

Town of Kiawah Island Subdivision Request
Case #SBD24-00001

Planning Commission Meeting: March 6, 2024

CASE INFORMATION

Applicant: KDP II LLC

Property Owner(s): KDP II LLC

Surveyor: Southeastern Land Surveying LLC

Location: Captain Sam's Spit (Beachwalker Drive)

Parcel Identification: 207-05-00-0011

Property Size: Proposed Lot Approximately 2,369,050 SQFT | 54.386 Acres

Deed: Book 0335 Page 077

Application:

The subdivision request is sited at the western end of the island and is adjacent to the Kiawah River to the north and Atlantic Ocean to the south. Located across the Kiawah River to the north is unincorporated Charleston County, and to the northwest is the Town of Seabrook Island. Located to the east is a multifamily development (The Cape) within the municipal boundaries of the Town of Kiawah Island. The subject parcel has been historically identified into two planning areas (Parcel 12A: Beachwalker Park and Parcel 12B: Captain Sams Spit) based on the formerly executed *2013 Amended and Restated Development Agreement By and Between Kiawah Resort Associates and the Town of Kiawah Island* (2013 ARDA). This development agreement terminated December 4, 2023. The subject parcel is principally undeveloped; however, a portion of the subject parcel has been developed. The portion of the parcel that is developed, which would be located on Parcel 12A, is Beachwalker County Park. The property owner leases this portion of the parcel to Charleston County, in which the park is operated by Charleston County Parks and Recreation Commission. Beachwalker County Park is open to the public accessed via Beachwalker Drive.

The subject parcel is currently under consideration for rezoning. The current zoning for the parcel is R-1, Residential and R-2, Residential for the area identified by TMS# 207-05-00-001.

The subject area in question of the submitted subdivision plat and waiver request would be located on Parcel 12B. The total area is approximately 1,693,395 square feet (38.875 acres) in size. The subject area identified as Oceanfront Highlands is a portion of beachfront highlands measured from the primary ocean front dune to mean high water as depicted in the stippled area, labeled parcel area being conveyed, on the subdivision plat. According to the survey, the primary ocean front dune was located in February 2024.

The applicant intends to subdivide a portion of the subject parcel 207-05-00-0011 for the purposes of conveyance to the Kiawah Island Community Association (KICA). This conveyance is pursuant to *Section 16(f) Captain Sam's Spit – Parcel 12B* of the formerly executed 2013 Amended and Restated Development Agreement. This section states, "On or before the Termination date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (e.g., lot owners, KICA, etc. pursuant to the authorizations hereinabove noted)."

In seeking approval of the proposed subdivision, the applicant is requesting a waiver from the Town of

DECISION OF THE PLANNING COMMISSION

Pursuant to Sec. 12-246. - Administration. (b) Planning Commission (3), the Planning Commission shall act to *“consider any waiver requests with respect to the requirements contained in this article.”*

Pursuant to Sec. 12-254. – Waivers.

(a) Where extraordinary hardships may result from strict interpretation of this article, the Planning Commission may, by an affirmative vote of at least two-thirds of its members present at a meeting, approve a waiver from strict compliance with this article so that fairness is realized and the public interest is protected, provided that such waiver does not have the effect of nullifying the intent and purpose of the comprehensive plan, article II of this chapter or this article.

(b) The applicant shall submit a petition in writing stating clearly and definitely the reason for the waiver request. Consideration will be given if each of the following factors is found:

- 1) Special and/or unique conditions affecting the property;*
- 2) Undue hardships that will result from adherence to one or more of the relevant requirements; and*
- 3) Granting of the waiver will not be detrimental to adjacent properties, property owners or to the public interest.*

STAFF REVIEW AND APPROVAL CRITERIA

The Planning Department has reviewed this document for FINAL APPROVAL of this subdivision to be known as Oceanfront Highlands Parcel 12B TMS# 207-05-00-0011 and finds that it is inconsistent with Chapter 12 Article III Subdivision Regulations as the proposed subdivision does not satisfy the requirements of the Town’s subdivision regulations. Pursuant to Sec. 12-284. and 12-309. - Lots. (h)., *“All lots shall be provided with access (ingress and egress) by means of streets which are constructed in conformance with standards and specifications prescribed in article V of this chapter, the road code.”*

In the event the Planning Commission considers approval of the subdivision application #SBD24-000001, planning staff recommends that:

A. The Planning Commission must consider approval of the applicant’s waiver request where consideration will be given if each of the following factors is found:

- 1) *Special and/or unique conditions affecting the property;***

Staff finds that there may be special and unique conditions affecting the subject property including but not limited to the irregular and unique shape of the subject parcel, and the formerly executed 2013 ARDA conveyance obligations pursuant to the referenced conveyance clause Section 16(f) Captain Sam’s Spit *“such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune.”*

- 2) *Undue hardships that will result from adherence to one or more of the relevant requirements; and***

Staff finds that there may be undue hardships that will result from adherence to one or more of the relevant requirements such as the connection of a roadway to the proposed subdivision due to the challenges presented of developing a roadway on this parcel which meet the requirements of the code.

3) *Granting of the waiver will not be detrimental to adjacent properties, property owners or to the public interest.*

Staff finds that granting of the waiver may not be detrimental to adjacent properties, property owners or to the public interest. The subject area is currently undeveloped and there are no active development plans submitted for the subject area. The subject area is to be conveyed to the Kiawah Island Community Association, representing the interest of property owners on Kiawah. Similarly, and historically in the land use and development patterns of Kiawah, other oceanfront property has also been conveyed to KICA for the benefit of the community.

B. Upon approval, the following statement should be added to the subdivision plat:

- 1) *“This subdivision does not provide access (ingress and egress) by means of streets which are constructed in conformance with standards and specifications prescribed within the Town of Kiawah Island’s Land Use Planning and Zoning Ordinance and was granted a waiver by the Planning Commission pursuant to § 12-254. Waivers.”*

Additional information: A second plat in the same area identified as Parcel 12B, which depicts conveyance of marshlands to Kiawah Island Community Association has been submitted for review. Planning staff is currently reviewing this subdivision plat, which is anticipated to come before Planning Commission for review in April.

PLANNING COMMISSION MEETING MARCH 6, 2024

Notifications: Notice of this meeting has been published and posted in accordance with the Freedom of Information Act and the requirements of the Town of Kiawah Island.

Town of Kiawah Island

Town of Kiawah Island Municipal Center
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455

March 6, 2024



SUBDIVISION APPLICATION

#SBD24-000001

#SBD24-000001

A Subdivision Plat & Waiver Request
Oceanfront Highlands Parcel 12B #TMS207-05-00-0011

Applicant/Property Owner: KDP II LLC

Surveyor: Southeastern Land Surveying, LLC.

Location: Captain Sam's Spit (Beachwalker Drive)

Parcel(s): #TMS 207-05-00-0011 (#TMS 207-05-00-001)

Zoning District: R-1, Residential (R-2, Residential – BWCP Leased Site)

Acres: Proposed Lot Approximately 2,369,050 SQFT | 54.386 Acres

Lot(s): 1 Lot

3



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#SBD24-000001 | Case Information

- The subdivision request is sited at the western end of the island and is adjacent to the Kiawah River to the north and Atlantic Ocean to the south.
- Located across the Kiawah River to the north is unincorporated Charleston County, and to the northwest is the Town of Seabrook Island. Adjacent to the east is a multifamily development (The Cape).
- The subject parcel has been historically identified into two planning areas (Parcel 12A: Beachwalker Park and Parcel 12B: Captain Sam's Spit) based on the formerly executed 2013 ARDA. The subject area would be sited on Parcel 12B.
- The subject parcel is principally undeveloped; however, a portion of the parcel is developed in Beachwalker County Park (leased to Charleston County, operated by CCPRC). Beachwalker County Park is open to the public.

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#SBD24-000001 | Case Information

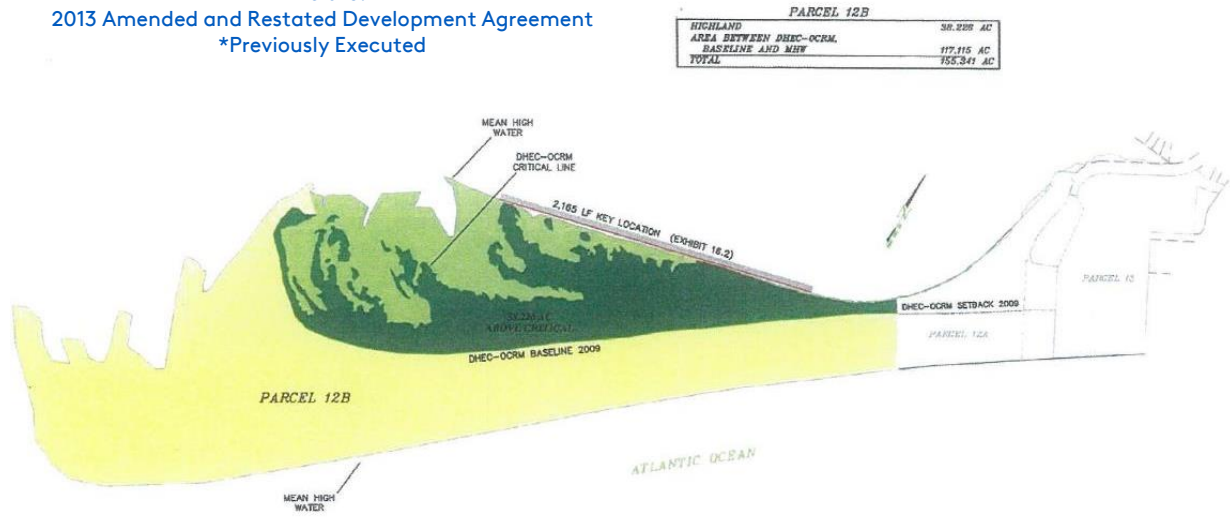
- The subject area identified as Oceanfront Highlands is a portion of beachfront highlands measured from the primary ocean front dune to mean high water.
- The applicant intends to subdivide a portion of the subject parcel for the purposes of conveyance to the Kiawah Island Community Association (KICA). This conveyance is pursuant to Section 16(f) Captain Sam's Spit – Parcel 12B of the formerly executed 2013 ARDA. This section states:

"On or before the Termination date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (e.g., lot owners, KICA, etc. pursuant to the authorizations hereinabove noted)."

6

6

Exhibit 16.2
2013 Amended and Restated Development Agreement
*Previously Executed

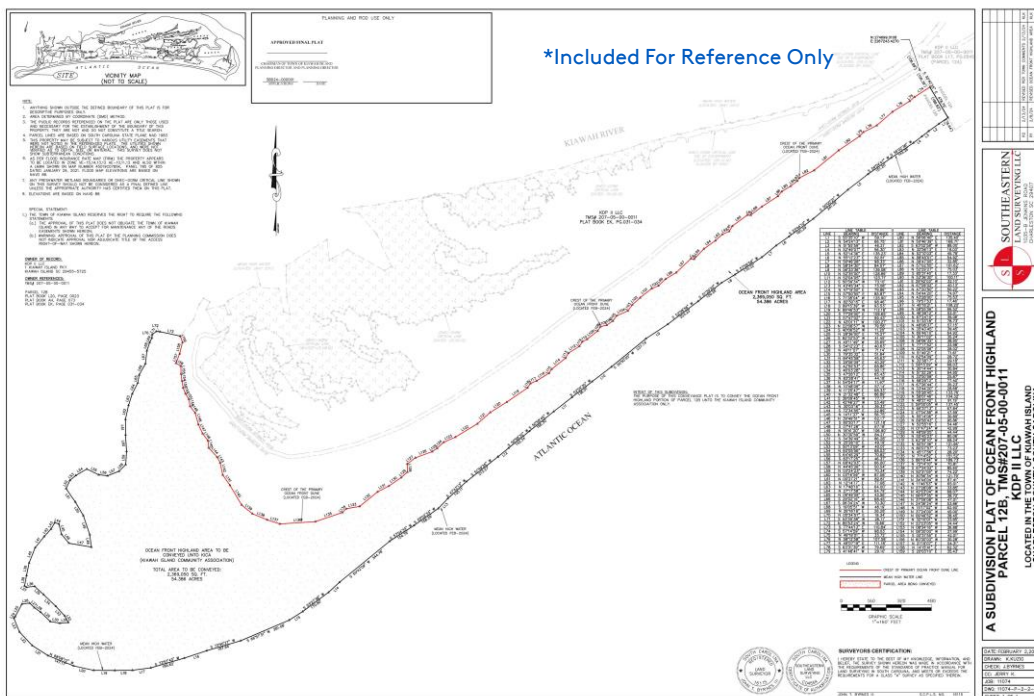


Captain Sams
EXHIBIT 16.2
07.08.2011

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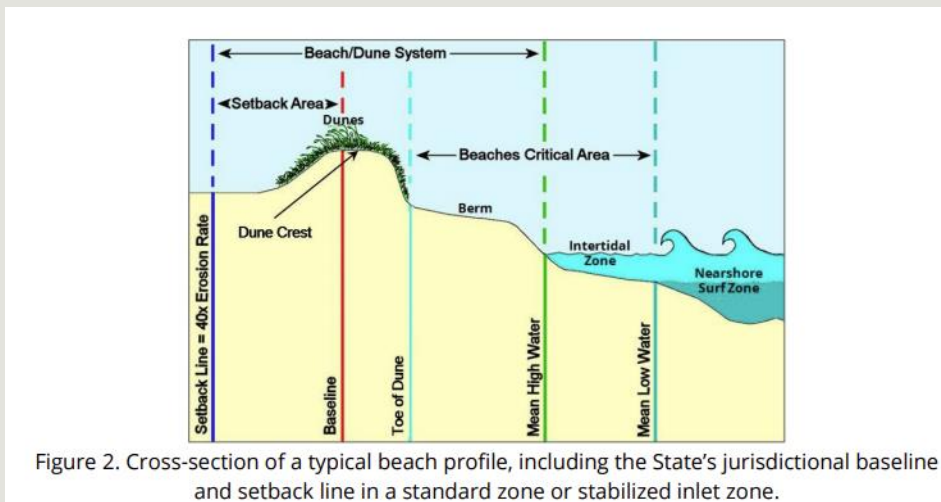


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Typical Beach Profile



South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resource Management, Beachfront Jurisdictional Line Stakeholder Workgroup Final Report, 2019

10

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#SBD24-000001 | Case Information

- In seeking approval of the proposed subdivision, the applicant is requesting a waiver from the Town of Kiawah Island Subdivision Regulations pursuant to Sec. 12-254. - Waivers as the proposed subdivision does not connect to a roadway.

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#SBD24-000001 | Waiver Request

Pursuant to Sec. 12-254. - Waivers.

- a) "Where extraordinary hardships may result from strict interpretation of this article, the Planning Commission may, by an affirmative vote of at least two-thirds of its members present at a meeting, approve a waiver from strict compliance with this article so that fairness is realized and the public interest is protected, provided that such waiver does not have the effect of nullifying the intent and purpose of the comprehensive plan, Article II of this chapter or this article.
- b) The applicant shall submit a petition in writing stating clearly and definitely the reason for the waiver request. Consideration will be given if each of the following factors is found:
 - 1) Special and/or unique conditions affecting the property;
 - 2) Undue hardships that will result from adherence to one or more of the relevant requirements; and
 - 3) Granting of the waiver will not be detrimental to adjacent properties, property owners or to the public interest."

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#SBD24-000001 | Staff Review

A Subdivision Plat | Oceanfront Highlands Parcel 12B #TMS207-05-00-0011

The Planning Department has reviewed this document for FINAL APPROVAL of this subdivision to be known as Oceanfront Highlands Parcel 12B TMS# 207-05-00-0011 and finds that it is inconsistent with Chapter 12 Article III Subdivision Regulations as the proposed subdivision does not satisfy the requirements of the Town's subdivision regulations.

Pursuant to Sec. 12-284. and 12-309. - Lots. (h)., *"All lots shall be provided with access (ingress and egress) by means of streets which are constructed in conformance with standards and specifications prescribed in article V of this chapter, the road code."*

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#SBD24-000001 | Staff Review

A Subdivision Plat | Oceanfront Highlands Parcel 12B #TMS207-05-00-0011

In the event the Planning Commission considers approval of subdivision application #SBD24-000001, planning staff recommends that:

A. The Planning Commission must consider approval of the applicant's waiver request pursuant to Sec. 12-254. Waivers. Staff finds that the consideration factors pursuant to this section would be found given the proposed subdivision application.

B. Upon approval, the following statement is noted on the subdivision plat:

- 1) *"This subdivision does not provide access (ingress and egress) by means of streets which are constructed in conformance with standards and specifications prescribed within the Town of Kiawah Island's Land Use Planning and Zoning Ordinance and was granted a waiver by the Planning Commission pursuant to § 12-254. Waivers."*

14

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Approximate
delineation of the
Captain Sams
marshland
conveyance

Distance:
1654.60 ft

Start survey at the Parcel 12B
demarcation line as shown on the
2015 Preliminary Plat
(approximately 1,655 feet west of
the Timbers/KICA property line).

Field Locate the Crest
of the Primary
Oceanfront Dune

Field Locate the
Mean High Water
Line

1 Inch = 500 Feet
0 500 1,000
Feet

- (e) Archeological Studies. Subject to the provisions of § 6-31-80, the Programmatic Agreement heretofore entered between the Property Owner and the State Department of Archives and certain other state and federal entities shall govern all matters dealing with archeology at Kiawah Island. A copy of such Agreement is attached as Exhibit 16.4: Programmatic Agreement.
- (f) Captain Sam's Spit – Parcel 12B.

This parcel is known as Captain Sam's Spit and is shown on Exhibit 16.2. It comprises approximately 155.341 acres of highland of which the Property Owner may plat, Develop, and convey: (a) fee simple title to no more than 20 acres for Single Family Detached Dwelling residential purposes and any uses as are authorized for Parcel 12B as authorized by this Agreement;(b) and utilize additional Parcel 12B highland acreage as may be needed for infrastructure/Development including, but not limited to, road rights-of-way, utilities, beach access easements, paths, trails, green space, community recreation serving Parcel 12B, dock access, parking, etc., with any such Development to comply with this Agreement including but not limited to Exhibits 13.1 and 13.2. *Provided however*, only highland landward of the setback line and/or critical line set by OCRM may have structures built thereon (lot lines and boardwalks permitted by OCRM from time to time may, however, irrespective of the foregoing, extend seaward of the setback line and critical line).

Such developable acreage shall be based on environmentally-sensitive approaches to Development, including limited and careful infrastructure construction. The Town will assist Property Owner in facilitating provision of access strategies that minimize impacts with narrow rights-of-ways to 20' widths or less and narrower road profiles to 16', provided such access is appropriate for emergency vehicles. Property Owner may use pervious material for same.

Notwithstanding any other provision of this Agreement, Property Owner agrees that prior to any conveyance to KICA of rights, title, or interests in any roadway and adjacent right-of-way leading to developable property appearing on recorded plats at Captain Sam's Spit (i.e., on Parcel 12B), the Property Owner shall first obtain and provide to the board of directors of KICA, a certification from a licensed civil engineer with at least 20 years experience in South Carolina coastal development, that such roadway/right-of-way, in such engineer's considered professional opinion, will not unreasonably be subject to tidal erosion from the Kiawah River or the Atlantic Ocean.

When and if such roadway/right-of-way improvements are completed by Property Owner and such certification obtained from the licensed civil engineer, as aforesaid, is so delivered, then the roadway/right-of-way may, with all such improvements as are herein or otherwise authorized or provided for, be conveyed

pursuant to the Kiawah Island General Covenants and/or the KICA Covenants, to KICA in such form as Property Owner has heretofore customarily conveyed rights in other roads and rights-of-way at Kiawah Island to KICA.

Property Owner may construct up to 2 Neighborhood Docks (with OCRM permitting approval) serving Parcel 12B or Parcel 12 A with flexibility for placement per Exhibit 16.2. The Key Location Ordinance shall be amended by the Town to accommodate same as and when the dock(s) are ready to be Developed by Property Owner.

Should the baseline/setback and/or critical lines move (including adjustments as result from periodic measurements by OCRM), allowances and locations for structure placement shall be adjusted accordingly by the parties and confirmed by amendment(s) hereto upon request of either party.

Property Owner shall provide to KICA (by quitclaim deed conveyance) 8 parking spaces at the approximate location on the approved subdivision plat upon completion of the road access and shall improve the spaces with pervious material. An easement to KICA shall be limited to its members' use for access along the road to the 8 parking space area. A beach access path from such parking area shall also be granted by Property Owner to KICA by quitclaim deed for its members' convenient usage. Property Owner shall make these conveyances upon completion of the infrastructure of Phase One of Captain Sam's Spit and the dedication to KICA of said infrastructure in conformance with the provisions of this section.

On or before the Termination Date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (e.g., lot owners, KICA, etc. pursuant to the authorizations hereinabove noted).

Prior to the Termination Date, Property Owner also agrees to restrict all remaining highlands not devoted to the uses or purposes authorized herein, to non-developable, passive green space by restrictive covenant recorded in the Charleston County RMC office. Property Owner shall grant an easement to KINHC (provided KINHC accepts) for any acreage not subject to Development, including such acreage as is to be conveyed, ultimately, to KICA.

The Town has requested that the Property Owner consider the possibility of establishing a temporary site on the Kiawah River for KICA members to launch kayaks and canoes before further Development of Captain Sam's Spit. Property

Owner agrees to study the issue and consider the request in good faith.

17. [Left intentionally blank]

18. **Kiawah Island Community Association, Inc.**

(a) Waiver.

The Property Owner executed a Limited Waiver under Declaration of Kiawah Island Community Association pursuant to the terms of the 2005 Development Agreement that is recorded in the RMC Office for Charleston County at Book 568, Page 393 (the "Limited Waiver"), copy attached as Exhibit 18.1. The Parties agree that the "retained rights of Kiawah Resort Associates, LP, its successors and assignees" as set forth in Limited Waiver shall expire upon transition under the KICA Covenants or January 1, 2018 whichever occurs first.

(b) KICA Authority.

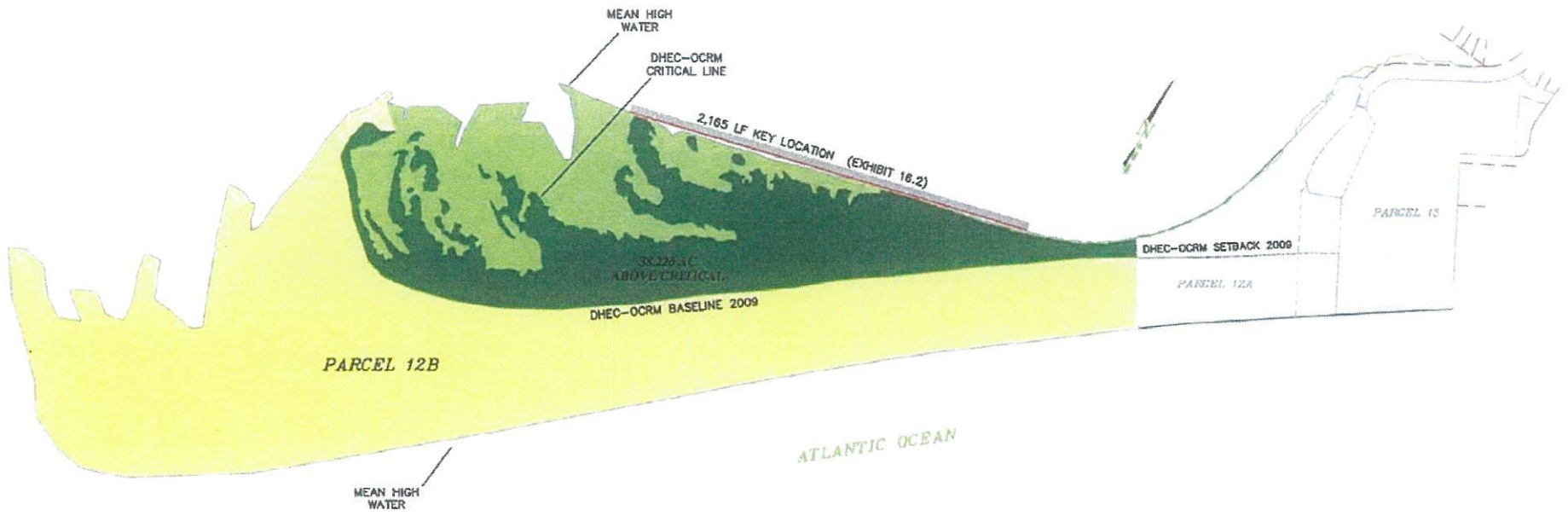
This Agreement shall not be understood as amending the KICA Covenants or changing rights thereunder. Except as expressly provided in this Agreement, the rights granted the Property Owner as the "Company" under the KICA Covenants are not intended to be lessened or abrogated, and any consensual relinquishment herein of rights provided to the Property Owner by the KICA Covenants shall not be deemed or construed to be permanent waivers of its rights under the KICA Covenants except as expressly set forth in the Limited Waiver that was Exhibit 18.1 to the 2005 Development Agreement that is recorded in the RMC Office for Charleston County at Book B 568, Page 393.

(c) The Security Gates.

The Town and the Property Owner recognize and respect the fundamental importance and value of the security gates, private rights-of-way and private amenities to the Town, the Property Owner and the owners of property on Kiawah Island and Cassique and to the enhancement and preservation of every property owner's land values. If a judicial challenge is brought seeking to make one or more of the roads on the island open to the general public and the challenging party prevails based, in whole or in substantial part, on the expenditure of public funds by the Town and/or an ordinance passed by the Town and/or other conduct or ownership of facilities of the Town, the Town agrees that it will immediately cease such expenditures, repeal such ordinance, and refrain from owning such facilities (as are inside the security gates) or continuing such conduct. This paragraph shall be subject to the provisions of § 6-31-80 and shall not be construed to prevent the performance or enforcement of the specific provisions of this Agreement.

PARCEL 12B

HIGHLAND	38.226 AC
AREA BETWEEN DHEC-OCRM, BASELINE AND MHW	117.115 AC
TOTAL	155.341 AC



Captain Sams
EXHIBIT 16.2
07.08.2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF OWNERSHIP
Application SBD24-000001
(Captain Sam's Ocean Front Highland)

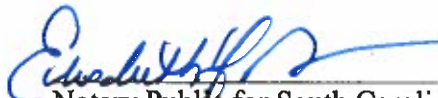
KNOW ALL MEN BY THESE PRESENTS, that KDP II LLC:

1. Owns that certain piece, parcel or tract of land located in the Town of Kiawah Island, Charleston County, South Carolina, shown and designated as "OCEAN FRONT HIGHLAND AREA TO BE CONVEYED UNTO KICA (KIAWAH ISLAND COMMUNITY ASSOCIATION) TOTAL AREA TO BE CONVEYED: 2,369,050 SQ. FT. 54.386 ACRES" on a proposed plat by Southeastern Land Surveying LLC entitled "A SUBDIVISION PLAT OF OCEAN FRONT HIGHLAND PARCEL 12B, TMS#207-05-00-0011 KDP II LLC LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA" dated February 2, 2024, last revised on February 13, 2024, said tract bearing Charleston County Tax Map Sequence Number 207-05-00-0011.

2. Said parcel is a portion of the property conveyed to KDP II LLC, a South Carolina limited liability company, by Special Warranty Deed from Kiawah Development Partners II, Inc., dated May 31, 2013, and recorded in 0335, page 077 in the Office of the Register of Deeds for Charleston County, S.C.

Sworn to before me this
20th day of February, 2024.

KDP II LLC (Corp. Seal)

 (SEAL)
Notary Public for South Carolina
My commission expires: 11-2-2030

By: 
Chris Randolph
Its: Authorized Agent

ELISABETH F. NIMMONS
Notary Public for South Carolina
My Commission Expires: 11-2-2030



PLANNING DEPARTMENT

Joel H. Evans, RLA, AICP
Zoning/Planning Department Director

843.202.7200
1.800.524.7832
Fax: 843.202.7222
Lonnie Hamilton, III
Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405-7464

PERMIT APPLICATION: RESTRICTIVE COVENANTS AFFIDAVIT

I, Chris Randolph, Authorized Agent of KDP II LLC have reviewed the restrictive covenants applicable to Parcel Identification Number(s) 207-05-00-0011 located at the west end of Kiawah Island, being a portion of Captain Sam's Spit, Parcel 12B, and the proposed permit application is not contrary to, does not conflict with, and is not prohibited by any of the restrictive covenants, as specified in South Carolina Code of Laws, Section 6-29-1145.

KDP II LLC

By: 

Name: Chris Randolph, Authorized Agent [Date] 2.20.24

Effective July 1, 2007, South Carolina Code of Laws Section 6-29-1145 requires local governments to inquire in the permit application, or in written instructions provided to the applicant, if a tract or parcel of land is restricted by a recorded covenant that is contrary to, conflicts with or prohibits an activity for which a permit is being sought. [Section 6-29-1145 is copied on the back of this page]

For Staff Use Only:

Received by _____ Date _____ Application Number: SBD24-000001

