

# Memo

To: Town of Sullivan's Island  
From: Derk Van Raalte  
Date: February 26, 2021  
Subj: Adoption of Accreted Land (AL) Work Plan and Settlement Order Amendment

Staff worked diligently with the engineering team to prepare a work plan ("Work Plan") to honor the Original Settlement Agreement reached in October of 2020. I previously reported to Council that the settlement's contemplated work would require coordination with various third-party regulatory agencies, at least including the United States Army Corps of Engineers ("the Corps") and SCDHEC OCRM ("OCRM.") I also reported that it was possible that changes might occur through interactions with regulators and would be incorporated, along with other details, into a detailed Work Plan. That has occurred and I wish to provide you with an update and obtain approval to proceed.

Portions of the land governed by the Original Settlement Agreement contain wetlands and/or lie seaward of the OCRM setback line. Both can impact AL work. While the setback lines were known, wetland boundaries could not be known until a survey team arrived on site. Thus, one of the first tasks was to get a delineation. Sabine & Waters in January reported the results shown on the accompanying map. Wetlands and/or critical zone areas cover a substantial portion of the site.

Any work on such land must be approved in one fashion or another by the Corps and/or OCRM. A key is to tailor work details to be as respectful as possible of each agency's core concerns. The staff at OCRM and the Corps have been most patient in talking to the Town's team to explain their perspectives and core concerns. With that general insight in hand the Town's engineering team and staff looked at the Original Settlement Agreement terms and set about drawing a work plan that (a) incorporates the original terms where not in conflict with regulatory goals and (b) modifies the original terms where necessary to address regulatory concerns. Staff then reviewed the Work Plan with Plaintiffs' counsel since, under the Settlement, any deviation from the Original Settlement terms requires Plaintiffs' consent. Plaintiffs' counsel has indicated consent to the Town moving forward in this fashion.

The result of this effort is the Work Plan provided here for consideration at the upcoming March 16<sup>th</sup> Council Meeting. The changes are many and varied. As a result, the best way to recognize them is by reference to the accompanying comparison chart. The general thrust can be summarized here, however: (a) Substantially less tree / shrub removal will occur in areas below the OCRM Setback / Dune line<sup>1</sup>, but the plan as modified is still expected to provide a significant increase in

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<sup>1</sup> In Zones 1 and 2 the OCRM setback line, natural topography, and vegetation location are such that it is possible to tailor the work plan to propose leaving uncut specified vegetation seaward of the Setback line. A map of Zone 3 shows it to be significantly different. There the setback line in places goes in hundreds of feet from the beach nearly to the back yards of adjacent homeowners. As a result, it would not be possible to provide any relief if the Setback line became the project area work limit. The team looked for an alternative line that would respect the core regulatory concerns of OCRM, such as soil stability, while at the same time allowing the improvements sought in the Settlement Agreement. A natural dune ridge line emerged as a suitable dividing point and the proposed Work Plan utilizes this as the proposed split point for work in Zone 3.

breezes and ocean views. Plant material originally slated for removal, but now retained by the Work Plan, may be trimmed or pruned in ways not expected to jeopardize survival of the plant. (b) Work methods will be tailored in wetland areas to avoid land disturbance or deposit of debris into the wetland area. In some cases land may fall into both categories and thus be subject to both types of modifications. Again, the exact contours are best understood by reference to the accompanying chart.

The next step in carrying out the Town's responsibilities under the Settlement is to submit a Work Plan with accompanying documents to OCRM and the Corps for official review.<sup>2</sup> I will seek your approval on March 16<sup>th</sup> to make that submittal.

As a housekeeping matter, the deviation of this Work Plan from the Original Settlement Agreement and Court Order must be addressed. Otherwise, the Town completing work as permitted by the Corps and OCRM might be argued to be non-compliant. That is in neither the Town nor the Plaintiffs' best interest. To avoid this Town counsel and Plaintiffs' counsel have drafted a proposed joint Motion to ask the Court to:

- Amend the Original Settlement Agreement and Order to conform to the Work Plan now being submitted to regulators;
- Provide a mechanism to administratively address any future changes regulators might request as a condition of approval. Notably, the Town would not object to future changes suggested by regulators *so long as* the proposed change does not exceed what was contemplated in the Original Settlement Agreement or this Work Plan. In other words, the Town would not object to being asked by regulators to do *less* than the maximum amount Council approved;
- Reset the time clock for citizens to opt-in to participate. Originally the time period was twelve (12) months from the date of settlement. However, we are now some months down the road, regulatory permissions are not yet in hand, and through no fault of the Town, its citizens, or regulators, it is not realistically possible for citizens to sign up yet to participate. As a result, an amendment would reset this time clock to run for twelve (12) months after the Town receives regulatory approvals.
- For clarity, confirm that the Work Plan is based on the tree survey data set both sides used for purposes of settlement. One must have a fixed ruler with which to measure.

Attachments: Proposed Work Plan  
Proposed Wetlands Map  
Comparison Chart

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<sup>2</sup> Note, minor non-substantive clarifications (i.e. identifying highland staging locations, etc.) may occur in the course of putting the document in final form for formal submittal as deemed appropriate by engineering staff.