

## Who Gets What in the 2005 Development Agreement Approved 10/12/2005

1. KICA ISSUES		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
Retains control over KICA Covenants (p24 and Exh. 18.1)		KRA, with only 1 Director and paying only 5% of KICA assessments, retains control over amending covenants. See also Article VIII, Section 2 of KICA Covenants. Therefore, for next 13 years, KRA – rather than PODs who comprise majority of KICA Board – determines whether any amendments can be made to KICA Covenants.
Retains control over choice of KICA Counsel (Exh. 18.1)	If majority of PODs determine Counsel has conflict of interest, it can replace Counsel for that matter (Exh. 18.1)	This is a significant win for property owners.
<del>Easier for KRA to bring new properties under KICA Covenants. '94 DA requires 6 of 7 KICA Directors to vote to accept contiguous or near-contiguous properties west of Main Gate for inclusion under KICA Covenants; '05 DA reduces this to simple majority of Board ('05, p24; Cov, Art 11, Sect 2)</del>	Property Owner referendum required to bring off-Island properties under Covenants (p24)	Referendum requirement only partial win; Board not required to recommend extending Covenants, and KRA can vote its own Type A votes and any proxies it receives. When '05 DA expires, Covenants will again prevail and if unchanged, KRA will be able to bring properties into KICA <b>“without further consent of the Association.”</b>
	KRA waives right to appoint majority of KICA Board (p24 and Exh. 18.1)	KRA's permanent waiver of appointing Board majority effective with signing of DA, instead of 1/1/2008 per '94 DA or 30 days after effective date of '05 DA, as originally proposed.
	KRA cannot vote for PODs (p25)	This protection for property owners was in the '94 DA, but not the '05 DA until the final version.
	Access Agreement between KRA and KICA to be amended to reference '05 DA and any subsequent DA; required reduction of maximum allowable dwelling units by number of lots sold at Cassique continues	With the Access Agreement (AA) between KRA and KICA signed in 9/2000, Cassique property owners received KICA decals to access Kiawah Island Club facilities inside the security gates, using KICA roads. In exchange, Cassique property owners are required to pay half the annual KICA assessment. Further, the AA required KRA to reduce the maximum allowable dwelling units on Kiawah by the number of platted properties sold at Cassique. Prior to the final '05 DA, the AA was not referenced, nor was '05 DA referenced in AA.
<del>KICA annual assessment reduced from 150% to 100% on marsh island properties, such as Terrapin Island, Summer Islands, etc. ('94, p11)</del>		Deeds to these properties permit KICA to charge a superassessment for maintenance of bridges, etc.
	Dual majority no longer required to appoint KICA General Manager and Director of Security	Dual Majority means there must be a majority of Developer Directors <u>and</u> a majority of Property Owner Directors for approval. This was important in '94 to protect specific individuals who held these positions at that time. Both incumbents in '94 are no longer employed by KICA.
	No dual majority required to approve expenditure of MR/R funds	MR/R stands for KICA Major Repair and Replacement funds, which are used for maintenance and repair of KICA infrastructure (roads, culverts, etc.). This has never been an item of contention.
	KICA Board gains right to relocate KICA offices without KRA approval	The significance of this item is unclear because KICA does not currently own any property to which its offices could be relocated.

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<b>1. KICA ISSUES (CONTINUED)</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
	KICA Board gains right to control its own operations	Standards Manual included in '94 DA controlled KICA operations. '05 DA eliminates Standards Manual. At 9/9/05 public hearing, Leonard Long, a KRA principal, stated publicly that Standards Manual had been “largely ignored and on the shelf gathering dust all these years.”
	Sora Rail maintenance tract donated to KICA (p18)	KRA to convey .15 acres for maintenance tract to KICA by quitclaim deed. Quitclaim deeds are used without warranty of title.
	KICA can appoint 1 member of ARB if it so desires (p10)	This right already exists under KICA Covenants (Art VII, Sect 1) which stipulate (1) all members of the ARB “be appointed by the Board of Directors of the Association” and (2) at least one member of the Association, other than the Developer’s representatives, shall be a member of the ARB. KICA has not exercised its right to appoint members of the ARB.
<b>2. LAND USE AND PLANNING ISSUES</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
	Town gains control of undeveloped land sooner under '05 DA ('94,p7 and '05, Exh. 1.1, p6)	Under '94 DA KRA/ARB totally controlled standards (lot coverage, setbacks, etc.) for virtually all properties not yet developed. This meant that until 100% of a parcel was sold and almost all homes/condos (90%) were constructed, KRA/ARB retained this control. With '05 DA, Town zoning applies once smaller percentage (75%) of a neighborhood has dwelling units constructed on it.
	Maximum number of new dwelling units limited to 1184, and this number will be reduced by lots sold at Cassique (p7)	1974 was maximum number of new dwelling units permitted by '94 DA. 790 units have been sold since then, leaving 1184, maximum number of new units under '05 DA. The only real reduction in maximum number of new units from '94 to '05 comes from 54 Cassique lots sold to date (included in 790). Going forward, KRA is required to subtract future Cassique lots sold from 1184 maximum.
<del>DELETED KRA no longer needs to annually request Town reduce maximum allowable dwelling units by number of dwelling units sold at Cassique (AA, p3)</del>		This issue not addressed in '05 DA until final version. See discussion immediately above and under KICA issues regarding Access Agreement.
	ARB limited to granting only 10% variance in lot coverage and/or 20% variance in setbacks. If lot coverage limited to 33%, ARB could approve $33\% + .10(33\%) = 36.3\%$ coverage. (Exh. 13.3)	Variance granted only when lot has “exceptional circumstances” and burden is on ARB to demonstrate. Note related changes to new lot coverage and setback requirements that follow.
Maximum coverage on lots 6,000 to 11,999 sq. ft. increase between 7 and 17%, from 33% to as much as 50% ('94, p14 and '05, Exh. 13.3)	Maximum coverage on lots between 4,000 and 5,999 sq. ft. decreased by 10% to 50% ('94, p14 and '05, Exh. 13.3)	Except for 4,000-5,999 sq. ft. lots, the '05 DA standards permit larger homes than previously allowed. Since amount of deviation from standard is limited under '05 DA, it is difficult to assess who wins what on this item. BUT, limiting ARB variances to 10% of lot coverage is less significant than if previous lot coverage standards applied. To put these numbers in perspective, a half-acre lot is 21,780 sq. ft.
	Lot width on most parcels increased under '05 DA by 5-15 ft. ('94, p14 and '05, Exh. 13.3)	
Requirements for rear setbacks decreased by 5-15 ft. for 40% of parcels ('94, p15 and '05, Exh. 13.3)	Requirements for front setbacks increased by 5-10 ft. for 40% of parcels ('94, pp14-15 and '05, Exh. 13.3)	No change to remaining parcels.

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2. LAND USE AND PLANNING ISSUES (CONTINUED)		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
	Changes to <i>Designing With Nature</i> guidelines only with approval from Town (p9)	Town approval shall not be unreasonably withheld or delayed. '94 DA contained specifics about protecting oaks and large trees. '05 DA does not contain this language. <i>Designing with Nature</i> , Exh. 13.7, is neither on line, nor was it available when requested at Town Hall.
Broad latitude in type of commercial activity permitted on parcels outside main gate and at Osprey Beach II (Exh. 13.1)		Permitted uses include, but not limited to, vehicle, boat, or RV storage, utility service, power distribution, public and sports assembly, sewage pumping control stations, automotive oil change or lubrication shops, or car washes.
Approval for mixed use developments shall not be “unreasonably withheld” (p13)		“Unreasonably” is not defined. This places burden on Town to document reasons for its action(s). These actions would have to withstand Court scrutiny.
Right to build up to 50 single dwelling units on Captain Sam’s Spit (Exh. 13.2)	No hotel at Captain Sam’s Spit, and no hotel rooms or support space allocated to undeveloped lands as defined in '05 DA (p25)	KRA gains the right to construct up to 50 units, but has publicly indicated it plans to build no more than 17. Given KRA’s track record, it is highly unlikely they would have decided to build a hotel so close to property possibly to be used for private club facilities. (See private clubs below.) In fact, KRA chose a lower-than-permitted density development adjacent to its River Course properties, by changing Rhett’s Bluff from a second West Beach Village with condos, shops, and marina, to R-1 single family dwellings.
Membership lodges permitted on Beachwalker Park, Captain Sam’s, Beachwalker Ocean, the Settlement, East Beach Interior, Governor’s Marsh, Osprey Beach II, and Cougar Island parcels (Exh. 13.1 and 13.2)	Maximum number of membership lodges limited to 20 (Exh. 13.2)	Membership lodges are defined in the '05 DA as residential dwelling units used by guests of the Developer or of the Kiawah Island Club. An example of a membership lodge would be a dwelling on Club Cottage Lane. Membership lodges are not discussed in the text of the '05 DA, but are permitted uses in the Exhibits.
Private clubs permitted on Beachwalker Park, Captain Sam’s, Beachwalker Ocean, the Settlement, Osprey Beach II, and Cougar Island parcels (Exh. 13.1)		Private clubs are defined in the '05 DA as privately owned, membership organizations, with applicable fees. Nothing in definition limits membership in these clubs to Kiawah Island property owners. A club at Beachwalker Park could, for example, be for the private use of residents of an off-island development. There have been no provisions made for land to build another Sandcastle-type facility anywhere on the island. Under PDD1a, the original agreement with the Kuwaitis, the site of the private Kiawah Island Beach Club was to have been a second property owner recreation facility.
	Town standards for building on multiple lots extended to undeveloped properties (p10)	
	Lots and dwellings on Bear Island reduced from 18 to 2 (Exh. 13.2 in both '94 and '05 DAs)	Not clear who builds and maintains bridge to island. KICA would be responsible for any erosion control costs. Property owner access to Bear Island (and open space there donated to KICA, with easements to conservation organizations) may be restricted to access by boat only. Under the easement for Bear Island, in addition to the two homes, KRA is permitted to build “associated improvements” that include a helicopter landing pad.
'05 DA prevails over Town zoning ordinances in event of conflict regarding KRA property (p3)	KRA must submit issue to Town and wait 7 days before taking action if conflict (p3)	
Town cannot apply laws and land development regulations passed after '05 DA to KRA property (p4)		Exceptions for laws and regulations that do not impact issues defined within or anticipated by '05 DA, issues of public health, safety or welfare, or if '05 DA is based on “materially inaccurate” information provided by KRA. Town asserts control in this area only by documenting its actions at a level high enough to withstand Court scrutiny.
All rights given KRA under '05 DA are “vested rights” (p4)		These rights are transferred or sold with the property.

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<b>2. LAND USE AND PLANNING ISSUES (CONTINUED)</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
Rights vested under '94 DA remain in effect until 2008 for property defined as "undeveloped" in 1994, but not now owned by KRA (p4)		It is difficult to assess the impact of this provision since it appears to be open to interpretation. This seems to provide KRA/ARB with continued control over properties defined in '94 DA as undeveloped, but since sold to third parties, until 1/1/2008, the date the '94 DA would have expired.
Town will assist KRA with state, federal, local government and regulatory agencies to build on Captain Sam's Spit (p22)	KRA conveys areas of highland and land seaward of the primary oceanfront dunes to KICA (p22)	Conveyance is by quitclaim deed. The property between the ocean and the primary dunes is already open to public access or is land on which people can neither walk nor build. As with all property it accepts, KICA assumes full liability for the property and anything that occurs on it.
Town will support amending Key Location Ordinance to add 2 floating "community" docks (up to 200 ft.) at Captain Sam's Spit, will expeditiously grant necessary permits, and will be supportive of any other governmental permits (pp4,5)		These docks will be for private use of owners at Captain Sam's Spit.
	Type of support Town will provide for amending Key Location Ordinance to allow construction of 2 "community docks" at Captain Sam's Spit limited to non-financial support (p4)	Exclusion of Town from <i>financial</i> support added after Town was asked for clarification of meaning of "support." This clarification was added only here, rather than in all places in the '05 DA where Town "support" is referenced.
Parking standards (required number of spaces) for community services omitted, as are parking standards for recreational facilities and private clubs. (Exh. 13.4)	Parking standards added for outdoor restaurant seating and employees working in conference areas (Exh. 13.4)	
	Commercial space limited to 219,000 sq. ft. (p10)	We have been unable to assess to date whether this is a reduction from the maximum 300,000 sq. ft. of commercial space allowed under '94 DA and how it relates to the existing total of approximately 800,000 sq. ft.
Right to build R-2 units (6 dwelling units per acre and 4 dwellings per building) in the Settlement, on Club Cottage Lane and Cougar Island behind V-gate, and multiple parcels in front of V-gate (Exh. 13.2)		Traffic through V-Gate in August 2005 was 24.3% higher than in August 2004. Greater density in these areas may further increase traffic. Traffic increases were a major reason some property owners objected to the cottages the Resort proposed to build at the Ocean Course several years ago.
Right to build bridges to islands in marshes (p19)		Such bridges will impact KICA maintenance costs, once KRA conveys ownership to KICA.

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3. TRAFFIC MITIGATION ISSUES		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
KRA relieved of obligation to 4-lane KI Pkwy (p5)	KRA must provide traffic mitigation on KI Pkwy when “near capacity traffic volumes” are reached (Exh. 10.1)	The DA defines “near capacity traffic volume” as 1330 vehicles per hour (VPH) in one direction (approximately 1 vehicle every 3 seconds); 1190 VPH for bridge. National Safety Council recommends 3 second minimum between vehicles, regardless of speed at which they’re traveling. 60 seconds, divided by 3 seconds/car = 20 cars/minute. This translates to 1200 VPH, the maximum safe number of vehicles/lane in one hour. Compare this to total traffic northbound on Route 17 at Folly Road from 8 – 9 a.m. on Monday, 9/26/2005 – 1946 VPH. This total is for both in-bound lanes, with each lane averaging 973 VPH. It is unlikely traffic on KI Pkwy will ever reach the point at which KRA is required to pay for mitigation (1330 VPH), even though drivers may experience congestion at numbers below 1330 VPH.
KRA’s contribution to traffic mitigation on KI Pkwy is limited to maximum of \$250,000 or 10% of cost of project (p5)	Town gains commitment of up to \$250,000 toward traffic mitigation on KI Pkwy (p5)	This obligation does not survive termination date of ‘05 DA. Town officials have estimated upgrade currently under consideration for KI Pkwy – including bike path to Freshfields – would cost between \$3.5-4 million; of that total, bike path is projected to cost \$750,000.
Access to the Settlement and the River Course from KI Pkwy near Night Heron Park (Exh. 10.3)	Future street intersections with KI Pkwy limited to <del>DELETED 3 streets</del> 1 street accessing The Settlement (Exh. 13.5)	‘05 DA (p5) states, “The Town agrees to support” a street in this location. “Support” is not defined in document. Only one more street into the Settlement from KI Pkwy can be added, rather than the three allowed in earlier versions of ‘05 DA. Exh. 10.3 diagram of proposed location for such a street includes 3 special notes. Note 3 says approval for this intersection will not be granted “until a traffic study has been completed by the Town of Kiawah Island, and any mitigation measures determined necessary by the study have been completed.” Statement below Special Note 3: “Special Note 3 added under protest by applicant [KRA]. Applicant reserves all rights.” No written guarantee in ‘05 DA requiring people in Settlement to pay V-Gate assessment once new road(s) constructed from KI Pkwy into Settlement. No written provisions for addressing potential security breaches of V-Gate. A vehicle which accesses the Settlement from KI Pkwy could by-pass V-Gate and access eastern end of island by exiting Settlement via existing gate to River Course.
4. THE UTILITY (KIU) ISSUES		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
	Right of first offer to purchase KIU if KRA wishes to sell (p15)	Right of first refusal would offer Town additional protections. Nothing in right of first offer prevents KRA from selling to third party for less than Town offer or requires KRA to offer Utility to Town at third party’s price. Language establishing time limits for Town’s disclosure of interest to purchase and to present offer price no longer ambiguous, even though a property owner sought clarification of this provision. Town now has to make its purchase offer within 30 days after deadline for announcing intent to exercise right of first offer, rather than having 120 days after the deadline.
	Limits service area to “Kiawah Island” unless Town consents (p15 and Exh. 1.1(x))	Limiting service area to geographic Kiawah Island is significant win for property owners.
	KRA donates infrastructure (e.g., hydrants and transmission lines) on undeveloped parcels to KIU (p15)	Town states that donated infrastructure includes transmission lines, etc. to undeveloped properties, as well as infrastructure on these properties. While this is new for KRA on Kiawah, this is standard practice in South Carolina.
	KRA donates land to KIU for future above-ground water storage (p15)	Does not address current long term utility leases with KRA for property on which existing facilities are located or donation of land for same to KIU.

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<b>4. THE UTILITY (KIU) ISSUES (CONTINUED)</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
Town agrees not to “seek further property or monetary exactions or impact fees” (p15)		Almost every other utility in SC collects impact fees from developers to offset costs of system expansion for future capacity. KRA currently pays Seabrook Island Utility an impact fee of \$2000 for each lot it develops at Cassique, in addition to donating infrastructure. No payment of impact fees to KIU increases costs to all KIU customers. <b>Inability of Town to seek impact fees, property or monetary exactions, coupled with Town’s forfeiture of right to fund 3<sup>rd</sup> party rate interventions (see below), limits Town’s options for protecting property owner interests.</b>
Town cannot provide financial support for third party rate interventions (p16)		Town has given up its right to partner with KPOG, as it has done in the past, to challenge KIU rate increase requests.
Specifically excludes construction and donation of aquifer storage and recovery systems (ASR) (p15)		ASR systems are used to store underground water. As another 1184 dwelling units are added to the island and as more property owners become full-time residents, systems of this type may be needed at some point to supplement water purchased from St. Johns Water Company.
Controls choice of engineer to conduct Town inspection of KIU system and facilities (p16)	Right to inspect system and facilities 3 times during life of agreement (p16)	Right to inspect has restrictions. Access to proprietary financial information excluded. Information disclosed to consulting engineers is confidential. Must use KRA’s consulting engineers, who designed original system, or mutually agreed upon substitute. <b>Town’s lack of control over inspection process and choice of engineer could compromise outcome of inspection.</b>
Town to meet with KIU/KRA before intervening in rate cases (p16)		
	Town retains right of eminent domain (p14)	The right of eminent domain is given to municipalities by the State and cannot be given up under any circumstances.
Puts KIU issues to rest without participating in management audit conducted by the State’s Public Service Commission (PSC)		The Town has not required KIU to submit to an independent management audit by PSC before entering into ‘05 DA. Based upon practices of majority of utilities in SC, such an audit might well find KRA should pay impact fees to KIU as it does to Seabrook Island Utility for Cassique.
<b>5. OPEN SPACE, LAND DONATION AND CONVEYANCE ISSUES</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
Town recognizes KRA affiliate’s land donation for roundabout “constitutes a valuable contribution toward Facilities, even though roundabout is not located on Kiawah Island” (p16)		
KRA controls design/location of all new trails (p13)		
Donation of facilities and open spaces limited to those already conveyed or promised under ‘94 DA (p13)		No donated properties committed under ‘94 DA are suitable for another Sandcastle-type facility or property owner pool. With the signing of the ‘05 DA, KRA has <b>no future obligation</b> to give <b>any</b> property to KICA for “parks, parklands, recreational facilities, open spaces and recreational areas on Kiawah Island.” This appears to absolve KRA of any responsibility, even if another DA were signed on or before the expiration of the ‘05 DA.
KRA gets oversight on Town’s landscaping/maintenance of roundabout (p16)	If no corrective measures by Town within 30 days, KRA has right to “accomplish corrective measures, at its expense, unless the Town objects” (p16)	KRA has oversight, but according to wording of Agreement, KRA pays for any corrective measures unless Town objects.

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5. OPEN SPACE, LAND DONATION AND CONVEYANCE ISSUES (CONTINUED)		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
KRA reserves right to donate conservation easements to 501(c)(3) organizations before transferring unbuildable marsh and lowland property to KICA (p19)		Conveyance by quitclaim deed. Donating easements to 501(c)(3) organizations creates good will within the community and provides tax write-offs for KRA. If the land were first donated to KICA, it could benefit greatly from deductions it would be able to claim.
	8 spaces for beach parking and pedestrian path for beach access at Captain Sam's donated to KICA if that parcel is developed (pp17-18, 22)	Conveyance by quitclaim deed from KRA.
KRA gains undefined additional time to fulfill commitment to create Cougar Island Park (p18)	'05 DA reconfirms '94 DA requirement that Town gets at least 2-acre Park; gains 3 more parking spaces not covered in '94 DA (p18)	Per '94 DA, Cougar Island Park was to have been conveyed by 1/1/2000. '05 DA extends development and conveyance date to "no later than one year after recording the final plat for Cougar Island that includes the proposed park and amenities."
KRA retains ownership of two properties currently leased by KICA for boat storage (p18)		Per "Development Agreement Negotiations" in Oct. '05 <i>Kiawah Island Digest</i> , KICA requested additional land for boat storage, but negotiations were not successful. "Boat storage land is currently leased from KRA."
	KICA gains property at Captain Sam's Spit (p22)	Conveyance of Captain Sam's Spit, as well as Bear Island, could have significant maintenance cost implications for KICA. During previous years, Captain Sam's Spit has required considerable renourishment and restoration to offset effects of erosion. Channel between Captain Sam's and Seabrook Island was moved in late '90s.
	KICA not required to accept road/right of way at Captain Sam's Spit without certification property "will not unreasonably be subject to tidal erosion from the Kiawah River or the Atlantic Ocean" (p22)	<p>With the exception of land for future park on Cougar Island, if the Island is developed, all land donations are at risk for significant maintenance costs. A clause was added regarding Captain Sam's Spit, requiring KRA, before conveying roadway and right of way to KICA, to submit a licensed engineer's certification stating they "will not unreasonably be subject to tidal erosion from the Kiawah River or the Atlantic Ocean."</p> <p>At the same time, a number of other changes (noted in <b>bold</b>) were made to the wording in the paragraph about Captain Sam's Spit (pp22,23). These include conveyance of "(a) <b>fee simple title to no more than 20 acres</b> for Single Family Detached Dwelling residential purposes and <b>any uses as are authorized for Parcel 12B [Captain Sam's Spit] as authorized by this Agreement</b>; (b) and utilize additional Parcel 12 highland acreage as may be needed for infrastructure/<b>Development</b> including, but not limited to, road rights-of-way, utilities, <b>beach access easements</b>, paths, trails, green space, community recreation <b>servicing Parcel 12B</b>, dock access, parking, etc., <b>with any</b> such Development to comply with this Agreement including but not limited to Exhibits 13.1 and 13.2."</p> <p>On p23, in the paragraph referencing conveyance of highland to KICA, further qualifications have been added.</p> <p>It is difficult to assess why any of these changes were made and what the impact of these changes will be.</p>
	KICA gets all marshes and lowlands (below mean high tide) before '05 DA ends (p19)	KICA Covenants already guarantee this. Art. IV, Sec. 7(a)(3) says "prior to 2016, it [KRA] shall convey to the Association ... open space designated as such on the Company's Master Development Plan or subdivision plats recorded in the Register of Mesne Conveyance, Charleston County."

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5. OPEN SPACE, LAND DONATION AND CONVEYANCE ISSUES (CONTINUED)		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
	KICA receives beach parking spaces at Ocean Course (p17)	'94 DA required KRA to convey easement to KICA for 30-space parking area seaward of Ocean Course clubhouse by 1/1/ 2000. Several of 9 amendments to the '94 DA address extensions of this deadline and the exact number of spaces to be provided. Still no date set for conveyance of these spaces. <b>Town has stated that added references to 6<sup>th</sup> and 8<sup>th</sup> amendments to '94 DA are sufficient to guarantee conveyance of original number of spaces (30).</b>
KRA does not convey “undevelopable” highlands or isolated highlands and may deed them to purchasers for docks, bulkheads, walkways and gazebos (p19)		This entire section is confusing. What is KRA giving and what is KRA retaining? It is also unclear if this excludes these properties from zoning or other restrictions.
	KRA conveys Bear Island to KICA (p20)	Conveyance is by quitclaim deed. KRA has already given a full conservation easement to Ducks Unlimited. KRA agrees it can build only two single family houses on 6.9 acres.
	Town retains rights to emergency beach access points (p20)	This is the minimum Town should require to maintain public health and safety obligations.
	KRA has agreed to study Town's request to “consider the possibility of establishing a temporary site on the Kiawah River for KICA members to launch kayaks and canoes before further development of Captain Sam's Spit.” (p23)	<b>This paragraph was added to '05 DA in response to a property owner's request.</b>
<del>DELETED Golf Courses/Tennis Courts Covenant, as defined in '94 DA, not included in '05 DA ('94, p39)</del>	KIGR Golf Courses/Tennis Centers Covenant added to '05 DA, but wording different from '94 DA ('94, p39 and '05 DA, p18)	The 9/30 analysis listed this in KRA's column, because this covenant was not included in the proposed DA. Since it was added to the '05 DA, it has been moved to the Property Owners' column. <b>This covenant requires current and future owners of Marsh Point (now Cougar Point), Turtle Point, Osprey Point, and the Ocean Course, as well as the two Resort Tennis Centers, use these properties only for such golf course and tennis center purposes (and reasonable, related retail and commercial activities) for a period of approximately 83 years. The purpose and effect of such restrictive covenants was to prevent the conversion of these amenities to other uses, such as residential or other purely commercial purposes, for such period. This “win” for property owners is qualified, however, because (1) wording of the covenant changed from the '94 DA to the '05 DA and (2) it is unclear exactly what the new wording means. The phrase “absent consent of property owner” [KRA] was added to the agreement approved 10/12/2005 without any opportunity to ask what these changes in language mean.</b>

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6. ARB (ARCHITECTURAL REVIEW BOARD) ISSUES		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
KRA retains control of ARB – Town agrees it will not establish an architectural review body during term of '05 DA (pp9,10)	KICA can appoint one member of ARB “if the Board so desires” (p10)	Transition of control of ARB from KRA to KICA requires analysis of a number of issues, including the cost of ARB operation and timeline for transition. None of these issues is addressed in the '05 DA. Further, according to the KICA Covenants (Art. 7, Sec. 1), “The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, <b>all of whom shall be appointed by the Board of Directors of the Association.</b> ” We are unaware of any instance in which KICA has exercised this right.
	ARB’s authority to deviate from lot coverage standards limited to 10% and from setback standards by 20% (Exh. 13.3)	Standards are established in Exh. 13.3. These new standards permit larger homes than allowed under the previous standards and adjusted setbacks. It is difficult to assess who wins what on this item, BUT, limiting ARB variances to 10% of lot coverage is less significant than if the previous lot coverage standards applied.
ARB retains right to determine and adjust natural buffers between parcels of differing density or residential/nonresidential lands (p8)		
ARB gains flexibility re: tree replacement guidelines	Town approval required for changes to guidelines (p9)	Town approval “shall not be unreasonably withheld or delayed.” No specific language in '05 DA requiring projects be designed to “minimize the loss of oak trees and other trees” 8” or more in diameter, as specified in '94 DA.
ARB retains control of standards for commercial and utility properties (pp10-12)		
ARB is given greater leeway with beachfront property and building setback guidelines (p19)		New language in '05 DA allows ARB to deviate from strict customs and usages regarding oceanfront setbacks on a case by case basis.
ARB continues control over approval of fencing, which is limited to hedgerows and/or wooden, masonry, or wrought iron material that is architecturally integrated (p8)	Fencing height limited (5') and ARB limited to what can be approved in front yards or within 5' of side or rear yard – Town must approve fences higher than 3' from pavement of adjacent streets if inside Sight Triangle (p8)	“Sight Triangle” is defined in '05 DA as a triangular shaped portion of land at intersections in which nothing is permitted to be placed which limits or obstructs visibility of motorists.
ARB retains “sole and exclusive jurisdiction with regard to the standards and guidelines . . . and granting of ‘variances’” (p9)		ARB jurisdiction is on all undeveloped properties.
	ARB agrees to submit meeting agenda to Town and KICA in timely manner (p10)	

## Who Gets What in the 2005 Development Agreement Approved 10/12/2005

7. MISCELLANEOUS ISSUES		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
'05 DA automatically extended from 8/1/2015 to 1/1/2018 if 250 or more acres remain undeveloped as of 1/1/2008 (p25)		State statute authorizing development agreements sets guidelines for length of agreements as they relate to amount of property to be developed. KRA qualifies for automatic extension provided that on 1/1/2008, 250 or more of the 993 acres of the Undeveloped Lands covered by the '05 DA are still to be developed. According to Development Schedule contained in '05 DA (p25), it will be at least 20 years before this point in development is reached.
KRA projects development completed by 2030 (p24)		Wording in Agreement appears to conflict with this date. “The Property Owner [KRA] projects that in the following years after the execution and adoption of this agreement, the following percentages of the Undeveloped Lands within the Real Property will be developed.” The chart which follows this paragraph shows that at year 5, 10% will be developed and that at year 30, 100% will be developed. The confusion is whether “year 5” refers to 2005 or 2010 (2005 plus 5 years).
KRA gets “reasonable time” to cure any material breaches of Agreement uncovered during Town’s annual review (p25)		The words “material” and “reasonable” are not defined.
If any third party or any other governmental official institutes legal action challenging the validity of any provision of this Agreement, the parties agree to cooperate in defending the agreement (p27)		Agreeing to cooperate in defending DA appears to say, for example, that if the State were to bring an action against KRA for violating State regulations by building on Captain Sam’s Spit, the Town would be required to join and support KRA in its defense.
	Binding arbitration clause for disputes over interpretation of language in '05 DA (p34)	This clause was added only after a property owner raised the issue. There was nothing in the initial draft of the '05 DA addressing how to resolve differences in interpretation of language, short of going to court.
8. UNADDRESSED ISSUES <sup>1</sup>		
KRA – THE DEVELOPER	PROPERTY OWNERS	DISCUSSION
KRA conveys a number of properties to KICA by quitclaim deed (p22 for one example)		Quitclaim deeds make no warranties as to title, but simply transfer to KICA whatever interest grantor [in this instance, KRA] has. By accepting such a deed, KICA assumes all risks and liabilities. Properties to be conveyed by quitclaim deed as a part of '05 DA include beach parking and beach access at Captain Sam’s Spit, as well as areas of highland and land seaward of primary oceanfront dunes there, Sora Rail maintenance tract, all marshes and lowlands, and Bear Island.
Undeveloped land covered by '05 DA is generally zoned higher density than land already developed		Remaining parcels may be developed at higher density than what currently exists on the island. This will exacerbate traffic on the island in general and behind the V-gate in particular. <b>NOTE: The '05 DA did not rezone properties at a higher density; KRA simply developed properties with lower permitted densities first.</b>
KRA retains “full power to add to, subtract from or make changes in the Master Development Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association” (Cov, Art II, Sect 1)		Because this right is given to KRA under the KICA Covenants, and because KRA retains its veto power over proposed changes to the Covenants, it is unlikely that KRA would voluntarily relinquish this control. This power enables KRA to make changes which may increase its voting strength relative to the rest of the KICA membership. We’re not sure exactly what this means, but this provision is certainly there for a reason. Could this potentially shift control back to the Developer?

<sup>1</sup>These include concessions we would like to have seen KRA make. Since the Town has been reluctant to share information about the negotiations, we don’t know how many of these issues were raised.

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<b>8. UNADDRESSED ISSUES<sup>1</sup> (CONTINUED)</b>		
<b>KRA – THE DEVELOPER</b>	<b>PROPERTY OWNERS</b>	<b>DISCUSSION</b>
KRA retains right to determine when properties are functionally complete and can be conveyed to KICA		KRA can donate any property it chooses, and KICA must accept it, once that property is deemed to be functionally complete. “Functionally complete” remains undefined. In the past, KICA PODs have questioned whether property conveyed by KRA to KICA has been ready to be conveyed.
KICA must accept all properties donated by KRA (Cov, Art IV Sect 7)		At times, donated properties have required substantial remediation. One such example is property at Cinder Creek which was eroded and required costly mitigation. In addition, there have been questions in the past about the condition, design and/or quality of some property conveyed to KICA, e.g., bridges to Summer Islands, as they relate to remediation and maintenance KICA then has to conduct.
KRA not required to donate property for KICA maintenance facility at eastern end of the island		As we approach build-out, KICA must maintain more and more Common Properties. Many of new properties are located at eastern end of the island, far from the Sora Rail maintenance facility, requiring daily movement of equipment back and forth.

<sup>1</sup>These include concessions we would like to have seen KRA make. Since the Town has been reluctant to share information about the negotiations, we don't know how many of these issues were raised.

### Other Changes to the document which don't affect Who Gets What

- “DIECI, Inc.” changed to “Vanderhorst, LLC” as one entity with a legal interest in any of the Real Property owned by KRA and covered by the '05 DA. (p2)
- Under “Vested Rights,” language added requiring KRA to provide Town with list of third parties to whom KRA sold then-undeveloped land between signing of '94 DA and execution of '05 DA. This information is important because these third parties have vested rights which survive even though '94 DA superseded by '05 DA. (p4)