Comprehensive Plan Update

Guiding the future for a lasting Lowcountry.

APPENDIX A

CHARLESTON COUNTY IMPLEMENTATION TOOLBOX

An Appendix to the Charleston County Comprehensive Plan ~~Update~~

Planning Commission Recommendation Draft - October 13, 2014

~~*Prepared for*~~
~~*Charleston County, South Carolina*~~
~~*by:*~~
~~*McBride Dale Clarion &*~~
~~*Clarion Associates*~~

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Comprehensive Plan Five-Year Review (proposed deletions shown as ~~strikethroughs~~; proposed additions shown as red text)

TABLE OF CONTENTS

Table of Contents 1

Introduction/Preface 2
A. Special Note on the Annual Work Plan for Implementation.....3

1. Planning and Land Use Strategies 4
A. The Zoning and Land Development Regulations Ordinance.....4
i. Overlay and Special Purpose Zoning Districts.....4
ii. Planned Development Zoning Districts.....4
B. Development Agreements.....5
C. Developments of County Significance.....6
D. Coordination with Other Planning Efforts.....7
i. Strategic Land Use Plans.....7
ii. The Charleston County Greenbelt Plan.....7
iii. The Charleston County Comprehensive Transportation Plan.....7
iv. Solid Waste Management Plan.....8
v. Stormwater Management Plan.....8
vi. Public-Private Partnerships.....8

2. Land Use and Public Facilities Linkage and Fiscal Sustainability 9
A. Capital Improvement Program(s).....9
B. Impact Assessment Studies.....10
i. Fiscal Impact Assessment.....11
C. Adequate Public Facilities Ordinance.....12
D. Funding Tools.....13
i. Property Tax.....13
ii. Sales Tax (Capital Projects, Local Option, Transportation Authority.....14
iii. Impact Fees.....14
iv. Real Estate Transfer Fee.....15
v. Tax Increment Finance Districts.....16

3. Interjurisdictional Cooperation 17
A. Urban Growth Boundary.....17
B. Service Provision Agreements.....18

4. Rural Preservation 19
A. Zoning to Encourage and Allow Rural Business.....19
B. Conservation Subdivisions.....20
C. Purchase of Development Rights.....20
D. Transfer of Development Rights.....21
E. Local Food Consumption.....22

5. Development Quality, Transitional, Mixed Use 23
A. Mixed Use.....23
B. Big Box.....23
C. Transitional Standards in the Urban/Suburban Area.....24
D. Form-Based Code.....24
E. Traditional Neighborhood Developments (TND).....25

INTRODUCTION/PREFACE

This document is an appendix to the ***Charleston County Comprehensive Plan***, and is designed to assist in accomplishing the adopted goals and strategies. The following is a "toolbox" of actions and strategies Charleston County might consider undertaking to achieve the Plan's vision for the future. The strategies are organized around five "core" elements or themes:

1. The ***Planning and Land Use Regulation Strategies Section*** includes an overarching set of planning tools that the County can use, and in some cases already uses, to enable many of the action strategies of the Plan. Updating these tools for consistency with the Comprehensive Plan is the first step in achieving the Vision of the Plan.
2. The ***Land Use and Public Facilities Linkages, and Fiscal Sustainability Section*** focuses on tools that allow the County to proactively manage growth by recognizing the connection between growth and the provision of services. The tools include methods to prepare facility needs assessments, to estimate timing and cost of providing facilities and services to new development, and alternative models to increase revenue to fund infrastructure improvements.
3. The ***Intergovernmental Coordination Section*** focuses on the issues of implementing the Plan in an environment influenced by multiple jurisdictions, various plans, diverse interests, and ever-changing jurisdictional boundaries. These tools provide guidance on the types of agreements and efforts the County could pursue to ensure coordination amongst the various jurisdictions to successfully implement the Plan.
4. The ***Rural Preservation Section*** focuses on regulatory and administrative actions the County could pursue to further the efforts to protect the unique Lowcountry rural landscapes. Rural preservation is aided by other key themes of the Plan such as directing growth to areas with available infrastructure and services. Protection of the rural character is interconnected with most of the other implementation tools in this document.
5. The final section is ***Design Quality and Character.*** The tools in this section focus on guidelines (non-regulatory) or standards (regulatory) the County could include in the development review process to influence the quality and character of growth rather than just how much and where development takes place.

The following tools may be mixed and matched to meet the resources and needs of the County in the coming years. This document attempts to provide a strong foundation and understanding regarding approaches available for implementation. The information within the following sections should provide the County decision-makers with the tools necessary to manage the County's growth in a spirit consistent with the vision of the ***Charleston County Comprehensive Plan***.

October 13, 2014 Draft
Comprehensive Plan Five-Year Review (proposed deletions shown as ~~strikethroughs~~; proposed additions shown as red text)

A SPECIAL NOTE ON THE ANNUAL WORK PLAN FOR IMPLEMENTATION

Through the 2008 update of the Plan, Planning Commission recognized that there are geographic areas of the County, which due to location along major roadways, close proximity to the municipal jurisdictions, or perceived impact if the area is developed warrant additional study and planning. These areas were identified in the plan as "Special Planning Areas." The Implementation of the recommendation for further planning can be carried out in the short to mid-term. Each of the nine areas will require a customized planning approach. The County's Planning Department can head these efforts based on an annual directive from County Council with adequate resources.

The *Zoning and Land Development Regulations Ordinance* will be used to implement many of the strategies ~~overlay districts for the area plans and special corridors identified~~ in the *Annual Work Plan for Implementation* in combination with service and transportation land use planning. However, one of the unique topics in the Annual Work Plan for Implementation is in regard to Developments of County Significance. These geographic locations are identified as large areas in a rural context, where there is expressed desire to develop. If development occurs in these locations there will be a change to the landscape, thereby impacting the established way of life in potentially dramatic ways. Because of their location in relatively rural areas, access to services like sanitary sewer, roads, and to some extent schools, and EMS/fire services are currently unavailable or severely limited. Providing these services will be a challenge for such large areas and require extensive financial resources to complete. To ensure the agency approving the development is the one responsible for providing services and that a comprehensive approach is taken to evaluate the impacts of the development, it is recommended in the Plan that the County establish Intergovernmental Agreements with relevant jurisdictions.

It is impractical to guess what the impacts of such large developments will be, so it is the intent of the Annual Work Plan for Implementation to tackle each area specifically to complete detailed area studies. One of the first steps the County should take to address Developments of County Significance is to enter into Intergovernmental Agreements with the other jurisdictions to make sure the impact of such a development is not unfairly shifted to a jurisdiction with little or no regulatory control. It is essential that the development approval jurisdiction be able to ensure proper services without undue hardship to existing residents and landowners. Intergovernmental Agreements are explained under separate heading below.

The second layer of concern for the County in regard to Developments of County Significance is the proper treatment of the application and development approval process when and if it is not consistent with the current *Comprehensive Plan* recommendations but could be in keeping with the overall vision and the criteria established in the Plan. This second tier utilizes Plan Amendments, Development Agreements, and Planned Development and Form-Based Zoning Districts applications as well as criteria for such developments. Development Agreements and Planned Developments are also explained in more detail in the following sections.

1. PLANNING AND LAND USE STRATEGIES

The Planning and Land Use Strategies reflect the approach most commonly used by communities in the pursuit of planning goals. This list represents the basic tools the County has used to update and implement the Comprehensive Plan. These are options that are not novel and provide familiar foundation for effective management of County growth. These tools include:

A. The *Zoning and Land Development Regulations Ordinance*
   i. Overlay and Special Use Zoning Districts
   ii. Planned Development Zoning Districts

B. Development Agreements

C. Developments of County Significance

D. Coordination with Other Planning Efforts

Each of these tools is explained below.

A. The Zoning and Land Development Regulations Ordinance

The *Zoning and Land Development Regulations Ordinance* is the predominate regulatory tool the County has to implement the *Comprehensive Plan*. This ordinance provides standards that development must meet and therefore is the link between the recommendations of the Plan and the resulting development in the County. It will be important that the *Zoning and Land Development Regulations Ordinance* be evaluated to determine where updates are needed to be consistent with the vision of the Plan.

i. Overlay and Special Purpose Zoning Districts

As established in ~~Chapter 3 of~~ the *Zoning and Land Development Regulations Ordinance* the County can put into effect an overlay or special purpose zoning district to create development controls for a particular area. These districts can be used to focus regulations that are customized for a specific geographic area which can vary from the underlying zoning. This tool can be effective as follow up implementation for strategic land use plans and in the case of infill development to ensure new infill matches the character of existing development. They are also particularly useful in areas along jurisdictional boundaries to provide consistent regulations between the County and municipalities. Overlay and Special Purpose Zoning Districts are most appropriate in cases where a number of properties are owned by various parties but share some common characteristic or feature that should be protected or enhanced rather than modified by base zoning standards that may not be consistent with the features unique to the area. Examples include modified setbacks, design standards, or standards to address a unique natural feature.

ii. Planned Development Zoning Districts

Planned Development Zoning Districts (PD), which are provided for ~~in Article 4.27~~ in the *Zoning and Land Development Regulations Ordinance*, are intended to promote innovative site planning through flexible development standards. There can be mutual benefit to both developer and County from a PD because in exchange for flexibility the development typically includes open spaces, affordable homes, and other amenities.

The PD is a good companion to a Development Agreement because it provides a tie to the development standards that can be customized for a particular site and development.

In trying to achieve the Plan's core elements, County baseline standards for future planned developments should address or continue to address the topics listed below. Following establishment of the minimum standards, the County should adopt the baseline standards as part of its development code.

- **Open space.** It is common for developments to require some open space (see Open Space definition, page 126). Current PD regulations call for the provision of open space if the PD includes a request to increase residential density to the maximum density recommended for the property by the *Comprehensive Plan*. When this is the case, a minimum of 0.2 acres of common open space per dwelling unit is required in the Rural Area and 0.05 acres of common open space is required in the Urban/Suburban Area. Ten percent of the land area designated for office, commercial, and/or industrial uses is required for any PD requesting density increases as described above, regardless of its location in the County.

- **Environmental protection.** As under current regulations, PDs should continue to protect any resources determined significant by the Planning Director. These include but are not limited to: agricultural soils and active farmland, buffer areas between active farmland and existing/planned future non-farm development, wetlands, mature trees, land adjacent to preserved farmland on neighboring properties, scenic views, water access and shoreline buffers, and habitat of species designated as of federal, state and local concern. PDs also must comply with all

provisions of tree protection and preservation regulations and must adhere to the waterfront development standards of the underlying base zoning district. Additionally, as part of the review process, coordination with other applicable agencies regarding environmental impacts and cultural/historic/archaeological resources may be performed to better inform the planning staff, public, and policymakers of the effects of a given development.

- **Transportation and public facilities.** PDs should comply with transportation demand management, traffic impact assessment, and any public facility mitigation requirements, and should not be allowed to waive or modify those requirements.
- **Connectivity and access management.** PDs should comply with all local connectivity and access management rules and should not be allowed to waive or modify those requirements.
- **Design Character and Quality.** PDs should meet or exceed all mixed-use, transitional, and community form standards and guidelines and should not be allowed to waive or modify those requirements.

B. Development Agreements

A Development Agreement is a somewhat unique tool in South Carolina that allows both local governments and a developer or land holder to enter in to an agreement that grants development rights and ties them to adequate public facilities through a public process. Development Agreements can be useful in cases that involve review and action by multiple governmental agencies. The *South Carolina Local Government Development Agreement Act* requires a detailed submission for any Development Agreement.

Under South Carolina state law, Development Agreements must conform to local development standards, and so they often are combined with a planned development ordinance (PD) to establish a negotiated approval for development over an extended period of time. The requirement for conformance to the local comprehensive plan influences the decision to require Developments of County Significance (described in the next section) to request a Plan Amendment when located in the Rural Areas. In Charleston County, Planned Developments are governed by ~~Article 4.23, Planned Development Zoning District, of~~ the *Charleston County Zoning and Land Development Regulations Ordinance*. Development Agreements are allowed under ~~Article 3.16~~ Chapter 3 if they are in accordance with South Carolina Code of Law, Title 6, Chapter 31.

Any future Development Agreements should be required to meet or exceed the minimum standards outlined below (as stated in the Plan):

- Preservation of a portion of the land for open spaces, natural features and/or recreational areas (see Open Space definition, page 126);
- A historic and archeological resource study;
- Preservation, mitigation and/or management of significant cultural, historic and archaeological sites, resources and landscapes;
- Information regarding the location, density and intensity of proposed land uses;
- Proof that the proposed form and character of development is compatible with the intent of the Rural Area guidelines;
- Proof that residential land use patterns are coordinated with employment and service opportunities in the area of the proposed development;
- Inclusion of a variety of housing ownership types and affordability;
- Economic development information such as economic feasibility analysis, estimates of average annual ad valorem tax yields, economic development analysis of the impact on the economy and employment market;
- Fiscal impact analysis of the public infrastructure needs;
- List of required public improvements including, but not limited to transportation improvements; educational facilities, public safety services, and government facilities;
- Traffic impact study;
- Interconnected and complete transportation network;
- Analysis of public transit alternatives;
- Provision of transportation alternatives; and
- Emergency evacuation plans.

In addition, existing Development Agreements that are re-opened should be required to meet these minimum standards, to the extent permitted by law. Further, all future Development Agreements should contain language and criteria to establish

when an agreement can be re-opened based on a set of defined conditions. These conditions should include:

- A phasing schedule that requires phases to be completed within a specified period of time, or the Development Agreement will be re-opened (something the statute does not require, but allows);
- A schedule that requires the transportation analysis component and mitigation requirements to be re-evaluated after certain thresholds are reached, to ensure transportation impact and mitigation issues are addressed;
- Recognition that subsequently adopted laws are not in conflict with the Development Agreement and can be applied, if at a public hearing the County Council determines:
    - There are substantial changes that have occurred within the County which, if not addressed by the County, would pose a serious threat to the health, safety, and welfare;
    - The new laws address these problems and are essential to addressing them; and
    - The laws expressly state they are to apply to the Development Agreement;
- Recognition that subsequently adopted laws can apply to the Development Agreement if it is found that the Development Agreement was based on substantially and materially inaccurate information supplied by the developer.

The County could adopt these standards as part of its local code for Development Agreements.

C. Developments of County Significance

Generally the first time the concept of defining and regulating projects of county or regional significance was seriously considered occurred in the late 1960s when the American Law Institute (ALI) of the American Bar Association decided to prepare a *Model Land Development Code*. The Model Code embraced two forms of the concept: the development of regional impact (DRI) and development of regional benefit (DRB) process, which served two different purposes; under the Model Code, the DRI process allowed for extra local review of development projects of a certain size to ensure any extra-local or regional impacts were addressed; the DRB process allowed for extra local review and preemptive decision making to ensure projects of regional benefit were not rejected at the local level because regional benefits were not considered (American Law Institute of the American Bar Association, 1976; Pelham, 1979; Bollens, 1992).

These proposals about projects of regional significance in the Model Code came in response to several problems identified with the traditional framework of local planning and zoning. First was the incapacity or unwillingness of local governments to address the issues of extra-local impacts when they considered development proposals. Second was the incapacity or unwillingness for local governments to consider the positive regional benefits of certain types of development proposals that would clearly have negative local impacts, like prisons or solid waste sites (LULUs, or locally unwanted land uses). It was suggested that unless these problems were addressed, the results would lead to environmental degradation, the inefficient siting of public facilities and regional inequality (Babcock, 1966; Bosselman and Callies, 1971; Reilly, 1973; Healy and Rosenberg, 1979; Plotkin, 1988). The Model Code recommendation was to allow limited state regulatory preemption into local decision making to address these problems.

Since that time this concept has been recognized as a legitimate and much needed planning tool to ensure extra-local impacts and regional benefits are addressed in the land use regulatory process, and a hand full of states have embraced the concept in a variety of forms. The broad-based and oldest state initiative where the project of regional significance concept has been adopted and implemented is in Florida, where in 1972, the *Florida Environmental Land and Water Management Act* (1972) was adopted, establishing the development of regional impact (DRI) review process. It has been in place now for over 25 years.

The lessons learned from the practice experience in implementing and administering a project of regional impact type review are multiple. However, one clear lesson learned is that translating the concept of "regional significance" into a clear and workable definition that is "implementable" with some degree of efficiency is challenging -- requiring consideration of multiple policy and technical issues. They include fundamental matters like what resources in the region are truly regional in nature and therefore require the evaluation of extra-jurisdictional impacts (e.g., potable water sources, roads, wastewater treatment facilities, water quality issues, wildlife impacts, the economy and housing); what methods are acceptable in evaluating regional impacts; and at what threshold is the size of a proposed project development going to generate significantly substantial impacts on regional resources.

There are a number of different ways to define "projects of regional significance." They include numerical thresholds by land use type; numerical thresholds based on public facility impact; numerical thresholds based on employment generation; thresh-

olds based on impacts to natural, historic, archeological or cultural resources; thresholds based on extra-local impacts; and thresholds based on public facility type.

Beyond the pure definition, but relevant to the workability of the definition to the overall program initiative are structural issues about process and intergovernmental relations (e.g., procedurally, how will the program work, and how is intergovernmental review considered), and general implementation. This is the case in Charleston County. South Carolina has not adopted a system like Florida's or the Model Code's. Just as clear as a practical matter, Charleston County, the municipalities within its borders, and neighboring counties and municipalities are faced with potential Development of Regional/County significance whatever definition is agreed upon. It is important that the municipalities communicate and coordinate their processes with one another. The same underlying rationale applies as with other tools. For physical and fiscal reasons, and for their own economic welfare and quality of life, these governments need to communicate and coordinate. Developments of County Significance are governed by Chapter 3 of the *Zoning and Land Development Regulations Ordinance*.

D. Coordination with Other Planning Efforts

One of the most basic approaches the County can take in pursuit of implementation is more focused or strategic planning efforts to develop recommendations or policies related to a particular area of County management or a geographically specific area. The general goals and strategies in the *Comprehensive Plan* are broad based and apply countywide. However, there are areas where more detailed and specific recommendations could be beneficial. The Plan identifies geographic areas where further planning will be needed; the approach for those Area Plans is detailed in the "Annual Work Plan for Implementation."

Coordination with other jurisdictions as well as other County departments that are responsible for ordinances that further the strategies of the *Comprehensive Plan* is discussed in the *Comprehensive Plan*, as well. Listed below are some general items regarding strategic land use plans and information on County plans and programs currently in place that further the goals of the *Comprehensive Plan*.

i. Strategic Land Use Plans

The County has the ability to undertake area specific land use plans that can focus on the context and conditions of a specific area. There are several locations identified in the Comprehensive Plan for further study.

These recommendations include coordination with adjacent jurisdictions to make sure the plan for the area is consistent across jurisdictional boundaries. These plans should focus on assessment of:

- The physical character of surrounding land uses and buildings;
- Road and transportation impacts;
- Availability of services; and
- Public input.

Following the example established in locations such as The Mount Pleasant Overlay District, Sweetgrass Basket Special Consideration Area, the County and impacted jurisdictions should establish coordinated regulatory overlay zoning districts to provide consistent guidance and standards for development in these areas.

ii. The Charleston County Greenbelt Plan

Charleston County voters initiated two strategic plans in 2004 when they voted in a countywide referendum to raise funds for transportation related improvements using a Half-Cent Sales Tax. The referendum includes requirements for acquisition and protection of green spaces called "greenbelts." The County prepared a *Comprehensive Greenbelt Plan* to provide an open public process to identify key resources and prepare a strategy for the best way to achieve the intent of the referendum. The *Greenbelt Plan* provides the County with the direction and tools necessary to allocate funds from the One Half-Cent Sales Tax toward Greenbelts. The County has since established the Greenbelt Program to administer the day-to-day activities and acquisition of land into in the County's *Greenbelt Plan*.

iii. The Charleston County Comprehensive Transportation Plan

As a result of the 2004 referendum, the County established RoadWise, a division under the Deputy County Administrator for the Half-Cent Sales Tax Program, to manage and oversee transportation related improvements. The Transportation Advisory Board prepared the *Charleston County Comprehensive Transportation Plan* that identifies a 25 year (through 2030) allocation of resources to transportation improvement projects. The *Comprehensive Transportation Plan* is a key resource in the achievement of Plan related strategies for improvements to the County's transportation networks and road conditions.

iv. Solid Waste Management Plan

The County operates solid waste management services and facilities through the Solid Waste Division. The Division maintains a Master Plan which considers the various costs and benefits associated with solid waste management options. The plan was updated concurrent with the *Comprehensive Plan* and details the approach the County will take in management of recycling and solid waste disposal facilities.

v. Stormwater Management Program

In October of 2007, the County put into effect the *Charleston County Stormwater Program Permitting Standards and Procedures Manual* to "protect, maintain, and enhance water quality and the environment of Charleston County and the short-term and long-term public health, safety, and general welfare of the citizens of the Charleston County." The program is intended to minimize property and environmental damage caused by development. This is a significant implementation tool for many of the strategies dealing with sustainable and environmentally sensitive development. The County is in the process of preparing a County Stormwater Management Plan.

vi. Public Private Partnerships

There are some elements of the Plan for which the County has the most control over implementation. However, there are elements where partnerships with other agencies particularly private agencies can be a benefit in implementation. Agencies such as the ~~Lowcountry Housing Trust~~ South Carolina Community Loan Fund (formerly Lowcountry Housing Trust) that can provide a unique resource to determine best practices the County could use to further many of its goals. A public private partnership can be useful for initiatives such as affordable housing initiatives, when the County may not have in-house resources.

2. LAND USE AND PUBLIC FACILITIES LINKAGE AND FISCAL SUSTAINABILITY

One of the major themes in the *Comprehensive Plan* is the need to link land use decisions to the availability of public facilities and services in a fiscally sustainable manner. The goals and strategies of the *Comprehensive Plan* establish a policy for the County to ensure that future growth is balanced with adequate provision of public facilities and services. However, the following tools could be used to further strengthen this effort. As discussed below, tools such as a Capital Improvements Program (CIP) and an Adequate Public Facilities Ordinance (APFO) can be effective in shaping, directing, and accommodating growth when land use assumptions and projections are taken into account in facilities planning. The state mandated Priority Investment Act is essentially a requirement for a Capital Improvements Program for certain public facilities that requires intergovernmental communication. Communication is the first step to coordination, and in Charleston County, intergovernmental coordination is essential to success. Investments in infrastructure and service provision should be directed to the Urban/Suburban Area of the County, located within the Urban Growth Boundary, to alleviate development pressure in the Rural Area of the County. Properly funded facilities plans that reinforce and facilitate compact growth in defined areas while working to meet needs elsewhere will result in less development pressure in the Rural Area of the County.

To address these goals, the County should consider focusing its efforts on the following planning, regulatory, and funding actions:

- Prepare a Capital Improvements Program (CIP) for transportation, parks, public safety, stormwater management, and public buildings in accordance with the South Carolina Priority Investment Act as well as the County's Future Land Use Plan.
- Establish Adequate Public Facilities Ordinances (APFOs), polices that only allow new development where adequate public infrastructure, such as transportation, potable water, and wastewater, to serve the development is in place at the time of impact of the proposed development. Establishing APFOs will require extensive coordination with other local jurisdictions to set up agreements regarding these policies.
- Establish financial feasibility for CIPs and APFOs through a fiscal impact assessment.

The following tools are included to support these efforts:

A. Capital Improvement Program
B. Impact Assessments
C. Adequate Public Facilities Ordinance
D. Funding Tools

A. Capital Improvement Program(s)

A CIP is a five- or six- year schedule of capital projects for public facilities. Types of public facilities in a CIP might include transportation, public water and sewer, parks, stormwater, public safety, public buildings, and schools. Many communities prioritize these facilities and develop a CIP for three or four public facilities. Chief among these are transportation, potable water, wastewater, and public safety.

A CIP is most effective when coordinated with assumptions and goals in the comprehensive plan. A CIP is effectively a business plan for the County both fiscally and physically:

- Fiscally: A properly funded CIP is a fiscal business plan for meeting the infrastructure needs of the County. It takes stock of where the County is presently with regards to service provision. It identifies present deficiencies and future needs. It then pairs these needs with funding sources in a fiscally feasible manner.
- Physically: The CIP is also a part of a larger business plan for guiding growth. Infrastructure improvements facilitate development. A CIP that takes the land use and development goals of the community into account can influence the shape and location of development. A strong CIP directs where development and redevelopment will be supported through public infrastructure investments.

Currently, Charleston County is using an annual CIP/budget process for the following facilities: Detention Center, Radio Communications, Judicial Center, Consolidated Dispatch, and other County facilities. These expenditures are not well coordinated with assumptions in the Land Use Plan and are not based on an extended time horizon.

On May 23, 2007, Governor Sanford signed into law the South Carolina Priority Investment Act. The Act amends the Local Government Comprehensive Planning Enabling Act of 1994 requiring two new CIP-like elements to the comprehensive planning process. The Act provides for a specific transportation element requiring local governments to consider all transportation facilities (i.e., roads, transit projects, pedestrian and bicycle projects) as part of a comprehensive transportation network.

The Act also added a new Priority Investment Element, which requires local governments to coordinate and analyze available public funding for public infrastructure and facilities over the next ten years and to recommend projects for expenditures of those funds for needed public infrastructure.

Additionally, the Priority Investment Element requires a basic level of coordination between local governments. The Act requires that the Priority Investment Element be developed through coordination with "adjacent and relevant jurisdictions and agencies." All governmental entities and utilities - counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies and other public entities - that are affected by or have any planning authority over public projects identified in the Priority Investment Element must be consulted in the coordination process. The Act provides for a basic level of coordination requiring written notification to the other agencies and an opportunity for comment on the proposed projects.

The recommended process for establishing a CIP for a given facility is:

- Establish a Level of Service (LOS)[1] for the facility;
- Identify existing conditions of the facility, based on the established LOS;
- Identify deficiencies (if they exist), and costs to correct;
- Identify and utilize appropriate land use assumptions from the Comprehensive Plan;
- Estimate demand for the facility over the planning horizon, based on land use assumptions and the established LOS;
- Estimate capital improvement needs to accommodate new growth and development over the planning horizon in order to maintain the established LOS;
- Estimate costs over the next five (5) years (Five Year CIP), to provide needed improvements;
- Develop a financially feasible program to fund the capital improvements identified in the Five-Year CIP; and
- Update annually.

1 Level of Service is a term used to describe a benchmark or standards against which the provision of a service can be measures. For example, a roads level of service may be established by how many cars it is carrying in relation to the number of cars it is designed to carry, or how much congestion there is. In the case of water the Level of Service may be related to the capacity of the pipes carrying the water, or the pressure of water in the home, or the capacity to treat drinkable water in millions of gallons per day. The important thing with a Level of Service is that it can be established in many ways but is then used as a way to measure continued performance. If a goal Level of Service is set it can be used to assess need for new facilities to maintain the desired Level of Service.

Specifically, the CIPs for transportation facilities will include, at a minimum, the following elements:

- Establishment of a Level of Service (LOS) standard that gives the expectation of having rural transportation service and roads in the Rural Area of the County;
- Establishment of a LOS standard that gives the expectation of having a higher level of services in the Urban/Suburban Area of the County;
- Identification of the existing conditions of the public facilities, based on the established LOS, any deficiencies in service conditions (if they exist), and the costs to correct the deficiencies;
- Estimates of the capital improvement needs to accommodate new growth and development and their costs over a five (5) year planning horizon;
- Preparation of a specific list of capital improvements to be provided by the County to accommodate new development over the next five (5) years (Five Year CIP), which shall be updated annually; and
- A financially feasible program to fund the capital improvements identified in the Five-Year CIP.

Establish financial feasibility for CIPs and APFOs

Financial feasibility is the key element in CIPs and APFOs. Once needs and goals are identified, the County must have a feasible financial structure to bring about the infrastructure improvements. If the County hinges approval on the provision of services, it needs to have service provision plan. This is especially true in the case of APFOs where the County can risk legal challenges if it ties development approval to public facilities that it does not plan to fund feasibly.

It is also important to note that APFOs cannot be used to correct current infrastructure deficiencies.

B. Impact Assessment Studies

Impact Assessments are tools that can be used on a countywide or project specific basis. An impact assessment is a numeric analysis of the anticipated impact of growth on one or more systems and recommendations for necessary improvements and the cost of those improvements. Impact Assessment Studies often involve the use of geographic and mathematical models that can run growth or development scenarios to measure their impact on the facility, services, or system of choice. The County could choose to use an Impact

Assessment Study in one of two ways:

- Scenario one would be initiated by the County and would use land development regulations and growth projections associated with the Comprehensive Plan to generate demand for various services and systems in the County. The results of this type of assessment would offer a comprehensive picture of what improvements would be needed under a list of assumptions. This scenario would yield general results that would provide a long-term picture of the impacts of growth if it follows the guidance of the Plan. The results could serve as a basis for a Capital Improvements Program. It would also establish a baseline to assess the impacts of individual developments. This first scenario would be beneficial if the County decided to purse a countywide Impact Fee
- Scenario two allows the County to require an Impact Assessment for services or facilities as part of development approval for a specific development. This alternative provides the County with information how necessary improvements to support growth in a specific geographic location and analyze the cost of those improvements to determine how those improvements will be funded. The County could choose to require the developer to submit impact assessments or could require application fees to obtain an expert of the County's choice.

Fiscal Impact Assessments specifically look at the relationships between costs and revenues associated with new development; however, a service specific assessment could be prepared such as water or sewer services, schools, or transportation.

Fiscal Impact Assessment[2]

A fiscal impact model will compare County costs against County revenues associated with land use policies and specific development projects, thereby indicating the short- and long-term fiscal sustainability of land use decisions. The County could then weigh land use policy decisions, acceptable levels of public services provided, plans for capital investments, and long-term borrowing needs, in addition to prompting local officials to evaluate current and future revenue sources.

There are two primary methodologies utilized in Fiscal Impact Analyses. These are the average cost and case study-marginal methodologies. The average cost approach is the simplest method and the most popular. Costs and revenues are calculated on the average cost per unit of service (often per capita or per employee). This method assumes the current average cost of serving existing residents, workers, students, etc. is the best estimate of the cost to serve new residents, workers and students. The major weaknesses of this methodology include: (1) it does not reflect the fact that both costs and revenues generated by new development can differ significantly from those of the existing development base; (2) it does not consider available public service and capital capacities; and (3) it usually does not consider the geographic location of new development.

The case study-marginal methodology is the most realistic method for evaluating fiscal impacts. This methodology takes site or geographic-specific information into consideration. Therefore, any unique demographic or locational characteristics of new development are accounted for, as well as the extent to which a particular infrastructure or service operates under, over or close to capacity. This methodology is more labor intensive than the average cost method due to its more specific data needs.

If the County simply wants to estimate the fiscal impact of a project or development scenario at a point in time in the longer term future, say twenty years, then the average cost approach may generate somewhat similar results to the case study-marginal cost approach for that year. As discussed previously, the weakness of the average cost approach is its inability to adequately reflect fiscal realities pertaining to timing and spatial distribution.

Advantages:

- Fiscal Impact Analysis can bring a realistic sense of the costs of growth into the public discussion. The County can benefit from the "objective screen" that the analysis provides, which can lead to a better understanding-both for the public and for County Officials-of the relationships among the various factors contributing to growth and development.
- Encourages the integration of land use and budget decisions.
- Can provide an understanding of the fiscal/service delivery implications of different land use scenarios or specific development projects.
- Encourages "what-if" questions related to acceptable levels of service and land use and financial policy.
- From a planning perspective, a Fiscal Impact Analysis directly links proposed zoning and land uses with projected population and employment growth related to residential and nonresidential development.

Disadvantages:

- The most frequently mentioned criticism of fiscal analyses is the "inherent limitations" associated with any methodology or approach. In other words, "outputs

2 Description of Fiscal Impact Analysis provided by TischlerBise Associates, Inc.

are only as good as the inputs" and their specific relevance and application to the County and analysis. Consequently, a model developed using a methodology inappropriate to the situation, faulty assumptions, or a "black-box" approach, can significantly erode the public's trust and confidence in the model's output.

- Assumptions and data should be reviewed on a regular basis to ensure that they continue to accurately reflect current trends, thereby placing an administrative burden on the jurisdiction.
- A Fiscal Impact Analysis will not provide the "answer" to policy questions. It can be a useful tool, but it can also be a source of contention if there are substantial tensions regarding the costs of growth, which could lead to the practice of "fiscal zoning," approving only those development projects that generate a net surplus.

C. Adequate Public Facilities Ordinance

In an effort to encourage fiscally and physically responsible growth, the County should also consider coordinating land use permitting with public facilities. A chief tool local governments have used to this end is an Adequate Public Facilities Ordinance (APFO).

An APFO requires new development show adequate public facilities and services will be available at the time development impacts occur. The goal is to reduce lag time between project impact and service delivery.

One of the traditional roles of local government is the provision and management of capital facilities -- roads, potable water and wastewater infrastructure, solid waste facilities, drainage facilities, parks, police facilities, and fire and emergency medical service (EMS) facilities. In the majority of communities throughout the nation, these responsibilities are carried out either on an ad hoc basis (with local governments considering capital facility needs and their funding as they arise, usually on an annual basis), or more systematically, through the development of five- or ten-year capital improvement programs (CIPs) that are sometimes integrated into long-term infrastructure funding strategies for the local government.

Over the past 15 years, a growth management technique has emerged that embraces the idea that local government's provision and management of capital public facilities is more effective if the public facility planning and funding program is coordinated with the land use regulatory process so that the approval of development is coordinated with the provision of capital public facilities. This technique has been used primarily in rapidly growing communities in the sunbelt and in several fast-growing states (Maryland[3], Florida[4], and Washington[5]) where local governments have struggled to keep pace with the public facility demands created by new development. In the planning profession and literature, the concept is characterized as adequate public facilities or "concurrency."

At its most basic level, the concept of adequate public facilities is simple and straightforward. It is a growth management tool used by local government that coordinates the provision of capital public facilities, through a CIP, with the timing of development. It requires that adequate public facilities be available to accommodate new growth and development at or about the time it occurs. Experiences in the implementation of the APFO concept, however, especially for roads, teaches that it can be a complex growth management technique that must be carefully crafted and based upon a sound management and funding program to be effective.

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3 Montgomery County, Maryland, operates the longest running APF program in the country. Since 1973, when the county added an APF requirement to its subdivision ordinance, subdivision approval has been linked to the adequacy of public facilities. Since the inception of Montgomery County's APF program, over 18 local governments in Maryland have initiated APF programs. They include Anne Arundel County, Baltimore County, Prince Georges County, Frederick County, the City of Gaithersburg and others.

4 One of the centerpieces of Florida's 1985 growth management legislation is a concurrency mandate. The legislation requires that all local governments in the state (400 +) prepare a comprehensive plan that includes a "financially feasible" five -year capital improvement element (CIE) for a minimum of six public facilities (roads, potable water, wastewater treatment, parks and recreation, solid wastes, and drainage), that the CIE identify the public facilities needed to serve the expected population at locally established LOS standards for each public facility, that a concurrency management system (CMS) is designed as part of the implementation section of the comprehensive plan, and that the CIE, and the other portions of the local comprehensive plan be implemented in part through concurrency regulations that provide that public facilities and services meet or exceed the standards established in the capital improvements element "and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development." Sec. 163.3202(2)(g), Fla. Stat.

5 Washington established mandatory planning and implementation standards which include concurrency requirements for the local governments around Puget Sound and for the other fast-growing counties and cities in the state in 1990. Like Florida's concurrency mandate, the Washington legislation follows the traditional approach to APF or concurrency management: to establish a management framework for the coordination of infrastructure with new growth and development so that adequate public facilities are available (or concurrent) at or about the time new growth and development needs the infrastructure. Washington's concurrency requirements, however, provide local governments broader latitude than Florida local governments to locally determine which local public facilities should be subject to concurrency. The one exception is roads, which are required to be included in the concurrency management program, and potable water and sanitary sewer systems, which are strongly encouraged to be included in the program.

In any initial discussion of the APFO concept, it is first important to dispel any misconceptions about what an APFO is or should be. The traditional and appropriate definition of APFO emphasizes planning/management/funding as the key and most important components of any APFO program. Under this view the focus of APFO is on government's responsibilities to establish sound planning and funding programs for infrastructure; while important, the regulatory aspects of the program are not as important, and are used only to ensure that adequate facilities are available -- which they should be if the planning and funding parts of the program are well managed. Thus, under the traditional and appropriate application of APFO, the focus is on the management of infrastructure so that the community's desired levels of growth and development are coordinated with the provision of infrastructure in an efficient and orderly way.

A second and inappropriate view perceives APFO as a purely regulatory and "no growth" measure, with no governmental responsibilities to manage and coordinate the provision of infrastructure. Under this perspective, County may impose an adequate public facilities requirement (e.g., that adequate road facilities shall be available prior to the approval of development) without planning, management, and funding efforts to ensure the adequate provision of infrastructure in an orderly fashion.

Given that the planning and management of infrastructure is at the heart of an APFO initiative, the key to a sound APFO program is the design and implementation of a financially feasible capital improvements program (CIP) for the public facility for which the APFO program is being established. Consequently, it is key that a sound APFO program be based upon a CIP and funding program that:

- Establishes a LOS to evaluate the conditions of existing infrastructure, identifying deficiencies, and capital costs to correct deficiencies;
- Projects needed capital improvements to provide adequate capacity for new growth and development;
- Is financially feasible so that there is funding to provide the needed capital facilities to accommodate new growth and development and correct deficiencies within reasonable time frames; and
- Annually monitors facility conditions so that the CIP can be updated to address changed conditions.

Types of public facilities for which an APFO could be applied include transportation, parks, potable water, sewage, drainage, solid waste, and schools.

The County should consider developing an APFO for transportation, sewer, water, EMS, stormwater, and fire systems. If established, the APFO shall require a CIP that:

- Establishes a LOS to evaluate the conditions of existing infrastructure, identifies deficiencies, and the capital costs to correct deficiencies within reasonable time frames;
- Identifies the capital improvements to provide adequate capacity for new growth and development;
- Is financially feasible so there is funding to provide the needed capital improvements to accommodate new growth and development and to correct deficiencies;
- A monitoring program that annually monitors/measures capacity and demand conditions on the system(s) subject to the APFO; and
- An ordinance that evaluates development and ensures development is not approved unless adequate capacity is available to accommodate it.

There are some challenges associated with implementing an APFO in Charleston County. The first is that water and sewer are two of the facilities/services that influence the placement and rate of growth. However, the County is not currently in the business of providing or regulating public sewer and water provisions. If an APFO were to include those services or transportation, a great deal of coordination between the County and the service providing agencies would be required. The second challenge, or reality of an APFO, is that they can not be used to address existing or current infrastructure deficiencies.

D. Funding Tools

The Capital Facility Plan, Fiscal Impact Assessment and the Adequate Public Facility Ordinance all include reference or components related to funding. The County has several options for funding capital improvements/infrastructure improvements. The following are the primary sources of funding for these facilities. All of the options except Impact Fees and Tax Increment Finance Districts can be used to correct existing deviancies.

i. Property Tax

The property tax is administered and collected by Charleston County with assistance from the South Carolina Department of Revenue. Real and personal property are subject to the tax. Approximately two-thirds of County-levied property taxes are used for support of public education. Municipalities levy a tax on property situated within the limits of the municipality for services provided by the municipality. The tax is paid by individuals, corporations,

partnerships, etc. owning property within the state.

Each class of property is assessed at a ratio unique to that type of property. Primary residences and privately-owned agricultural lands are assessed at four (4) percent of fair market value; rental properties are assessed at six (6) percent of fair market value. Other classes such as utility property and manufacturing property are taxed at higher rates. The assessment ratio is applied to the market value of the property to determine the assessed value of the property. Each county and municipality then applies its millage rate to the assessed value to determine the tax due. The millage rate is equivalent to the tax per $1,000 of assessed value. For example, if the millage rate is 200 mills and the assessed value of the property is $1,000, the tax on that property is $200. Charleston County's millage rate currently stands at 168 mills. The County itself charges 46.8 mills (32% of the county-wide millage). This rate has not been raised in the last thirteen years. On top of the County millage, the School Board charges 113.6 mills (68% of the county-wide millage).

ii. Sales Tax (Capital Projects, Local Option, Transportation Authority)

The State of South Carolina allows for three taxes to provide a dedicated funding source for infrastructure. They include the following:

1. The first is a voter approved Capital Project Sales Tax (S. C. Code of Laws 4-10-310), which must be used for capital projects such as bridges, highways, streets. This 1% tax has a duration period of seven years.

2. The second is a Local Option Sales Tax (S. C. Code of Laws 4-10-20), which if approved by the voters, must then issue a property tax credit to County taxpayers totaling the amount of revenue raised. This 1% tax has no duration limit.

3. The third is a Transportation Authority Sales Tax (South Carolina Code of Laws 4-37-10). This 1% tax has a duration limit of 25 years.

Charleston County is not currently using a Capital Projects Sales Tax. The County does currently use a Local Option Sales Tax to "roll back" property taxes.

Additionally, Charleston County is using a Transportation Authority Sales Tax. The Half Cent Transportation Sales Tax was approved by almost sixty percent of the voters in a countywide referendum on November 2, 2004. It was implemented in Charleston County business establishments on May 1, 2005 and is expected to raise $1.3 billion for Charleston County over twenty-five years. This tax is used to fund transportation projects, transit and the greenbelt program.

Advantages:

- A Capital Projects Sales Tax is often one of the most convenient forms of infrastructure financing, and can result in the generation of substantial amounts of revenue.
- A sales tax is generally easy to administer and relatively invisible when it is "piggybacked" onto state taxes.
- A sales tax broadens the tax base to include non-residents.
- A sales tax can be used to back revenue bonds, which will not impact the County's debt capacity.
- A sales tax is applied across the Region and County.

Disadvantages:

- A sales tax can be considered a regressive tax, especially if it is applied to groceries, since lower income households spend a greater share of their income on groceries than upper income households.
- Sales tax revenue varies with spending trends, and so is less reliable than property tax revenue.
- The Capital Projects Sales Tax must be approved by a vote of the voters.

iii. Impact Fees

An impact fee is a land use regulatory tool used by a local government that exacts a fair share fee on new development based on the costs the local government will incur to fund capital infrastructure (such as roads and parks) to accommodate new development. In determining the reasonableness of these one-time fees, the analysis that supports the fee should demonstrate that: 1) needed capital facilities are a consequence of new development; 2) the fees exacted are a proportionate share of the government's cost; and 3) revenues are managed and expended in such a way that new development receives a sufficient benefit.

Impact fees cannot be imposed on new development to pay for or provide public capital improvements needed by the existing development base. Capital improvements funded by impact fees must enable the jurisdiction to accommodate new development by adding capital facility capacity. To be proportionate, new development should pay for the capital cost of infrastructure according to its "fair" share of impact on the particular public facility for which it is imposed. To ensure impact fees are proportionate, the cost allocation methodology should consider variations by type of development and type of public facility. As appropriate, capital cost assumptions must consider the net cost of fa-

cilities after accounting for grants, intergovernmental revenues and other funding sources. The reasonable connection between the impact fees and the benefit requires that funds be earmarked for use in acquiring capital facilities to benefit the new development. Sufficient benefit also requires consideration of when the fees are spent. This benefit test generally leads communities to set up collection and expenditure zones for public facilities that have general geographic service areas.

South Carolina enables local government entities with comprehensive plans to impose certain types of development impact fees for transportation, public safety (Police, Fire, EMS), potable water, wastewater, solid waste, and stormwater facilities.) However, impact fees in South Carolina cannot be charged for schools. See *South Carolina Code of Laws § 6-1-910, et. seq.*

The impact fee ordinance must include an explanation of the calculation of the impact fee and specify the system improvements for which the impact fee is intended to be used. The ordinance must also establish a procedure for timely determinations of applicable impact fees and developer credits, include a description of acceptable levels of service for system improvements and provide for the termination of the impact fee. As described above, the amount of additional impact fees is limited to the amount attributable to the additional service units or change in scope of the development. A government entity imposing an impact fee is required to prepare and publish an annual report describing the amount of all impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.

Charleston County does not currently utilize impact fees.

Advantages:

- Impact fees can help meet capital infrastructure needs due to new growth with less pressure on the tax rate.
- Impact fees can generate substantial sums of revenue.
- Impact fees are politically attractive, since they pass on specific capital costs to future development.
- Impact fees coordinate new growth with the facilities demanded.
- Impact fees can be applied across the region.
- Impact fees are more predictable and equitable than informal systems of negotiated exactions and are likely to generate considerably more revenue.

Disadvantages:

- Impact fees are typically not due until development occurs. As a result, this makes it difficult for the jurisdiction to use the fees to construct capital improvements prior to or in conjunction with new development.
- In the context of funding growth-related facilities, impact fees cannot be assessed on the existing development base.
- Rational nexus requirements impose a set of earmarking and accounting controls that limit the use of impact fee revenue.
- Technical studies are required to develop and justify the adopted impact fee amount.
- A good impact fee program requires regular updating.

iv. Real Estate Transfer Fee

Also known as a deed transfer tax or documentary stamp taxes, a real estate transfer fee is a fee on the transfer, sale or conveyance of real property. The rate is applied against the purchase price of the property. The use of revenue raised can be restricted to certain capital expenditures. For example, the State of Maryland authorizes a real estate transfer tax with a specific percentage set aside for the purchase of parkland.

The State Legislature has not authorized Charleston County to utilize a real estate transfer fee at this time. At least one other local government, Town of Hilton Head, has received authorization for a real estate transfer fee.

Advantages:

- A real estate transfer fee has the potential to generate a substantial amount of revenue since it is based on all real estate transfers.
- A real estate transfer fee can be used to back revenue bonds, which will not impact the County's debt capacity.
- A real estate transfer fee is generally easy to administer and relatively invisible when it is paid at time of closing on real property.
- A real estate transfer fee is applied across the County.
- Does not affect residents who remain on their property or do not sell or buy real estate.

Disadvantages:

- Since revenue from the fee fluctuates with the real estate market, the revenue stream can be difficult to predict.
- It can be argued that real estate transfer fees are regressive since the burden is higher for lower income households.

v. Tax Increment Finance Districts

The *South Carolina Tax Increment Financing Act* enables the County to establish special districts for improvement or redevelopment; wherein in the incremental revenue generated from the improvements is used to fund the capital facilities for public good within that district. The use of incremental tax revenues derived from the tax rates of various taxing districts in redevelopment project areas for the payment of redevelopment project costs is of benefit to the taxing districts because taxing districts located in redevelopment project areas would not derive the benefits of an increased assessment base without the benefits of tax increment financing, all surplus tax revenues are turned over to the taxing districts in redevelopment project areas.

3. INTERJURISDICTIONAL COOPERATION

Given the patchwork of municipal and county governments and service providers, as well as the overlap of local, state, and federal jurisdictions in Charleston County, interjurisdictional cooperation is a key to achieving any of the planning goals or strategies recommended in the County's *Comprehensive Plan*. It is important because it touches each of the Plan's other goals: Land Use and Public Facilities Linkage, Compact Growth in a Well-Defined Area, Rural Preservation, and Design Quality and Character throughout all of the County.

This is especially true in South Carolina where annexation statutes allow municipalities to annex willing landowners into their jurisdictions without coordination from counties. This annexation puts the landowner beyond the reach of the County's land use policies and development regulations. Municipal plans and goals can be at odds with the County's policies and vision for rural preservation, compact growth, and design quality, and can be in conflict with the County's Urban Growth Boundary.

The same issues exist regarding service provision. First, as noted earlier, service provision increases development pressures. Service provision through municipalities and other entities may increase development pressures in ways not congruent with the County's policies and vision. Annexation into a municipality bypasses these County regulations, thwarting the County's vision. Again, in South Carolina, annexation into a municipality willing to take advantage of development pressures is an easy process for landowners. Second, the County provides many public services. Decisions by municipalities within and outside the County can and will have effects on the County's bottom budget line. Mutually agreed upon and mutually beneficial agreements are needed to ensure the County, municipalities, and service providers achieve coordinated physical and fiscal goals.

To address these goals, the County should consider focusing its efforts on the following actions:

1. **Establish a mutually agreed to Urban Growth Boundary (UGB) with the City of Charleston, the Town of Mount Pleasant and the City of North Charleston.**
2. **Enter into interjurisdictional agreements regarding service provision.**
3. **Enter into interjurisdictional agreements regarding Developments of County Significance.**
4. **Become a Designated Management Agency under the *Section 208 Water Quality Management Plan*.**

A. Urban Growth Boundary

Through its *1999 Comprehensive Plan*, Charleston County established an informal UGB with its Suburban/Rural Area Edge. Since that time, the idea has remained important within the County, but the ease of municipal annexation has left the Boundary without teeth. Intergovernmental agreements should solidify the rationale and formalize the process for moving the boundary. As an example, in North Beaufort County, South Carolina, the county and municipalities identified a boundary, agreed to jointly develop CIPs for infrastructure to serve the area, and agreed on how to address urban development issues and annexation at the edges.

Where cities designate areas for urban growth, growth management policies can guide new development patterns by directing urban service extensions to such designated areas and withholding them from others. The basic idea is to designate land for new development contiguous to or near existing development to encourage preservation of open space and resource lands, prevent the premature or costly over-extension of public services such as water and sewer, and discourage the development of stand-alone, isolated developments. Land within the growth boundary is targeted for growth. Land outside the boundary can continue to be used for agricultural, forestry, or other less-intensive purposes, but cannot be developed at urban densities. Most recent state growth management initiatives have required localities to establish urban growth boundaries within which new development is to be targeted and accommodated.

Advantages:

- When used in combination with appropriate capital improvement policies, adequate public facilities ordinances, intergovernmental agreements, and policies limiting annexations to delineated urban growth areas, growth boundaries can help steer development toward these areas and prevent the costly overextension of public services.
- Growth boundaries can influence growth patterns in a simple understandable fashion.
- Creation of urban growth boundaries has proven to be an effective tool to protect open space and agricultural and forest lands.

Disadvantages:

- Urban growth policies requirements guidance and planning for development patterns within the growth boundary.
- Urban growth policies alone do not address development quality issues.

- If urban growth policies are strictly local in effect; where local governments compete for new areas in which to expand, one jurisdiction's refusal to provide urban services can be undermined by others.
- If not enough land area is provided to accommodate development within the urban growth boundary, overly strict delineations may drive up the cost of land, and limit feasibility to a market based economy.

B. Service Provision Agreements

It is being increasingly recognized as an important planning and development tool in South Carolina due to annexation laws and fragmentation of service providers as communities urbanize. The reason is that many of the public problems caused by urban growth know no political boundaries and consequently development decisions made by one municipality will affect the County and other municipalities.

Cooperation must be voluntary

Various methods and procedures may be utilized to formalize cooperation. Intergovernmental cooperation may take any agreed arrangement. It may be horizontal, as between municipalities, or vertical, as between counties and the state, as between a municipality and a county, or as between a municipality and a state. It is important to note, though, that any intergovernmental cooperation on the local level must be voluntary. Essential control of the cooperative action or arrangement must be vested in the elected governing bodies of the units involved and the identities of the existing units of government must be preserved. It is fundamentally a legislative task to define intergovernmental relationships between municipalities and counties. (1 McQuillin Mun. Corp. § 3A.05 (3rd ed.))

Cooperation through contracts/agreements

The most effective approach to inter-jurisdictional cooperation may be through intergovernmental contracts or agreements. This approach is a flexible, yet predictable method of inter-jurisdictional cooperation. Such contracts or agreements can be used to accommodate program needs to desirable service areas without affecting basic structure and organization. (1 McQuillin Mun. Corp. § 3A.05 (3rd ed.))

Contracts are perhaps the most common form of interjurisdictional cooperation. The contract defines the terms of each local entity's respective rights and obligations. Ordinarily, contracts are used when one local entity undertakes to supply something, usually services or facilities, to another that agrees to pay for whatever is supplied; or the contract may cover reciprocal service or supply obligations. The Advisory Commission on Intergovernmental Relations has described interjurisdictional arrangements as being of two major types: (1) the provision of governmental services on a contractual basis by one unit of government to one or more additional units, and (2) the joint conduct by two or more units of government of a particular function, or the joint operation of a particular governmental facility. (1 McQuillin Mun. Corp. § 3A.05 (3rd ed.))

Per the *South Carolina Joint Agency Act*, Title 6, Chapter 24, a governmental entity may: jointly plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest in a project with one or more governmental entities in South Carolina; undertake the exercise of any administrative function or power jointly with one or more governmental entities in South Carolina; enter into, amend, and terminate agreements in the nature of forward supply agreements, agreements for the management of interest rate risks or risks posed by the fluctuation of the cost of gas supplies, agreements for the management of cash flow, and other similar agreements; and agree to share the costs of a like undertaking with another governmental entity. Even when agreeing to act jointly, each governmental entity agreeing to act jointly shall have the legal capacity, power, and authority, by charter, act, constitution, or other law, to so act on its own. Additionally, a joint agency can be created by agreement if its creation advances the best interests of the government entity and those it serves.

Establishment of joint agencies would advance a number of County goals. First, it is by definition interjurisdictional coordination. Beyond this formality, it gets parties to the table to discuss a range of other goals such as preservation, compact growth, etc. Just as with a CIP within a jurisdiction, joint agencies allow members to effectuate their other goals through their agency decisions, expenditures, and investments in infrastructure. Second, it allows for economies of scale in service provision. Local governments are interested in fiscally responsible growth as much as they are interested in physically responsible growth.

4. RURAL PRESERVATION

In previous plans, Charleston County has recognized the importance of rural preservation to the future character and quality of life to the residents of the County and Region. This recognition is important because rural preservation as a goal advances related goals ranging from historic character preservation to environmental stewardship to growth management to economic development to quality of life:

Historic Character Preservation
For three centuries, agriculture along with shipping dominated the regional economy of Charleston County. Whether cultivated by large antebellum plantations, post-Civil War freedman settlements, or more modern 20th Century farms, Charleston County's agricultural production left the economy firmly rooted in the County's rich soils. While agriculture has yielded its historic dominance to shipping, the medical industry, and others, much of the land of Charleston County remains essentially unchanged despite extensive urbanization in and around the Cities of Charleston, North Charleston, and the Town of Mount Pleasant. A rural preservation program works to protect this landscape that longtime residents have come to love and which continues to draw newcomers. Rural preservation is being augmented by the *Charleston County Greenbelt Plan*.

Environmental Stewardship
Rural preservation seeks to preserve both an agricultural and natural rural landscape. While agriculture can have its own deleterious effects on the environment, these effects are not as great as suburban sprawl and its earthmoving site plans, impervious surfaces, fertilized lawns, and auto-centered lifestyle. Additionally, rural preservation not only focuses on agriculture. It should also encourage through incentives and regulations the protection of natural resources like forests and wetlands. Such environmental stewardship is not only a good idea for broad, global ideas but also for local reasons. Most notably, these include local air and water quality.

Growth Management
Rural preservation is the flipside of any county "business plan" for managing growth. If not managed and anticipated properly, physical development can cost the County fiscally. Costs include service provision and infrastructure development. A strong rural preservation program that limits development in rural areas reinforces County plans to manage and control growth.

Economic Development
A comprehensive rural preservation plan empowers farmers and other landowners to develop rural and agricultural support uses. As discussed below, uses might include corporate retreats and agri-tourism. In an attractive area that is already a tourist destination, such as Charleston County, these expanded uses have the potential to unlock a great deal of economic development. Furthermore, as also discussed below, as fuel and food prices continue to rise, niche farming and general agriculture itself has the potential to bring tremendous economic development to the County. These rural economic development engines need rural preservation to foster their growth.

Quality of Life
Rural Preservation adds to the quality of life of a community. It protects and enhances natural resources. It also protects and enhances economic opportunities for farmers and other rural landowners. It allows for economic growth and physical development while protecting private rights and the public's real past and present connections to the landscape. It encourages economic viability for rural endeavors as well as environmental stewardship.

The County of Charleston *Comprehensive Plan* ("The 1999 Plan") as adopted by Charleston County Council on April 20, 1999 and as updated and adopted for the state mandated five-year review by Charleston County Council November 18, 2003 and October 5, 2004 recognized these public goods.

To these ends, the County has made a number of policy and regulatory decisions. These have included the establishment of the Rural Area, developing supportive zoning provisions, and implementing a greenbelt program.

A. Zoning to Encourage and Allow Rural Business

One tool to achieve Rural Preservation is to explore ways, through zoning, to encourage and allow rural and agricultural businesses to prosper through farm and agricultural related activities. The County could:

Expand Rural Commercial and Rural Industrial Categories
In the Agricultural Preservation districts, the basic agricultural uses like agriculture, horticulture, animal husbandry and equestrian activities should be expanded to include more agricultural support uses. Agricultural support uses are support businesses (re-

pair, service, retail, and related uses) related to the basic agricultural uses and activities. The support businesses are further divided into those that are directly associated with an on-going basic agricultural activity, and located on the same property, versus a support business that is off-site. Off-site support businesses should be small-scale in nature, and may include such uses as farm product sales, farm machinery repair and leasing.

As needed, performance standards should be used to address potential external impacts as well as ensure the maintenance and preservation of the agricultural and rural character of the area. The types of potential impacts identified that might need to be addressed include: access/traffic, location of the use on the land (setbacks); the size/bulk of the bulk of the use in relation to other uses; impact on rural character (e.g., height, visibility); and environmental impacts (such as noise and lighting).

Allow agri-tainment uses, by right

Examples of such uses could include new equestrian centers and boarding facilities, event facilities, nurseries, heritage and rural tourism destinations, farmer's markets, and bed and breakfasts.

Allow corporate retreats, subject to performance standards

Conferences centers, corporate retreats, and corporate training facilities should be allowed subject to access/traffic, setback, size/bulk, impact on rural character, and environmental impacts.

B. Conservation Subdivisions

Conservation subdivisions permit single-family residential development in rural areas with reductions in lot area and setback standards, in return for the landowner setting aside a large portion of the site in open space. Generally, a conservation subdivision has three primary characteristics: smaller building lots; more open space; and protection of natural features and agricultural lands. The rules for site development emphasize setting aside and conserving the most sensitive areas of a site, with the development of building lots on the remaining less sensitive areas. In most cases, by locating development on smaller lots and maintaining open space, a landowner can achieve similar densities as with a conventional subdivision. The additional open space, the protection of natural features, and a more compact development form benefit both the residents and the greater public. Conservation subdivisions implement Charleston County's land use planning goals by helping residential development in the Rural Areas maintain rural character and open space, encourage compact development form, and preserve natural features. The actual process of designing a conservation subdivision typically involves the following four basic steps:

Step 1: Resource Analysis/Mapping

The applicant identifies significant natural and cultural resources on the site. These are two basic categories of resources: (1) Primary conservation areas and (2) secondary conservation areas. Primary conservation areas include lakes, wetlands, floodplains, streams, rivers, wildlife habitat, significant vegetation, historic buildings, and archeological sites. Secondary conservation areas include areas of active agricultural activity, land with scenic vistas, and lands with recreation opportunities. The applicant also produces mapping showing resources and open space on neighboring parcels.

Step 2: Site Visit

Next, County staff and the applicant visit the development site to see first hand where resources exist and to understand the lay of the land and what areas might be suitable for development sites. The relationship to surrounding parcels is also examined.

Step 3: Delineation of Conservation and Development Areas

In Step 3, the applicant produces a map that depicts primary and secondary conservation areas and open space as well as areas suitable for development (the development delineation area or the yield plan).

Step 4: Submission of Conservation Design Plan

In Step 4, the applicant submits a conservation subdivision plat showing primary and secondary conservation areas and open space on the site, along with the development area where the single family cluster lots would be located. Areas suitable for development are specifically delineated as well as other areas that will be disturbed for accessory structures and uses, septic fields, roads, trails, and utilities. Where applicable, lot lines would be shown on the conservation subdivision plat. The full development density permitted by the zoning district for the entire site would be allowed within the development delineation area.

C. Purchase of Development Rights

The Purchase of Development Rights (PDR) concept is an approach to preserving and

protecting agricultural lands, environmentally sensitive areas, and other open spaces through the purchase of a portion of the property rights associated with the land. Typically, the ownership of land includes the possession of a bundle of property rights associated with the land, including surface, mineral, air: possession, use, modification, development, lease, or sale of the land (or a portion thereof).

In most cases, the County or other agency seeking to purchase the development rights acquires a legal easement from the landowner that is often referred to as a conservation easement, or an obstacle to future development that is placed on the deed and referred to as a restrictive covenant or deed restriction. These easements or restrictions can work to limit all, some, or a portion of the allowable development based upon the objectives of the purchaser. For example, a conservation easement might be designed to allow a farmer to continue farming, and even construct and sell an additional dwelling provided such activity does not impede the ability to successfully farm the land.

The County is currently operating a PDR program through the Greenbelt Program.

How the system works

After obtaining enabling legislation, the County then appoints a board or other body to manage the system. The primary functions of the board include reviewing applications from those seeking to sell property rights, obtaining appraisals, prioritizing lands for acquisition, negotiating agreements for selected lands, and ensuring enforcement of the easement terms. Appraisals are used to determine the value of the development rights being purchased. The value of development rights represents the difference between the land's value with and without the easement. For example, a 100 acre farm may be worth $10,000 per acre if sold for a residential subdivision, but only $3,000 per acre with the restrictive easement. This means that the development rights cost 7,000 per acre, or $700,000 for the entire farm. Actual purchases by the community or agency should take place under the guidelines of an established plan, and often work best when crafted to create large uninterrupted areas of agriculture or open space instead of smaller sites in a scattered arrangement.

Advantages:

The key benefit to the PDR system is that it is voluntary, and the property owner is compensated for the development rights. From the perspective of a County, a PDR system is a very cost-effective way to control the future of the land since it does not require expenditures for fee simple interest or maintenance costs. In addition, the system is flexible and allows the County to control types of subsequent development, and how or when development can occur (if at all). It is also a technique that allows a landowner to obtain equity value from the land while keeping it in its productive or natural state. The PDR system also helps ensure continued agricultural use by lowering the taxable value of the land.

Disadvantages:

One major disadvantage of the program is that the County must typically provide the money for purchases "up front," which can be a strain on budgetary resources. The programs can be funded through a bond referendum or another tax. Often, such programs must be established in an area before explosive development potential drives up land values; thus timing is a key issue. Additionally, the program is almost always funded by some form of tax (property taxes, excises taxes, sales taxes, etc.) which can be unpopular with constituents. In the case of the Charleston County Greenbelt Program it is funded through the Half-Cent Sales Tax established by referendum. Since the program is voluntary, the County has little means of controlling which lands are brought into the system. Since the PDR system relies on easements or other controls, it has little control over the landowner's ultimate disposition of the land. Finally, while the PDR system does avoid many of the long-term maintenance costs associated with fee simple acquisition, the local jurisdiction must still assure enforcement of the easement's terms, and unenforced easement rights may be forfeited through neglect.

D. Transfer of Development Rights

Transfer of Development Rights (TDR) programs are attracting increasing attention throughout the United States. Many once-rural communities are growing rapidly and are looking for ways to balance resource and open space protection with concern over property rights. When designed correctly, TDR programs, which seek to shift permissible development densities from unsuitable development areas to more appropriate sites, can be an effective growth management tool. By creating "receiving area" markets for the sale of unused development rights, TDR programs encourage the maintenance of low-density land uses, open spaces, historical features, critical environmental resources, and other sensitive features of designated "sending areas." Where a landowner in a sending area sells development rights to another landowner in a receiving area, the purchaser thereby augments the latter's development rights in excess of the otherwise permissible limits. In this manner, the County could protect a variety of sensitive features while providing a mechanism to help offset any perceived diminution in land development potential.

A successful TDR program incorporates the following three essential elements:

Sending Areas: Resources for Protection
The first step in creating a TDR program is the identification of valued resources and the designation of an area for the protection of such resources. This is the "sending area." Where development pressures threaten resources in the sending area, the TDR program enables landowners to transfer development rights to other locations, thus directing growth pressures away from the sending area. Where TDR programs are mandatory, the program restricts the landowner's development rights, allowing landowners to realize land value only through transfers. In voluntary TDR programs, sending area landowners participate in density transfers at their option; where they do not undertake density transfers, they retain their land development rights. In Charleston County, the sending areas could be the Rural Area.

Receiving Areas: Density Incentives
In a strong market, the developer seeks to maximize the intensity of development projects, and thus possesses an incentive to purchase additional development rights. Capitalizing on this incentive, a TDR program identifies those areas in which development can occur at relatively high densities without threatening valued resources or community character. In these designated "receiving areas," the program awards developers increased density allowances in exchange for their purchase of TDRs from landowners in sending areas. In Charleston County, the receiving areas could be the Urban/Suburban Area.

Allocation of Transferable Rights in Sending Areas and Receiving Areas
The TDR program must set forth formulas for allocating the amount of development rights that will be available to sending area landowners and receiving area projects. In order to negotiate a TDR transaction, the sending area landowner must understand how many development rights can be conveyed. Similarly, the receiving area purchaser must understand how much each purchased TDR will increase permissible development densities. Simple ratios setting forth TDRs/acre for sending areas and density bonus/TDR for receiving areas satisfy the basic program requirement. These ratios will be essential to the participants' basic understanding of how TDR transactions will benefit them; without this understanding, all parties will be reluctant to participate in TDR transactions.

The core elements set forth above provide the framework for a basic TDR program. Sending area landowners sell TDRs on the open market to receiving area developers, or to a government-administered TDR "bank" or clearinghouse. Where such transactions occur, the seller records a permanent easement on the property deed, permanently reducing development rights in the amount transferred. Upon application for development approvals, the developer then submits evidence of the TDR transaction to the approving agency, and thereby obtains permission to increase the density of the development accordingly.

E. Local Food Consumption

In a time of rising transportation costs, producers and consumers are increasingly looking locally for each other. The County should encourage this through public education. Local food consumption increases the viability of agriculture for farms of all sizes. It also enhances the public's connection to the landscapes immediately around them. Support of programs such as farmers markets, support of roadside produce stands and encouragement of supportive businesses that use local resources can all further support this goal. The County would probably need to address these issues through rural zoning that continues to allow road side stands, and through economic development activities that promote business growth that utilizes local food resources.

October 13, 2014 Draft
Comprehensive Plan Five-Year Review (proposed deletions shown as ~~strikethroughs~~; proposed additions shown as red text)

5. DEVELOPMENT QUALITY, TRANSITIONAL, MIXED USE

The *Comprehensive Plan* includes a section of guidelines to influence the quality of development. The guidelines are organized by the Rural and Urban/Suburban Areas of the County. These guidelines in the Plan serve as general recommendations, however, if the County desires to use them in a regulatory capacity they could be adopted into the Zoning and Land Development Regulations, and or as a separate ordinance to serve as a regulatory tool.

To achieve these goals, in addition to including clauses in Development Agreements with individual developers, the County should consider developing general design standards focused in the following areas for other developments:

A. Mixed Use

B. Big Box

C. Transitional

D. Community Form

While addressing the location, amount, timing, and cost of growth are often key elements of growth management systems, there is an increasing recognition at the local level that the quality, appearance, and environmental impacts of development must also be dealt with. Only then can a community be assured that its distinctive character will be protected and that development will be attractive, consistent, and sustainable from an environmental perspective. The other issue in the Charleston County environment is the need for consistency along jurisdictional boundaries. Adoption of consistent standards for areas that include multiple jurisdictions can improve the quality of development in those areas.

A. Mixed Use

In recent years, many jurisdictions have become dissatisfied with development under their traditional "Euclidean" or single-use/separated-use zoning. These schemes are seen to promote "sprawl", automobile dependency, and unattractive, undesirable development.

In an effort to create more dynamic, aesthetically pleasing, sustainable compact communities, many local governments are now allowing mixed use development. If designed properly, having a mix of uses in close proximity encourages walking and other non-auto modes of transportation, fosters community, and creates a lively, safe environment at all times of the day.

In order to ensure a desired degree of quality, while forgoing stricter use controls, these governments are retaining development controls through mixed use design standards.

Issues to consider in developing mixed-use standards include:

- Vehicular Connectivity/Cross Access;
- Block Length and Width;
- Traffic Calming;
- Calibrated Streetscapes;
- Variety of Street Types;
- Unified Character;
- Signage;
- Gathering Spaces;
- Vertical Mixed-use;
- Horizontal Mixed-use;
- Mandated Use Mix;
- Lot Size Mix;
- Housing Mix;
- Architectural Character;
- Massing & Articulation;
- Connected Open Space;
- Building Organization:
    - Build "to the sidewalk";
    - Frame street intersections with building walls; and
    - Use buildings to enclose gathering spaces and create a rhythm of built and empty space along the street frontage.
- Building Orientation:
    - Primary entrances should face streets not internal site areas or parking lots.

B. Big Box

Large retail developments depend on high visibility from major public streets. In turn, their design determines much of the character and attractiveness of major streetscapes. The marketing interests of many corporations, even with strong image-making design by professional designers, can be detrimental to community aspirations and sense of place when they result in massive individual developments that are not compatible

with a community's existing physical features. To address these concerns, an increasing number of communities throughout the nation have adopted development and design standards for large retail developments to ensure they contribute to the community as a unique place by reflecting its physical character, and are compatible with existing residential neighborhoods and streets.

Generally, this is done either through development standards or guidelines for large retail development, or as a combination of minimum requirements together with guidelines. The standards apply to all new retail development that exceeds a certain size threshold – for example, 25,000 square feet or more of gross floor area.

If the County decides to include Large Retail Development Standards in its regulations, consideration should be given to the following types of standards, some of which are already required by the Zoning and Land Development Regulations Ordinance:

- **Facades/Exterior Walls and Detail Features** – Facades of a certain length incorporate wall plane projections or recesses to break up building mass.
- **Roofs** – Require parapets to conceal flat roofs and rooftop equipment such as HVAC units be concealed from public view.
- **Building Materials and Façade Colors** – Metal siding and concrete block be prohibited for all building elevation; establish limitations on use of synthetic stucco near ground level and around doors; establish standards for the use and type of vinyl siding (exposure width, detailing, graining). Explore standards related to color.
- **Customer Entrances** – Require each principal building to have a clearly defined, highly visible customer entrance with features such as canopies or porticos; overhangs; recesses/projections; arcades; etc. These features can be presented as a menu, allowing the applicant to choose a few from a longer list. Some regulations also require, to the maximum extent feasible, the primary customer entrance be located on the side of the building that is closest in distance to the majority of off-street parking spaces and be located in the center of that building side.
- **Parking Lot Orientation** – Require a limited amount of the off-street parking area for the entire property be located between the principal building(s) and the primary abutting street.
- **Screening Outdoor Storage, Trash Collection, and Loading Areas** – Require screening of outdoor storage, trash collection, and loading areas.
- **Pedestrian Flows** – Require sidewalks on all sides of the lot that abut a public street, and continuous internal pedestrian walkways of a certain width connect parking areas and the primary entrance.

C. Transitional Standards in the Urban/Suburban Area

In the Urban/Suburban Area, the County's site plan review program should be implemented, including design review boards and architectural review boards and coordinate with design review boards, architectural review boards and planning staffs of adjacent municipalities that address issues such as:

- Building Facades;
- Building Dimensions;
- Site Design;
- Parking and Driveway Areas;
- Loading and Refuse Storage Areas;
- Lighting;
- Signage;
- Open Space;
- Alternatives for Shallow Lots of 150 Feet or Less in Depth; and
- Operational Standards.

D. Form Based Code

The most fundamental features of form based codes include blocks; streets and streetscapes; and alleys and parking. To address these issues, Charleston County could consider developing a form-based code with a basic set of community design standards. The following types of standards might be included:

- Block Design;
- Street Design;
- On-Street Parking;
- Off-Street Parking;
- Access to Lots;
- Street Connectivity;
- Sidewalks;
- Street Trees; and
- Traffic Calming.

E. Traditional Neighborhood Developments (TND)

Traditional Neighborhood Development (TND) is modeled after the pattern of development popular up through the mid-1900s. The traditional neighborhood concept reflected human scale, walkable communities with a mix of uses and densities and mixed-use cores. The TND Design Concept is a modern adaptation of that historic pattern is a viable and desirable option for some areas of Charleston County. This design is typically characterized by a "grid"—or frequently interconnected—street network, typically with alleys, mixed-housing types and some mixed-uses. These mixed-uses, with basic architectural consideration, can be integrated into a neighborhood, even if the neighborhood is established. Accessory residential units are also easily accommodated. This type of development requires a different set of physical standards, including maximum setbacks or "build-to" lines, porches and rear-facing or detached garages. These developments typically have a higher density than what is common in most parts of the County, which can be appropriate for many reasons, including efficiency of infrastructure, efficient use of land and more potential pedestrian opportunities. In this sort of development, appearance and size of the structure are often more important than use.

Most TND include open or recreational areas and a Neighborhood Center with varying amounts of retail, office, and civic uses depending on context and magnitude of the TND. A Neighborhood is a physical entity and is the fundamental building block of urban form–perhaps best described as an area in which most residents are within walking distance of its center. This distance is approximately one-quarter mile (1,320 feet), which is equivalent to a five minute walk.

Blocks in a TND are typically no more than 300 feet in width and 600 feet long. Larger blocks should include interior pedestrian paths or alleys or other features such as parks. Street networks in Neighborhoods may be either rectilinear or curvilinear but should be interconnected to form a block

system.

The County could adopt a TND zoning district or promote them through the use of a Planned Development (PD).