



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

**Chairman**

ED PAPPAS

**Vice Chair**

CECILY MCMILLAN

**Commission Members**

VACANT

VACANT

JON HENNEY

GLENN MILLER

GAIL MURRAY

DANIEL RIEDEL

DENNIS ROSS

**Interim County Administrator**

JOHN ROBINSON

**Staff Support**

ROBERT MERCHANT

**Administration Building**

Beaufort County Government

Robert Smalls Complex

100 Ribaut Road

**Contact**

Post Office Drawer 1228

Beaufort, South Carolina 29901-1228

(843) 255-2140

[www.beaufortcountysc.gov](http://www.beaufortcountysc.gov)

# Planning Commission Agenda

Thursday, September 7, 2023 at 6:00 PM

Council Chambers

County Administration Building, 100 Ribaut Road, Beaufort, SC

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

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. FOIA – PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT
4. APPROVAL OF MINUTES – August 7, 2023
5. APPROVAL OF AGENDA
6. CITIZEN COMMENTS – NON-AGENDA ITEMS  
*(Comments are limited to 3 minutes.)*

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## ACTION ITEMS

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7. **ZONING MAP AMENDMENT/REZONING REQUEST** FOR 57 ACRES (R200 004 000 0301 0000, R200 004 000 0302 0000, R200 004 000 0300 0000, R200 004 000 0063 0000) LOCATED AT 1, 2, 3, 4 BENNETT POINT DRIVE FROM PLANNED UNIT DEVELOPMENT (PUD) TO T2 RURAL (T2R).
8. **OSPREY POINT (MALIND BLUFF) PLANNED UNIT DEVELOPMENT (PUD) MASTER PLAN AMENDMENT** TO 17.2 ACRES (R600 013 000 0495 0000) TO REPLACE 207,700 SQUARE FEET OF COMMERCIAL DEVELOPMENT WITH 228 MULTI-FAMILY UNITS AND 20,000 SQUARE FEET OF COMMERCIAL; APPLICANT: ROBERT DEEB

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## DISCUSSION ITEMS

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9. CHAIRMAN'S REPORT
10. ADJOURNMENT



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

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held in Council Chambers on Monday, August 7, 2023 at 6:00 p.m.

**MEMBERS PRESENT:**

Mr. Ed Pappas, Chairman  
Mr. Jon Henney  
Ms. Cecily McMillan  
Mr. Glenn Miller  
Ms. Gail Murray  
Mr. Dan Riedel  
Mr. Dennis Ross

**MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Mr. Mark Davis, Planning and Zoning Deputy Director  
Mrs. Chris DiJulio-Cook, Senior Administrative Specialist  
Ms. Kristen Forbus, Long Range Planner

**CALL TO ORDER:** Chairman Ed Pappas called the meeting to order at 6:01 p.m.

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

**REVIEW OF MEETING MINUTES:** Mr. Glenn Miller made a motion to approve the July 6, 2023 minutes. Mr. Jon Henney seconded. The motion passed unanimously.

**CITIZEN COMMENTS:** Mr. Pappas asked if there were any citizen comments, not related to the agenda, there were none.

**ACTION ITEMS:**

**ZONING MAP AMENDMENT/REZONING REQUEST FOR 71.54 ACRES (R600 013 000 0008 0000 AND R600 013 000 0050 0000) LOCATED AT 1691 OKATIE HIGHWAY FROM T2 RURAL (T2R) TO T4 NEIGHBORHOOD CENTER (T4NC) AND T3 NEIGHBORHOOD (T3N) USING A VILLAGE PLACE TYPE OVERLAY (PTO) DEFERRED FROM THE JULY 6<sup>TH</sup>, 2023 MEETING.**

Mr. Mark Davis reminded everyone that the applicants had requested a deferral from the previous month's meeting to address several concerns that had come up at the meeting.

Kevin Dukes, attorney for the applicant, Dan Keefer, Witmer, Jones, Keefer, and Dylan Turner, Kimley Horn, all spoke and presented while addressing key issues such as: encroachment to existing homes and traffic impacts to Cherry Point Road and road conditions.

Ms. Carol Crutchfield of the Beaufort County School District stated that the board approved sending out a referendum to voters that would include a new school which, if approved, would offer some relief depending on how much development continued in the area.

Chairman Pappas opened the meeting up for public comment.

Several people spoke. They were:

Scottie Daniel - spoke against the zoning map amendment.

Grant McClure, Coastal Conservation League - spoke against the zoning map amendment at this time, requested a further continuance.

Felice LaMarca - spoke against the zoning map amendment.

Larry Michuda – spoke against the zoning map amendment.

Derek Stetter - spoke against the zoning map amendment.

Kathleen Keating - spoke against the zoning map amendment.

Mr. Eric Claussen, Beaufort County Engineering, spoke about the coordination between Jasper County and Hardeeville. He said that we are all part of the MPO, the Metropolitan Planning Organization, so they are all part of the planning and coordination of the corridor study.

After much discussion, Mr. Dennis Ross made a motion to recommend denial of the ZONING MAP AMENDMENT/REZONING REQUEST FOR 71.54 ACRES (R600 013 000 0008 0000 AND R600 013 000 0050 0000) LOCATED AT 1691 OKATIE HIGHWAY FROM T2 RURAL (T2R) TO T4 NEIGHBORHOOD CENTER (T4NC) AND T3 NEIGHBORHOOD (T3N) USING A VILLAGE PLACE TYPE OVERLAY (PTO). Mr. Riedel seconded the motion. The motion passed 5:2 (For: Ross, Riedel, Pappas, Miller, McMillan / Against: Henney, Murray)

#### **VOTE ON PLANNING COMMISSION VICE CHAIR FOR THE REMAINDER OF 2023**

Mr. Riedel nominated Cecily McMillan for Vice Chair. Mr. Miller seconded the nomination. The vote was unanimous.

#### **CHAIRMAN'S REPORT**

Chairman Pappas reminded everyone the September meeting will be held on a Thursday.

**ADJOURNMENT:** Chairman Pappas adjourned the meeting at 8:03 p.m.

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

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Ed Pappas  
Beaufort County Planning Commission Chairman

Date: \_\_\_\_\_



# MEMORANDUM

**TO:** Beaufort County Planning Commission  
**FROM:** Robert Merchant, Beaufort County Planning and Zoning Department  
**DATE:** September 7, 2023  
**SUBJECT:** ZONING MAP AMENDMENT/REZONING REQUEST FOR 57 ACRES (R200 004 000 0301 0000, R200 004 000 0302 0000, R200 004 000 0300 0000, R200 004 000 0063 0000) LOCATED AT 1, 2, 3, 4 BENNETT POINT DRIVE FROM PLANNED UNIT DEVELOPMENT (PUD) TO T2 RURAL (T2R).

## STAFF REPORT:

### A. BACKGROUND:

**Case No.** CDPA-000031-2023  
**Owner/Applicant:** Gregory Bennett, Marvin Black, J. Craig Floyd, David Salsbury  
**Property Location:** 1, 2, 3, and 4 Bennett Point Drive  
**District/Map/Parcel:** R200 004 000 0301 0000, R200 004 000 0302 0000, R200 004 000 0300 0000, R200 004 000 0063 0000  
**Property Size:** 57 acres  
**Current Future Land Use Designation:** Preserved Land  
**Current Zoning District:** Planned Unit Development (PUD) (Pleasant Point)  
**Proposed Zoning District:** T2 Rural (T2R)

**B. SUMMARY OF REQUEST:** The applicants are seeking to amend the zoning of four undeveloped parcels from the Pleasant Point PUD to T2R. The parcels make up the “Texas Tract” which was originally platted and approved for 179 single family lots. This was then reduced to four lots that remain in a Conservation Easement. This easement states that the tract cannot be further subdivided and each parcel is limited to one dwelling unit.

**C. EXISTING ZONING:** The parcels are currently zoned PUD.

**D. PROPOSED ZONING:** The T2 Rural zoning is intended to preserve the rural character of Beaufort County. This Zone applies to areas that consist of sparsely settled lands in an open or cultivated state.

It may include large lot residential, farms where animals are raised or crops are grown, parks, woodland, grasslands, trails, and open space areas. Its density is one dwelling unit per three acres.

**E. COMPREHENSIVE PLAN FUTURE LAND USE MAP:** These four lots are designated Preserved Land. The Comprehensive Plan states that this land use category includes all public parks; and public and private lands that are preserved through conservation easements.

**F. TRAFFIC IMPACTS:** According to Section 6.3.20.D of the CDC, *“An application for a rezoning shall include a TIA where the particular project or zoning district may result in a development that generates 50 trips during the peak hour or will change the level of service of the affected street.”* The applicant does not require a TIA.

**G. SCHOOL CAPACITY IMPACTS:** The School District will not be affected by the proposed rezoning.

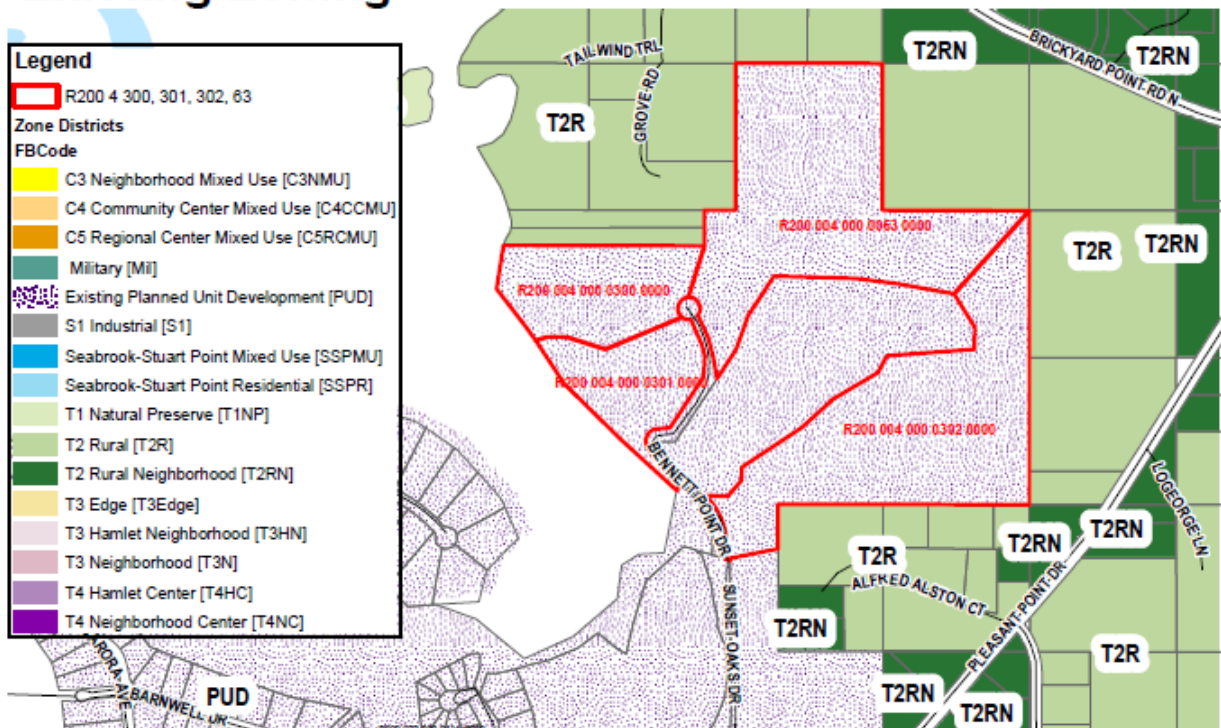
**H. STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request.

**I. ATTACHMENTS**

- Zoning Map (existing and proposed)
- Texas Tract Conservation Easement

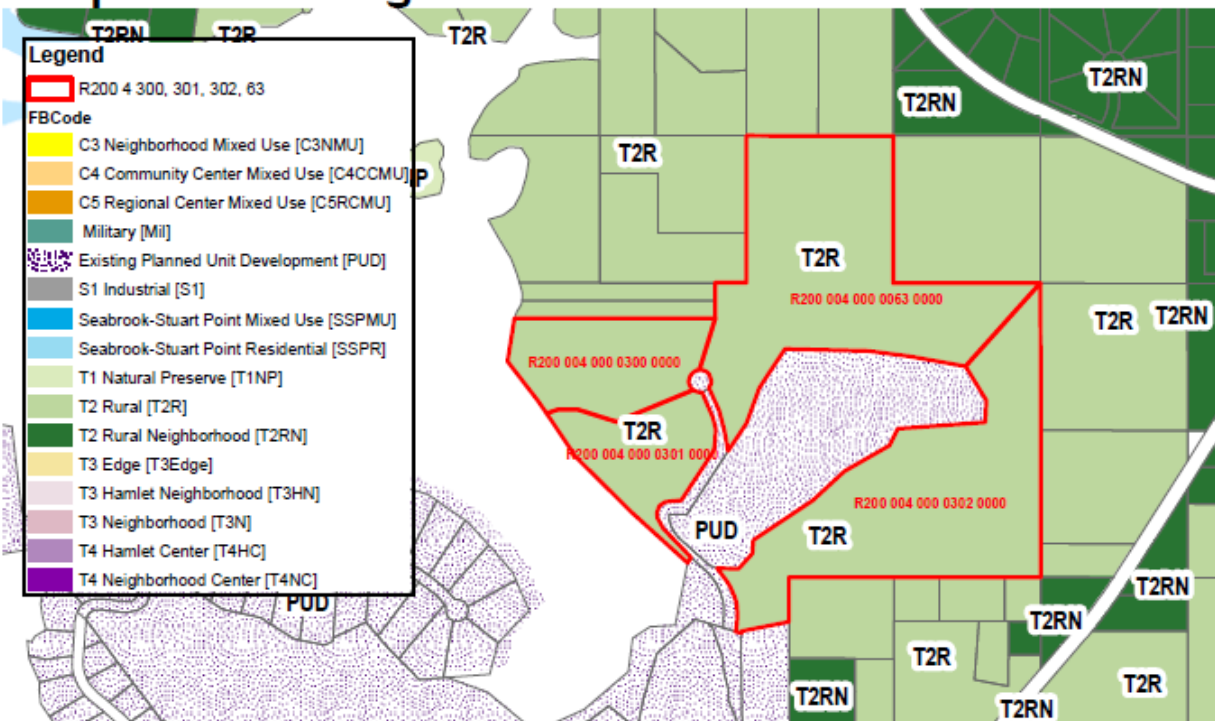
# Existing Zoning

- Legend**
- R200 4 300, 301, 302, 63
  - Zone Districts**
  - FBCode**
  - C3 Neighborhood Mixed Use [C3NMU]
  - C4 Community Center Mixed Use [C4CCMU]
  - C5 Regional Center Mixed Use [C5RCMU]
  - Military [Mil]
  - Existing Planned Unit Development [PUD]
  - S1 Industrial [S1]
  - Seabrook-Stuart Point Mixed Use [SSPMU]
  - Seabrook-Stuart Point Residential [SSPR]
  - T1 Natural Preserve [T1NP]
  - T2 Rural [T2R]
  - T2 Rural Neighborhood [T2RN]
  - T3 Edge [T3Edge]
  - T3 Hamlet Neighborhood [T3HN]
  - T3 Neighborhood [T3N]
  - T4 Hamlet Center [T4HC]
  - T4 Neighborhood Center [T4NC]



# Proposed Zoning

- Legend**
- R200 4 300, 301, 302, 63
  - FBCode**
  - C3 Neighborhood Mixed Use [C3NMU]
  - C4 Community Center Mixed Use [C4CCMU]
  - C5 Regional Center Mixed Use [C5RCMU]
  - Military [Mil]
  - Existing Planned Unit Development [PUD]
  - S1 Industrial [S1]
  - Seabrook-Stuart Point Mixed Use [SSPMU]
  - Seabrook-Stuart Point Residential [SSPR]
  - T1 Natural Preserve [T1NP]
  - T2 Rural [T2R]
  - T2 Rural Neighborhood [T2RN]
  - T3 Edge [T3Edge]
  - T3 Hamlet Neighborhood [T3HN]
  - T3 Neighborhood [T3N]
  - T4 Hamlet Center [T4HC]
  - T4 Neighborhood Center [T4NC]



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BEAUFORT COUNTY SC - ROD  
BK 01892 PGS 0381-0394  
FILE NUM 2003101680  
12/31/2003 01:24:58 PM  
REC'D BY S SMITH RCPT# 209610  
EASEMENT FEES 20.00

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**CONSERVATION EASEMENT**

THIS GRANT OF CONSERVATION EASEMENT ("Conservation Easement" or "Easement") is made this 24<sup>th</sup> day of December, 2003, by Two Mile High South Carolina, LLC, a Florida limited liability company who's address is 158 North Harbor City Blvd. Melbourne, FL 32935 ("Grantor") in favor of the Beaufort County Open Land Trust, Inc., a non-profit corporation exempt from taxation pursuant to Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, and organized and existing under the laws of South Carolina, with an address of P.O. Box 75, Beaufort, South Carolina 29901 ("Beaufort County Open Land Trust") ("Grantee").

**WITNESSETH**

**WHEREAS**, the Grantor is the owner in fee simple of the property in Beaufort County, South Carolina or particularly described in Exhibit A , attached hereto and incorporated by this reference ("Property"); and

**WHEREAS**, the Property is a unique and significant natural area and whose preservation as open space is being done "for the scenic enjoyment of the general public" which will ultimately "yield a significant public benefit" as those phrases are used in P.L. 96-541, 26 USC 170(h)(4)(A)(iii), as amended, and in regulations promulgated thereunder, because the Property has a substantial amount of frontage on public waterways and may be seen visually from public roads and waterways by local residents and tourist. These values (collectively, "conservation values") are of great importance to the Grantor, the people of and visitors to Beaufort County, the South Carolina Lowcountry and the State of South Carolina; and

**WHEREAS**, preservation of the Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit. Specifically, it will protect the Property from on-going residential development in furtherance of the scenic enjoyment of the general public and for the public's benefit as open space, as such development, into small building lots as formally planned would permanently impair the scenic character of the area, and would interfere with the scenic panorama that can be enjoyed from the surrounding roads and waterways that are currently enjoyed by the public; and

**WHEREAS**, the characteristics of the Property, its current use and state of improvement, are documented in an inventory of relevant features of the Property dated \_\_\_\_ December 2003, on file in the office of the Grantee and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this Grant which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. This baseline documentation will be used by the Grantor and Beaufort County Open Land Trust to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Baseline Documentation is not in intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use; and

THIS AGREEMENT SUBJECT TO ARBITRATION UNDER THE SOUTH CAROLINA UNIFORM ARBITRATION ACT



**WHEREAS**, the Grantor and Beaufort County Open Land Trust have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of South Carolina has authorized the creation of Conservation Easements pursuant to the South Carolina Code, Sections 27-8-10, et. seq. and Grantor and Beaufort County Open Land Trust wish to avail themselves of the provisions of that law; and

**WHEREAS**, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation value of the Property in perpetuity; and

**WHEREAS**, Grantee is a publicly supported, tax-exempt nonprofit organization, qualifying under Section 501 (c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, forested, and/or open space conditions; and

**WHEREAS**, Grantee agrees by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come;

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the law of the state of South Carolina and in particular to Title 27 Chapter 8 (Section 27-8-10, et. seq.) of the 1976 Code of Laws of South Carolina as Amended, Grantor hereby as an absolute and unconditional gift, does give, grant, bargain, sell and convey to the Beaufort County Open Land Trust as Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **PURPOSE:** It is acknowledged by the Grantor and Grantee that the Property's shape and large amount of water frontage are unique, and that extensive residential development of the Property would contribute to the degradation of the scenic and natural character of the Property. It is further acknowledged that Beaufort County, South Carolina and its rivers are visited and used often by residents and tourists of the County and surrounding counties, and that the Easement granted hereby will protect and preserve such local landscape for the enjoyment for all public visitors to the Property's surrounding lands and waterways. Therefore, the purpose of this Conservation Easement is to ensure that the Property will be retained predominantly in its natural and scenic condition; to preserve, as open space, the Property for its aesthetic value for the benefit of the public; and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property and to assure the availability of the Property for traditional uses that are compatible with the conservation values of the Property, such as limited residential construction, selective timber harvesting and the other uses as set forth herein.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the terms and provisions of this Conservation Easement. However,

unless otherwise specified below nothing in this Conservation Easement will require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves him of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES:** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Property. Additional retained rights of the Grantor are set forth in Paragraph 3 below.

2.1 Subdivision. The Property is further described on public records as shown on the plat prepared by David Gasque dated Jan. 28, 1994 and recorded in Plat Book 48 at Page 127 in the records of Beaufort County, South Carolina. The Property is further shown as being subdivided into four large parcels on a plat by David Gasque dated 2/25/03 on file at the office of the Grantee. The Grantor may not further subdivide or partition the Property.

2.2 Development. The Grantor, its Successors and Assigns shall have the limited right to develop a portion of the Property, as described below.

2.2.1 Approved Development. With the prior notice to the Beaufort County Open Land Trust as set forth below, Grantor, Successors and Assigns shall have the right to develop improvements on the Property as follows:

- (i) To construct a maximum of (1) new, single-family residential dwelling on each of the four parcels of land as delineated on the Plat referred to in paragraph 2.1, which dwellings shall not exceed Six Thousand (6,000) square feet of heated floor space in size.
- (ii) To construct one garage and or guest house on each of the four parcels of land as delineated within the Property, each garage not to exceed the accommodation of three automobiles.
- (iii) To construct out-buildings, sheds, a barn to accommodate horses or other animals, a swimming pool, tennis court, dog run, cook sheds, storage buildings and other accessory buildings, not to exceed Four Thousand (4,000) square feet in the aggregate, on each of the four parcels as shown on the Plat referred to in paragraph 2.1. These accessory buildings and improvements to provide needed services for the permitted structures which shall compliment the architectural design and plan of each of the four individual parcels. Such sheds and other accessory buildings, except for a single guest house on each of the four parcels, may not be used as dwelling units.
- (iv) To construct, improve and maintain driveways, access roads and walkways, wells and underground utilities necessary to accommodate the dwelling unit

and out-building and permitted improvements and there use as set forth in this Easement, provided such improvements and maintenance are done in accordance with local, State and federal laws and the conversation purposes of this Easement. All access roads and walkways shall be of a permeable material, unless otherwise required by governmental authority having jurisdiction over the subdivision of the Property.

- (v) To construct fencing or hedges on or around each of the four parcels in the manner consistent with any current local restrictions.
- (vi) Grantor shall use public water and sewage for the permitted residences and out buildings to be constructed on each of the four parcels if the same is available. If public water and sewage are not available Grantor shall have the right to drill wells and install septic tanks on each of the four parcels for the permitted residence and out-building, together with other necessary utilities to serve the structures on each lot.
- (vii) On each of the two parcels fronting on the salt water and salt marsh the Grantor, Successors, or Assigns may construct one dock in accordance with plans to be approved by the South Carolina OCRM.

2.2.2 Notice to Beaufort County Open Land Trust. Prior to beginning construction of allowed improvements Grantor shall submit architectural and site plans to the Beaufort County Open Land Trust for its record, and shall provide notice of initiation of new construction.

2.2.3 Arbitration. Except as set forth in Section 4.2, the parties agree that the sole and only remedy available to them in any cause or matter regarding this Easement shall be arbitration. To that end, the parties expressly agree to arbitrate all disputes of whatever kind or nature that may arise out of or relate in any way to this Conservation Easement. The venue for the arbitration shall be Beaufort, South Carolina, and the parties agree that South Carolina law shall govern all claims and defenses of whatever kind, including counterclaims and any other requests for relief, made in the arbitration by any party. The parties further agree that the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The determination of the arbitrator shall be the final and shall be binding on the parties.

2.2.4 Prohibition of Other Construction. No other structures or improvements may be placed or constructed on the Property except as expressly permitted by this Conservation Easement. Furthermore, there shall be no constructing or placing of any airplane landing strip, utility lines, towers, or conduits, other than those necessary to serve the Property's improvements. Additional boat and water craft landings may be constructed on the Property. Outdoor lighting shall be placed and shielded so it minimizes the impact on surrounding areas without impairing its functional use to the existing structures or the

improvements allowed hereunder.

- 2.3 Improvements. Grantor shall have the right to maintain, remodel, and repair structures, docks, fences, water wells, utilities, and other permitted improvements, and in the event of their destruction, to reconstruct any such permitted improvements with another of similar size, function, capacity, location and material.
- 2.4 Timber Management. Grantor shall have the right to selectively harvest timber from the Property in accordance with the best management practices of the South Carolina Forestry Commission, and further, that is designed to ensure the maintenance of good quality growing stock of native timber while preserving the aesthetic value of the Property, as open space, for the residents and the public at large to view from the surrounding properties and public waterways. Grantor shall be allowed, at any time, to remove any rotting, diseased or dead trees, or other trees or timber that is downed for any reason.
- 2.5 Wildlife Management. In order to maintain wildlife numbers and diversity Grantor shall be entitled to maintain and establish, through mechanical means or otherwise, food plots for such wildlife.
- 2.6 Wetlands Impoundments. Subject to applicable governmental regulations, Grantor shall have the right to maintain, enhance and manage historic or existing wetland impoundments, including without limitation, on-site ponds, for the purposes of providing habitat and food for native fish, waterfowl, colonial wading birds, shore birds and other native wildlife or for other purposes allowed by this Easement. Grantor shall be allowed to have alligators and other dangerous wildlife killed and/or removed from the Property, from time to time, in accordance with the ordinances and regulations of the South Carolina Department of Natural resources or other such state or federal agency with proper management and enforcement jurisdiction.
- 2.7 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, is allowed.
- 2.8 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, housing of horses and other equestrian activities, hunting, fishing, hiking, trapping and horseback riding, that require no surface alteration or other development of the land, except as provided in this Easement. The Grantor may travel across the Property in motorized vehicles, but pursuit of wildlife by any form of motorized transportation is not allowed; nor shall the property

be used for ATV tracts or trails.

- 2.9 **Excavation.** Except as necessary to accommodate the activities expressly permitted under this Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling, or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance in the soil in any manner that would directly affect the aesthetic value of the Property or would be visible from the surrounding properties and waterways otherwise occupied by residents of the area or the public at large. The Grantor is specifically authorized to construct and maintain any access roads to the structures permitted herein or any access roads required by local governmental entities.
- 2.10 **Hydrology.** Grantor shall be allowed to create new ponds, lakes, or other reservoirs when excavating for the purpose set forth in this Easement, subject to approval by Beaufort County Open Land Trust, which shall not be unreasonably withheld.
- 2.11 **Signage.** No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed to the state the name and address of the Property and the names of the persons living on the Property, to regulate permitted onsite activities, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use. The Grantee shall have the right to post a sign or plaque on each of the 4 parcels, not to exceed 2 square feet each, identifying the Property as subject to the Conservation Easement.
- 2.12 **Limited Use of Biocides.** Grantor may use pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, as needed for routine agriculture and horticultural practices on the Property, except where use of such products will remove the Property from compliance with the Baseline Documentation.
- 2.13 **No Dumping.** There shall be no storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste on the Property. Except as needed to service permitted improvements, there shall be no placement of underground storage tanks on the Property. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property that could cause erosion or siltation on the Property, unless authorized herein.

- 2.14 No Pollution. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to the Property.
- 2.15 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to domestic animals and/or humans by means and methods approved by Beaufort County Open Land Trust. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.
- 2.16 Commercial Development. Any commercial or industrial use of or activity on the Property, other than those relating to agriculture, aquiculture, silviculture, recreation, home business, lodging or as otherwise permitted by the provisions of this Easement, is prohibited.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

- 3.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement, including the right to maintain all existing roads and utilities. Prior to making any change in use of the Property. Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of the Conservation Easement.
- 3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey as individual parcels or any of the four parcels as set forth and referred to in paragraph 2.1, subject to the terms of this Conservation Easement.

4. **BEAUFORT COUNTY OPEN LAND TRUST'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Beaufort County Open Land Trust by this Conservation Easement.

- 4.1 Right of Entry. The Grantee's staff, contractors and associated natural resource management professionals have the right to enter the Property after prior written notice to Grantor, for the purpose of inspecting the Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement. Grantor shall not be responsible for any costs associated with monitoring enforcement by the Grantee.
- 4.2 Right to Enforce. The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With advance notice

given by Grantee to Grantor, the Grantee may enter the Property for the purpose of inspecting for violations. The foregoing notwithstanding, the Grantee shall have the right to immediately enter the Property when an ongoing or imminent violation could reasonably be expected to substantially diminish or impair the conservation values of the Property. If the Grantee finds a violation, it may at its discretion take appropriate legal action. The Grantee shall give the Grantor written notice of the alleged violation and 60 days to correct it, or begin good faith efforts to correct in the event the violation is something which cannot be reasonably corrected within 60 days ("cure period"), before filing any legal action. Notwithstanding such notice and cure period, where there is an ongoing or imminent violation that could substantially diminish or impair the conservation values of the Property, Grantee may dispense with the written notice and cure period and immediately file a legal action in order to enforce the terms of this Conservation Easement. If a court with proper jurisdiction determines that a violation of this Easement may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or take immediate legal action shall not bar it from doing so at a later time.

- 4.3 Costs of Enforcement. Any costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by the Grantor's violation of the terms of this Easement shall be borne by the Grantor. If the Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorney's fees, shall be borne by the Grantee.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the Property. Among other things, this shall apply to:

- 5.1 Taxes. The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.
- 5.2 Upkeep and Maintenance. The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

6. **ACCESS.** No right of access by the general public to any portion of the Property is

conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

7. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this Easement are not divisible and are assignable in whole but not in part. The Grantee shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer, is a "qualified organization" under Section 170 (h) of the U.S. Internal Revenue Code, and the organization expressly agrees to assume the responsibility imposed on the Grantee. If the Grantee ever ceases to exist or no longer qualifies under Section 170 (h) or applicable state law, and prior thereto, the parties are unable to agree upon a substitute the Grantee, a court with jurisdiction shall transfer this Easement to another organization having similar purposes that agrees to assume the responsibility.
8. **TRANSFER OF PROPERTY.** Any time the Property, or any of the four parcels comprising the Property, is transferred by the Grantor to any third party, the Grantor will notify the Grantee in writing within 30 days of such transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or of the transfer or limit their enforcement in any way.
9. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of the Grantor, or its successors in interest, and the Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170 (h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the South Carolina Code, Sections 27-8-10, et. seq., or any regulations promulgated pursuant to that law. The Grantor and the Grantee have no right or power to agree to any amendment that would affect the enforce ability of this Conservation Easement.
10. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the Grantor and the Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings with respect to the part of the Property so condemned and any other portions of the Property for which the fulfillment of the stated conservation purposes is impossible.

If the Easement is terminated through judicial action or condemnation and the Property is sold or taken for public use, then, as required by Section 1.170A-14(g)(6) of the IRS regulations,



the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee shall not be entitled to a percentage of any proceeds from such judicial sale or condemnation which are attributed to the value of improvements made after the date of this Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

11. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of South Carolina without regard for conflicts of law, in order to resolve any ambiguities and questions of the validity of specific provisions and so as to give maximum effect to its conservation purposes.
12. **INDEMNIFICATION.** Each party agrees to hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgements, costs, expenses and fees that the indemnified party may suffer or incur as a result of arising out of the activities of the other party on the Property.
13. **TITLE.** The Grantor covenant and represent that the Grantor is the sole owner and are seized of the Property in fee simple and have good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all mortgages, judgements, liens or other encumbrances which are superior in priority to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. The Grantor makes no representation or warranty of title to that portion of the Property consisting of marshland or lands below the mean high water mark of abutting tidal waters. Any and all mortgages, liens or encumbrances must be subordinated to this Conservation Easement.
14. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to the Grantor and the Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

Grantor:

**Richard Love Jr.**  
**Two Mile High South Carolina, LLC**  
**158 North Harbor City Blvd.**  
**Melbourne, FL 32935**

To the Beaufort County Open Land Trust:

**Director**  
**Beaufort County Open Land Trust, Inc.**  
**PO Box 75**  
**Beaufort, SC 29901**

15. **ENVIRONMENTAL CONDITION.** The Grantor warrants that he has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

16. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.
17. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear, and specifically to each purchaser from the Grantor of the four parcels of land which comprise the Property.
18. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.
19. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest on the Property.
20. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be constructed as impairing the ability of the Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.
21. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the Seal of Beaufort County Open Land Trust and the signature of its authorized representative affixed hereto, Beaufort County Open Land Trust hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Beaufort County Registry of Deeds.





**EXHIBIT A****Property Description**

All that certain piece, parcel or tract of land, situate, lying and being in pleasant point plantation an Lady's Island, Beaufort county, south Carolina, being shown and consisting of 57.20 acres, more or less, on a plat prepared by David E. Gasque, RLS, dated January 28, 1994, revised December 6, 2002, entitled "Boundary Survey Texas Tract Prepared for Pleasant Point Land company" and recorded in Plat Book 90 at Page 146 in the office of the Register of Deeds for Beaufort County, South Carolina; and as divided into four parcels specifically referred to in this Conservation Easement by Plat of David E. Gasque RLS dated 2/25/03 and filed in the of the Grantee. For a more complete description as to metes, bounds, courses and distances reference may be made to the last referred to plat prepared by David E. Gasque.

This conveyance is made to subject to all applicable restrictive covenants, easements and rights-of-way filed of record for Pleasant Point Plantation in the office of the Register of Deeds for Beaufort County, South Carolina and to an unrecorded avigation easement in favor of the United States of America.

This being the Property acquired by the within grantor by deed from Pleasant Point Land Company, L.L.C. a South Carolina limited liability company by deed dated December 11, 2002 and recorded in Deed Book 1685 at Page 0167 in the records of Beaufort County, South Carolina.

This Conservation Easement prepared by W. Brantley Harvey, Jr., Esq., of the law firm of Harvey & Battey, P.A., 1001 Craven Street, PO Box 1107, Beaufort, South Carolina 29901. Telephone (843) 524-3109.



COUNTY COUNCIL OF BEAUFORT COUNTY  
**Community Development Department**  
Beaufort County Government Robert Smalls Complex  
Administration Building, 100 Ribaut Road  
Post Office Drawer 1228, Beaufort, South Carolina 29901-1228

**TO:** Beaufort County Planning Commission  
**FROM:** Robert Merchant, Beaufort County Planning and Zoning Director  
**DATE:** September 7, 2023  
**SUBJECT:** **Osprey Point (Malind Bluff) Planned Unit Development (PUD) Master Plan Amendment**

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**A. BACKGROUND:**

**Owner:** LCP III, LLC (J. Nathan Duggins, III)  
**Applicant:** Eric Walsnovich, Wood and Partners  
**Property Location:** On the east side of Okatie Highway (SC 170) at the intersection of Pritcher Point Road.  
**District/Map/Parcel:** R600-013-000-0006-0000  
**Property Size:** 17.2 acres

**B. SUMMARY OF REQUEST:** The applicant is requesting that a portion of the Osprey Point PUD master plan be amended. The current PUD as amended in 2019 consists of 345 single-family residential units and 207,700 square feet of commercial development. The residential portion of the Osprey Point PUD is a Pulte Homes development called Malind Bluff currently under construction. The applicant is proposing to amend the PUD master plan to replace the 207,000 square feet of commercial development that is proposed for the front 17.2 acres with 228 multi-family units and 20,000 square feet of commercial.

**C. PREVIOUS REQUEST:** A similar PUD amendment went before the Planning Commission in January 2022 that would have replaced 207,000 square feet of commercial development with 204 multi-family residential units. The Planning Commission recommended denial of the PUD amendment. The Natural Resources Committee of County Council at their March 7, 2022 meeting voted 5 for and 4 against to recommend approval of the amendment. Concerned about the split vote, the applicant requested a delay due to concerns about the split vote from the Natural Resources Committee. One of the biggest concerns from the community was the loss of any commercial component to the PUD. The application has now been revised and resubmitted.

**D. HISTORY OF PUD AMENDMENTS:** If approved, this would be the fourth major amendment to the PUD. The original PUD was approved in 2008 and featured a mix of housing types – 213 townhouses, 110 multi-family units, and 204 single-family detached units as well as 207,700 square feet of commercial. This original master plan had an integrated grid of streets with alleys and sidewalks. In 2014 it was amended to simply feature a conventional

front-loaded, age-restricted, single-family residential community and commercial along SC170. In 2017, it was amended to remove the age restrictions. In 2019, the Development Agreement was further amended. With each successive amendment, the mixed-use component of the Osprey Point has been significantly reduced.

**E. HOUSING AFFORDABILITY:** The applicant is proposing 228 units with the following breakdown:

- 49% of the units (approximately 112 Units) at 80% of AMI (as adjusted for family size)
- 26% of the units (approximately 59 Units) at 120% of AMI (as adjusted for family size)
- 25% of the units (approximately 57 Units) at Market Rate.

According to the Community Development Code (Section 4.1.350) rental affordable housing is defined as a dwelling unit, where occupants have, in the aggregate, household income less than or equal to eighty (80%) percent of the area median income (AMI) for rental units. Using this definition, only 49% of the units qualify as affordable housing. The PUD amendment provides no information on how long the units will remain affordable and how this will be monitored.

**F. TRANSPORTATION:** The applicant has provided a memo that compares the previously approved land uses to the new set of land uses. This comparison shows that there is a reduction in the overall trips generated by the original PUD. With the amended PUD, office switched to residential, and Shopping Center switched to Strip Retail Plaza, resulting in a net decrease in trips generated by the PUD. The engineering department has provided the following comments:

- Given our region's current rapid rate of development, it is the policy of the Lowcountry Council of Governments (LCOG) not to rely on TIAs after they reach 12 months of age. A new study is required after that point to consider the impact of the newest developments and consequential shifts in traffic conditions. The current TIA for the Okatie Village PUD is 4 years old, and the parcel on which this site plan sits is included in that TIA. Also, per County Code 6.3.2, a TIA is required, because the land use has changed, and the new use is expected to generate 50 or more trips to the roadway network.
- Okatie Elementary School has received approval and an easement to extend a road from the school that connects to Malind Bluff Boulevard and then traverses this Development to Pritcher Road. That road is labeled "ROAD A" on the concept plan. This change could put a significant amount of bus activity on Pritcher Road in the AM peak hour, which may cause some choke points at this site given the location of the access points on Pritcher Road. At best, the access point closest to 170 may need to be "Right In Right Out", to reduce potential left-turn conflicts. Or at second-best, access may not need to be permitted altogether, and the lost parking in the rear moved to the front of the commercial building. Nevertheless, an updated TIS would give the County the insight it would need to further understand the implications of this new development and bus routing scheme. Maybe, Beaufort County Schools and this Developer could split the cost of the study given the mutual benefits it would provide.
- In this amended PUD, office switched to residential, and Shopping Center switched to Strip Retail Plaza, resulting in a net decrease in trips generated by the PUD. To validate the proposed decrease in trips, the developer should provide the County with the

type(s) of variables used to generate the number trips for both new uses, i.e., Weekday, Saturday, Sunday, Gross Square Feet, Adjacent Street Traffic Volumes, etc. Sometimes, certain uses, especially retail, generate significantly more trips on a Saturday than a weekday. Depending on the variable used, the trips could be more than the original estimations, or like the developer is proposing, it could be less than originally anticipated. It'd be nice to know the variables used to know for certain, because Saturday is probably the busiest time for a "Strip Retail Plaza". It's not your typical run-in run out type of establishment. People usually peruse a little longer at a plaza, and therefore going on a Saturday may give you that time.

- The applicant's site is adjacent to SC 170 which is a state-owned road of regional significance. For the last few years, the County has engaged consultants and many other stakeholders regarding the need for implementing capacity and access improvements strategies in the corridor to maintain safety and flow throughout the corridor. The outcome of those engagements has led to the development of a collection of Traffic and Access Management Studies along the corridor and SCDOT Safety Improvements. The applicant should become familiar with these studies which are publicly available.

**G. SCHOOL IMPACTS:** The School District has been given a copy of this proposed master plan amendment. They will be providing a letter in response and plan to attend the meeting. Once we receive this letter, we will provide it to the Planning Commission.

**H. STAFF RECOMMENDATION:**

As previously stated in the history section of this report, the applicant has requested to amend the PUD/Master Plan and Development Agreement several times since the original adopted Osprey Point Planned Development. Unfortunately, this practice is not uncommon, and can often lead to straying from the original intent of why a governmental jurisdiction agreed to the Development Agreement in the first place. As a part of the original intent of the Osprey Point Planned Development, affordable housing was a component, however it was providing through a mix of housing types, including townhomes. Requiring these types of dwelling units (townhomes, duplexes, quadplexes, etc.) implements affordable housing opportunities in a more meaningful manner and often provides them to be offered as ownership and/or rental opportunities.

At this time, the Master Plan amendment submitted by the applicant proposes all of the units as apartments and not all of them as affordable. Staff does not support this.

If the County is inclined to support the applicants request, at minimum, staff recommends the following be required by the applicant:

- If the County supports the amended PUD, it will require an amendment to the Osprey Point Development Agreement. The Development Agreement amendment process shall follow the requirements and procedures of Article 7, Section 7.3.10 of the Community Development Code.
- The Osprey Point PUD document should be revised to require that all multi-family dwelling units are affordable to individuals and families earning 80% or less of



county median income. The affordable housing units shall, at a minimum, meet the Affordable Housing requirements found in Article 4, Section 4.1.350.G of the Community Development Code. However, the period of affordability shall be no less than 30 years. This needs to be codified in the PUD document and Development Agreement. Staff also suggests that this requirement be part of the deed to the property.

- The existing Osprey Point PUD required the developer to dedicate a 0.5 acre parcel for public safety (Sheriff, Fire, EMS). The amended master plan does not show any land dedicated for this use. If the County no longer believes the use for the 0.5 acre is necessary, then the County should reconsider a different public use and the County may renegotiate the size of the land to be dedicated.
- The existing development agreement requires 207,700 square feet of commercial. The applicant's proposed amendment is proposing 20,000 square feet of commercial. This issue/concern was brought up when this item was reviewed by the Planning Commission and Natural Resources Committee in 2022. If the County supports this significant reduction in commercial development, the Development Agreement shall require the completion of the entire 20,000 square feet of commercial prior to the completion of the first apartment building.
- The existing Traffic Impact Analysis shall be updated in its entirety to reflect the proposed new uses and existing roadway conditions. This should be done as part of the PUD amendment.
- The applicant shall continue to work with staff to further refine the master plan and the PUD shall be amended to include all development and design standards in codified form, which will require the design elements as shown in the concept master plan.

**I. ATTACHMENTS:**

- Proposed Master Plan Map
- Proposed Draft of PUD and Development Agreement Revisions
- Transportation Memo



**DEVELOPMENT SUMMARY:**

- EXISTING ZONING: OSPREY POINT PUD
- TOTAL DEVELOPMENT = +/- 17.2 ACRES
- PROPOSED LAND USES:  
 COMMERCIAL OUTPARCEL: +/- 2.70 ACRES; 20,000 SF OF GROSS FLOOR AREA  
 MULTI-FAMILY RESIDENTIAL PARCEL: +/- 14.5 ACRES; 228 UNITS; 15.72 DU/AC

**PARKING SUMMARY:**

Per the SC Housing 2023 Qualified Allocation Plan, 304 parking spaces must be provided for the residential portion of this development.

Under current Beaufort County Community Development Code parking standards for Multi-Family Residential, 438 spaces are required.

The Applicant requests an 18% reduction from the Beaufort County Code parking standards for Multi-Family Residential pursuant to Section 5.5.40.B.2.d. - Parking Adjustments - Special Housing Projects.

Parking Spaces to be provided:  
 MULTI-FAMILY RESIDENTIAL: 362 SPACES

- Studios: 1.0 Space per Unit
- One Bedroom: 1.5 Spaces per Unit
- Two Bedrooms: 1.75 Spaces per Unit
- Three Bedrooms: 2.0 Spaces per Unit

COMMERCIAL: 70 SPACES (per development code; 1 space per 300 sf)  
 TOTAL PARKING = 432 SPACES

**BUILDING HEIGHT:**

MAXIMUM 45 FT. FROM ADJACENT GROUND LEVEL TO BUILDING EAVE

**OPEN SPACE REQUIREMENTS AND CALCULATIONS (Per PUD):**

TOTAL OPEN SPACE REQUIRED = 8.72 ACRES (Calculated from the residual amount of open space required from the total Osprey Point PUD minus provided open space within Pulte's single-family detached residential development)

TOTAL OPEN SPACE PROVIDED = The plan will meet the required open space. The open space calculations do not include areas within street easements, building footprints, trash compactors, parking areas or parking drive aisle ways.

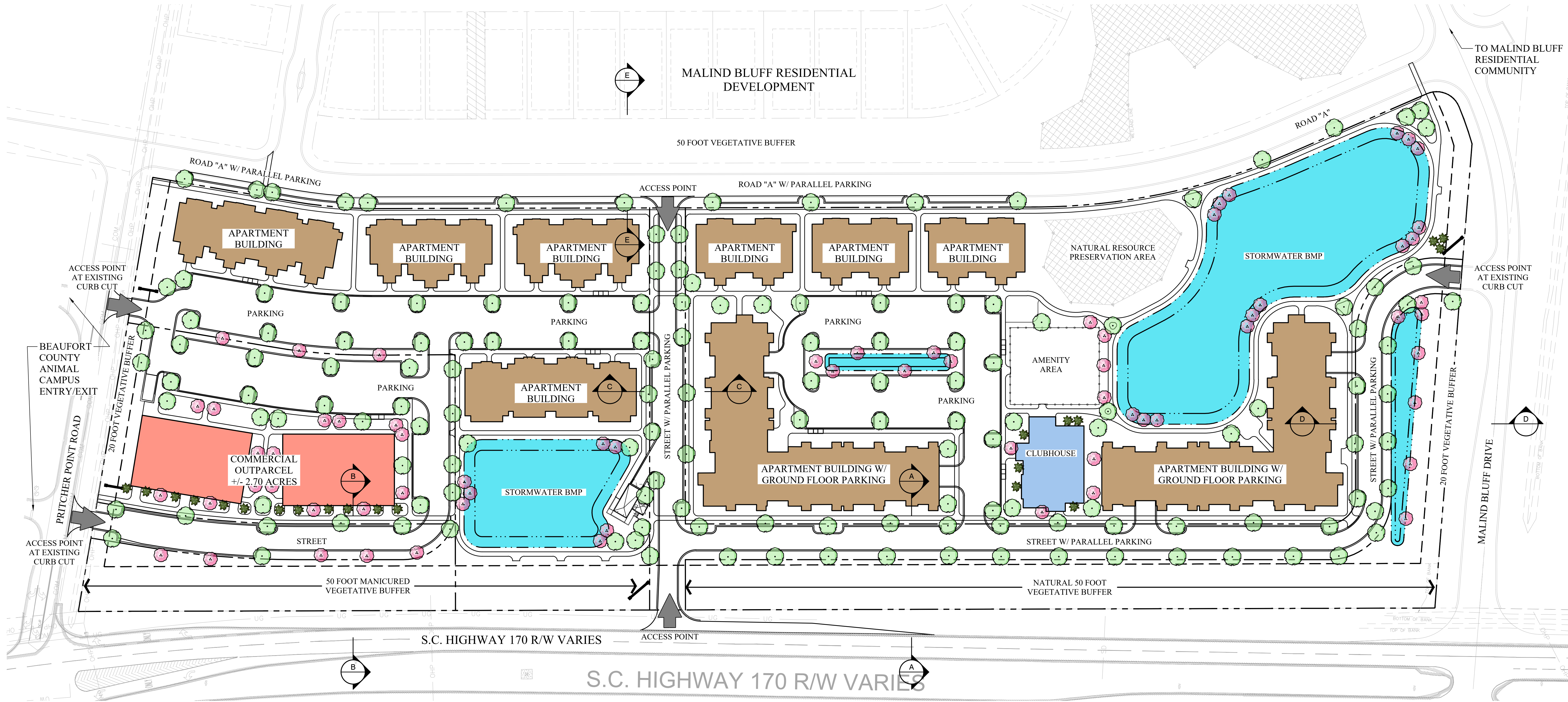
**CIVIC OPEN SPACE REQUIREMENTS AND CALCULATIONS (Per Beaufort County Code):**

TOTAL CIVIC OPEN SPACE REQUIRED = 15% OF TOTAL AREA ACREAGE = 17.2 ACRES \* 15% = 2.58 ACRES

TOTAL CIVIC OPEN SPACE PROVIDED = The plan will meet the required civic open space area. The civic open space area calculations include amenitized and landscaped storm water lagoons, nature preserves with adjacent sidewalks, and community clubhouse, pool, playground, seating and grilling areas.

**AFFORDABLE HOUSING UNIT BREAKDOWN:**

- 49% of the units (approximately 112 Units) at 80% of AMI (as adjusted for family size)
- 26% of the units (approximately 59 Units) at 120% of AMI (as adjusted for family size)
- 25% of the units (approximately 57 Units) at Market Rate.





**STATE OF SOUTH CAROLINA**

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**SECOND AMENDMENT  
TO  
DEVELOPMENT AGREEMENT  
(OSPREY POINT)  
AND PLANNED UNIT DEVELOPMENT**

**COUNTY OF BEAUFORT**

**REF: Book 2888 Page 169  
Book 3787 Page 2069**

Prepared For:

**BBR Development, LLC**

By:

**Burr & Forman LLP**  
Walter N. Nester, III

Submitted to:

Beaufort County, South Carolina

**THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (OSPREY POINT) AND PLANNED UNIT DEVELOPMENT** (the "**Second Amendment**") is made and entered this \_\_\_ day of \_\_\_\_\_ 2023, by and between LCP III, LLC, a South Carolina limited liability company ("**Owner**") and Beaufort County, South Carolina (the "**County**").

**WITNESSETH**

**WHEREAS**, pursuant to the South Carolina Local Government Development Agreement Act, Section 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976, as amended) (the "**Act**"), the Owner and County entered into a Development Agreement ("**Development Agreement**") dated September 3, 2009, recorded on September 11, 2009 in **Book 2888** at **Page 169** of the Office of the Register of Deeds for Beaufort County, South Carolina ("**ROD**"), the Development Agreement having been authorized by the Beaufort County Council ("**County Council**") upon Third and Final Reading on October 27, 2008; and

**WHEREAS**, the Owner and the County entered into that certain First Amendment to Development Agreement dated July 22, 2019 and recorded in the ROD in **Book 3787** at **Page 2069** ("**First Amendment**"); and

**WHEREAS**, the majority of Osprey Point has been developed with the exception of a 16.54 acre parcel fronting SC Highway 170 and bearing Beaufort County TMS Number R600 013 000 0495 0000 (the "**Property**") as described in **Exhibit "A"** attached hereto and incorporated herein; and

**WHEREAS**, Owner intends to develop the Property to include residential apartments, commercial spaces and open spaces in accordance with the Conceptual Master Plan – PUD Amendment, dated July 28, 2023 and attached hereto as **Exhibit "B"** ("**Concept Plan**"); and

**WHEREAS**, the Owner and the County now desire to amend the terms of the Development Agreement as set forth hereinbelow; and

**WHEREAS**, Section 6-31-60(B) of the Act provides that "a major modification of the Development Agreement may occur only after public notice and a public hearing"; and

**WHEREAS**, after a duly noticed public hearing held by the County Council, County Council approved this Second Amendment to Development Agreement by an Ordinance legally adopted on \_\_\_\_\_, 2023; and

**WHEREAS**, pursuant to the Act and the Ordinance adopted by the County Council on \_\_\_\_\_, 2023, the parties have entered into this Second Amendment to Development Agreement.

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, the County and Owner hereby agree as follows:

**I. INCORPORATION.**

The above recitals are hereby incorporated herein by reference, including the full text of all recorded documents referenced in the above recitals.

**II. AMENDED CONCEPT PLAN**

The Owner and County hereby amend the Concept Plan for the Osprey Point PUD to show changes consistent with this Second Amendment as depicted in **Exhibit “B”**. **Exhibit “B”** shall be the Concept Plan for the Property and all prior versions are hereby repealed and replaced by **Exhibit “B”**.

**III. MODIFICATION OF SECTION IV(C)**

Section IV(C) of the Development Agreement is hereby deleted and replaced as follows:

Permitted Uses. Permitted uses on the Property include multi-family dwellings and accessory uses thereto, recreational uses such as parks, water-related amenities and the like, and commercial, office and retail uses as shown and depicted on the Concept Plan attached as **Exhibit “B”**. No more than Two Hundred Twenty-Eight (228) single-family dwelling units, and no more than 20,000 square feet of nonresidential commercial, office and/or retail space shall be constructed on the Property. Timesharing or fractional ownership uses shall not be permitted.

#### **IV. MODIFICATION OF SECTION VI**

Section VI of the Development Agreement is hereby amended to allow phasing of the development on the Property. In addition, subdivision pursuant to a commercial subdivision is permitted.

#### **V. CONFORMANCE OF PUD ZONING**

The parties agree that the PUD zoning for the Property is amended in all respects to be in conformance with the Development Agreement as amended by this Second Amendment, such that everything allowed and granted under their terms are allowed and granted by the PUD zoning.

#### **VI. GENERAL PROVISIONS**

A. Authority of the Parties. County and Owner represent to each other that each has full authority to enter this First Amendment. Article XII of the Development Agreement provides Owner and County the continuing right to amend the Development Agreement, provided all procedural requirements for the amendment are met.

B. Ratification of Development Agreement. Except as expressly modified or amended by this Second Amendment, the parties hereto ratify and affirm all provisions of the Development Agreement as amended by the First Amendment.

C. Exhibits. All exhibits attached hereto or referenced in this Second Amendment are incorporated herein fully and completely.

D. Repeal of Prior Inconsistent Terms. All terms of the Development Agreement, as previously amended, which are inconsistent with the terms and conditions of this Second Amendment are hereby repealed and rescinded.

[Signatures on Following Pages]







**EXHIBIT "A"**

**Property Description**

**EXHIBIT “B”**

**Concept Plan**

## Memorandum

To: David Bennett, BBR Development, LLC

From: Jennifer T. Bihl, PE, PTOE, RSP 2I

Date: July 26, 2023

Re: Malind Bluff Updated Land Use Plan Trip Generation Summary – Commercial Parcel

This memo summarizes the projected trip generation for the commercial parcel of the Okatie Village development (Malind Bluff PUD, River Oaks PUD) and compares the previously contemplated commercial uses with the new land uses envisioned for this parcel. As part of this proposed land use update, the commercial uses are planned to be 20,000 square feet (sf) of retail and 228 affordable housing units. The concept plan for the proposed update is included in the **Appendix**.

While a new TIA would be necessary to confirm the roadway improvements that will be necessary as a result of the change in uses of the PUD; due to the significant reduction in trips, it is expected that some of the roadway improvements currently identified in the PUD documents will no longer be warranted.

### Previously Completed October 2019 Okatie Village PUD Traffic Study Summary

A traffic study was completed for the Okatie Village PUD in August 2019. The Okatie Village development included the Osprey Point PUD and the River Oaks PUD and included the following land uses. The commercial use parcel included the office and retail uses.

- 159,525 square feet (sf) of retail space (Osprey Point PUD)
- 53,175 sf of office space (Osprey Point PUD)
- 345 single-family detached units (Osprey Point PUD)
- 315 single-family detached units (River Oaks PUD)

The trip generation of the proposed development was determined using trip generation rates published in Institute of Transportation Engineers (ITE) Trip Generation handbook (Institute of Transportation Engineers, Tenth Edition). To be conservative for the purposes of this memo (reviewing the commercial uses), the overall development internal capture was not included in the summary of the projected commercial trips. The pass-by trips for the commercial uses were calculated using ITE standards.

**Table 1** summarizes the peak hour trips associated with the commercial uses of PUDs.

The commercial components of proposed PUDs are projected to generate 308 new trips during the AM peak hour (209 entering and 99 exiting) and 622 new trips during the PM peak hour (270 entering and 352 exiting).

Land Use and Intensity	ITE Land Use Code	AM Peak Hour			PM Peak Hour		
		Total	In	Out	Total	In	Out
53,175 sf Office	710	76	65	11	62	10	52
159,525 sf Retail	820	232	144	88	768	369	399
Gross Trips		308	209	99	830	379	451
Pass-by Trips		0	0	0	-208	-109	-99
<b>Net New Trips</b>		<b>308</b>	<b>209</b>	<b>99</b>	<b>622</b>	<b>270</b>	<b>352</b>

1. Source: ITE *Trip Generation 10<sup>th</sup> Edition*
2. PM peak hour pass-by trips based on August 2019 study

*Proposed Land Use Plan (2023) Summary*

As noted above, the current concept plan for the project (**Appendix**) replaces the 159,525 sf of retail space and 53,175 sf of office space in Osprey Point PUD with 228 affordable multifamily units and 20,000 sf of retail space. This portion of the project is also planned to be occupied by 2026.

The potential trip generation of the proposed development was determined using trip generation information and methodologies from the Institute of Transportation Engineers’ (ITE) *Trip Generation, 11<sup>th</sup> Edition* (2021). Pass-by rates were based on ITE standards.

**Table 2** summarizes the peak hour trips associated with the proposed commercial parcel updates to the Okatie Village development and the difference in trips compared to the previous concept plan.

With the updated concept plan, the proposed commercial portion of the PUDs are projected to generate 139 new trips during the AM peak hour (49 entering and 90 exiting) and 205 new trips during the PM peak hour (116 entering and 89 exiting). This is a reduction of approximately 170 vehicles during the AM peak hour and approximately 420 vehicles during the PM peak hour.

Land Use and Intensity	ITE Land Use Code	AM Peak Hour			PM Peak Hour		
		Total	In	Out	Total	In	Out
224 Affordable Low Rise Multifamily Units (Not Close to Transit)	220	94	22	72	119	75	44
20,000 sf Retail (Strip Retail Plaza)	822	45	27	18	128	64	64
Gross Trips		139	49	90	247	139	108
Pass-by Trips		0	0	0	-42	-23	-19
<b>Net New Trips with July 2023 Concept Plan</b>		139	49	90	205	116	89
Net New Trips with August 2019 Concept Plan		<b>308</b>	<b>209</b>	<b>99</b>	<b>622</b>	<b>270</b>	<b>352</b>
<b>Difference</b>		<b>-169</b>	<b>-160</b>	<b>-9</b>	<b>-417</b>	<b>-154</b>	<b>-263</b>

1. Source: ITE *Trip Generation 11<sup>th</sup> Edition (2021)*
2. 40% PM pass-by assumed for external retail use driveway trips based on LUC 821 pass-by information

## **Appendix**

**DEVELOPMENT SUMMARY**

- EXISTING ZONING: OSPREY POINT PUD
- TOTAL DEVELOPMENT: ~ 172 ACRES
- PROPOSED LOTS: 15
- COMMERCIAL OUTPARCEL: ~ 2.70 ACRES, 20,000 SF OF GROSS FLOOR AREA
- MULTIFAMILY RESIDENTIAL PARCEL: ~ 14.5 ACRES, 228 UNITS, 15,72 DU, AC

**PARKING SUMMARY**

Per the SC Housing 2023 Qualified Allocation Plan, 304 parking spaces must be provided for the residential portion of this development.  
 Under current Beaufort County Community Development Code parking standards for Multi-Family Residential, 438 spaces are required.  
 The Applicant requests an 18% reduction from the Beaufort County Code parking standards for Multi-Family Residential pursuant to Section 5.5.40.12.2.4 - Parking Adjustments - Special Housing Projects.

Parking Spaces to be provided:

- MULTIFAMILY RESIDENTIAL - 362 SPACES
  - Studios: 1.0 Space per Unit
  - One Bedroom: 1.3 Spaces per Unit
  - Two Bedrooms: 1.75 Spaces per Unit
  - Three Bedrooms: 2.0 Spaces per Unit
- COMMERCIAL: 70 SPACES (per development code, 1 space per 306 sf)
- TOTAL PARKING - 432 SPACES

**BUILDING HEIGHT**

MAXIMUM 45 FT. FROM ADJACENT GROUND LEVEL TO RAILING EDGE

**OPEN SPACE REQUIREMENTS AND CALCULATIONS (Per HUD)**

TOTAL OPEN SPACE REQUIRED: 672 ACRES (calculated from the residual amount of open space required from the total Open Space PUD minus provided open space within public's single-family detached residential development)

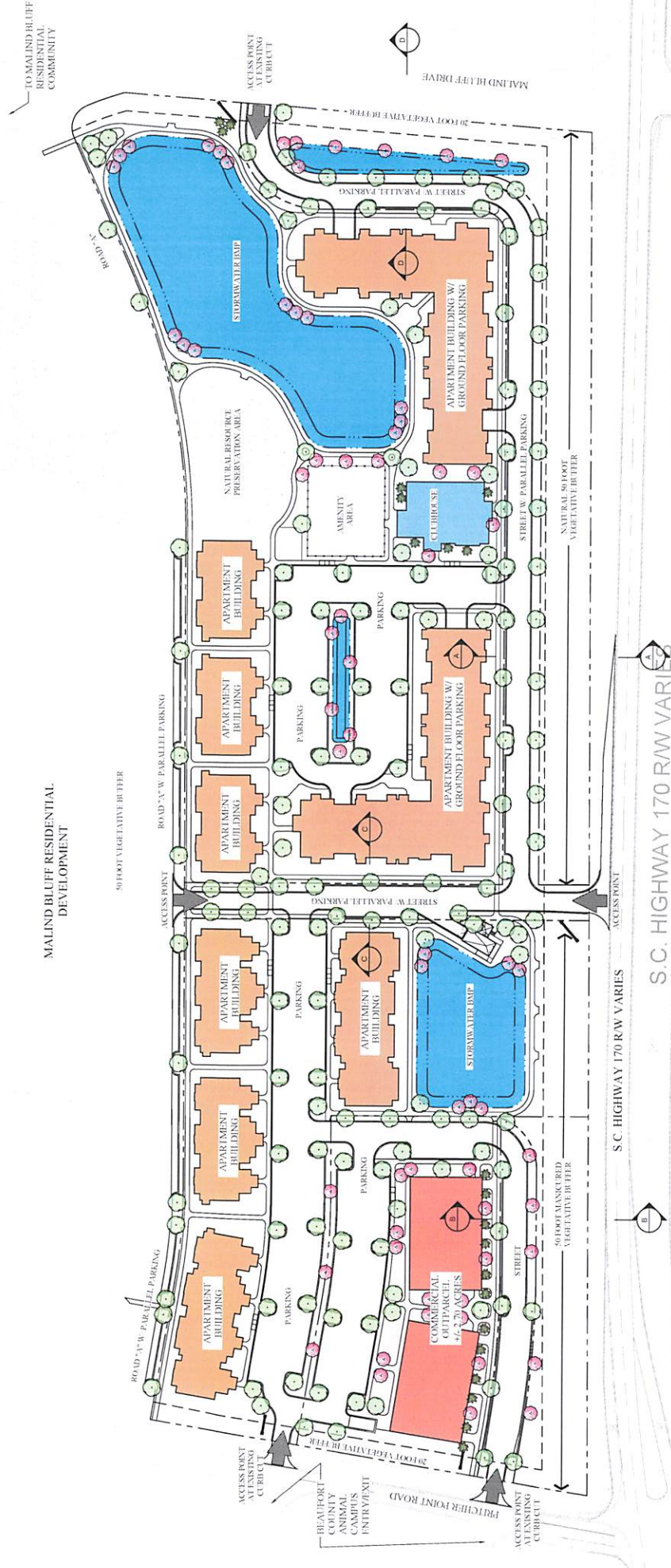
TOTAL OPEN SPACE PROVIDED: The plan will meet the required open space. The open space calculations do not include areas within street easements, building footprints, trash compactors, parking areas or parking drive aisle ways.

**CIVIC OPEN SPACE REQUIREMENTS AND CALCULATIONS (Per Beaufort County Code)**  
 TOTAL CIVIC OPEN SPACE REQUIRED: 15% OF TOTAL AREA ACREAGE - 17.2 ACRES ± 15%  
 TOTAL CIVIC OPEN SPACE PROVIDED: The plan will meet the required civic open space area. The civic open space area calculations include amenitized and landscaped storm water lagoons, nature preserves with adjacent sidewalks, and community clubhouse, pool, play ground, seating and grilling areas.

**AFFORDABLE HOUSING UNIT BREAKDOWN:**

- 49% of the units (approximately 112 Units) at 80% of AMI (or adjusted for family size)
- 26% of the units (approximately 99 Units) at 120% of AMI (or adjusted for family size)
- 25% of the units (approximately 57 Units) at Market Rate.

**MALIND BLUFF RESIDENTIAL DEVELOPMENT**



**PROJECT TITLE:**  
 Osprey Point PUD

**PROJECT LOCATION:**  
 Beaufort County, NC

**SHEET TITLE:**  
 PUD Amendment - Concept Master Plan

**ISSUE DATE:**  
 July 28, 2023



Plan is conceptual in nature and subject to change pursuant to SC Housing and/or market conditions.