

# COUNTY COUNCIL OF BEAUFORT COUNTY

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COUNTY ATTORNEY

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CLERK TO COUNCIL

## AGENDA NATURAL RESOURCES COMMITTEE

Tuesday, September 6, 2011  
2:00 p.m.

Executive Conference Room  
Administration Building

### Committee Members:

Paul Sommerville, Chairman  
Brian Flewelling, Vice-Chairman  
Steven Baer  
Gerald Dawson  
William McBride  
Jerry Stewart  
Laura Von Harten

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 2:00 p.m.
2. BEAUFORT COUNTY ZONING MAP AMENDMENT/REZONING FOR R300 015 000 0101 0000 (KNOWN AS ST. HELENA STATION PLANNED UNIT DEVELOPMENT (PUD), 13.24 ACRES OFF SEA ISLAND PARKWAY/HIGHWAY 21); FROM PUD TO RURAL (R) ZONING DISTRICT; OWNERS: GARY M. MEYER, E. LINWOOD JOHNSON, AND MICHAEL J. MYERS; APPLICANT: BEAUFORT COUNTY PLANNING STAFF ([backup](#))
3. TEXT AMENDMENT TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE (ZDSO), ARTICLE VII, SEC. 106-1845(6) BUFFER DISTURBANCE (ADDS RIVER BUFFER DISTURBANCE STANDARDS) ([backup](#))
4. PRESENTATION OF FINAL TOWN OF BLUFFTON INTERGOVERNMENTAL AGREEMENT ON STORMWATER UTILITY OPERATION AND REQUESTS FOR ONE YEAR EXTENSION OF EXISTING AGREEMENTS FOR CITY OF BEAUFORT AND TOWN OF PORT ROYAL. ([Bluffton](#)) ([Beaufort](#)) ([Port Royal](#))
5. CONSIDERATION OF REAPPOINTMENTS AND APPOINTMENTS
  - A. Planning Commission ([backup](#))
  - B. Southern Corridor Review Board ([backup](#))
  - C. Zoning Board of Appeals ([backup](#))
  - D. Waiver of Template Ordinance Sec. 2-193(e)(2) ([backup](#))

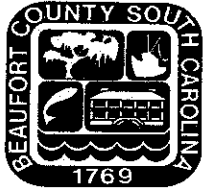
6. EXECUTIVE SESSION

- A. Discussion of negotiations incident to proposed contractual arrangements and proposed purchase of property

7. ADJOURNMENT

County TV Rebroadcast	
Wednesday	9:00 a.m.
Thursday	1:00 a.m.
Friday	10:00 p.m.

Natural Resources		
<i>Date</i>	<i>Time</i>	<i>Location</i>
October 3	2:00 p.m.	ECR
November 7	2:00 p.m.	ECR
December 5	2:00 p.m.	ECR



## MEMORANDUM

**TO:** Natural Resources Committee of Beaufort County Council  
**FROM:** Anthony Criscitiello, Beaufort County Director of Planning & Development *TC*  
**DATE:** August 26, 2011  
**SUBJECT:** Rezoning Request for St. Helena Station (PUD) from PUD to Rural

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**EXCERPT OF PLANNING COMMISSION RECOMMENDATION from its draft June 6, 2011, meeting minutes:**

Mr. Criscitiello noted that this PUD was approved in 1989 with no specific master plan and no development activity has occurred since then. The owners have met with the staff in January and in April 2011. He noted the County standards regarding sunsetting PUDs in the year 2010. The PUD has an approved density of 12 units to the acre, which is 4 times higher than the base Rural zoning density of 1 unit per three acres. The front half of the PUD is approved for unspecified general commercial uses. The St. Helena Corners Area Community Preservation District is 0.6 mile away and the Rural Business District is 0.2 mile away. Staff, as the applicant, is asking for Planning Commission guidance on how to proceed.

Chairman Hicks instructed the Commission regarding the rezoning as a reversion to the base zoning of Rural District.

Property Owner's Comments: Mr. Tom Holloway of Harvey & Battey is the property owner's representative. The PUD has been in existence for over 20 years ago. He recognizes the County's sunset ordinance and its right to go through the sunset process. He appeared before the (Planning Commission) Subcommittee where various options were discussed. He is asking that the Planning Commission recommend extending the PUD for a year so that 20 years of investment and land ownership is not sunsetted today and we can explore other options.

Public Comment: Mr. Reed Armstrong of the Coastal Conservation League stated that this property has sat undeveloped and unused for over 20 years. This serves as an opportunity to step in and try to reverse some of the sprawl that has evolved from the numerous PUDs throughout the county. By returning this to rural, fitting with the character of the area, we can try to reverse some of the sprawl pattern. I recommend that this property be returned to rural zoning.

Discussion included noting that another PUD had asked for a year-long extension but was unable to complete any action and was reverted as well, clarifying that the sunset ordinance was effective January 2010 and the property owner had had 18 months to date, noting the initial contact was initiated by the staff with the owners in the Spring of 2011, noting that the location would be spot zoned and recommended allowing the owner to begin again, and sympathizing with the owners' dilemma but noting that the owner had sat on his property for too long.

**Motion:** Mr. Thomas made a motion, and Mr. Semmler seconded the motion, to recommend approval to County Council of the Beaufort County Zoning Map Amendment/Rezoning for R300 015 000 0101 0000 (known as St. Helena Station Planned Unit Development (PUD), 13.24 acres off Sea Island Parkway/Highway 21); from PUD to Rural (R) Zoning District. No further Commission discussion occurred. The motion was carried unanimously (FOR: Hicks, LeGree, Riley, Semmler, Sutler, and Thomas).

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## **STAFF REPORT**

### **A. BACKGROUND:**

<b>Case No.</b>	ZMA-2011-05
<b>Applicant:</b>	Beaufort County Planning Department
<b>Property Owner:</b>	Gary Meyer
<b>Property Location:</b>	North side of Sea Island Parkway (US 21) between Warsaw Island Road and Polowana Road, St. Helena Island
<b>District/Map/Parcel:</b>	R300-015-0101
<b>Property Size:</b>	13.24 acres
<b>Current Future Land Use Designation:</b>	Rural
<b>Proposed Future Land Use Designation:</b>	No Change Proposed
<b>Current Zoning District:</b>	Planned Unit Development (PUD)
<b>Proposed Zoning District:</b>	Rural

### **B. SUMMARY OF REQUEST:**

St. Helena Station was approved by Beaufort County in 1989, which was prior to the adoption of countywide zoning in 1990. The front ½ of the property was approved for general commercial uses and the rear ½ for residential development up to 12 du/ac. There is no specific master plan for the property.

Since 1989, there has been no development activity in this PUD. Section 106-7 of the County's Zoning and Development Standards Ordinance (ZDSO) states that PUDs approved before adoption of the current ZDSO (April 1999) are exempt from its provisions provided that more than 50 percent of the approved lots are platted and recorded or more than 50 percent of the utilities and infrastructure completed as of January 1, 2010. This section also gives property

owners the option of requesting an amendment to the PUD to extend this sunset date and/or negotiate a development agreement with the County.

The Planning staff met with the property owner in January 2011, to discuss the rezoning of older PUDs that have not developed. To date, the property owner has declined to submit an application for an amendment to this PUD to extend the buildout date and/or seek a development agreement with the County.

Section 106-491 of the ZDSO allows the Beaufort County Planning Department to initiate an amendment to the zoning map. Under this provision, and in compliance with Section 106-7, the Planning Department is requesting that St. Helena Station PUD be rezoned to the Rural zoning district, which is compatible with the zoning of the surrounding area and is consistent with the Comprehensive Plan.

**C. ANALYSIS:** Section 106-492 of the ZDSO states that a zoning map amendment may be approved if the weight of the findings describe and prove:

**1. *The change is consistent with the County's Comprehensive Plan and the purposes of the ZDSO.***

This property is designated Rural on the Future Land Use Map. Rural areas are located outside of the growth areas in the County. During the Comprehensive Plan's 20-year timeframe, it is expected that Rural areas will continue to develop with low-density residential and supporting small-scale commercial uses in addition to agricultural operations. The maximum gross residential density in rural areas is one dwelling unit per three acres. The approved density in the St. Helena Station PUD is 12 units/acre, which is clearly inconsistent with the current land use designation and zoning of surrounding properties.

The front half of the PUD is approved for unspecified general commercial uses. Currently, commercial development is permitted within the Corner's Area Community Preservation District, which is located approximately six-tenths of a mile to the east of the subject property, and within the Rural Business (RB) District, which is located approximately two-tenths of a mile to the east. The property could not be included in the RB District without a significant expansion of this district along the highway, including several intervening parcels.

**2. *The change is consistent with the character of the neighborhood.***

Staff is requesting that the property be zoned to Rural, which is consistent with the zoning and use of surrounding properties. The Rural zoning district allows residential development at a density of one dwelling unit per three acres and small-scale commercial uses such as traditional shops and agricultural support services.

**3. *The extent to which the proposed zoning and use of the property are consistent with the zoning and use of nearby properties.***

See response to item #2.

**4. *The suitability of the property for the uses that have been proposed.***

The property is a long, narrow parcel that abuts a marsh. It is suitable for low-density, rural development.

**5. *Allowable uses in the proposed district would not adversely affect nearby property.***

All surrounding properties are zoned Rural.

**6. *The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.***

The property has remained undeveloped since it received PUD approval in 1989.

**7. *The current zoning is not roughly proportional to the restrictions imposed upon the landowner in light of the relative gain to the public health, safety and welfare provided by the restrictions.***

The public interest will be served by ensuring that development of this property is consistent with the Beaufort County Comprehensive Plan.

**8. *A traffic impact analysis (TIA) indicates that the rezoning request to a higher intensity will not adversely impact the affected street network and infrastructure in the higher zoning classification.***

The proposed rezoning did not trigger the need for a traffic impact assessment (TIA) since the request is for a less intensive district.

**D. RECOMMENDATION:**

Because the Beaufort County Planning Department is the applicant, staff did not make a recommendation.

**E. SUBCOMMITTEE RECOMMENDATION:**

The St. Helena Island Subcommittee met on April 20, 2011. Members present: Ms. LeGree and Mr. Hicks (Commission Chairman). Members absent: Mr. Brown, Mr. Petit, Mr. Semmler and Mr. Thomas. The Subcommittee did not have a quorum so there was no recommendation.

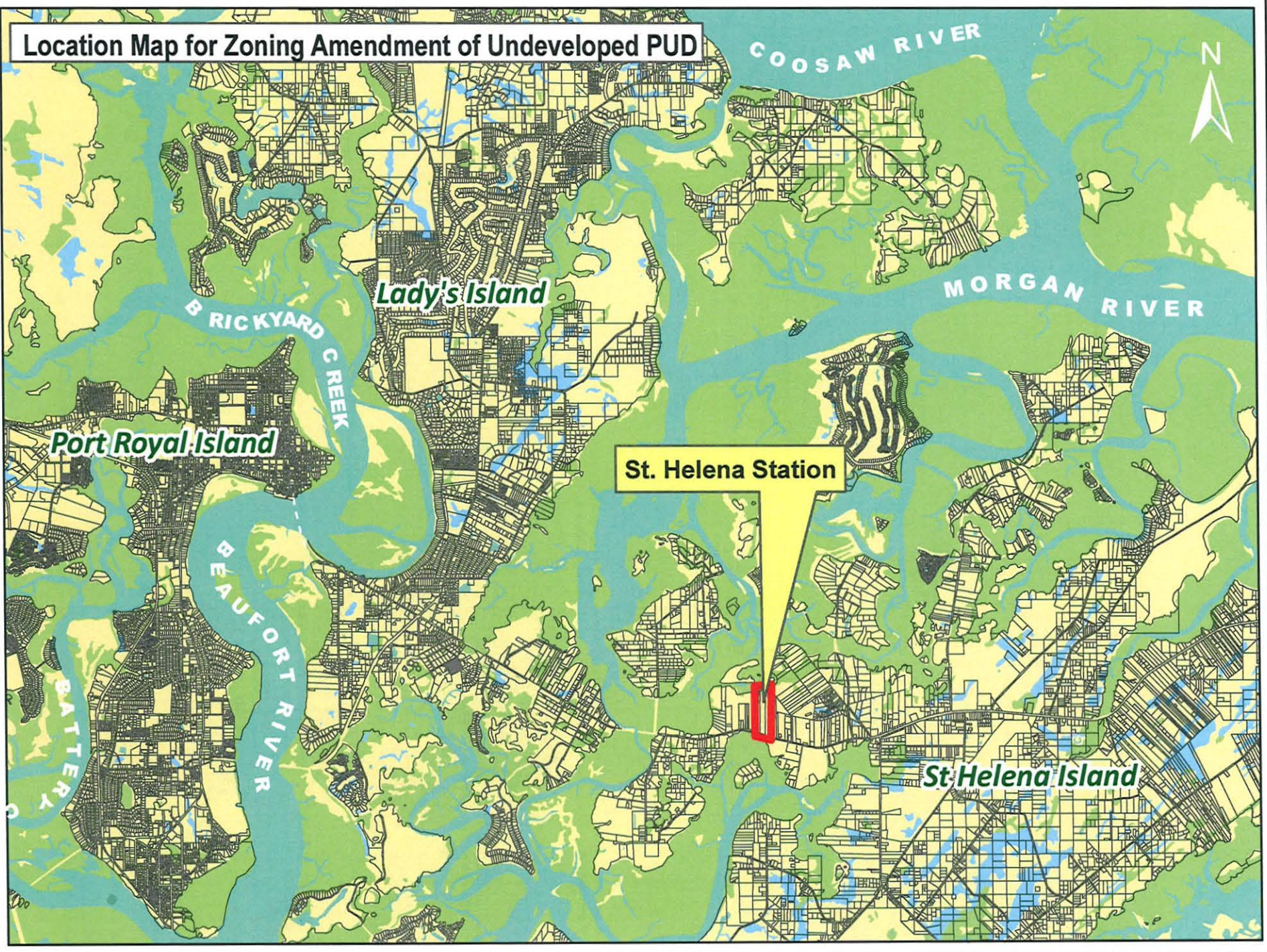
There were no comments from the general public; however, the owner of St. Helena Station PUD, Mr. Gary Meyer, told the Subcommittee that he was surprised to hear about the ZDSO requirement to sunset existing PUDs. He felt that with all of the development on Fripp, Harbor and Dataw Islands there needed to be additional commercial development along US 21 to

provide services. His attorney, Mr. Tom Holloway of Harvey & Battey, said that they would like for this rezoning to be tabled at the Planning Commission and that they be allowed to go back to staff and work out a solution that would be amenable to all parties.

**F. ATTACHMENTS:**

- Location Map
- Master Plan for the St. Helena Station PUD
- Future Land Use Map
- Zoning Map

**Location Map for Zoning Amendment of Undeveloped PUD**



*Lady's Island*

*Port Royal Island*

**St. Helena Station**

*St. Helena Island*

COOSAW RIVER

MORGAN RIVER

B RICKYARD CREEK

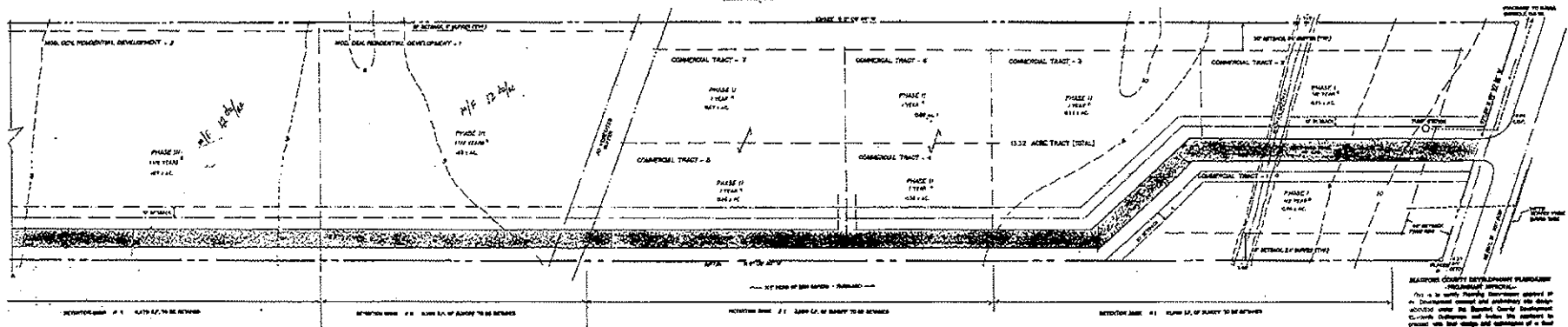
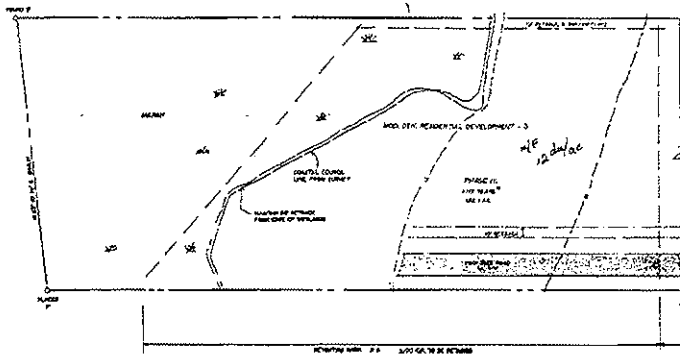
BEAUFORT RIVER







INDEX MAP  
7-13-2008



MAJORS COUNTY DEVELOPMENT PLANNING  
CONCURRENCE APPROVAL  
This is to certify Planning Commission approval of  
the Development Plan and preliminary site plan  
submitted under the Planning Commission  
Ordinance Chapter 140 and that the applicant  
is in compliance with the terms and conditions of a final  
approval.  
Date of Planning Commission meeting *11/07/08*  
Councilor for *[Signature]*



**RESIDENTIAL DEVELOPMENT**

- ONE PERCENT IMPROVEMENTS ON ALL LOTS
- ONE PERCENT IMPROVEMENTS ON ALL LOTS
- IMPROVEMENTS TO BE PROVIDED BY THE DEVELOPER

*[Signature]*

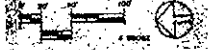
**COMMERCIAL DEVELOPMENT**

- FOUR PERCENT IMPROVEMENTS ON ALL LOTS
- IMPROVEMENTS TO BE PROVIDED BY THE DEVELOPER

*[Signature]*

MAJORS COUNTY DEVELOPMENT PLANNING  
CONCURRENCE APPROVAL  
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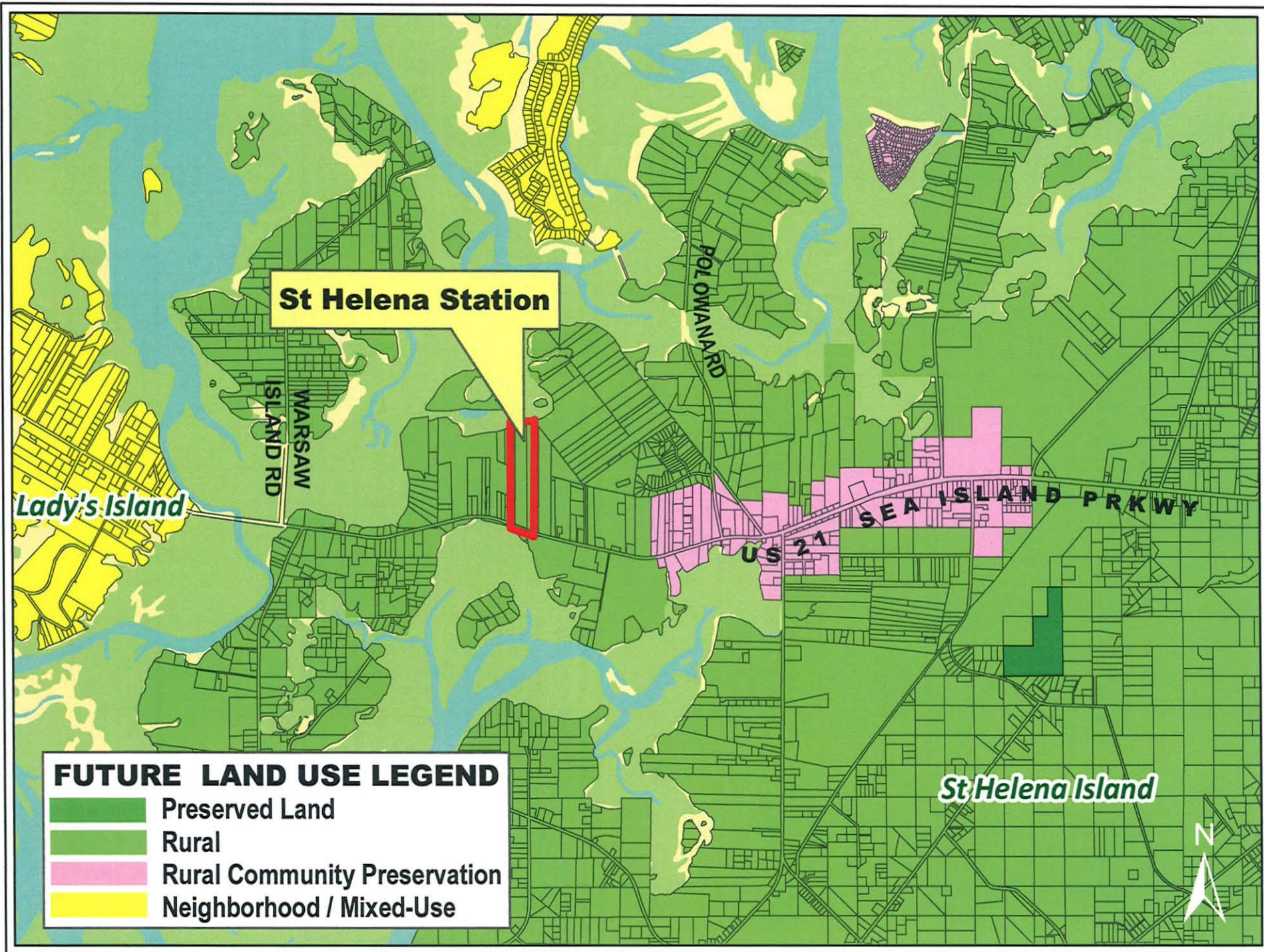


NO.	DATE	REVISION	BY
1		ISSUED FOR PERMITS	AS
2		REVISIONS FOR COMMENTS	AS
3		REVISIONS FOR COMMENTS	AS
4		REVISIONS FOR COMMENTS	AS

© THE FOLLOWING IS A PRELIMINARY PLAN AND SHALL BE SUBJECT TO THE APPROVAL OF THE PLANNING COMMISSION AND THE BOARD OF ZONING ADJUSTMENTS.

THIS PROPERTY LIES IN A FLOOD PLAIN. BEFORE ANY DEVELOPMENT, THE DEVELOPER SHALL OBTAIN A FLOOD HAZARD STUDY FROM THE MAJORS COUNTY HEALTH DEPARTMENT.

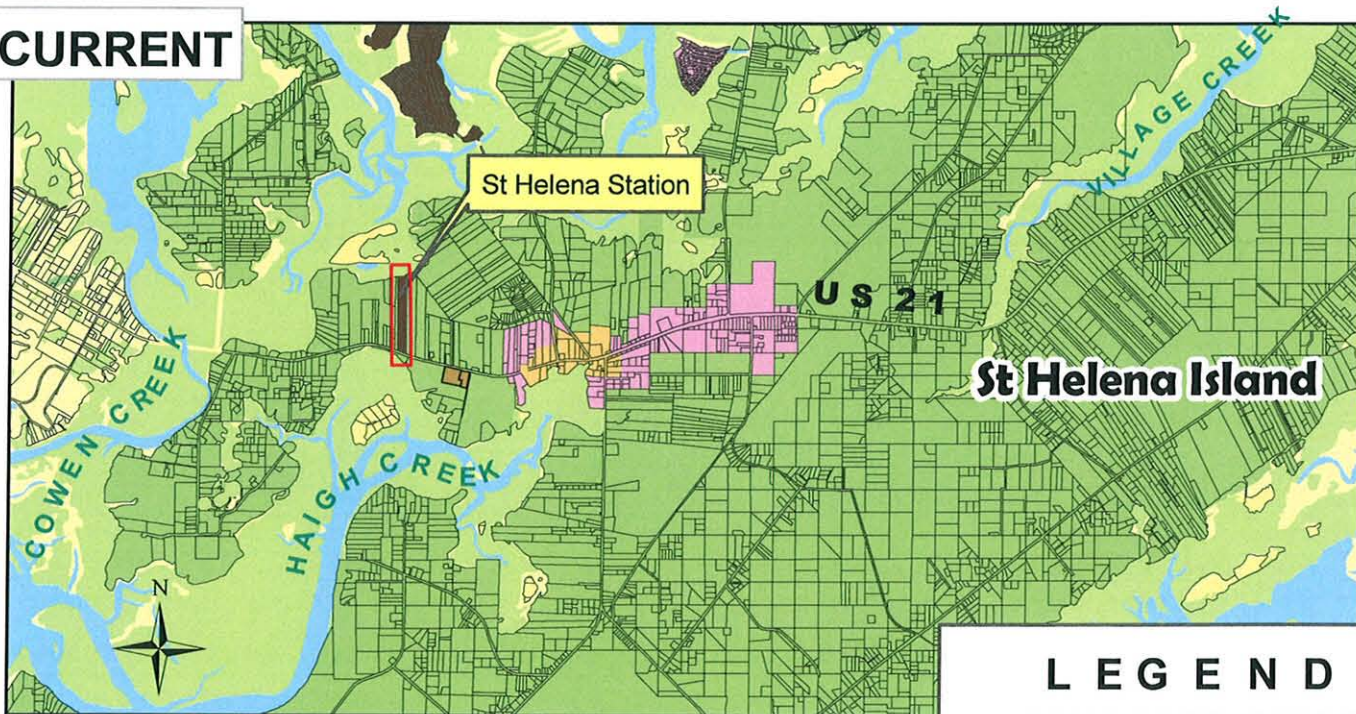
PRELIMINARY PLAN OF A FLOOD PLAIN. BEFORE ANY DEVELOPMENT, THE DEVELOPER SHALL OBTAIN A FLOOD HAZARD STUDY FROM THE MAJORS COUNTY HEALTH DEPARTMENT.



**FUTURE LAND USE LEGEND**

- Preserved Land
- Rural
- Rural Community Preservation
- Neighborhood / Mixed-Use

# CURRENT

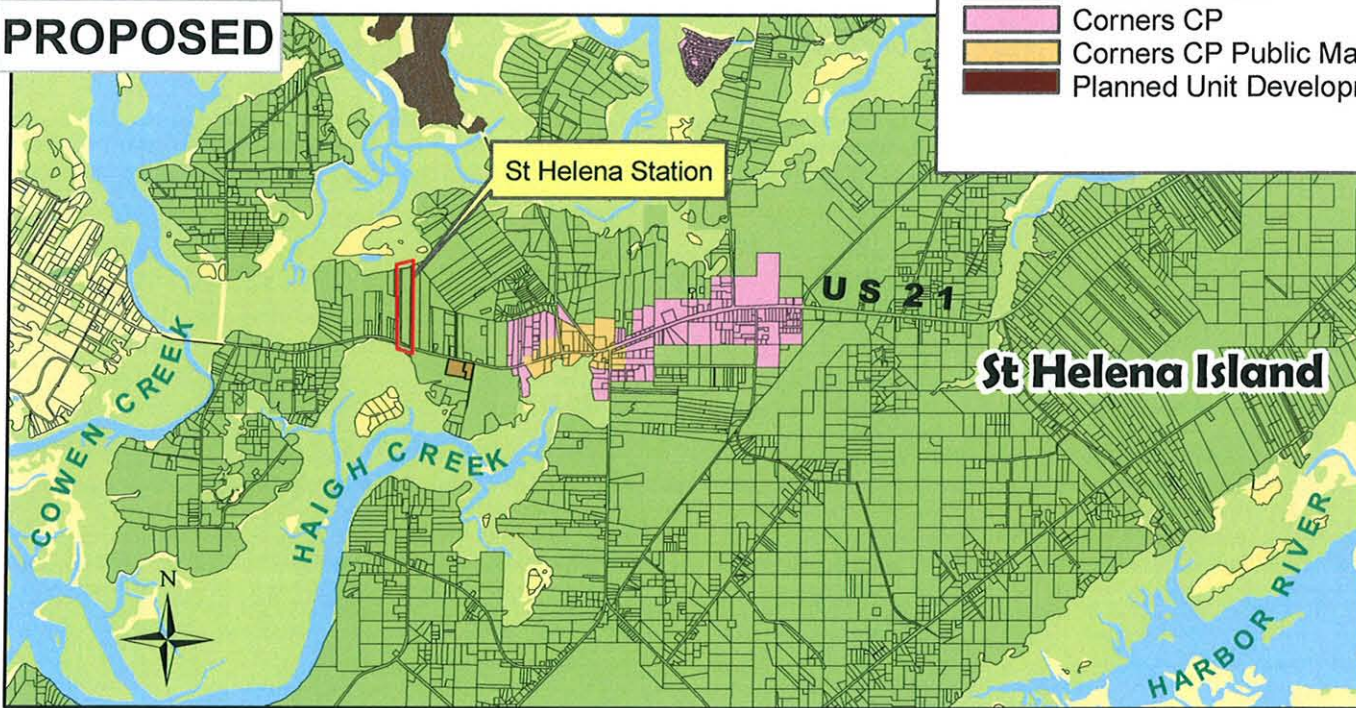


### LEGEND

#### ZONE DISTRICT

- Resource Conservation
- Rural
- Rural Business
- Corners CP
- Corners CP Public Market
- Planned Unit Development

# PROPOSED



## REZONING AMENDMENT

300 015 000 0101 0000 St Helena Station  
FROM Planned Unit Development [PUD] TO Rural [R]



## PLANNING DIVISION MEMORANDUM

**To:** Natural Resources Committee of Beaufort County Council  
**From:** Anthony Criscitiello, Planning Director *TC*  
**Subject:** River Buffer Amendment  
**Date:** August 26, 2011

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**EXCERPT OF PLANNING COMMISSION RECOMMENDATION from its draft June 6, 2011, minutes:**

Mr. Criscitiello noted that the Codes Enforcement Department brought forth this proposed text amendment. This will aid the enforcement of the river buffer standards for residential and commercial properties.

Discussion included clarification of the standards, clarification on the inch-per-inch replacement requirement and the reforestation fund; and disagreement with requiring an engineering study.

**Public Comment:**

1. Mr. Reed Armstrong, noted that the tree plant back states that if it is determined by staff that all tree inches cannot be planted back on site, then the tree reforestation fee will be assessed. Also, the Beaufort County Stormwater Utility Board has discussed and raised concerns about disturbances to the river buffer by developers, builders and individual property owners and difficulties in enforcement of river buffer protections. Their concerns were based on concerns about water quality and the value of river buffers for water quality. The Stormwater Board rightfully felt effective enforcement is necessary. So, I add my voice to those of staff and the Stormwater Board in supporting this amendment.
2. Mr. David Tedder noted that he assisted in the original standard but he wanted to point out the following:
  - a. He recommended a rewrite of the first two sentences in Sec. 106-1845 to read: "There shall be no disturbance of the river buffer except as otherwise allowed under this Chapter, including bulkheads, rip-rap and erosion control devices, and view corridors as outlined in subsections (2) and (3) above. A river buffer disturbance violation shall require a revegetation plan to be submitted for review and approval by county staff."
  - b. It is a Pandora's Box when you adopt this ordinance. How are you going to determine when the plants were planted? There needs to be some concern that at the behest of neighbors who might have problems with their neighbors who report such activities.

Discussion included noting that Mr. Tedder's recommendations should be considered by staff when adding such into the motion, and clarification of the type of revegetation plans expected by the staff for review.

**Motion:** Mr. Semmler made a motion, and Mr. Riley seconded the motion, **to recommend approval to County Council of the Text Amendments to the Beaufort County Zoning and Development Standards Ordinance (ZDSO), Article VII, Sec. 106-1845(6) Buffer Disturbance that adds river buffer disturbance standards, and recommend that the Planning staff to consider Mr. David Tedder's comments.** No further Commission discussion occurred. The motion was carried unanimously (FOR: Hicks, LeGree, Riley, Semmler, Sutler, and Thomas).

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**STAFF REPORT:**

**Summary of proposed amendments:** Clarification of disturbance allowed in the river buffer.

**Justification:** The Codes Enforcement department has been unable to successfully prosecute buffer violations because the judge(s) state the existing ordinance does not clearly outline that disturbance is not allowed in the river buffer.

**Recommendation: Amend Article VII Resource Protection, Site Capacity and Open Space, Division 3 Natural Resources Protection Standards Sec. 106-1845 as noted below by bold and underlined for additions.**

**Sec. 106-1845. River buffer.**

The river buffer extends inland 50 feet from all tidal waters and wetlands beginning at the OCRM critical line. The following standards are required for all development affecting the river buffer:

- (1) *Drainage.* [Ed. Note: no changes proposed.]
- (2) *Bulkheads, rip-rap and erosion control devices.* [Ed. Note: language provided for information only – no changes proposed.] All bulkheads, rip-rap or other erosion control devices in the river buffer are limited uses, subject to the required standards below.
  - a. A permit to construct the bulkhead, rip-rap or erosion control device must have been issued by OCRM.
  - b. Application for a permit for the installation of a bulkhead, rip-rap or other erosion control device more than 48 inches in total vertical height from the existing ground elevation must submit design plans, including certification from a South Carolina registered professional engineer as to the adequacy of the design standards included to prevent collapse or other failure.

- c. The provisions of subsection 106-1846(b), tree protection and specimen trees, must be met.
  - d. Any disturbance of shoreline within the river buffer landward of the SC critical line shall require submission of a revegetation plan. A principal objective of the plan is to preserve and replace as much of the on-site preconstruction native vegetation to the extent possible. Other acceptable landscaping plants are found in the SC DHEC publication entitled "Backyard Buffers", publication CR-003206 (11/00). Such plantings shall be in the quantities set forth in Table 106-1680(e) for a maritime forest on a disturbed area prorated acre basis, i.e., a one-tenth of an acre disturbance requires one-tenth of the bufferyard planting, unless soil conditions are unfavorable to establish this type of forestation, in which case a revegetation plan more suitable for the type of soil conditions will be accepted.
  - e. Revegetation of areas landward of the critical line, having sloping topography in excess of 1:3 slope, shall also include slope stabilization measures in compliance with SCDOT standards, as set forth in section 205, Embankment Construction, of the SCDOT Standard Specifications for Highway Construction, Edition of 2000.
  - f. Landscaping and construction design plans will be submitted to the zoning development administrator (ZDA), who shall issue a development permit for construction and land disturbance if these criteria are satisfied. Inspection of the construction and landscaping shall be done by the Beaufort County Building Inspection Department as provided for building permits.
- (3) *View corridor.* [Ed. Note: language provided for information only – no changes proposed.] The landowner may provide a view corridor through the river buffer. The following standards shall apply:
- a. Such a view corridor shall not extend for more than 75 feet or one-third of the lot width, whichever is less.
  - b. The view corridor shall generally involve only pruning to provide views. However, a landowner may submit a selective clearing and selective landscaping program for the view corridor. This shall only be approved by the DRT if the net result provides both ample screening of the shoreline and filtering of runoff from lawns on the lots.
- (4) *Setbacks.* [Ed. Note: no changes proposed.]
- (5) *Waiver.* [Ed. Note: no changes proposed.]
- (6) **Buffer Disturbance. There shall be no disturbance of the river buffer except as allowed for bulkheads, rip-rap and erosion control devices and view corridors**

**outlined in this section. A buffer disturbance violation shall require a revegetation plan prepared by a landscape designer or landscape architect to be submitted for review and approval by the natural resource planner. The plant back requirements shall minimally meet those requirements outlined in Subsection (2)d above. Removal of trees shall require plant back inch for inch of trees removed. If it is determined by the natural resource planner that all tree inches can not be planted back on site due to site constraints, the remaining tree inches shall be subject to a general forestation fee.**

Lisa Sulka  
*Mayor*

Fred Hamilton Jr.  
*Mayor Pro Tempore*

Anthony Barrett  
*Town Manager*



*Council Members*  
Michael Raymond  
Oliver Brown  
Allyne Mitchell  
Sandra Lunceford  
*Town Clerk*

August 25, 2011

Mr. Gary Kubic  
Beaufort County Administrator  
Beaufort County  
P.O. Drawer 1228  
Beaufort, SC 29901

RE: Storm Water Inter-Governmental Agreement

Dear Mr. Kubic:

The Town of Bluffton is happy to submit our Stormwater Management and Utility Agreement (IGA) with Beaufort County. The Town Council approved the negotiation and execution of the IGA on August 9, 2011. Please find attached the Town of Bluffton's executed copy for your review and execution.

As previously indicated, the Town of Bluffton appreciates all of the hard work your staff has dedicated to this agreement. As always, feel free to contact me with any questions you may have

Kind regards,

Anthony Barrett  
Town Manager

CC: Rob McFee, Director of Engineering & Infrastructure Division  
Robert Fletcher, Director of Engineering  
Ron Bullman, Stormwater Engineer



A STORMWATER MANAGEMENT AND UTILITY AGREEMENT

BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND

THE TOWN OF BLUFFTON, SOUTH CAROLINA

DATED: 8-24-11

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WHEREAS, this Agreement is made on this 24th day of August, 2011, by and between Beaufort County, South Carolina, and the Town of Bluffton, 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 Bluffton, South Carolina, shall be known as the “Storm Water Management and Utility Agreement Between Beaufort County, South Carolina, and the Town of Bluffton, 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 storm water infrastructure;
- (d) Construction of new storm water infrastructure;
- (e) Maintenance of storm water infrastructure;
- (f) Operation of storm water 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, Ordinances 2005-33 2008-29, and 2009-21 regarding the establishment of a Stormwater Utility. 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 Bluffton, 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 Bluffton, South Carolina.

*2.02 County:* Beaufort County, South Carolina.

*2.03 County Wide Stormwater Management Study:* 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.

*2.04 Cost of Service Analysis and Rate Study:* The study conducted by the County which was adopted by County Council August 22, 2005 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 Service Fee; Single Family Unit Rate (SFU).* 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.

2.06 *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 will impact communities under 100,000 population, small construction sites between one acres and five acres, and industrial sites owned and operated within communities under 100,000 population.

2.07 *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.

2.08 *Stormwater Infrastructure:* Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, 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.

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

2.09 *Stormwater Management Plan:* The plan developed by the County 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.

2.10 *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 the vacant/undeveloped land category, as pursuant to the provisions of Beaufort County Ordinance 2005-33.

2.11 *Stormwater Utility:* The administrative organization 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.

2.12 *Town:* The Town of Bluffton, 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 of the execution hereof.

*3.02 Periodic Review of this Agreement:* The Beaufort County Stormwater Management Plan Implementation Committee shall conduct periodic review of this Agreement to insure that it remains current with the state of the art stormwater management and practices 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 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 storm water 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 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 collection Rate for its fiscal year prior to August 15 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 that the Town fails to submit this letter in accordance with Article 4 of this agreement, the previous year's rate shall apply. If requested by the County, the Town shall also provide to the County an annual report of its storm water fee expenditures for each fiscal year.

*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 equivalent single family unit (SFU) billed and collected by the Stormwater Utility. The Utility shall define its administrative costs each year during the annual budget process. For fiscal year 2012 the fee shall be \$2.80 per Single Family Unit (SFU) base rate applied to the fee paying lands within the limits of the Town. After FY 2012, the Beaufort County Stormwater Management Plan

Implementation Committee shall conduct annual reviews of the Utility's administrative budget and recommend any changes to the amount billed per SFU and the Utility shall provide the Town and itemized proposal for the administrative services and deliverables to be provided in the coming fiscal year. This proposal shall be submitted to the Town by March 15 of each calendar year. The Town shall provide a written recommendation of acceptance to the Utility by April 15 of the same year. This shall serve as the basis for the annual administrative fee to be calculated per Town 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 cost 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; 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 (SFU's):* The Town shall be responsible each year for setting the Storm Water 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 all applicable laws, ordinances and regulations.

*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 shall have the responsibility to maintain the Stormwater Management Plan to be administered by the Stormwater Utility .

*5.02 Relationship of Plan to Agreement:* The Stormwater Management Plan developed and maintained by the Stormwater Utility 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 storm water data,

implementation of the master plan, acquisition of easements, coordination with other agencies, reporting to the storm water 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 15 throughout the term of this agreement as a 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 storm water 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 road Rights of Ways, whether Federal, State, County or Municipal, shall be maintained by the owner, as these areas are exempt from Stormwater Utility User Fees per Section 99-109 (b) of County Ordinance 2005-33. 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.

*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 Town shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the Town, unless superseded by the hydrologic and hydraulic engineering and design standards of the County or State, as may be required for specific work performed in County or State rights of way.

*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 Town:* The Town and County 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 the 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. Each jurisdiction shall be responsible for providing inspections during construction to ensure that construction is following the approved development plan.

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

*7.00 NPDES Compliance:* Should the Town be designated by the State of South Carolina for compliance with the NPDES program, the 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.

*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.

*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 Understanding, Contracts, and/or Joint Resolutions.

*9.01 Agreement Recommendations:* The Stormwater Implementation Committee 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. For agreements solely between the Town and the County, the Stormwater Implementation Committee 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.

## **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.

10.08 *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.

*10.09 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.

*10.10 Notices:* All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, 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 BLUFFTON  
Anthony Barrett, Town Manager  
20 Bridge Street,  
PO Box 386  
Bluffton, SC 29928

To the County:        BEAUFORT COUNTY, SOUTH CAROLINA  
Gary Kubic, Manager  
Post Office Box 1128  
Beaufort, SC, 29902

10.11 *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.

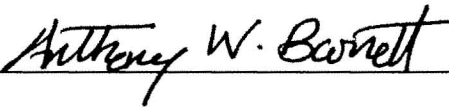
10.12 *Further Assurances and Corrective Documents:* The Town and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The Town and the County 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 Bluffton, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this 24th day of August, 2011.

WITNESSES:

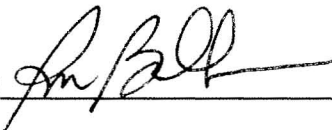
THE TOWN OF BLUFFTON,  
SOUTH CAROLINA

  
\_\_\_\_\_

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

Anthony Barrett, Town Manager

  
\_\_\_\_\_

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

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

\_\_\_\_\_

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

Gary Kubic, County Administrator

\_\_\_\_\_

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

OFFICE OF THE COUNTY ADMINISTRATOR  
COUNTY COUNCIL OF BEAUFORT COUNTY

GARY KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING  
100 RIBAUT ROAD  
POST OFFICE DRAWER 1228  
BEAUFORT, SOUTH CAROLINA 29901-1228  
TELEPHONE: (843) 255-2026  
FAX: (843) 255-9403  
[www.hcra.net](http://www.hcra.net)

BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

LADSON F. HOWELL  
STAFF ATTORNEY

JOSH GRUBER  
STAFF ATTORNEY

August 23, 2011

Mr. Scott Dadson, City Manager  
City of Beaufort  
Post Office Drawer 1167  
Beaufort, SC 29901

Re: Extension of Current Stormwater Utility Intergovernmental Agreement

Dear Mr. Dadson:

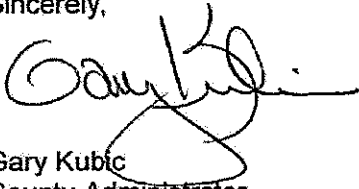
In response to your August 16, 2011, we are willing to extend and operate under the current agreement for the Fiscal Year ending June 30, 2012. We need to continue to work to establish a new longer term agreement and this can be signed in the interim but will not be effective till July 1, 2012.

Much has been accomplished under the old agreement and we need to request your active participation in our joint efforts to restore our waters to their designated uses. As you are aware we are proposing a five-year restoration plan that will focus on Battery Creek. A multi jurisdictional effort will be needed to restore this watershed. We look forward to working with you on this effort.

We also need to coordinate better on reimbursement work performed by the county at the request of the City and well as prompt payment of City's cost share for county wide stormwater management plan activities on education, monitoring and water quality retrofits studies.

We look forward to working with you to address stormwater related issues in our goal of protecting the water resources that are a major economic force to our County.

Sincerely,



Gary Kubic  
County Administrator

GK:ch

cc: Rob McFee  
Dan Ahern  
Eddie Bellamy





Scott Dadson  
City Manager  
(843) 525-7070

**CITY OF BEAUFORT**  
**PUBLIC WORKS DEPARTMENT**  
16 Burton Hill Road  
Mailing Address: 1911 Boundary Street  
Beaufort, South Carolina 29902  
Fax: (843) 525-7095

Isiah Smalls  
Public Works Director  
(843) 525-7054

August 16, 2010

Mr. Gary Kubic, County Administrator  
Beaufort County  
Post Office Drawer 1228  
Beaufort, South Carolina 29901

RE: Stormwater Utility Intergovernmental Agreement (IGA)

Dear Mr. Kubic:

The City of Beaufort requests a one year extension of the existing IGA that is scheduled to expire on September 4, 2011. This extension would allow the City to review the draft "Joint Form Base Code" that is being developed by "Opticos Design Inc.," on behalf of the County, Town, and City.

We are hopeful that during this time we can work out a regional approach that will provide consistency, where it is necessary, and differing service levels where it is appropriate, between the county and the two municipalities in how we deal with properties in our respective jurisdictions.

We suggest several items that we can jointly work on in the coming weeks and months by scheduling working sessions with all of the municipalities, towns, and the county.

1. Review the proposed Transect Language proposed for the multi-jurisdictional Land Use Code and how it applies to the capital and operational cost of delivering Stormwater services.
2. Assess the impact of the Code on the delivery of a Stormwater fee structure.
3. Develop a cost structure based upon current and future uses and the proper local governmental delivery unit for same or the differing ones, as may be the case.

As stated in the City of Beaufort - Town of Port Royal Municipal Stormwater Policy Statement of Intent, the City of Beaufort is resolved *to develop a unified ordinance, policy and procedure ("Unified Stormwater Ordinance") to address the impact of stormwater volume within our respective municipal*

***boundaries. The Unified Stormwater Ordinance will address both stormwater volume and water quality, and furthermore, develop the Unified Stormwater Ordinance in a way that will encourage infill and redevelopment within and adjacent to our urban cores, and foster efficient delivery of services to the community as a whole.***

The City also recognizes and appreciates the work of the Stormwater Implementation Committee in updating the proposed IGA, regarding the Administration Fee Structure, the Language for a Baseline Standard dealing with "municipality water quality controls in each jurisdiction", and requirements for an annual review of the IGA at least once a year. That we all have worked together to accomplish this is a move in the right direction.

Thank you for your patience and cooperation with us in this endeavor. We look forward to our continued involvement and collaboration with the Stormwater IGA and the proposed Joint Form Base Code.

Sincerely,



Scott F. Dadson, City Manager  
City of Beaufort

SD/clb

Cc: Mayor and City Council, City of Beaufort  
Andy Kinghorn, City Rep  
Isiah Smalls, COB  
Lamar Taylor, COB  
Libby Anderson, COB  
Van Willis, Town of Port Royal

A STORMWATER MANAGEMENT AND UTILITY AGREEMENT  
BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND  
THE CITY OF BEAUFORT, SOUTH CAROLINA

DATED: SEPTEMBER 12, 2001

9/12/01

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WHEREAS, this Agreement is made on this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between Beaufort County, South Carolina, and the City of Beaufort, South Carolina, for the purpose of establishing the terms and conditions of the participation by the City in a county-wide stormwater utility, which utility shall be operated by the County.

#### ARTICLE 1 - TITLE AND PURPOSE

1. *Title* : This intergovernmental agreement between Beaufort County, South Carolina, and the City of Beaufort, South Carolina, shall be known as the "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, 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 City 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 2001-\_\_\_\_, entitled: "\_\_\_\_\_". In the case

of any conflict between the provisions of the Ordinance and this Agreement, the provisions of this Agreement shall control.

## ARTICLE 2 - DEFINITIONS

2. *Definitions* : When used in this "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, South Carolina," the following words shall have the meaning set forth in this Article 2.

2.01 *Agreement* : This Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, South Carolina.

2.02 *City*: The City of Beaufort, South Carolina

2.03 *County* : Beaufort County, South Carolina.

2.04 *County Wide Drainage Study* : A study to be conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County.

2.05 *Equivalent Residential Unit*: As is set forth in Beaufort County Ordinance 2001-23, an Equivalent Residential Unit shall mean fifteen thousand (15,000) square feet of total property area with a development intensity factor of 0.31. The equivalent residential unit shall be used as the basis for determining stormwater service charges to dwelling unit properties or classes of dwelling unit properties and other properties.

2.06 *Cost of Service Analysis and Rate Study* : A study to be conducted by the County to determine an equitable and appropriate rate structure for Stormwater Utility 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. 2000), and S. C. Regs. 72-310 (Supp. 2000).

2.07 *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 population, small construction sites between one acre and five acres, and industrial sites owned and operated by communities under 100,000 population.

2.08 *Stormwater Infrastructure* : Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, 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.

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

2.10 *Stormwater Management Plan* : A plan to be developed by the County that shall include, but not be limited to, 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.

2.11 *Stormwater Utility User Fees* : Fees charged by the Beaufort County Stormwater Utility to residents of Beaufort County for the purposes of Stormwater Management, Administration of the Stormwater Utility and acquisition and/or creation of Stormwater Infrastructure, pursuant to the provisions hereof and Beaufort County Ordinance 2001-23.

2.12 *Stormwater Utility* : The administrative organization 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.

### ARTICLE 3 - TERM OF THIS AGREEMENT

3.0 *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 of the execution hereof.

3.02 *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.

3.03 *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 3.03 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 days prior to the date the termination will be effective.

3.04 Termination During First Three Years: During the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by mutual agreement of the parties hereto.

3.05 Termination After First Three Years: After the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article 3.05 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 days prior to the date the termination will be effective.

3.06 *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 Fees to property owners in the City, shall immediately end.

3.07 *Conveyance of Assets* : Upon termination of this Agreement under any provision of this Article 3, the County shall convey to the City all of its right, title and interest in any Stormwater Infrastructure, including any easements or other interests in real property, within the municipal limits of the City.

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

ARTICLE 4 - INITIAL FUNDING OF STORMWATER UTILITY AND RATE AND DRAINAGE STUDIES

4.0 *Initial Funding of Stormwater Utility* : For a period of not more than three (3) years from the date of this Agreement; or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, the Stormwater Utility shall charge and collect Stormwater Utility User Fees at an annual rate of no more than Forty and 03/100 (\$40.03) Dollars for each "Equivalent Residential Unit" within the County, and shall calculate all Stormwater Utility User Fees as set forth in Section 9 of County Ordinance 2001-23.

4.01 *Relief from Fees* : For a period of not more than three (3) years, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02 above, relief from payment of the Stormwater Utility User Fees as described in Article 4.0 above, shall be granted by the County only in accordance with its adopted Ordinance Number 2001-22, entitled "An Ordinance Regarding Relief From Beaufort County Stormwater Management Charges For Impoverished Residential Property Owners And Private Non-Profit Organizations, Government Agencies and Religious Organizations"; provided, however, that Beaufort County Ordinance 2001-22 shall be amended to provide relief for "tax-exempt" organizations as opposed to "non-profit" organizations, before any such relief is granted. All other property owners shall be required to pay Stormwater Utility User Fees as set forth in Article 4.0 above.

4.02 *County to Undertake Studies* : The County shall, within a period not to exceed three (3) years from the date of this Agreement:

(a) Complete a County Wide Drainage Study to determine the drainage infrastructure and maintenance needs within the various watersheds within the County; and,

(b) Complete a Cost of Service Analysis and Rate Study to determine an equitable and appropriate rate structure for Stormwater Utility 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. 2000), and S. C. Regs. 72-310 (Supp. 2000).

4.03 *Initial Funding Relationship* : For a period of not more than three (3) years from the date of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, above, whichever shall first occur, the Stormwater Utility User Fees shall be charged and collected in accordance with Article 4.0 above and such Stormwater Utility User Fees collected within the City shall be disbursed in accordance with this Article 4.

(a) A sum not to exceed five (5%) percent of the amount collected within the City to the Stormwater Utility for Administrative Costs of the Stormwater Utility

(b) A sum not to exceed seven and one-half (7.5%) percent of the cost of the studies to be undertaken under Article 4.2, above, shall be disbursed to the Stormwater Utility to be applied to the cost of such Studies; provided, however, that

the percentage of the City's contribution toward the studies in any year shall not exceed the percentage of the overall cost of studies for the year divided by the overall amount of money raised in the Countywide utility for the year; and,

(c) The balance of the amount collected within the City shall be returned to the City to be utilized for the purposes set forth in Articles 5.01, 5.02 and 5.03, below.

#### ARTICLE 5 - FINANCE AND FUNDING

5.0 *Financial and Funding Relationship* : When the studies described in Article 4.02 above have been completed, or three (3) years from the date of this Agreement, whichever shall first occur, the Stormwater Utility Fee charged and collected pursuant to Article 4 above shall cease, and the rates for Stormwater Utility Fees shall then be set in accordance with the findings contained in the studies; provided, however, that the County shall first obtain the City's approval for the amount of Stormwater Utility User Fees. From that point forward, Stormwater Utility Fees collected within the City shall be disbursed in accordance with this Article 5.

5.01 In accordance with the provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310 (Supp. 2000), Stormwater Utility Fees collected within the City, less an amount not to exceed five (5%) percent of the Stormwater Utility Fees collected within the City to be applied to the County's administrative cost in collecting the Stormwater Utility Fees and administering the Stormwater Utility, shall be returned to the City in the form of:

(a) Transfers of money to the City for the construction of Stormwater Infrastructure, or for 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 City for general fund or other funds spent by the City to fund

construction of Stormwater Infrastructure pursuant to agreements between the City and the Stormwater Utility;

(b) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of Beaufort County Stormwater Utility unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the City;

(c) Reimbursement to the City for the maintenance of Stormwater Infrastructure. The City may, at its option, contract with the County for maintenance of its Stormwater Infrastructure;

(d) Reimbursement to the City for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the City as set forth in Articles 5.05, 5.06 and 5.07 below; and,

**5.02 Priority of Use of Revenue :** Subject to the provisions of Article 5.04 below, Stormwater Utility User Fees collected within the City, less the pro-rata portion of the Stormwater Utility's administrative costs attributable to the City, which shall not exceed five (5%) percent of the Stormwater Utility Fees collected within the City, shall be returned to the City in services and revenue in the following order of priority:

(a) Transfers of funds to the City to be utilized by the City for the completion of the City's drainage capital improvements program. The City's drainage capital improvements plan shall be planned and built by the City, or to pay the cost of debt service on bonds issued or to be issued by the City or the Stormwater Utility for the purpose of building Stormwater Infrastructure, in so far as the law and covenants of

the bonds allow, or for repayment to the City for general fund or other funds spent by the City to fund construction of Stormwater Infrastructure pursuant to agreements between the City and the Stormwater Utility;

(b) Acquisition by the County of existing drainage ditches or other Stormwater Infrastructure that does not require major or material improvements, and for which no drainage easements favoring the public currently exist. Such property shall be held as assets of the Stormwater Utility, unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the City

(c) Long term operation and maintenance of all Stormwater Infrastructure acquired and/or built by the City or the County.

(d) Reimbursement to the City for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the City as set forth in Articles 5.06, and 5.07 below; and,

5.03 *Further Agreements Authorized* : The City and the Stormwater Utility and the County may enter into agreements whereby the City will build Stormwater Infrastructure within the City prior to the time that the Stormwater Utility is able to do so. Such agreements shall provide for the reimbursement to the City of funds expended for the construction of Stormwater Infrastructure or for the repayment of debt service incurred by the City for the construction of Stormwater Infrastructure, and for the conveyance of Stormwater Infrastructure to the Stormwater Utility.

5.04 *Cost of Services* : Stormwater Utility User Fees that are returned to the City in the form of County services, however described, shall be accounted for at the County's actual cost of the equipment and personnel utilized in the delivery of the services.

5.05 *Short Term and Long Range Planning* : The City and the County shall cooperate in developing short term and long range plans for Stormwater Management within the City.

(a) *Short Term Planning* : For each fiscal year that this Agreement is in effect, the City and the County shall develop a plan to meet the Stormwater Management needs of the City. The plan shall determine the combination of funds and services to be returned to the City each fiscal year. The priorities set forth in Article 5.02 above, shall guide the development of the plan, but the City and the County acknowledge that a combination of funding for the drainage capital improvements plan, acquisition of Stormwater Infrastructure and maintenance and operation of existing Stormwater Infrastructure is necessary to achieve a comprehensive plan of Stormwater Management within the City.

(b) *Long Range Planning* : The City and County will jointly develop a long range Stormwater Management plan to provide for the acquisition, construction, improvement, maintenance, and regulation of Stormwater Infrastructure, to include planning, development of system inventory, facilities design, major and minor system improvements and maintenance, development and implementation of water quality programs, system development and expansion and other program elements affecting Stormwater Management within the City.

The planning described in this Article 5.05 may be consolidated with Countywide planning efforts, to ensure that all issues are addressed to the extent possible with the resources of the Stormwater Utility.



5.06 *Plan Review and Site Inspection* : For all activities that constitute development within City limits, the City will continue to provide review of plans and site inspections to ensure compliance with laws, ordinances and regulations related to storm and surface water, erosion control and flooding. The City will be reimbursed for such services, from the Stormwater Utility User Fees collected within the City. The County will provide services as identified in Article 6.02 and 6.03 including but not limited to oversight, review of plans, site inspections, enforcement or maintenance action as may be required by or consistent with any County or City NPDES Phase II permit.

5.07 *Coordination of Services* : The City shall identify a representative of its staff to serve as the contact person and coordinator with the County for Stormwater Management Services, including services provided by the County within the City, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, development of RFP's/RFQ's and selection of consultants, facilitating access within any planned or future Planned Unit Developments within the City, and advising the County on site-specific conditions within the City.

#### ARTICLE 6- STANDARDS AND WATER QUALITY

6. *Applicable Standards* : The current planning, engineering and design standards relating to storm and surface water, erosion control, pollution and flooding within the City shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the City. In the event that the County adopts planning, engineering and design standards relating to storm and surface water, erosion control and flooding that are more stringent than those in effect within the City, then the City shall have a period of six months to adopt planning,

engineering and design standards relating to storm and surface water, erosion control, pollution and flooding at least as stringent as those adopted by the County.

6.01 *State or Federal Laws or Regulations* : The City 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 *NPDES II Compliance* : The County shall oversee compliance with the NPDES Phase II water quality program throughout the County. The cost of such oversight shall be included in, and as a part of, the Administrative expenses of the Stormwater Utility, as set forth in Article 5.01 and 5.02 above.

6.03 *NPDES II Program* : Should all or any part of the County be designated by the State of South Carolina, for compliance with the NPDES program, the County shall be responsible for the development of the NPDES 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. The cost of such oversight shall be an Administrative expense of the Stormwater Utility, the cost of which shall be pro-rated as provided in Article 5.01 above.

#### ARTICLE 7 - ESTABLISHMENT OF STORMWATER UTILITY

7. *Stormwater Utility* : The County shall establish a Stormwater Utility that will administer, fund and conduct a Stormwater Management program throughout the County.

7.01 *Stormwater Management Plan* : The County shall have the responsibility to develop a Stormwater Management Plan to be administered by the Stormwater Utility.

7.02 *Relationship of Plan to Agreement* : The Stormwater Management Plan developed by the Stormwater Utility shall incorporate the obligations of the County and City 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.

7.03 *Stormwater Utility User Fees* : The Stormwater Utility shall bill and collect Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to the provisions of 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 Program as allowed by law.

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

(a) *Initial Setting of Fees* : For a period not to exceed three (3) years from the date of this Agreement, the Stormwater Utility User Fee shall be Forty and 03/100 (\$40.03) Dollars, in accordance with the provisions of Article 4 of this Agreement.

(b) *Amendments to Fees* : Not more than three (3) years from the date of this Agreement, the Forty and 03/100 (\$40.03) Dollar fee to be charged pursuant to Article 4 of this Agreement shall terminate, and the County, subject to City Council approval, shall set the fees in accordance with the findings of the County Wide Drainage Study and the Cost of Service Analysis and Rate Study. The Stormwater Utility User Fees shall be in accordance with the County Wide Drainage Study and the Cost of Service Analysis and Rate Study required in Article 4 hereof, S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310(G)(Supp. 2000), or any

other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees.

(c) *Provision of Services* : Provision of the services, or disbursement of the funding as required under the provisions of this Agreement.

(d) *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.

(e) *Administrative Activities* : Managing all administrative activities of the Stormwater Utility.

(f) *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.

(g) *Operation and Maintenance* : Provide for the operation and maintenance of Stormwater Infrastructure. The City and County will negotiate transfers of existing City contracts, easements and other rights between the City and Planned Unit Developments within the City, to enable the County, at the City's option, to provide operation and maintenance services to Stormwater Infrastructure within the Planned Unit Developments. Where such transfers cannot be negotiated, the City will continue to provide the operation and maintenance, and will be reimbursed by the County.

(h) *Planned Unit Developments* : The Stormwater Utility shall extend to all Planned Unit Developments located within the City an offer to assume the ownership

and maintenance of Stormwater Infrastructure within the Planned Unit Development,  
and to fund the maintenance of the same through Stormwater Utility Fees.

7.05 *Delivery of Services* : The County shall coordinate the delivery of services hereunder through the City Manager or his designee.

7.06 *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.

#### ARTICLE 8 - MISCELLANEOUS

8. *Provisions Applicable to This Agreement* : The following general provisions are applicable to this agreement:

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

8.02 *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 City and the County.

8.03 *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.

8.04 *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.

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

8.06 *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.

8.08 *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.

8.09 *No Third Party Beneficiaries* : The City 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.

8.10 *Notices* : All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, 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 City: THE CITY OF BEAUFORT  
John F. McDonough, Manager  
P. O. Drawer 1167  
Beaufort, SC 29901

To the County:       BEAUFORT COUNTY, SOUTH CAROLINA  
                          John J. Kachmar, Administrator  
                          Post Office Box 1128  
                          Beaufort, SC, 29902


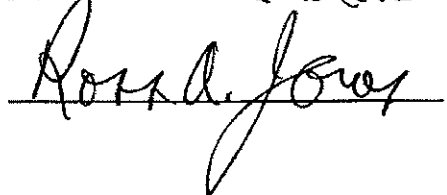
8.11 *No Waiver* : No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of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

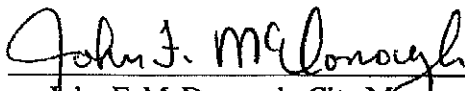
8.12 *Further Assurances and Corrective Documents* : The City and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The City and the County 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 City of Beaufort, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this 12th day of September, 2001.

WITNESSES:

THE CITY OF BEAUFORT, SOUTH CAROLINA

By:   
John F. McDonough, City Manager

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

Cheryl H. Harris

By:

[Handwritten Signature]

Juanita B. Ellis

Attest:

[Handwritten Signature]



OFFICE OF THE COUNTY ADMINISTRATOR  
COUNTY COUNCIL OF BEAUFORT COUNTY

GARY KUBIC  
COUNTY ADMINISTRATOR

CHERYL HARRIS  
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING  
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BEAUFORT, SOUTH CAROLINA 29901-1228  
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BRYAN J. HILL  
DEPUTY COUNTY ADMINISTRATOR

LADSON F. HOWELL  
STAFF ATTORNEY

JOSH GRUBER  
STAFF ATTORNEY

August 23, 2011

Mr. Scott Dadson, City Manager  
City of Beaufort  
Post Office Drawer 1167  
Beaufort, SC 29901

Re: Extension of Current Stormwater Utility Intergovernmental Agreement

Dear Mr. Dadson:

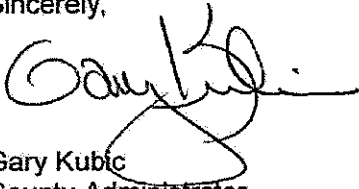
In response to your August 16, 2011, we are willing to extend and operate under the current agreement for the Fiscal Year ending June 30, 2012. We need to continue to work to establish a new longer term agreement and this can be signed in the interim but will not be effective till July 1, 2012.

Much has been accomplished under the old agreement and we need to request your active participation in our joint efforts to restore our waters to their designated uses. As you are aware we are proposing a five-year restoration plan that will focus on Battery Creek. A multi jurisdictional effort will be needed to restore this watershed. We look forward to working with you on this effort.

We also need to coordinate better on reimbursement work performed by the county at the request of the City and well as prompt payment of City's cost share for county wide stormwater management plan activities on education, monitoring and water quality retrofits studies.

We look forward to working with you to address stormwater related issues in our goal of protecting the water resources that are a major economic force to our County.

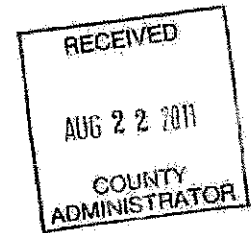
Sincerely,



Gary Kubic  
County Administrator

GK:ch

cc: Rob McFee  
Dan Ahern  
Eddie Bellamy



Scott Dadson  
City Manager  
(843) 525-7070

**CITY OF BEAUFORT**  
**PUBLIC WORKS DEPARTMENT**  
16 Burton Hill Road  
Mailing Address: 1911 Boundary Street  
Beaufort, South Carolina 29902  
Fax: (843) 525-7095

Isiah Smalls  
Public Works Director  
(843) 525-7054

August 16, 2010

Mr. Gary Kubic, County Administrator  
Beaufort County  
Post Office Drawer 1228  
Beaufort, South Carolina 29901

RE: Stormwater Utility Intergovernmental Agreement (IGA)

Dear Mr. Kubic:

The City of Beaufort requests a one year extension of the existing IGA that is scheduled to expire on September 4, 2011. This extension would allow the City to review the draft "Joint Form Base Code" that is being developed by "Opticos Design Inc.," on behalf of the County, Town, and City.

We are hopeful that during this time we can work out a regional approach that will provide consistency, where it is necessary, and differing service levels where it is appropriate, between the county and the two municipalities in how we deal with properties in our respective jurisdictions.

We suggest several items that we can jointly work on in the coming weeks and months by scheduling working sessions with all of the municipalities, towns, and the county.

1. Review the proposed Transect Language proposed for the multi-jurisdictional Land Use Code and how it applies to the capital and operational cost of delivering Stormwater services.
2. Assess the impact of the Code on the delivery of a Stormwater fee structure.
3. Develop a cost structure based upon current and future uses and the proper local governmental delivery unit for same or the differing ones, as may be the case.

As stated in the City of Beaufort - Town of Port Royal Municipal Stormwater Policy Statement of Intent, the City of Beaufort is resolved *to develop a unified ordinance, policy and procedure ("Unified Stormwater Ordinance") to address the impact of stormwater volume within our respective municipal*

***boundaries. The Unified Stormwater Ordinance will address both stormwater volume and water quality, and furthermore, develop the Unified Stormwater Ordinance in a way that will encourage infill and redevelopment within and adjacent to our urban cores, and foster efficient delivery of services to the community as a whole.***

The City also recognizes and appreciates the work of the Stormwater Implementation Committee in updating the proposed IGA, regarding the Administration Fee Structure, the Language for a Baseline Standard dealing with "municipality water quality controls in each jurisdiction", and requirements for an annual review of the IGA at least once a year. That we all have worked together to accomplish this is a move in the right direction.

Thank you for your patience and cooperation with us in this endeavor. We look forward to our continued involvement and collaboration with the Stormwater IGA and the proposed Joint Form Base Code.

Sincerely,



Scott F. Dadson, City Manager  
City of Beaufort

SD/clb

Cc: Mayor and City Council, City of Beaufort  
Andy Kinghorn, City Rep  
Isiah Smalls, COB  
Lamar Taylor, COB  
Libby Anderson, COB  
Van Willis, Town of Port Royal

A STORMWATER MANAGEMENT AND UTILITY AGREEMENT  
BETWEEN BEAUFORT COUNTY, SOUTH CAROLINA, AND  
THE CITY OF BEAUFORT, SOUTH CAROLINA

DATED: SEPTEMBER 12, 2001

9/12/01

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WHEREAS, this Agreement is made on this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between Beaufort County, South Carolina, and the City of Beaufort, South Carolina, for the purpose of establishing the terms and conditions of the participation by the City in a county-wide stormwater utility, which utility shall be operated by the County.

#### ARTICLE 1 - TITLE AND PURPOSE

1. *Title* : This intergovernmental agreement between Beaufort County, South Carolina, and the City of Beaufort, South Carolina, shall be known as the "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, 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 City 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 2001-\_\_\_\_, entitled: "\_\_\_\_\_". In the case

of any conflict between the provisions of the Ordinance and this Agreement, the provisions of this Agreement shall control.

## ARTICLE 2 - DEFINITIONS

2. *Definitions* : When used in this "Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, South Carolina," the following words shall have the meaning set forth in this Article 2.

2.01 *Agreement* : This Stormwater Management And Utility Agreement Between Beaufort County, South Carolina, and the City of Beaufort, South Carolina.

2.02 *City*: The City of Beaufort, South Carolina

2.03 *County* : Beaufort County, South Carolina.

2.04 *County Wide Drainage Study* : A study to be conducted by the County to determine the drainage infrastructure and maintenance needs within the various watersheds within the County.

2.05 *Equivalent Residential Unit*: As is set forth in Beaufort County Ordinance 2001-23, an Equivalent Residential Unit shall mean fifteen thousand (15,000) square feet of total property area with a development intensity factor of 0.31. The equivalent residential unit shall be used as the basis for determining stormwater service charges to dwelling unit properties or classes of dwelling unit properties and other properties.

2.06 *Cost of Service Analysis and Rate Study* : A study to be conducted by the County to determine an equitable and appropriate rate structure for Stormwater Utility 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. 2000), and S. C. Regs. 72-310 (Supp. 2000).



2.07 *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 population, small construction sites between one acre and five acres, and industrial sites owned and operated by communities under 100,000 population.

2.08 *Stormwater Infrastructure* : Real property, interests in real property, improvements to real property such as ditches, drains, pipes, culverts, catch basins, pumps, 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.

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

2.10 *Stormwater Management Plan* : A plan to be developed by the County that shall include, but not be limited to, 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.

2.11 *Stormwater Utility User Fees* : Fees charged by the Beaufort County Stormwater Utility to residents of Beaufort County for the purposes of Stormwater Management, Administration of the Stormwater Utility and acquisition and/or creation of Stormwater Infrastructure, pursuant to the provisions hereof and Beaufort County Ordinance 2001-23.

2.12 *Stormwater Utility* : The administrative organization 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.

### ARTICLE 3 - TERM OF THIS AGREEMENT

3.0 *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 of the execution hereof.

3.02 *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.

3.03 *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 3.03 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 days prior to the date the termination will be effective.

3.04 Termination During First Three Years: During the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by mutual agreement of the parties hereto.

3.05 Termination After First Three Years: After the first three (3) years of the Initial Term of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, this Agreement may be terminated by either party hereto, by delivering written notice of the termination to the other party. Termination under this Article 3.05 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 days prior to the date the termination will be effective.

3.06 *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 Fees to property owners in the City, shall immediately end.

3.07 *Conveyance of Assets* : Upon termination of this Agreement under any provision of this Article 3, the County shall convey to the City all of its right, title and interest in any Stormwater Infrastructure, including any easements or other interests in real property, within the municipal limits of the City.

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

ARTICLE 4 - INITIAL FUNDING OF STORMWATER UTILITY AND RATE AND DRAINAGE STUDIES

4.0 *Initial Funding of Stormwater Utility* : For a period of not more than three (3) years from the date of this Agreement; or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, below, whichever shall first occur, the Stormwater Utility shall charge and collect Stormwater Utility User Fees at an annual rate of no more than Forty and 03/100 (\$40.03) Dollars for each "Equivalent Residential Unit" within the County, and shall calculate all Stormwater Utility User Fees as set forth in Section 9 of County Ordinance 2001-23.

4.01 *Relief from Fees* : For a period of not more than three (3) years, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02 above, relief from payment of the Stormwater Utility User Fees as described in Article 4.0 above, shall be granted by the County only in accordance with its adopted Ordinance Number 2001-22, entitled "An Ordinance Regarding Relief From Beaufort County Stormwater Management Charges For Impoverished Residential Property Owners And Private Non-Profit Organizations, Government Agencies and Religious Organizations"; provided, however, that Beaufort County Ordinance 2001-22 shall be amended to provide relief for "tax-exempt" organizations as opposed to "non-profit" organizations, before any such relief is granted. All other property owners shall be required to pay Stormwater Utility User Fees as set forth in Article 4.0 above.

4.02 *County to Undertake Studies* : The County shall, within a period not to exceed three (3) years from the date of this Agreement:

(a) Complete a County Wide Drainage Study to determine the drainage infrastructure and maintenance needs within the various watersheds within the County; and,

(b) Complete a Cost of Service Analysis and Rate Study to determine an equitable and appropriate rate structure for Stormwater Utility 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. 2000), and S. C. Regs. 72-310 (Supp. 2000).

4.03 *Initial Funding Relationship* : For a period of not more than three (3) years from the date of this Agreement, or upon completion of the County Wide Stormwater Management Study and the Cost of Service Analysis and Rate Study described in Article 4.02, above, whichever shall first occur, the Stormwater Utility User Fees shall be charged and collected in accordance with Article 4.0 above and such Stormwater Utility User Fees collected within the City shall be disbursed in accordance with this Article 4.

(a) A sum not to exceed five (5%) percent of the amount collected within the City to the Stormwater Utility for Administrative Costs of the Stormwater Utility

(b) A sum not to exceed seven and one-half (7.5%) percent of the cost of the studies to be undertaken under Article 4.2, above, shall be disbursed to the Stormwater Utility to be applied to the cost of such Studies; provided, however, that

the percentage of the City's contribution toward the studies in any year shall not exceed the percentage of the overall cost of studies for the year divided by the overall amount of money raised in the Countywide utility for the year; and,

(c) The balance of the amount collected within the City shall be returned to the City to be utilized for the purposes set forth in Articles 5.01, 5.02 and 5.03, below.

#### ARTICLE 5 - FINANCE AND FUNDING

5.0 *Financial and Funding Relationship* : When the studies described in Article 4.02 above have been completed, or three (3) years from the date of this Agreement, whichever shall first occur, the Stormwater Utility Fee charged and collected pursuant to Article 4 above shall cease, and the rates for Stormwater Utility Fees shall then be set in accordance with the findings contained in the studies; provided, however, that the County shall first obtain the City's approval for the amount of Stormwater Utility User Fees. From that point forward, Stormwater Utility Fees collected within the City shall be disbursed in accordance with this Article 5.

5.01 In accordance with the provisions of S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310 (Supp. 2000), Stormwater Utility Fees collected within the City, less an amount not to exceed five (5%) percent of the Stormwater Utility Fees collected within the City to be applied to the County's administrative cost in collecting the Stormwater Utility Fees and administering the Stormwater Utility, shall be returned to the City in the form of:

(a) Transfers of money to the City for the construction of Stormwater Infrastructure, or for 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 City for general fund or other funds spent by the City to fund

construction of Stormwater Infrastructure pursuant to agreements between the City and the Stormwater Utility;

(b) Acquisition of Stormwater Infrastructure, including any easements or other interests in real property which shall be held in the name of Beaufort County Stormwater Utility unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the City;

(c) Reimbursement to the City for the maintenance of Stormwater Infrastructure. The City may, at its option, contract with the County for maintenance of its Stormwater Infrastructure;

(d) Reimbursement to the City for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the City as set forth in Articles 5.05, 5.06 and 5.07 below; and,

**5.02 Priority of Use of Revenue :** Subject to the provisions of Article 5.04 below, Stormwater Utility User Fees collected within the City, less the pro-rata portion of the Stormwater Utility's administrative costs attributable to the City, which shall not exceed five (5%) percent of the Stormwater Utility Fees collected within the City, shall be returned to the City in services and revenue in the following order of priority:

(a) Transfers of funds to the City to be utilized by the City for the completion of the City's drainage capital improvements program. The City's drainage capital improvements plan shall be planned and built by the City, or to pay the cost of debt service on bonds issued or to be issued by the City or the Stormwater Utility for the purpose of building Stormwater Infrastructure, in so far as the law and covenants of

the bonds allow, or for repayment to the City for general fund or other funds spent by the City to fund construction of Stormwater Infrastructure pursuant to agreements between the City and the Stormwater Utility;

(b) Acquisition by the County of existing drainage ditches or other Stormwater Infrastructure that does not require major or material improvements, and for which no drainage easements favoring the public currently exist. Such property shall be held as assets of the Stormwater Utility, unless this Agreement is terminated, at which point in time they would revert back or be conveyed to the City

(c) Long term operation and maintenance of all Stormwater Infrastructure acquired and/or built by the City or the County.

(d) Reimbursement to the City for plan review and site inspections related to compliance with stormwater ordinances and standards for development within the City as set forth in Articles 5.06, and 5.07 below; and,

5.03 *Further Agreements Authorized* : The City and the Stormwater Utility and the County may enter into agreements whereby the City will build Stormwater Infrastructure within the City prior to the time that the Stormwater Utility is able to do so. Such agreements shall provide for the reimbursement to the City of funds expended for the construction of Stormwater Infrastructure or for the repayment of debt service incurred by the City for the construction of Stormwater Infrastructure, and for the conveyance of Stormwater Infrastructure to the Stormwater Utility.

5.04 *Cost of Services* : Stormwater Utility User Fees that are returned to the City in the form of County services, however described, shall be accounted for at the County's actual cost of the equipment and personnel utilized in the delivery of the services.



5.05 *Short Term and Long Range Planning* : The City and the County shall cooperate in developing short term and long range plans for Stormwater Management within the City.

(a) *Short Term Planning* : For each fiscal year that this Agreement is in effect, the City and the County shall develop a plan to meet the Stormwater Management needs of the City. The plan shall determine the combination of funds and services to be returned to the City each fiscal year. The priorities set forth in Article 5.02 above, shall guide the development of the plan, but the City and the County acknowledge that a combination of funding for the drainage capital improvements plan, acquisition of Stormwater Infrastructure and maintenance and operation of existing Stormwater Infrastructure is necessary to achieve a comprehensive plan of Stormwater Management within the City.

(b) *Long Range Planning* : The City and County will jointly develop a long range Stormwater Management plan to provide for the acquisition, construction, improvement, maintenance, and regulation of Stormwater Infrastructure, to include planning, development of system inventory, facilities design, major and minor system improvements and maintenance, development and implementation of water quality programs, system development and expansion and other program elements affecting Stormwater Management within the City.

The planning described in this Article 5.05 may be consolidated with Countywide planning efforts, to ensure that all issues are addressed to the extent possible with the resources of the Stormwater Utility.

5.06 *Plan Review and Site Inspection* : For all activities that constitute development within City limits, the City will continue to provide review of plans and site inspections to ensure compliance with laws, ordinances and regulations related to storm and surface water, erosion control and flooding. The City will be reimbursed for such services, from the Stormwater Utility User Fees collected within the City. The County will provide services as identified in Article 6.02 and 6.03 including but not limited to oversight, review of plans, site inspections, enforcement or maintenance action as may be required by or consistent with any County or City NPDES Phase II permit.

5.07 *Coordination of Services* : The City shall identify a representative of its staff to serve as the contact person and coordinator with the County for Stormwater Management Services, including services provided by the County within the City, long range planning and water quality initiatives such as the NPDES Phase II requirements compliance, notification of problems, development of RFP's/RFQ's and selection of consultants, facilitating access within any planned or future Planned Unit Developments within the City, and advising the County on site-specific conditions within the City.

#### ARTICLE 6- STANDARDS AND WATER QUALITY

6. *Applicable Standards* : The current planning, engineering and design standards relating to storm and surface water, erosion control, pollution and flooding within the City shall prevail in the design, construction, operation and maintenance of any portion of the Stormwater Infrastructure within the City. In the event that the County adopts planning, engineering and design standards relating to storm and surface water, erosion control and flooding that are more stringent than those in effect within the City, then the City shall have a period of six months to adopt planning,

engineering and design standards relating to storm and surface water, erosion control, pollution and flooding at least as stringent as those adopted by the County.

6.01 *State or Federal Laws or Regulations* : The City 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 *NPDES II Compliance* : The County shall oversee compliance with the NPDES Phase II water quality program throughout the County. The cost of such oversight shall be included in, and as a part of, the Administrative expenses of the Stormwater Utility, as set forth in Article 5.01 and 5.02 above.

6.03 *NPDES II Program* : Should all or any part of the County be designated by the State of South Carolina, for compliance with the NPDES program, the County shall be responsible for the development of the NPDES 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. The cost of such oversight shall be an Administrative expense of the Stormwater Utility, the cost of which shall be pro-rated as provided in Article 5.01 above.

#### ARTICLE 7 - ESTABLISHMENT OF STORMWATER UTILITY

7. *Stormwater Utility* : The County shall establish a Stormwater Utility that will administer, fund and conduct a Stormwater Management program throughout the County.

7.01 *Stormwater Management Plan* : The County shall have the responsibility to develop a Stormwater Management Plan to be administered by the Stormwater Utility.

7.02 *Relationship of Plan to Agreement* : The Stormwater Management Plan developed by the Stormwater Utility shall incorporate the obligations of the County and City 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.

7.03 *Stormwater Utility User Fees* : The Stormwater Utility shall bill and collect Stormwater Utility User Fees from property owners, tenants, or other appropriate parties, pursuant to its authority and subject to the provisions of 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 Program as allowed by law.

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

(a) *Initial Setting of Fees* : For a period not to exceed three (3) years from the date of this Agreement, the Stormwater Utility User Fee shall be Forty and 03/100 (\$40.03) Dollars, in accordance with the provisions of Article 4 of this Agreement.

(b) *Amendments to Fees* : Not more than three (3) years from the date of this Agreement, the Forty and 03/100 (\$40.03) Dollar fee to be charged pursuant to Article 4 of this Agreement shall terminate, and the County, subject to City Council approval, shall set the fees in accordance with the findings of the County Wide Drainage Study and the Cost of Service Analysis and Rate Study. The Stormwater Utility User Fees shall be in accordance with the County Wide Drainage Study and the Cost of Service Analysis and Rate Study required in Article 4 hereof, S. C. Code Ann. 48-14-120(C)(Supp. 2000), and S. C. Regs. 72-310(G)(Supp. 2000), or any

other applicable law or regulation, and shall not include provisions for relief from the payment of the Stormwater Utility User Fees.

(c) *Provision of Services* : Provision of the services, or disbursement of the funding as required under the provisions of this Agreement.

(d) *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.

(e) *Administrative Activities* : Managing all administrative activities of the Stormwater Utility.

(f) *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.

(g) *Operation and Maintenance* : Provide for the operation and maintenance of Stormwater Infrastructure. The City and County will negotiate transfers of existing City contracts, easements and other rights between the City and Planned Unit Developments within the City, to enable the County, at the City's option, to provide operation and maintenance services to Stormwater Infrastructure within the Planned Unit Developments. Where such transfers cannot be negotiated, the City will continue to provide the operation and maintenance, and will be reimbursed by the County.

(h) *Planned Unit Developments* : The Stormwater Utility shall extend to all Planned Unit Developments located within the City an offer to assume the ownership

and maintenance of Stormwater Infrastructure within the Planned Unit Development,  
and to fund the maintenance of the same through Stormwater Utility Fees.

7.05 *Delivery of Services* : The County shall coordinate the delivery of services hereunder through the City Manager or his designee.

7.06 *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.

#### ARTICLE 8 - MISCELLANEOUS

8. *Provisions Applicable to This Agreement* : The following general provisions are applicable to this agreement:

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

8.02 *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 City and the County.

8.03 *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.

8.04 *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.

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

8.06 *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.

8.08 *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.

8.09 *No Third Party Beneficiaries* : The City 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.

8.10 *Notices* : All notices, applications, requests, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered in person, 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 City: THE CITY OF BEAUFORT  
John F. McDonough, Manager  
P. O. Drawer 1167  
Beaufort, SC 29901

To the County:           BEAUFORT COUNTY, SOUTH CAROLINA  
                                  John J. Kachmar, Administrator  
                                  Post Office Box 1128  
                                  Beaufort, SC, 29902


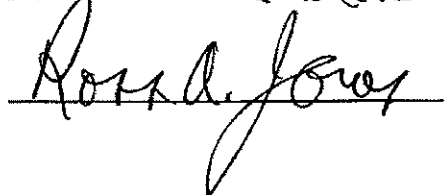
8.11 *No Waiver* : No failure of either party hereto to exercise any power or right given to such party hereunder, or to insist on strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of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

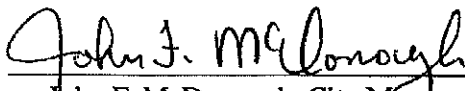
8.12 *Further Assurances and Corrective Documents* : The City and the County agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect to the provisions hereof. The City and the County 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 City of Beaufort, South Carolina, and Beaufort County, South Carolina, by and through their duly authorized officers, have set their hands and seals on this 12th day of September, 2001.

WITNESSES:

THE CITY OF BEAUFORT, SOUTH CAROLINA

By:   
John F. McDonough, City Manager



WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

Cheryl H. Harris

By:

[Handwritten Signature]

Juanita B. Ellis

Attest:

[Handwritten Signature]

Seeks Reappointment  
Resigned  
Vacancy

Seeks Reappointment  
Resigned  
Vacancy

**PLANNING BOARD**

	<u>Telephone</u>	<u>Appointed</u>	<u>Reappointed</u>	<u>Term- Years</u>	<u>Term Expires</u>	<u>CC District</u>	<u>Ethnicity</u>	<u>North/ South</u>	<u>Gender</u>
1. Jim Hicks, Chairman (Comprehensive Plan Planning Area) (Lady's Island) 5 Lake Court Lady's Island, SC 29907 <a href="mailto:jbhicks@hargray.com">jbhicks@hargray.com</a>	(H)522-3988 (F)379-3758	8/12/1996 (partial term)	2/24/1997 2/26/2001 2/14/2005 2/9/2009	4	2/13	7	Caucasian	North	Male
2. Vacant - Charles Brown (Comprehensive Plan Planning Area) (Sheldon Township)		4/26/2010 (partial term)			2/13	6		North	
3. Diane J. Chmelik (At-Large) 7 South Oak Forest Drive Okatie, SC 29909 <a href="mailto:fchmelik@islc.net">fchmelik@islc.net</a>	(H)987-2425	3/8/2004	2/11/2008	4	2/12	10	Caucasian	South	Female
4. Mary Rivers LeGree (Comprehensive Plan Planning Area) (St. Helena Township) 144 Coffin Point Road St. Helena Island, SC 29920 <a href="mailto:mlegree@embarqmail.com">mlegree@embarqmail.com</a>	(H)838-4655 (C)592-4058	8/14/2006	2/22/2010	4	2/14	5	African American	North	Female
5. Ronald Petit <sup>1</sup> (Comprehensive Plan Planning Area) (Port Royal Island) 25 Stuart Town Court Beaufort, SC 29902 <a href="mailto:petitr@charter.net">petitr@charter.net</a>	(H)525-0220 (O)812-5893	2/14/2005	2/9/2009	4	2/13	11	Caucasian	North	Male

**PLANNING BOARD**

	<u>Telephone</u>	<u>Appointed</u>	<u>Reappointed</u>	<u>Term- Years</u>	<u>Term Expires</u>	<u>CC District</u>	<u>Ethnicity</u>	<u>North/ South</u>	<u>Gender</u>
6. W. Edward Riley (Comprehensive Plan Planning Area) (Bluffton/Daufuskie Island) 74 Winding Oak Drive Okatie, SC 29909-4207 <a href="mailto:Riley4055@charter.net">Riley4055@charter.net</a>	(H)987-4055 (C)812-2875	12/10/2007		4	2/12	10	Caucasian	South	Male
7. Robert W. Semmler <sup>1,2</sup> (At-Large) 16 Dockside Lane St. Helena Island, SC 29920 <a href="mailto:semmlerrw@gmail.com">semmlerrw@gmail.com</a>	(C)263-3482	6/23/2008 (partial-term)	1/26/2009 2/28/2011	4	2/15	11	Caucasian	North	Male
8. E. Parker Sutler (At-Large) 71 Sutler Road Okatie, SC 29909 <a href="mailto:psutler@charter.net">psutler@charter.net</a>	(H)987-9134 (C)812-8930	2/11/2008 (partial-term)	2/28/2011	4	2/15	10	Caucasian	South	Male
9. John R. Thomas (At-Large) 59 White Oaks Circle Bluffton, SC 29910 <a href="mailto:bluffthomas@hargray.com">bluffthomas@hargray.com</a>	(H)815-4471 (O)338-6448	8/10/2009	2/28/2011	4	2/15	4	Caucasian	South	Male

**Authorized Membership: 9**  
 (Five - Comprehensive Plan Planning Areas (exclusive of municipalities)  
     Sheldon Township  
     Port Royal Island  
     Lady's Island  
     St. Helena Township  
     Bluffton/Daufuskie Township)  
 (Four - At-Large (inside/outside municipalities))  
**Vacancies: 1**  
**Terms Expired: 0**

**Historical Background:**

S.C. Act 487 of 1967

Title 6, Chapter 7, *Code of Laws of South Carolina*, 1976, as amended

County Council's Minutes dated January 27, 1969

Joint Planning Commission Agreement dated February 7, 1969

Ordinance 99/18 dated April 26, 1999

Municipal Planning Commission created February 1, 2000

Ordinance 2000/20 dated April 24, 2000

<sup>1</sup> Council voted 05.09.11 to switch Rob Petit from At-large to representative Port Royal Island.

<sup>1</sup> Council voted 05.09.11 to switch Robert Semmler from representative Port Royal Island to At-Large.

<sup>2</sup> Council voted 012609 to move Robert Semmler from at-large to Comprehensive Plan Planning Area / Port Royal Island.

**Planning  
(Candidates With Applications and Resumes on File)**

<b>Name</b>	<b>Council District</b>	<b>Ethnicity</b>	<b>Primary Interest or Expertise</b>	<b>Other ABC Interest</b>	<b>Date Application Received</b>
Butler, Richard	7	Caucasian	Retired - Former Navy Captain		November 2007
Clark, Gail	7	Caucasian	Lowcountry Estuarium Coordinator		January 2007
Coleman, William	1	Caucasian	Retired - Brokerage firms (domestic, and foreign)	Airports - 1	January 2009
Colvin, Andrew	4	Caucasian	Attorney	Southern - 2 PALS - 3	September 2008
Cyran, Anne	3	Caucasian	Current Planner, HHI		May 2008
Flewy, Christopher	4	Caucasian	Director of Food and Beverage	Atax - 1 Zoning - 3	June 2009
Gibson, Terry	7	Caucasian	Retired University Professor	Foster - 1 Alcohol - 2	August 2010
Hodges, Andrea	11	Caucasian	MS Horticulture/Ed. Specialist, USMC	Rural - 2 PALS - 3	January 2007
McDaniel, Curtis	9	Caucasian	General Manager First Vehicle Services	PALS - 2 Foster Care - 3	May 2011
Parker, Arthur M.	4	Caucasian	Financial Advisor/USMC pilot, retired	Airports - 1 Historic - 3	July 2008
Rymer, Russell	10	Caucasian	Retired - Management		November 2007
Starkey, Donald	9	Caucasian	Consultant - Orbital Sciences Corp.	Northern - 2 Airports - 3	November 2008
Stephens, D. Shannon	1	Caucasian	First Citizens Bank VP/Retail Sales Manager	Tax - 1 Construction - 3	July 2008

**SOUTHERN CORRIDOR REVIEW BOARD**

	<u>Telephone</u>	<u>Appointed</u>	<u>Reappointed</u>	<u>Term- Years</u>	<u>Term Expires</u>	<u>CC District</u>	<u>Ethnicity</u>	<u>North/ South</u>	<u>Gender</u>
1. James K. Tiller, Chairman (Landscape architect Beaufort County) 10 Starboard Tack 10 Pinckney Colony Road, Ste. 101 Hilton Head Island, SC 29909 <a href="mailto:Jim@jktiller.com">Jim@jktiller.com</a>	(H)686-3622 (O)815-4800 (F)815-4802	3/13/2000	2/11/2002 3/13/2006 2/22/2010	4	2/14	1	Caucasian	South	Male
2. Laura Barrett (Representative Town of Bluffton) P.O. Box 24 51 Colcock Avenue Bluffton, SC 29910 <a href="mailto:mrivertdesign@hargray.com">mrivertdesign@hargray.com</a>	(H)757-6630	2/9/2009		4	2/13	4	Caucasian	South	Female
3. Joseph K. Hall * (Representative Town of Hilton Head Is. P.O. Box 5216 Hilton Head Island, SC 29938 <a href="mailto:jkh@hallandhull.com">jkh@hallandhull.com</a>	(H)686-2321 (O)815-2929	10/9/2006	2/9/2009 (partial term)	4	2/13	3	Caucasian	South	Male
5. Ed Pinckney (Landscape architect Town of Bluffton) 67 Pine View Drive Bluffton, SC 29910 <a href="mailto:Ed@pinckneyassociates.com">Ed@pinckneyassociates.com</a>	(H)757-1011 (O)757-9800	2/9/2009	2/22/2010 (partial term)	4	2/14	4	Caucasian	South	Male
6. Pearce Scott * (Architect Town of Buffton) 4 Chiswick Way Bluffton, SC 29910	(H)816-6067 (O)912-234-8056	4/25/2011			2/13		Caucasian	South	Male

**SOUTHERN CORRIDOR REVIEW BOARD**

<u>Telephone</u>	<u>Appointed</u>	<u>Reappointed</u>	<u>Term- Years</u>	<u>Term Expires</u>	<u>CC District</u>	<u>Ethnicity</u>	<u>North/ South</u>	<u>Gender</u>
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1. Vacant (Representative Beaufort County)								
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4. Vacant (Architect Beaufort County)				2/13				
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- \* Joseph Hall - Hilton Head Island Town Council reappointment November 7, 2010
- \* Pearce Scott - Bluffton Town Council appointment December 14, 2010

<p><b>Authorized Membership: 7</b>                  Two - architects (1 Beaufort County, 1 Town of Bluffton)                  Two - landscape architects (1 Beaufort County, 1 Town of Bluffton)                  Three - representative (1 Beaufort County, 1 Town of Bluffton, 1 Town of Hilton Head Island)  <b>Vacancies: 2</b>  <b>Terms Expired: 0</b></p>
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<p><b>Historical Background:</b>                  Ordinance 99/12                  Ordinance 94/9                  Ordinance 2005/36                  Ordinance 2009/29</p>
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**Southern Corridor Review  
(Candidates With Applications and Resumes on File)**

<b>Name</b>	<b>Council District</b>	<b>Ethnicity</b>	<b>Primary Interest or Expertise</b>	<b>Other ABC Interest</b>	<b>Date Application Received</b>
Atkins, James C.	4	Caucasian	Architect		August 2011
Beste, Greg	4	Caucasian	Architect		August 2011
Cobia, William	3	Caucasian	Real Estate Appraiser	Northern - 2 Historic - 3	September 2008
Colvin, Andrew	4	Caucasian	Attorney	Planning - 1 PALS - 3	September 2008
Fraser, John III	10	Caucasian	Retired		May 2010
Lindblad, Brenda	4	Caucasian	Banker		May 2010
Ogden, Daniel	4	Caucasian	Architect		July 2011
Schermerhorn, Barbara	10	Caucasian	Retired		September 2010
Watkins, Brian	4	Caucasian	Landscape Business	PALS - 1 Bluffton- 2	February 2010
West, Walter	1	Caucasian	Retired	Airports - 1 Historic - 2	November 2008



**ZONING APPEALS BOARD**

	<u>Telephone</u>	<u>Appointed</u>	<u>Reappointed</u>	<u>Term- Years</u>	<u>Term Expires</u>	<u>CC District</u>	<u>Ethnicity</u>	<u>North/ South</u>	<u>Gender</u>
1. Thomas A. Gasparini, Chairman (Southern Beaufort County) 4168 Spring Island Okatie, SC 29909	(H)987-1100 <a href="mailto:springranchhand@gmail.com">springranchhand@gmail.com</a>	4/26/2004 (partial term)	2/14/2005 4/13/2009	4	2/13	10	Caucasian	South	Male
2. William Cecil Mitchell, III (Lady's Island) 4 Mises Drive Beaufort, SC 29907	(H)522-2181 (O)812-4204 <a href="mailto:cecil@mitchellbrothersinc.com">cecil@mitchellbrothersinc.com</a>	2/28/2011		4	2/15	7	Caucasian	North	Male
3. Vacant - Philip H. LeRoy (Beaufort/Port Royal)					2/12	11			
4. Kevin B. Mack (St. Helena Island) 1174 Seaside Road St. Helena Island, SC 29920	(H)838-2626 (O)597-2410 <a href="mailto:mlchauling@hotmail.com">mlchauling@hotmail.com</a>	10/28/2002 (partial term)	2/14/2005 4/13/2009	4	2/13	5	African American	North	Male
5. Tim L. Rentz (At-Large, northern Beaufort County) 1109 Beavers Den Beaufort, SC 29902	(H)522-3425 (O)524-3191 <a href="mailto:timr@coastalcontractors.net">timr@coastalcontractors.net</a>	8/10/2009 (partial term)	2/28/2011	4	2/15	9	Caucasian	North	Male
6. Chester Williams (At Large, southern Beaufort County) 17 McIntosh Road Hilton Head Island, SC 2996-2006	(H)342-7450 (O)842-5411 <a href="mailto:zboa@ccwlaw.net">zboa@ccwlaw.net</a>	4/26/2004 (partial term)	3/13/2006 4/12/2010	4	2/14	2	Caucasian	South	Male
7. Edgar Williams (Northern Beaufort County (north of Whale Branch River)) 231 Big Estate Road Yemassee, SC 29945	(H)846-8629 <a href="mailto:williru44@aol.com">williru44@aol.com</a>	3/11/2002	3/13/2006 2/22/2010	4	2/14	6	African American	North	Male
8. Vacant (Ex-officio)									

**Authorized Membership: 7**

Reference County Attorney letter dated July 27, 1998

(One - Beaufort/Port Royal Island

One - Lady's Island

One - St. Helena Island

One - Northern Beaufort County north of Whale Branch River

One - Southern Beaufort County

Two - At Large one north and one south of Broad River and  
may include, to the extent practical, at least one attorney  
and one design professional)

**Vacancies: 1 (Beaufort/Port Royal)**

**Terms Expired: 0**

**Historical Background:**

Ordinance 98/16

Ordinance 2000/6

**Zoning Appeals  
(Candidates With Applications and Resumes on File)**

Name	Council District	Ethnicity	Primary Interest or Expertise	Other ABC Interest	Date Application Received
Bullen-Ennever, Jean	10	Unknown	Hotel Night Auditor	Atax - 1 Hospital - 3	April 2009
Flewy, Christopher	4	Caucasian	Director of Food and Bevarage	Atax - 1 Planning - 2	June 2009
Swan, Charles A.	4	Caucasian	Retired	Construction - 1 Historic - 3	May 2010

**Thomas A. Gasparini  
4168 Spring Island  
Okatie, SC 29909**

August 30, 2011

D. Paul Sommerville, Chairman  
Natural Resources Committee  
Beaufort County Council  
1509 Pigeon Point Road  
Beaufort, SC 29902

Subject: Beaufort County Zoning Board of Appeals; Attendance

Dear Paul:

This letter is my special written appeal of reasonable cause pursuant to Part 1, Chapter 2. Article V, Section 2-193(e)(2) of the Code of Ordinances, County of Beaufort, South Carolina (the "County Code") to mitigate the provisions of the County Code Part 1, Chapter 2. Article V, Section 2-193(e)(1).

I was appointed to the Beaufort County Zoning Board of Appeals (the "ZBOA") in April, 2004 to fill a partially completed term, and have since been reappointed to successive full four-year terms.

County Code Part 1, Chapter 2, Article V, Section 2-193(e)(1) requires automatic removal from the ZBOA if three (3) consecutive meeting are missed.

Unfortunately, in June, July and August of this year I was unable to attend the regularly scheduled ZBOA meetings as a result of two (2) separate instances of dermatological surgery at MUSC in Charleston (June and August) and one (1) European vacation (July). In each instance the surgery at MUSC, while outpatient in nature, was more complicated and time-consuming than anticipated. The result of this chain of events is that I indeed missed three (3) consecutive meetings of the ZBOA, for which I take full responsibility.

As stated above, this letter is my special written appeal of reasonable cause to be relieved from the provisions of County Code Part

1, Chapter 2. Article V, Section 2-193(e)(1) for the June, July, and August 2011 meetings.

I am more than willing to continue to serve on the ZBOA, and I regret the necessity to raise this matter with you.

Thank you for your kind consideration.

Very truly yours,

Handwritten signature of Thomas A. Gasparini in black ink.

Thomas A. Gasparini

cc: Wm. Weston J. Newton, Esquire  
Chairman, Beaufort County Council