

COUNTY COUNCIL OF BEAUFORT COUNTY

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LADSON F. HOWELL
COUNTY ATTORNEY

SUZANNE M. RAINEY
CLERK TO COUNCIL

AGENDA NATURAL RESOURCES COMMITTEE Monday, December 13, 2010 2:00 p.m. Executive Conference Room Administration Building

Committee Members:

Paul Sommerville, Chairman
Jerry Stewart, Vice-Chairman
Wm. Weston J. Newton

Staff Support:

Tony Criscitiello, Division Director

- 2:00 p.m.** 1. CALL TO ORDER
2. DISCUSSION / DEVELOPMENT AGREEMENT EXTENSION FOR MYRTLE PARK PLANNED UNIT DEVELOPMENT ([backup](#))
3. ADJOURNMENT

LAW OFFICES OF
David L. Tedder, P.A.

604-A Bladen St. • Beaufort, South Carolina 29902
Mailing Address: P.O. Box 1282 • Beaufort, SC 29901-1282

Telephone
(843) 521-4222

David L. Tedder, Esq.
dave@tedderlawoffice.com

Fax Number
(843) 521-0082

November 1, 2010

HAND DELIVERED

Ladson Howell, Esq.
Beaufort County Attorney
P.O. Drawer 1228
Beaufort, SC 29901-1228

The Honorable Paul Sommerville
Chairman, Natural Resource Committee
Beaufort County Council
P.O. Drawer 1228
Beaufort, SC 29901-1228

Re: Myrtle Park Development Agreement (Bluffton Area)
My Client - Chartwell Mews, LLC, by Franklin Construction, Managing Member
Request for Development Agreement Extension – Condemnation Action Settlement

Dear Messrs. Howell and Sommerville:

As noted in my earlier correspondence, we have been working with engineering and the Stuckey Law Firm that was working on the Bluffton Parkway condemnation actions. We have now resolved the matter of the routing through, and access into my client's property in a fashion that honors the Development Agreement and accommodates the needs of the County. We believe that the condemnation can now be resolved amicably with this development agreement extension. The extension provides for donation of the land for the Bluffton Parkway as drawn on the exhibits, which were prepared by the County's engineers, and the owners will accept the offered compensation on the additional right of way for the Tanger frontage road.

Please review and schedule a meeting of the subcommittee at you convenience. If there are questions I might be able to resolve before that meeting, please call me to discuss.

Best personal regards,


David L. Tedder

cc: Mr. Steve Lopes, o/b/o Chartwell Mews and Franklin Construction
Anthony Criscitiello
Christopher Murphy, Esq.

WHEREAS, the Development Agreement provided for the construction of the Bluffton Parkway (known as the 'East-West Connector' in the Development Agreement) and associated improvements (including drainage, wetland mitigation and pedestrian paths/sidewalks and bike paths) by the County upon lands to be dedicated to the County by Owner (and others), as shown in the exhibits to the original Development Agreement and Design Guidelines adopted as part of the Second Amendment, and that a portion of this road was dedicated by other parties to the County and constructed, among other things; and

WHEREAS, delays and complications also arose during this initial term, including litigation and settlement regarding wetland delineation and establishment of agreed wetland buffers and mitigation as part of Civil Action Number 2001-CP-07-944, which delayed the predecessor in title's plans, as well as completion of the infrastructure improvements contemplated in the Development Agreement lying to the South of Burnt Church Road, being the property now owned by Chartwell Mews, LLC, resulting in there being outstanding obligations under the Development Agreement for both the County and Owner; and

WHEREAS, the design, permitting and bidding associated for the construction of the Bluffton Parkway has taken more time than originally envisioned, with associated condemnation of adjacent properties and road design ongoing as of October, 2010; and

WHEREAS, Owner (and its predecessors in title) has diligently pursued its obligations contemplated under the Development Agreement, and in all manners complied with the terms (as amended) of the Development Agreement, including dedication of other lands to the County as provided for in the Development Agreement, however, dedication of lands for the Bluffton Parkway have not occurred, because of the delay in design and the potential expiration of the Agreement; and

WHEREAS, the road design and associated improvements requires the County to obtain land belonging to Owner not only for the Bluffton Parkway, but for an associate frontage road connector, and storm water infrastructure and ponds; and

WHEREAS, the County has initiated multiple condemnation actions beginning on November 5, 2009, including three involving Chartwell Mews, LLC, being 2009-CP-07-6049, 2010 CP-07-4741, and 2010-CP-07-4742; and

WHEREAS, turmoil in the financial and real estate markets has increased to levels which have imposed significant obstacles to development of the Property subject to the Development Agreement, especially in the last 24 months; and

WHEREAS, Owner desires to extend the Development Agreement to recognize that construction of both Bluffton Parkway and Burnt Church Road improvements were delayed far longer than expected, so that it obtains the intended benefit of the Development Agreement, as well as end the condemnation actions by extending the term, dedicating the road rights of way requested, and agreeing to the compensation

offered for lands not originally contemplated for road right of way in the Development Agreement; and

WHEREAS, Section 6-31-60 of the Act provides that the parties to a development agreement are not precluded from extending the termination date by mutual agreement; and

WHEREAS, the Development Agreement provided in Section III, *Term*, that the term of this Agreement may be renewed as to each individual Owner who may need such an extension; and

WHEREAS, the County finds that the continued development of the Property in accordance with the terms of the Development Agreements and the extension of time requested is in the best interests of the County, and will provide needed right of way for public infrastructure, including areas not contemplated in the Development Agreement; and

WHEREAS, it is the intention of the parties hereto adopt the following amendments to the Development Agreement, which are found to be consistent with the requirements of the statutes of the State of South Carolina and the Ordinances of Beaufort County.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, Beaufort County and the Owners hereby agree as follows:

- 1) Paragraph III, *Term*, of the Development Agreement is amended to provide that the term of the Agreement is extended to December 31, 2015;
- 2) Owner agrees to dedicate the right of way areas as shown in the attached exhibits, being the exhibits attached to the aforementioned condemnation actions, with the only direct compensation from the County being for the value of the additional land not contemplated in the Development Agreement, with the value set forth in the condemnation action (\$13,100.00); and
- 3) All other terms and conditions of the Development Agreement (as amended) shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereby set their hands and seals in multiple counter-parts, effective on the date first above written.

(EXHIBITS AND SIGNATURES CONTINUED ON FOLLOWING PAGES)

WITNESSES:

COUNTY OF BEAUFORT, SOUTH CAROLINA

By: _____

Name: Weston Newton
Title: Chairman, Beaufort County Council

Attest: _____

Suzanne M. Rainey
Clerk to Council

STATE OF SOUTH CAROLINA.)

ACKNOWLEDGMENT

COUNTY OF BEAUFORT.)

I HEREBY CERTIFY, that on this ____ day of _____, 2011, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Weston Newton, as Chairman of Beaufort County Council, and Suzanne M. Rainey, as Clerk to Council, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within document, who acknowledged the due execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires:

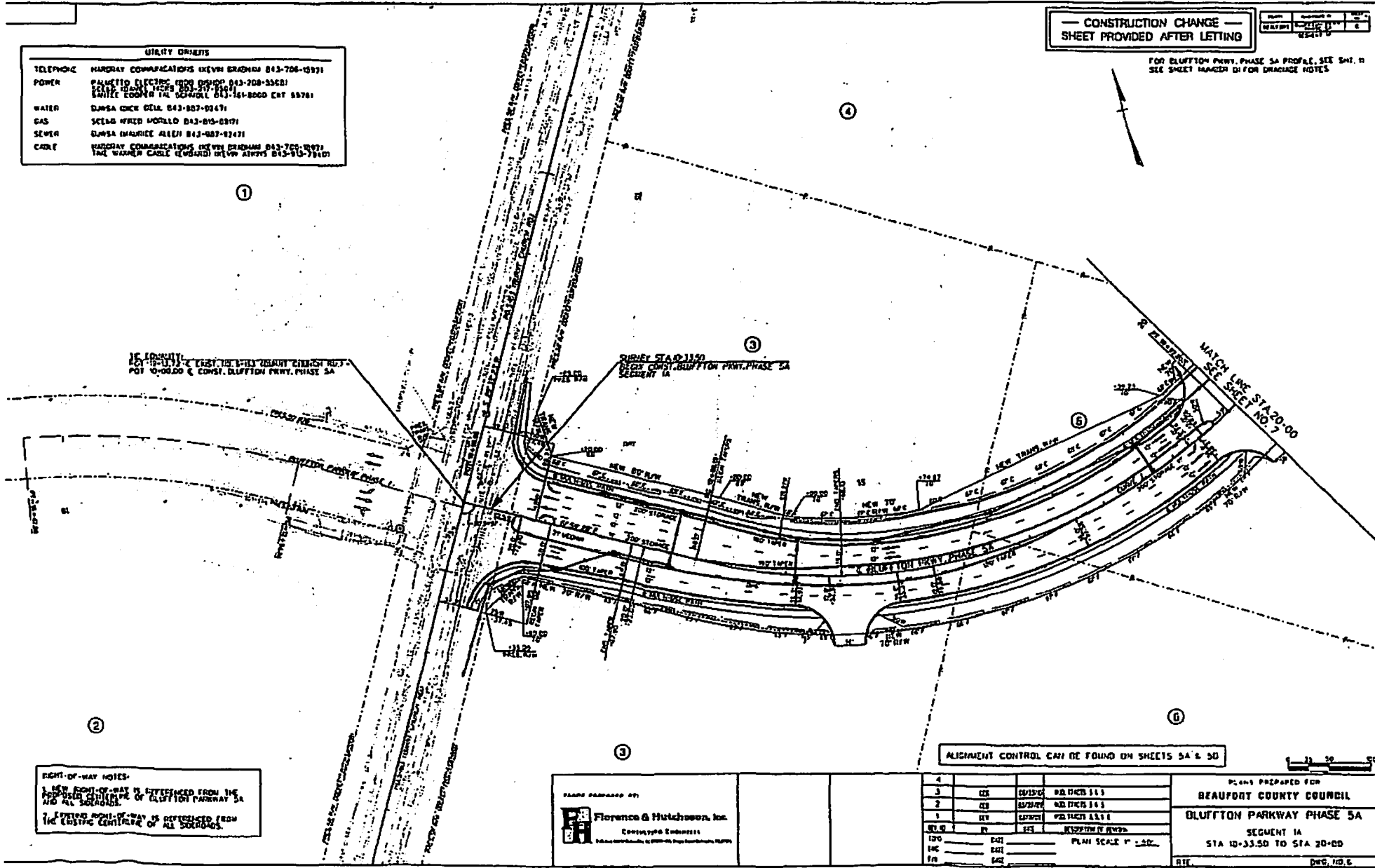
(EXHIBITS CONTINUE ON FOLLOWING PAGES)

| UTILITY ORIENTS | |
|-----------------|--|
| TELEPHONE | HARGRAY COMMUNICATIONS KEVIN BRADSHAW 843-708-1071 |
| POWER | PALMETTO ELECTRIC COOP DIVISION 843-708-3563 SCANA POWER 843-807-2100 SUNBELT COOPERATIVE UTILITIES 843-800-8778 |
| WATER | DUNSA ONCE BELL 843-807-0247 |
| GAS | SCANA HYDRO WORLD 843-810-0371 |
| SEWER | DUNSA MAINTENANCE ALLEN 843-807-0247 |
| CABLE | HARGRAY COMMUNICATIONS KEVIN BRADSHAW 843-708-1071 TIME WARNER CABLE (CABLE) KEVIN ALLEN 843-915-7900 |

— CONSTRUCTION CHANGE —
SHEET PROVIDED AFTER LETTING

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| DATE | BY | NO. |
| REVISION | DESCRIPTION | |
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FOR BLUFFTON PARKWAY PHASE 5A PROFILE, SEE SHEET 11
SEE SHEET NUMBER 11 FOR DRAINAGE NOTES



IF EXISTING
POT 10+00.00 & CONST. BLUFFTON PARKWAY PHASE 5A

UTILITY STA 11+50
EXIST. CONST. BLUFFTON PARKWAY PHASE 5A
SEGMENT 1A

MATCH LINE STA 20+00
SEE SHEET NO 7

ALIGNMENT CONTROL CAN BE FOUND ON SHEETS 5A & 5B

1" = 20'

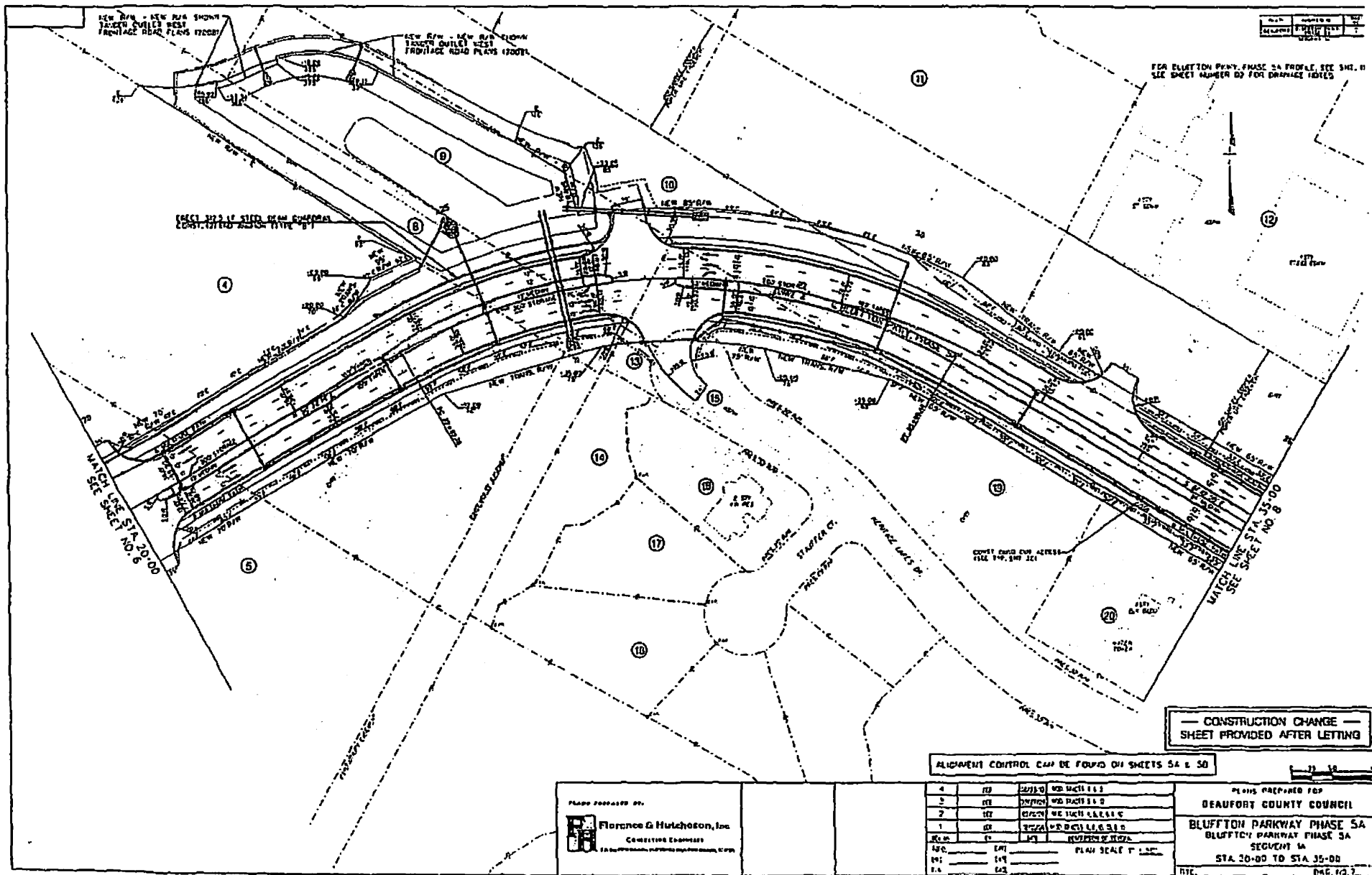
RIGHT-OF-WAY NOTES:
1. NEW RIGHT-OF-WAY IS DETERMINED FROM THE PROPOSED CENTERLINE OF BLUFFTON PARKWAY 5A AND ALL SURROUNDS.
2. EXISTING RIGHT-OF-WAY IS DETERMINED FROM THE EXISTING CENTERLINE OF ALL SURROUNDS.

DESIGN PREPARED BY:
Florence & Hutchinson, Inc.
CONSULTING ENGINEERS
1000 W. BROADWAY, SUITE 1000, CHARLOTTE, NC 28202

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PLANS PREPARED FOR
BLUFFTON COUNTY COUNCIL
BLUFFTON PARKWAY PHASE 5A
SEGMENT 1A
STA 10+33.50 TO STA 20+00
DATE: 12/1/00

Ex A



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| DATE | REVISION | BY |
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FOR BLUFFTON PARKWAY PHASE 5A PROFILE, SEE SHEET 11
SEE SHEET NUMBER 07 FOR DRAINAGE NOTES

NEW R/W - NEW R/W SHOWN
EXISTING OUTLET WEST
FRONTAGE ROAD PLANS (72007)

NEW R/W - NEW R/W SHOWN
EXISTING OUTLET WEST
FRONTAGE ROAD PLANS (72007)

MATCH LINE STA 20+00
SEE SHEET NO. 6

MATCH LINE STA 35+00
SEE SHEET NO. 8

CONSTRUCTION CHANGE
SHEET PROVIDED AFTER LETTING

ALIGNMENT CONTROL CAN BE FOUND ON SHEETS 5A & 5B



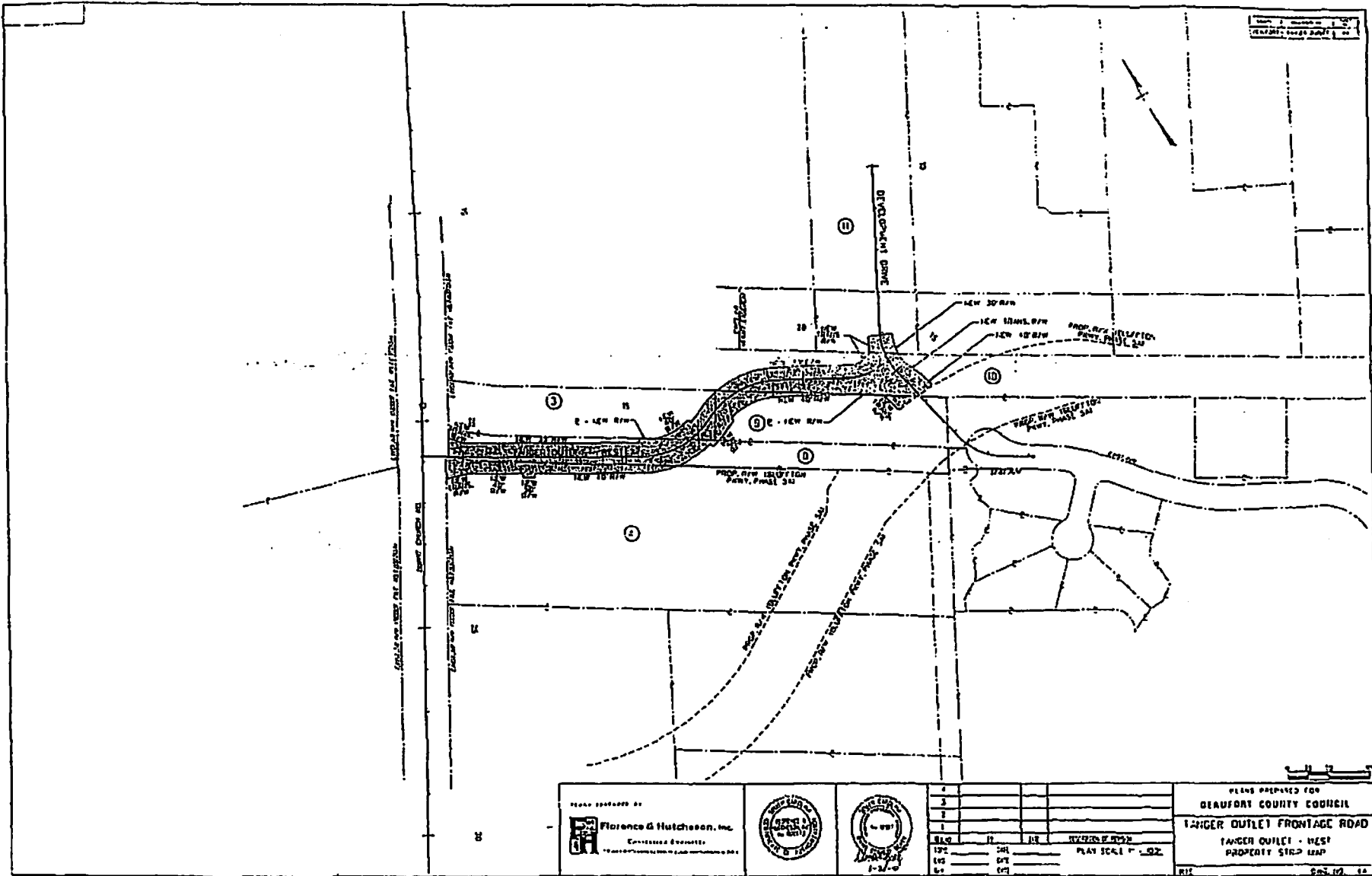
PLANS PREPARED BY:

Florence & Hutchinson, Inc.
CONSULTING ENGINEERS
1000 W. BROADWAY, SUITE 1000, CHARLOTTE, N.C. 28202

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PLANS PREPARED FOR
BLUFFTON PARKWAY PHASE 5A
BLUFFTON PARKWAY PHASE 5A
SEQUENT 5A
STA 20+00 TO STA 35+00
DATE 10/17

Sheet 1 of 2
 TANGER OUTLET FRONTAGE ROAD
 DEAFFORT COUNTY, SOUTH CAROLINA



PLANS PREPARED BY
Florence & Hutchison, Inc.
 CONSULTING ENGINEERS
 1100 W. BROADWAY, SUITE 100
 CHARLOTTE, N.C. 28202



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PLANS PREPARED FOR
DEAFFORT COUNTY COUNCIL
TANGER OUTLET FRONTAGE ROAD
 TANGER OUTLET - WEST
 PROPERTY STRIP LEAP

ALL RIGHTS RESERVED BY FLORENCE & HUTCHISON, INC. 11/11/11