corporations shall be jointly and severally liable as parties hereunder.

(4) Language Construction:

The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against either party hereto.

**ARTICLE 29**  
**SUCCESSORS AND ASSIGNS**

If and where assignment is permitted under the terms hereof, the terms, provisions, covenants and conditions contained in this Agreement shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the party hereto permitted to make such assignment, except as otherwise set forth herein.

**ARTICLE 30**  
**ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of Licensors and Licensee and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof. Except as here and otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Licensors or Licensee unless reduced to writing and signed by each of them. Without limiting the generality of the foregoing, this Agreement may not be amended or modified without the written consent of all beneficiaries under any mortgages or deeds of trust constituting a lien on the fee of all or any portion of the Premises demised to Licensee.

**ARTICLE 31**  
**SERVICE OF NOTICES**

A. Notices To Be In Writing:

Any and all notices and demands by or from Licensors to Licensee, or by or from Licensee to Licensors, required or desired to be given hereunder shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, regular first class mail, postage prepaid. If such notice or demand be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice or demand be served by regular first class mail, in the manner herein provided, service shall be conclusively deemed at forty-eight (48) hours after the deposit thereof in the United States mail addressed to the party to whom such notice or demand is to be given.

B. Notices to Licensors:

Any notice or demand to Licensors shall be addressed to Licensors at the address specified in Article 1 above.

C. Notices to Licensee:

Any notice or demand to Licensee shall be addressed to Licensee at the address specified in Article 1 above.

D. Change of Address:

Any party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereof, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

**ARTICLE 32**  
**JOINDER AND CONSENT OF SEA PINES RESORT, LLC**

By virtue of certain covenants and restrictions encumbering the Premises and held by Sea Pines Resort, LLC, the Joinder and Consent attached hereto as **Exhibit “B”** is being executed by Sea Pines Resort, LLC to consent to the execution, operation, and performance of this Agreement.

**ARTICLE 33**  
**ENCROACHMENT**

Licensor asserts that the Property encroaches onto an adjacent parcel known as Parcel C-2B of Sea Pines Center, +/- 0.31 acres, Beaufort County PIN R550 017 000 1197 0000 which is owned by Sea Pines Center Associates, LLC (“SPCA”), which encroachment is evidenced by that written letter agreement dated December 5, 2015 between Licensor and SPCA (the “Encroachment Agreement”). The parties acknowledge and agree that should SPCA make a written request to Licensor to remove such encroachment, MORI is required by the Encroachment Agreement to remove the encroachments within 120 days after receipt of such request. Licensee agrees to allow MORI access to the Property to resolve such encroachment issue, and further agrees not to take any actions which would violate the Encroachment Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first-above written.

**WITNESSES:**

\_\_\_\_\_  
  
\_\_\_\_\_

**LICENSOR:**

**MARRIOTT OWNERSHIP RESORTS, INC.**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
  
\_\_\_\_\_

**LICENSEE:**

**THE TOWN OF HILTON HEAD ISLAND,  
SOUTH CAROLINA**

**By:** \_\_\_\_\_  
**David Bennett, Mayor**

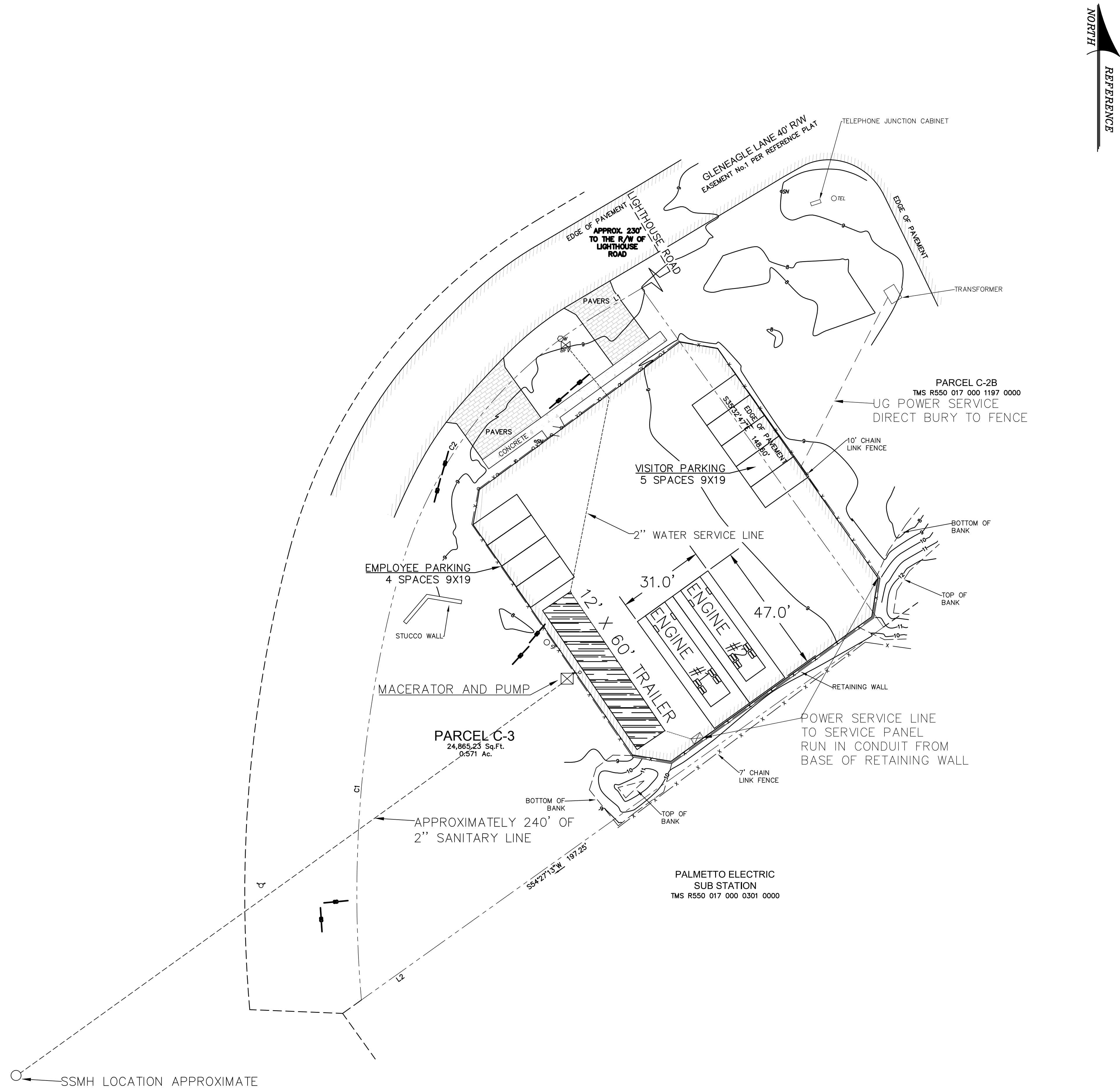
**Attest:** \_\_\_\_\_  
**Stephen G. Riley, ICMA-CM  
Town Manager**

## **Exhibit “A”**

### Tenant Improvements

See **Exhibit “A-1”** attached hereto and incorporated herein by reference, and as additional information thereto:

- Remove sections of the northwest fence for vehicle entry.
- Trim (limb-up) trees located within Premises and perform landscaping maintenance for general cleaning of Premises.
- Provide electricity through a meter connection and run conduit along/through the northeast wall of Premises.
- Provide water from the source located at the northwest portion of the Premises and trench to the temporary trailer to be placed on the Premises.
- Provide sewer by directional bore to a manhole located to the southwest on property owned by Gleneagle Green Horizontal Property Regime, Inc.
- Place a trailer on the Premises and block/tie down.
- Park two (2) fire trucks on Premises along with approximately three (3) to five (5) personal vehicles.



## **EXHIBIT “B”**

### **JOINDER AND CONSENT OF SEA PINES RESORT, LLC**

WHEREAS, Sea Pines Plantation Company, Inc. (“SPCC”) conveyed Parcel C-3, containing 0.571 acres (the “Property”), as more particularly described in that certain Deed (“Deed”) to Marriott Ownership Resorts, Inc., which Deed was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 518 at Page 738; and

WHEREAS, Sea Pines Resort, LLC (“Company”) is the assignee of the rights owned by SPCC, as evidenced by that certain document recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2539 at Page 1193; and

WHEREAS, the Deed contained a restriction and limitation that the Property may be used only for the construction and operation thereon of two (2) regulation tennis courts and parking reasonably necessary or required therefore; and

WHEREAS, a Modification of Restrictive Covenant was subsequently executed by the Company and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3376 at Page 1565, which expanded the use restrictions set forth in the Deed; and

WHEREAS, the use restrictions set forth in the Deed and Modification of Restrictive Covenant are collectively referred to as the “Use Restriction”; and

WHEREAS, the Town of Hilton Head Island, South Carolina and Marriott Ownership Resorts, Inc. have requested, and the Company has agreed, to modify the Use Restriction encumbering the Property only to the extent of allowing for the operation and performance of the Lease to which this Exhibit “B” is attached, thereby allowing for the Property to be used as a temporary fire station for the Town of Hilton Head Island, South Carolina until a new Fire Station Number 2 is constructed and utilized by the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, for valuable consideration, the Company does hereby modify the Use Restriction encumbering the Property only to the extent of allowing for the operation and performance of the Lease to which this Exhibit “B” is attached, thereby allowing for the Property to be used as a temporary fire station for the Town of Hilton Head Island, South Carolina until a new Fire Station Number 2 is constructed and utilized by the Town of Hilton Head Island, South Carolina. The modification of Use Restriction contained herein shall terminate and be void and of no effect upon termination or expiration of the Lease to which this Exhibit “B” is attached.

(SIGNATURE PAGE FOLLOWS)

**WITNESSES:**

**SEA PINES RESORT, LLC**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Steven P. Birdwell, President

STATE OF SOUTH CAROLINA )

)

**ACKNOWLEDGMENT**

COUNTY OF BEAUFORT )

I, the undersigned Notary Public do hereby certify that Steven P. Birdwell personally appeared before me this day and, in the presence of the two witnesses above named, subscribed to the within Waiver on behalf of Sea Pines Resort, LLC.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_(SEAL)

Signature of Notary Public for State of South Carolina

My Commission expires:\_\_\_\_\_

# **MEMORANDUM**

**TO:** Stephen G. Riley, ICMA-CM  
**FROM:** Derrick Coaxum, Project Manager  
**DATE:** July 7, 2016  
**RE:** Island Recreation Site Lease and Facility Use Agreement

---

## **Recommendation:**

Staff recommends the approval of the attached lease and facility use agreement between Beaufort County School District Board of Education, and the Town of Hilton Head Island and Hilton Head Island Recreation Association for the use of property and facilities associated with the Town's proposed expansion of the Island Recreation Center.

## **Summary:**

The current Island Recreation Center, which is owned by the Town, is on land owned by the Beaufort County School District Board of Education and leased to the Town. The proposed expansion of the Rec Center will require additional land beyond what the Town currently leases. The attached proposed lease and facilities agreement between the Beaufort County School District Board of Education, the Town of Hilton Head Island and Hilton Head Island Recreation Association will expand the land area leased by the Town to facilitate the expansion of the Island Recreation Center. Additionally, it provides parameter under which Island Rec may use school facilities and under which the School District may use Island Rec facilities. The life of the lease is 35 years with opportunities for renewal.

## **Background:**

In 1987 Beaufort County Board of Education and Town of Hilton Head Island entered into an agreement for the Town to lease approximately 5.7 acres to create the Island Recreation Center. The Center includes a gymnasium, classrooms, offices, swimming pool, outdoor basketball courts, a playground and play fields. The center runs a pre-school day program, afterschool and summer programs for school age children along with sports programs for all ages, adults and children alike. The Center also operates the only public pool facility on the Island. It provides swimming and water exercise opportunities for all ages, as well as a place for local private swim teams and the HHI High School swim teams to practice and hold competitions. The pool operates year-round by incorporating the use of an air supported dome to enclose the pool area during the winter season.

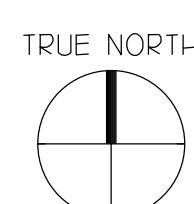
The proposed agreement will increase the amount of land leased from approximately 5.7 acres to approximately 8.4 acres. This will allow the Town to proceed with its proposed expansion of the Rec Center. This expansion will include a second gymnasium, more office space and classrooms, additional parking, relocated tennis courts and ROTC drill pad, a new pool deck and additional field lighting. The proposed new building construction will be approximately 31,000 square feet on two stories with 15,000 in renovated existing space.

PROJECT NO:

THESE DRAWINGS AND THE PROJECT MANUAL  
ARE INSTRUMENTS OF SERVICE AND REMAIN  
PROPERTY OF THE FWA GROUP ARCHITECTS.  
UNAUTHORIZED DUPLICATION OR REUSE WITH  
WRITTEN CONSENT IS PROHIBITED.

ARCHITECTURAL  
SITE PLAN  
LEASE LINES

AS-100



A1 SITE PLAN  
LEASE LINE

SCALE: 1" = 40'-0"

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A LEASE AND FACILITY USE AGREEMENT WITH THE BEAUFORT COUNTY SCHOOL DISTRICT BOARD OF EDUCATION AND HILTON HEAD ISLAND RECREATION ASSOCIATION FOR THE PURPOSE OF LEASING CERTAIN REAL PROPERTY OWNED BY BEAUFORT COUNTY SCHOOL DISTRICT BOARD OF EDUCATION AND TO BE USED AND OPERATED BY THE HILTON HEAD ISLAND RECREATION ASSOCIATION.**

WHEREAS, pursuant to a lease and use agreement, the Town of Hilton Head Island, South Carolina (“Town”), in conjunction with the Hilton Head Island Recreation Association (“Association”), currently leases certain real property from Beaufort County School District Board of Education (“BCSD”) for use and operation by the Association for the activities and services that the Association provides to citizens, residents and visitors of Hilton Head Island; and

WHEREAS, the Town, Association, and BCSD desire to enter into a Lease and Facility Use Agreement to update the existing lease and use agreement and provide for the construction and installation of various items within and outside the leased property; and

WHEREAS, the Town Council for the Town has determined that it is in the best interests of the Town to execute the Lease and Facility Use Agreement, a copy of which is attached hereto as Exhibit “A”, for the aforementioned purposes.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS RESOLVED BY THE AUTHORITY OF THE SAID COUNCIL:**

1. The Mayor and/or Town Manager are hereby authorized to execute a Lease and Facility Use Agreement in substantially similar form as the document attached hereto as Exhibit “A”; and

2. The Mayor and/or Town Manager are hereby authorized to take such other and further action as may be necessary to complete the Town's obligations described in the Agreement to be executed by them, which is authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

\_\_\_\_\_  
**David Bennett, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Victoria L. Pfannenschmidt, Town Clerk**

**Approved as to Form:** \_\_\_\_\_  
**Gregory M. Alford, Town Attorney**

**Introduced by Council Member:** \_\_\_\_\_

**Ward:** \_\_\_\_\_

# LEASE AND FACILITY USE AGREEMENT

**1. PREMISES.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain parcel of real property together with any and all improvements thereupon, more particularly described and shaded in Exhibit A attached hereto and incorporated by reference herein, all of which is hereinafter referred to as the “Premises.” Lessor leases the Premises to Lessee for use by the Association.

**2. AUTHORIZATION TO OPERATE AND CONSTRUCT.** Lessor authorizes Lessee and the Association to continue to operate upon the Premises public recreation facilities and to construct future improvements or additions to the same as shown on Exhibit B, incorporated by reference herein.

**3. RELOCATION OF TENNIS COURTS AND TENNIS COURT LIGHTING.** Lessor authorizes Lessee and/or the Association, at Lessee's and/or the Association's sole expense, to remove existing tennis courts from the Premises and to reconstruct tennis courts as shown on Exhibit B, incorporated by reference herein. The Parties understand the relocated tennis courts will be located on real property owned by Lessor but not within the Premises. Lessor further authorizes Lessee and/or the Association, at Lessee's and/or the Association's sole expense, to relocate the tennis court lights, light poles, and all materials incidental and required for tennis court lighting from their present location to the location of the reconstructed tennis courts. Lessee and the Association agree to be solely responsible for the payment of any and all costs associated with the operation of the tennis court lights during the Term of this Agreement; provided, however, that Lessor shall be responsible for all maintenance or repair of the tennis courts (and tennis court areas) exclusive of the tennis court lights. The Parties agree Lessor shall have primary use, and Lessee and the Association secondary use, of the relocated tennis courts as set forth in Paragraph 13, *supra*.

**4. EXPANSION, OPERATION, AND USE OF PARKING LOTS.**

- A. Lessor authorizes Lessee and/or the Association to construct a new parking lot with no fewer than seventy-two (72) additional parking spaces, shown on Exhibit B as "New Parking" and being situated west of the parking lot currently servicing the HHIHS gymnasium and situated south of the relocated tennis courts.
- B. Lessor authorizes Lessee and/or the Association to expand the parking lot shown in the northwest corner of Exhibit B and shown thereon as "New Parking" with no fewer than 44 additional parking spaces.
- C. Lessee and the Association shall be solely responsible for the maintenance, repair, and upkeep of the parking lots/spaces constructed pursuant to this Agreement, the existing parking lot fronting the entrance to the Island Recreation Center, and the existing parking lot previously constructed by Lessee across Wilborn Road, and any green spaces located therein.
- D. During normal school hours and in evenings when school activities require, Lessor shall have primary use of the parking lots/spaces constructed pursuant to this Agreement. Lessee and the Association shall have primary use of the existing parking lot fronting the entrance to the Island Recreation Center and the existing parking lot previously constructed by Lessee across Wilborn Road, and shall have secondary use of other parking lots on Lessor's property.

**5. CONSTRUCTION OF JROTC DRILL PAD.** Lessor authorizes Lessee and/or the Association to construct a new JROTC Drill Pad to the specifications required by Lessor, at roughly the location shown on Exhibit B. Lessee and the Association understand and acknowledge the exact location and specifications of the Drill Pad will be in the sole determination of Lessor.

**6. INSTALLATION OF FIELD LIGHTING.** Lessor authorizes Lessee and/or the Association, at Lessee's and/or the Association's sole expense, to install lights, light poles, and all materials incidental and required for field lighting, including but not limited to a separate electrical meter, on the existing practice field located in the northwest corner of Lessor's property and situated west of the "New Parking" as shown in the northwest corner of Exhibit B. Lessor agrees to be solely responsible for the payment of any and all costs associated with the operation and maintenance of the field lights during the Term of this Agreement.

**7. USE OF GREEN SPACE.** Notwithstanding the provisions set forth in Paragraph 13 below, the Parties agree Lessee and the Association may use and shall upkeep and maintain the green space existing between HHIHS and the Island Recreation Center, and shown on Exhibit B as being and situated west of the relocated tennis courts and east of the Island Recreation Center.

**8. BASEBALL FIELD NETTING.** Lessor authorizes Lessee and/or the Association, at Lessee's and/or the Association's sole expense, to install protective netting south of the existing baseball field to protect users of the relocated tennis courts. Lessee and the Association shall maintain and keep such protective netting in good repair and condition at all times. In the event Lessor expresses a concern to Lessee and/or the Association with the condition or upkeep of the protective netting, Lessee and/or the Association shall remedy the concern without undue delay.

**9. TERM AND TERMINATION.** The initial term (the "Initial Term") of this Agreement shall be for a period of thirty-five (35) calendar years, commencing on the 19th day of July, 2016, and ending at midnight on June 30, 2051. After the Initial Term, this Agreement shall automatically be renewed for successive renewal terms of five (5) years each, beginning on July 1 of the renewal year and concluding on June 30 of the fifth year. Either party may terminate this Agreement by sending to the other a written notice evidencing that party's intent to terminate this Agreement no later than 11:59 PM on January 1 of the final year of the Agreement term then in effect. The Initial Term and any renewal terms shall collectively be called the "Term".

**10. TERMINATION OF 1987 LEASE AGREEMENT.** The Parties agree, upon execution of this Agreement, the 1987 Lease Agreement shall automatically terminate and be of no further force or effect. The Parties waive any necessary pre-termination notice requirements regarding termination of the 1987 Lease Agreement.

**11. TERMINATION OF 2013 LONG-TERM FACILITY USE AGREEMENT.** The Parties agree, upon execution of this Agreement, the January 15, 2013 Long-Term Facility Use Agreement (the "2013 Agreement") executed by Lessor and the Association shall

automatically terminate and be of no further force or effect. The Parties waive any necessary pre-termination notice requirements regarding termination of the 2013 Agreement.

**12. PAYMENTS DURING TERM.** Other than the utility and other payments to be made by Lessee pursuant to this Agreement, the Parties agree no periodic lease payment shall be due from Lessee or the Association to Lessor. Pursuant to BCSD Administrative Regulation OS-29, Use of School Facilities, the BCSD Superintendent waives, and neither Lessee nor the Association shall be required to pay, the base usage and/or HVAC fee(s) due to Lessor pursuant to BCSD Administrative Regulation OS-29, Use of School Facilities. Lessor reserves the right to charge the Association costs related to usage, including but not limited to, custodial fees, supervision fees, and costs for operators of the HHIHS VPAC light and/or sound system(s); however, Lessor will not charge Lessee or the Association custodial fees or supervision fees if the use of Lessor's facilities by Lessee and/or the Association occurs during the usual and customary employment hours of a custodian assigned to the facility in use or a person who may supervise the use of Lessor's facility.

**13. USE OF FACILITIES.**

**A. USE OF FACILITIES NOT WITHIN THE LEASED PREMISES BY THE ASSOCIATION.**

1. Lessor shall have the first priority of use on all Facilities located and situate on property owned by Lessor and not located within the Premises. Lessor grants to the Association a non-exclusive second and subordinate priority to use Lessor's Hilton Head Island Facilities not located within the Premises for the costs and fees described in Paragraph 12, *supra*. The Association may be allowed to use these Facilities not located within the Premises after normal school hours for students when the particular Facility is not in use by Lessor or not otherwise needed for public school purposes. The appropriate school Principal, or his/her designee, shall determine whether a particular Facility is scheduled for use, in use, or otherwise needed for public school purposes.
2. A request to use any Facility not within the Premises shall be submitted to the appropriate Principal or his/her designee at least twenty-four (24) hours prior to the requested use(s). When possible and reasonable, such request shall be in writing. All requests shall:
  - a. State the purpose for which a Facility not within the Premises will be used by the Association; and
  - b. State the date(s) on which the Association desires to use Facility not within the Premises and which facility it desires to use.
3. The appropriate Principal or his/her designee may reasonably require additional information in any request for use of a Facility not within the Premises by Association.

4. The appropriate Principal or his/her designee shall approve all reasonable requests by the Association to use a Facility not within the Premises not scheduled for use, in use, or otherwise needed for public school purposes.
5. For each such requested use not otherwise described within this Agreement, the Association shall be required to complete the BCSD Facility Use Agreement.

**B. USE OF FACILITIES WITHIN THE LEASED PREMISES BY LESSOR.**

During the Term, Lessor may use, without charge, the Facilities located within the Premises. With the exception of the agreed upon uses set forth in this Agreement, whenever Lessor shall desire to use facilities located within the Premises, the procedure shall be as follows:

1. A request to use any Facility within the Premises shall be submitted to the Association's Executive Director or his/her designee at least twenty-four (24) hours prior to the requested use(s). When possible and reasonable, such request shall be in writing. All requests shall:
  - a. State the purpose for which a Facility within the Premises will be used; and
  - b. State the date(s) on which the Lessor desires to use a Facility within the Premises and which Facility it desires to use.
2. The Association's Executive Director or his/her designee may reasonably require additional information in any requests for use of a Facility within the Premises by Lessor.
3. The Association's Executive Director or his/her designee shall approve all reasonable requests to use a Facility within the Premises, which do not conflict with a current or expected use of such Facility by the Association.

- C. For purposes of this Paragraph, "Facility" or "Facilities" shall be defined as any sports or recreation facilities, courts and fields, green space, buildings, and parking lots located on Lessor's real property known as the Hilton Head Island school campuses and/or leased to Lessee pursuant to this Agreement.

**14. SWIMMING POOL.** Lessee and the Association shall allow Lessor to use the swimming pool constructed on the Premises for the purpose of teaching swimming to Lessor's students and for practices and swim meets by the HHIHS swimming team(s). Lessor's use shall be on a schedule mutually determined by the Association and Lessor, although the Association agrees to allow the HHIHS swim teams to practice and conduct swim meets on mutually agreeable dates and times which do not conflict with Lessor's school day for students. Lessor

shall be responsible for providing appropriate staff when using the swimming pool for its programs, in addition to those staff employed by the Association and/or Lessee.

**15. SURVEYING.** Lessee and/or the Association shall pay any and all surveying costs related to the construction and relocation of the structures on the Premises and on Lessor's property.

**16. EXTERIOR MATERIALS.** Lessee and the Association agree to consult with Lessor's representative regarding exterior materials for facilities to be constructed on the Premises to ensure they are architecturally compatible with the structures existing on the school complex areas and on Lessor's adjoining property.

**17. COMPLIANCE WITH RULES AND REGULATIONS GOVERNING SCHOOL FACILITIES.** Lessee and the Association agree to comply with BCSD Administrative Regulations OS-29, Use of School Facilities, HRS-9, Tobacco-Free Workplace, and SS-24, Tobacco Use by Students, and the BCSD Rules and Regulations Governing Use of School Facilities, as may be from time to time amended and which are incorporated herein by reference.

**18. UTILITIES AND ACCESS.** Subject to Paragraph 6 above and any other provisions set forth herein to the contrary, Lessee and the Association shall have the sole responsibility for payment to third parties for any and all utilities (including, without limitation, heating and air conditioning, gas, water and sewer, electricity, internet access and telephone service) that are provided to and consumed on the Premises during the Term. Lessee and/or the Association shall pay all costs, if any, to install or extend water and sewer facilities on the Premises including appropriate tap fees, if any. Lessee and/or the Association shall be solely responsible for any and all costs attendant to providing installation of electrical power to the Premises. Lessor agrees to grant such easements over and across adjoining property it now owns, as may be required, for the purpose of such installations, other utilities and for ingress and egress of the general public.

**19. MAINTENANCE.** Lessee and the Association shall maintain the facilities on the Premises in good repair, and the Lessor will maintain its facilities in a similar condition. Subject to any provisions set forth herein to the contrary, Lessor shall not be responsible for maintenance to the facilities on or to the Premises.

**20. SIGNAGE.** Signage shall be provided by Lessee and/or the Association. No person or entity may install any signage on the outside or inside of the building or on the Premises without prior written permission of the Lessor, which permission shall not be unreasonably withheld or delayed.

**21. ACCESS TO LESSOR'S PROPERTY.**

- A. The Parties acknowledge Lessor reserves the right, but does not assume a duty, to exclude from Lessor's property, including but not limited to, any location Lessee and/or the Association intends to use, any person(s) whom Lessor reasonably believes

pose a security risk to the health and safety of the occupants of the property, in accordance with Lessor's normal lawful authority, policies, practices, regulations, and control of its property, and nothing in this Agreement shall diminish in any manner Lessor's authority to manage and control its property, and access thereto, pursuant to South Carolina law.

- B. Lessee and the Association agree that they, their employees, agents, volunteers, and participants in the use remain at all times subject to Lessor's lawful authority, policies, practices, regulations, and discretion with regard to matters of control and management of school property, including but not limited to both active and passive measures for the safety and security of property and/or persons. Lessee and the Association accept any inconvenience or interference in the use caused by the rights reserved to Lessor in this Paragraph.
- C. It is understood the uses set forth in this Agreement include ancillary uses of facilities and fixtures at the locations, such as restrooms, access routes through buildings and grounds, parking, utilities, authorized fixtures and equipment at the locations, and the like, provided however, that Lessee and the Association shall not make any ancillary use not reasonably necessary to support the uses, and all ancillary use if subject to Lessor's control or limit in Lessor's sole discretion.
- D. The Association shall, at its sole expense and no less than annually in June, conduct a criminal history records check and sexual offender registry check on all Association staff or volunteers who will be on Lessor's property to act on behalf of the Lessee and/or the Association. During the Term, the Association shall, at its sole expense, conduct a criminal history records check and a sexual offender registry check on all newly added staff and new volunteers who will be on Lessor's property to act on behalf of the Association. The Association shall report in writing to Lessor the checks required by the Paragraph have been conducted, and the Association must obtain Lessor's review and approval of any staff or volunteer with any criminal history or registered status. Lessor shall establish minimum standards for the scope of the required checks. Lessor may require the use of a service under contract with Lessor for the purpose of conducting criminal history and sexual offender registry checks. The Association's records of such checks shall be maintained on file by the Association and be available for review by Lessor upon request. Lessor's authority to control and manage its property shall be final with regard to the access of any Lessee and/or Association staff or volunteers.
- E. The Association assumes and retains full and sole responsibility for the custody, care, and/or control of children participating in its programs, and acknowledges Lessor does not assume any responsibility or liability whatsoever for any harm while children are in the custody, care and/or control of the Association.

**22. INSURANCE.** During the Term, the Association shall maintain, at its sole expense, insurance compliant with the minimum insurance requirements set forth in BCSD Administrative Regulation OS-29, Use of School Facilities, as may be time to time amended.

The Association shall present any required certificates or other proof of insurance as required by Lessor. Any failure by the Association to maintain in force and effect the required minimum insurance coverage shall be considered a material breach of this Agreement. In furtherance of and in addition to the insurance requirements set forth in BCSD Administrative Regulation OS-29, Use of School Facilities, the Association shall maintain no less than \$1,000,000.00 of primary general liability coverage and \$5,000,000.00 of excess liability coverage. The Association shall further maintain no less than \$1,000,000.00 in sexual abuse or molestation coverage and \$1,000,000.00 excess coverage. The Association shall name Lessor as a loss payee on any and all applicable insurance policy(ies). Lessee and the Association are solely responsible for insuring their own personal property against loss.

**23. DAMAGE AND REPLACEMENT.** Lessee and the Association shall keep any locations leased from or used with the permission of Lessor, whether within or outside the Premises, in good order and repair, ordinary wear and tear excepted. The Association shall promptly provide Lessor written notice of any required repairs or unsafe conditions, and Lessor shall be afforded a reasonable period to complete the same. Any repair or replacement resulting from damage to Lessor's property, facilities, and/or equipment caused by and/or resulting from the Association's use of Lessor's property shall be reimbursed by the Association to Lessor at Lessor's actual cost of repair or replacement no later than thirty (30) calendar days after the Association's receipt of Lessor's invoice. Except as otherwise provided herein, no modifications to Lessor's property are allowed without prior written consent from Lessor.

**24. SPECIAL MAINTENANCE AND CLEANING FEES.** Any costs incurred relating to this section shall be dealt with by the Parties' representatives and be resolved on an equitable basis.

**25. LESSEE MODIFICATIONS.** Neither Lessee nor the Association shall make alteration of the Premises other than those contemplated as set forth and described in Exhibit B or make any modifications thereto without prior written approval of the Lessor, said approval not to be unreasonably withheld or delayed.

**26. QUIET ENJOYMENT.** Lessee and the Association shall have the right to quietly enjoy the Premises during the Term, subject only to Lessor's right to enter upon the Premises to inspect the same.

**27. COMPLIANCE WITH LAW.** The Parties warrant, each unto the others, that they have the power and authority to enter into this Agreement and that they shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Lessee's and the Association's use of the Premises.

**28. ASSIGNMENT AND SUBLETTING.** Neither Lessee nor the Association shall not assign this Agreement or sublet all or any portion of the Premises, or improvements made by Lessee and/or the Association, without the prior written consent of the Lessor, which may be granted or withheld in Lessor's sole discretion. Lessor warrants the Association may operate the facilities on the Premises on behalf of Lessee. No such assignment or subletting shall in any way

relieve Lessee and/or the Association of any of its obligations in this Agreement. This section shall apply to all successive assignments and subleases.

**29. LOSS AND DAMAGE.** Unless caused by negligence of Lessor, Lessor will not be liable for any loss, damage or theft of any property of Lessee or the Association or others kept or stored in or about the Premises. Lessee and the Association acknowledge it is Lessee's responsibility to insure its own property and improvements.

**30. DEFAULT.** If a party shall breach a provision of this Agreement and fail to cure the default within thirty (30) calendar days of written notice thereof, the non-defaulting party shall have the right to pursue any and all available remedies at either law or equity.

**31. NO WAIVER.** The failure of a party to require strict performance by the others of any covenant, term or condition of this Agreement is not a waiver of any breach of the same or any other covenant, term or condition herein.

**32. REMEDIES CUMULATIVE.** To the extent permitted by law, the rights and remedies of Lessor herein are cumulative, and the exercise of any one of them will not be deemed to be in exclusion of any other. The rights and remedies herein are in addition to any rights and remedies available to Lessor at law or equity.

**33. RIGHT TO CURE OTHER'S DEFAULT.** If a party fails to perform any covenant, term or condition of this Agreement, the others may, after giving reasonable notice, perform such covenant, term or condition and expend whatever sums may be necessary. All sums expended shall be repaid on demand. This performance shall not waive any rights or remedies which either party may have against the other for such default.

**34. TIME OF ESSENCE.** Time is of the essence of this Agreement.

**35. SURRENDER AND HOLDING OVER.** No surrender of the Premises or this Agreement shall be effective unless accepted in writing by Lessor. At the expiration or sooner termination of this Agreement, Lessee and the Association will remove their effects and peaceably deliver possession of the Premises to Lessor in as good repair and condition as they were at the commencement of this Agreement, ordinary wear and tear and fire or other casualty damage excepted. Any property left on the Premises after vacation or abandonment the Premises shall be deemed abandoned and Lessor may remove, store and/or dispose of the same as it sees fit, subject to applicable law. If Lessee and/or the Association holds over beyond the expiration or termination of this Agreement and rent is accepted by Lessor, a month to month tenancy shall be created which will otherwise be governed by the terms and conditions of this Agreement. Nothing in this section shall be construed as consent to any holding over by Lessee and/or the Association.

**36. NOTICES.** All notices and communications under this Agreement shall be in writing and shall be deemed to be properly given upon the first to occur of the following: (i) upon receipt by the party to whom such communication is being given; or (ii) three (3) business

days after being duly deposited in the United States mail, certified or registered, return receipt requested and addressed as follows:

To Lessee: Town of Hilton Head Island, South Carolina  
Attn: Town Manager  
One Town Center Court  
Hilton Head Island, South Carolina 29928

With copy to: Gregory M. Alford  
Alford & Thoreson, LLC  
P.O. Drawer 8008  
Hilton Head Island, South Carolina 29938

To Association: Island Recreation Center  
Attn: Executive Director  
P.O. Box 22593  
Hilton Head Island, South Carolina 29925

To Lessor: Beaufort County School District  
Attn: Chief Finance and Operations Officer  
Post Office Drawer 309  
Beaufort, South Carolina 29901

With copy to: Beaufort County School District  
Attn. General Counsel  
Post Office Drawer 309  
Beaufort, South Carolina 29901

**37. ESTOPPEL.** The Parties certify to the others that (a) the other party is not in default under the 1987 Lease Agreement, as of the date of execution of this Agreement, and (b) as pertaining to this Agreement only, that all payments and performance obligations of each party due and payable or to be performed prior to the date of actual execution of this Agreement have been paid or performed, as the case may be.

**38. ENTIRE AGREEMENT.** The Parties acknowledge that they have read and understand the terms of this Agreement. This Agreement contains the entire agreement and understanding between the Parties regarding the Premises and is subject to no agreements, conditions or representations that are not expressly set forth herein. This Agreement may only be amended in a writing signed by all Parties hereto.

**ACKNOWLEDGEMENTS:**

**BEAUFORT COUNTY SCHOOL DISTRICT**

\_\_\_\_\_  
By: Mary M. Cordray  
Its: Chairperson

Before these two (2) witnesses:

(1)\_\_\_\_\_ (2)\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_(date) by Mary M. Cordray, the Chairperson of the Beaufort County School District.

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: \_\_\_\_\_

**TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**

\_\_\_\_\_  
By: David Bennett

Its: Mayor

\_\_\_\_\_  
Attest: Stephen G. Riley, ICMA-CM

Its: Town Manager

Before these two (2) witnesses:

(1)\_\_\_\_\_

(2)\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_(date) by David Bennett, the Mayor of the Town of Hilton Head Island, South Carolina, and by Stephen G. Riley, the Town Manager of the Town of Hilton Head Island, South Carolina.

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_

**HILTON HEAD ISLAND RECREATION ASSOCIATION**

\_\_\_\_\_  
By: \_\_\_\_\_

Its:

Before these two (2) witnesses:

(1)\_\_\_\_\_

(2)\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_(date) by  
\_\_\_\_\_, the \_\_\_\_\_ of the Hilton Head Island Recreation  
Association.

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_

## **EXHIBIT A**



C HHI -  
ISLAND  
RECREATION  
CENTER  
ENHANCEMENT &  
EXPANSION

Town of Hilton Head Island  
Hilton Head Island, South Carolina

[illegible]

PROJECT NO:
FWA 2456.01
TOWN OF HHI 2016-0014

DRAWN BY: MJR  
APPROVED BY: BHT

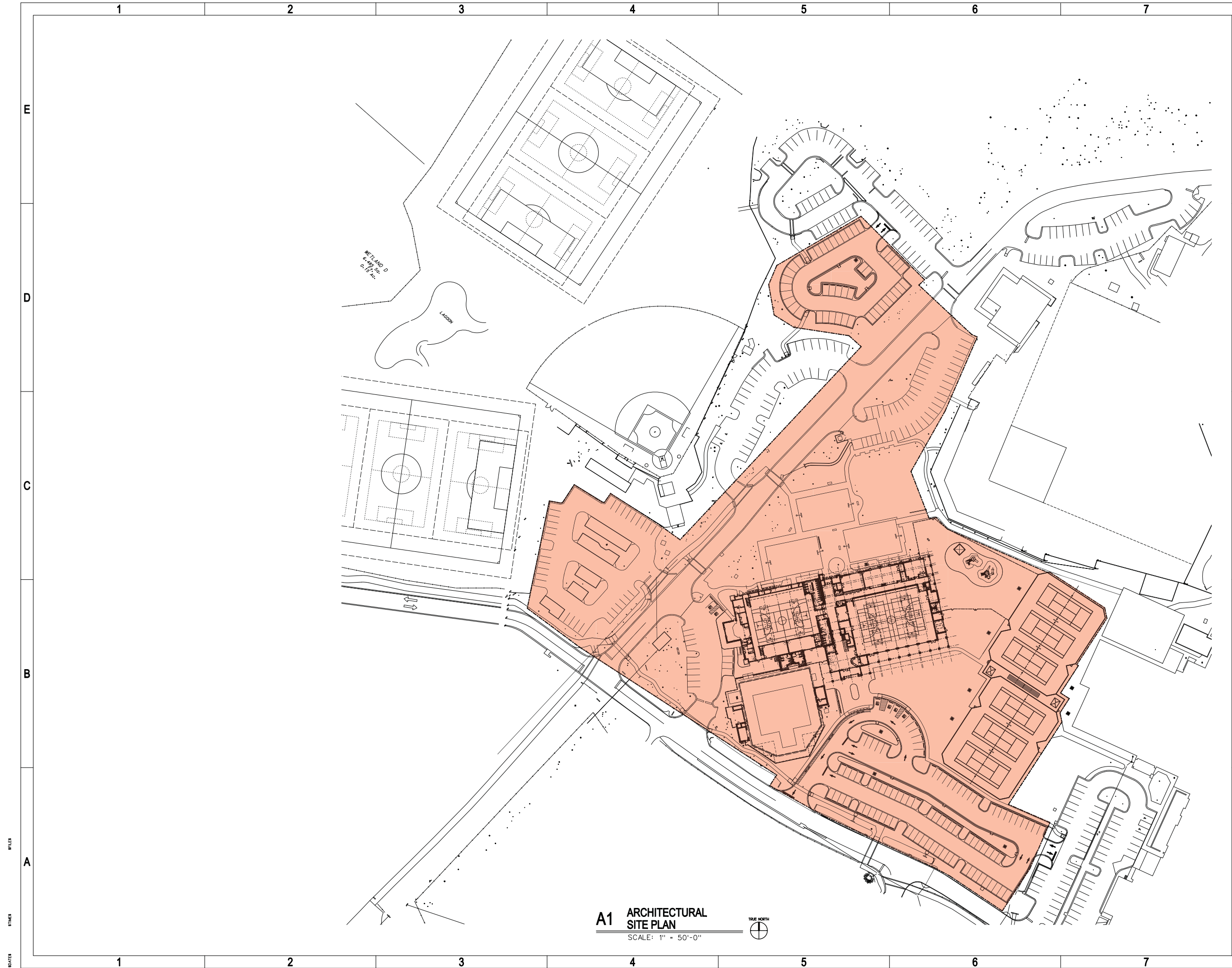
THESE DRAWINGS AND THE PROJECT MANUAL  
ARE INSTRUMENTS OF SERVICE AND REMAIN THE  
PROPERTY OF THE FWA GROUP ARCHITECTS.  
UNAUTHORIZED DUPLICATION OR REUSE WITHOUT  
WRITTEN CONSENT IS PROHIBITED.

SHEET TITLE

ARCHITECTURAL  
SITE PLAN

SHEET NUMBER

AS100



## **EXHIBIT B**

Town of Hilton Head Island  
Hilton Head Island, South Carolina

PROJECT NO:	FWA 2456.01
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THESE DRAWINGS AND THE PROJECT MANUAL  
ARE INSTRUMENTS OF SERVICE AND REMAIN THE  
PROPERTY OF THE FWA GROUP ARCHITECTS.  
UNAUTHORIZED DUPLICATION OR REUSE WITHOUT  
WRITTEN CONSENT IS PROHIBITED.

SHEET NUMBER

AS-101



# TOWN OF HILTON HEAD ISLAND

## *Public Projects and Facilities Management Department*

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**TO:** Stephen G. Riley, ICMA-CM, Town Manager  
**VIA:** Scott Liggett, PE, Dir. of Public Projects & Facilities / Chief Engineer  
Mitch Thoreson, Town Attorney  
**FROM:** Jeff Buckalew, PE, Town Engineer  
**CC:** Jennifer Lyle, Assistant Town Engineer  
**DATE:** July 5, 2016  
**SUBJECT:** Condemnation Authority for CIP Right of Way and Easement Acquisitions –  
Pope Avenue-Office Park Road-New Orleans Road Intersection Improvements

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### **Recommendation:**

Staff recommends Town Council authorize the Town Attorney and Town Manager to utilize the Town's powers of eminent domain in accordance with South Carolina law, as necessary to acquire the those rights of way and easements required to facilitate construction of the Pope Avenue-Office Park Road-New Orleans Road Intersection Improvements.

### **Summary:**

Title 28 of the South Carolina Code of Laws empowers the Town to condemn real property for a public purpose. Town staff has developed construction plans based on the future traffic needs of this intersection. Construction and future maintenance of these improvements requires easements and/or right of way on 3 privately owned parcels. Time is of the essence regarding these acquisitions, to allow for construction to begin this fall. Property owners will receive just compensation where condemnations are filed.

### **Background:**

The projects have been designed to minimize impacts to private property. However, there are 3 parcels being impacted to provide for public infrastructure that meets current engineering standards and permitting requirements. The Town will negotiate with these property owners to seek an equitable settlement, however if these negotiations are unsuccessful at a certain date, condemnations will be filed to keep the projects on schedule. Construction is to begin in the fall, to limit potential impacts on tourists and local businesses. Delays in acquisitions could slide the entire project schedule and have the potential to impose adverse economic impacts on the area.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING CONDEMNATION, PURSUANT TO S.C. CODE SECTION 28-2-10, *et seq.*, OF EASEMENT RIGHTS AND RIGHT OF WAY OWNERSHIP OVER PORTIONS OF PARCELS AT THE INTERSECTION OF OFFICE PARK ROAD, NEW ORLEANS ROAD AND POPE AVENUE ON HILTON HEAD ISLAND TO FACILITATE THE TOWN OF HILTON HEAD ISLAND’S POPE AVENUE – OFFICE PARK ROAD – NEW ORLEANS ROAD INTERSECTION IMPROVEMENTS PROJECT.**

WHEREAS, the Town has planned and desires to undertake the “Pope Avenue – Office Park Road – New Orleans Road Intersection Improvements Project”, which Project is for the benefit and use of the general public and which Project involves, among other things, the acquisition of Easement rights and Right of Way ownership over portions of various parcels located at the intersection of Office Park Road, New Orleans Road and Pope Avenue on Hilton Head Island, for the purposes of the construction, maintenance, use and expansion of roadways for the general public, all as shown on the attached Exhibit “A” (“Acquisition Needs”); and,

WHEREAS, portions of the following parcels (referenced per Beaufort County Property Identification Number) are affected by the Acquisition Needs:

- R552-015-000-0026-0000
- R552-015-000-0010-0000
- R552-015-00C-0053-0000
- R552-015-00C-0054-0000
- R552-015-00C-0055-0000

; and

WHEREAS, the Town must seek condemnation efforts in order to timely obtain the Acquisition Needs; and,

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of the Town to proceed with condemnation of the Acquisition Needs pursuant to S.C. Code Section 28-2-10, *et seq.*

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF  
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA AND IT IS  
HEREBY RESOLVED BY THE AUTHORITY OF THE SAID COUNCIL:**

1. The Town Attorney is granted authorization to proceed with condemnation, pursuant to S.C. Code Section 28-2-10, *et seq.*, of the Acquisition Needs in substantial conformance with the attached Exhibit "A" over the above-referenced properties.
2. The Mayor and/or Town Manager and/or Town Attorney are hereby authorized to take such other and further action as may be necessary to complete the actions authorized hereby.

**PASSED AND APPROVED BY THE TOWN COUNCIL THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2016.**

\_\_\_\_\_  
**David Bennett, Mayor**

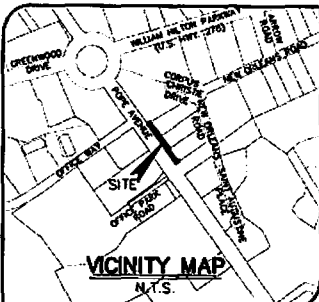
**ATTEST:**

\_\_\_\_\_  
**Vicki L. Pfannenschmidt, Town Clerk**

**Approved as to Form:** \_\_\_\_\_  
**Gregory M. Alford, Town Attorney**

**Introduced by Council Member:** \_\_\_\_\_

## Exhibit A



LINE TABLE		
LINE	LENGTH	BEARING
L1	80.94	S 36°08'12" E
L2	30.35	S 52°24'23" E

R552 015 000 0057 0000  
VANGUARD ASSOCIATES  
2708 SUNSET BOULEVARD  
HOUSTON TX 77005

R552 015 000 0055 0000  
ANCHOR BANK (THE)  
380 WELLINGTON ST TOWER B  
LONDON ONTARIO N5A 4S4

R552 015 000 0054 0000  
ANCHOR BANK (THE)  
380 WELLINGTON ST TOWER B  
LONDON ONTARIO N5A 4S4

TEMPORARY  
CONSTRUCTION  
EASEMENT  
1,481 SQ FT 0.03 ACRES.

R552 015 000 0053 0000  
ANCHOR BANK (THE)  
380 WELLINGTON ST TOWER B  
LONDON ONTARIO N5A 4S4

TEMPORARY  
CONSTRUCTION  
EASEMENT  
1,813 SQ FT 0.04 ACRES.

BIKE PATH EASEMENT  
PLAT BOOK 41 PAGE 17

PECI EASEMENT  
PLAT BOOK 112 PAGE 70

BIKE PATH EASEMENT  
PLAT BOOK 112 PAGE 72

RIGHT OF WAY  
1,813 SQ FT 0.03 ACRES

SOME OR ALL AREAS ON THIS PLAT ARE FLOOD HAZARD AREAS AND HAVE BEEN IDENTIFIED AS HAVING AT LEAST A ONE PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS. REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE TOWN BUILDING OFFICIAL. IN ADDITION, FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO FEDERALLY INSURED MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.

#### REFERENCE PLAT

1) BIKE PATH & PECE EASEMENT OVER: PARCELS 53, 54, 55, & 57  
SHEPARD COMMERCIAL, HILTON HEAD ISLAND,  
BEAUFORT COUNTY, SOUTH CAROLINA  
DRAWN: 01/04/06  
RECORDED IN BOOK 112, PAGE 70, DATED 03/17/2006  
RCD: BEAUFORT COUNTY, SC  
BY: JOHN R. CARTER S.C.R.L.S. #14801

2) A BIKE PATH EASEMENT PLAT  
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA  
RECORDED IN BOOK 41, PAGE 17, DATED 6-18-81  
RCD: BEAUFORT COUNTY, SC  
BY: W.A. DUNHAM S.C.R.L.S. #11590

ADDRESS: 62 NEW ORLEANS ROAD  
DISTRICT: 552, MAP: 15, PARCELS: 53, 54, 55  
THIS PROPERTY LIES IN F.E.M.A. ZONE A7 - 14.0  
COMMUNITY NO. 450250, PANEL: 00140, DATED: 9/29/88

#### NOTES:

- 1) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.
- 2) HORIZONTAL DATUM IS S.C. STATE PLANE (NAD 83) 2007.
- 3) THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE SEARCH AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
- 4) PARCEL BOUNDARIES NOT SHOWN IN FULL.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "M" SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



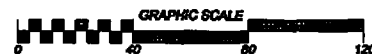
RIGHT OF WAY, AND  
TEMPORARY CONSTRUCTION  
EASEMENTS OVER PARCELS:  
R552 015 000 0055 0000  
R552 015 000 0054 0000  
R552 015 000 0053 0000

NEW ORLEANS ROAD/POPE AVENUE,  
HILTON HEAD ISLAND,  
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR: THE TOWN OF HILTON HEAD ISLAND

DATE: 08/20/16

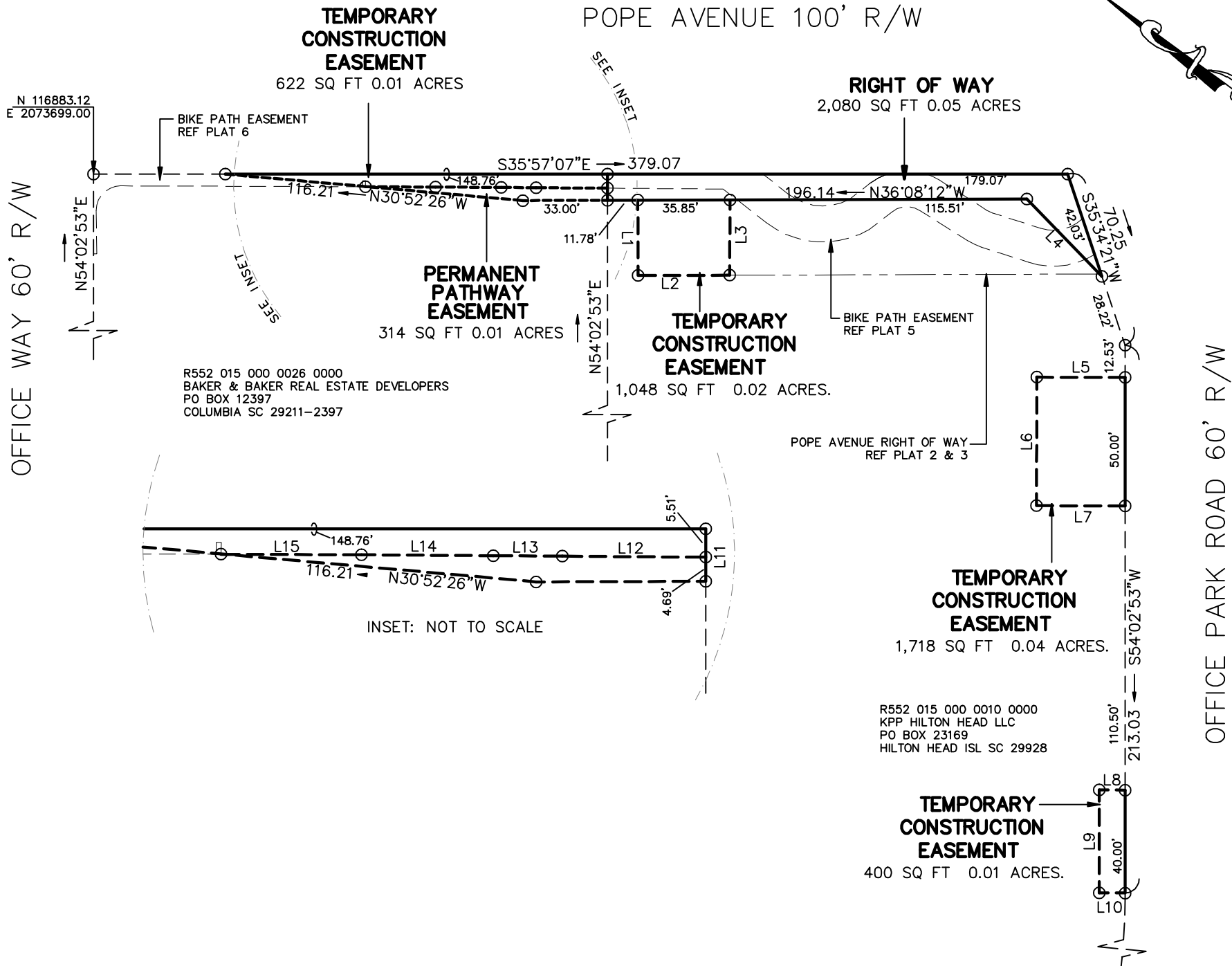
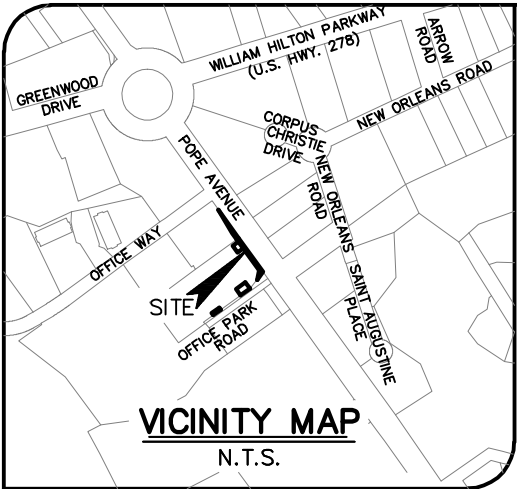
SCALE: 1" = 40'



**SILS** Sea Island Land Survey, LLC.  
40 Mathews Court,  
Hilton Head Island,  
SC 29925  
FILE NO: 14100/10  
Tel: (843) 681-3248  
Fax: (843) 689-3871  
E-mail: sils@spynet.com  
DWG No.: 1-2516

NOT VALID UNLESS EMBOSSED.

COPYRIGHT © BY SEA ISLAND LAND SURVEY, LLC. CAD: JH



LINE TABLE		
LINE	LENGTH	BEARING
L1	29.32	S 53°51'48" W
L2	35.65	S 36°08'12" E
L3	29.32	N 54°14'52" E
L4	42.04	N 09°57'10" E
L5	34.26	N 35°42'33" W
L6	50.00	S 54°17'27" W
L7	34.47	S 35°42'33" E
L8	10.00	N 35°42'33" W
L9	40.00	S 54°02'53" W
L10	10.00	S 35°42'33" E
L11	10.20	N 54°02'53" E
L12	27.86	N 35°32'43" W
L13	13.47	N 35°32'43" W
L14	25.66	N 35°32'43" W
L15	27.30	N 35°44'48" W

REFERENCE PLAT

- 1) BOUNDARY SURVEY OF PROPOSED EXTENSION OF OFFICE PARK ROAD SHOWING PARCEL DELINEATIONS & PROPOSED BIKE PATH EASEMENTS A SECTION OF SEA PINES OFFICE PARK, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA DRAWN: 7/30/2004 RECORDED IN BOOK 122, PAGE 157, DATED 12/04/2007 ROD. BEAUFORT COUNTY, SC BY: TERRY G. HATCHELL S.C.R.L.S. #11059
- 2) A COMPOSITE PLAT OF PARCELS LOCATED BETWEEN POPE AVENUE AND SEA PINES FOREST PRESERVE, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA LAST REVISED: 9/14/78 RECORDED IN BOOK 27, PAGE 51, DATED 12/04/2007 ROD. BEAUFORT COUNTY, SC BY: JERRY L. RICHARDSON S.C.R.L.S. #4784
- 3) PLAN AND PROFILE FOR WIDENING OF ROAD S-80, POPE AVENUE: DOCKET NO. 7.412, PROJ A - 412, BY SOUTH CAROLINA STATE HIGHWAY DEPARTMENT
- 4) EXHIBIT OF PROPOSED CONSOLIDATED BOUNDARY UCSB CAMPUS, OFFICE PARK ROAD, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA DRAWN: 12/8/2015 SEA ISLAND LAND SURVEY DWG# 1-2557 BY: MARK R. RENEW S.C.R.L.S. #25437
- 5) BIKE PATH EASEMENT OVER: PARCEL 10, POPE AVENUE, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA DRAWN: 06/30/06 RECORDED IN BOOK 115, PAGE 171, DATED 09/01/2006 ROD. BEAUFORT COUNTY, SC BY: JOHN R. CARTER S.C.R.L.S. #14801
- 6) BIKE PATH EASEMENT OVER: PARCEL 26, POPE AVENUE, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA DRAWN: 06/30/06 SEA ISLAND LAND SURVEY DWG# 1-1776-A BY: JOHN R. CARTER S.C.R.L.S. #14801

ADDRESS:

5 OFFICE WAY (PARCEL 26)  
10 POPE AVENUE (PARCEL 10)

DISTRICT: 552, MAP: 15, PARCELS: 10 & 26

THIS PROPERTY LIES IN F.E.M.A. ZONE A7 - 14.0'

COMMUNITY NO. 450250, PANEL: 0013D, DATED: 9/29/86

SOME OR ALL AREAS ON THIS PLAT ARE FLOOD HAZARD AREAS AND HAVE BEEN IDENTIFIED AS HAVING AT LEAST A ONE PERCENT CHANCE OF BEING FLOODED IN ANY GIVEN YEAR BY RISING TIDAL WATERS ASSOCIATED WITH POSSIBLE HURRICANES. LOCAL REGULATIONS REQUIRE THAT CERTAIN FLOOD HAZARD PROTECTIVE MEASURES BE INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN THESE DESIGNATED AREAS. REFERENCE SHALL BE MADE TO THE DEVELOPMENT COVENANTS AND RESTRICTIONS OF THIS DEVELOPMENT AND REQUIREMENTS OF THE TOWN BUILDING OFFICIAL. IN ADDITION, FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE AS A PREREQUISITE TO FEDERALLY INSURED MORTGAGE FINANCING IN THESE DESIGNATED FLOOD HAZARD AREAS.

NOTES:

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- 2) HORIZONTAL DATUM IS S.C. STATE PLANE (NAD 83) 2007.
- 3) THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE SEARCH AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
- 4) PARCEL BOUNDARIES NOT SHOWN IN FULL.

NOT VALID UNLESS EMBOSSED.



RIGHT OF WAY, PERMANENT  
PATHWAY EASEMENT, AND  
TEMPORARY CONSTRUCTION  
EASEMENTS OVER PARCELS:

R552 015 000 0010 0000  
R552 015 000 0026 0000

OFFICE WAY/ POPE AVENUE  
HILTON HEAD ISLAND,  
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:  
THE TOWN OF HILTON HEAD ISLAND

REVISED: 07/08/16- ADDED PERMANENT EASEMENT

DATE: 08/21/16

SCALE: 1" = 50'



**SILS** Sea Island Land Survey, LLC.  
4D Mathews Court,  
Hilton Head Island,  
SC 29926  
Tel (843) 681-3248  
Fax (843) 689-3871  
E-mail: sils@oprynet.com  
FILE No: 14100/10  
DWG No.: 1-2617

# **MEMORANDUM**

**TO:** Town Council  
**FROM:** Stephen G. Riley, Town Manager  
**VIA:** Greg DeLoach, Assistant Town Manager  
**DATE:** June 28, 2016  
**RE:** **RBC Heritage**

---

**Recommendation:** Staff recommends Town Council consider entering into an agreement with the Heritage Classic Foundation (Heritage).

**Background:** The Heritage requests the Town enter into a Sponsorship Agreement for reasons stated in the attached letter from Heritage Board Chair, Simon Fraser.

**Summary:** Heritage seeks an initial one (1) year funding commitment (\$250,000) from the Town, however, in the event Heritage enters into an agreement with a title sponsor or with a title sponsor and presenting sponsor for more than one (1) year, then the term shall be the same as that in the title/presenting sponsor agreements, with a 3% per year increase, but for no longer than year 2023.



June 16, 2016

The Hon. David Bennett, Mayor  
Members of the Town Council  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re: RBC Heritage Presented by Boeing

Dear Mayor Bennett and Town Council Members:

The Heritage Classic Foundation wishes to express its gratitude to the Town of Hilton Head Island and the citizens of Hilton Head Island for its critical support of the RBC Heritage Presented by Boeing over the last 5 years. The Town stepped up when needed and insured that we would keep the Heritage as a viable PGA TOUR event. The economic impact and publicity, along with the charitable aspects of the Heritage, are universally recognized as most important to our community. The role the Town plays in these efforts is most welcomed by the Heritage Classic Foundation.

The Foundation is now in the process of negotiating renewals of the title sponsorship agreement with RBC and a presenting sponsorship agreement with The Boeing Corporation. Last year the Foundation entered into a one year renewal with RBC to cover 2017. We are close to concluding negotiations with RBC to further extend its sponsorship. We are confident that we will be announcing a renewal agreement with Boeing in the near future.

As part of our negotiations with RBC, they have asked whether the Town will continue as a sponsor or supporter of the tournament. It is important to RBC that all of the stakeholders remain involved to a significant degree supporting the tournament. The continuing support of the Town is also important to the Foundation. The cost of staging the event goes up faster than the title and presenting sponsor fees. With the success of the parking at Coligny last year, the Foundation is exploring other similar parking arrangements elsewhere which will benefit the local business community and serve our residents and guests. The additional transportation expenses associated with these efforts and needed additional marketing to grow sales to keep the tournament successful are significant.


With all of this in mind, the Foundation respectfully requests and seeks the continuing support of the Town. Our proposal is that the Town continue as a sponsor in the dollar amount of \$250,000. The terms of the sponsorship proposal are set forth in the enclosed Sponsorship Agreement. Please review the same and let me know if you have any questions or comments. Steve Wilmot and I are also available to meet if you like.

We hope that the Town agrees that the future success of the tournament is important, and the RBC Heritage Presented by Boeing is worthy of the requested investment from the Town. Again, the Foundation is extremely thankful for the Town's support, and we look forward to a close working relationship moving forward.

71 Lighthouse Road, Suite 4200  
Hilton Head Island, South Carolina 29928  
tel: 843.671.5755 • fax: 843.671.6738  
[www.heritageclassicfoundation.com](http://www.heritageclassicfoundation.com)

Thank you and with kindest regards, I am

Sincerely,

  
Simon Fraser  
Chairman

pc:jsf  
enclosure



***RBC Heritage Presented by Boeing  
Sponsor Agreement***





***Town of Hilton Head Island***  
**Sponsor Agreement**  
**(The RBC Heritage)**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and among HERITAGE CLASSIC FOUNDATION (hereinafter referred to as “Heritage”), a South Carolina not-for-profit corporation and the Town of Hilton Head Island (hereinafter referred to as “Town”).

**W I T N E S S E T H**

WHEREAS, Heritage contracts annually with the PGA TOUR, Inc. (hereinafter sometimes referred to as “PGA TOUR”) to conduct a PGA TOUR sanctioned golf tournament known as the RBC Heritage (the “Tournament”) on the Harbour Town Golf Links (the “Golf Course”) in Sea Pines Resort, Hilton Head Island, South Carolina, such contracts to be hereinafter referred to as the “PGA TOUR Agreement”;

WHEREAS, the Tournament provides significant economic impact and publicity to the Town of Hilton Head Island; and

WHEREAS, Town desires to become a non-named sponsor of the Tournament under the terms and conditions set forth herein.

NOW, THEREFORE for valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto agree as follows:

1. The above WHEREAS clauses are hereby incorporated into the body of this agreement.

2. **DURATION**

The Agreement shall be for a term of one (1) year beginning January 1<sup>st</sup>, 2017 and concluding December 31, 2017; provided, however, in the event Heritage enters into an agreement with a title sponsor or with a title and presenting sponsor for more than one year, then the term shall be the same as that in the title/presenting sponsor agreements but not beyond 2023.

3. **SPONSORSHIP**

Heritage accepts and designates Town as an OFFICIAL sponsor of the Tournament for the term of this agreement.

4. **TOURNAMENT NAME AND LOGO**

The Tournament shall be known nationally as the “RBC Heritage” and locally and in the State of South Carolina and certain other areas and mediums as the “RBC Heritage Presented by Boeing.” As a condition of its association with the Tournament, Town is hereby required to refer to the Tournament solely as the RBC Heritage or the RBC Heritage Presented by Boeing and to use the official logo as supplied by the Tournament in any promotional or advertising materials wherein the Tournament is mentioned. Guidelines will be provided to the Town as to when to use either RBC Heritage or the RBC Heritage Presented by Boeing.

Heritage reserves the right to change the name of the Tournament and the official logo. If a change is made, Town agrees to refer to the Tournament by the new name and to use the new name from the date of being notified by Heritage of a change in name or official logo.

5. **PRIVILEGES**

Heritage will provide or cause to be provided to Town the following:

- (a) Upper tier logo placement in Pairing Sheet Wednesday – Sunday;
- (b) Full page 4 color ad in the Official Spectator Guide;
- (c) Official Sponsor listing and link on the official web site [www.rbcheritage.com](http://www.rbcheritage.com) and the PGA TOUR Tournament specific web site at [www.pgatour.com](http://www.pgatour.com);
- (d) Listing on the Tournament’s Official Scoreboards Monday-Wednesday of Tournament week;
- (e) Upper tier logo placement on year round Sponsor Board;
- (f) Official Sponsor listing in the Spectator Guide and Media Guide;
- (g) Official Welcome message on the Bus DVD’s and placement of a .30 commercial ad within the running time on the Jumbo-tron video board in the Heritage Lawn spectator venue;

6. **FEE**

Sponsorship Fee for listed Privileges will be Two Hundred Fifty Thousand Dollars (\$250,000) in year 2017, April 10-16. The Sponsorship Fee in subsequent years from 2018 will increase 3% each year. Exact Tournament dates beginning in 2018 are set by the PGA Tour and are TBD. Full Payment shall be made on or before April 1<sup>st</sup> of year contract year.

The Sponsorship Fee is for the privileges listed in item 5 above and will support the operational needs of the Tournament, including but not limited to transportation and marketing.

7. **INDEMNIFICATION**

Heritage agrees to hold harmless Town, its subsidiaries, successors and assigns from and against all claims, damages, issues and expenses including reasonable attorneys’ fees, arising out of or resulting from the Tournament or any of its related activities, provided that any such claims, damages, loss or

expense (1) is attributed to bodily injury or property damage, and (2) is caused in whole or in part by any negligent act or omission of Heritage and not proximately caused by Town.

Town agrees to hold harmless Heritage, from and against all claims, damages, issues and expenses, including reasonable attorney's fees, arising out of or resulting from Town's use of the Tournament facilities and the Expo tent or its related activities, provided that any such claims, damages, loss or expense (1) is attributable to bodily injury or property damage, or claims by suppliers to Town; and (2) is caused in whole or in part by any negligent act or omission of Town and not proximately caused by Heritage.

8. **WARRANTIES AND REPRESENTATIONS**

(a) For the term of this Agreement, Heritage warrants and represents to Town:

- (i) Heritage has the authority to enter into this Agreement and has obtained all permissions and consents necessary to fulfill Heritage's obligations under this Agreement;
- (ii) The Tournament will be sanctioned as a scheduled event on the PGA TOUR and televised live by TGC and CBS;
- (iii) Heritage has in force a valid cosponsor Agreement with the PGA TOUR for the Tournament;
- (iv) The Tournament will be held principally to raise proceeds for charity and a substantial majority of Tournament personnel will be volunteers.

9. **CANCELLATION OF THE TOURNAMENT**

The performance of this Agreement is subject to termination without liability in the event the Tournament or portions of the Tournament are cancelled due the occurrence of any circumstance beyond the control of either party - such as acts of God, earthquakes, tornadoes, hurricanes, flood, acts of terrorism, government regulations, disaster, strikes (except those involving the employees or agents of the party seeking the protection of this clause), civil disorder, or curtailment of transportation facilities, - to the extent such circumstance makes it illegal or impossible to hold the Tournament; provided however that any amounts paid by Town to Heritage as of such date of cancellation may be non-refundable to the extent that Heritage is unable to recoup pre-paid deposits and payments for services rendered to date. To the extent that the cancellation occurs prior to the expenditure of a significant amount of money and/or if Heritage is able to obtain refunds on any payments or deposits amounts paid by Town, Heritage will refund such amount to Town.

**CANCELLATION OF AGREEMENT**

Should the Town Council fail to appropriate funds for the sponsorship fee of the RBC Heritage tournament in the annual budget for the Town during the term of this Agreement, the Town shall be deemed to have terminated the Agreement and the Town shall not be obligated to pay any funds to RBC for sponsorship of the tournament.

If money has been appropriated in the Town's annual budget for that fiscal year and should the Town thereafter cancel the Agreement, the following cancellation sliding scale will apply for that fiscal year only:

- Signing of Agreement to 120 Days of Tournament: 25% of Fee
- Signing of Agreement to 90 Days of Tournament: 50% of Fee
- Signing of Agreement to 60 Days of Tournament: 75% of Fee
- Signing of Agreement to 30- 0 Days of the Tournament: 100% of Fee

10. **MISCELLANEOUS**

- (a) No person not a party to this Agreement shall have any equitable or other rights by virtue of this Agreement.
- (b) If any term or provision of this Agreement should be determined to be invalid or unenforceable, such term or provision shall, if possible, be changed to the most minor extent necessary to make it valid and enforceable and to carry out the intent of the parties. In such event, all remaining terms and provisions of this Agreement shall remain in full force and effect with such change or without the effected term or provision, as the case may be.
- (c) This Agreement constitutes the entire agreement of the parties and supersedes all prior written and all contemporaneous oral agreements, understandings, and negotiations between the parties.
- (d) This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same documents.
- (e) This Agreement and any rights herein granted are personal to the parties hereto, and shall not be assigned, sublicensed, encumbered, or otherwise transferred by any party without the prior written consent of the parties. Any attempt at volatile assignment, sublicense, encumbrance, or other transfer, whether voluntary or by operation of law, shall be void and of no force and effect.
- (f) Failure of any party to complain of any act or omission on the part of any other party, no matter how long the same may continue, shall not be deemed to be a waiver by any party of its rights under this Agreement.
- (g) This Agreement shall be binding on the parties hereto, their successors, assigns and legal representatives.
- (h) Notice by any party is deemed given when personally delivered or mailed, postage prepaid, addressed to the other parties at the address appearing below:

**HERITAGE  
CLASSIC  
FOUNDATION**

Steve Wilmot, President  
Heritage Classic Foundation  
Post Office Box 3244  
Hilton Head Island, SC 29928

**TOWN**

Stephen G. Riley  
Town Manager  
One Town Center Court  
Hilton Head Island, SC 29928

WITNESSETH WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

***HERITAGE CLASSIC FOUNDATION***

By: \_\_\_\_\_

Name:

Its:

***TOWN OF HILTON HEAD ISLAND***

By: \_\_\_\_\_

Name:

Its:

Attest: \_\_\_\_\_

Name:

Its: