COUNTY COUNCIL OF BEAUFORT COUNTY

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CLERK TO COUNCIL

AGENDA
NATURAL RESOURCES COMMITTEE
Monday, February 1, 2016
2:00 p.m.
Council Chambers, Administration Building
Beaufort County Government Robert Smalls Complex
100 Ribaut Road, Beaufort

Committee Members:
Brian Flewelling, Chairman
Alice Howard, Vice Chairman
Gerald Dawson
Steve Fobes
William McBride
Jerry Stewart
Roberts "Tabor" Vaux

Staff Support:
Anthony Criscitiello, Planning Director
Gary James, Assessor
Eric Larson, Division Director
Environmental Engineering
Dan Morgan, Division Director
Mapping & Applications

1. CALL TO ORDER – 2:00 P.M.

2. PUBLIC COMMENT

3. CONSIDERATION OF RECOMMENDATIONS
   A. Recommendation to allow County Administrator to enter into Agreement with Academy Park, LLC for a Partnership to Develop a Regional Stormwater Facility in the Rock Springs Creek Watershed (backup)
   B. Recommendation to allow County Administrator to enter into Agreement with David Coleman, property owner, for a Partnership to Develop a Regional Stormwater Facility in the Rock Springs Creek Watershed (backup)

4. DISCUSSION / ENHANCEMENT NOTIFICATION PROCEDURES (backup)

5. DISCUSSION / TERMINATION OF OAKS DEVELOPMENT AGREEMENT (backup)

6. PRESENTATION / SUMMARY OF JANUARY 7, 2016 MEETING OF THE PLANNING COMMISSION

7. CONSIDERATION OF REAPPOINTMENTS AND APPOINTMENTS
   A. Planning Commission
   B. Rural and Critical Lands Preservation Board
   C. Zoning Board of Appeals

8. ADJOURNMENT

The County Channel

BEAUFORT COUNTY STORMWATER UTILITY
120 Shanklin Road
Beaufort, South Carolina 29906
Voice (843) 255-2805 Facsimile (843) 255-9478

MEMORANDUM

TO: **County Council**
Natural Resources Committee

FROM: **Eric W. Larson, Stormwater Manager**

SUBJECT: **Academy Park Subdivision and Rock Springs Creek watershed Regional Stormwater Facility project (Phase I)**

DATE: **February 1, 2016**

September 9, 2015, the Planning Department's Staff Review Team gave approval to a proposed subdivision, Academy Park. The project consists of a first phase of 25 lots fronting existing roads in the Lady's Island Community Preservation District. A group of neighborhood property owners appealed the decision of staff to the Planning Commission citing issues such as density and traffic. On December 7, 2015, the Planning Commission upheld the staff determination that the development was allowed by the current Community Development Code. The Developer's remaining tract has the potential of adding another 10-12 homes via an internal street network. However, the remainder of the site has another potential use, which is the focus of this proposal.

As part of the stormwater review for this first phase, it was noted the unique location of the site adjacent to a natural wetlands and a man-made ditch conveyance serving Sam's Point Road. County Stormwater staff and the Developer began discussing the opportunity to construct a regional stormwater facility that could serve his site in addition to the greater Rock Springs Creek sub-watershed. A project in this watershed was identified in the 2006 Beaufort County Stormwater Management Plan and further defined in the 2011 Retrofit Study with a cost of approximately $1.7 million. In December 2015, the County completed a Feasibility Study to test the effectiveness of a stormwater basin in this location and the results were favorable. The report is included with this memo.

The County and Developer are proposing a partnership in which the cost of design and construction is shared and the ownership is transferred to the County at the completion of the project. This mutually beneficial project provides stormwater needs for both parties at a significantly lower cost than if done separately. Attached to this memo is a draft agreement between the County and the Developer outlining the partnership in greater detail. The draft agreement has been revised since the January 4, 2016 NRC meeting to reflect concerns raised by the committee members, county staff, and public comments.

Estimated cost to the County is $60,911. This project will be funded from the Stormwater Capital Projects fund. While this project was slated for 2018, the Stormwater Utility Board recommended re-prioritizing this project due to the potential cost saving associated with this partnership.

Staff is recommending to the County Council to authorize County Administrator Gary Kubic to negotiate and sign an agreement with Academy Park LLC for a partnership to construct a regional stormwater facility in the Rock Springs Creek watershed.

STATE OF SOUTH CAROLINA)

ACADEMY PARK SITE
ROCK SPRINGS CREEK WATERSHED PROJECT

COUNTY OF BEAUFORT)

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, by and between Academy Park, LLC or its assigns, (hereinafter the "Developer") and the County of Beaufort, South Carolina, a body politic and political subdivision of the State of South Carolina (hereinafter the "County.")

WHEREAS, the County desires to work with Developer to potentially develop a regional best management practice (stormwater retention pond) on Developer's property identified as the Rock Springs Creek Watershed Project Phase I (Factory Creek M2) or "Project"; and

WHEREAS, the County has previously conducted extensive studies and evaluations to develop the Stormwater 2006 Management Plan; and

WHEREAS, the 2006 Stormwater Management Plan identifies certain projects including this Project, which were further evaluated in the 2011 Regional Retrofit study; and

WHEREAS, the Project involves the construction of a regional stormwater basin approximately 3.4 acres at ultimate build-out; and

WHEREAS, the County has conducted a Feasibility study to evaluate the Project for the Academy Park Site, R___-____-___-____ , , R___-____-___-____ , & , R___-____-___-____ ("Site"); and

WHEREAS, the feasibility study yielded favorable results and this agreement defines a Public – Private Partnership ("P3") to serve as a contract with the Developer for the Project that includes the design, permitting, construction, and transfer of ownership of the Site. The project will need to be approved by the Stormwater Management Utility Board, Beaufort County's Natural Resources Committee, and County Council; and

NOW, THEREFORE, for and in consideration of the foregoing recitals and the performance of the mutual promises, conditions, and covenants herein set forth, and for the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the County and the Developer, the County and the Developer hereby agree as follows:

1. The Developer will be required to bond the improvements of the Project prior to commencement of construction. In the event the Developer is unable to fulfill the terms of this Agreement, the bond will be surrendered and at the option of the County, the proceeds used to complete the Project or restore the Site to as close to existing conditions as feasible. The Bond shall be the form of a construction surety for 125% of the project cost.

2. The County has completed a Feasibility study of the Project. The County staff presented the results of the Feasibility Study to the Stormwater Management Utility Board for recommendation December 2015. The Board recommended to move forward with the Project.
3. The Developer shall purchase the Site to be developed.
4. The Developer will provide a wetland jurisdictional determination for wetland on the Site. Once determined to be valid and accepted by the USACE, any impacts will be planned for mitigation and permitted as necessary before construction begins.
5. The Developer will be allowed to begin construction of an approximate 3.4 acre pond that does not encroach on the wetland or regional ditch leading from Sam's Point Road.
6. A consultant will prepare a final design of an approximately 3.4 acre regional stormwater basin and consult with local government, OCRM, USACE, DHEC to assure design can be permitted. Consultant will be selected from an existing County ID/IQ contract or the County's pre-approved list. A Non-Competition Agreement may be needed due to existing relationship with the developer for the Academy Park proposed development. The design shall meet the standards of the County's Best Management Practices Manual, current edition.
7. The County shall provide the fees for all designs needed to complete this project. -
8. The County will present the Project to the Stormwater Management Utility Board, the Natural Resources Committee, and County Council for recommendation. A public meeting may be part of this process.
9. If the Stormwater Management Utility Board, the Natural Resources Committee, and County Council approve the project, then this agreement will proceed to construction. If not, this agreement terminates without further action.
10. The County will submit the recommended and approved regional design project to the local government for permitting, and approval.
11. The Developer shall provide all permitting fees.
12. The Developer shall provide all wetland mitigation fees and costs.
13. The Developer shall provide all review fees.
14. The County and Developer shall upon final determination of its total, share the cost of the tree mitigation at a mutually agreed ratio.
15. Once all the permitting requirements are complete, construction on the modification of the pond into a regional stormwater facility will be completed.
16. The Developer shall provide for all the construction costs of the Project (its cost should not cause the Academy Park total infrastructure cost to exceed the total value of fill material extracted from pond).
17. The Developer shall complete construction of the Project within 12 months.
18. The County shall purchase land for the sum of One Dollar and Zero Cents ($1.00) from the Developer.
19. The County will own and operate the Project in perpetuity. The County shall provide for the perpetual Operations and Maintenance costs of the Regional Stormwater Facility. Maintenance requirements shall follow the County's Best Management Practices Manual, current edition.

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The parties hereto affirmatively represent that this Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party who is not a signature party hereto. No party, other than the signature parties, shall have any enforceable rights hereunder or have any enforcement hereof for any claim for damages as a result of any alleged breach hereof.

This Agreement shall be governed by the laws of South Carolina with venue in the County of Beaufort.

IN WITNESS WHEREOF, the parties have set their hands this day and year indicated above.

WITNESSES:

_____

_____

BEAUFORT COUNTY, a political sub-division of the State of South Carolina

By:_____
Name: Gary Kubic
Title: County Administrator
Address: P.O. Drawer 1228
Beaufort, SC 29901-1228
Phone: (843) 255-2026
Fax: (843) 255-9403
Date: _____

WITNESSES:

_____

_____

Academy Park, LLC

By:_____
Name: Robert Sample
Title: _____
Address: PO Box 2238
Beaufort , SC 29902
Phone: (843) 476 9639
Fax:
Date: _____

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APPLIED TECHNOLOGY & MANAGEMENT
P.O. BOX 20336
CHARLESTON, SC 29413-0336
TEL: 843-414-1040
FAX: 843-414-0155
www.appliedtm.com

Technical Memorandum

To: Eric Larson, P.E.

From: Tony Maglione, Robert Burleson, P.E.

Date: December 14, 2015

Re: Factory Creek Watershed Stormwater Pond Feasibility Study: Samples Property

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Introduction:

The County is evaluating a developer's offer to provide a site for an approximately 3.4 acre stormwater retention pond in the watershed. In the CDM/Smith SW Management Plan of 2006 Factory Creek was designated as a watershed that would require a 16% reduction in fecal coliform levels at build out. A subsequent study by Ward Edwards Engineering identified two locations in the watershed that would be possible locations for stormwater ponds. However, the Ward Edwards identified sites are in the lower two thirds of the watershed where the developer proposed site is in the top third of the watershed.

An initial review of the aerial photography and existing stormwater infrastructure near the developers site, may provide additional opportunities to intercept and treat stormwater from existing drainage systems and potentially use the pond for removal of other pollutants of concern in addition to fecal coliform; such an option does not appear to exists at the sites identified in the Ward Edwards study.

Beaufort County has asked Applied Technology and Management (ATM) to evaluate the feasibility of using the developer's proposed site in lieu of the two locations shown in the Ward Edwards study.

Site Description

The Samples site is located in the Factory Creek M2 hydrologic sub-basin, which is a portion of the Rock Springs Creek 2 Water Quality Basin. The site is located on Lady's Island as shown on Figure 1. It is located just north of Fairfield Drive and approximately 1,200 ft. east of Sam's Point Road. The site and the proposed stormwater pond location is presented on Figure 2. Topography across the proposed pond site ranges from 16 ft-NAVD.

on the west side near the County drainage easement to 18 ft-NAVD on the east side. Slopes are relatively flat with some isolated depressions.

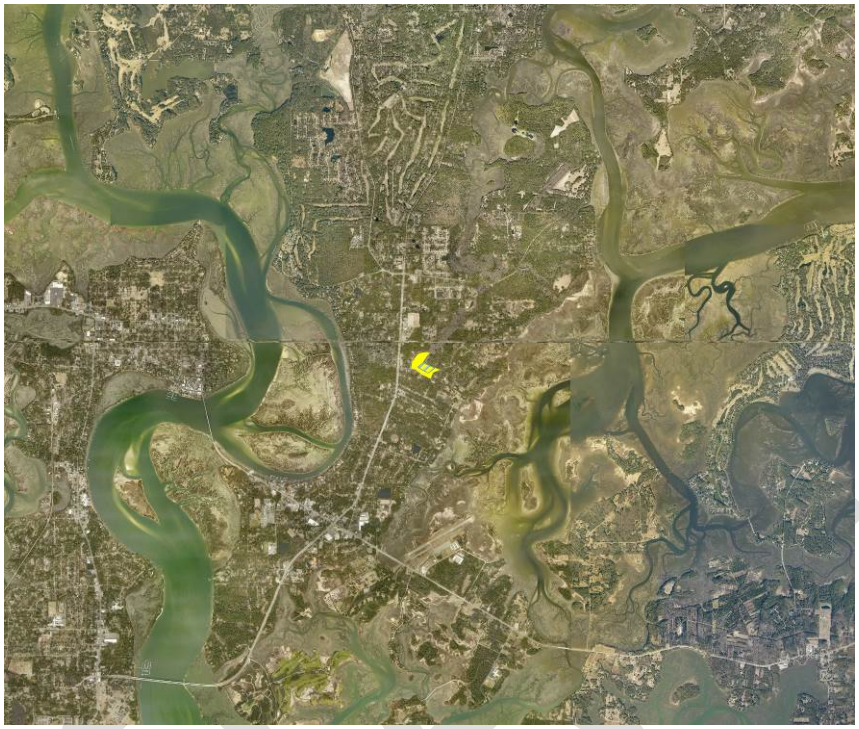


Figure 1: Location of Samples Property



Figure 2: Samples Property

The proposed stormwater pond site is bounded on the north by a regional drainage ditch that conveys runoff from Sam's Point Road east directly to the Morgan River. The ditch has effectively cut off flow coming from the south and would only overflow to the north if water elevations in the ditch exceeded 13.3 ft-NAVD, per topographic information received from Carolina Engineering. Ditch bottom elevations in this area range from 11.5 ft-NAVD to 11.8 ft-NAVD and average 11.6 ft-NAVD. Per the wetland delineation provided by Carolina Engineering, there are no jurisdictional wetlands on the proposed pond site. The proposed pond site is bordered on the west by 1.175 acres of delineated jurisdictional wetlands.

Contributing Basin

The drainage basin served by the drainage ditch was estimated in the 2011 Ward Edwards Study to be approximately 185 acres. This was based the northern basin boundary being drawn just north of the drainage ditch and intersecting the Factory Creek M2 basin as contained in the 2006 Beaufort County Stormwater Master Plan and the Beaufort County GIS layer.

Information contained in the Beaufort County GIS was reviewed to confirm areas that drain to the regional drainage ditch and subsequently to the proposed pond location. Information obtained and reviewed included LiDAR, drainage, water collection points and outfalls. The engineering plans for the SC Route 802 (Sam's Point Road) improvements were obtained and reviewed to confirm drainage collection areas on the highway that conveyed flow to the drainage ditch**.** Review of the information indicated that some areas west of Sam's Point Road did not drain to the roads collection system. Areas south of Wallace Road and the New Point development actually drain to the west (Personal Communication, J. Ackerman, P.E., Carolina Engineering). Some smaller areas east of Sam's Point Road also do not drain to the road drainage system. Excluding these areas resulted in a smaller drainage basin to the potential stormwater pond site. The resultant drainage basin is approximately 132 acres and is presented on Figure 3.

The drainage basin associated with the proposed pond location includes a mixture of property uses including low density residential, medium density residential, commercial, and institutional. The majority are low density residential that pre-dates any stormwater control regulations. The institutional land use (Beaufort Academy) also pre-dates current stormwater regulations and does not appear to have a detention pond.

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Figure 3: Contributing Basin and Proposed Pond Location

Wet Detention Pond Concept for the Samples Property

Allowing for buffers, sloping to existing surrounding grades and access roads for future maintenance, the actual pond size is estimated to be 3.4 acres. Ditch bottom elevations in this area range from 11.5 ft-NAVD to 11.8 ft-NAVD and average 11.6 ft-NAVD. The regional drainage ditch overflows to the north if water elevations in the ditch exceeded 13.3 ft-NAVD, per topographic information received from Carolina Engineering. Elevations on the proposed pond site range from 16 ft-NAVD to 18-ft NAVD. Given the elevations in the drainage ditch, the operational active storage will be between 11.8 ft-NAVD, the control elevation of the pond and 13 ft-NAVD, the overflow elevation. Recommended mean depths

for the permanent pool are 3-7 ft. below the pond control elevation. This range would place the pond bottom at an average elevation of 4.8 ft-NAVD.to 8.8 ft-NAVD.

The concept is to create an offline wet detention pond. A diversion channel would be constructed from the existing regional drainage ditch to the excavated pond. The concept includes a weir in the drainage ditch at a crest elevation of 13 ft-NAVD. Flows in the drainage ditch would be diverted into the pond until the diversion weir was overtopped at elevation 13 ft-NAVD. Major flows would still be allowed to overflow the drainage ditch to the north as occurs now. A bleed-down orifice would be constructed with a control elevation at 11.8 ft-NAVD. The discharge from the bleed-down orifice would be east, or downstream, of the diversion weir.

Recommended permanent pool volumes for wet detention systems are to provide at least a 14-day hydraulic residence time (HRT) for desired removal efficiencies to be achieved. The Watershed Management Model (WMM) was used to estimate flows and pollutant loads from which HRT and pollutant loads removed could be estimated. The WMM files were were provided to the County by CDM/Smith and were the same files used in the development of the 2006 Beaufort County Stormwater Management Plan. These files were provided to ATM for use in the feasibility assessment of the Samples property.

A new WMM scenario was developed for the Samples Property and its contributing basin using the base WMM databases as provided by CDM/Smith. Land cover estimates were made using 2015 aerial photographs. The results of the WMM analysis are presented in Table 1. The WMM simulation indicates an annual mean daily flow of 0.556 acre-feet/day. For July, which is typically the wettest month of the year with 7.4 inches of precipitation, this would yield a monthly mean daily flow of 1.001 acre-feet/day. To achieve the recommended 14-day HRT for July, assuming a pond area of approximately 3.3 acres at the pond control elevation of 11.8 ft-NAVD would require a mean depth of approximately 4.25-ft. with a resultant pond-bottom elevation of 7.55 ft-NAVD. **Estimated excavation quantity assuming an average land surface elevation of 17 ft-NAVD is 52,000 cubic yards.**

Table 1 also presents estimated pollutant loads from the contributing 132-acre basin. The receiving water quality parameter of focus is fecal coliform. **Based on 80% reduction of fecal coliform loads from the contributing basin in the proposed wet detention pond, this would result in an overall fecal coliform load reduction in the Rock Springs Creek 2 water quality basin (1,188 acres) of approximately 5.6%. Based on the**

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removal efficiencies in WMM, the proposed pond is anticipated to also provide the following pollutant load reductions to the Morgan River:

Parameter	lbs/yr removed
Total Nitrogen	**273**
Total Phosphorus	**71**
TSS	**29,288**

In summary, the construction of a regional BMP at the Samples property provides a number of benefits over the proposed BMP site for the Factory Creek M2 basin. The location of the property adjacent to the regional drainage ditch allows for capturing and treating runoff from a 132-acre basin which has a very limited amount of water quality BMPs. It is located in an area that should not present difficulties for environmental permitting given the avoidance of jurisdictional wetlands and that the regional drainage ditch allows for the placement of needed ancillary structures without direct wetland impacts. Any potential dewatering impacts to vicinity wetlands are avoided as the operational range of water levels for the proposed pond can be consistent with those of the existing regional drainage ditch.

The original Factory Creek M2 regional BMP proposed in the 2006 Beaufort County Stormwater Management Plan was evaluated previously by Ward Edwards in 2011. The conclusion was that constructing the ponds would require significant excavation in some locations, but is not completely unfeasible. There should be sufficient room to grade the top banks back to existing elevations, although it will reduce the pond sizes somewhat. Access to the western pond could easily be provided from Milton Way, as the road fronts about 500 lf of the road. However, access to the eastern pond would be difficult if not impossible, as it is bordered by wetlands on the west and north sides, and by residential lots on the east and south sides. Access would either require wetland impacts or easements crossing the home sites. Field wetland approximations would be needed if this BMP location is pursued, and wetland impact permits would be needed to intercept and redirect flow from the main conveyance channel. The cost of this alternative was estimated to be $1,700,000.

The most important limitation to consider in evaluating the original BMP location is the potential service area. Following review of available GIS information, the SCDOT engineering plans for SC Route 802, and discussions with local engineers, the location is only capable of serving an area of less than 100 acres. Given the likely challenges to implementing the original proposed BMP and the reduced benefit from that originally estimated in the 2006 report, locating a regional BMP in that location is not considered desirable.

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Table 1: WMM Results for Samples Regional Facility Scenario

Tributary Area (acres)	DCIA (acres)	DCIA (%)	Loading Factor	Parameter	Units	Storm Water	Base Flow	Point Source	CSO	Total	Storm Water with BMP Controls	CSOs with Controls	Total with Controls	Reduction (%)
132	23	17.1		Flow	(ac-ft/yr)	126	77	0	0	203	126	0	203	0
132	23	17.1	medium	FC Geomean Log	lbs/yr	1,266	482	0	0	1,747	1,063	0	1,545	11.6
132	23	17.1	medium	F-Coli	counts/yr	4.70E+13	1.90E+11	0	0	4.71E+13	9.43E+12	0	9.62E+12	79.6
132	23	17.1	medium	Pb	lbs/yr	6	0.209378635	0	0	6	1	0	1	77.1
132	23	17.1	medium	Total N	lbs/yr	683	209	0	0	893	410	0	620	30.6
132	23	17.1	medium	TP	lbs/yr	117	34	0	0	151	47	0	80	46.6
132	23	17.1	medium	TSS	lbs/yr	36,646	3,769	0	0	40,415	7,358	0	11,127	72.5
132	23	17.1	medium	Zn	lbs/yr	27	0.209378635	0	0	27	13	0	14	49.6
132	23	17.1	medium	BOD	lbs/yr	3,361	628	0	0	3,989	2,018	0	2,646	33.7

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Summary

The construction of a regional BMP at the Samples property provides a number of benefits over the proposed BMP site for the Factory Creek M2 basin including:

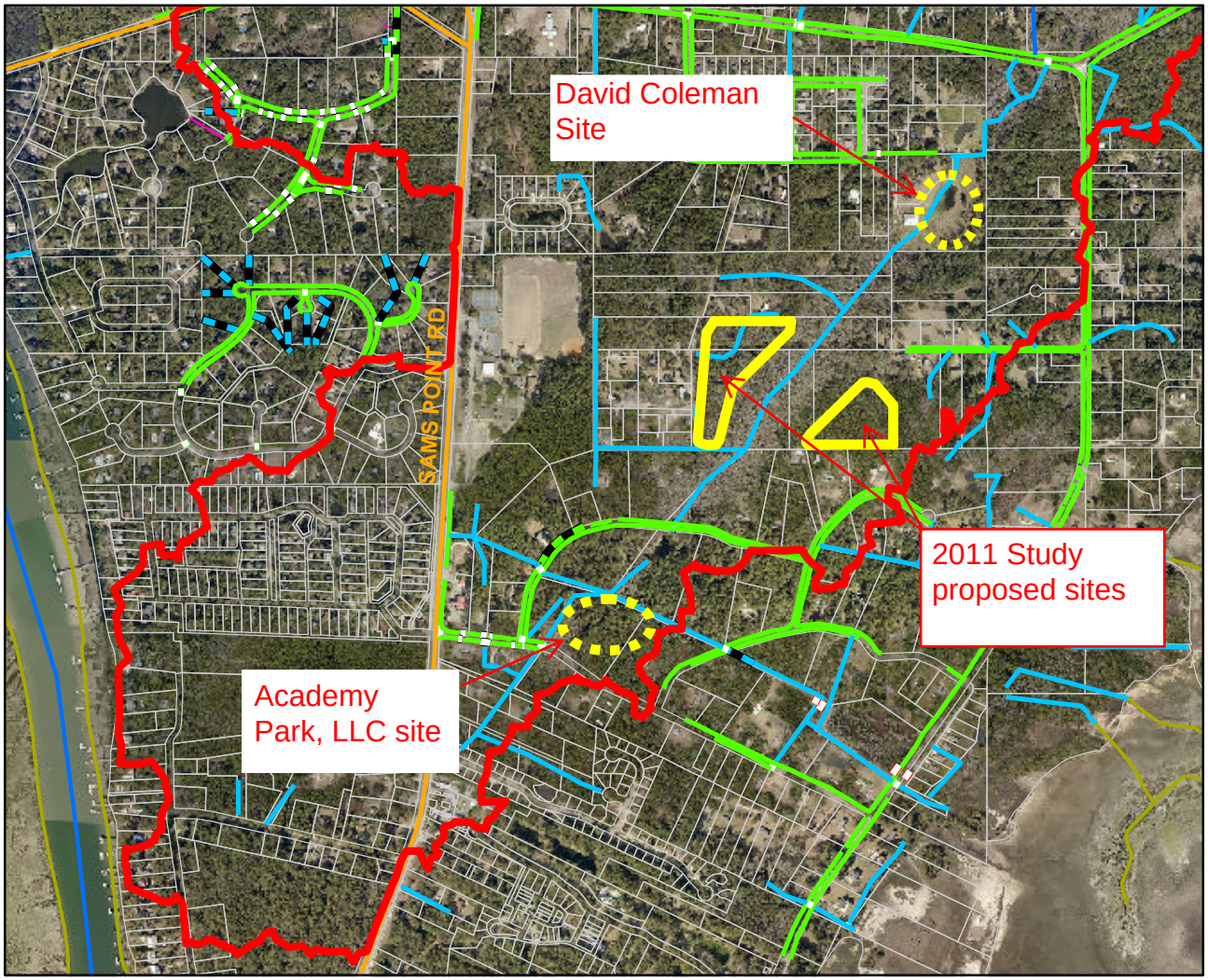
1. The location of the property adjacent to the regional drainage ditch allows for capturing and treating runoff from a 132-acre basin which has a very limited amount of water quality BMPs.
2. It is located in an area that should not present difficulties for environmental permitting given the avoidance of jurisdictional wetlands and that the regional drainage ditch allows for the placement of needed ancillary structures without direct wetland impacts.
3. Any potential dewatering impacts to vicinity wetlands are avoided as the operational range of water levels for the proposed pond can be consistent with those of the existing regional drainage ditch.
4. The water quality benefits to Morgan River can be provided at a reduced capital cost due to developer-provided services

The original Factory Creek M2 regional BMP proposed in the 2006 Beaufort County Stormwater Management Plan has a reduced potential service area that is likely smaller than that of the Samples property site. Access to this site is more limited. There is uncertainty as to how much “useable” area is available for building the BMP given that field wetland delineations have not been performed and wetland impact permits would be needed to intercept and redirect flow from the main conveyance channel into the ponds. Also, there are greater capital costs related to land acquisition and construction.

Recommendation: **Based on the analysis performed, it is recommended that Beaufort County pursue implementation of a regional water quality BMP (wet detention pond) on the Samples Property.**

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County Retrofit Project: Factory Creek M2
Activity: Regional BMP
Township: Lady's Island



Project Schedule: FY 2018, 2020 & 2022

Project Cost: $1,740,000
$200,000 (2018)
$340,000 (2020)
$1,200,000 (2022)

Drainage

TYPE	
River	Roadside
Creek/Stream	Roadside Pipe
River/Creek/Marsh BANK	Road Pipe
Channel (fka Outfall)	Crossline Pipe
Channel Pipe	Driveway Pipe
Lateral	Access Pipe
Lateral Pipe	Bleeder Pipe

0 450 900 1,800 2,700 3,600 Feet

1 inch = 1,207 feet

Prepared By: BC Stormwater Management Utility
Date Print: 5/19/14

Description: Development in the Factory Creek hydrologic sub-basin in the Rock Springs Creek watershed inlcudes approx. 300 acres of a mix of single family development, and commercial/institutional development built prior to stormwater regulations. There are only a few stormwater best management practices, such as detention basins, in the area. The project would be to construct a regional detention facility to provide stormwater runoff water quality treatment and volume reduction. Due to the grades of the area and the "stop gap measure" to construct a ditch to drain a portion of the wetland, construction will involve a large amount of earthwork, making project cost a limiting factor for project implementation. Rock Springs Creek drains into the Morgan River, which is impaired by bacteria pollution, a major source being urban runoff. The site is located in Beaufort County on Lady's Island.

BEAUFORT COUNTY STORMWATER UTILITY
120 Shanklin Road
Beaufort, South Carolina 29906
Voice (843) 255-2805 Facsimile (843) 255-9478

MEMORANDUM

TO: **County Council**
Natural Resources Committee

FROM: **Eric W. Larson, Stormwater Manager**

SUBJECT: **David Coleman site and Rock Springs Creek watershed Regional Stormwater Facility project (Phase II)**

DATE: **February 1, 2016**

At the December 2015 meeting of the Stormwater Utility Board, the Board made recommendation to the Natural Resources Committee to allow County Administration to enter into an agreement with a Developer for a regional stormwater project in this watershed, specifically the Academy Park, LLC site. Another property owner within the watershed was made aware of this proposed project and requested consideration for a similar partnership on their property, which is the focus of this proposal.

The location of the site is adjacent to a natural wetlands within the lower third of the watershed, potentially intercepting a large portion of the runoff within the watershed not captured by the Academy Park, LLC (Phase I) site. County Stormwater staff and the Developer began discussing the opportunity to construct a regional stormwater facility that could serve the lower two-thirds of the Rock Springs Creek sub-watershed. A project in this watershed was identified in the 2006 Beaufort County Stormwater Management Plan and further defined in the 2011 Retrofit Study with a cost of approximately $1.7 million. In January 2016, the County completed a Feasibility Study to test the effectiveness of a stormwater basin in this location and the results were favorable. The report is included with this memo.

The County and Developer are proposing a partnership in which the cost of design and construction is shared. Unlike Phase I, the ownership remains with the Developer at the completion of the project with the County being granted an easement and inspection/enforcement rights. The County and Developer will cost share the operations and maintenance. This mutually beneficial project provides stormwater needs for the County at a significantly lower cost than if done without this partnership. Attached to this memo is a draft agreement between the County and the Developer outlining the partnership in greater detail.

Exact cost to the County is unknown at this time but estimated between $50,000 and $100,000. Exact costs will be defined prior to execution of the agreement. This project will be funded from the Stormwater Capital Projects fund. While this project was slated for 2018, the Stormwater Utility Board recommended re-prioritizing this project due to the potential cost saving associated with this partnership.

Staff is recommending to the County Council to authorize County Administrator Gary Kubic to negotiate and sign an agreement with David Coleman for a partnership to construct a regional stormwater facility in the Rock Springs Creek watershed.

STATE OF SOUTH CAROLINA)

DAVID COLEMAN SITE
ROCK SPRINGS CREEK WATERSHED PROJECT

COUNTY OF BEAUFORT)

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, by and between David Coleman, (hereinafter the "Developer") (address) and the County of Beaufort, South Carolina, a body politic and political subdivision of the State of South Carolina (hereinafter the "County.")

WHEREAS, the County desires to work with Developer to potentially develop a regional best management practice (stormwater retention pond) on Developer's property identified as the Rock Springs Creek Watershed Project Phase II (Factory Creek M2) or "Project"; and

WHEREAS, the County has previously conducted extensive studies and evaluations to develop the Stormwater 2006 Management Plan; and

WHEREAS, the 2006 Stormwater Management Plan identifies certain projects including this Project, which were further evaluated in the 2011 Regional Retrofit study; and

WHEREAS, the Project involves the construction of a regional stormwater basin approximately 5-10 acres at ultimate build-out, phased in the following increments – 3 acres (Phase IIa), 5 acres (Phase IIb), and build-out (Phase IIc); and

WHEREAS, the County has conducted a Feasibility study to evaluate the Project for the David Coleman Site, R___-____-___-____ & R___-____-___-____ ("Site"); and

WHEREAS, the feasibility study yielded favorable results and this agreement defines a Public – Private Partnership ("P3") to serve as a contract with the Developer for the Project that includes the design, permitting, construction, and easement of the Site. The project will need to be approved by the Stormwater Management Utility Board, Beaufort County's Natural Resources Committee, and County Council; and

NOW, THEREFORE, for and in consideration of the foregoing recitals and the performance of the mutual promises, conditions, and covenants herein set forth, and for the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the County and the Developer, the County and the Developer hereby agree as follows:

1. The Developer will be required to bond the improvements of the Project prior to commencement of construction. The bond will be associated with a Department of Health and Environmental Control (DHEC) mining permit(s), guaranteeing the performance of the conditions of the mining permit(s) which includes a provision to meet all local codes. Should the mining permit(s) conditions be insufficient to cover the stormwater design elements of the Project, then the Developer will provide a second surety bond to the County to ensure that the stormwater design elements are

completed. In the event the Developer is unable to fulfill the terms of the stormwater elements of the Project in this Agreement, the bond will be surrendered and the County will use the proceeds to complete the Project.

2. The County has completed a Feasibility study of the Project. The County staff presented the results of the Feasibility Study to the Stormwater Management Utility Board for recommendation January 2016. The Board recommended to move forward with the Project.
3. The Developer shall purchase the Site to be developed.
4. The Developer will provide a wetland jurisdictional determination for wetland on the Site. Once determined to be valid and accepted by the USACE, any impacts will be planned for mitigation and permitted as necessary before construction begins. .
5. The Developer will provide approved permits as follows:
    a. USACE letter allowing a disturbance of approx. 1 acre within the delineated wetland area without permit (for Phase IIa);
    b. DHEC Mining permit allowing a 2 acres mining operations adjacent to the delineated wetland area (for Phase IIa);
    c. DHEC Mining permit allowing an additional 2 acres mining operations adjacent to the delineated wetland area (for Phase IIb);
    d. DHEC Mining permit allowing an additional 1-5 acres mining operations adjacent to the delineated wetland area (for Phase IIc);
6. Upon proof of approved permits, the County will issue a compliance letter to satisfy DHEC mining permit requirements to state the Project is related to a Stormwater Capital Project and allowed by local code. The Developer will be allowed to begin construction of the Project. It is understood that this is being allowed in anticipation of the regional basin project.
7. The Developer will prepare a final design, including a phasing plan, of the Project and consult with local government, OCRM, USACE, DHEC to assure design is permitted. The Developer will select a Consultant from the County's pre-approved list. The design shall meet the standards of the County's Best Management Practices Manual, current edition.
8. The Developer shall provide the fees for all designs needed to complete this project.
9. The County will present the Project to the Stormwater Management Utility Board, the Natural Resources Committee, and County Council for recommendation. A public meeting may be part of this process.
10. If the Stormwater Management Utility Board, the Natural Resources Committee, and County Council approve the project, then this agreement will proceed to construction. If not, this agreement terminates without further action, obligation, or liability of either party to the other.
11. The County will submit the recommended and approved regional design project to the local government for permitting, and approval.
12. The Developer shall provide all permitting fees.
13. The Developer shall provide all wetland mitigation fees and costs.
14. The Developer shall provide all review fees.
15. The County shall upon final determination of its total, provide the cost of the tree mitigation.

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16. Once all the permitting requirements are complete, construction on the modification of the pond into a regional stormwater facility will be completed.
17. The Developer shall provide for all the construction costs of the Project.
18. The Project shall be phased in three (3) projects as described above. Should the Developer become unable to complete a subsequent phase(s) due to permitting problems, this agreement is modified to accept the project at the completion of the completed phase(s).
19. The Developer shall complete construction of the Project within 12 (?) months.
20. The County shall purchase an easement for the Project and access thereto across the Site for the sum of One Dollar and Zero Cents ($1.00) from the Developer.
21. The Developer will operate the Project in perpetuity. The County and Developer shall cost -share for the perpetual Operations and Maintenance costs of the Project at a mutually agreed ratio to be determined once the final design and maintenance needs have been defined. Maintenance requirements shall follow the County's Best Management Practices Manual, current edition.
22. Developer shall provide liability insurance for the Project in perpetuity.
23. The County will continue to have the right to enter the property and inspect the Project on an annual basis for compliance with all related stormwater requirements. In the event deficiencies are found, the County will direct the Developer to make the needed corrections to the Project and Site within 60 days. If the Developer fails to perform or needs assistance, the County will partner to make the needed corrections.

The parties hereto affirmatively represent that this Agreement is solely for the benefit of the parties hereto and not for the benefit of any third party who is not a signature party hereto. No party, other than the signature parties, shall have any enforceable rights hereunder or have any enforcement hereof for any claim for damages as a result of any alleged breach hereof.

This Agreement shall be governed by the laws of South Carolina with venue in the County of Beaufort.

IN WITNESS WHEREOF, the parties have set their hands this day and year indicated above.

WITNESSES:

_____

_____

BEAUFORT COUNTY, a political sub-division of the State of South Carolina

By:_____
Name: Gary Kubic
Title: County Administrator
Address: P.O. Drawer 1228
Beaufort, SC 29901-1228
Phone: (843) 255-2026
Fax: (843) 255-9403
Date: _____

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WITNESSES:

_____

_____

David Coleman

By:_____
Name: David Coleman
Title: _____
Address: _____
_____
Phone: (843) _____
Fax: _____
Date: _____

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APPLIED TECHNOLOGY & MANAGEMENT

P.O. BOX 20336

CHARLESTON, SC 29413-0336
TEL: 843-414-1040
FAX: 843-414-0155
www.appliedtm.com

Technical Memorandum

To: Eric Larson, P.E.

From: Tony Maglione, Robert Burleson, P.E.

Date: January 27, 2015

Re: Factory Creek Watershed Stormwater Pond Feasibility Study: Coleman Property

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Introduction:

The County is evaluating a developer's offer to provide a 7.6-acre site for a regional stormwater facility in the watershed. In the CDM/Smith SW Management Plan of 2006 Factory Creek was designated as a watershed that would require a 16% reduction in fecal coliform levels at build out. A subsequent study by Ward Edwards Engineering identified two locations in the watershed that would be possible locations for stormwater ponds. The Ward Edwards identified sites are in the lower two thirds of the watershed. The Coleman site is in the lower third of the watershed.

An initial review of the aerial photography and existing stormwater infrastructure near the developers site, may provide additional opportunities to intercept and treat stormwater from existing drainage systems and potentially use the pond for removal of other pollutants of concern in addition to fecal coliform; such an option does not appear to exists at the sites identified in the Ward Edwards study.

Beaufort County has asked Applied Technology and Management (ATM) to evaluate the feasibility of using the developer's proposed site in lieu of the two locations shown in the Ward Edwards study.

Site Description

The Coleman site is located in the Factory Creek M2 hydrologic sub-basin, which is a portion of the Rock Springs Creek 2 Water Quality Basin. The site is located on Lady's Island as shown on Figure 1. It is located on the main sub-basin flow way approximately 300 ft. east of the eastern end of Reed Road. The site and the proposed stormwater pond location is presented on Figure 2. Topography across the proposed pond site ranges from 9 ft-NAVD. At the pond's top-of-bank to 14 ft-NAVD at the southwest corner of the parcel.

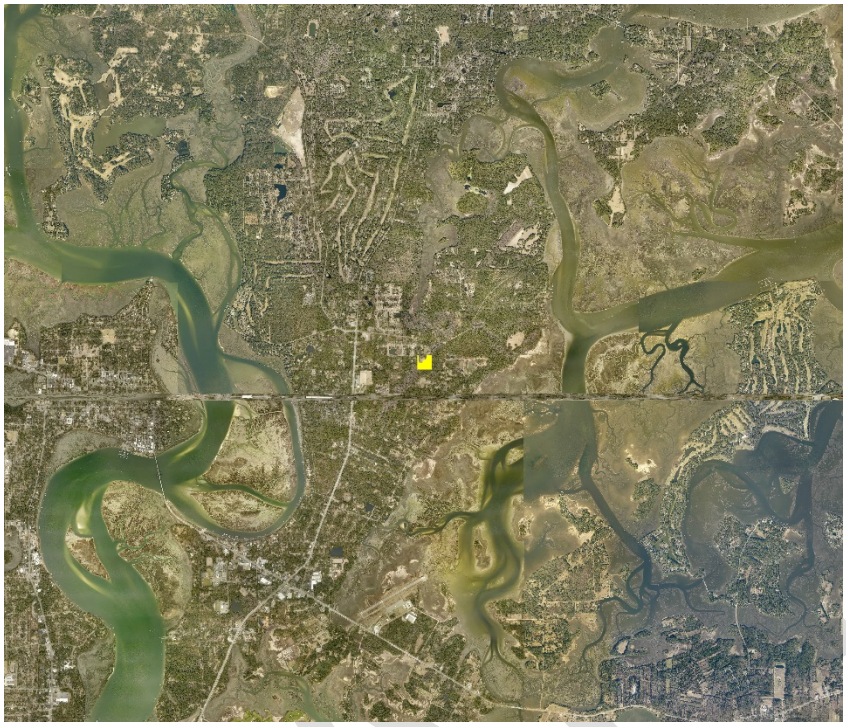


Figure 1: **Location of Coleman Property**

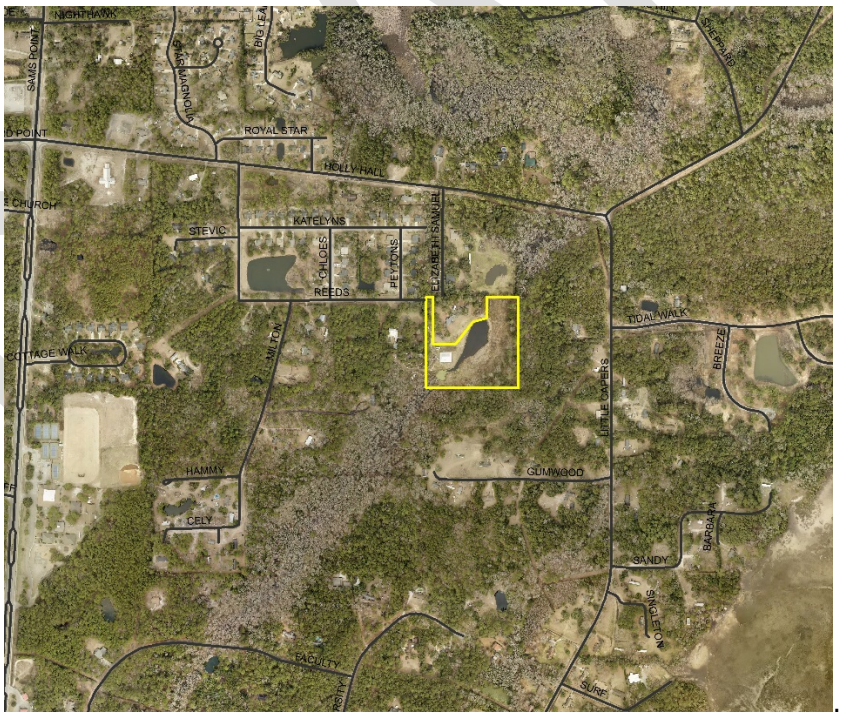


Figure 2: **Coleman Property**

A single building is visible on the site in aerial photographs, but its use is unknown. Although NWI indicates the site is mostly wetlands, the site is also mostly cleared and contains a 0.98-acre pond**. It should be noted that according to the GIS parcel layer, the northwest edge of the existing pond is located on a parcel owned by Carolyn Birckbichler.** The pond appears to collect the sub-basin flow and discharge it on the north end of the property. Grades on the site range from elevation 14 ft-NAVD at the southwest corner down to elevation 9 ft-NAVD at the pond edge. Access to the site is provided by way of a dirt road connecting to Reeds Road.

Contributing Basin

Information contained in the Beaufort County GIS was reviewed to confirm areas that drain toward the Coleman site. Information obtained and reviewed included LiDAR, drainage, water collection points and outfalls. The engineering plans for the SC Route 802 (Sam's Point Road) improvements were obtained and reviewed to confirm drainage collection areas on the highway that conveyed flow to the drainage ditch**.** Review of the information indicated that some areas west of Sam's Point Road did not drain to the roads collection system. Areas south of Wallace Road and the New Point development actually drain to the west (Personal Communication, J. Ackerman, P.E., Carolina Engineering). Some smaller areas east of Sam's Point Road also do not drain to the road drainage system. The resultant drainage basin that is captured by the drainage ditch from Sam's Point Road to the wetland stream near the center of the swamp is approximately 132 acres. This area would typically be excluded from the basin contributing to the Coleman site except during large storm events. Based on review of all of the information listed above, the drainage basin to the Coleman parcel was estimated to be 232 acres and is presented on Figure 3. Approximately 38 acres of this basin is designated as forested wetlands by the NWI maps. This comprises 17 percent of the estimated basin area.

The drainage basin associated with the proposed pond location includes a mixture of property uses including low density residential, medium density residential, commercial, and institutional. The majority are low density residential that pre-dates any stormwater control regulations. The institutional land use (Beaufort Academy) also pre-dates current stormwater regulations and does not appear to have a detention pond. Approximately 31 acres of medium density residential area appears to be served by a BMP in the form of a wet pond. This comprises 13 percent of the contributing basin area.

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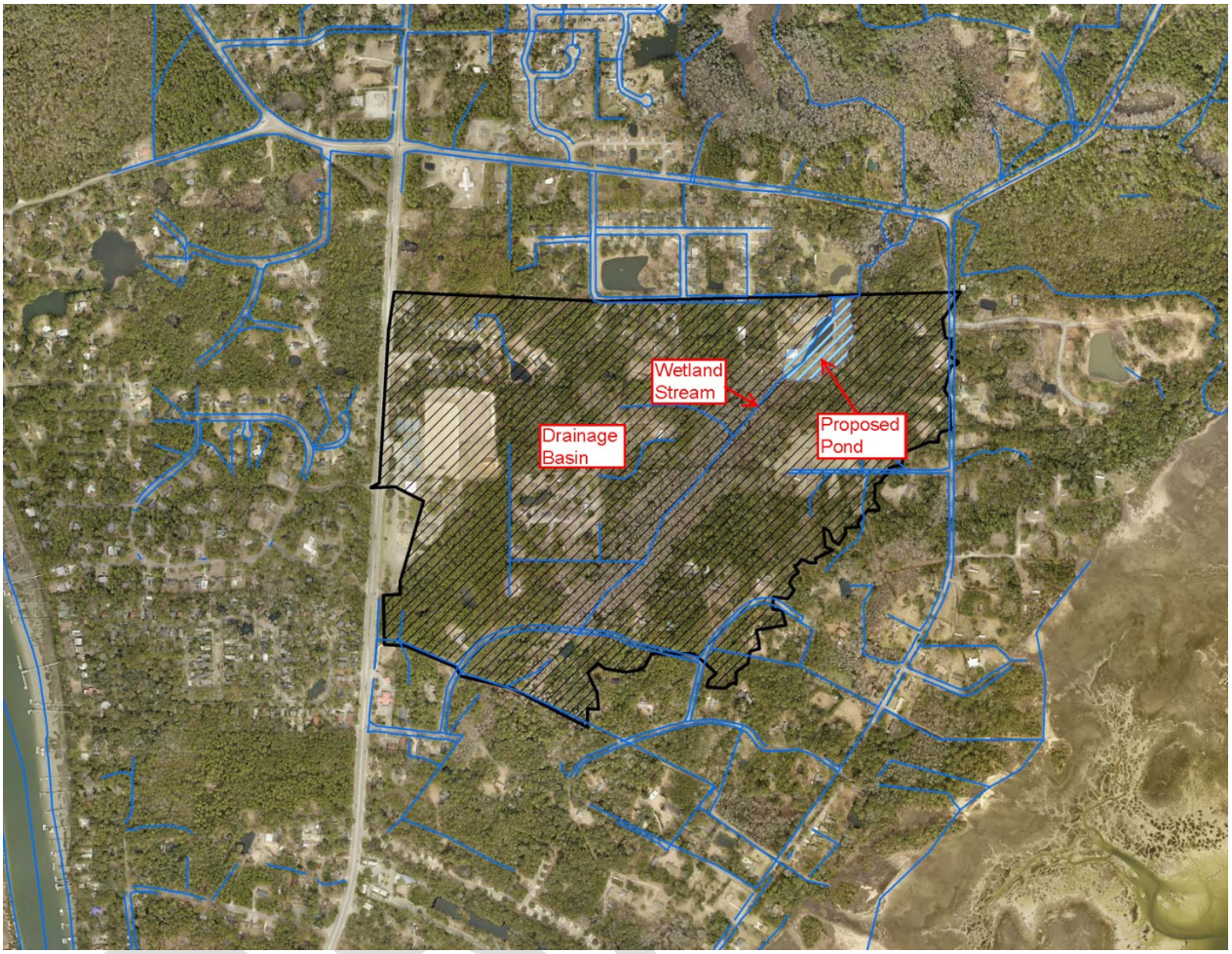


Figure 3: Contributing Basin and Proposed Pond Location

Wet Detention Pond Concept for the Coleman Property

Although limited in size and although it contains a building, this parcel may be of some value for a BMP given the existing pond. It may be possible to expand or modify the existing 0.98 acre pond to better serve as a water quality treatment pond; however a wetlands investigation will be needed to verify the presence of and potential impacts to any nearby wetlands. The majority of the property has been cleared with some wetland hardwoods remaining on the southern and eastern boundaries.

The concept is to create an inline wet detention pond utilizing the existing stream inflow. The concept includes a weir at the north boundary of the parcel. Allowing for buffers, sloping to existing surrounding grades and access roads for future maintenance, the size of the proposed pond is estimated to be 4.3 acres. The construction of the pond is proposed

to be in the area that has already been cleared. This assumes that permitting agencies view this area as highly impacted and would not require mitigation.

Wetland stream elevations at the existing pond are unknown as is the depth of the existing pond. The downstream control for the outlet stream is a 24-in RCP at Holly Hall Road with an upstream elevation of 5.3 ft. NAVD and a downstream invert elevation of 5.58 ft. NAVD. Elevations on the proposed pond site range from 9 ft-NAVD at the pond edge to 14 ft-NAVD. In the area where the pond expansion is proposed to occur, the elevations range from 9 ft.-NGVD to 11 ft.-NGVD. Given the elevations in the existing pond, the operational active storage will be between 9 ft.-NAVD, the control elevation of the pond and 10.5 ft-NAVD, the overflow elevation. The control elevation of 9 ft. NAVD is estimated from LiDAR and is assumed to represent the seasonal high water table elevation. This would need to be confirmed as part of the detailed design. Elevations above 10.5 ft. NAVD could potential flood some neighboring properties to the south and west.

Recommended mean depths for the permanent pool are 3-7 ft. below the pond control elevation. This range would place the pond bottom at an average elevation of 2 ft-NAVD.to 6 ft.-NAVD. The depth of the existing pond is not known at this time. Other recommendations for the pond expansion include constructing a littoral zone from north edge of existing pond to the north parcel boundary for enhanced removal of dissolved nutrients.

Recommended permanent pool volumes for wet detention systems are to provide at least a 14-day hydraulic residence time (HRT) for desired removal efficiencies to be achieved. The Watershed Management Model (WMM) was used to estimate flows and pollutant loads from which HRT and pollutant loads removed could be estimated. The WMM files were were provided to the County by CDM/Smith and were the same files used in the development of the 2006 Beaufort County Stormwater Management Plan. These files were provided to ATM for use in the feasibility assessment of the Samples property.

A new WMM scenario was developed for the Coleman Property and its contributing basin using the base WMM databases as provided by CDM/Smith. Land cover estimates were made using 2015 aerial photographs. It was estimated that approximately 31 acres of medium density residential area in the contributing basin had BMPs in the form of wet ponds. The results of the WMM analysis are presented in Table 1. The WMM simulation indicates an annual mean daily flow of 0.926 acre-feet/day. For July, which is typically the wettest month of the year with 7.4 inches of precipitation, this would yield a monthly mean daily flow of 1.67 acre-feet/day. To achieve the recommended 14-day HRT for July,

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assuming a total pond area (existing plus new) of approximately 4.3 acres at the pond control elevation of 9 ft-NAVD would require a mean depth of approximately 5.5-ft. with a resultant pond-bottom elevation of 3.5 ft-NAVD. **Estimated excavation quantity in the new pond area assuming an average land-surface elevation of 10 ft-NAVD for the recommended mean depth 5.5-ft. is 29,280 cubic yards. The depth of the existing pond at a control elevation of 9 ft-NAVD is unknown at this time.**

Table 1 also presents estimated pollutant loads from the contributing 232-acre basin. This estimate includes the pollutant load reductions due to the existing BMPs and for the proposed regional BMP facility on the Coleman property. The receiving water quality parameter of focus is fecal coliform. **Based on 80% reduction of fecal coliform loads from the contributing basin in the proposed wet detention pond, this would result in an overall fecal coliform load reduction in the Rock Springs Creek 2 water quality basin (1,188 acres) of approximately 6.8%. Based on the removal efficiencies in WMM, the proposed pond is anticipated to also provide the following pollutant load reductions to the Morgan River:**

Parameter	lbs/yr removed
Total Nitrogen	**369**
Total Phosphorus	**83**
TSS	**34,485**

In summary, the construction of a regional BMP at the Coleman property provides a number of benefits over the proposed BMP site for the Factory Creek M2 basin. The location of the property in the main wetland stream allows for capturing and treating runoff from a 232-acre basin that has a very limited amount of water quality BMPs**. It is located in an area that is designated as forested wetlands according to NWI maps. The area has been directly impacted through the construction of a building, a 0.98-acre pond and has been cleared of original vegetation (likely wetland hardwoods).** Any potential dewatering impacts to vicinity wetlands are avoided as the operational range of water levels for the proposed pond can be consistent with those of the existing wetland stream.

Given the existing wetland impacts, discussions with environmental permitting agencies should be initiated to determine if expansion of the existing pond into a regional wet detention facility would be permitted. The wetlands issue needs to be investigated immediately if the County is going to pursue this any further as the cost of delineation, surveying, permitting and potential mitigation could take a long time to successfully complete and could be very expensive. If Mr. Coleman needs to

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create a borrow pit in the next few months, the wetland issue could easily stall that effort especially if wetland mitigation is required. The County should first determine the potential wetland issues before moving forward with this project.

The original Factory Creek M2 regional BMP proposed in the 2006 Beaufort County Stormwater Management Plan was evaluated previously by Ward Edwards in 2011. The conclusion was that constructing the ponds would require significant excavation in some locations, but is not completely unfeasible. There should be sufficient room to grade the top banks back to existing elevations, although it will reduce the pond sizes somewhat. Access to the western pond could easily be provided from Milton Way, as the road fronts about 500 lf of the road. However, access to the eastern pond would be difficult if not impossible, as it is bordered by wetlands on the west and north sides, and by residential lots on the east and south sides. Access would either require wetland impacts or easements crossing the home sites. Field wetland approximations would be needed if this BMP location is pursued, and wetland impact permits would be needed to intercept and redirect flow from the main conveyance channel. The cost of this alternative was estimated to be $1,700,000.

The most important limitation to consider in evaluating the original BMP location is the potential service area. Following review of available GIS information, the SCDOT engineering plans for SC Route 802, and discussions with local engineers, the location is only capable of serving an area of less than 100 acres. Given the likely challenges to implementing the original proposed BMP and the reduced benefit from that originally estimated in the 2006 report, locating a regional BMP in that location is not considered desirable.

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Table 1: WMM Results for Coleman Property Regional Facility Scenario

Tributary Area (acres)	DCIA (acres)	DCIA (%)	Loading Factor	Parameter	Units	Storm Water	Base Flow	Point Source	CSO	Total	Storm Water with BMP Controls	CSOs with Controls	Total with Controls	Reduction (%)
232	34	14.6		Flow	(ac-ft/yr)	203	135	0	0	338	203	0	338	0
232	34	14.6	medium	FC Geomean Log	lbs/yr	1,972	847	0	0	2,818	1,657	0	2,503	11.2
232	34	14.6	medium	F-Coli	counts/yr	6.07E+13	3.34E+11	0	0	6.10E+13	1.22E+13	0	1.25E+13	79.5
232	34	14.6	medium	Pb	lbs/yr	7	0.36812431	0	0	7	1	0	2	75.7
232	34	14.6	medium	Total N	lbs/yr	964	368	0	0	1,332	579	0	947	28.9
232	34	14.6	medium	TP	lbs/yr	147	59	0	0	206	59	0	118	42.8
232	34	14.6	medium	TSS	lbs/yr	45,534	6,626	0	0	52,160	9,143	0	15,769	69.8
232	34	14.6	medium	Zn	lbs/yr	31	0.36812431	0	0	31	15	0	16	49.4
232	34	14.6	medium	BOD	lbs/yr	4,106	1,104	0	0	5,210	2,465	0	3,569	31.5

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Summary

The construction of a regional BMP at the Coleman property provides a number of benefits over the proposed BMP site for the Factory Creek M2 basin including:

1. The location of the property in the main wetland stream allows for capturing and treating runoff from a 232-acre basin that has a very limited amount of water quality BMPs**.**
2. Any potential dewatering impacts to vicinity wetlands are avoided as the operational range of water levels for the proposed pond can be consistent with those of the existing wetland stream.
3. The water quality benefits to Morgan River can be provided at a reduced capital cost due to developer-provided services
4. **Given the existing wetland impacts, discussions with environmental permitting agencies should be initiated early to determine if expansion of the existing pond into a regional wet detention facility would be permitted.**
5. It provides an estimated 6.8 percent overall reduction in fecal coliform loads to the Morgan River. When combined with the proposed regional BMP facility on the Samples property, an estimated 12 percent of the required 16 percent reduction in fecal coliform loads to the Morgan River is achieved.

The original Factory Creek M2 regional BMP proposed in the 2006 Beaufort County Stormwater Management Plan has a reduced potential service area that is likely smaller than that of the Samples property site. Access to this site is more limited. There is uncertainty as to how much "useable" area is available for building the BMP given that field wetland delineations have not been performed and wetland impact permits would be needed to intercept and redirect flow from the main conveyance channel into the ponds. Also, there are greater capital costs related to land acquisition and construction.

Recommendation: Based on the analysis performed, it is recommended that Beaufort County pursue implementation of a regional water quality BMP (wet detention pond) on the Coleman Property. Given the existing wetland impacts, discussions with environmental permitting agencies should be initiated early to determine if expansion of the existing pond into a regional wet detention facility would be permitted.

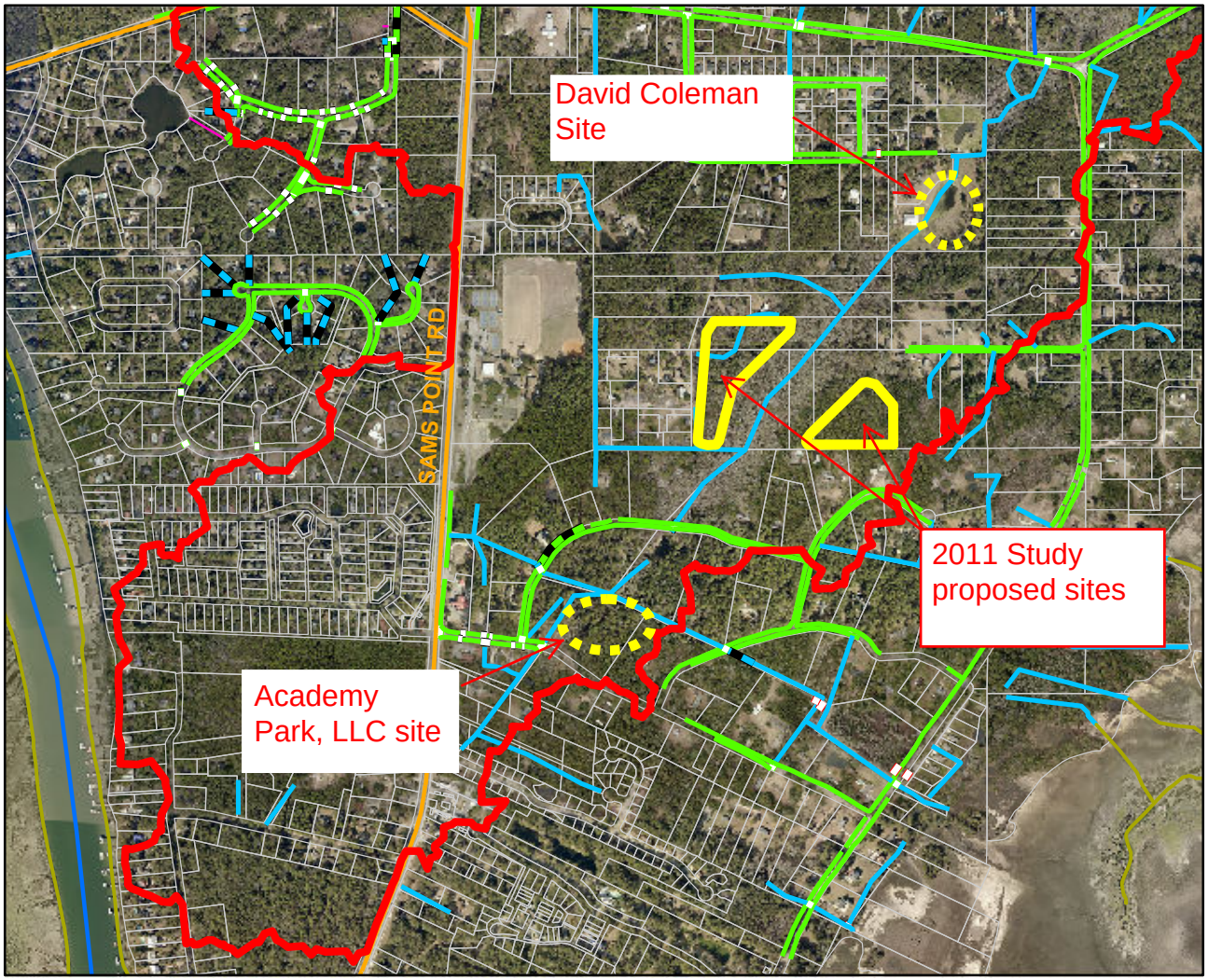
The wetlands issue needs to be investigated immediately if the County is going to pursue this any further as the cost of delineation, surveying, permitting and potential mitigation could take a long time to successfully complete and could be very

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expensive. If Mr. Coleman needs to create a borrow pit in the next few months, the wetland issue could easily stall that effort especially if wetland mitigation is required. The County should first determine the potential wetland issues before moving forward with this project.

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County Retrofit Project: Factory Creek M2
Activity: Regional BMP
Township: Lady's Island



Project Schedule: FY 2018, 2020 & 2022

Project Cost: $1,740,000
$200,000 (2018)
$340,000 (2020)
$1,200,000 (2022)

Drainage

TYPE	
River	Roadside
Creek/Stream	Roadside Pipe
River/Creek/Marsh BANK	Road Pipe
Channel (fka Outfall)	Crossline Pipe
Channel Pipe	Driveway Pipe
Lateral	Access Pipe
Lateral Pipe	Bleeder Pipe

0 450 900 1,800 2,700 3,600 Feet

1 inch = 1,207 feet

Prepared By: BC Stormwater Management Utility
Date Print: 5/19/14

Description: Development in the Factory Creek hydrologic sub-basin in the Rock Springs Creek watershed inlcudes approx. 300 acres of a mix of single family development, and commercial/institutional development built prior to stormwater regulations. There are only a few stormwater best management practices, such as detention basins, in the area. The project would be to construct a regional detention facility to provide stormwater runoff water quality treatment and volume reduction. Due to the grades of the area and the "stop gap measure" to construct a ditch to drain a portion of the wetland, construction will involve a large amount of earthwork, making project cost a limiting factor for project implementation. Rock Springs Creek drains into the Morgan River, which is impaired by bacteria pollution, a major source being urban runoff. The site is located in Beaufort County on Lady's Island.

Table 7.4.50.A: Required Public Hearings			
Development Application or Approval	Advisory or Decision-Making Bodies		
	County Council	Planning Commission	Zoning Board of Appeals (ZBOA)
Comprehensive Plan Amendment	X	X	
Text Amendment	X	X	
Zone Map Amendment	X	X	
Special Use Permit			X
Variance Permit			X
Plat Vacation	X		
Street Renaming		X	
Appeal to Planning Commission		X	
Appeal to Zoning Board of Appeals			X
Development Agreements	X		

B. **Public Hearing Notification.** All development applications requiring a public hearing shall comply with the S.C. Code of Laws, the provisions listed in Table 7.4.50.B (Public Hearing Notification Timing Requirements), and the other provisions of this Section with regard to public notification. Failure to receive notice in accordance with this Section shall not invalidate the proceedings for which notice was required, nor shall failure to receive notice constitute a basis for legal action against the County.

1. **Notice Timing Requirements.** Public notification of a public hearing on a development application shall be provided in accordance with the timing requirements in Table 7.4.50.B (Public Hearing Notification Timing Requirements), for the type of application and the type of notice. In computing the required time periods, the day the notice is published or postmarked shall not be included, but the day of the hearing shall be included.

1. Schedule and ensure notice of any required public hearing on the application (if appropriate) in accordance with Section 7.4.50 (Public Hearing Scheduling and Notice);
2. Transmit the application, related materials, and the staff report to the appropriate advisory or decision-making body;
3. Transmit a copy of the staff report to the applicant; and
4. Make the application, related materials, and the staff report available for examination by the public in the Community Development Department during normal business hours, and make copies of such materials available at a reasonable cost.

D. **Applications Subject To Director Decision.**

1. **Decision.** If an application is subject to staff review and a final decision by the Director, the Director shall approve the application, approve the application subject to conditions, or disapprove the application, based on the review standards set forth in Division 7.2 (Application Specific Review Procedures) or Division 7.3 (Other Review Procedures), as appropriate, for the particular type of application.
2. **Conditions of Approval.** Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this Development Code. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the development permit or approval.

7.4.50 Public Hearing Scheduling and Notice

A. **Public Hearing Scheduling.**

1. **Application to be Scheduled for Meeting.** When a development application is subject to a public hearing, as identified in Table 7.4.50.A (Required Public Hearings), the Director shall ensure that the public hearing on the application is scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the advisory or decision-making body reviewing the application.
2. **Timing.** The public hearing(s) on the application shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.
3. **Public Hearing by Review Boards.** A public hearing shall be conducted by the following advisory or decision-making bodies for the following development applications. See Table 7.4.50.A (Required Public Hearings).

Table 7.4.50.B: Public Hearing Notification Timing Requirements

Development Application or Approval	Notice Required (Calendar Days)		
	Publication	Written	Posted
Comprehensive Plan Amendment [1]	30 days before public hearing		
Text Amendment [1]	between 15 & 30 days before public hearing		
Zone Map Amendment [1,2]	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing
Special Use Permit; Variance Permit; Plat Vacation; or Street Renaming	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing
Appeal to ZBOA or Planning Commission	between 15 & 30 days before public hearing		
Development Agreements	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing	between 15 & 30 days before public hearing

[1] Public Notification applies to public hearing before both Planning Commission and County Council.
[2] Staff initiated large-scale amendments to the zoning map are exempt from written and posted notice requirements.

2. **Published Notice Requirements.**

   a. When the provisions of this Development Code require that notice be published, the Director or the Clerk to County Council (as appropriate) shall be responsible for preparing the content of the notice and publishing the notice in a newspaper of general circulation in the County.

   b. The Director shall prepare an affidavit certifying that published notice has occurred in compliance with the standards of this Subsection. The affidavit shall be conclusive that notice has been given in compliance with the terms of this Subsection.

   c. The affidavit shall be included in the support materials on the application.

3. **Written Notice Requirements**

   a. When the provisions of this Development Code require that written notice be provided, the Director shall be responsible for preparing and mailing the written notice. Notice shall be mailed to:

      (1) All owners of the land subject to the application; and

      (2) All owners of land within 500 feet of the property lines of land subject to the application whose address is known by reference to the latest ad valorem tax records.

   b. Notice shall be deemed mailed by its deposit in the United States mail, properly addressed, postage paid.

   c. A copy of the mailed notice shall be maintained in the office of the Director for public inspection during normal business hours.

4. **Posted Notice Requirements.**

   a. When the provisions of this Development Code require that notice be posted on the land subject to the application, notice shall comply with the following standards:

      (1) One sign, provided by the Director, shall be placed on each public thoroughfare that the land subject to the application abuts. The Director may require additional signs to be placed on the parcel to carry out this Development Code's intent.

      (2) The sign shall be set back no more than five feet from the street right-of-way.

      (3) All signs shall be placed in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. Where the land does not have frontage on a public street, an additional sign shall be erected on the nearest street right-of-way with an attached notation generally indicating the direction and distance to the land subject to the application.

      (4) The sign shall be removed after the close of the public hearing on the application.

   b. The applicant shall sign and provide to the Director an affidavit stating that posted notice has been provided in accordance with the standards of this Subsection. The affidavit shall be accompanied by a photograph showing the posted notice on the land subject to the application. The affidavit and photograph shall be conclusive that notice has been given in accordance with the terms of this Subsection. The affidavit shall be submitted to the Director prior to the public hearing to which the notice pertains.

   c. The applicant shall ensure that the posted notice is maintained on the land subject to the application until the completion of the public hearing to which the notice pertains. Failure of any such posted notice to remain in place after the notice has been posted shall not be deemed a failure to comply with the requirements of this Development Code or be grounds to challenge the validity of any decision made on the application. However, it shall be a violation of this Development Code for any person to remove, mar, scratch, obliterate, or in any manner deface, hide from view, or tamper with such signs.

   d. The sign(s) shall be removed by the applicant within five days after the public hearing to which the notice pertains.

5. **Notice Content.** All notices for public hearings, unless expressly noted otherwise, whether done by mail (written notice), publication (publishing in a newspaper of general circulation in the County), or posting shall:

   a. Identify the application or application number and the name of the applicant or the applicant's agent;

   b. Indicate the type of development application submitted;

   c. Indicate the date, time, and place of the public hearing;

   d. Describe the land involved by street address or legal description, general area of the county, and property size (except posted notice);

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE COUNTY ADMINISTRATOR

GARY KUBIC
COUNTY ADMINISTRATOR

CHERYL HARRIS
EXECUTIVE ASSISTANT

ADMINISTRATION BUILDING
BEAUFORT COUNTY GOVERNMENT ROBERT SMALLS COMPLEX
100 RIBAUT ROAD
POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2056
FAX: (843) 255-9403
www.bcgov.net

JOSHUA A. GRUBER
DEPUTY COUNTY ADMINISTRATOR/
SPECIAL COUNSEL

THOMAS J. KEAVENY, II
COUNTY ATTORNEY

January 5, 2016

XX PROPERTY OWNER
ADDRESS

Re: Termination of Oaks Development Agreement

Dear Property Owner,

You are being contacted as the property owner of a parcel that is subject to the jurisdiction of the Oaks Development Agreement. Pursuant to South Carolina Code Ann. § 6-31-10, et seq. (the "Development Agreement Act") local governments may establish procedures and requirements, as provided therein, to consider and enter into development agreements with developers for the purpose of vesting property rights and to protect such rights from the effect of subsequent enacted local legislation or from the effects of changing policies and procedures of local government agencies. The Oaks Development Agreement was approved pursuant to the Development Agreement Act.

By way of background, the Oaks Development Agreement was approved by Beaufort County Ordinance 1999/37 on November 22, 1999 and recorded January 20, 2000 in the Office of the Register of Deeds ("ROD") for Beaufort County, South Carolina (the "County") in Book 1253 at Page 550 (the "Original Agreement"), as amended by that First set of Amendments to Development Agreement dated October 13, 2000, approved by Beaufort County Ordinance 2000/32 on August 28, 2000, and recorded November 7, 2000 in the ROD in Book 1350 at Page 2433 (the "First Amendment"), and as amended by that Second Set of Amendments to Development Agreement dated October 13, 2000, approved by Beaufort County Ordinance 2000/40 on September 11, 2000, and recorded November 7, 2000 in the ROD in Book 1350 at Page 2454 (the "Second Amendment") (the "Original Agreement", "First Amendment" and "Second Amendment" are collectively referred to as the "Oaks Development Agreement"). The Oaks Development Agreement would have expired on January 1, 2009, but for an April 1, 2014 Opinion of the South Carolina Attorney General (the "AG Opinion"). The AG Opinion held that the South Carolina General Assembly Permit Extension Joint Resolution—passed in 2010 and extended in 2013—which extended certain government approvals affecting the development of real property within the State of South Carolina also applied to the terms of development agreements. Based on the AG Opinion, the Oaks Development Agreement may still therefore be in effect, with an expiration date of January 1, 2019.

Pursuant to § 6-31-1000 of the Development Agreement Act, a development agreement may be terminated by the mutual consent of parties to the development agreement or by their successors in interest. Alternatively, §6-31-90 of the Development Agreement Act provides that if, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing upon the developer, within a reasonable time after the periodic review, setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach. If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement provided, that the local government has first given the developer the opportunity: (1) to rebut the finding and determination; or (2) to consent to amend the development agreement to meet the concerns of the local government with respect to the findings and determinations.

The County has determined that there have been several material breaches of the Oaks Development Agreement. The material breaches are listed in Exhibit A attached hereto and made part of this notice.

Importantly, during its recent review, the County has considered the breaches of the Oaks Development Agreement in conjunction with the changed nature of the property which is subject thereto and believes that it is in the best interest of the current property owners that the Oaks Development Agreement be terminated. Therefore, by this letter the County requests that should an owner in interest desire to contest the termination of the Oaks Development Agreement that such owner contact the County within thirty (30) days of the date of this letter. If the County receives no response, the County shall deem that the non-responsive parties do not oppose the termination of the Oaks Development Agreement and will proceed with its termination in accordance with the Development Agreement Act.

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EXHIBIT A

1. Section II of the Oaks Development Agreement requires the creation of an "Owners Association" that is to be responsible for the construction and/or maintenance and/or upgrading of the infrastructure constructed within the area subject to the Oaks Development Agreement. The County is not aware of the formation of such an Owners Association nor the handling of these responsibilities.

2. Section V(1) requires each of the owners of individual properties subject to the jurisdiction of the Oaks Development Agreement submit an Initial Development Application to the County DRT and requires written notice to the County and written approval by the DRT of all development rights transfers. Many property transfers have occurred without the submission of applications or notice to the County and approval by the DRT.

3. Section VI references the projected build out (which is attached as Exhibit "F" to the Oaks Development Agreement). Failing to comply with this development schedule is not, in and of itself, a material breach according to the Oaks Development Agreement. However, this failure shall be judged by the totality of the circumstances, including good faith efforts to comply, in order to assess whether a default has occurred. Project build out described in Exhibit "F" of the Oaks Development Agreement should have occurred by 2011. Development of the property subject to the Oaks Development Agreement has occurred but such development has been inconsistent with the terms of Oaks Development Agreement, including the project build out schedule.

4. Section VIII(A) requires, within the property, private roads to be constructed by the Owners or Developers and maintained by the Owners or Developers, or by an Owners Association, or dedicated to the appropriate entity, until the County accepts the roads by a separate agreement. Private roads which have been constructed are not being uniformly maintained.

5. Section IX(B) requires the creation of a recreational facility or recreational open space within twelve (12) months of the Oaks Development Agreement. No such recreational facility or open space tract has been created.

6. Section IX(B) also requires Owners to pay up to $10,000.00 to the County, or provide in kind services for site preparation of the former Bluffton landfill site, if requested by the County. Failure to meet this requirement is explicitly listed as a default pursuant to Section XII(2). Additionally, Section XII states that a failure to pay these fees is a collective default by the Owners.

7. Section IX(C) requires Owners to pay the costs of a traffic impact study. Section XII states that a failure to pay such fees is a collective default by the Owners.

8. Section X(1) requires a Master Plan of the storm water drainage systems be included with each Initial Development Application.

9. Section XI of the Oaks Development Agreement requires all Owners or their designees to meet with the County at least once per year to review development completed in the past year and development proposed for the following year. Such meetings have not occurred and development has occurred in a manner not contemplated by the Oaks Development Agreement.

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