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1 **2018-59 (1<sup>ST</sup> READING): AN ORDINANCE TO AMEND THE ZONING ORDINANCE FOR**  
2 **THE CITY OF MYRTLE BEACH BY AMENDING THE PUBLIC UTILITY DEFINITION, AND**  
3 **ADD A SOLAR FARM DEFINITION.**

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4 **Applicant/Purpose:** EDF Renewables & Horry County (applicant) / to amend the zoning ordinance  
5 & the public utility definition to include solar farms.  
6

7 **Brief:**

- 8 • Applicants proposes to install a solar farm for Santee Cooper on land leased from the County  
9 on the west side of South Kings between Ocean Woods Cemetery & Executive Helicopters.
- 10 • Santee Cooper has a smaller solar installation on Mr. Joe White Ave near Seaboard St.
- 11 • The subject parcel is currently zoned PRC (Parks/Recreation/Conservation). Solar farms are  
12 not a permitted use in PRC.
- 13 • There are 2 options to achieve compliance required for the project:
  - 14 ▪ Rezone the property to a zone that allows such uses.
  - 15 ▪ Amend the text for the PRC Zone to add Solar Farms as a permitted use.
- 16 • Applicants originally requested to rezone the parcel to HC-2 (Highway Commercial-2)
- 17 • Subject property abuts HC-2 zoned property, which allows this use.
- 18 • 8/21/18: Planning Commission recommends:
  - 19 ▪ Denial of the rezoning request from PRC to HC.
  - 20 ▪ Text amendment to define solar farms as a separate use & apply that as a permitted  
21 use in all non-residential zones except IN (Institutional), CS (Cabana Section) & C-6  
22 (Urban Village, were it is allowed as a supplemental use).

23  
24 **Issues:**

- 25 • Property was formerly a landfill & is encumbered by restrictive covenants limiting uses.
- 26 • The proposed ordinance allows solar farms in the PRC zone for the 1<sup>st</sup> time & sets  
27 requirements for installations in all zones in which it is allowed:
  - 28 ▪ Installations must be installed & maintained in compliance w/ the International  
29 Building Code, National Electric Code & all local regulations, directives & codes.
  - 30 ▪ Installation requires issuance of applicable permits such as building &/or electrical.  
31 A permit cannot be issued w/out CAB approval.
  - 32 ▪ Solar farms may have transformers w/ substations.
  - 33 ▪ Installations will set back at least 30' from the front street (or the front setback of  
34 the underlying zoning, whichever is more).
  - 35 ▪ Installations must adhere to the side & rear setbacks of the underlying zoning.

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37 **Public Notification:**

- 38 • 1 sign posted. 11 letters mailed. Legal ad ran.
- 39 • Normal meeting notification.

40  
41 **Alternatives:**

- 42 • Modify the request.
- 43 • Deny the proposed ordinance.

44  
45 **Financial Impact:** An increase in business license revenue from EDF Renewables, & an increase in  
46 building permit revenue during construction. Santee Cooper does not pay property taxes.  
47

48 **Manager's Recommendation:** I recommend 1<sup>st</sup> reading.  
49

50 **Attachment(s):** Proposed ordinance, staff report, Comp Plan citations, zoning comparison.

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

AN ORDINANCE TO AMEND THE ZONING  
ORDINANCE FOR THE CITY OF MYRTLE BEACH  
BY AMENDING THE PUBLIC UTILITY  
DEFINITION, AND ADD A SOLAR FARM  
DEFINTION

IT IS HEREBY ORDAINED that the City of Myrtle Beach Code of Ordinances, Amendment A, Zoning, Article 2 (Definitions), Section 203 is amended to include a new definition, solar farm, as follows:

**Section 203. Definitions**

Solar Farm: an installation or area of land in which a large number of solar panels are set up in order to generate electricity as the primary use on the property; transformers with substation capabilities may be part of the design. Solar farms are subject to supplemental provisions as listed in Article 13 Supplemental Provisions, Section 1312 Solar Farms.

IT IS FURTHER ORDAINED that the City of Myrtle Beach Code of Ordinances, Amendment A, Zoning, Article 13 (Supplemental Provisions), is amended to include a new section, 1312, as follows:

**1312. SOLAR FARMS**

1312.A. Intent. The intent of these standards is to provide for safe, attractive, orderly and functional sustainable energy options in furtherance of the goals of the comprehensive plan.

1312.B. Application. These standards shall apply to the installation and/or placement of any solar farm within the City of Myrtle Beach.

1312.C. Installation.

- 1. Solar farms shall be installed and maintained in compliance with the International Building Code, National Electric Code and all local regulations, directives and codes.
- 2. Installation of any solar farm shall require the issuance of any applicable permits such as building and/or electrical. A permit shall not be issued without Community Appearance Board approval.
- 3. Solar farms may have transformers with substation capabilities in the design and installation.

1312.D. Setbacks.

- 1. Front street setbacks. Any solar farm installation will set back from the front street 30 feet or the front street setback of the underlying zoning, whichever is greater.

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2. Side/Rear setbacks. Any solar farm installation will adhere to the side and rear setbacks of the underlying zoning.

**IT IS FURTHER ORDAINED** that that the City of Myrtle Beach Code of Ordinances, Amendment A, Zoning, Article 14 (Zoning Districts), Section 1407.C (Permitted Uses) is amended to include a new use, Solar Farms, as follows:

Use Category and Type	MU-M	MU-H	C6	C7	C8	A	CG	E	HC1	HC2	MP	IN	AP	BP	LM	WM	CS	IR	PRC
<b>Public Services</b>																			
Buildings and uses of utilities holding a franchise from the city	S	P	S	P	P	S		S	P	P	P		P	P	P	P		P	
Parks, recreation areas, recreation facilities or recreation buildings owned by the City of Myrtle Beach	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P
Public utilities installations and substations	P	P	S	P	P	P	P	P	P	P	P		P	P	P	P		P	
Public works facility/public utilities	P	P	S	P	P	P	P	P	P	P	P		P	P	P	P		P	P
<b>Solar farms</b>	<b>P</b>	<b>P</b>	<b>S</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>I</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>I</b>	<b>P</b>	<b>P</b>

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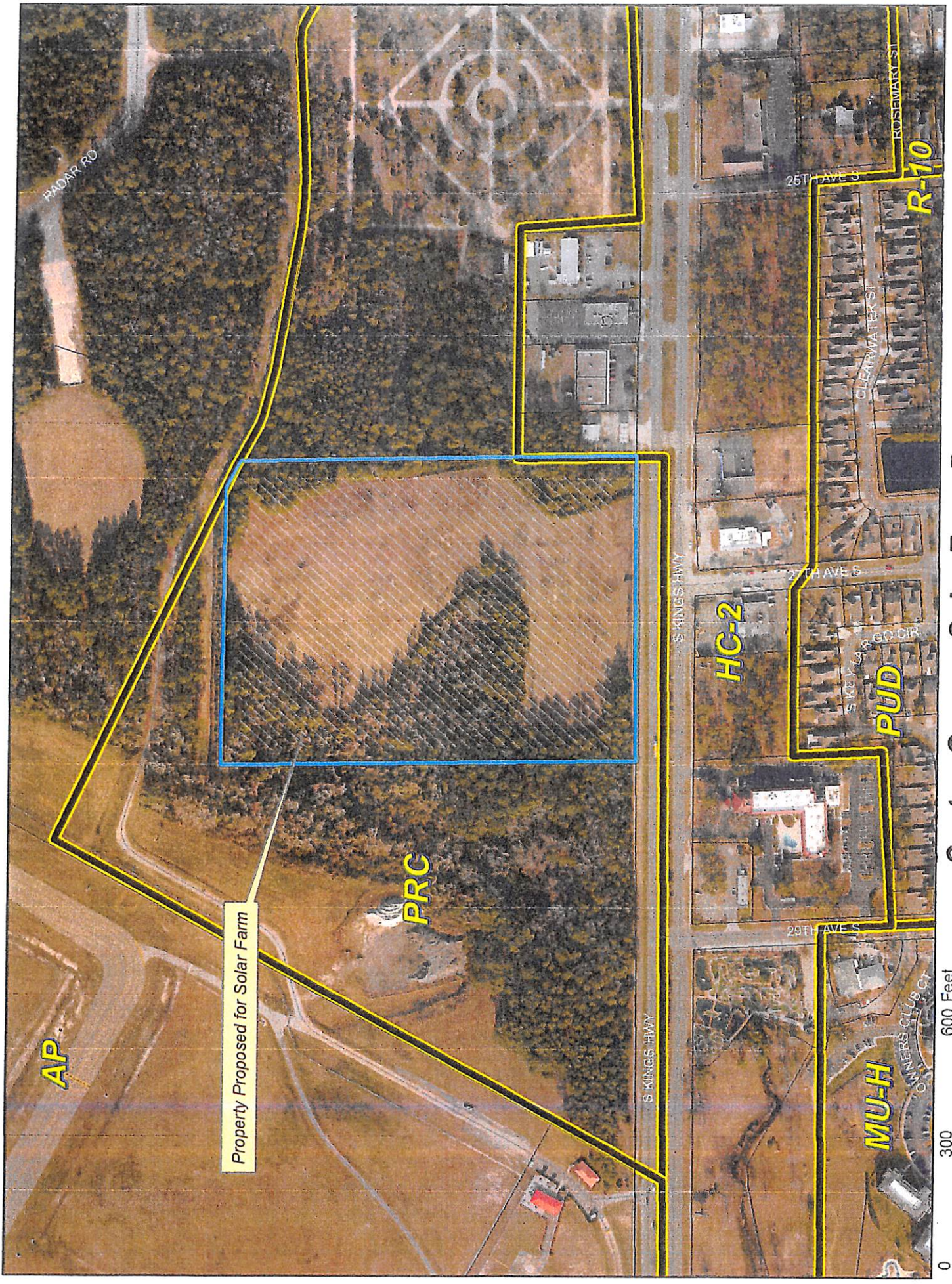
This ordinance shall become effective upon adoption.

\_\_\_\_\_  
BRENDA BETHUNE, MAYOR

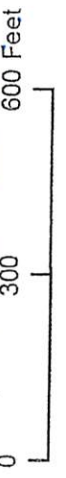
ATTEST:

\_\_\_\_\_  
JENNIFER STANFORD, ACTING CITY CLERK

1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

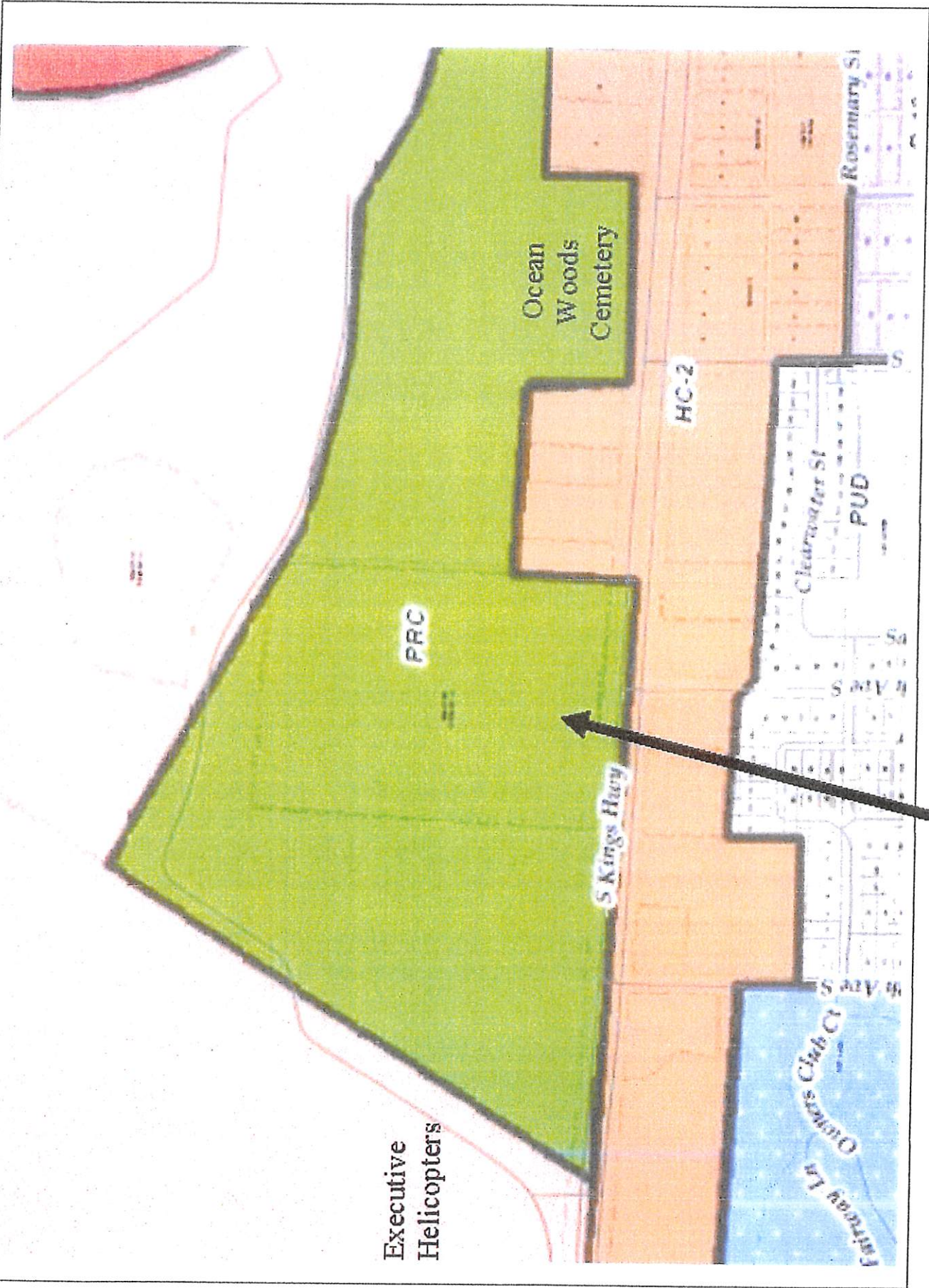


Property Proposed for Solar Farm



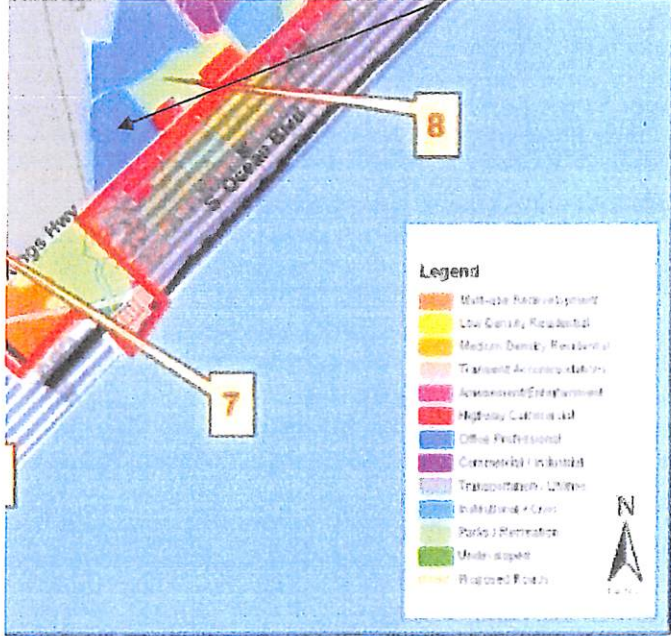
# Santee Cooper Solar Farm Proposal

1 inch = 300 feet



Z18-06 Santee Cooper Solar farm  
Approximately 17 acres on South Kings Highway

1	<b>APPLICANT</b>	EDF Renewables, co-applicant
2		Santee Cooper, co-applicant
3		Horry County, property owner
4		
5	<b>REQUESTED ACTION</b>	To rezone property located at 2700 S Kings Hwy from PRC (Parks/Recreation/Conservation) to HC-2 (Highway Commercial). <i>Note: Planning Commission recommended alternative</i>
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9		
10	<b>REASON FOR REQUEST</b>	To construct a solar farm
11		
12	<b>SITE LOCATION</b>	2700 S Kings Hwy
13		
14	<b>SIZE</b>	17.004 acres
15		
16	<b>EXISTING LAND USE</b>	Vacant
17		
18	<b>COMPREHENSIVE PLAN</b>	Future Land Use: Industrial/Civic
19		



20		
21		
22	<b>SUITABILITY</b>	<b>Water &amp; Sewer</b> is available to serve the property. <b>Abuts a public street</b> S Kings Hwy <b>Parcel size</b> meets minimum requirements for HC-2 <b>Easements:</b> utility easements, access rights
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26		
27	<b>ZONING HISTORY</b>	<b>4/9/1977:</b> Annexed as part of the MB Air Force Base property; zoned I-1 (Industrial) until base closed, when zoning converted to IR (Interim Redevelopment) <b>1988:</b> Zoned PRC <b>2014:</b> Zoned PRC
28		
29		
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1 PUBLIC NOTICE LEGAL AD RAN Yes  
 2 SIGNS POSTED Yes  
 3 LETTERS SENT 11  
 4

5 **SURROUNDING ZONING**

NW	Vacant/Airport Runway PRC/AP	Vacant AP	Vacant/Cemetery PRC	NE
	Vacant/Helicopter Rides PRC/AP	<b>Subject Property</b> PRC	Gas Station HC-2	
SW	Accommodations HC-2	Commercial HC-2	Vacant HC-2	SE

6  
 7 **ALTERNATIVES TO APPROVAL** Recommend alternative zone  
 8 Recommend denial.  
 9

10 **FINANCIAL ANALYSIS:** Potential increase in business license fees, construction-related  
 11 fees.  
 12  
 13

14 **STAFF COMMENTS**

15  
 16 **Construction Services, DPW, Police, Fire, C&L Services, Addressing:** No concerns.  
 17

18 **Planning Staff:** See analysis and summary.

19 *Alternative:* add transfer stations to PRC

20 *Other options:* break down definition of transfer stations in code into  
 21 classifications based on conveyance.

22 **Information needed regardless of option:** Covenant Release or information  
 23 regarding the 60-day advance notice being relayed to the Air Force, EPA  
 24 and SC DHEC pursuant to Section VII of the quitclaim deed.  
 25

26 **ANALYSIS**

27  
 28 *Section 403 of the Zoning Ordinance lists the following factors, which should be part of the*  
 29 *information considered when evaluating requests to change the Zoning Ordinance Text or Map.*  
 30

31 **Section 403.A.** Whether or not the requested zoning change is [1] consistent with the  
 32 Comprehensive Plan or [2] is justified by an error in the original ordinance.

- 33 • **[1] Yes.** The Comprehensive Plan Future Land Use Plan shows the property  
 34 as "industrial/civic" land. The use proposed, a solar farm, falls into the civic  
 35 category. Other uses in the HC-2 zone, however, do not align with the  
 36 comprehensive plan's future land use map.
- 37 • **[2] No.** There are no known errors with regard to this application.  
 38

39 **Section 403.B.** – The precedents, and the possible effects of such precedents, which  
 40 might result from approval or denial of the petition.  
 41

- 1           ◦ Precedence for this type of use exists in the city limits on Mr Joe White Ave.  
2           A small solar array (valued at \$500,000) was installed on the Santee Cooper  
3           property in 2010-2011.  
4

5       **Section 403.C.** – The capability of the city or other government agencies to provide any  
6       services, facilities or programs that might be required if the petition were approved.

- 7           ◦ **Water** is available to serve this site.
- 8           ◦ **Sewer** is available to serve this site.
- 9           ◦ **Street frontage** exists along S Kings Hwy.
- 10          ◦ **Sidewalks** (part of the East Coast Greenway) exist along S Kings Hwy.
- 11

12       **Section 403.D.** Effect of approval of the petition on the condition or value of property in  
13       the city.

- 14          ◦ Effect on subject property: increase in income potential.
- 15          ◦ Effect on surrounding property: converts vacant land into a viable commercial  
16          use.
- 17

18       **Section 403.E.** Effect of approval of the petition on adopted development plans and  
19       policies of the City.

- 20
- 21          ◦ **Deed Restrictions:** State law requires staff to ask if there are deed restrictions  
22          that would prohibit a planning action from going forward. Absent information  
23          from the applicant, anyone with an interest in the action can bring forth the  
24          information.
  - 25           ◦ This property is subject to environmental and use restrictions that limit the  
26           use and how the land is handled during any future project work (page 4 of  
27           the deed). This includes the following restrictions, unless approval is  
28           received from the Air Force, EPA, and SC DHEC:
    - 29               ▪ The Misque Dump must maintain soil cover integrity;
    - 30               ▪ Land use may not change unless a 60-day advance notice is  
31               submitted and approved; and
    - 32               ▪ Any grant, transfer, leases, licenses, and/or conveyance of any  
33               interest, in the property must be given a 60-day advance notice.
  - 34           ◦ The deed restrictions allow that the original owner (the US Government)  
35           may give a modification or release “Covenant Release”) in whole or in  
36           part, subject to request from property owner, notification and concurrence  
37           or approval of the Air Force, SC DHEC, and US EPA Region IV.
    - 38               ▪ Staff does not have knowledge of any Covenant Release in  
39               relation to this property.
- 40

- 41          ◦ **Comprehensive Plan:** Petition could be interpreted as compatible with  
42          comprehensive plan.
- 43

44       *State Law Reference:*

45

46       SECTION 6-29-1145. Determining existence of restrictive covenant; effect.

47

48       (A) In an application for a permit, the local planning agency must inquire in the  
49       application or by written instructions to an applicant whether the tract or parcel of land is



1 restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the  
2 permitted activity.

3  
4 (B) If a local planning agency has actual notice of a restrictive covenant on a tract or  
5 parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

6  
7 (1) in the application for the permit;

8  
9 (2) from materials or information submitted by the person or persons requesting  
10 the permit; or

11  
12 (3) from any other source including, but not limited to, other property holders, the  
13 local planning agency must not issue the permit unless the local planning agency  
14 receives confirmation from the applicant that the restrictive covenant has been  
15 released for the tract or parcel of land by action of the appropriate authority or  
16 property holders or by court order.

17  
18 (C) As used in this section:

19  
20 (1) "actual notice" is not constructive notice of documents filed in local offices  
21 concerning the property, and does not require the local planning agency to  
22 conduct searches in any records offices for filed restrictive covenants;

23  
24 (2) "permit" does not mean an authorization to build or place a structure on a  
25 tract or parcel of land; and

26  
27 (3) "restrictive covenant" does not mean a restriction concerning a type of  
28 structure that may be built or placed on a tract or parcel of land.

29  
30 **Relevant Comprehensive Plan Citations**

31  
32 **Land Use Element**

- 33  
34 • Ensure new non-residential development is compatible adjacent to or near  
35 neighborhoods.

36 *Action: The Planning Commission, with assistance from Planning and*  
37 *other appropriate departments and the Zoning Administrator, works with*  
38 *neighborhood organizations to develop plans. The Planning Commission*  
39 *recommends the plans to City Council for adoption.*

40 *Time frame: Short term.*

41 *Potential funding source: No funding needed.*

42  
43  
44 ***Other Policies***

45 **City Manager's Strategic Objectives Citations – Economic Development:**

46  
47 Strategy 1: Define an Economic Development Vision & Define Strategies to Achieve that  
48 Vision.

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- **Proposed Vision – to foster an environment in which economic activity can be expanded so that all our citizens have an opportunity to enjoy what the community has to offer.**
- **Focus Sectors:**
  - **Infill retail development.**
  - **New technology & communications.**
  - **Medical services.**

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**CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA**

**AN ORDINANCE TO REZONE PROPERTY  
LOCATED AT 2700 S KINGS HWY (PIN # 445-  
00-00-0001) FROM PRC (PARKS/RECREATION/  
CONSERVATION) TO HC-2 (HIGHWAY  
COMMERCIAL)**

**PIN 445-00-00-0001  
TMS 186-00-01-320**

**IT IS HEREBY ORDAINED** that the official zoning map of the City of Myrtle Beach is amended by rezoning approximately 17.004 acres, being Horry County PIN # 445-00-00-0001 (as shown on "Exhibit A" attached hereto) from zone PRC (Parks/Recreation/Conservation) to HC-2 (Highway Commercial).

This ordinance shall become effective upon adoption.

\_\_\_\_\_  
BRENDA BETHUNE, MAYOR

ATTEST:

\_\_\_\_\_  
JENNIFER STANFORD, ACTING CITY CLERK

1<sup>st</sup> Reading:

2<sup>nd</sup> Reading:



1 inch = 300 feet

**Santee Cooper Rezoning Proposal**

0 300 600 Feet



EDF Renewables  
5 Commerce Avenue  
West Lebanon, NH 03784

Horry County  
1301 2<sup>nd</sup> Avenue  
Conway, SC 29526

July 25, 2018

City of Myrtle Beach Planning Department  
City Hall  
937 Broadway  
Myrtle Beach, South Carolina 29578

Via email and FedEx

RE: Request to rezone parcel identified by Tax Map Number (TMS) 188-00-01-320, in its entirety, from the Parks, Recreation and Conservation District to the HC2 Highway Commercial District in order to facilitate development of a solar photovoltaic electrical generation project to be owned and operated by Santee Cooper.

Dear Planning Board:

Horry County (the "County") is the owner of a 17,004 acre parcel located along Kings Highway identified by Tax Map Number (TMS) 188-00-01-320 (the "Parcel"). The County intends to lease the Parcel to Santee Cooper for the construction and operation of a 2 MW solar photovoltaic electrical generation project (the "Project"). The Project is being developed and constructed by EDF Renewables ("EDF") who was selected as the developer by Santee Cooper through competitive bid.


The County, working with Santee Cooper, and with assistance from EDF, submits this application to rezone the Parcel from the Parks, Recreation and Conservation ("PRC") District to the HC2 Highway Commercial ("HC2") District for consideration at your August 21<sup>st</sup> meeting. The Request for Rezoning Application Form and supporting materials are attached. If you have any questions or concerns, please do not hesitate to contact Allen Tate, of EDF, at [allen.tate@edf-re.com](mailto:allen.tate@edf-re.com) or 802-359-6571.

Horry County



Chris Eldridge  
County Administrator

EDF Renewables



J. J. by A. T.  
Jordana Jusidman  
Director of Project Development

## LIST OF SUPPORTING DOCUMENTATION

1. Agency Letter
2. Request for Rezoning Application
3. Memorandum in Support of Rezoning
4. Relevant Portion of the Myrtle Beach Zoning Map
5. Figure 18 of the CP: Planning Area VI Existing Land Use Map
6. Figure 19 of the CP: Planning Area VI Proposed Land Use Map
7. Written legal description of the Parcel
8. Recorded Boundary Survey
9. Deed

Horry County  
1301 2<sup>nd</sup> Avenue  
Conway, SC 29526

July 25, 2018

City of Myrtle Beach Planning Department  
City Hall  
937 Broadway  
Myrtle Beach, South Carolina 29578

**RE: Rezoning request agency letter for Tax Map Number (TMS) 188-00-01-320**

To whom it may concern:

Horry County (the "County") is the owner of a 17.004 acre parcel located along Kings Highway identified by Tax Map Number (TMS) 188-00-01-320 (the "Parcel"). The County intends to lease the Parcel to Santee Cooper for the construction and operation of a 2 MW solar photovoltaic electrical generation project (the "Project"). The Project is being developed and constructed by EDF Renewables ("EDF") who was selected as the developer by Santee Cooper through competitive bid. The County hereby authorizes EDF Renewables to prepare and submit a Request to Rezone the Parcel from the Parks, Recreation and Conservation ("PRC") District to the HC-2 Highway Commercial ("HC-2") District. The County further authorizes EDF Renewables to speak in support of the County's request at any Planning Department, Planning Commission, or City Council meetings.

Respectfully,

Horry County

By: 

Name: Chris Eldridge

Title: County Administrator



## REQUEST FOR REZONING APPLICATION

This is an application to request an amendment to the Zoning Map of the City of Myrtle Beach, South Carolina. All information contained in this application is subject to public disclosure under the South Carolina Freedom of Information Act (FOIA).

**TYPE OR PRINT** all answers on this application. Attach any additional information requested to complete this application. There is a five hundred dollar (\$500.00) non-refundable fee for this application. (Cash or check payable to "City of Myrtle Beach".)

The following items are required to process a request for rezoning:

- A completed rezoning request application, signed by the property owner(s) or agent authorized to request a rezoning.
- If property owner(s) are not representing themselves, authorization for an agent to act on behalf of the property owner must be submitted.
- A written legal description (metes and bounds) of the property.
- Recent (within 6 months) boundary survey of property: **38 paper copies** no larger than 11" X 17" **and a digital copy** in either .pdf or .jpeg format. Staff may accept other property description instruments (i.e. plats or surveys) at their discretion.
- Copy of deed(s) proving ownership of property.

Requests for rezoning are considered by the Planning Commission at their regularly scheduled meeting (the third Tuesday of the month). To be placed on the Planning Commission's agenda, the completed rezoning application and all additional requested materials must be submitted to the City of Myrtle Beach Planning Department (located on the first floor of City Hall) by 5:00 p.m. on the date of the deadline. A deadline schedule is available from the Planning Department upon request. The recommendation of the Planning Commission will be forwarded to City Council for final action. **This application in no manner implies approval or acceptance of the proposed rezoning request by the City of Myrtle Beach nor does the City waive its right and privilege to deny such application.**

**Public Hearing:** Regulations require that this application be given a public hearing. Notification of the public hearing will be in the form of advertisement in a local newspaper, public hearing sign(s) posted on the property, and letters mailed to property owners within 300 feet of the property.

**Withdrawal Policy:** Complete applications will be processed by the Planning Department. At the written request of the applicant, **PRIOR TO PUBLIC NOTIFICATION**, an application may be continued, tabled or withdrawn. Once the public has been notified of the public hearing, the application request shall be placed on the agenda. During the public hearing, the applicant may request that the item be continued or tabled. Should the applicant wish to remove the request from the agenda **after** public notification but **prior to the public hearing**, the applicant must **withdraw** the application in writing. Once an application is withdrawn the file is closed. Another application, along with any applicable fees, may be submitted at a future date.

If there are any questions regarding rezoning policies and procedures, or if you need assistance in completing the application please contact the Planning Department at:

**CITY OF MYRTLE BEACH PLANNING DEPARTMENT**  
**CITY HALL, 937 BROADWAY**  
**P.O. BOX 2468, MYRTLE BEACH, SC 29578**  
**PHONE – 843-918-1050 / FAX – 843-918-1083**  
**WEBSITE – [www.cityofmyrtlebeach.com](http://www.cityofmyrtlebeach.com)**



**REQUEST FOR REZONING APPLICATION**  
PRINT OR TYPE ALL ANSWERS (EXCEPT SIGNATURE)

**APPLICANT INFORMATION:**

**Primary Contact:** Allen Tate, EDF Renewables

**Mailing Address:** 5 Commerce Avenue, West Lebanon, NH 03784

**Day Phone:** 802-359-6571 **Fax:** \_\_\_\_\_

**Email:** allen.tate@edf-re.com

**Property Owner # 1:** Horry County

**Mailing Address:** 1301 2nd Avenue, Conway, SC 29526

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Authorized Agent # 1 (if applicable):** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Property Owner # 2:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Authorized Agent # 2 (if applicable):** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Property Owner # 3:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Authorized Agent # 3 (if applicable):** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Day Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

REQUEST FOR REZONING APPLICATION  
PRINT OR TYPE ALL ANSWERS (EXCEPT SIGNATURE)

Description of Property.

Street address of property to be rezoned (if applicable): South Kings Highway

Horry County Tax Map (TMS) Number: 188-00-01-320

Current City of Myrtle Beach Zoning Designation: PRC

Exact size of subject property: Acre(s): 17.004 Square Footage: \_\_\_\_\_

Zoning Requested.

What type of zoning district is requested? Mixed Use

What City Zoning District is requested (if known)? HC2  
(NOTE: The zoning district requested in this application may not be the zoning district approved for the subject parcel by City Council after consideration and approval of the rezoning request).

Explain why this property should be zoned as requested: \_\_\_\_\_

See Memorandum in Support of Rezoning of Parcel 188-00-01-320

Specify proposed land use (i.e. retail store, single-family homes, restaurant, etc.): photovoltaic generation facility

SIGNATURE AND CERTIFICATION

The undersigned hereby respectfully request that the City of Myrtle Beach Planning Commission review this request for rezoning application for the above-described property. All of the above statements and information, whether written on this application or attached, are true and correct to the best of my knowledge and belief. Signature(s) of all property owner(s) or authorized agent(s) must be obtained before application can be accepted for processing.

Signature of Property Owner # 1:  Date: 7/25/18 A.T.

Signature of Authorized Agent # 1: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Property Owner # 2: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Authorized Agent # 2: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Property Owner # 3: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Authorized Agent # 3: \_\_\_\_\_ Date: \_\_\_\_\_



## MEMORANDUM IN SUPPORT OF REZONING OF PARCEL 188-00-01-320

Santee Cooper has entered into arrangements with Horry County (the "County") to lease a 17.004 acre parcel located along Kings Highway identified by Tax Map Number (TMS) 188-00-01-320 (the "Parcel"). The Parcel contains a closed landfill. Santee Cooper intends to construct a 2 MW solar photovoltaic electrical generation project (the "Project") on the landfill portion of the closed landfill using ballasted mounting system that would not penetrate the cap. The County is requesting that the Parcel be rezoned to the HC2 Highway Commercial ("HC2") District. The Project would be a permitted use in the HC2 District under the Myrtle Beach Zoning Ordinance. Rezoning the Parcel is conducive with the future land use recommendations of the Myrtle Beach 2011 Comprehensive Plan ("CP"). Rezoning of the Parcel and construction of the Project would also further various goals and recommendations of the CP. Furthermore, construction of the Project would be beneficial to Myrtle Beach (the "City").

### I. Background Information

*The Project:* In March of 2018, Santee Cooper issued a Request for Proposals ("RFP") for the design, installation, operation, commissioning and maintenance of the Project. EDF Renewables ("EDF") was awarded the contract for the Project and is now managing the permitting process for the Project. EDF has extensive experience designing and constructing solar facilities on landfills and has recently completed construction of the largest capped landfill solar array in the country. The projected useful lifespan of the Project is 30-35 years.

*The Parcel:* The Parcel is the site of the former Myrtle Beach Airforce Base Misque Dump which was closed prior to the sale of the property from the federal government to the County in 2008. The Parcel is subject to certain environmental and use restrictive covenants necessary for the protection of human health and safety and the federal government's warranty to conduct any future required remedial actions with regards to hazardous waste. Typical of closed and covered landfills, the top portion has been kept free of tree growth to prevent any disturbance to the surface layer which could result in water infiltration and escape of landfill gas. The Parcel is currently zoned in the Parks, Recreation, and Conservation ("PRC") District. See Exhibit 4, Relevant Portion of the Myrtle Beach Zoning Map. The Parcel is not currently utilized for recreational purposes or as part of any park or conservation project. The Parcel is enclosed by a perimeter fence and locked gate.

II. Rezoning to HC2 is conducive with the CP's proposed future use for the Parcel.

The CP calls for development in the Parcel's PRC District: The CP currently identifies the existing land use for the Parcel and neighboring parcels as "Undeveloped." See Exhibit 5, Figure 18 of the CP: Planning Area VI Existing Land Use Map. The CP recommends that the Parcel and neighboring parcels to the north be developed for Office Professional use. See Exhibit 6, Figure 19 of the CP: Planning Area VI Proposed Land Use Map. To facilitate this development, the CP also recommended the extension of Harrelson Boulevard to South Kings Highway, a step the City has since taken. Under the CP, Ocean Woods Cemetery would be the primary green space in area southeast of the airport.

Rezoning to the HC2 District would further the future land use recommendation of the CP: According to the CP, current office professional uses in Myrtle Beach are "concentrated primarily along Oak Street, the office developments between 38<sup>th</sup> and 48<sup>th</sup> Avenues North and offices near the Grand Strand Regional Medical Center." See CP, Page 145. Under the current zoning map, those areas are either zoned as Medical/Professional District ("MP") or Mixed Use, Medium Density ("MU-M"). Given those development patterns, it would seem that an MU-M or and MP District would be appropriate district classifications to encourage Office Professional use. Between the MU-M and MP, the MU-M district would be more conducive to encouraging Office Professional use because it would allow for amenities that compliment Office Professional development, such as coffee shops, pharmacies, and restaurants. However, properties located along South Kings Highway, including the properties neighboring the Parcel, are typically zoned as HC2. Zoning the Parcel as MU-M would cause the Parcel to have a zoning district isolated from neighboring properties. However, Section 1904 of the City's Zoning Code allows properties fronting Kings Highway zoned HC2, at the owner's discretion, to be developed in accordance with the rules and regulations of the MU-M District. Thus, rezoning the Parcel to HC2 would further the recommendations of the CP by using the MU-M standards to promote Office Professional use development, but maintaining zoning consistency with other properties along Kings Highway.

Construction of a solar facility on the Parcel would not create an impediment to Office Professional use: The existence of the closed landfill on the Parcel is a major impediment to onsite and neighboring development of Office Professional use. Onsite, construction of buildings or parking areas on closed landfills is extremely difficult because of issues relating to landfill gas buildup in an enclosed buildings and subsurface integrity. While these challenges may be overcome, doing so comes with significant cost, therefore the Parcel would likely be one of the last properties developed in the area, if the Parcel were developed at all. The Project would not encounter such difficulties because the ballasted support system does not penetrate the ground or and sufficiently disperses the limited weight of the system to avoid problems with surface instability. With regards to neighboring development, the lackluster appearance of the Parcel and the notion of building next to a landfill is also impediment to development. Construction of the Project could help resolve these impediments. The Project would comply with

screening and landscaping requirements along Kings Highway, thus improving the appearance of the Parcel. Also, in today's social climate, buildings abutting a solar farm are generally better regarded than buildings abutting a landfill. And lastly, the financial model of the Project is based on a 30-35 year life span. After that time, the Project can be removed from the Parcel. During that period, issues regarded to landfill gas and subsurface integrity will have improved, thus the Parcel will have enjoyed productive use while its suitability for Office Professional use has improved. Therefore, the Project is more likely to promote the recommendations of the CP than it is to create an impediment to those recommendations.

Rezoning the Parcel to HC2 would not improperly island the remaining portions of the PRC District:

Rezoning the Parcel to HC2 would leave a small portion of the neighboring parcel, Tax Map Number (TMS) 186-00-01-317, in the PRC District. The CP recommends this property is also used for Office Professional use. Furthermore, the remaining PRC section of this property is already islanded from any connectivity that the Parcel would provide because of the existing fence around the Parcel.

III. Rezoning the Parcel facilitates other goals of the CP.

Construction of the Project would further certain recommendations with regards to sustainability: The subtitle of the CP is "Becoming a Sustainable City" and sustainability with regards to long term social, economic, and environmental health is a prevalent theme in the CP. The City acknowledges that according to the Policy Guide for Planning for Sustainability (American Planning Association 2000), reduction in the dependence upon fossil fuels by promoting alternative energy, such as solar power, is an action that can be taken in support of sustainability. See CP Page 143. With this acknowledgement in place, a number of recommendations made in the CP specifically reference the development of solar energy itself and the prioritization of alternative energy sources when planning neighborhoods. In the Neighborhoods section of the CP, recommendation item 1 calls for the City to "[c]ontinue to make sustainability a priority when planning and revitalizing neighborhoods." See CP at page 129. The CP recommends achieving this goal by giving attention to "alternative energy sources such as solar power." *Id.* In the Land Use section of the CP, recommendation item 28 calls for the City to "[r]educe the city's carbon footprint." See Page 161- 162. In this item, the CP acknowledges that solar power is part of a strategy to achieve the recommendation. Rezoning the Parcel to the HC2 District would permit the Project to be constructed on the Parcel as a permitted use.

The Project would further the recommendation to work with utility companies to provide for energy alternatives: In the Community Facilities and Services section, the CP states that "[a]lternative energy sources are available and should be utilized such as solar and wind energy." See CP at page 98. Recommendation item 16 of that section also directs the "City Manager's Office continues to work with Santee Cooper and other public utilities to reduce our reliance on oil and gasoline and to provide for energy conservation and alternatives such as LED street lighting, solar panels and wind energy." See CP at Page 110. This Project represents an opportunity for the City to follow the spirit of the CP

recommendation to bring alternative energy to the City and reduce the City's dependency on fossil fuels. Placing power generation near electrical load centers is particularly efficient with regards to electrical delivery. However, due to generally high real estate prices in the City, locating such generation facilities is generally not feasible. The Parcel is a unique opportunity as the challenges created by the presences of the landfill and proximity to the airport make it less desirable for traditional development. The County and Santee Cooper have worked for several years to develop an arrangement mutually beneficial arrangement and resolve issues related to Federal Aviation Agency ("FAA") technical requirements. The rezoning of the Parcel would be an opportunity for the City to capitalize on a unique opportunity to benefit the entire community.

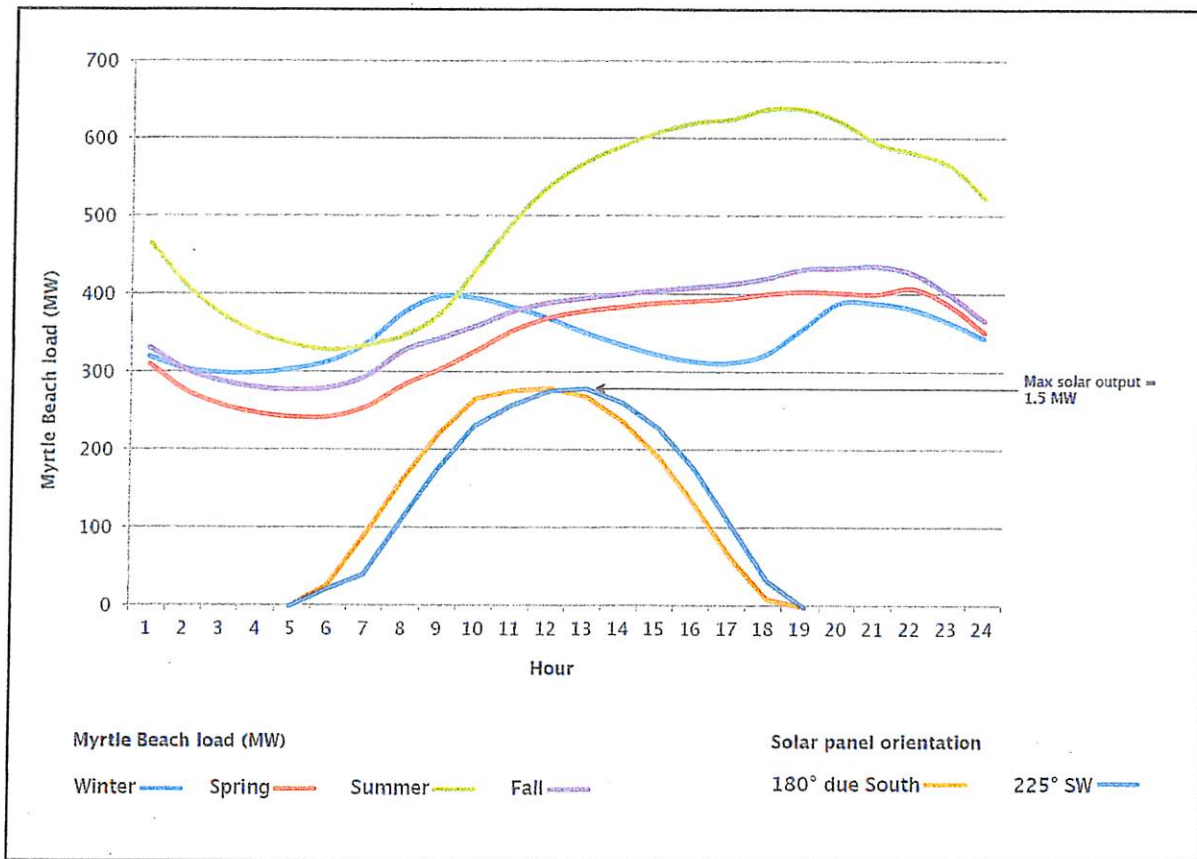
Construction of the Project would further the CP's recommendation for the development of vacant lots. In the Neighborhoods section of the CP, recommendation item 21 calls for the City to "Continue working to improve vacant lots and large undeveloped tracts of land." See CP at page 132. In this recommendation item, the CP directs the Planning Department to guide private development to create new developments with appropriate community facilities that will meet neighborhood needs without creating additional problems. *Id.* Rezoning the parcel and subsequently construction of the Project would place a challenging vacant lot into productive use. The Project would not create any additional demands on services, but rather would benefit local services by helping to reduce community electrical prices through the diversification of Santee Cooper's electricity supply and increased reliability by bringing electrical generation closer to the load area.

#### IV. The Proposed Project would benefit the entire Myrtle Beach Community

The Project represents an excellent opportunity for the City to efficiently benefit from solar generated electricity: The Project represents an excellent opportunity for Santee Cooper to incorporate solar into its portfolio for the purpose of reducing electricity costs, diversifying its energy mix, and increasing its experience with what is becoming a rapidly expanding means of electrical generation. As a utility scale project, the Project would generate solar electricity at a less expensive rate than residentially produced solar electricity. Furthermore, as currently proposed, electricity from the Project would be nearly at par with the avoided cost Santee Cooper incurs when it either builds its own fossil fuel electricity generating plants or purchase fossil fuel electricity from independent producers on the wholesale market. Thus, this Project would allow Santee Cooper to deliver the benefits of solar produced electricity to its customers.

The electrical load profile of the City, shown in Figure 1 below, is particularly well suited for solar generation. In summer, the City's electrical load begins to increase sharply between 9am and 10am and then continues to increase steadily through the course of the afternoon. The output of a solar facility also begins to increase dramatically during that time. The similar matching of the morning curve can help Santee Cooper avoid tapping into other more expensive load sources during the summer peak demand period.

Figure 1: Electrical load profile of Myrtle Beach and projected load profile of a 1.5MW solar array (not the proposed Project).



The location of the Project is also particularly beneficial to Santee Cooper and its customers. Building electrical generation near a large electrical load, such as the City, is very efficient. Currently, most of the City's electricity comes from remote locations such as the Rainey natural gas plant in Anderson, the Cross coal power plant near Pineville, and when the load is heavy, like on summer afternoons, from the Winyah coal power plant in Georgetown. Producing electricity near the load center, particularly on summer afternoon when demand is greatest, helps reduce transmission costs and electrical loss from long distances transport.

## V. Conclusion

Rezoning the Parcel to facilitate the construction of the Project would further the recommendations of the CP and benefit the broader Myrtle Beach Community. Choosing the HC2 District would maintain zoning consistency in the area.

### Relevant Portion of the Myrtle Beach Zoning Map

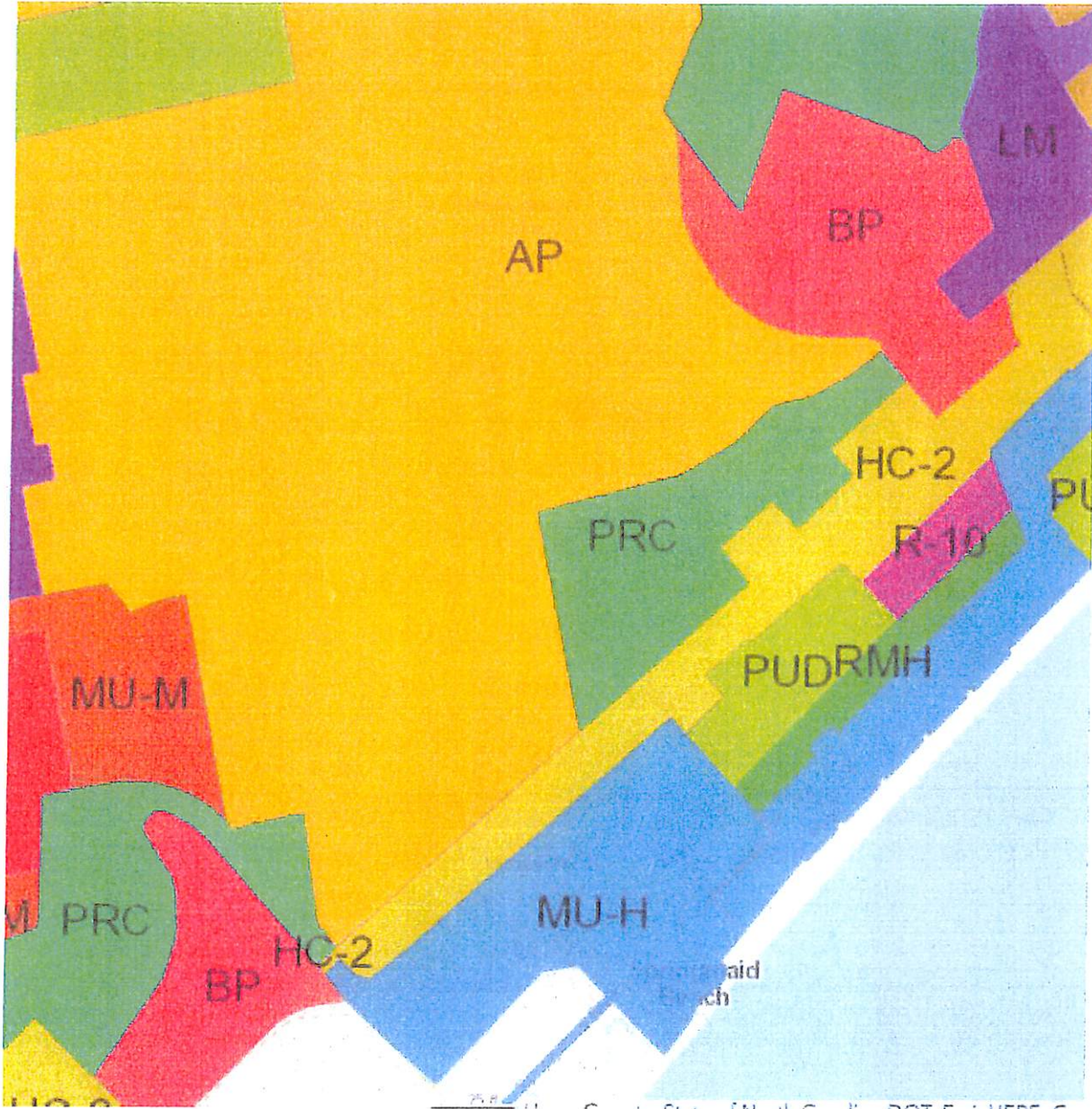
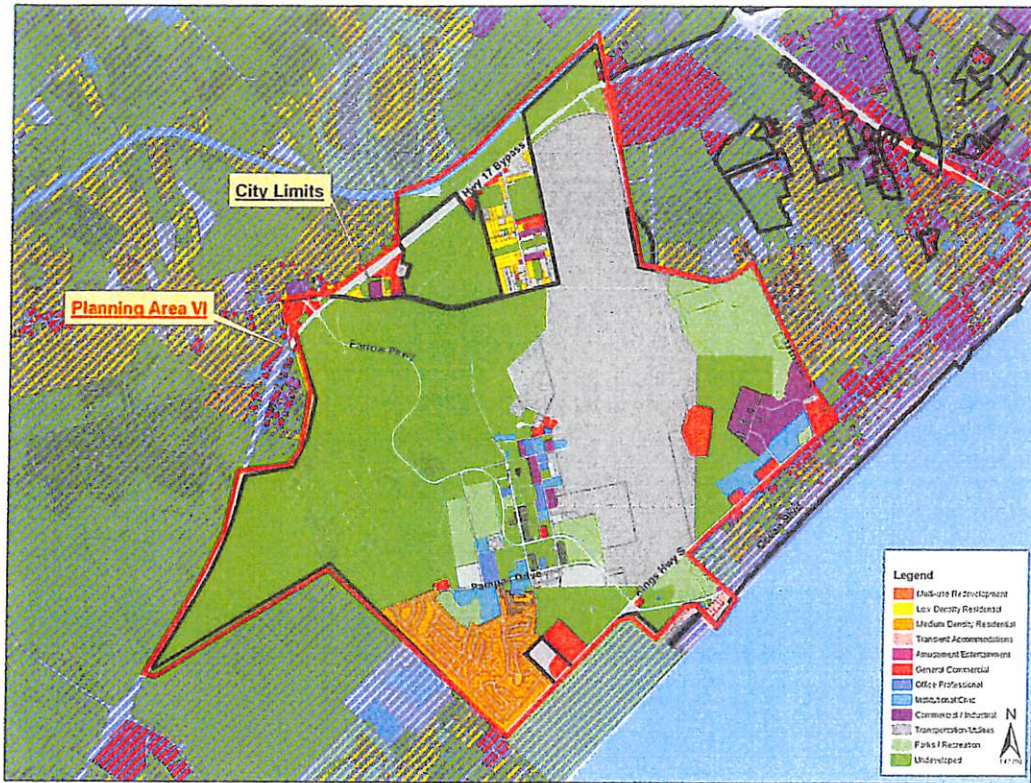




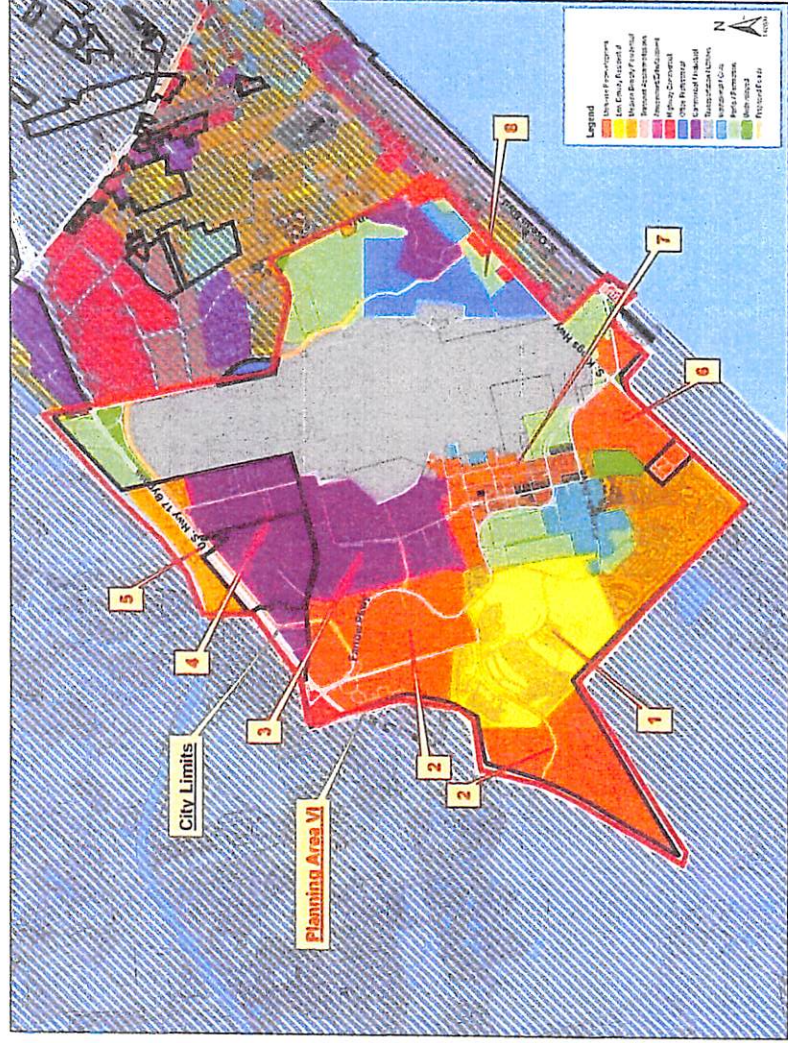
Figure 18: Planning Area VI Existing Land Use Map



Myrtle Beach Existing Land Use - Planning Area VI  
August 2009



Figure 19: Planning Area VI Proposed Land Use Map



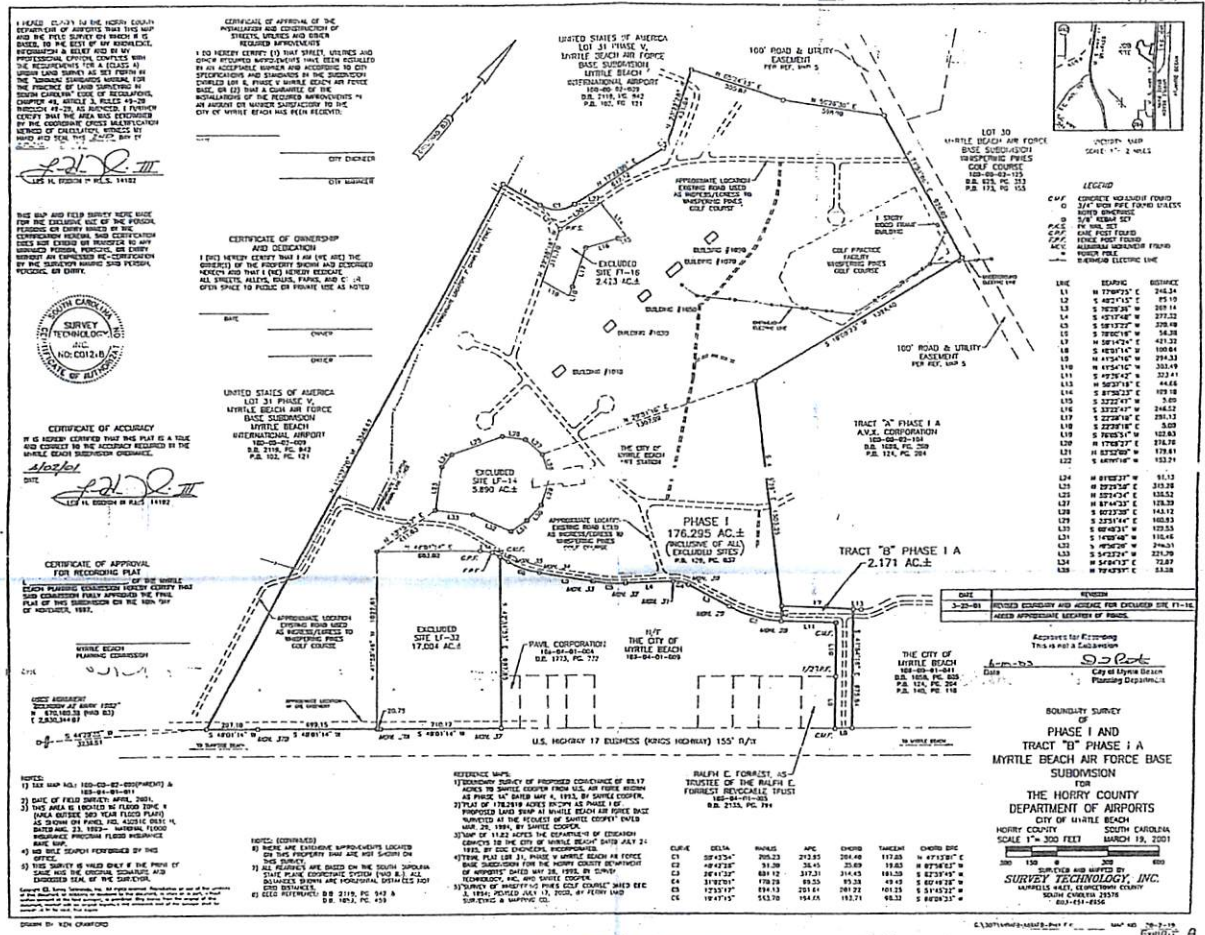
Myrtle Beach Proposed Land Use - Planning Area VI  
August 2009





Legal Description of the Parcel – Tax Map Number (TMS) 188-00-01-320

Being all and the same property and improvements thereon, situated in the City of Myrtle Beach, Horry County, South Carolina, containing 17 acres, more or less, conveyed to Horry County by Quitclaim Deed of the United States of America, dated September 30, 2008, recorded in the Horry County Register of Deeds at Book 3366, Page 1096, and being more particularly shown and described as "Excluded Site LF-32 17.004AC. +-," on a Boundary Survey of "Phase 1 and Tract "B" Phase 1A Myrtle Beach Airforce Base Subdivision", Map No. 20-2-19), prepared by Les H. Bodkin III (P.L.S. No. 14182) for the Horry County Departments of Airports, City of Myrtle Beach, as recorded in the Horry County Register of Deeds at Plan Book 191, Page 27.



**CERTIFICATE OF APPROVAL OF THE PLAT**  
 I HEREBY CERTIFY THAT THE PLAT IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY RECORDS AND THAT THE SAME ARE IN ACCORDANCE WITH THE ACTS OF CONGRESS AND THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THIS MATTER.

**CERTIFICATE OF OWNERSHIP AND DESIGNATION**  
 I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESIGNATED HEREON AND THAT I HAVE HERETOFORE ACQUIRED THE SAME BY LEGAL MEANS AND THAT I HAVE THE RIGHT TO CONVEY THE SAME BY DEED OR OTHERWISE TO WHOMSOEVER I MAY THINK FIT.

**CERTIFICATE OF ACCURACY**  
 I HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY RECORDS AND THAT THE SAME ARE IN ACCORDANCE WITH THE ACTS OF CONGRESS AND THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THIS MATTER.

**CERTIFICATE OF APPROVAL FOR RECORDING PLAT**  
 I HEREBY CERTIFY THAT THE PLAT IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEY RECORDS AND THAT THE SAME ARE IN ACCORDANCE WITH THE ACTS OF CONGRESS AND THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THIS MATTER.

**NOTES**  
 1) THE MAP NO. 100-03-03 (EQUIPMENT) & 100-03-04 (EQUIPMENT)  
 2) DATE OF FIELD SURVEY: APRIL 20, 1961  
 3) THIS AREA IS LOCATED IN FLOOD ZONE A (AREA SUBJECT TO FLOOD PLAIN)  
 4) SURVEY BY FIELD AND AIR PHOTO (SEE PLAT DATES APR. 21, 1961 - AIRPHOTO, 10000 FEET ALTITUDE)  
 5) THIS SURVEY IS MADE IN ACCORDANCE WITH THE ACTS OF CONGRESS AND THE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THIS MATTER.

DATE	REVISION
3-20-61	REVISED BOUNDARY AND AREA FOR EXCLUDED SITE 17-16
	NEEDED APPROPRIATE SIGNATURE OF OWNER

LINE	BEARING	DISTANCE
101	N 78°05'10" E	248.34
102	S 82°15'10" E	85.19
103	S 82°05'10" E	207.32
104	S 82°05'10" E	209.48
105	S 82°05'10" E	209.48
106	S 82°05'10" E	209.48
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200	S 82°05'10" E	209.48



B3191e27

TMS Number contract 1860001320

After recording, return to:

Steve TerMsath  
Environmental Coordinator  
AFRPA/COO  
143 Billy Mitchell Blvd, Suite 1  
San Antonio, Texas 78226

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

QUITCLAIM DEED

I. PARTIES

THIS INDENTURE, made between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in Section 2832 of the Act of Congress approved October 23, 1992 (The National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484), hereinafter referred to as GRANTOR, and HORRY COUNTY, a political subdivision of the State of South Carolina, as assignee of all right, title, interest and estate of the SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, an agency of the State of South Carolina, pursuant to the Partial Assignment of Exchange Agreement recorded in the office of the Register of Deeds in Book 1900 at page 975 on November 12, 1996, as GRANTEE, whose address is P.O. Box 1236, Conway, South Carolina 29526. When used in this Deed, unless the context specifies otherwise, "Grantor" shall include the assigns of the Grantor, and "Grantee" shall include the successors and assigns of the Grantee.

II. CONSIDERATION AND CONVEYANCE

WITNESSETH THAT, pursuant to Section 2832 of Public Law 102-484, the Secretary of the Air Force may convey all or any portion of that tract of land consisting of 3,744 acres known as Myrtle Beach Air Force Base, South Carolina, to the State of South Carolina in exchange for conveyance by the State of South Carolina of that tract of land known as Poinsett Air Force Range, and other tracts of land contiguous with Poinsett Air Force Range, South Carolina;

NOW THEREFORE, the Grantor, for and in consideration of the conveyance to it of a portion of said Poinsett Air Force Range and a portion of certain land contiguous with Poinsett Air Force Range, does hereby remise, release and forever quitclaim unto the said Grantee, its successors and assigns, subject to the exceptions, reservations, restrictions and conditions hereinafter expressed and set forth, all the right, title, interest, claim or demand which the Grantor has or may have had in or to the following described property and improvements thereon, situated on the Myrtle Beach Air Force Base, lying and being in Horry County, South Carolina, containing 17 acres, more or less, and being more particularly shown and designated as "Excluded Site LF-32 17.004AC.+\_", on a Boundary Survey of "Phase I and Tract "B" Phase 1A Myrtle Beach Air Force Base Subdivision", (Map No. 20-2-19), prepared by Les H. Bodkin III (P.L.S. No. 14182) for the Horry County Department of Airports, City of Myrtle Beach,

Horry County, South Carolina, dated April 2, 2001, and recorded July 21, 2003 in Plat Book 191, Page 27, Horry County Clerk's Office, which is at Exhibit A.

The Property is a portion of the property conveyed to the United States of America by deed of the Town of Myrtle Beach, South Carolina, a Municipal Corporation, dated November 17, 1955, and recorded in the Office of the Register of Mesne Conveyances for Horry County in Deed Book 169 at page 177, and by Corrective Deed of The City of Myrtle Beach, South Carolina, a Municipal Corporation, dated September 21, 1978, recorded October 19, 1978, in Deed Book 625, page 353, records of Horry County.

### III. APPURTENANCES AND HABENDUM

TOGETHER WITH all and singular the rights, members, hereditaments, and appurtenances to such premises belonging or in anywise incident or appertaining; to have and to hold all and singular such premises unto the Grantee forever, in fee simple (which, together with the premises described above, are called the "Property" in this Deed).

### IV. RESERVATIONS

The United States has reserved access to the Property in the Section VI.C. of this deed in order to perform any remedial or corrective action as required by CERCLA Section 120(h)(3)(A)(iii).

### V. CONDITION

A. The Grantee agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances, whether or not of record.

B. The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "as is," "where is," without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

### VI. COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA) (42 U.S.C. § 9620(h)(3))

A. Property Covered by Access Rights and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A))

For the Property, the Grantor provides the following covenants and retains the following access rights:

**B. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B)):**

Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), the United States warrants that - -

1. all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to Section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this deed, and
2. any remedial action or corrective action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States.

**C. Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)):**

Pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(iii)), the United States (including but not limited to Environmental Protection Agency (EPA) Region 4, and the state of South Carolina Department of Health and Environmental Control (SCDHEC), and their respective officers, agents, employees, contractors and subcontractors) retains and reserves a perpetual and assignable easement and right of access on, over, and through the property, to enter upon the property in any case in which an environmental response or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response or corrective action is on the property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the grantee and its successors and assigns and shall run with the land.

In exercising such easement and right of access, the United States shall provide the grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the grantee's and the grantee's successors' and assigns' quiet enjoyment of the property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the

property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

In exercising such easement and right of access, neither the grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

#### NOTICE

#### **BREACH OF ANY ENVIRONMENTAL USE RESTRICTIVE COVENANT IN SECTION VII. BELOW, MAY AFFECT THE FOREGOING WARRANTY**

#### **VII. ENVIRONMENTAL USE RESTRICTIVE COVENANTS AND NOTICES**

A. The following environmental use restrictive covenants in this section are being created to protect human health and the environment. The Land Use Control Boundary is identified on **Exhibit B**. Prior approval of the Air Force, EPA and SCDHEC is required for any modification or termination of the Environmental Use Restrictive Covenants as set forth below in Section VII.D. Release of Environmental Use Restrictive Covenants.

1. With respect to the Misque Dump (SWMU 142), the Grantee covenants not to (1) excavate or compromise the integrity of the soil cover, unless a construction plan is submitted to and approved by the Air Force, EPA, and SCDHEC prior to implementing the work and; (2) change land use unless a 60-day advance notice is submitted to and approved by the Air Force, EPA, and SCDHEC.
2. The Grantee covenants that it shall notify and obtain prior approval from the Air Force, SCDHEC and EPA, Region 4, at least sixty (60) days before any anticipated action that may alter or negate the need for the aforementioned environmental use restrictive covenants with respect to the Property. In addition, the Grantee must notify the Air Force, SCDHEC and EPA at least sixty (60) days prior to any proposed grant, transfer, or conveyance of any interest in the property that remains subject to Land Use Controls (LUCS).
3. For the purposes of this Section VII.A, the Grantee shall also include any subsequent transferees, lessees, licensees, successors and assigns of the Grantee.



B. It is the intent of the Grantor and the Grantee that the Air Force will retain the right to enforce any restrictive covenant in this section through the chain of title, in addition to any State law that requires the State to enforce any restrictive covenant in this section. The Grantee covenants to insert all of this section in any deed to the Property that it delivers or in any lease or license. The failure of the Air Force to enforce these environmental use restrictions shall in no event be deemed a waiver of the right of the Air Force to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

C. The warranty set forth in Subparagraph VI.B above is limited to response actions found to be necessary to protect human health and the environment from conditions existing at the time of the deed. The obligation of the United States under such warranty does not extend to response actions required as a result of an act or omission of the Grantee that either (1) introduces new or additional contamination, (2) results from a breach of any environmental restriction set forth in this deed, or (3) increases the cost of the required response action by improperly managing any contamination or contaminated soil or water existing on the Property on the date of this Deed from the United States.

D. Release of Environmental Use Restrictive Covenant(s).

1. The Grantee may request from the United States a modification or release of one or more of the environmental use restrictive covenant(s) in whole or in part in this section, subject to the notification and concurrence or approval of the Air Force, SCDHEC and USEPA Region IV. In the event the request of the Grantee for modification or release is approved by the United States, SCDHEC, and USEPA Region IV, the United States agrees to modify or release the covenant (the "Covenant Release") giving rise to such environmental use restriction in whole or in part. The Grantee understands and agrees that all costs associated with the Covenant Release shall be the sole responsibility of the Grantee, without any cost whatsoever to the United States. The United States shall deliver to the Grantee in recordable form the Covenant Release. The execution of the Covenant Release by the United States shall modify or release the environmental use restrictive covenant with respect to the Property in the Covenant Release.

2. In the event that the environmental use restrictive covenants contained in this section are no longer necessary, the United States will record any appropriate document modifying or removing such use restrictions, as appropriate.

E. Notice of Myrtle Beach AFB Unilateral Administrative Order (UAO) and Administrative Order on Consent. Myrtle Beach AFB is under a UAO, dated September 27, 1995, issued by Region IV of the United States Environmental Protection Agency pursuant to Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA" or "Act"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h), for the investigation of environmental contamination and implementation of corrective measures to clean-up the facility. In addition, the Grantor is subject to Administrative Order on Consent 03-08-HW dated March 24, 2003 and issued by SCDHEC, that requires the Grantor to monitor and enforce the land use controls contained in VII.A of this deed.

F. Notice of Land Use Controls Implementation Plan. The Grantee hereby acknowledges receipt of a copy of the Land Use Control Implementation Plan (LUCIP) section of the Corrective Measures Impementation Work Plan (CMIWP), which includes the LUC boundary, concurrent with, or prior to, the transfer of fee title from the USAF to the Grantee.

#### VIII. OTHER COVENANTS

A. Asbestos-Containing Materials ("ACM"). The Grantee is warned that the Property may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable Federal, State, and local laws relating to asbestos. The Grantee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. The Grantee covenants and agrees that it will notify the Grantor promptly of any potentially friable ACM that constitutes a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601-9675). The Grantor's responsibility under this deed for friable ACM is limited to friable ACM in demolition debris associated with past Air Force activities and is limited to the actions, if any, to be taken in accordance with the covenant contained in Section V of this Deed. The Grantee is warned that the Grantor will not be responsible for removing or responding to ACM in or on utility pipelines. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured.

#### B. General Lead-Based Paint and Lead-Based Paint-Containing Materials and Debris (collectively "LBP")

1. Lead-based paint was commonly used prior to 1978 and may be located on the Property. The Grantee is advised to exercise caution during any use of the Property that may result in exposure to LBP.

2. The Grantee covenants and agrees that in its use and occupancy of the Property, the Grantee is solely responsible for managing LBP, including LBP in soils, in accordance with all applicable Federal, State, and local laws and regulations. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, contact, disposition, or other activity involving LBP on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured. The Grantee further agrees to notify the Grantor promptly of any discovery of LBP in soils that appears to be the result of Grantor activities and that is found at concentrations that may require remediation. The Grantor hereby reserves a non-exclusive easement, in its sole discretion, to undertake an investigation and conduct any remedial action that it determines is necessary on the Property.

C. Non-discrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

D. Hazards to Air Navigation. Prior to commencing any construction on, or alteration of, the Property, the Grantee covenants to comply with 14 C.F.R. Part 77 entitled "Objects Affecting Navigable Air Space," under the authority of the Federal Aviation Act of 1958, as amended.

E. Drinking Water Notice. Grantee is hereby given notice that the investigation of the shallow groundwater at this site discovered naturally occurring dissolved metals at concentrations that exceed U.S. EPA Safe Drinking Water Act regulations maximum contaminant levels and/or risk-based concentrations for drinking water.

F. Wetlands. The property contains an area of probable wetlands, protected under Federal and State laws and regulations, in the western portion of the property. The Grantee covenants to be responsible for completing an area-specific detailed wetlands delineation to the United States Army Corps of engineers under an actual reuse proposal to support an application for a Clean water Act Section 404 permit or to determine conclusively that a permit may not be required for a certain activity.

#### IX. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to touch and concern the land and shall run with the land.

#### X. LIST OF EXHIBITS

The following Exhibits are attached to and made a part of this Deed:

- Exhibit A – Property Description Map (Excluded Site LF-32)
- Exhibit B - Environmental Restriction Site Plan

WITNESS the execution hereof at the direction of the Secretary of the Air Force, the day and year first above written. *September 30, 2008*

THE UNITED STATES OF AMERICA

By *Jeffrey Domm*  
JEFFREY DOMM  
Acting Director  
Air Force Real Property Agency

Witnesses:

*Steph Fishel*  
STEPHANIE FISHEL

*Karin M. Ritzman*  
KARIN M. RITZMAN

State of Texas :

ss.

PROBATE:

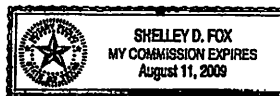
County of Bexar :

Personally appeared the undersigned witness and made oath that (s)he saw the Grantor, by its duly authorized officer(s) and/or agent(s), sign, seal, and as the Grantor's act and deed, deliver the Quitclaim Deed, and that the deponent, with the other witness subscribed above, witnessed the execution thereof.

*Karin M. Ritzman*  
KARIN M. RITZMAN  
Witness

Sworn to before me this *30<sup>th</sup>* day of September 2008.

*Shelley D. Fox* (L.S.)  
Notary Public for Texas



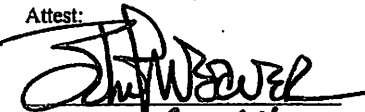
ACCEPTANCE

The Grantee acknowledges delivery of this Deed and agrees to be bound by all the  
agreements, covenants, conditions, restrictions, and reservations contained in it.

DATE: September 30, 2008

(Grantee)

By:   
Administrator

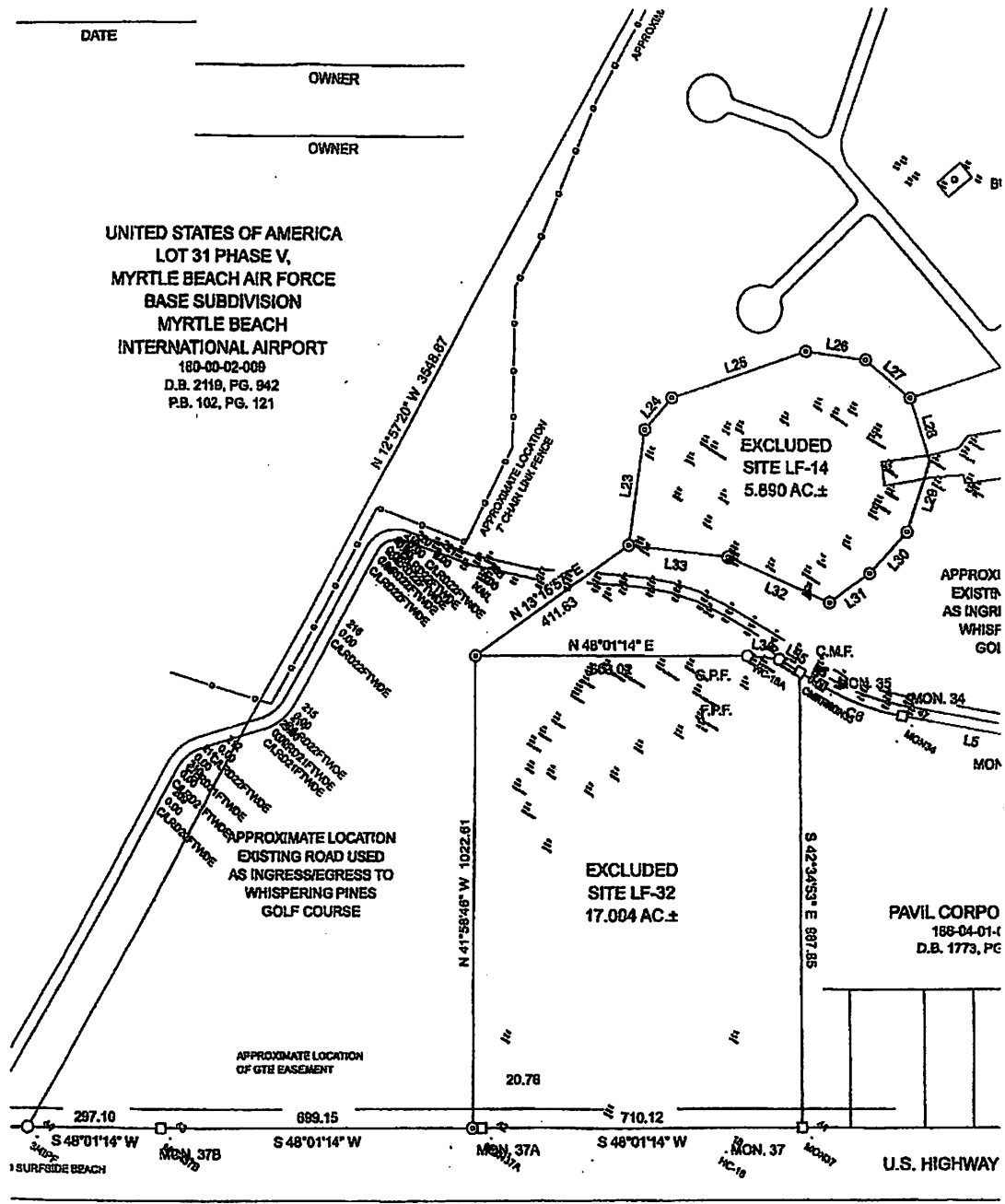
Attest:  
  
Horry Co. Atty.

**Exhibit A**

**Former Myrtle Beach AFB**

**Misque Dump (LF-32)**

**Property Description Map**



DATE

OWNER

OWNER

UNITED STATES OF AMERICA  
 LOT 31 PHASE V,  
 MYRTLE BEACH AIR FORCE  
 BASE SUBDIVISION  
 MYRTLE BEACH  
 INTERNATIONAL AIRPORT  
 180-00-02-009  
 D.B. 2119, PG. 942  
 P.B. 102, PG. 121

EXCLUDED  
 SITE LF-14  
 5.890 AC±

EXCLUDED  
 SITE LF-32  
 17.004 AC±

PAVIL CORPO  
 188-04-01-1  
 D.B. 1773, PC

REFERENCE MAPS:  
 1) BOUNDARY SURVEY OF PROPOSED CONVEYA  
 ACRES TO SANTEE COOPER FROM U.S. AIR FOF  
 AS PHASE 1A DATED MAY 4, 1993, BY SANTEE C  
 2) PLAT OF 178.2919 ACRES KNOWN AS PHASE I C  
 PROPOSED LAND SWAP AT MYRTLE BEACH AIR

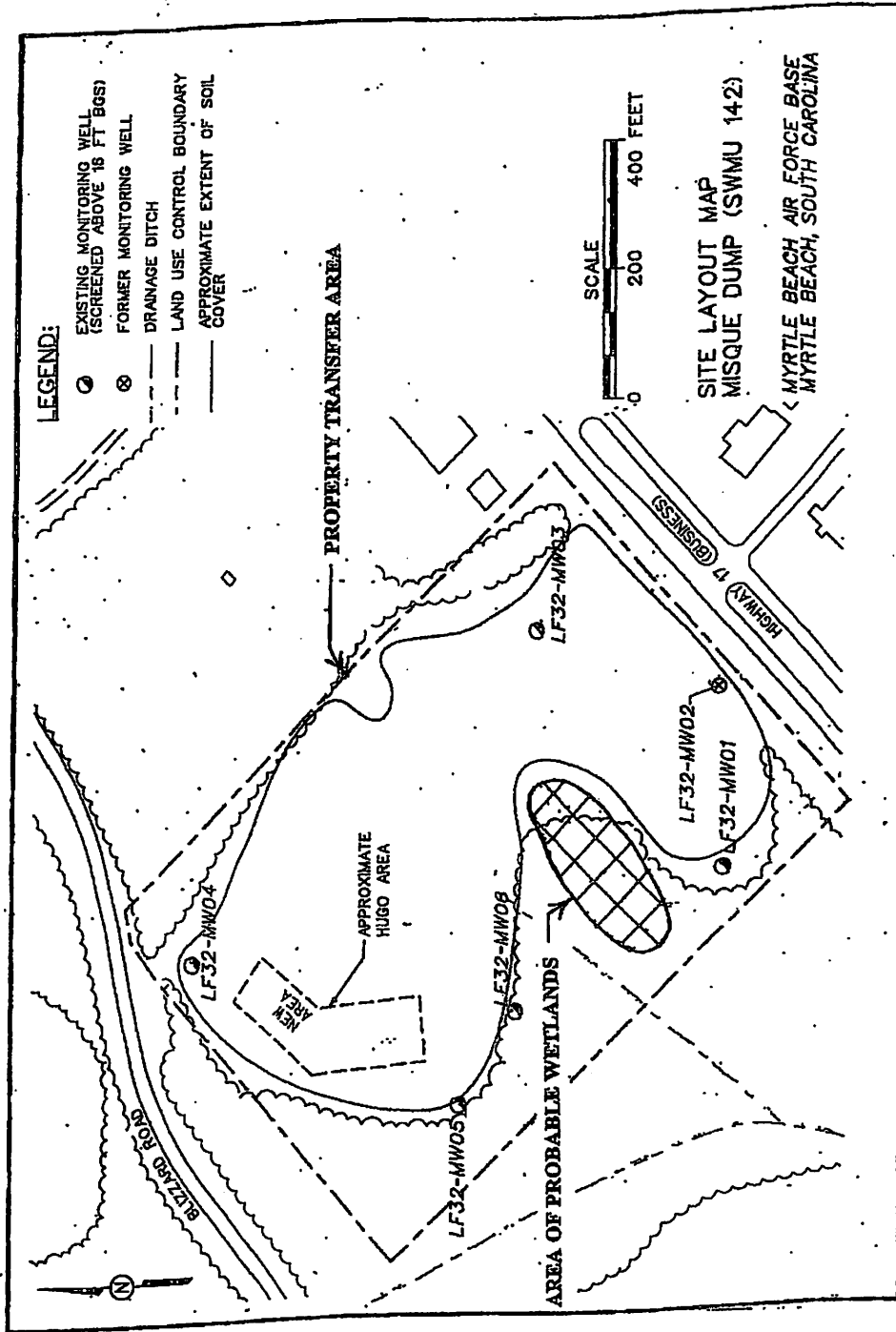
**Exhibit B**

**Former Myrtle Beach AFB**

**Misque Dump (LF-32)**

**Environmental Map and Land Use Control Boundary**





STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT FOR EXEMPT TRANSFERS  
COUNTY OF )

Personally appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this Affidavit and I understand such information.
2. The property being transferred is located at MYRTLE BEACH  
INTERNATIONAL AIRPORT  
bearing Horry County Tax Map Number 15A-00-02-009 was transferred by The United States of America, acting by and through the Secretary of the Air Force, to Horry County, a \_\_\_\_\_, on Sept. 30, 2008.
3. The deed is exempt from the deed-recording fee because the Grantor is The United States of America and is not subject to state taxation under the Constitution and laws of The United States.
4. As required by Code Section 12-24-70, I state that I am a responsible person who with the transaction as Attorney  (for) the (Grantor,  Grantee)
5. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor, and, upon conviction, must be fined not more than \$1,000 or imprisoned for not more than one year, or both.

JOHN WEAVER  
Responsible Person Connected with the  
Transaction Horry Co. Atty.  
JOHN WEAVER  
Printed or Typed Name

Sworn to before me this 30<sup>th</sup> day of September, 2008.

Q. Carulli (L.S.)  
Notary Public for South Carolina

My commission expires 2-28-2018.