



**Town of Sullivan's Island  
Town Council Special Meeting  
Friday, October 2, 2020  
9:00 a.m.**

**Virtual Meeting as a Result of COVID-19 Pandemic**

<https://us02web.zoom.us/j/86059222020?pwd=MFFRYWFiRjZYT1ZueUdxNXFzQWRxdz09>

Follow the prompts to download and run the Zoom application on your computer or mobile device. You will be prompted to set up a free Zoom account. Once you have completed sign up, click to join the audio conference. When you're in the meeting, you may click on the Start Video button to start your video. If you already have a Zoom account and would like to manually join the meeting, our Meeting ID is 860 5922 2020 and the password is 29482.

1. Call to Order and Confirmation of FOIA Notice
2. Explanation of Bluestein et al. v. Town of Sullivan's Island et al. 2010-CP-10-5449 Mediation Settlement Terms (Provided by Litigation Counsel Brady Hair and Derk Van Raalte)
3. Public Comment (Maximum 1 minute and 30 seconds to comment): Public must submit a request to address Council to Courtney Sottile at [csottile@sullivansisland.sc.gov](mailto:csottile@sullivansisland.sc.gov) by 3:00 p.m. Thursday, October 1, 2020. (name and address must be provided)
4. Executive Session- Legal Advice: Bluestein et al. v. Town of Sullivan's Island et al. 2010-CP-10-5449
5. Upon Returning to Open Session, Council may take action on items discussed during Executive Session

6. Discussion and Consideration of a Resolution Settlement Agreement from Mediation Effort on September 10, 2020 for Bluestein et. Al. vs. Town of Sullivan's Island
7. Adjourn

## Bluestein v. Sullivan's Island

### Summary of Settlement Terms

Submitted by: Brady Hair and Derk Van Raalte, Litigation Counsel

#### Summary

The Town has been engaged in Accreted Land-related litigation in Bluestein v. Sullivan's Island for over a decade. Recently both parties attempted to find common ground with the assistance of a mediator. Emerging from that process was a potential settlement that would end the litigation. Under the terms of the settlement the Town would update its management practices regarding the Accreted Land as follows. Note that the potential settlement terms are presented for an up-or-down vote. Modification of the potential settlement terms is not an option before Council at today's meeting.

#### General Approach:

- The Town would implement selective thinning of the Accreted Land (AL), based on initial cut parameters set forth below for each of the four Zones (Transition Zone, Zone 1, Zone 2, and Zone 3.) These parameters are based upon the mapping and data used by the Parties in mediation and related regulatory discussions. In order to maintain similar conditions going forward, with the help of a naturalist, the Town would review changes in the condition of the AL on a recurring basis (for instance, once every five years) with an eye towards making whatever changes might be necessary to maintain appropriate levels of density and diversity. This would provide a mechanism to deal with natural attrition, growth, or other changes to the natural environment. Primary funding for transition zone work would be the Town. Funding for work in the Zones 1-3 would be subject to the receipt of adequate donations or grants.

#### Zones:

- Zone 1: Station 16 beach path to western edge of property line at 1715 Atlantic (TMS# 523-12-00-014)
- Zone 2: Eastern edge of Zone 1 to Eastern Edge of SIES property
- Zone 3: Eastern edge of Zone 2 to Station 28.5 beach path

- Transition Zone (TZ)

### Beach Paths:

- All vegetation to be removed 4' on either side of town owned beach paths/boardwalks.
- Private beach paths to be maintained at a width of 6.5' plus additional understory may be cleared to a maximum of 2' on either side (per draft plan 3a). Cutting and maintenance shall be subject to the receipt by the Town of sufficient grants or donations.

### Myrtles (All Zones):

- Allow for 50% of myrtles seaward of TZ to be removed with focus on saving myrtles located in low-lying topography areas
- All remaining myrtles may be cut to a height of 5'
- Property owners abutting town owned beach paths may trim myrtles from non-adjacent property line to beach path (eliminating "no man's land" currently existing in certain areas)
- Current town procedures will apply for annual cutting and payment thereof will apply

### Zone 1:

- Keep all Live Oaks, Magnolias, Palmettos
- Remove all Cedar, Pine, Hackberry trees under 12" DBH
- Remove all other tree species under 6" DBH
- Limbing of trees >16" DBH will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

### Zone 2:

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH



- Remove all Cedar, Pine, Hackberry trees under 16" DBH
- Remove all other tree species under 8" DBH
- Limbing of trees allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines located on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

**Zone 3:**

- Keep all Live Oaks, Magnolias, Palmettos >6" DBH
- Remove all Cedar, Pine, Hackberry trees under 18" DBH
- Remove all other tree species under 10" DBH
- Limbing of trees will be allowed with TOSI approval so long as proposed limbing would not harm health of tree.
- Vines on trees may be removed with TOSI approval for health of tree
- All non-native or invasive species may be removed

**Transition Zone:**

- Trees to be preserved are only Live Oaks, Magnolias, Palm Trees 16" DBH or greater
- All other vegetation to be removed
- 100' seaward of property line of adjacent properties (includes Bayonne right of way)
- Heavy machinery allowed landward of OCRM setback line

**Permitting:**

Permitting will be required through OCRM. Continued consultation with OCRM and the Land Trust will be important as the Town develops its implementation plan and permit application. The Town will need to engage an engineer and/or technical consultant to develop an appropriate, detailed plan specifying methods and objectives, and to make appropriate regulatory applications.

We would expect environmentally appropriate overseeding to be a part of any such plan in order to assure continued soil stability.

**Funding and Timing:**

Thinning of the 2500 Block of Atlantic will proceed with all deliberate speed after formal settlement approval by Council and funding of block thinning cost by Plaintiff. The work shall be done by way of a contract signed by the Town and a vegetation management contractor as appropriate under the Town's procurement process.

Homeowners shall have the right to enter into an agreement with the Town whereby they must provide sufficient funds with the Town within 12 months of the settlement of Bluestein v. Town of Sullivans Island to cut the property within their block in accordance with the zone specifications contained herein. As described above, using such funds the Town shall hire the approved contractor to complete the thinning. Such cutting will be done on a block by block basis after sufficient funds to thin a particular block are on-hand.

**Appeals:**

No party shall appeal the issuance of any permits issued for completion of work consistent with the settlement.

**Compliance with Law required:**

Implementation is subject to compliance with law.

**Compliance with Deed:**

The Land Trust has initially reviewed the potential settlement and believes that it is not in conflict with the substantive requirements of the deed.





- Tree Type**
- Ash
  - Bay
  - Birch Tree
  - Cedar
  - Gum
  - Hackberry
  - Hickory
  - Laurel Oak
  - Live Oak
  - Miscellaneous Evergreen Tree
  - Miscellaneous Hardwood Tree
  - Miscellaneous Oak
  - Myrtle
  - Palm
  - Pecan
  - Pine
  - Water Oak
- 100 Foot Transition Zone**
- Zone 1**

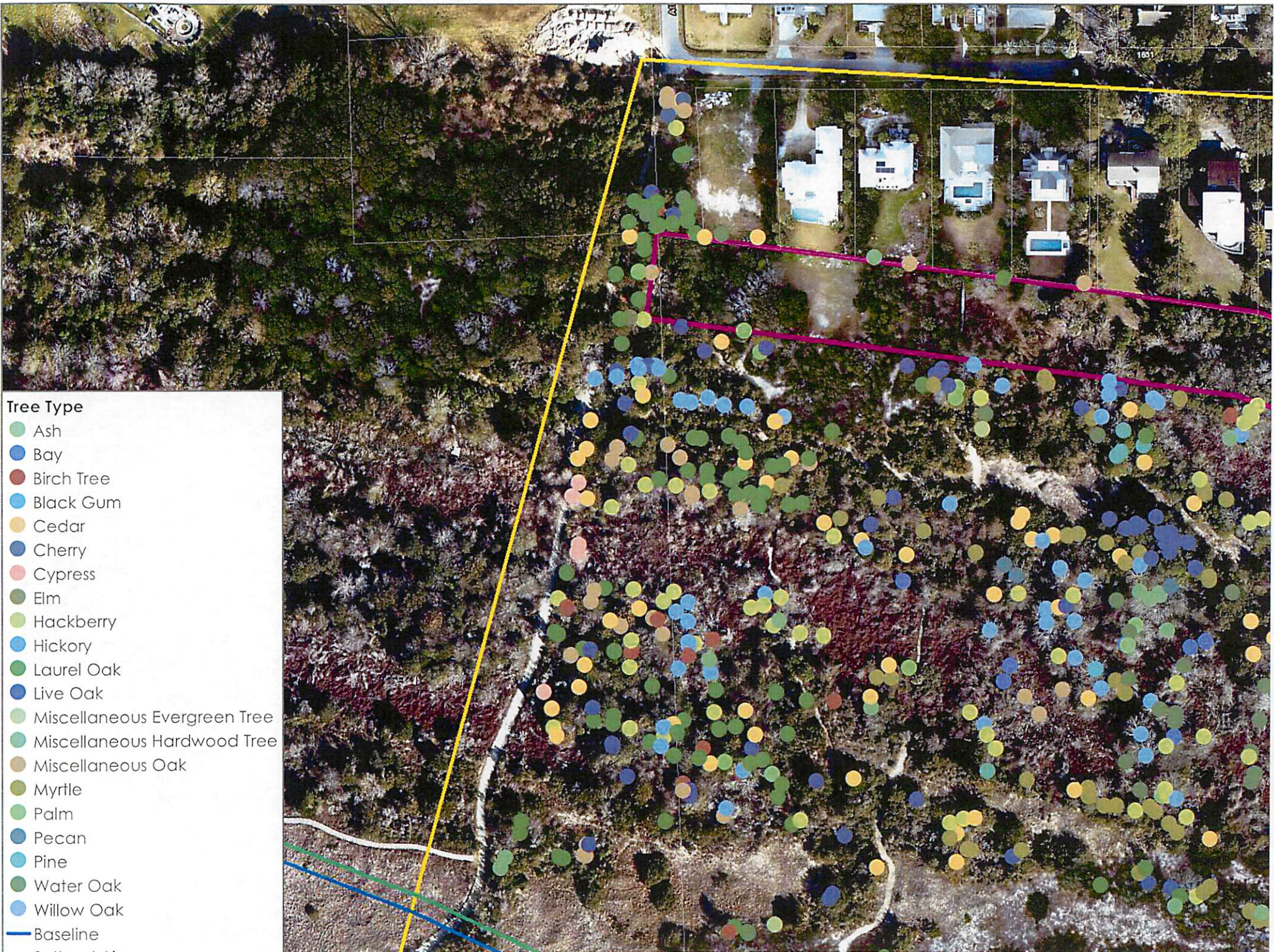












- Tree Type**
- Ash
  - Bay
  - Birch Tree
  - Black Gum
  - Cedar
  - Cherry
  - Cypress
  - Elm
  - Hackberry
  - Hickory
  - Laurel Oak
  - Live Oak
  - Miscellaneous Evergreen Tree
  - Miscellaneous Hardwood Tree
  - Miscellaneous Oak
  - Myrtle
  - Palm
  - Pecan
  - Pine
  - Water Oak
  - Willow Oak
- Baseline
- Setback Line









- Tree Type
- Live Oak
  - Palm
  - Baseline





- Tree Type**
- Ash
  - Bay
  - Birch Tree
  - Cedar
  - Gum
  - Hackberry
  - Hickory
  - Laurel Oak
  - Live Oak
  - Magnolia
  - Miscellaneous Evergreen Tree
  - Miscellaneous Hardwood Tree
  - Miscellaneous Oak
  - Myrtle
  - Palm
  - Pecan
  - Pine
  - Water Oak
- 100 Foot Transition Zone
- Zone 2





- Tree Type**
- Bay
  - Birch Tree
  - Cedar
  - Gum
  - Hackberry
  - Hickory
  - Laurel Oak
  - Live Oak
  - Magnolia
  - Miscellaneous Evergreen Tree
  - Miscellaneous Hardwood Tree
  - Myrtle
  - Palm
  - Pecan
  - Water Oak
  - Baseline
  - Setback Line









- Tree Type**
- Live Oak
  - Magnolia
  - Palm
  - Baseline













### A Resolution

**Making Specific Findings of Fact, Authorizing Settlement of Bluestein v. Sullivans Island on the general parameters set forth below, and Authorizing Staff to Take All Actions Necessary and Proper to Implement the Described settlement including procurement actions in accordance with Town policy, the development of detailed plans and applications, and the submittal of applications necessary to effectuate this settlement.**

**WHEREAS**, the Town owns property along the Atlantic Ocean which is known generally as The Accreted Land (AL); and

**WHEREAS**, the Town obtained title to the AL by way of a deed from the Lowcountry Land Trust; and

**WHEREAS**, the deed contained certain restrictions and covenants, both procedural and substantive; and

**WHEREAS**, the deed provides the Town with the unrestricted authority to trim and control the growth of vegetation; and

**WHEREAS**, after decade of litigation the Town and Plaintiff(s) have reached a voluntary settlement; and

**WHEREAS**, the Town recognizes the need to develop a detailed implementation plan to use in conjunction with OCRM; and

**WHEREAS**, after preliminary consultation with the Land Trust the Town has received feedback that the proposed settlement is consistent with the substantive deed restrictions; and

**WHEREAS**, the Town is permitted to undertake activity on the AL enhance mosquito control, engage in scenic enhancement, and to control vegetation if accompanied by specific written findings of fact; and

**WHEREAS**, the Town wishes this Resolution to constitute such specific written findings of fact; and

**WHEREAS**, the Town Council finds that the potential settlement adopted herein strikes the most advantageous possible outcome of the lawsuit and best balances the competing needs of

beachfront and inland island residents and represents the best possible balance between ecological and natural interests on the one hand and human needs and safety on the other.

**NOW THEREFORE, BE IT RESOLVED**, by the Mayor and Town Council in Council Assembled, that:

1) Findings of Fact:

- a. The settlement, and implementing steps associated therewith, are solely undertaken to further specific enumerated, permissible public purposes under the Deed. In this instance, the Town Council believes that thinning of vegetation will serve the interests of improved mosquito control, improved vegetation management, enhanced public safety, improved public health, and scenic enhancement. The current thickness of vegetation, in significant part caused by the “hedging effect” of prior cutting rules, makes it extremely difficult for anti-mosquito treatments to penetrate. Members of Council have also noted an increased prevalence of pests correlated to the growth of the AL over past years with the 2005 cutting rule in effect. Additionally, by direct observation Council knows that the level of thickness significantly impedes airflow causing stagnant conditions that are not conducive to healthful and enjoyable living. Moreover, Council believes that the thickness of vegetation on the AL allows for rapid spread of wildfire should favorable fire conditions exist. Council believes that the thinning of myrtles and trees would improve all of these shortcomings. In addition, the cumulative effect of decades of growth has been to alter views from what existed at the time of deed signing. Council believes that the proposed action would help restore views to a level closer to what were enjoyed at the time the Deed Restrictions were implemented. Finally, Council believes that excessive plant density (stems per acre) can retard desirable maturation of plant life on the AL and that the thinning proposed herein will allow those stems retained to more fully and beneficially develop. Council believes that the combination of these factors will not only improve the safety of human habitation on the island, but also improve the overall condition of flora and fauna on the island. Finally, Council finds that the utilization of environmentally sensitive means (use of appropriate equipment, thinning techniques, naturalist approved seeding, etc) can avoid material problems with erosion, particularly in light of the decades of documented natural accretion in this area.
- b. The settlement, and implementing steps associated therewith, are necessary for the health, safety and general welfare of the Town. For the reasons set forth above, the Town finds that the settlement and implementation thereof are necessary steps to improve the health safety and welfare of the Town and its residents. Reduction in pests / mosquitoes benefits public health, as does fire hazard reduction. Improved airflow is also beneficial, allowing for (among other things) increased opportunities to avoid the need for artificial climate control during the course of a year.



- c. The benefits of the proposed settlement, and implementing steps associated therewith, outweigh any potential damage done to the aesthetic, ecological, scientific and education value of the property in its natural state. The Town finds this element to be met. The AL is proposed to remain in an undeveloped state. The proposed changes are intended to improve aesthetic conditions. They are also intended to improve wildlife habitat and allow maturation of retained vegetation. Given the diversity and number of stems remaining under the proposed plan the scientific and educational value of the property will not be undermined. In fact, Council finds it will be enhanced.
- d. In making these fact findings, Council has considered
  - i. The cumulative effect of actions pursuant to the proposed settlement and past AL related actions on the natural state of the Property. The Town's cutting rules have been unchanged for fifteen years and, in fact, bear striking resemblance to the rules in place at the time the deed restrictions were enacted. Consequently, there is no significant "cumulative" action to be considered. Regardless, the Council has carefully considered the changes proposed here and believe that they will either not harm or will enhance the natural environment of the AL for flora and fauna and will do so in a manner that benefits the island as a whole.
  - ii. Alternative methods of furthering the stated public benefits that would not adversely impact the natural state of the AL. The Council finds that there are no suitable alternative methods. The principle concern being addressed here is excessive vegetation growth and density leading to all of the problems previously enumerated. The only way to address excessive vegetation growth and density is selective thinning. The current plan represents a selective thinning plan carefully tailored to address these stated concerns while maximizing retained ecological, educational and scientific goals.
  - iii. The probable results of not taking the proposed settlement-related actions. The probable results of not taking the proposed settlement-related actions are two-fold. First, the existing conditions (and trend toward increasing vegetation thickness and growth) will continue to mature into an increasing problem. In that sense, taking no action at this point would amount to "action" furthering the undesirable attributes. Second, failure to undertake the proposed settlement would subject the Town and residents to the uncertainty inherent in a trial. Failure to prevail at a trial would mean that the Town would lose control of how the issues / concerns enumerated herein would be ameliorated. Instead, those decisions would be made by a judge not inherently familiar with the AL, or by a Plaintiff focused on his own interest rather than the balanced interests of the island

as a whole (as reflected by this Council and the balancing of interests struck with this settlement.)

2) Settlement of *Bluestein v. Sullivan's Island* is authorized on terms stated below:

**General Approach:**

- The Town would implement selective thinning of the Accreted Land (AL), based on initial cut parameters set forth below for each of the four Zones (Transition Zone, Zone 1, Zone 2, and Zone 3.) These parameters are based upon the mapping and data used by the Parties in mediation and related regulatory discussions. In order to maintain similar conditions going forward, with the help of a naturalist the Town would review changes in the condition of the AL on a recurring basis (for instance, once every five years) with an eye towards making whatever changes might be necessary to maintain appropriate levels of density and diversity. This would provide a mechanism to deal with natural attrition, growth, or other changes to the natural environment. Primary funding for transition zone work would be the Town. Funding for work in the Zones 1-3 would be subject to the receipt of adequate donations or grants.

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Thinning of the 2500 Block of Atlantic will proceed with all deliberate speed after formal settlement approval by Council and funding of block thinning cost by Plaintiff. The work shall be done by way of a contract signed by the Town and a vegetation management contractor as appropriate under the Town's procurement process. Maintenance shall be subject to receipt of sufficient grants and/or donations

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**Appeals:**

No party shall appeal the issuance of any permits issued for completion of work consistent with the settlement.

**Compliance with Law required:**

Implementation is subject to compliance with law.

The supporting Charts and Diagrams are attached hereto and shall be incorporated as if set forth fully herein.

- 3) Staff is hereby authorized including procurement actions in accordance with Town policy, the development of detailed plans and applications, and the submittal of applications necessary to effectuate this settlement

**IN WITNESS WHEREOF**, in writing I have hereunto set my hand and caused the Seal of the Town of Sullivan's Island to be affixed hereto on the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Patrick M. O'Neil, Mayor

Attest:

\_\_\_\_\_  
Courtney Sottile, Town Clerk

\_\_\_\_\_  
Andy Benke, Town Administrator