

ORDINANCE 2020 /16

**AN ORDINANCE AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE
THE WIDGEON POINT PRESERVE 2020 JOINT OWNERSHIP AND OPERATING
AGREEMENT WITH THE BEAUFORT COUNTY OPEN LAND TRUST**

WHEREAS, Beaufort County ("County") and the Beaufort County Open Land Trust ("BCOLT") are joint owners of certain real property in Beaufort County, South Carolina known as Widgeon Point Preserve (R600 007 000 0001 0000) on Lemon Island under and by virtue of that certain general warranty deed dated August 23, 2007 and recorded at Deed Book 02616, Pages 1609-1614, Beaufort County, South Carolina recorded (said real property being referred to hereinafter as "Property"); and

WHEREAS, the County is the owner of a 7/8 undivided interest in the Property and BCOLT is the owner of 1/8 undivided interest in the Property; and

WHEREAS, the County and BCOLT previously entered into a joint ownership agreement dated August 26, 2008; and


WHEREAS, the County and BCOLT desire to terminate the aforementioned agreement and enter into the Joint Ownership and Operating Agreement attached hereto and incorporated by reference as "Attachment A"; and

WHEREAS, County Council finds that it is in the best interest of County citizens, residents and visitors to enter into a Joint Ownership and Operating Agreement with BCOLT, which designates shared ownership, intent, operating and maintenance responsibilities between the parties.

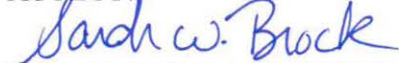
NOW, THEREFORE, BE IT ORDAINED by Beaufort County Council, duly assembled, does hereby authorize the County Administrator to execute the Widgeon Point Preserve 2020 Joint Ownership and Operating Agreement with Beaufort County Open Land Trust, attached hereto as Attachment A and incorporated herein fully as if repeated verbatim.

Adopted this 27th day of April, 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: 
Joseph Passiment, Chairman

ATTEST:



Sarah W. Brock, Clerk to Council

Third and Final Reading: April 27, 2020 / Vote 11:0

Public Hearing: April 13, 2020

Second Reading: April 13, 2020 / Vote 11:0

First Reading: March 23, 2020 / Vote 10:0

Attachment A

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

WIDGEON POINT PRESERVE

JOINT OWNERSHIP and

OPERATING AGREEMENT

THIS WIDGEON POINT PRESERVE JOINT OWNERSHIP AND OPERATING AGREEMENT (“Agreement”) made and entered into this ____ day of _____, 2020 by and between Beaufort County, a political subdivision of the State of South Carolina (“County”), and the Beaufort County Open Land Trust, a South Carolina non-profit corporation, (“BCOLT”); collectively hereinafter referred to as the “Parties”.

WHEREAS, the County and BCOLT are joint owners of certain real property in Beaufort County, South Carolina known as Widgeon Point Preserve on Lemon Island under and by virtue of that certain general warranty deed dated August 23, 2007, and recorded in the Beaufort County Register of Deeds at Deed Book 02616, Pages 1609-1614, Beaufort County, South Carolina (said real property referred to hereinafter as the “Property”); and

WHEREAS, the County is the owner of a 7/8 undivided interest in the Property and BCOLT is the owner of a 1/8 undivided interest in the Property; and

WHEREAS, the County and BCOLT intend by this Agreement to delineate their respective rights, duties, and obligations respecting the joint ownership and use of the Property.

NOW, THEREFORE, in consideration of the Property and in consideration of the mutual promise, covenants, terms and conditions set forth herein, the Parties mutually agree as follows:

1. PROPERTY DESCRIPTION

The Property consists of 162.24 acres, known as the Widgeon Point Preserve, with the current TMS No. R600 007 000 0001 0000. The Property is further described by the legal description attached hereto and incorporated by reference as “Exhibit A”.

2. JOINT OWNERSHIP

It is acknowledged that the Parties jointly own the Property and the respective shares of ownership of the owners are as follows:

Beaufort County	7/8 undivided interest
Beaufort County Open Land Trust	1/8 undivided interest

The Parties intend that the Property shall be used as a nature preserve and passive park for the education and passive recreation enjoyment of the citizens of Beaufort County as provided for in this Agreement and that all such usage shall be based upon sound principles of ecology including, without limitation, effective management of native habitats found on the Property with the express purpose of protecting its biodiversity of native species.

a. ***Ownership Liability.*** The percentage of ownership stated in this Section shall not be construed as a percentage of liability, and the Parties shall be equally liable for any claims pursuant to Section 12(c) of this Agreement.

3. TERM

The term of this Agreement shall cover a period of twenty-five (25) years, commencing on the entered upon date, unless terminated sooner pursuant to the provisions in this Agreement. The term of this Agreement may be extended for three (3) additional twenty-five (25) year terms upon the mutual agreement and written approval of both the County and BCOLT.

4. USE OF PROPERTY

The Property shall be used as a nature preserve and passive park for passive recreation open to the public; and subject to all applicable County rules and regulations. It is further intended that the Natural Area of the Property, which is generally designated as that area between the interior bridge and the Port Royal Sound and as further shown in "Exhibit B", be restricted from structural improvements, excluding signage, benches and picnic tables, with the remainder of the Property being used for passive park buildings and structures.

a. **Access to Property.** The Property shall be open to the public seven (7) days a week from dawn to dusk. Pursuant to Ordinance 2018/53 Section 91-104, operating hours shall be posted at the Property's designated entrance.

b. **Scheduling of Events.** County shall be responsible for scheduling events and functions on the Property, will maintain a schedule and calendar of such events and shall develop a method of sharing such event information with BCOLT.

c. **Private Functions.** County may offer to rent the Property and/or its facilities, in whole or part, for private functions at a rental rate stipulated by the Passive Park Facility Rental Policy. All revenue generated by the private functions shall be retained by County to be utilized for passive park operations, maintenance and management expenses incurred by County under the terms of this Agreement.

d. **BCOLT Events.** In addition to the events open to the public and private events or functions as provided for above, BCOLT shall be entitled to use the Property for events and functions at no cost to BCOLT. BCOLT events and functions may be scheduled after consultation with County to determine that another event or function is not scheduled on the same time and date. BCOLT shall be responsible for any and all site and grounds set-up and clean-up necessary as the result of any BCOLT event.

5. ROUTINE AND MAJOR MAINTENANCE

County shall be responsible for routine and major maintenance of the Property. Routine and major maintenance shall include but not be limited to grass cutting, debris removal, maintenance and repair of the barns, fences, gates, trails, roads, bridges, and other structures now or hereinafter erected on the Property. County shall also be responsible for paying the utility costs for electricity, water and the portable toilet facility.

BCOLT shall be responsible for coordinating volunteer efforts to assist the County's routine maintenance efforts, upon mutual consent between BCOLT and the County's Passive Parks Manager.

6. MAJOR ALTERATIONS AND CAPITAL IMPROVEMENTS

Any major alterations or capital improvements on the Property shall be mutually agreed to by both Parties and shall be undertaken under the supervision of the County and their policies and procedures. The cost of

such major repairs or capital improvements shall be the County's responsibility. For purposes of this Agreement the term "major alteration" or "capital improvement" shall be deemed to be any alteration or capital improvement having a cost or expense including all labor, materials, permits, and related items totaling in excess of \$2,500.00.

7. INSURANCE

County shall obtain a policy or policies of insurance providing fire insurance protection with extended coverages to include windstorm and hail damage at replacement cost on all buildings and structures on the Property. In addition, County and BCOLT each shall at all times maintain a policy of general liability insurance with limits of liability of at least \$1,000,000.00 per occurrence. All policies of insurance shall identify the County and BCOLT as named insureds.

8. SECURITY AND INSPECTIONS

It shall be the duty of County to assure adequate security is maintained on the Property through the maintenance of the fences and gates and assuring that gates and secured areas are locked when the Property is not in use.

It shall be the duty of BCOLT to adhere to the security plan and measures, as mutually agreed upon by the Parties, and to assure that gates and secured areas remain locked when the Property and/or its structures are not in use.

9. NOTICE

Each party shall give the other notice of any adverse circumstances or situations arising in connection with the use of the Property including notice of any claim or dispute arising from its use. Any such notice including and any other notice necessary or appropriate under this Agreement shall be given as follows:

To BCOLT:	Beaufort County Open Land Trust Attn: Executive Director P.O. Box 75 Beaufort, SC 29901
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To County:	Beaufort County Attn: County Administrator P.O. Box 1228 Beaufort, SC 29901
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10. BREACH OF CONTRACT

If a party to this Agreement determines that the other party is in breach of the terms of this Agreement, the claiming party shall notify the other party of the breach with a First Notice and request voluntary compliance. In the event that voluntary cure is not agreed upon within sixty (60) days of receipt of First Notice, the claiming party shall give written notice to the other party of such breach with a Second Notice and demand corrective action. If the noticed party fails to cure the breach within sixty (60) days after receipt of the Second Notice, the claiming party may bring an action of law or in equity in a court of competent jurisdiction.

11. TERMINATION

Either party shall have the right to terminate this Agreement for any reason upon six (6) months' prior written notice beginning with the delivery to and acceptance of the designated authority of the other party. In the event either party wishes to terminate this Agreement, the noticing party shall offer to purchase the ownership interest of the other party in the Property based upon a current professional (MAI) appraisal of the Property. The noticed party shall have sixty (60) days to respond to the terminating notice.

BCOLT shall not convey its ownership interest in the Property without express approval of the South Carolina Conservation Bank.

12. OTHER PROVISIONS

a. **Definition of Terms.** For the purpose of this Agreement, all terms, specifically "passive park" and "passive recreation", shall be defined pursuant to Beaufort County Ordinance 2018-53.

b. **Mutual Cooperation.** The Parties shall cooperate with each other, and will use all reasonable efforts to cause the fulfillment of the terms and conditions of this Agreement.

c. **Liability.** To the extent the law provides, each Party shall be responsible for its own acts, omissions and negligence and shall not be responsible for the acts, omission and negligence of the other Party. Neither party shall be liable to the other party for any claims, demands, expenses, liabilities or losses (including attorney's fees) which may arise out of any acts or failures to act by the other party, its employees or agents, in connection with the performance of services or responsibilities pursuant to this Agreement.

d. **Disputes.** All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be first submitted to an agreed upon mediator. The disputing party shall be responsible for cost of mediation.

e. **Entire Agreement.** This Agreement contains the entire agreement between the Parties pertaining to the subject matter contained herein. All prior agreements by or between the Parties shall be deemed to have merged into this Agreement, including the Widgeon Point Joint Ownership Agreement dated August 26, 2008. If there are conflicting terms between this Agreement and any documents merged into this Agreement, this Agreement shall supersede.

f. **Amendment or Modification.** This Agreement cannot be amended or modified orally or by a single party. No amendment or modification to this Agreement shall be valid unless in writing and signed by both Parties to this Agreement.

g. **Binding Nature and Assignment.** This Agreement shall bind the Parties and their respective successors in interest as may be permitted by law. Neither party to this Agreement may assign their rights or obligations arising under this Agreement without the prior written consent of the other party.

h. **No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties and not for the benefit of any other person or entity.

i. **Counterparts.** This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. The Parties agree that this Agreement may be communicated by use of a fax or other electronic means, such as electronic mail and the internet, and that

the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed valid and binding upon the Parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents.

j. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.

k. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

l. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving its rights. No delay or omission by either party to exercise any right or remedy it has under this Agreement shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of the covenant or of any other covenant.

m. **Applicable Law.** This Agreement is enforceable in the State of South Carolina and shall in all respects be governed by, and constructed in accordance with, the substantive Federal laws of the United States and the laws of the State of South Carolina. Any claims for default, non-performance or other breach shall be filed in Beaufort County, South Carolina.

IN WITNESS WHEREOF, and in acknowledgement that the Parties hereto have read and understood each and every provision hereof, the Parties have caused this Agreement to be executed on the date first written above.

WITNESSES:

BEAUFORT COUNTY

By: _____

Name: Ashley M. Jacobs

Title: County Administrator

BEAUFORTY COUNTY

OPEN LAND TRUST

By: _____

Name: Kristin Williams

Title: Executive Director

EXHIBIT A

Legal Description

All those certain pieces, parcels or lots of land, situate, lying and being in the Bluffton Township, County of Beaufort, Sate of South Carolina, being the eastern part of Lemon Island, containing seven (7) parcels of high ground containing 51.28 acres, more or less, together with a portion of a Lake containing 20.74 acres, more or less, all of which is more fully shown on a plat entitled "Boundary Survey of 162.24 Acre Tract, Okatie Highway – S.C. Highway 170, A Section of Widgeon Point, Lemon Island, Okatie, Beaufort County, South Carolina", Prepared for the Trust for Public Land and Beaufort County, Dated July 18, 2007, prepared by Surveying Consultants, Terry G. Hatchell, R.L.S. S.C. No. 11059. For a more complete description as to metes, bounds, courses and distance, reference is made to the above referenced plat which is recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 120 at Page 193.

EXHIBIT B

