

Post & Courier

CHARLESTON COUNTY COUNCIL PUBLIC HEARING **Tuesday, June 21, 2022 at 6:30 PM**

Charleston County Council will hold a public hearing on the matter listed below beginning at 6:30 p.m., Tuesday, June 21, 2022, in Council Chambers (second floor of the Lonnie Hamilton, III, Public Services Building, located at: 4045 Bridge View Drive, North Charleston, SC 29405). Packet information can be found online at: <https://www.charlestoncounty.org/departments/zoning-planning/>. The meeting will be livestreamed at: <https://www.charlestoncounty.org/departments/county-council/cctv.php>. Public comments may be made in person or written public comments may be emailed to CCPC@charlestoncounty.org or mailed to the address listed above by noon on Tuesday, June 21, 2022. Contact the Zoning and Planning Department at (843)202-7200 or CCPC@charlestoncounty.org for additional information.

a. Amendments to the Zoning and Land Development Regulations Ordinance (ZLDR).

This Public Notice is in accordance with Section 6-29-760 of the Code of Laws of South Carolina.

Kristen L. Salisbury
Clerk of Council

**PROPOSED TEXT AMENDMENTS TO THE CHARLESTON
COUNTY ZONING AND LAND DEVELOPMENT REGULATIONS
ORDINANCE (ZLDR)**

Planning Commission Meeting: May 9, 2022

Public Hearing: June 21, 2022

Planning & Public Works Committee Meeting: July 7, 2022

1st Reading: July 12, 2022

2nd Reading: August 23, 2022

3rd Reading: September 6, 2022

Summary of Proposed Amendments:

The following ZLDR text amendments are being proposed:

- a. Art. 5.3, Johns Island Maybank Highway Corridor Overlay Zoning District; Art. 5.14, James Island Maybank highway Corridor Overlay Zoning District; Art. 5.15, Main Road Corridor Overlay Zoning District; Art. 8.4, Preliminary Plat; Art. 8.5, Final Plats; and Chapter 12, Definitions: Per the April 6, 2022 letter from the U.S. Army Corps of Engineers (USACE), the Charleston District Regulatory Division will no longer prioritize wetland delineation requests that are not associated with a USACE permit application. They recommend allowing wetland delineations prepared by environmental consultants utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation instead of relying on jurisdictional determinations when those requests are not associated with a USACE permit application. The proposed amendments implement that recommendation.
- b. Sec. 9.2.4, Required Tree Protection: Reduce the tree barricade radii distance requirement from 1.5 feet times the DBH to one foot times the DBH.
- c. Sec. 9.8.6, Billboards: Clarify that the minimum distance between billboards and other on-premises signs applies only to freestanding signs and not wall signs.
- d. Sec. 4.24.4, Reductions of OCRM Critical Line Setbacks, Sec. 9.2.1, General (Tree Protection and Preservation), and Chapter 12, Definitions: Authorize the Zoning and Planning Director to waive or modify existing OCRM Critical Line setbacks and buffers when the alteration results in an overall expansion of the OCRM Critical Line into the existing highland and freshwater wetland areas for the creation of a Mitigation Bank and specific conditions are met; exempt the removal of trees associated with relocating the OCRM Critical Line as described above from the Tree Protection and Preservation requirements of the ZLDR; and define "Mitigation Bank."

This packet includes the full text of each individual proposed amendment.

Staff Recommendation:

Consideration of amendments to the Zoning and Land Development Regulations Ordinance (ZLDR).

Planning Commission Review and Recommendation – May 9, 2022:

Public Input and Planning Commission Recommendations:

- Art. 5.3, Johns Island Maybank Highway Corridor Overlay Zoning District; Art. 5.14, James Island Maybank highway Corridor Overlay Zoning District; Art. 5.15, Main Road Corridor Overlay Zoning District; Art. 8.4, Preliminary Plat; Art. 8.5, Final Plats; and Chapter 12, Definitions: Amend requirements to allow wetland delineations prepared by environmental consultants utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation instead of relying on jurisdictional determinations when those requests are not associated with a USACE permit application:
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*

- *Public Comments: One person spoke in support; no one spoke in opposition; three people spoke with questions regarding the proposed amendments.*
- *Planning Commission Recommendation: Approval with the addition of the following language: "reviewed and approved by the Charleston County Public Works Department (Stormwater Division)" (vote: 6 to 0).*
- Sec. 9.2.4, Required Tree Protection: Reduce the tree barricade radii distance requirement from 1.5 feet times the DBH to one-foot times the DBH:
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*
 - *Public Comments: Four people spoke in support; no one spoke in opposition.*
 - *Planning Commission Recommendation: Approval (vote: 6 to 0)*
- Sec. 9.8.6, Billboards: Clarify that the minimum distance between billboards and other on-premises signs applies only to freestanding signs and not wall signs:
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*
 - *Public Comments: No one spoke regarding the proposed amendments.*
 - *Planning Commission Recommendation: Approval (vote: 6 to 0)*
- Sec. 4.24.4, Reductions of OCRM Critical Line Setbacks: Authorize the Zoning and Planning Director to waive or modify existing OCRM Critical Line setbacks and buffers when the alteration results in an overall expansion of the OCRM Critical Line into the existing highland and freshwater wetland areas for the creation of a Mitigation Bank and specific conditions are met:
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*
 - *Public Comments: One person spoke in support; six people spoke in opposition.*
 - *Planning Commission Recommendation: Disapproval (vote: 5 to 1; Commissioner Logan Davis dissented).*
- Sec. 9.2.1, General (Tree Protection and Preservation), and Chapter 12, Definitions: Authorize the Zoning and Planning Director to waive or modify existing OCRM Critical Line setbacks and buffers when the alteration results in an overall expansion of the OCRM Critical Line into the existing highland and freshwater wetland areas for the creation of a Mitigation Bank and specific conditions are met; exempt the removal of trees associated with relocating the OCRM Critical Line for a Mitigation Bank pursuant to the amendments proposed for Sec. 4.24.4:
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*
 - *Public Comments: One person spoke in support; six people spoke in opposition.*
 - *Planning Commission Recommendation: Disapproval (vote: 5 to 1; Commissioner Logan Davis dissented).*
- Chapter 12, Definitions: Add a definition for "Mitigation Bank":
 - *Public Input prior to the meeting: No correspondence regarding the proposed amendments was received prior to the Planning Commission meeting.*
 - *Public Comments: No one spoke regarding the proposed amendments.*
 - *Planning Commission Recommendation: Approval (vote: 6 to 0).*

May 9, 2022 Planning Commission Meeting Notifications:

The Planning Commission meeting was noticed in the *Post & Courier* on April 22 and the same day, notifications were sent to 608 people on the ZLDR/Comprehensive Plan Interested Parties' List.

PUBLIC HEARING: JUNE 21, 2022

Public Input: Four letters in support and four letters in opposition to the proposed mitigation bank amendments have been received. One letter in support of the tree ordinance amendments have been received.

Speakers: Three individuals spoke in support of Sections 4.24.2 and 9.2.1 of the ZLDR. Seven individuals spoke in opposition to Sections 4.24.2 and 9.2.1 of the ZLDR. One individual spoke in

opposition to the USACE amendments, one individual asked a question regarding the tree radius protection amendments, and one individual made general comment about the proposed amendments.

June 21, 2022 Public Hearing Notifications:

The public hearing was noticed in the *Post & Courier* on May 20, 2022 and the same day, notifications were sent to 608 people on the ZLDR/Comprehensive Plan Interested Parties' List.

PLANNING/PUBLIC WORKS COMMITTEE MEETING: July 7, 2022

Recommendations:

- Freshwater Wetland Delineation Requirements:
 - *Approval (vote: 6 to 1; Councilman Middleton dissented)*
- Required Tree Protection Requirements:
 - *Approval (vote: 7 to 0)*
- Clarify Billboard Distance Requirements:
 - *Approval (vote: 7 to 0)*
- Allow Modifications of OCRM Critical Line Setback and Buffer Requirements-Mitigation Banks:
 - *Disapproval (vote: 6 to 1; Councilman Middleton dissented).*
- Allow Removal of Trees Subject to Conditions-Mitigation Banks:
 - *Approve (vote: 7 to 0)*
- Incorporate a Definition for "Mitigation Bank":
 - *Approve (vote: 6 to 1; Councilman Middleton dissented)*

FIRST READING: July 12, 2022

Vote:

- Freshwater Wetland Delineation Requirements:
 - *Approval (vote: 8-0)*
- Required Tree Protection Requirements:
 - *Approval (vote: 8-0)*
- Clarify Billboard Distance Requirements:
 - *Approval (vote: 8-0)*
- Allow Modifications of OCRM Critical Line Setback and Buffer Requirements-Mitigation Banks:
 - *Approval (vote: 5-3; Councilmembers Middleton, Schweers, and Johnson dissented)*
- Allow Removal of Trees Subject to Conditions-Mitigation Banks:
 - *Approve (vote: 6-2; Councilmembers Middleton and Schweers)*
- Incorporate a Definition for "Mitigation Bank":
 - *Approve (vote: 8-0)*

SECOND READING: August 23, 2022

County Council deferred the amendments to receive Second Readings on September 6, 2022.

SECOND READING: September 6, 2022

Vote:

- Freshwater Wetland Delineation Requirements:
 - *Approval (vote: 9-0)*
- Required Tree Protection Requirements:
 - *Approval (vote:9-0)*
- Clarify Billboard Distance Requirements:
 - *Approval (vote: 9-0)*
- Allow Modifications of OCRM Critical Line Setback and Buffer Requirements-Mitigation Banks:
 - *: Approval (vote: 5-3-1; Councilmembers Middleton, Schweers, and Wehrman dissented; Councilman Darby abstained)*
- Allow Removal of Trees Subject to Conditions-Mitigation Banks:
 - *Approval (vote: 5-3-1; Councilmembers Middleton, Schweers, and Wehrman dissented; Councilman Darby abstained)*
- Incorporate a Definition for “Mitigation Bank”:
 - *Approve (vote: 8-0-1; Councilman Darby abstained)*

THIRD READING: September 20, 2022

Vote:

- Freshwater Wetland Delineation Requirements:
 - *Approval (vote: 9-0)*
- Required Tree Protection Requirements:
 - *Approval (vote:9-0)*
- Clarify Billboard Distance Requirements:
 - *Approval (vote: 9-0)*
- Allow Modifications of OCRM Critical Line Setback and Buffer Requirements-Mitigation Banks:
 - *County Council voted (5-4) to table Third Reading for 30 days to the October 25th County Council meeting to allow the property owner and opposition to meet.*
- Allow Removal of Trees Subject to Conditions-Mitigation Banks:
 - *County Council voted (5-4) to table Third Reading for 30 days to the October 25th County Council meeting to allow the property owner and opposition to meet.*
- Incorporate a Definition for “Mitigation Bank”:
 - *Approval (vote: 9-0)*

THIRD READING: November 10, 2022

Vote:

- Allow Modifications of OCRM Critical Line Setback and Buffer Requirements-Mitigation Banks:
- Allow Removal of Trees Subject to Conditions-Mitigation Banks:

Proposed Amendments to the Zoning & Land Development Regulations Ordinance (ZLDR)

Charleston County Planning and Public Works Meeting
July 7, 2022



Proposed Amendments to Wetland Delineation Requirements

- ZLDR does not allow freshwater wetlands to be included in density or lot area calculations.
- Submittal of a U.S. Army Corps of Engineers Approved Jurisdictional Determination for subdivision, site plan review, and other permit applications is necessary to determine if this requirement is met.
- Per an April 6, 2022 letter from the U.S. Army Corps of Engineers (USACE), the Charleston District Regulatory Division will no longer prioritize wetland delineation requests that are not associated with a USACE permit application.
- They recommend allowing wetland delineations prepared by environmental consultants utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation instead of relying on jurisdictional determinations when those requests are not associated with a USACE permit application.
- The proposed amendments implement that recommendation in ZLDR Art. 5.3, Johns Island Maybank Highway Corridor Overlay Zoning District; Art. 5.14, James Island Maybank highway Corridor Overlay Zoning District; Art. 5.15, Main Road Corridor Overlay Zoning District; Art. 8.4, Preliminary Plat; Art. 8.5, Final Plats; and Chapter 12, Definitions.

Proposed Amendments to Wetland Delineation Requirements

Planning Commission recommendation (May 9, 2022):

Approval with the addition of the following language: “reviewed and approved by the Charleston County Public Works Department (Stormwater Division)” (vote: 6 to 0).

Sec. 9.2.4, Required Tree Protection

- Reduce the tree barricade radii distance requirement from 1.5 feet times the DBH to one foot times the DBH of the tree.
- This is being proposed to reflect a more realistic root protection zone for trees.

Sec. 9.2.4, Required Tree Protection

Planning Commission recommendation (May 9, 2022):

Approval (vote: 6 to 0).

Sec. 9.8.6, Billboards

- Clarify that the minimum distance between billboards and other on-premises signs applies only to freestanding signs and not wall signs.

Sec. 9.8.6, Billboards

Planning Commission recommendation (May 9, 2022):

Approval (vote: 6 to 0).

Sec. 4.24.4, Reductions of OCRM Critical Line Setbacks and Buffers

- A. The Zoning and Planning Director shall be authorized to reduce OCRM Critical Line Setbacks to a distance not less than the buffer depth, when deemed necessary by the Director to accommodate reasonable Development of the Parcel when it is determined by the Director that the Setback reduction will not have a significant adverse impact on public health or safety.
- B. The Zoning and Planning Director shall be authorized to modify the OCRM Critical Line Setbacks and buffers when DHEC-OCRm has granted approval to modify or alter OCRM jurisdictional wetlands within public or private Rights-of-Way and drainage easements.
- C. The Zoning and Planning Director shall be authorized to waive or modify the existing OCRM Critical Line Setback and Buffer requirements when there is an alteration that results in an overall expansion of the OCRM Critical Line into existing highland and freshwater wetland areas for the creation of a Mitigation Bank and the following conditions are met:
 - 1. DHEC-OCRm, U.S. Army Corps of Engineers and any other state or federal agency having jurisdiction has granted approval to alter the jurisdictional wetlands; and
 - 2. The OCRM Critical Line Setback and Buffer of the relocated OCRM Critical Line shall at minimum be that of the corresponding zoning district; and
 - 3. An OCRM Critical Line Buffer planting plan is submitted for review and approval by the Zoning and Planning Director and planted within one year of the completion of the alteration.

Sec. 4.24.4, Reductions of OCRM Critical Line Setbacks and Buffers

Planning Commission recommendation (May 9, 2022):

Disapproval (vote: 5 to 1)

Sec. 9.2.1, General (Tree Protection and Preservation)

B. Applicability and Exemptions.

1. The provisions of this Article apply to all real property in unincorporated Charleston County, except as otherwise expressly exempted.
2. The following are exempt from the provisions of this Article:
 - a. Single family detached residential Lots of record are exempt except for those relating to Grand Tree documentation, protection and replacement. This does not exempt applications for Major or Minor Subdivisions from the requirements of Sec. 9.4.4, Landscape Buffers.
 - b. This Article shall not restrict public utilities and electric suppliers from maintaining safe clearance around existing utility lines, and existing Easements in accordance with applicable state laws. Siting and construction of future gas, telephone, communications, electrical lines, or other Easements shall not be exempt from the provisions of this Article.
 - c. Removal of Trees for “bona fide forestry operations” shall comply with state law.
 - d. Removal of Trees for Bona Fide Agricultural Uses pursuant to Sec. 3.8.2, Exemptions, Sub-Paragraph A, provided this exemption does not apply to the Grand Tree documentation, protection, and replacement requirements of this Ordinance.
 - e. Removal of trees associated with relocating the OCRM Critical Line pursuant to 4.24.4 C., except Grand Tree removal shall be mitigated inch per inch pursuant to section 9.2.6 of this Ordinance.
 - f. Removal of trees for safe clearance of aircraft as required by federal law or the establishment of facilities exclusively dedicated to Aviation operations are exempt.

Sec. 9.2.1, General (Tree Protection and Preservation)

Planning Commission recommendation (May 9, 2022):

Disapproval (vote: 5 to 1)

Chapter 12, Definitions

Add definition for “Mitigation Bank”: A site, or suite of sites, where aquatic resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by U.S. Army Corps of Engineers permits. This definition is limited to those sites which are governed by a mitigation banking instrument approved by the U.S. Army Corps of Engineers.

Chapter 12, Definitions

Planning Commission recommendation (May 9, 2022):

Approval (vote: 6 to 0).

Public Input

- Four letters in support and four letters in opposition to the proposed mitigation bank amendments have been received.
- One letter in support of the required tree protection amendments have been received.

June 21, 2022 Public Hearing

- Three individuals spoke in support and seven individuals spoke in opposition to Sections 4.24.2 and 9.2.1 of the ZLDR.
- One individual spoke in opposition to the USACE amendments, one individual asked a question regarding the tree radius protection amendments, and an individual made general comment about the proposed amendments.

Notifications

- May 9, 2022 Planning Commission meeting:
 - P&C ad ran April 22, 2022;
 - Packet was posted on April 29, 2022; and
 - 608 notifications were sent on April 22, 2022.
- June 21, 2022 Public Hearing:
 - P&C ad ran May 20, 2022; and
 - 608 notifications were sent on May 20, 2022.

CHAPTER 5 | OVERLAY AND SPECIAL PURPOSE ZONING DISTRICTS

ARTICLE 5.3 JO-MHC-O, JOHNS ISLAND MAYBANK HIGHWAY CORRIDOR OVERLAY ZONING DISTRICT

Sec. 5.3.7 General Development Standards and Requirements (All Districts)

A. Residential Density.

1. *Maximum Residential Density.* The Density/Intensity and Dimensional Standards listed in Table 5.3-3 of this Article shall apply to all properties in the MU District, and the Density/Intensity and Dimensional Standards listed in Table 5.4-5 of this Article shall apply to all properties in the LC District.
2. *Calculation of Residential Density.* Residential density shall be calculated by dividing the number of Lots/Dwelling Units on a site by the net area (in acres) of Highland of the site on which the Lots/Dwelling Units are located. Net Highland acres includes all acreage that is not below the Office of Coastal Resource Management Critical Line or identified as Freshwater Wetlands. Site Plan Review and Subdivision applications shall include all Freshwater Wetland metes and bounds, and total Freshwater Wetland acreage based on **a wetland delineation prepared by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation, which must be reviewed and approved by the Charleston County Public Works Department (Stormwater Division), or** a United States Army Corps of Engineers (USACE) Approved Jurisdiction Determination (AJD). Accessory Dwelling Units (ADUs) are not included in the calculation of residential density.

ARTICLE 5.14 JA-MHC-O, JAMES ISLAND MAYBANK HIGHWAY CORRIDOR OVERLAY ZONING DISTRICT

Sec. 5.14.6 Development Standards and Requirements

A. Residential Density.

1. *Maximum Residential Density.* The Density/Intensity and Dimensional Standards listed in Table 5.16-2 of this Article shall apply to all properties in the JA-MHC-O.
2. *Calculation of Residential Density.* Residential Density shall be calculated by dividing the number of Lots on a site by the net area (in acres) of Highland of the site on which the Lots are located. Net Highland acres includes all acreage that is not below the Office of Coastal Resource Management Critical Line or identified as Freshwater Wetlands. Site Plan Review and Subdivision applications shall include all Freshwater Wetland metes and bounds, and total Freshwater Wetland acreage based on **a wetland delineation prepared by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation, which must be reviewed and approved by the Charleston County Public Works Department (Stormwater Division), or** a United States Army Corps of Engineers (USACE) Approved Jurisdiction Determination (AJD). Accessory Dwelling Units (ADUs) are not included in the calculation of residential density.

ARTICLE 5.15 MRC-O, MAIN ROAD CORRIDOR OVERLAY ZONING DISTRICT

Sec. 5.15.7 General Development Standards and Requirements (All Districts)

A. Residential Density.

1. *Maximum Residential Density.*
 - a. The Density/Intensity and Dimensional Standards listed in Table 5.17-2 of this Article shall apply to all properties in the BMC and RC Districts.
 - b. The Kitford Community Industrial (KCI) District shall be subject to the Density/Intensity and Dimensional Standards of the Industrial (IN) Zoning District; and
 - c. The Kitford Community Residential (KCR) District shall be subject to the Density/Intensity and Dimensional Standards of the Rural Residential (RR-3) Zoning District.
2. *Calculation of Residential Density.* Residential density shall be calculated by dividing the number of Lots/Dwelling Units on a site by the net area (in acres) of Highland of the site on which the Lots/Dwelling Units are located. Net Highland acres includes all acreage that is not below the Office of Coastal Resource Management Critical Line or identified as Freshwater Wetlands. Site Plan Review and Subdivision applications shall include all freshwater wetland metes and bounds, and total Freshwater Wetland acreage based on ***a wetland delineation prepared by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation, which must be reviewed and approved by the Charleston County Public Works Department (Stormwater Division), or*** a United States Army Corps of Engineers (USACE) Approved Jurisdiction Determination (AJD). Accessory Dwelling Units (ADUs) are not included in the calculation of residential density.

CHAPTER 8 | SUBDIVISION REGULATIONS

ARTICLE 8.4 PRELIMINARY PLAT

Sec. 8.4.2 Application

The following shall be submitted:

- A. Completed applications for Preliminary Plat approval shall be submitted to the Zoning and Planning Department on forms available in the Zoning and Planning Department. Three copies and one digital file of the Preliminary Plat shall be filed with the application.
- B. Preliminary Plats shall be drawn to engineer's scale no smaller than one-inch equals 200 feet. Where large areas are being platted, they may be drawn on one or more sheets, 22 inches by 34 inches in size. For small areas being platted, a scale of one-inch equals 100 feet shall be used.
- C. Even if the Applicant intends to subdivide only a portion of a Parcel or tract of land initially, the Preliminary Plat shall show a proposed Street and Lot layout, drainage plan and other requirements for the entire Parcel or tract of land in which such portion is contained; except that the Zoning and Planning Director, with the recommendation of the Public Works Director, may waive this requirement on a finding that such a complete layout is not necessary to carry out the purposes of these regulations.

- D. The following information shall be required on each Plat:
1. The courses and distances of the perimeter of the land involved shall be indicated on the plat shown with all courses marked to show which are actual field observations and which are computed.
 2. References to a known point or points such as Street intersections and railroad crossings shall be shown.
 3. The total acreage of the land involved in the Subdivision, and the acreage of high land above the Office of Coastal Resource Management Critical Line. Date of Critical Line certification shall be indicated. (Aerial photography may not be used to determine OCRM Critical Line location.)
 4. The names of adjacent landowners and Streets where known or available shall be given (with the parcel identification numbers), and all intersecting boundaries or property lines shall be shown.
 5. Proposed divisions to be created shall be shown, including Building envelopes for each Lot (a minimum 1,600 square foot buildable area with a minimum width of 20 feet), for each Lot, Right-of-Way widths, Roadway widths, road surface types, sidewalks (if applicable), proposed Drainage Easements, and names of Streets; the locations of proposed Utility installations and Utility Easements; Lot Lines, dimensions and angles; sites reserved or dedicated for public uses; and sites for apartments, civic/institutional, commercial, and industrial uses. The status of the existing Lot access and the concept of the type of road construction being proposed shall be indicated (e.g., ingress/egress Easement, private road constructed or unconstructed, public Secondary or Primary Rural Road, Public Secondary or Primary County Road, and other details as appropriate, i.e., Curb and gutter, asphalt swales, inverted crown, roadside open ditch, etc.).
 6. The title, scale (including graphic scale), north arrow (magnetic, grid, or true), date, name of Applicant and the name and seal of engineer or surveyor with South Carolina Registration Number shall be shown.
 7. All existing Structures and physical features of the land, including contours (contours not required on proposed private subdivisions, and only within the Rights-of-Way of proposed rural public Streets), drainage ditches, roads and wooded areas shall be shown. The contour interval shall be one foot, unless otherwise approved in advance of submission by the Public Works Director. All contour information shall be based on Mean Sea Level datum and shall be accurate within one-half foot. The Bench Mark, with its description, and the datum used for the survey shall be clearly noted on the Plat.
 8. General drainage features, including proposed Drainage Easements and detention/retention basins. The proposed direction of drainage on each Street, ditch and Lot shall be indicated by the use of arrows and proposed Street names.
 9. The location of required Landscape Buffers as specified in Chapter 9, *Development Standards*, of this Ordinance, which shall not be located within Drainage Easements unless expressly approved by the Public Works Director.
 10. ***A wetland delineation prepared by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation, which must be reviewed and approved by the Charleston County Public Works Department (Stormwater Division), or a United States Army Corps of Engineers (USACE) approved jurisdictional determination (AJD) is required.***
 11. A notation shall be made on the Plat clearly indicating the applicable OCRM Critical Line buffers and Setbacks. A statement and signature from DHEC's Office of Ocean and Coastal Resource Management shall be included. At the time of Subdivision Plat

application submittal, the date of the OCRM approval signature cannot be older than five years.

12. Tree Surveys on lots of one acre or less are to include Grand Trees on the entire Lot. Tree surveys of Grand Trees may be requested upon site inspection if Lots greater than one acre appear to be unbuildable due to the presence of Grand Trees. All Grand Trees within 40 feet of the property line must be shown on the Plat.
13. Tree Surveys of all Grand Trees are required within access Easements, Drainage Easements, and Rights-of-Way. All Grand Trees within 40 feet or with canopies that encroach into the proposed Easement must be shown on the Plat.
14. A signature block on the Plat, signed by the owner(s) of the property and notarized indicating that the proposed Preliminary Plat being put forth is an action of the owner, heirs thereto or assigns.
15. A vacant block shall be provided on each page of the Plat that is three inches by eight inches in dimension for Charleston County approval stamps and notations.
16. A statement that any Easements for utilities or other encroachments in the area to be dedicated for Streets, highways, drainage or other public or private use are subject to binding provision that the costs of future relocation of any such encroachments due to the construction or maintenance of public improvements shall be borne by the holder of the Easement and/or Utility company.
17. A statement indicating the flood zone(s), valid as of the date of approval of the Preliminary Plat.

ARTICLE 8.5 FINAL PLATS

Sec. 8.5.2 Application

B. The Final Plat Shall Show the Following:

1. All proposed divisions of land shall be shown, including: each Lot showing Lot Lines, with bearings and distances; all Rights-of-Way; all Drainage Easements; names of all Streets; the locations of all Utility Rights-of-Way, and Utility Easements; all Structures; and all sites reserved or dedicated for public uses.
2. The title, scale (including graphic scale), north arrow (magnetic, grid, or true), date, name of Applicant, and the name of engineer or surveyor with South Carolina Registration Number shall be shown.
3. Block and Lot numbers suitably arranged by simple system.
4. The full names of adjacent landowners and Streets where known or available shall be given (with the Parcel identification numbers), and all intersecting boundaries or property lines shall be shown. Names of adjacent Property Owners may be omitted in established residential platted Subdivisions; however, legal block and Lot numbers and County Parcel identification numbers are required.
5. Certificates:
 - a. The signature and seal of the registered land surveyor in accordance with the current Minimum Standard Manual for the Practice of Land Surveying in South Carolina.
 - b. A notarized statement of Dedication by the Property Owner of Streets, Rights-of-Way, Easements, and any other sites for public or private use and warranty of title of property offered for dedication. If any change in ownership is made subsequent to the submission of the Plat and prior to the

- granting of final approval, the notarized statement of dedication shall be corrected accordingly.
- c. For any public dedication, a warranty deed for the transfer of the Right(s)-of-Way(s), Easement(s), or other sites for public use to the County on legal documents of the form suitable to the County must be provided.
 - d. A statement that any Easements for utilities or other encroachments in the area to be dedicated for Streets, highways, drainage or other public or private use are subject to a binding provision that the costs of future relocation of any such encroachments due to the construction or maintenance of public improvements shall be borne by the holder of the Easement and/or Utility company.
6. All Easements shall include their location, width, and centerline.
 7. The approved Office of Ocean and Coastal Resource Management (OCRM) Critical Line with signed approval statement on the Final Plat.
 8. At the Zoning and Planning Director's discretion, the Applicant/surveyor may be required to show buffers and Setbacks on Lots less than one acre in size or on newly created Lots that may appear to have encroachment of Structures into a buffer or Setback. A 1,600 square foot buildable area with a minimum width of 20 feet must be shown within the Setbacks.
 9. ***A wetland delineation prepared by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation, which must be reviewed and approved by the Charleston County Public Works Department (Stormwater Division), or a***
United States Army Corps of Engineers (USACE) approved jurisdictional determination (AJD) is required.
 10. High land acreage and low land acreage (If applicable, Freshwater Wetland acreage and acreage within the Office of Ocean and Coastal Resource Management Critical Line).
 11. Tree Surveys on Lots of one acre or less are to include Grand Trees on the entire Lot. Tree Surveys of Grand Trees may be requested upon site inspection if Lots greater than one acre appear to be unbuildable due to the presence of Grand Trees. All Grand Trees within 40 feet of the property line must be shown on the Plat.
 12. Tree Surveys of all Grand Trees are required within access Easements, Drainage Easements, and Rights-of-Way. All Grand Trees within 40 feet or with canopies that encroach into the proposed Easement must be shown on the Plat.
 13. Ownership and maintenance status of the Lot access shall be indicated for any newly-created Lots.
 14. A vacant block shall be provided on each page of the Plat that is three inches by eight inches in dimension for Charleston County approval stamps and notations.
 15. A statement indicating the flood zone(s), valid as of the date of approval of the Final Plat.

CHAPTER 12 | DEFINITIONS

ARTICLE 12.1 TERMS AND USES DEFINED

TERM DEFINITION

W

Wetlands, Freshwater Those areas of land that are inundated or saturated by fresh water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions and delineated as Freshwater Wetlands by the U.S. Army Corps of Engineers *or by an environmental consultant utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation as reviewed and approved by the Charleston County Public Works Department (Stormwater Division).*



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
69A HAGOOD AVENUE
CHARLESTON SOUTH CAROLINA 29403

April 6, 2022

Regulatory Division

Greetings! We are writing to inform you in advance of a Charleston District Corps of Engineers (Corps) programmatic shift that may affect your citizens and constituents. The Department of the Army (DA) Regulatory Program is one of the oldest in the Federal Government. Initially it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters. Time, changing public needs, evolving policy, case law, and statutory mandates have changed the complexion of the program, adding to its breadth, complexity, and authority.

The Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. As such, a delineation of wetlands and other waters is required for permitting purposes. In the past, our office has reviewed wetland delineation requests not associated with an active DA permit application to assist the public with project planning prior to submission of an application to impact regulated waters and wetlands.

It has come to the attention of the Corps in recent years that local government entities, and other enforcement bodies, have added a Corps' approved wetland delineation or Jurisdictional Determination (JD) as a requirement for citizens to perform functions not associated with an active Corps permit, including division of properties, submitting building permits and obtaining construction permits. These delineations are not required by the Corps to submit a Corps permit application. These requests have substantially increased the Regulatory Division's workload, impacting the agency's ability to effectively review permit applications and effectively regulate activity in the nation's waters and wetlands. To enable the Regulatory Division to deliver its primary purpose of preserving the nation's aquatic resources, and in accordance with agency mandates, **the Charleston District Regulatory Division will no longer prioritize wetland delineation requests that are not associated with a permit application.**

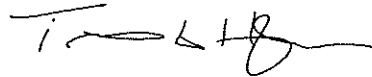
This letter is in advance of a Special Public Notice that will be issued the week of April 18, 2022. **South Carolina has a substantial community of environmental consultants who can prepare accurate and complete wetland delineations. The Corps utilizes the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplements(s) for Wetland Delineation to perform and review delineations. Consultants who properly use this manual and associated supplements should be equipped to accurately delineate wetlands and aquatic resources.** The Corps utilizes wetland delineations prepared and appropriately documented as the basis for

planning developments, residential home sites, and other general purposes to avoid impacts to wetlands and regulated waters, as well as the basis for submitting a DA permit application.

We are sending this letter to inform you of our new priorities and ask that you take this programmatic shift into consideration, as this will likely result in citizens and businesses not receiving timely responses on wetland delineation and JD requests not associated with DA applications. We encourage any entities requiring a Corps-approved delineation for activities that do not require a Corps permit to review internal programs and policies. If your local requirements are dependent on Corps' verified wetland delineations and JDs, we ask that you reconsider this requirement.

We understand that this is a shift and will require all of us work together as public servants to provide the best service possible to the citizens of South Carolina. If you have any questions about our new priorities, please don't hesitate to reach out to me at 843-329-8035 or via email at Travis.G.Hughes@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Travis G. Hughes', with a stylized flourish at the end.

Travis G. Hughes
Chief, Regulatory Division

ARTICLE 9.2 TREE PROTECTION AND PRESERVATION

Sec. 9.2.4 Required Tree Protection

A. General.

1. All Grand Trees and any other Trees required to remain on a site must be protected during construction and Development of a Parcel. Tree protection must be shown on all Development plans prior to site plan approval. A site inspection of the Tree barricades must be scheduled by the Applicant with the Zoning and Planning Department for approval prior to the issuance of permits or the start of Development activities.
2. Prior to issuance of a Zoning Permit, a pre-construction planning conference is required for on-site Tree preservation with the Zoning and Planning Director or staff representative, the Applicant(s), and any appropriate parties for determining if there is need for additional Tree protection techniques and for designating placement of Tree barricades, construction employee parking, temporary construction office, and dumpsters.

- B. Prior to the start of Land Development activities, protective Tree barricades shall be placed around all Required Trees in or near Development areas. The barricades shall be constructed of wood, metal, or plastic fencing or other materials approved by the Zoning and Planning Director, and include a top rail. Tree barricades shall be placed beneath the canopy Drip Line or ~~one and one-half feet~~ **one foot** times the DBH of the Tree as a radius from the trunk, whichever is greater. Other protective devices or construction techniques may be used as approved by the Zoning and Planning Director. Three inches of mulch shall be installed and maintained within all Tree barricade areas. The mulch shall remain in place throughout Development activities. The area within the Tree barricade shall remain free of all Building materials, dirt, fill, and other construction debris, vehicles, and Development activities. All Required Trees are also subject to the requirements of Sec. 9.4.6, *Landscape Materials Standards*, and Article 11.3, *Enforcement Responsibility and Complaints*.

ZONING AND LAND DEVELOPMENT REGULATIONS

CHAPTER 9 | DEVELOPMENT STANDARDS

ARTICLE 9.8 SIGNS

Sec. 9.8.6 Billboards

- A. **Industry Standards.** All Billboards shall be constructed in compliance with Industry Standards.
- B. **Location and Setbacks.** Billboards shall be allowed in those Zoning Districts indicated in CHAPTER 6, Use Regulations.

Table 9.8.6, Billboards	
Maximum Length	48 ft.
Maximum Width	14 ft.
Maximum Area	672 sq.ft.
Maximum Height	40 ft.
Maximum Setback (from property boundary and above ground utility)	25/20 ft.
Location Criteria	
Minimum distance to nearest Billboard	1,000 ft.
Minimum distance to nearest On-Premises Freestanding On-Premises Sign (excluding Signs located on the subject Parcel)	500 ft.

- C. **Orientation.**
- Signs shall face a maximum of two directions and may be mounted back to back or V'ed.
 - Where Signs are V'ed, the space between panels shall not exceed three feet at the point at which panels are closest, and the interior angle formed by Signs shall not exceed 60 degrees.
- D. **Compatible Size Signs.** Where Signs face two directions, whether back to back or V'ed, both Signs must be the same standard size.
- E. **Nonconforming Signs.** Refer to Chapter 10, *Nonconformities*.
- F. **Digital or Electronic Billboards.** Digital or Electronic Billboards are permitted in the Industrial Zoning Districts, provided that documentation of compliance with all applicable sections of this Ordinance and documentation that the billboard complies with the following standards are submitted:
- No use of location tracking, data collection, or geofencing of any type may be associated with the Digital or Electronic Billboard;
 - All messages, images or displays on a digital or electronically changing billboard shall remain unchanged for a minimum of eight seconds;
 - There shall be no appearance of flashing or sudden bursts of light, and no appearance of video motion, animation, scrolling, movement of flow of the message, image or display;
 - The Digital or Electronic Billboard shall comply with Sec. 9.9.1.E, *Illumination*; and

5. Proof of approval of the Digital or Electronic Billboard by the South Carolina Department of Transportation (SCDOT).

Sec. 4.24.4 Reductions, Modifications and Waivers of OCRM Critical Line Setbacks and Buffers

- A. The Zoning and Planning Director shall be authorized to reduce OCRM Critical Line Setbacks to a distance not less than the buffer depth, when deemed necessary by the Director to accomodate reasonable Development of the Parcel when it is determined by the Director that the Setback reduction will not have a significant adverse impact on public health or safety.
- B. The Zoning and Planning Director shall be authorized to modify the OCRM Critical Line Setbacks and buffers when DHEC-OCRM has granted approval to modify or alter OCRM jurisdictional wetlands within public or private Rights-of-Way and drainage easements.
- C. The Zoning and Planning Director shall be authorized to waive or modify the existing OCRM Critical Line Setback and Buffer requirements when there is an alteration that results in an overall expansion of the OCRM Critical Line into existing highland and freshwater wetland areas for the creation of a Mitigation Bank and the following conditions are met:
 - 1. DHEC-OCRM, U.S. Army Corps of Engineers and any other state or federal agency having jurisdiction has granted approval to alter the jurisdictional wetlands; and
 - 2. The OCRM Critical Line Setback and Buffer of the relocated OCRM Critical Line shall at minimum be that of the corresponding zoning district; and
 - 3. An OCRM Critical Line Buffer planting plan is submitted for review and approval by the Zoning and Planning Director and planted within one year of the completion of the alteration.

Sec. 9.2.1 General

- A. Trees are essential natural, invaluable economic, and priceless aesthetic resources. They play a critical role in purifying air and water, providing wildlife habitat, enhancing natural drainage, and managing stormwater and sediment. They also help conserve energy by providing shade and shield against noise and glare. Trees promote commerce and tourism by buffering different land uses and beautifying the landscape. For these and other reasons, this Article is intended to enhance the health, safety and welfare of Charleston County and its citizens and visitors.
- B. **Applicability and Exemptions.**
 - 1. The provisions of this Article apply to all real property in unincorporated Charleston County, except as otherwise expressly exempted.
 - 2. The following are exempt from the provisions of this Article:
 - a. Single family detached residential Lots of record are exempt except for those relating to Grand Tree documentation, protection and replacement. This does not exempt applications for Major or Minor Subdivisions from the requirements of Sec. 9.4.4, Landscape Buffers.
 - b. This Article shall not restrict public utilities and electric suppliers from maintaining safe clearance around existing utility lines, and existing Easements in accordance with applicable state laws. Siting and construction

of future gas, telephone, communications, electrical lines, or other Easements shall not be exempt from the provisions of this Article.

- c. Removal of Trees for “bona fide forestry operations” shall comply with state law.
- d. Removal of Trees for Bona Fide Agricultural Uses pursuant to Sec. 3.8.2, *Exemptions, Sub-Paragraph A*, provided this exemption does not apply to the Grand Tree documentation, protection, and replacement requirements of this Ordinance.
- e. Removal of trees associated with relocating the OCRM Critical Line pursuant to 4.24.4 C., except Grand Tree removal shall be mitigated inch per inch pursuant to section 9.2.6 of this Ordinance.
- f. Removal of trees for safe clearance of aircraft as required by federal law or the establishment of facilities exclusively dedicated to Aviation operations are exempt.

Chapter 12 Definitions

Mitigation Bank A site, or suite of sites, where aquatic resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by U.S. Army Corps of Engineers permits. This definition is limited to those sites which are governed by a mitigation banking instrument approved by the U.S. Army Corps of Engineers.

PROPOSED AMENDMENTS TO THE CHARLESTON COUNTY ZONING AND LAND DEVELOPMENT REGULATIONS ORDINANCE:
June 21, 2022 PUBLIC HEARING

Page 1 of 2

#	<u>Chapter/ Article/ Section</u>	<u>Description</u>	<u>Planning Commission Meeting Date and Recommendation</u>
1.	Art. 5.3, Johns Island Maybank Highway Corridor Overlay Zoning District; Art. 5.14, James Island Maybank highway Corridor Overlay Zoning District; Art. 5.15, Main Road Corridor Overlay Zoning District; Art. 8.4, Preliminary Plat; Art. 8.5, Final Plats; and Chapter 12, Definitions	Per the April 6, 2022 letter from the U.S. Army Corps of Engineers (USACE), the Charleston District Regulatory Division will no longer prioritize wetland delineation requests that are not associated with a USACE permit application. They recommend allowing wetland delineations prepared by environmental consultants utilizing the 1987 Army Corps of Engineers Wetland Delineation Manual and the appropriate Regional Supplement(s) for Wetland Delineation instead of relying on jurisdictional determinations when those requests are not associated with a USACE permit application. The proposed amendments implement that recommendation.	<u>May 9, 2022 Planning Commission recommendation: Approval with the addition of the following language</u> "reviewed and approved by the Charleston County Public Works Department (Stormwater Division)" (vote: 6 to 0).
2.	Sec. 9.2.4, Required Tree Protection	Reduce the tree barricade radii distance requirement from 1.5 feet times the DBH to one foot times the DBH.	<u>May 9, 2022 Planning Commission recommendation: Approval</u> (vote: 6 to 0).
3.	Sec. 9.8.6, Billboards	Clarify that the minimum distance between billboards and other on-premises signs applies only to freestanding signs and not wall signs.	<u>May 9, 2022 Planning Commission recommendation: Approval</u> (vote: 6 to 0).
4.	Sec. 4.24.4, Reductions of OCRM Critical Line Setbacks	Authorize the Zoning and Planning Director to waive or modify existing OCRM Critical Line setbacks and buffers when the alteration results in an overall expansion of the OCRM Critical Line into the existing highland and freshwater wetland areas for the creation of a Mitigation Bank and specific conditions are met.	<u>May 9, 2022 Planning Commission recommendation:</u> <i>Disapproval (vote: 5 to 1; Commissioner Logan Davis dissented).</i>
5.	Sec. 9.2.1, General (Tree Protection and Preservation)	Authorize the Zoning and Planning Director to waive or modify existing OCRM Critical Line setbacks and buffers when the alteration results in an overall expansion of the OCRM Critical Line into the existing highland and freshwater wetland areas for the creation of a Mitigation Bank and specific conditions are met; exempt the removal of trees associated with relocating the OCRM Critical Line for a Mitigation Bank pursuant to the amendments proposed for Sec. 4.24.4.	<u>May 9, 2022 Planning Commission recommendation:</u> <i>Disapproval (vote: 5 to 1; Commissioner Logan Davis dissented).</i>

PROPOSED AMENDMENTS TO THE CHARLESTON COUNTY ZONING AND LAND DEVELOPMENT REGULATIONS ORDINANCE:
June 21, 2022 PUBLIC HEARING

Page 2 of 2

<u>#</u>	<u>Chapter/ Article/ Section</u>	<u>Description</u>	<u>Planning Commission Meeting Date and Recommendation</u>
6.	Chapter 12, Definitions	Add a definition for "Mitigation Bank"	<u>May 9, 2022 Planning Commission recommendation: Approval (vote: 6 to 0).</u>

PUBLIC INPUT

From: [Emily Pigott](#)
To: [Marche L. Miller](#)
Subject: FW: Amendments to the Zoning and Land Development Regulations Ordinance
Date: Tuesday, June 21, 2022 9:15:15 AM

Non-resilience amendment input

Emily Pigott
Planner II
Charleston County Zoning & Planning
epigott@charlestoncounty.org
843-202-7225

From: Joel Evans <JEvans@charlestoncounty.org>
Sent: Sunday, June 19, 2022 7:52 AM
To: Andrea Melocik <AMelocik@CharlestonCounty.org>; Emily Pigott <EPigott@charlestoncounty.org>
Subject: Fwd: Amendments to the Zoning and Land Development Regulations Ordinance

Sent from my iPhone

Begin forwarded message:

From: Brantley Moody <BMoody@charlestoncounty.org>
Date: June 17, 2022 at 2:09:13 PM EDT
To: Joel Evans <JEvans@charlestoncounty.org>
Subject: Fwd: Amendments to the Zoning and Land Development Regulations Ordinance

Brantley Moody
Charleston County Council District 7
843.270.2483

Begin forwarded message:

From: Faith Deaver <faithdeaver0613@gmail.com>
Date: June 17, 2022 at 9:46:49 AM EDT
To: Brantley Moody <BMoody@charlestoncounty.org>
Subject: Amendments to the Zoning and Land Development Regulations Ordinance

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

June 17, 2022

Dear Mr. Moody,

I am writing in reference to the proposed amendment to the Zoning and Land Development Regulations Ordinance. If this amendment is approved, it would erode our rights to get involved in modifications that could harm our wetlands, wildlife habitat, and other natural resources. I am asking that County Council not approve this amendment that would allow county staff the ability to waive or modify marsh setbacks and buffer requirements when creating mitigation banks without getting input from the public. I petition you to deny this request. It is developer driven. We should not allow the mighty dollar and greedy developers be the destruction of our beautiful marshes and maritime forest.

Thank you for your time and attention on this important issue.

Sincerely,

Faith Deaver

From: [Deb Boissonneault](#)
To: [CCPC](#)
Subject: Item D in the upcoming Charleston County Council meeting
Date: Tuesday, June 14, 2022 5:00:05 PM

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

Hello

I recently became aware of a suggestion by the Charleston County Council to eliminate public input regarding creation of mitigation banks & also regarding tree removal plans during project development. Even with public input, the people living near development projects often end up with little control over what happens in their area. For that reason, I hope that the County Council does not eliminate the public comment option.

Deb Boissonneault

738 Old Plantation Rd, Charleston, SC 29412

From: [David Mikell](#)
To: [CCPC](#)
Subject: Mitigation Bank and Marshes
Date: Wednesday, June 15, 2022 1:07:50 PM

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

Please do not approve changes that allow county staff to waive or modify marsh setbacks and buffer requirements without getting input from the public.

Thank you,
David Mikell

Sent from my iPhone

From: [Paxton, Pam](#)
To: [CCPC](#)
Subject: Protest to change in Wetlands Mitigation rules
Date: Tuesday, June 14, 2022 1:52:28 PM

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

To Whom It May Concern,

I will try to attend the hearing on this issue on June 21st at 6:30p; however, in case I am unable to make it there, I want to voice my feelings for this proposed change to regulations. I am a Realtor, with 32 years experience in this market, a whole lot of that time working in the rural areas of Johns Island and Wadmalaw. I am grateful for the forward thinking developers who created large conservation easement tracts that included a limited number of housing opportunities yet allowed for agricultural pursuits; i.e. Selkirk Plantation, Martins Point and Ravens Bluff, for instance. I think that given our wonderful resources that have been so direly threatened in the last decade by Big Box developers slamming houses in neck and neck and shoulder to shoulder, burdening our infrastructure and clear cutting the lots of older trees, we should all as citizens have very transparent and open zoning regulations that allow those of us who live and work in these areas a voice in our natural surroundings.

I do not think the planning and zoning regulations that are currently in place should be reduced in any way whatsoever. If anything they should be strengthened and the public notices made more often and easier to be seen. If not for my involvement with local conservation voices, I would probably have only known about the recent Wadmalaw wetland mitigation issue after the fact via the newspaper articles. And because I have actually visited these pristine estuaries, I know how special they are. Many of the citizens of Charleston County have no idea what the County may make easier to eliminate. Think seven generations ahead, what makes Old Charleston so lovely are our rural close by areas and the quality construction of our existing housing. Do we really want to be covered up by ticky-tacky vinyl-sided cracker boxes with no trees? I quote Joni Mitchell, "They paved paradise, and put up a parking lot..."

I appreciate the opportunity to share my opinion.

--

Pam Dennis-Paxton
AgentOwned Realty Co.
843-509-2350 cell
843-769-5100 office
843-556-9566 fax
www.PamPaxton.REALTOR

[Review me on Zillow](#)

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"E-mails sent or received by this real estate licensee shall not constitute any offer or acceptance of contract terms by this real estate licensee and do not bind my Principal(s) unless my electronic communication includes one or more of the following: (1) the necessary Party(ies) electronic signature (2) electronic reproduction of the Party(ies) "wet ink" signature or (3) the Party(ies) electronic written authorization for this real estate licensee to bind my Principal(s) in contract. Licensee does not have apparent authority to sign for or bind

Principal(s) in contract."



South Carolina Mitigation Association

June 21, 2022

Charleston County Council
Lonnie Hamilton, III Public Services Building
2nd Floor, 4045 Bridge View Drive
North Charleston, SC 29405

Dear Council:

Formed in 2013, the South Carolina Mitigation Association promotes an active and efficient mitigation market that supports ecological function and economic development within our great state. We are a group of industry professionals that includes mitigation bankers, environmental consultants, engineers, and contractors who collaborate with a large group of stakeholders, including regulatory agencies and conservation organizations. Mitigation serves an essential role in the conservation and preservation of land and the continued improvement of our state. The work of our members has improved and protected thousands of acres of wetlands and miles of streams and floodplains in South Carolina.

As a primer, private and public entities site economic development and infrastructure improvement projects to avoid and minimize impacts to streams and wetlands. Environmental impacts are typically unavoidable for many present-day projects. Mitigation includes restoring, enhancing, and preserving streams and wetlands and is required to offset permitted or authorized impacts. The regulatory agencies typically require that the mitigation used to offset the impact results in no net loss of the type of system that is affected and the mitigation be located within the same watershed as the impact. Thus, when a freshwater wetland or salt marsh is filled within Charleston County, the replacement, or mitigation, should occur in the same watershed or general area. Through the restoration and perpetual protection of ecosystems, we maintain the balance between ecosystem function and ecosystem losses.

The United States Army Corps of Engineers and the Environmental Protection Agency regulate the mitigation industry. All mitigation projects, including mitigation banks, must adhere to Federal regulations. Many other state and federal agencies participate on an interagency team that reviews and approves mitigation projects. These agencies include the SCDHEC, SCDNR, NOAA-NMFS, and the USFWS, among others. Mitigation requires stakeholder engagement and interactions, and our members treat each other, the regulated community, government agency personnel, and the public with the utmost professionalism and courtesy. Receiving approval to implement a mitigation project is a lengthy multi-year process that requires a significant financial investment and extensive documentation of the plan and expected outcomes.



South Carolina Mitigation Association

Following approval and project implementation, practitioners monitor these projects to document and ensure the project meets stakeholder expectations and is effective. Mitigation sites are encumbered with site protection instruments to provide perpetual protection of the resources and associated buffer. In exchange for improving and protecting streams and wetlands, bankers earn credits that offset authorized impacts. For banks specifically, these credits are released on a delayed schedule to ensure that improvements to streams and wetlands occur before impacts and the loss of aquatic resources. Creating a mitigation bank requires a significant investment in land, environmental documentation, engineering, construction, and monitoring to generate these credits.

A recent Post & Courier article referenced two project-specific mitigation solutions that differ from present-day mitigation banks. Sandy Island is a mitigation bank operated by the South Carolina Department of Transportation (SCDOT) that protected a unique island resource and offset impacts to several large transportation projects, primarily in Horry County. The SCDOT implemented the Sandy Island project before the publication of federal regulations that govern the industry in 2008. The activities at Sandy Island are limited to preservation, and preservation-only projects are not viable mitigation solutions under current regulations. The other referenced project, Fairlawn Plantation, has played a significant role in bringing economic development projects to the Lowcountry, including Boeing, Mercedes-Benz, and the deepening of Charleston Harbor. However, these projects also had to purchase mitigation credits from approved mitigation banks to compensate for authorized impacts. Regulatory agencies prefer a mix of restoration, enhancement, and preservation activities (and credits) to achieve the goal of the 'no net loss' policy.

Mitigation banks play an essential role in the permitting process and support economic development and transportation projects of all sizes. Mitigation allows agencies to regulate stream and wetland impacts more effectively while supporting our nation's goal of no net loss of wetlands. Viable mitigation solutions – and specifically banks - allow agencies to focus their efforts on minimizing and reducing stream and wetland impacts. Otherwise, these underfunded and understaffed agencies would devote time and resources to regulating hundreds to thousands of individual and small mitigation projects. Mitigation banks play a vital role in protecting and restoring streams and wetlands. As an environmentally focused community, we should appreciate private landowners and companies that are willing to take financial risks to protect and restore streams and wetlands.

The SCMA urges Charleston County Council to adopt the proposed amendments to the Charleston County Zoning and Land Development Ordinance that will allow for projects that have been approved under a federal mitigation program to proceed without the need for a variance. Development of a mitigation bank is much different than development of a neighborhood or an industrial facility, and it is highly likely that in adopting the language, the County did not consider how application of the ordinance could prevent salt marsh from being restored. Since these projects are reviewed annually by federal and state agencies, the County can be assured that the projects will be successful and will help the County with efforts to improve coastal resiliency.

PO Box 1763 | Columbia, SC 29202

Tel: (803) 252-1087 | Fax: (803) 252-0589 | info@scmitigation.org | www.scmitigation.org



South Carolina Mitigation Association

Please contact the SCMA office with any questions or for further information.

Sincerely,

Adrienne Graham
Executive Director
On behalf of the Executive Committee

June 21, 2022

*The Honorable Teddie Pryor
Chairman, Charleston County Council
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405*



4922 O'Hear Avenue, Suite 101
North Charleston, SC 29405
www.charlestonchamber.org
843.577.2510

Dear Chairman Pryor and Members of Council,

The Charleston Metro Chamber is a membership organization, 1,600 members strong, serving as a collective voice to drive solutions for a thriving community. Our Regional Policy Committee has identified transportation and infrastructure as a top priority. Recently, the committee voted to support the Charleston County ZLDR amendments that allow salt marsh projects to proceed without variances.

The availability of tidal credits is essential to enhance the capacity of our multimodal transportation network while promoting a balanced approach to environmental regulation that embraces responsible stewardship without unreasonably burdening business and industry. Salt Marsh Mitigation banks are crucial for infrastructure projects like Main Road, Highway 41, and potentially I-526.

In pursuing our mission to advance a prosperous sustainable business environment, we strive to integrate responsible economic, environmental, and social principles into our regional strategies and decision making. We urge Charleston County Council to adopt the ZLDR amendments that allow salt marsh projects to proceed without variances.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Derreberry", with a long, sweeping underline.

Bryan Derreberry
President and CEO
Charleston Metro Chamber



Driving Solutions for a Thriving Community

Mary D. Shahid
Member
Admitted in SC

June 21, 2022

VIA E-MAIL PUBLIC-COMMENTS@CHARLESTONCOUNTY.ORG

County Council of Charleston County

Re: Public Hearing - ZLDR Resiliency Package

Dear Council Members:

I represent Point Farm MB, Inc., a mitigation bank approved for mitigation credit transactions by the United States Army Corps of Engineers. Point Farm Mitigation Bank is located on Wadmalaw Island, Charleston County, adjacent to the North Edisto River and Leadenwah Creek at Point Farm Road.

The ZLDR Resiliency Package includes the following: “The Zoning and Planning Director shall be authorized to waive or modify the existing OCRM Critical Line Setback and Buffer requirements where there is an alteration that results in an overall expansion of the OCRM Critical Line into existing highland and freshwater wetland areas for the creation of a Mitigation Bank” (Sec. 4.24.4)

The South Carolina Department of Health and Environmental Control (“DHEC”) issued a permit to Point Farm MB, Inc. (“Point Farm”) on March 2, 2022, authorizing tidal restoration activities including berm removal and reconnection of former tidal wetlands with adjacent tidal waters. The permit was challenged by individuals residing on Wadmalaw Island and that challenge was presented to the Board of Health and Environmental Control (“Board”) on May 5, 2022. The Board’s order is attached to this letter.

Importantly, the Board was reviewing only activities that impacted critical area – 37/100th of an acre of excavation impact to critical area which resulted in restoration and enhancement of 27 acres of critical area. Ultimately the Board affirmed the Point Farm permit upon the conclusion that “legitimate public needs ... will be met including the increased public access to these coastal resources and the enhancement and restoration of areas back to their natural tidal saltmarsh systems.” Board Order p. 6.

Austin
Charleston
Charlotte
Columbia
Greensboro
Greenville
Bluffton / Hilton Head
Myrtle Beach
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E MShahid@nexsenpruet.com
Nexsen Pruet, PLLC
Attorneys and Counselors at Law

The Point Farm Mitigation Bank will increase tidal salt marsh habitat beyond the 27 acres referenced by the Board, as the Board was only considering activities occurring in the State's critical areas. The total acreage of marsh restoration is approximately 60 acres.

Charleston County seeks to "prioritize resilience in all County plans, policies, and regulations." Chapter 3.11 Resilience Element. The County's resilience policies include preservation of saltmarsh areas, accomplished through increasing buffer requirements. Recognition of the value of restored and created saltmarsh areas is consistent with the County's resilience policies. Restoration, preservation, and enhancement of 60 additional acres of tidal wetlands is a highly effective resilience strategy.

On behalf of Point Farm, I request Council support for Section 4.24.4 of the Resiliency Package. To the extent that the development of a Mitigation Banks results in restoration of formerly impounded salt marsh areas, such Banks are accomplishing the Council's goals for resiliency.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary D. Shahid". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary D. Shahid

Enclosure



Board:

Robert Bolchoz, Chairman
Seema Shrivastava-Patel, Vice-Chair
Charles M. Joye, II, P.E., Secretary
Jim P. Creel, Jr.

J.B. (Sonny) Kinney
Richard V. Lee, Jr.
Morris E. Brown, III, MD, FAAFP
Robert R. Morgan, Jr., MD, MBA

May 27, 2022

Via Electronic Mail and US Mail Certified 70211970000081182595

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Via Electronic Mail Delivery

Sallie Phelan, Esquire
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SCHEC – Office of General Counsel
1362 McMillan Avenue, Suite 400
Charleston, SC 29405

RE: Docket No. 22-RFR-11, Tom Rowland, Point Farm MB, Inc.

Issuance of a critical area permit and coastal zone consistency certification for impacting tidelands critical areas on and adjacent to the North Edisto River and Leadenwah Creek at Point Farm Road, Wadmalaw Island, Charleston County. Permit No. OCRM03332

Counsel of Record:

Please find enclosed the Final Agency Decision in the above referenced matter.

Very truly yours,

M. Denise Crawford
Clerk of the Board

SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

Docket No. 22-RFR-11, Tom Roland, Point Farm MB, LLC

This matter comes before the South Carolina Board of Health and Environmental Control (“Board”) for final review pursuant to S.C. Code Ann. § 44-1-60. The matter under review is governed by the South Carolina Coastal Tidelands and Wetland Act, also known as the South Carolina Coastal Zone Management Act, S.C. Code Ann. § 48-39-10, et seq. and related regulations.

BACKGROUND

On June 8, 2021, the South Carolina Department of Health and Environmental Control (“Department”) received a permit application from Ross Nelson with the American Mitigation Company as registered agent for Tom Rowland, Point Farm MB, LLC (“Applicant”) to excavate tidelands critical area to restore and enhance critical area.

On July 7, 2021, the Department placed the permit on a 30-day public notice. The Department held both a virtual hearing and an in-person hearing on September 28, 2021, and

November 8, 2021, respectively. From November 8, 2021, to March 2, 2022, the Department conducted a thorough review and assessment of the impacts of restoring and enhancing these impoundments to tidal salt marsh. On March 2, 2022, the Department issued a critical area permit with special conditions to the Applicant. The permit authorized impacting tidelands critical areas to perform the activities necessary to enhance and restore former tidal salt marshes. Specifically, the *enhancement activities* consist of removing a berm and constructing a tidal channel to connect to the existing tidal streambed restoring a 17.36-acre jurisdictional saltwater pond to tidal salt marsh for 0.14 acres of critical area impacts. The *restoration activities* consist of removing a berm and constructing a tidal channel to restore 10.14 acres of a jurisdictional freshwater and brackish water impoundment to tidal salt marsh for 0.23 acres of critical area impacts. The total critical area impact resulting from this activity is 0.37 acres of excavation impact and a total of 27 acres of tidelands critical area will be restored and enhanced. On March 17, 2022, the Department received a timely request for final review of staff's decision from Wadmalaw Island Planning Committee, the South Carolina Coastal Conservation League and John and Marilyn Hill (collectively, "Requestors").

The Board conducted a final review conference on May 5, 2022. Requestors argued that the staff's review was inadequate and did not consider the science available to evaluate the freshwater and brackish systems that will be eliminated. Requestors further argued that the staff's decision was not consistent with the applicable statutes and regulations. Requestors asked the Board to remand the matter to staff to investigate biological values of the system and to evaluate marsh ownership and public access issues.

DISCUSSION

During the conference, Department staff presented information demonstrating that a meaningful review of the proposed activities' impacts was conducted. The Department reviewed and assessed the evaluation and feedback of federal and state agencies, reviewed site and aerial imagery, and assessed public comments. The Department also reviewed the materials and public comments submitted during the federal mitigation bank approval process pertaining to the enhancement and restoration of the areas in question for this permit.¹ The Department visited and assessed the site on at least two occasions.

Requestors argued that the Department was in error to consider these man-made systems degraded and their protection of lesser importance than enhancing and restoring the tidal salt marshes. However, the Department staff's determination is consistent with the provisions of the Coastal Zone Management Act. As set forth in S.C. Code Ann. § 48-39-20(F) the General Assembly found that there was an urgent need "to protect and to give high priority to natural systems . . ." There is no dispute that these areas have been manipulated and impacted by man. The proposed activities will enhance and restore these areas to the natural systems. It is well documented the tidelands critical area contains highly productive components of the marine food web. Many commercially and recreationally important fish and shellfish species depend on the tideland critical areas for all or part of their life cycle. In addition, many birds and other forms of wildlife utilize the tidelands critical area as habitat. Tidelands critical area serve, not only as

¹ The proposed enhancement and restoration activities to the man-made impoundments that are at issue for this Critical Area Permit were initially proposed and assessed as part of a mitigation bank approval process. The mitigation bank was permitted by the United States Army Corps of Engineers after an approximately three-year period including a year and a half of assessing potential impacts and addressing public comments.

important storm buffers, but also perform valuable functions such as acting as a filter by trapping sediments which help maintain water clarity. In S.C. Code Ann. § 48-39-30, the General Assembly declared state policies to be implemented by the Department to include protection and, where possible, restoration or enhancement of the State's coastal zone's resources for this and succeeding generations. The proposed project is consistent with this policy of enhancing and restoring these natural salt marsh systems.

Pursuant to S.C. Code Ann. § 48-39-150(6) and S.C. Code Regs. Ann. R.30-11(6), the Department is to consider the extent to which the development could affect the habitats for rare and endangered species of wildlife. Requestors raised the issue of potentially harmful impacts to endangered species, particularly to the wood stork. The Department relies on the United States Fish and Wildlife Service ("USFWS") and South Carolina Department of Natural Resources ("SCDNR") to comment on the potential impact of a proposed activity on any threatened or endangered species as this is the area of these agencies' expertise. The Department did not receive any comments or concerns related to potentially harmful impacts to wildlife from either the USFWS or SCDNR regarding this application. The USFWS and SCDNR also did not object to the final approval of the banking instrument for the mitigation bank which also included these activities. While the final banking instrument for the mitigation bank indicates that the wood storks which are listed as threatened have been observed within the brackish ponds on-site, this species is also known to utilize the salt marsh wetlands for foraging habitat according to the SCDNR.

Pursuant to S.C. Code Ann. § 48-39-150(5) and S.C. Regs. Ann. R.30-11(5), the staff is to consider "the extent to which the development could affect existing public access to tidal and

submerged lands, navigable waters and beaches or other recreational coastal resources.” Requestors disputed the staff’s assessment that this project would increase public access citing to the Mitigation Credit Purchase Agreement entered into by the County of Charleston, South Carolina and Point Farm MB LLC and American Mitigation Company, LLC. However, the provision cited to by the Requestors sets forth that public access shall be provided to Charleston County public schools, South Carolina public research universities, and other public research and/or education institutions for educational and/or research purposes.² Public access also will be increased in that the removal of the berms will allow the public access by water to these reestablished salt marshes which are presently completely closed off to the public.

Pursuant to S.C. Code Ann. § 48-39-150(3) and (5) and S.C. Regs. Ann. R.30-11(3) and (5), the staff is to consider the extent to which the proposed activities will affect water and oxygen supply. By removing the berms and reconnecting these areas to the tidal influences, oxygenation and water quality will be improved in these areas.

In the conference, Requestors stated they were concerned the proposed dredging would lead to the release of potentially contaminated sediments. Requestors conceded this issue was not previously raised, and Department staff confirmed no other agency or member of the public had

² The provision cited to by the Requestors provides:

Public Access to the Bank. Seller and Purchaser shall develop educational and/or research programs associated with water quality, tidal wetlands, aquatic and animal species, wetland vegetation, air quality and other environmental attributes of the Bank. Seller will provide public access to the inventory of the Bank’s lands to the Charleston County public schools, South Carolina public research universities, and other public research and/or education institutions for educational and/or research purposes on a reservation basis and with prior written approval from Seller. Such public access will be subject to respectful land use guidelines which may be developed by Seller. The Parties agree that the purpose of such public access is to further educational and research goals which benefit the public.

raised this concern during the public notice and comment review period. In response at the conference, Applicant offered to perform sediment testing to address this concern.

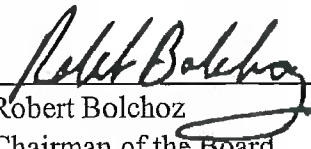
Having reviewed the record before the Board and heard from the parties in this matter, the Board concludes that the staff has conducted a meaningful review of the impacts of the critical area alteration. The Board further concludes public access will be improved to this critical area as a result of the restoration and enhancement activities including the removal of the berms.³ The Board further concludes that the staff's permitting decision is consistent with the Coastal Zone Management Act including S.C. Code Ann. Sections 48-39-20, 48-39-30 and 48-39-150 and S.C. Code Ann. Regs. R.30-11(B) & (C). The staff's permitting decision is also consistent with the specific standards for dredging and filling set forth in S.C. Code Ann. Regs. R.30-12(G) in that the minimal dredging activities and impacts to the system are justified in light of the legitimate public needs that will be met including the increased public access to these coastal resources and the enhancement and restoration of these areas back to their natural tidal saltmarsh systems.

CONCLUSION

After reviewing the written materials submitted to the Board and considering all arguments and evidence presented at the conference, the Board finds the staff's permitting decision consistent with applicable law and upholds the decision with the addition of a special condition requiring Applicant to submit a sediment sampling plan for Department approval, and if standards identified in the plan, as approved by the Department staff, are exceeded, the

³During the conference, discussion was held related to the Mitigation Bank and ownership of the marsh. While informative, these issues are not relevant to this decision.

Applicant shall implement appropriate BMPs (Best Management Practices) and take steps to mitigate related risks.


Robert Bolchoz
Chairman of the Board
South Carolina Department of Health and
Environmental Control

May 23, 2022

Notice of Right to Request Contested Case Hearing Before Administrative Law Court

S.C. Code Ann. § 44-1-60(F)(2) provides that within thirty days after the receipt of the Board's written final agency decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court (ALC), in accordance with the Administrative Procedures Act. A request for a contested case hearing before the ALC must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton, St. Suite 224
Columbia, SC 29201

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scalc.net>. If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for contested case hearing must be delivered or mailed to DHEC at the following address:

M. Denise Crawford
Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.



June 21, 2022

Charleston County Council
Lonnie Hamilton, III Public Services Building
2nd Floor, 4045 Bridge View Drive
North Charleston, SC 29405

Re: Proposed ZLDR Amendments
Point Farm Mitigation Bank
American Mitigation Company
Wadmalaw Island, Charleston County, South Carolina

Dear Council:

From the onset of this project, we have endeavored to create a unique salt marsh restoration project that is consistent with the conservation goals of the Wadmalaw Island community. We are proud to have created a project that will result in the restoration of impaired salt marsh and the perpetual protection of a significant acreage of developable lands adjacent to Leadenwah Creek and the North Edisto River. The conservation easement for the Bank has been recorded, and the uplands adjacent to the proposed marsh restoration areas are now protected from future development.

Many statements have been made regarding our project that are factually incorrect. These statements have been made in public hearings, through public comments, and have been published in the following locations.

- March 17, 2022 press release by the South Carolina Environmental Law Project ([SCELP Press Release](#))
- Articles and OpEd pieces in the Post & Courier – March 23, March 31, April 2, April 5, April 8, April 14, and May 6.
- February 2022 Wadmalaw Island Land Planning Committee Newsletter ([WILPC Newsletter](#))
- Request for Board Review (RFR) dated March 17, 2022
- SC House of Representatives Joint Resolution – Whetmore, Finlay, Cogswell, and Murray

Specifically, the following comments have been made that are not factually correct.

1. The areas being proposed for conversion to salt marsh have been called a high-quality freshwater wetland, a fully functional freshwater impoundment, and/or a formerly functioning rice impoundment.
2. The project will lead to alterations of public trust lands (salt marsh).
3. The project will impact threatened species.
4. An inadequate upland buffer limited to 50' along the marsh is being implemented.
5. The project will threaten public access.
6. It is a bad deal for the County.
7. The project utilizes public lands for a private gain.
8. The quality of sediments within the impoundments is concerning.

A brief response to these issues is provided below.

1. **Conversion of Freshwater Habitat:** There are 2 impoundments within the mitigation bank that will be restored to salt marsh. These impoundments were built by a previous landowner between the 1950s and early 1970s. Neither impoundment is a former rice impoundment. The impoundment on the southwestern side of the property has been managed as a saltwater impoundment, and therefore will not result in the conversion from freshwater to saltwater. The impoundment on the northeast side of the property has previously been a freshwater impoundment. However, salt water intruded into the impoundment during the storm surge from Hurricane Irma in 2017 and King tides. The salinity in the impoundment has increased, and a thin layer of freshwater now floats over a layer of salt water due to poor mixing. Salinity readings in this impoundment have ranged from 5 to 25 parts per thousand (ppt) since water quality monitoring began in 2019. For reference, brackish water is typically between 0.5 and 30 ppt. Seawater is normally greater than 30 ppt. The impoundment would have to be completely drained and refilled with freshwater to become a freshwater impoundment again. Additionally, due to rising sea levels, the berms and water control structures would have to be rebuilt to keep saltwater out of the impoundment. Water quality data collected from the impoundments is included in the approved Mitigation Banking Instrument which can be obtained from the United States Army Corps of Engineers. Nearly 100 acres of freshwater wetlands will remain unaltered on the property. Additionally, the owner intends to construct upland waterfowl impoundments on the property.
2. **Public Trust (Marsh) Lands:** This project does not involve alterations of any salt marsh that is outside of the existing impoundments. We have not received any mitigation credits for approximately 1,000 acres of salt marsh that were deeded with the property. Credits are only being generated in areas where salt marsh is being restored to its original condition, (within the impoundments/agriculture fields) and along marsh immediately adjacent to the 147 acres of uplands that are being placed into a restrictive conservation easement. The marsh adjacent to the uplands will not be altered but will remain protected. The conservation easement restricts this land from being subdivided and prevents docks, homes, impervious surfaces, and activity which might result in pollution from stormwater run-off.

For the permitted restoration work, the owner of the uplands adjacent to the marsh is the only entity that could apply for and receive permits (i.e., a license from the State) to restore the critical area unless the State used their power of eminent domain. Thus, no other applicant could initiate the restoration of the marsh, especially within the existing impoundments and adjacent agricultural fields, without the owner's consent. This is similar to permits issued for docks, marinas, or other structures over marshlands and tidal waters. The owner does not have to prove ownership of the marsh to build these structures. However, they do have to have control over the adjacent uplands in most circumstances.

3. **Protected Species:** Potential impacts to threatened and endangered species were reviewed by state and federal agencies during the permitting process for the bank. The United States Fish and Wildlife Service, the National Marine Fisheries Service, the South Carolina Department of Natural Resources, and the United States Army Corps of Engineers



determined that the project would not negatively affect any protected species.

4. Upland Buffers: Over 147 acres of developable uplands immediately adjacent to tidal salt marsh have been placed in a very restrictive conservation easement that does not allow for the lands to be subdivided. The average width of the buffer is 150'. Some areas are greater than 300'. Over 200 grand trees will be protected and nearly 14,000 new trees will be planted within the buffer. The average buffer width is nearly 4 times greater than required under Charleston County's Zoning and Land Development Regulations.
5. Public Access: Public access to the marsh through the creeks and rivers that surround the property will be enhanced, not restricted through this project. Removal of the impoundments creates additional marsh that may be subject to the Public Trust Doctrine. Further, an educational program is being developed with Charleston County that will allow students in the area to learn about the importance of salt marsh protection and restoration. Access restrictions noted in the contract to purchase the mitigation credits with Charleston County are specifically related to the educational component of the project and only apply to the uplands and remaining freshwater wetlands on the property.
6. Bad Deal for the County: It has been argued that the Bank is a bad deal for the county due to the price of credits. Mitigation credit prices are determined through a variety of factors including: supply and demand, cost of land, cost of permitting and design, and cost of construction. Banks typically take over 3 years to obtain approval. Once they are approved, the lands are encumbered with a conservation easement specific to mitigation projects that is much more restrictive than typical conservation easement. The site is constructed, and the area is monitored for 5-7 years. Credits are released over a 6-8 year period as the project sponsor demonstrates that they have met certain milestones and performance standards. For this project, all development potential for nearly 150 acres of uplands adjacent to the salt marsh has been completely removed through the conservation easement. In Charleston County, 3 acre lots are allowed in lands zoned AG-15 if they are within 1000' of the critical line. Thus, the potential to develop nearly 50 3-acre marsh front homesites, including some lots with docks, has been removed. Additionally, over \$3 million is being invested by the owners of the bank for permitting, design, construction, and monitoring. This money has been set aside into a separate account to ensure that it is only used for the mitigation bank. The price of the credits reflects these values.

Credits from other salt marsh mitigation banks have recently sold for \$60,000 to \$80,000 per credit. The County has received a substantial discount in exchange for reserving the credits that they may need for future infrastructure projects. Moreover, the County can release credits that they will not need so that they can be used by other entities. The County would then be reimbursed and can generate income for credits that are sold to and used by other entities. This is truly a cost savings for the taxpayer and win for Charleston County.

7. Public Marsh for Private Gain: See attached letter dated to 4/19/22.
8. Sediment Quality in Impoundments: Most recently, the opponents to the project have suggested that contaminants may be present in the ponds. This has never been a concern for any of the government agencies involved in the review, permitting, and approval of the



mitigation bank. It was not mentioned by the opponents until the DHEC Board review of the permit on 5/4/22. It was clearly an attempt to influence and sway the board that the review by agency staff was inadequate. We have agreed to perform the testing as a good faith gesture to the opponents. If contaminants are identified, the appropriate Best Management Practices (BMPs) will be implemented to minimize any potential impact on the adjacent marsh and waterways. A copy of the DHEC Board's response to the Request for Review is also attached for reference.

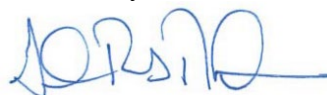
Based upon information available from the Coastal Conservation League's website (<https://www.coastalconservationleague.org/projects/salt-marsh/>), we do not understand the group's position regarding the restoration and protection of saltmarsh as it relates to Point Farm Mitigation Bank. We have permitted a project that specifically allows for marsh migration to occur into low lying areas adjacent to existing marsh. We are also restoring marsh that was altered by a previous property owner. Most private property owners try to prevent the conversion of their lands to salt marsh. Very few private property owners willingly allow this to occur on their property. In this instance, we have a landowner that has agreed to the restoration plan and completely removed the development potential of these lands. This should be an activity that is encouraged in order to protect sensitive coastal environments.

This project has received broad support from state and federal agencies that have reviewed the data and the plans for the project. We worked with the agencies to document the condition of the impoundments and to develop a scientifically sound restoration plan that does not impact protected species. The project is consistent with all applicable state and federal regulations. When we construct the project, we will continue to monitor the site for 5 years to ensure that the marsh is functioning properly. In fact, we will not receive all of the approved mitigation credits until we document that the site is fully functioning.

To go through this lengthy of a regulatory review process only to be denied a variance by a board that has very little understanding of the technicalities of how a mitigation bank operates and what it is designed to do is a travesty. County Council should support these changes so that Point Farm, and other proposed mitigation bank projects, are not subject to the same arbitrary process. Doing so is the best way to ensure that the County, and many other local municipalities, will have access to the tidal salt marsh credits needed to offset many different infrastructure projects slated throughout the growing Charleston region.

Proposed comments to be made by Ross Nelson during the Charleston County Council Public Hearing on June 21, 2022, are also attached. Please do not hesitate to contact me with questions. I can be reached at rnelson@amitco.org or 843-999-2661.

Yours truly,



Ross Nelson
American Mitigation Company





April 19, 2022

Submitted via email

Denise Crawford, Clerk
Board of Health and Env. Control
2600 Bull Street
Columbia, SC 29201

Re: Point Farm MB, LLC
22 RFR-11

Dear Madam Clerk:

Point Farm's attorney, Mary D. Shahid, asked me to respond to certain comments provided by House Members Spencer Wetmore and Shardale Murray, to the individual members of the Board of Health and Environmental Control. I am President of American Mitigation Company and have essentially performed all tasks essential to setting up the mitigation bank, obtaining approvals, and operating the bank.

House Members Wetmore and Murray ask the Board to overturn the critical area permit due to disturbance of State-owned marsh and tidal areas for private monetary gain. Both House Members reference the owners attempt to quiet the title to the marsh. House Member Wetmore also references a contract between Charleston County and Point Farm MB, LLC, regarding the purchase of mitigation credits produced by the approved mitigation bank and claims that the owner of the highlands is attempting to limit public access to the marsh.

Simply put, these arguments have no basis in fact.

The owner attempted to quiet the title based upon the belief that the Lord Proprietors Grant issued in 1700 to Joseph Morton conveyed the uplands and tidal salt marsh. The process to quiet the title was undertaken because (1) the deed and plats for the property referenced ownership to the marsh and (2) the owner thought quieting the title was required to operate the mitigation bank (see DHEC-OCRM comments provided by House Member Wetmore). The Charleston County Master-in-Equity ruled in favor of the State of South Carolina. The owner is no longer disputing this matter. Following additional review of state and Federal law, it was determined that quieting the title was not necessary for approval of the bank, implementation of the proposed activities, and placement of an easement on the property. For reference to Federal regulations, refer to the Preamble to the 2008 Federal Mitigation Rule (33 CFR Part 332 - pg. 19646 of 73 FR 19593). Moreover, the State of S. C. Conservation Easement Act specifically references the ability for a private party to place an easement on waters and other sensitive areas, although it is well known that these areas are held in the public trust for the citizens of the State. Apparently, control of the surrounding high ground is sufficient for preservation of these areas.

House Member Murray noted that the owner claimed ownership of the marsh by signing the Affidavit of Ownership or Control. This is a misrepresentation of the intention of this form. As

indicated above, the owner is no longer pursuing quieting of the title and is not disputing any claim of ownership to the marsh. No other party has an ownership interest that is contrary to that of the applicant. The applicant sought and received a permit (e.g. – a license) from the state that allows for removal of the berms to allow for restoration of public trust salt marsh. This request does not require the owner to quiet the title. Moreover, DHEC staff will confirm that the Affidavit supporting the permit application is to confirm title to the adjacent upland. Staff is well aware that it is issuing a license to utilize public trust tidelands when it issues a critical area permit.

The contract with Charleston County referenced by House Member Wetmore will allow the County to offset impacts to salt marsh for important infrastructure projects, including Main Rd./Highway 17 Improvements, Highway 41 improvements, and bike/pedestrian bridges over the Ashley River. The access agreement included in the contract is specific to access to the highlands that will remain on the property. The owner continues to use this land for agriculture, silviculture, and recreation. The owner desires intends to control access to highlands that remain on the property to ensure the safety of all visitors when entering the property.

As stated in many venues, this project will result in restoration of public trust marshlands and will increase accessibility to marsh that is currently located in private impoundments. Most importantly, it is not the intent of the owner to prevent public access to the marsh. Thus, these comments are not relevant. Impacts to 1/3 of an acre of critical area result in the creation and restoration of 60 additional acres of public trust marshlands.

Attempts by the House Members to limit use of marshlands for private monetary profit is extremely short sighted. Application of this standard would prevent the state from issuing a permit for docks, marinas, aquaculture facilities, and numerous other private endeavors that must cross state owned tidal marshlands. Almost every Critical Area Permit issued to a private party that allows for construction over marshlands results in a private gain to that entity, whether it be from increased property values for construction of a dock or regular revenues for construction of a marina.

The Initial Staff Response to Request for Review received by the Board on April 5, 2022, provides an outstanding response to issues raised by the Requestors. We request that the Board deny the Request for Review so that this important salt marsh restoration project that increases access to the marsh by the public, restores lost public trust lands, and provides mitigation for critical infrastructure projects throughout the Lowcountry can proceed.

Yours truly,



Ross Nelson
American Mitigation Company





Public Comments by Ross Nelson of American Mitigation Company. To be presented to Charleston County Council on June 21, 2022, during the public hearing for the proposed changes to the Zoning and Land Development Ordinance.

Council Members, thank you for the opportunity to speak in support of this amendment to Zoning and Land Development Ordinance. Earlier today, we submitted additional information about this project that specifically refutes much of the information that has been discussed about the Point Farm Mitigation Bank in various public settings. In the interest of time, I will not discuss the specifics of the responses that we provided. I do ask that you review and consider this information so that you can make an informed decision about the necessity of the proposed changes to ZLDR.

Mitigation banking is not a land development project – it is the exact opposite – it takes the land back to its original condition and removes impacts that have occurred to these important resources. The permitting process for a mitigation bank takes over 3 years to complete. There are numerous Federal and state agencies that are part of the process that review and comment on every project, including the United States Army Corps of Engineer, EPA, SCDHEC, OCRM, SCDNR, NOAA-NMFS, and the FWS. The process is subject to Federal and state rules and regulations and includes a review of wetlands, water quality, cultural resources, threatened and endangered species, and many other issues. A permit is not issued by the Corps or by the state for a Bank unless they are certain that the project will have a positive environmental outcome. In no instance could anyone foresee that a zoning variance would be required for a project approved under a federal program that is designed to ensure that wetlands are restored. A program that also requires years of monitoring after construction is complete to ensure that the restoration work was effective.

In almost all circumstances, it will be impossible to restore tidal salt marsh without being allowed to perform work in the critical line setback and buffer areas prescribed in the Zoning and Land Development Ordinance, an ordinance that was designed to regulate development, not wetland restoration. Thus, the requirement of a variance to restore a tidal salt marsh puts critical infrastructure projects throughout the region in jeopardy, especially if the County desires for the restoration to occur within the County.

In doing so, this limits the ability of the County to provide the very thing being promoted by this ordinance and by our project, coastal resiliency. In the face of sea level rise, we have 2 ponds that cannot be properly maintained without significant modifications – modifications that would also require federal and state permits and a variance for work within the County's critical line buffer and set back. We would need to raise dikes and replace water control structures that were constructed through the marsh by a previous owner to impound tidal salt marsh. Neither of these ponds are functioning as intended. Instead of maintaining these private recreational areas, the owner elected to restore the natural form and function of the ponds to the benefit of the public. They even elected to allow tidal flows to begin to enter low lying agricultural fields that are also experiencing regular tidal inundation on flood tides. Further, nearly 150 acres of prime marsh front real estate have been placed into a very restrictive conservation easement that will not allow for any type of subdivision or structures in this very valuable portion of the property. Most of these areas are uplands that are situated up to 5 feet or more above mean high tide. In doing so, the areas currently protected through the mitigation bank and the conservation easement are a model for coastal resiliency efforts.

Of even more importance, this project has received broad support from the state and federal agencies that are part of the review and approval process. The issues pointed out by opponents have ALREADY been reviewed and addressed by these agencies. In fact, the APPROVED restoration plan is based upon recommendations provided by the National Marine Fisheries Service.

Opponents have argued that the owners should place the rest of the property into a conservation easement – an outcome that may very well occur. However, this requirement is NOT part of the Federal approval process for mitigation banks. Thus, it should have no bearing on the decision by Council. Moreover, County Council should consider that, while development is an option for the owners, to date they have made no attempts to develop the site. In fact, they have continued to use the property as a recreational tract. It is a property that they love and one that they would like to continue to enjoy. And, as evidenced by the land ALREADY PLACED into the easement, they have removed the most valuable developable portions of this property from ever being developed.

To go through this lengthy of a regulatory review and process only to be denied by a board that has very little understanding of the technicalities of how a mitigation bank operates and what it is designed to do is a travesty. County Council should support these changes so that Point Farm, and other proposed mitigation bank projects, are not subject to the same arbitrary process. Doing so is the best way to ensure that the County, and many other local municipalities, will have access to the tidal salt marsh credits needed to offset many different infrastructure projects slated throughout the growing Charleston region. Do not let the personal feelings of a vocal minority continue to hamper the ability of important mitigation and infrastructure projects to proceed.

Thank you for your time.





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843.514.7354

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Tree Protection Research

Below is a breakdown of required tree protection ordinances in surrounding municipalities.

Municipalities that determine tree protection based on the dripline:

Hollywood
Berkeley County
Colleton County
Georgetown County

Town of James Island and Town of Meggett mirrors Charleston County's "old" ordinance which was undefined for the radius or diameter. But in my experience both municipalities have thus far interpreted the code to be 1.5' Diameter per 1" DBH

Isle of Palms: 6" per 1" of DBH, not specific to radius or diameter.

City of Charleston: 1' Radius per 1" DHB for anything over 24".

Town of Mount Pleasant: 6" Radius per 1" DBH.

Charleston County: 1.5' Radius per 1" DBH.

New Interpretation:

To put this mathematically, a 30" live oak now must have 45' protective barrier around it, measured from the base of the trunk. ($30 \times 1.5 = 45'$ Radius)

Old Interpretation:

A 30" live oak used to require a 22'-6" protective barrier around it, measured from the base of the trunk. ($30 \times 1.5 = 45'$ Diameter)

Exhibit A:

This survey is in Charleston County, I'm using this simply to illustrate a comparison. The tree protection zones shown on this survey are drawn using the "old" interpretation.

Exhibit B:

This is the same survey with protection zones shown using the "new or current" interpretation.

Exhibit C:

Again, the same survey with protection zones showing staffs recommended 1' radius per 1" DBH.

To further break the ordinance down in regards to Exhibit B, this would require a tree barricade to be installed around the tree with only a 25% relief encroachment. Not only does a house have to be built on this lot, but a driveway has to be installed, a lay down area for materials, places for parking for all the subs that have to build the house, a dumpster and room for large vehicles, dump trucks, concrete trucks, cranes, rollbacks, etc...

In my experience Charleston County's zoning staff has always been very helpful with problematic lots and they're willing to meet on-site when needed, but enforcing such a strict ordinance will certainly put not only an unnecessary strain on residents but also on the zoning staff as they will surely have to put more boots on the ground to walk these lots.

As a residential design firm that designs 150 projects on average annually in the various municipalities in and around Charleston County, I can speak from experience that being held to a standard of 1.5' Radius per 1" DBH will cause an increase in hardships for the residents of Charleston County and may unreasonably restrict the utilization of some properties. I am in full support of Staff's recommendation of a 1:1 radius to DBH tree protection zone and the abandonment of the current interpretation and hereby humbly ask that this change be adopted. Thank you for your time and consideration.

Sincerely,

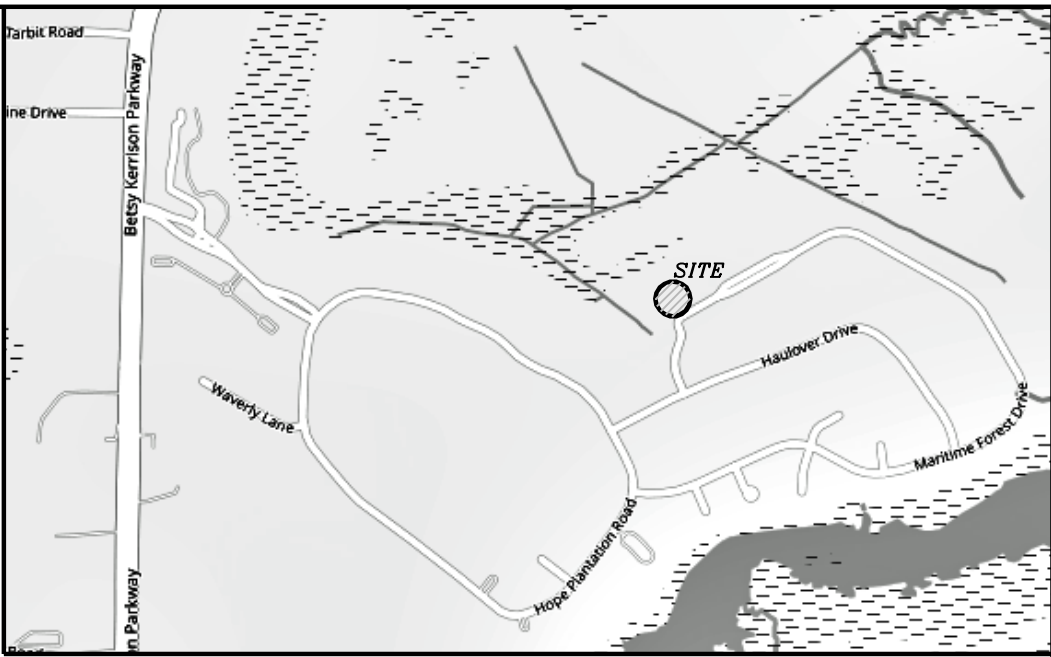
Jodi Crosby

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1923 MAYBANK HWY. - CHARLESTON, S.C. 29412
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E-mail - robertfranklandsurveying@comcast.net
WEB ADDRESS: www.robertfranksurveying.com

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	35.00'	27.47'	26.77'	S 82°46'50" W	44°58'12"
C2	50.00'	32.06'	31.51'	S 86°48'58" W	36°43'58"

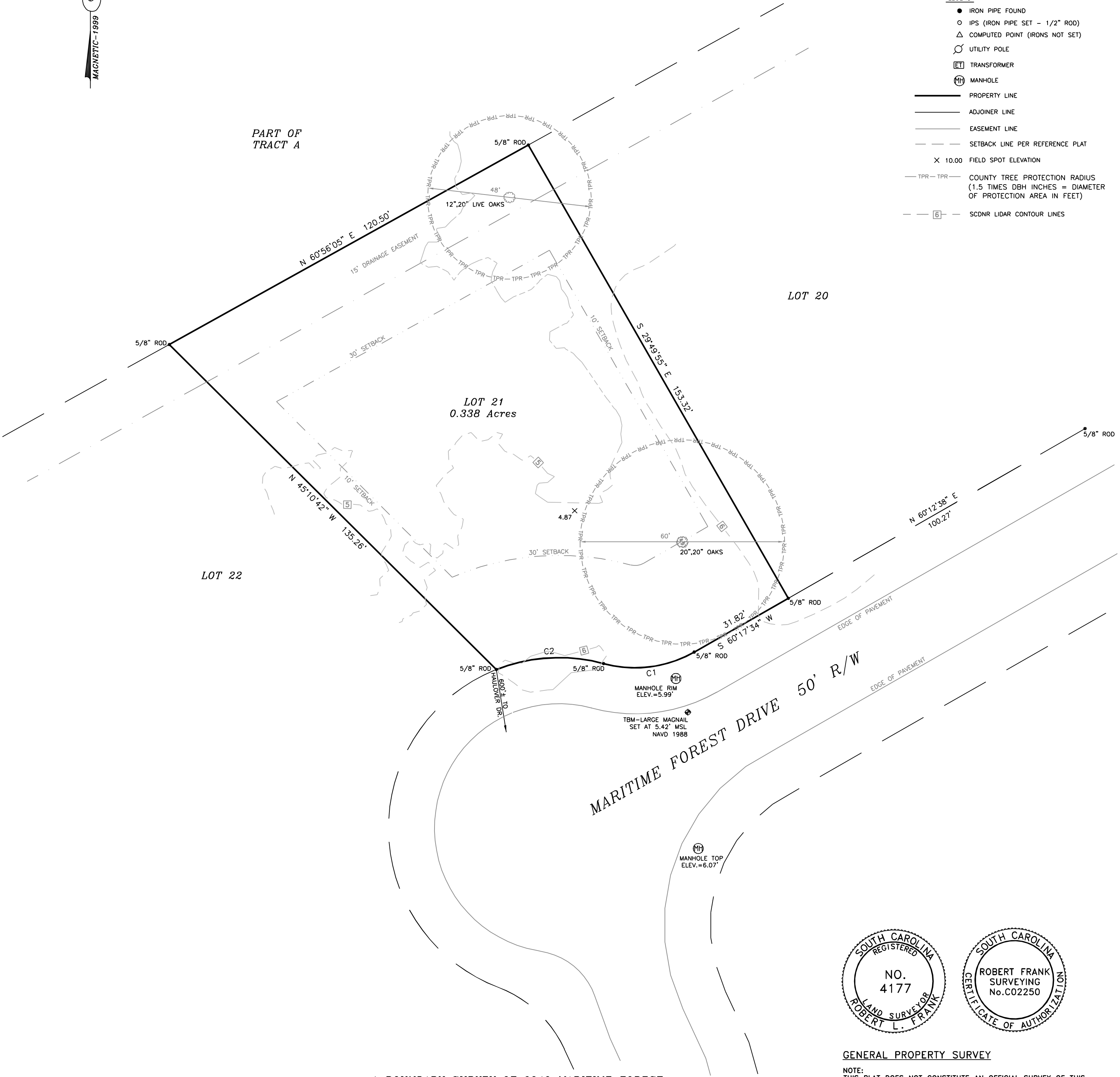


Exhibit A
1.5' diameter per 1" DBH
"Old"



LOCATION SKETCH (N.T.S.)

- LEGEND
- IRON PIPE FOUND
 - IPS (IRON PIPE SET - 1/2" ROD)
 - △ COMPUTED POINT (IRONS NOT SET)
 - UTILITY POLE
 - ET TRANSFORMER
 - MH MANHOLE
 - PROPERTY LINE
 - ADJOINER LINE
 - EASEMENT LINE
 - - - SETBACK LINE PER REFERENCE PLAT
 - X 10.00 FIELD SPOT ELEVATION
 - TPR - TPR COUNTY TREE PROTECTION RADIUS (1.5 TIMES DBH INCHES = DIAMETER OF PROTECTION AREA IN FEET)
 - [6] SCDNR LIDAR CONTOUR LINES



A BOUNDARY SURVEY OF 2842 MARITIME FOREST DRIVE, LOT 21G PHASE VI OF THE KIAWAH RIVER ESTATES S/D, LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA

NOTES: 1. TMS #203-12-00-131
2. IRON PIPES FOUND AT ALL CORNERS UNLESS OTHERWISE SHOWN.
3. PLAT REFERENCE: BOOK EG PAGE 654.
4. LOCATED IN FLOOD HAZARD ZONE AE MINIMUM ELEVATION 11' PER FIRM COMMUNITY-PANEL #455413 0785-K, PANEL INDEX DATED 01/29/21, MAP REVISED 01/29/21. (MAP #45019C0785K).
5. NOW OWNED BY: LYDIA AND THOMAS WANER.



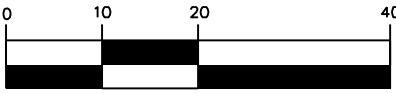
GENERAL PROPERTY SURVEY

NOTE: THIS PLAT DOES NOT CONSTITUTE AN OFFICIAL SURVEY OF THIS PROPERTY UNLESS STAMPED WITH THE EMBOSSED SEAL OF THE SURVEYOR. THIS PLAT DOES NOT CONSTITUTE A TITLE SEARCH OF THIS PROPERTY AND IS BASED SOLELY ON THE REFERENCES LISTED. AREA IS DETERMINED BY COORDINATE METHOD. THIS PROPERTY MAY CONTAIN WETLANDS NOT DELINEATED HEREON UNLESS SPECIFICALLY STATED ON THE SURVEY. DECLARATION IS MADE TO THOSE PERSONS FOR WHICH THIS PLAT IS PREPARED AND IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS. THIS DRAWING/PLAT IS AN INSTRUMENT OF SERVICE AND IS THE SOLE PROPERTY OF ROBERT FRANK LAND SURVEYING. IT SHALL NOT BE REPRODUCED OR USED IN ANY WAY, WHATSOEVER, WITHOUT THE WRITTEN PERMISSION OF ROBERT L. FRANK, PLS, SC REG. NO. 4177. COPYRIGHT © 2022, ROBERT L. FRANK

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

ROBERT L. FRANK PLS NO. 4177

MARCH 6, 2022
GRAPHIC SCALE



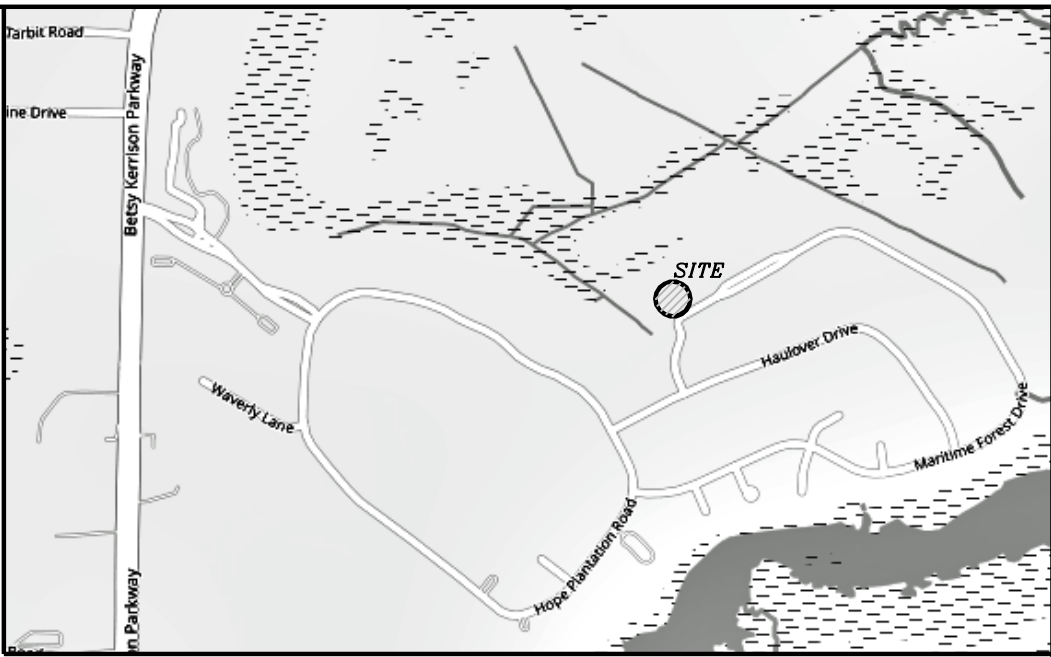
(IN FEET)
1 inch = 20 ft.

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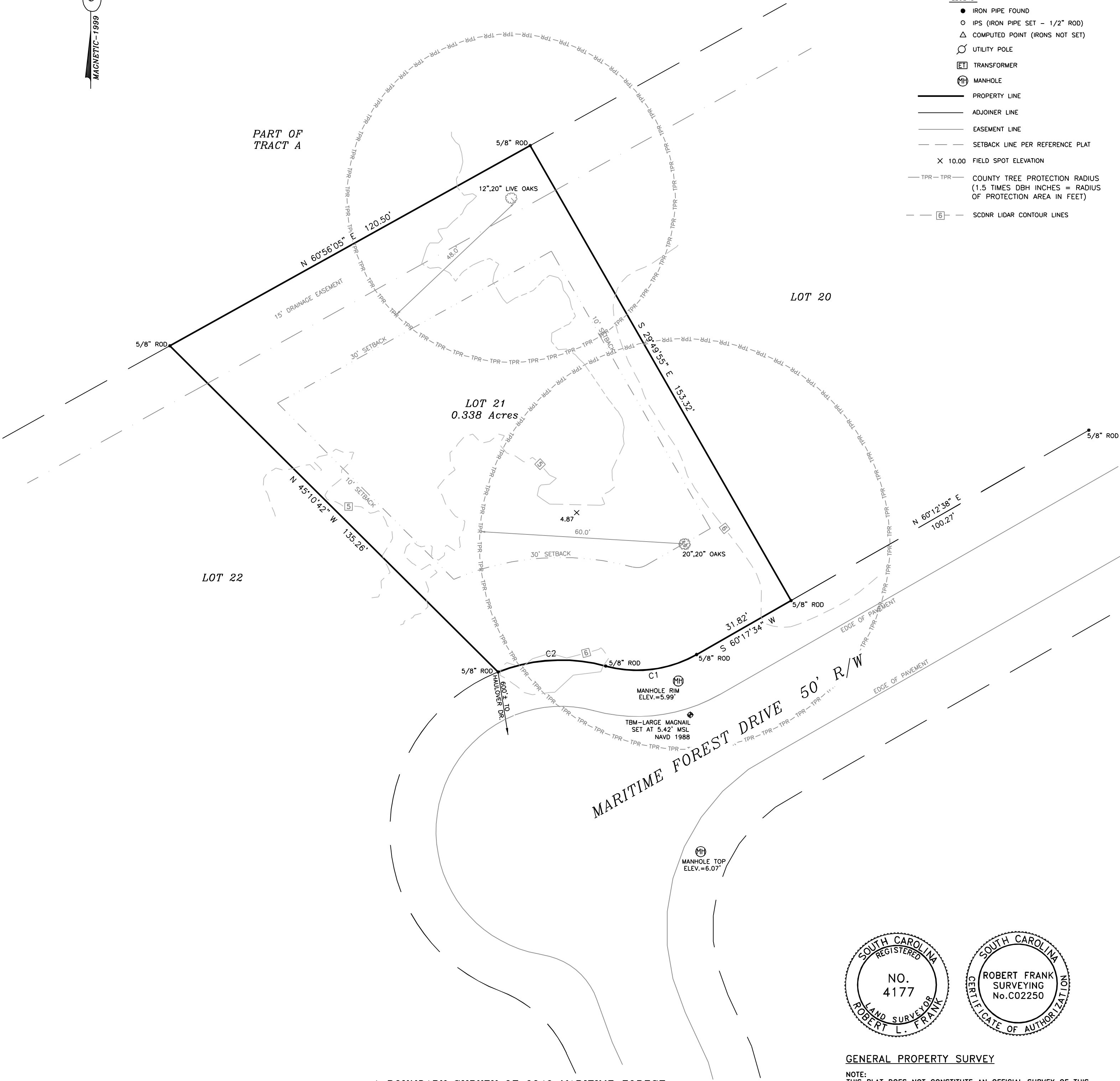


Exhibit B
1.5' radius per 1" DBH
"New"



LOCATION SKETCH (N.T.S.)

- LEGEND
- IRON PIPE FOUND
 - IPS (IRON PIPE SET - 1/2" ROD)
 - △ COMPUTED POINT (IRONS NOT SET)
 - UTILITY POLE
 - ⊞ TRANSFORMER
 - ⊞ MANHOLE
 - PROPERTY LINE
 - ADJOINER LINE
 - EASEMENT LINE
 - SETBACK LINE PER REFERENCE PLAT
 - X 10.00 FIELD SPOT ELEVATION
 - TPR — TPR — COUNTY TREE PROTECTION RADIUS (1.5 TIMES DBH INCHES = RADIUS OF PROTECTION AREA IN FEET)
 - [6] — SCDNR LIDAR CONTOUR LINES



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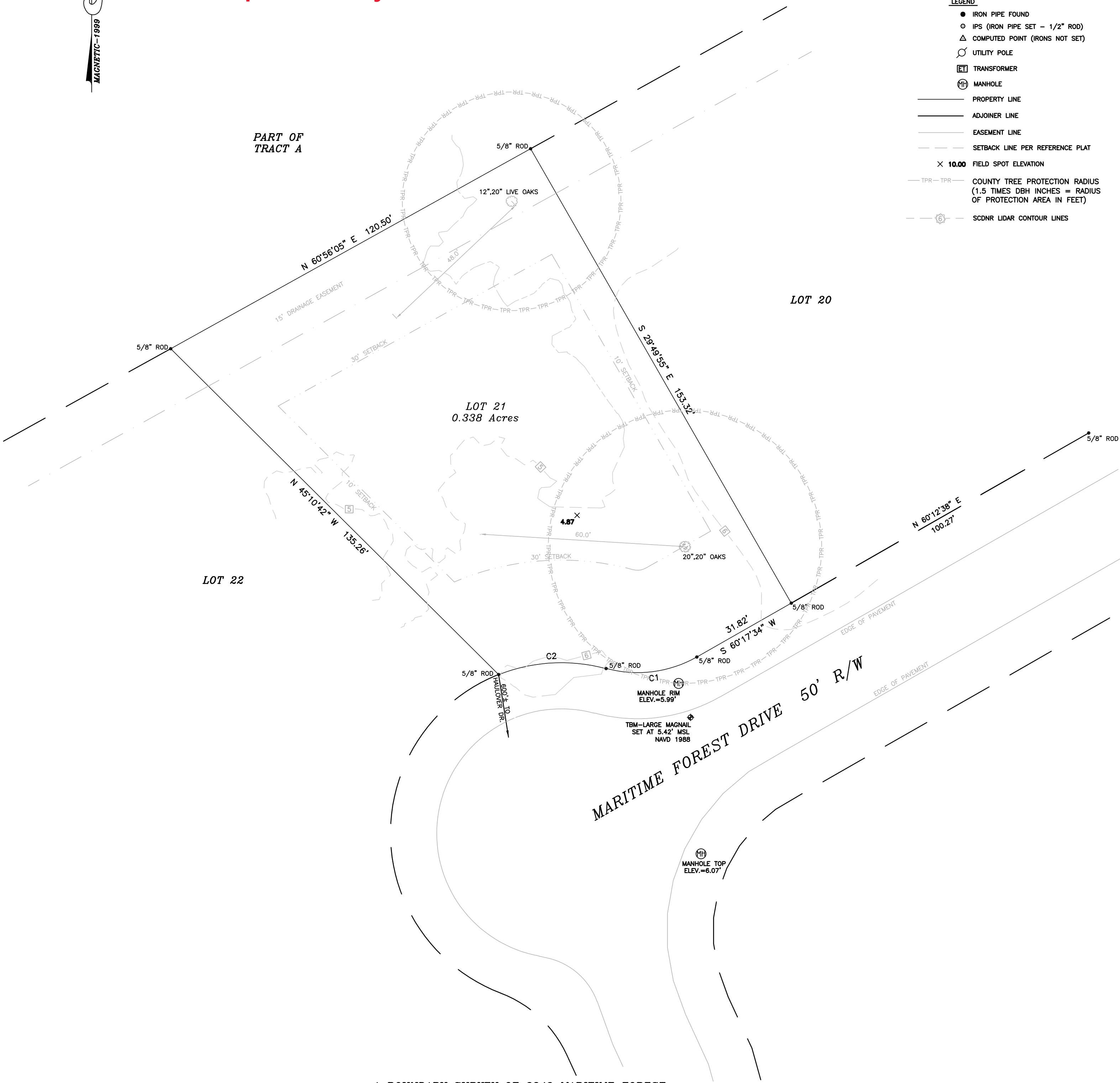


(IN FEET)
1 inch = 20 ft.

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	35.00'	27.47'	26.77'	S 82°46'50" W	44°58'12"
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Exhibit C
1' radius per 1" DBH
"Proposed by Staff"



A BOUNDARY SURVEY OF 2842 MARITIME FOREST DRIVE, LOT 21C PHASE VI OF THE KIAWAH RIVER ESTATES S/D, LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA

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5. NOW OWNED BY: LYDIA AND THOMAS WANKE.

