

SETTLEMENT OFFER AND AGREEMENT

This Settlement Offer and Agreement (“Agreement”) is entered into this ____ day of _____, 2022, (“Effective Date”) by and between Riverstone Properties, LLC (“Riverstone”), its successors and assigns, and Nassau County, Florida (“County”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, Riverstone owns approximately fifty (50) acres of undeveloped real property on the east side of First Coast Highway in the unincorporated portion of Amelia Island, Nassau County, Florida, which real property is identified as Parcel Number 39-1N-29-0000-0001-0000 (the “Property”); and

WHEREAS, the Property is within the Residential, General – 2 (RG-2) zoning district on the County’s Zoning Map; and

WHEREAS, on June 14, 2021, the County enacted Ordinance 2021-08 which, in part, amended Section 13.06 of the Land Development Code, which governs RG-2 zoned property, reducing the height of permitted structures within 1,000 feet landward of the Coastal Construction Control Line (“CCCL”) in the unincorporated portion of Amelia Island from eighty-five (85) feet to thirty-five (35) feet; and

WHEREAS, on September 27, 2021, the County enacted Ordinance 2021-20 which, in part, amended Ordinance 2021-08, which again amended Section 13.06 of the Land Development Code, striking any reference to the CCCL, and amending the permitted height within RG-2 zoning district in the unincorporated portion of Amelia Island to forty-five (45) feet; and

WHEREAS, on March 7, 2022, Riverstone delivered a written notice of claim (the “Claim”) pursuant to Section 70.001, Florida Statutes, the Bert J. Harris Jr., Private Property Rights Protection Act (the “Bert Harris Act”), to the Nassau County Board of County Commissioners (the “Commission”) alleging that the Property had been inordinately burdened by the adoption of Ordinances 2021-08 and 2021-20 (collectively, the “Ordinances”); and

WHEREAS, the Bert Harris Act authorizes the County to make a settlement offer and enter into a settlement agreement which would have the effect of a modification, variance, special exception, or any other extraordinary relief from the application of a rule, regulation, or ordinance as it would otherwise apply to property in Nassau County, provided that the relief granted protects the public interest served by the regulations at issue and is the appropriate relief necessary to prevent the governmental regulations from inordinately burdening the property; and

WHEREAS, the County has made a settlement offer pursuant to the Bert Harris Act and Riverstone has accepted the County’s offer, the terms and conditions of which are reflected in this Agreement; and

WHEREAS, the County has determined that entering into this Agreement to effectuate relief as authorized by the Bert Harris Act combined with other measures, including but not limited to the preservation of a natural buffer along First Coast Highway, the provision of a natural buffer along the northern boundary of the Property, and the donation of land for a County beach access, protects the public interest served by the Ordinances and is the appropriate relief necessary to prevent the Ordinances from inordinately burdening the Property; and

WHEREAS, pursuant to the Bert Harris Act, the County and Riverstone wish to avoid the expense, delay, risk, and uncertainty of lengthy litigation, and agree that it is in their respective mutual best interests to do so in accordance with the terms set forth herein; and

WHEREAS, the County has the authority and policy discretion to exercise the avoidance of expense and financial risk in entering into settlement agreements; and

WHEREAS, Riverstone has agreed to dismiss other related pending litigation challenging the Ordinances; and

WHEREAS, the public interest of citizens throughout the County is protected by avoiding the expense and financial risk in litigating the Claim and is further protected by the natural buffer along First Coast Highway and donated beach access; and

WHEREAS, the Parties now desire to settle and resolve all disputes between and among them concerning the Claim.

NOW THEREFORE, in consideration of the premises and the mutual undertakings and covenants set forth herein, the receipt, sufficiency and legality of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Height Allowable Under the Ordinances on the Property.** The County agrees that the maximum building height for multiple-family dwellings and other permitted structures on the Property is eighty-five (85) feet. Height shall be measured from the approved finished grade. The County agrees that this right shall continue in perpetuity, regardless of any future changes in ownership of the Property, any future amendment of the Land Development Code, or any future amendment of the Comprehensive Plan.
3. **Preservation of a Natural Buffer Along First Coast Highway.**
 - a. Riverstone hereby agrees that as a condition to settlement herein it will provide and maintain a buffer of existing trees and natural vegetation not less than one hundred (100) feet in depth from the easterly right-of-way line of First Coast Highway (the "Buffer Area"), excepting required ingress and egress access points, including within such access points required drives and pedestrian walkways and permitted landscaping and signage.
 - b. In furtherance of this condition, Riverstone agrees that within 180 days after (i) the earlier of final site engineering plan approval, acceptance of final subdivision plat by the County, or initial building permit approval by the County for development on the Property and (ii) the expiration of any applicable appeal periods or conclusion of appeals, Riverstone at its sole cost and expense shall record a conservation easement over the Buffer Area in favor of the County and/or a non-profit conservation entity approved by the Parties, in order to protect, preserve, and maintain the Buffer Area in its natural condition (the "Conservation Easement"). The Conservation Easement will reserve a portion of the Property for access and signage. The Parties acknowledge that both the width and final location of the access road may change and agree to work cooperatively to amend or modify the Conservation Easement as needed to accommodate the final width and location of the access road. Riverstone acknowledges and agrees that no development can occur on the Property until such time as the Conservation Easement has been recorded pursuant to this Agreement.

- c. Riverstone agrees that the terms of Paragraph 3 shall continue in perpetuity, regardless of any future change in ownership of the Property.
- 4. **Preservation of Natural Buffer Along Northern Property Boundary.** Riverstone hereby agrees that as an additional condition to settlement herein it will provide and maintain a buffer of existing trees and natural vegetation not less than twenty-five (25) feet in depth along the length of the northern boundary of the Property. Riverstone agrees that the terms of this condition shall continue in perpetuity, regardless of any future change in ownership of the Property.
- 5. **Donation of Land for County Beach Access.**
 - a. Riverstone hereby agrees that as an additional condition to settlement, within 180 days after (i) the earlier of final site engineering plan approval, acceptance of final subdivision plat by the County, or initial building permit approval by the County for development on the Property and (ii) the expiration of any applicable appeal periods or conclusion of appeals, Riverstone at its sole cost and expense will convey by special warranty deed to the County approximately $\pm$ eight (8) acres of land located along the southern boundary of the Property, immediately adjacent and parallel to the Amelia Island State Park, for future use and improvement by the County as a Beach Access (the "Beach Access"). Riverstone acknowledges and agrees that no development can occur on the Property until such time as the Beach Access has been conveyed to the County pursuant to this Agreement.
 - b. The County agrees that the Beach Access will be developed in a manner generally consistent with the following parameters and the conceptual site plan attached hereto and incorporated herein as Exhibit "A." Exhibit "A," as attached, shall not be construed to limit final site design as determined appropriate by the County or as may be limited by environmental, regulatory, or site constraints.
 - i. **General Criteria Applicable to the Beach Access.**
 - 1. An aesthetic and amenity package similar to the State Parks on Amelia Island and the Talbot Islands.
 - 2. Limit impact to the tree canopy to the extent feasible while still being able to develop the Beach Access for its intended use.
 - 3. Limit impact to the 'ancient' dune structures internal to the site to the extent possible while still being able to develop the Beach Access for its intended use.
 - 4. Limit visual impact of the Beach Access development from First Coast Highway to the extent feasible while still being able to develop the site for its intended use. This excludes signage, access control, traffic operations, lighting and similar items.
 - ii. **Access.**
 - 1. A meandering access drive that avoids, to the maximum extent possible, impact to the tree canopy. The access drive shall be a pervious surface if feasible and appropriate.
 - 2. A meandering multi-use trail that connects the beach access to the Amelia Island Trail on First Coast Highway.
 - 3. Access to the beach/ocean will be controlled by applicable State regulations.

iii. Parking.

1. Parking spaces will be pervious, unless otherwise required by the Americans with Disabilities Act of 1990 (the “ADA”), and will be comprised of dispersed parking spots similar to Big Talbot State Park.
2. Bicycle and golfcart parking, as needed.

iv. Amenities (Examples).

1. ADA compliant restrooms and wash/rinse stations.
2. Trailhead kiosk(s) and trail signage.
3. Multi-use trails, boardwalks, viewing platforms, and natural surface paths internal to the Beach Access property.
4. Multi-use trail connecting to the Amelia Island Trail to the Beach Access.
5. Picnic areas and amenities, gazebos, open air shelters, and similar structures.
6. Access to the beach/ocean consistent with State regulations.
7. Other amenities similar to those within the State Parks on Amelia Island and the Talbot Islands.

v. Prohibited Uses/Amenities.

1. Sports fields.
2. Field/stadium lighting of any kind.
3. Amphitheater or covered performance stage.

vi. Regulatory and Official Uses Permitted.

1. Access control, security booth.
2. Required signage utilizing environmentally sensitive lighting, if needed.
3. Security cameras utilizing environmentally sensitive lighting, if needed.
4. Site development improvements, such as, but not limited to:
 - a. Drainage improvements/infrastructure.
 - b. Utilities.
 - c. Access, mobility, and circulation infrastructure.
 - d. Support Infrastructure for amenities.

c. Riverstone agrees that this condition shall run with the land and bind Riverstone, its successors and assigns, regardless of any future change in ownership of the Property.

6. **Tree Preservation and Mitigation.** The Property is subject to the tree protection and replacement standards defined in Section 37.02 of the Nassau County Land Development Code as existing on April 29, 2022. The Property shall not be subject to any amendment to the Land Development Code, Comprehensive Plan, or other regulatory document that alters the tree protection and replacement standards for the unincorporated areas of Amelia Island. The County agrees that Riverstone is hereby entitled to future tree mitigation credits equal to the total caliper inches of protected trees retained within (1) the 25'-wide buffer along the northern property boundary, (2) the 100'-wide buffer along the western property boundary, and (3) the Beach Access. The mitigation credits shall be recognized by the County and used to mitigate impacts to protected trees as a result of Property development consisting of up to 150 residential units, up to 85 feet in height, and any accessory uses. Such credits shall not be reduced or eliminated by any future amendments to the Land Development Code or Comprehensive Plan. The Parties

agree that the terms of this condition shall continue in perpetuity, regardless of any future change in ownership of the Property.

7. Satisfaction of Parks and Recreational Facilities Obligations and Impact Fee Credits.

- a. The County agrees that the donation of the Beach Access fully satisfies and meets any and all County Comprehensive Plan and Land Development Code obligations related to the provision of Parks and Recreational Facilities by Riverstone, including but not limited to those obligations set forth in Article II, Chapter 34, of the Land Development Code, as such would otherwise be required for development of the Property with residential uses.
- b. The County further agrees that Riverstone shall receive developer contribution credits, as set forth in Section 34-86 of the Land Development Code, against any Parks and Recreational Facilities impact fees due for residential development on the Property in an amount equal to \$ 11,343,048.00, which amount is equal to the value of the Property being donated.
- c. Such credits shall not be reduced or eliminated by any future amendment of the County Land Development Code or the Comprehensive Plan.
- d. Riverstone may use, transfer, sell or assign, in whole or in part, its Parks and Recreational Facilities Impact Fee credits for use on the Property.

8. Residential Units. The Parties agree that Riverstone is entitled to construct up to 150 residential units on the Property pursuant to the Comprehensive Plan and RG-2 zoning and that the number of units will not be reduced or otherwise impacted by the recordation of the Conservation Easement over the Buffer Area or the donation of the Beach Access to the County. The Parties agree that the right to construct up to 150 residential units shall continue in perpetuity, regardless of any amendment to the Comprehensive Plan or Land Development Code, or any future change in ownership of the Property.

9. Other Development Rights. The Parties agree that, as a condition to settlement and in addition to the development rights set forth in paragraphs 1 and 8 above, the following development rights are applicable to development of the Property with up to 150 multiple-family residential units, and such rights shall continue in perpetuity, regardless of any future changes in ownership of the Property, or future amendment of the Comprehensive Plan or Land Development Code:

- a. *Permitted Temporary Uses:* Permitted temporary uses include construction trailers and offices, leasing/sales/management offices, models and similar uses.
- b. *Permitted Accessory Uses:* Permitted accessory uses include those uses provided for in Sections 13.02 and 28.15 of the Land Development Code. Without limiting the foregoing, the following accessory uses are permitted by right: signage; maintenance offices/areas; maintenance equipment storage building/areas; security offices; mail centers/kiosks; leasing/sales/management offices; amenity/recreation areas which may include pools, bathhouses, playgrounds, tennis courts, cabana(s)/clubhouse(s) with full food and beverage

services, health/exercise facilities, meeting rooms and similar uses; structured and/or surface parking or a combination of the two; stormwater, surface water management and flood control improvements; essential services, including water, sewer, gas, telephone, radio and electric equipment; and similar uses of a nature customarily incidental to oceanfront multiple-family residential uses.

c. *Minimum Yard Requirements:*

- i. Front yard: Zero (0) from the edge of the 100-foot natural buffer provided for in paragraph 3 above.
- ii. Side yard: Twenty (20) feet from the southern property boundary and twenty-five (25) feet from the northern property boundary which setback comprises and is coterminous with the twenty-five (25) foot buffer provided for in Paragraph 4 above.
- iii. Rear yard: Twenty (20) feet from the CCCL, as adopted.
- iv. Accessory uses may be located in the rear yard or in the side yard from the southern boundary, but not in the side yard from the northern boundary.

d. *Frontage:* Regardless of the preservation of the Buffer Area, the preservation of the natural buffer along the northern property boundary, and/or the recordation of a Conservation Easement over the Buffer Area, the Property shall be deemed to have sufficient frontage and access along First Coast Highway to satisfy all Comprehensive Plan and Land Development Code requirements for development of 150 multiple-family residential units.

e. *Signage:* Permitted signage for the development shall be as follows:

- i. Ground signs:
 1. Shall not exceed forty-eight (48) square feet in area.
 2. Shall not exceed two (2) signs per roadway entrance to the development.
 3. Shall not exceed thirteen (13) feet in height.
 4. Shall be limited to the name of the development, the address, and development name or logo.
 5. Shall have a landscaped area around the base of each sign which extends a distance in all directions equal to one-half (1/2) of the sign's height.
 6. May be externally illuminated but shall not be internally illuminated.
 7. May be located within the right-of-way with approval of the County Engineer, subject to site plan review.
- ii. Real estate signs, nameplates, political signs, flags, construction signs, temporary development signs, on-site directional or public service signs, public warning signs, seasonal displays or decorations, special event signs, and memorial signs or tablets shall be permitted as set forth in Section 4 of Ordinance 89-1 for the Residential District sign district as that term is defined therein.

10. **Pending Bert Harris Act Claim & Lawsuit.** Upon approval of this Agreement by the Board of County Commissioners and the expiration of all applicable appeal periods, Riverstone agrees that it will do the following:

- a. Withdraw the Claim and agrees that it will not seek further administrative or judicial review of the Claim, subject to the terms of Paragraphs 24 and 28 below.
- b. Dismiss without prejudice the case identified as Riverstone Properties, LLC. v. Nassau County, Florida, Case No. 21-CA-190, filed in the Circuit Court, Fourth Judicial Circuit, in and for Nassau County, Florida.

11. Attorneys' Fees and Costs.

- a. The Parties are each responsible for their own attorneys' fees and costs incurred up to and through the preparation and approval of this Agreement by the Commission.
- b. In connection with any litigation brought by the Parties to enforce this Agreement, the prevailing party shall be entitled to recover all attorneys' fees and costs incurred therein, including attorneys' fees and costs at trial or on appeal.

12. Conformity with the Land Development Code. The terms of this Agreement shall not be construed as making the Property in anyway non-conforming with the County's Land Development Code.

13. County Cooperation. None of the County's officers, employees, or agents shall in any way obstruct the efforts of Riverstone to achieve development of the Property with 150 multiple-family residential units, as contemplated in this Agreement, with regard to all approvals and permits necessary from all other applicable governmental entities with regulatory authority.

14. Applicable Law. This Agreement is to be construed and enforced according to the laws of the State of Florida. Any action filed to enforce the terms of this Agreement shall exclusively be filed in federal district court or Florida circuit court having jurisdiction in Nassau County, Florida.

15. Judicial Interpretation. Should any of the provisions of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the Parties and their agents have participated in the preparation hereof.

16. Authority. The signatories to this Agreement have the authority and are expressly authorized to resolve all matters as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

17. Entire Agreement. This is the entire agreement by and between the County and Riverstone, and no verbal or written assurance or promise by any party hereto is effective or binding unless included in this document. This Agreement may not be modified or amended without a written instrument signed by both Parties.

18. **Binding Effect: Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of all Parties to this Agreement.
19. **Agreement Runs with the Land.** The Parties acknowledge that the rights, covenants, restrictions, terms and conditions set forth in this Agreement touch and concern the Property and run with the land. The Parties intend the Agreement to be binding upon and inure to the benefit of any future owner of the Property.
20. **Waiver.** The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by either party of the time for performing any act shall not constitute a waiver at the time for performing any act by the other party required to be performed at a later date. Additionally, the exercise of any remedy provided by law in the provisions of this Agreement shall not exclude other remedies unless they are expressly excluded.
21. **Recorded.** This Agreement shall be recorded in the public records of Nassau County, Florida.
22. **Effective Date.** Upon submission to the County Attorney of this Agreement, fully executed by Riverstone, the Commission shall hold a hearing on whether to approve this Agreement. Said hearing shall be set within four (4) weeks of receipt by the County Attorney of the executed Agreement. This Agreement shall become fully effective on the date executed by the County.
23. **Counterparts.** This Agreement may be executed by the Parties hereto individually or in combination, in one or more counterparts, each of which shall be an original and all of which constitute one and the same Agreement. The Parties may execute counterparts of this Agreement by facsimile or electronic mail in PDF format, and accordingly agree and intend that an electronic signature delivered by facsimile machine or electronic mail shall bind the party so signing with the same effect as though the signature were an original signature.
24. **Tolling and Non-Severability.** If this Agreement is challenged and any portion of this Agreement is finally adjudicated to be invalid, the entire Agreement is void unless the Parties mutually agree otherwise. If the Agreement is void, Riverstone may immediately proceed with the Claim as if this Agreement had never been entered into by the Parties and any applicable time periods, filing deadlines and statutes of limitation shall be deemed tolled as of the filing date of such challenge and shall begin to run again upon such final adjudication.
25. **Further Assurances.** The Parties agree to execute and deliver any other documents reasonably required to carry out the terms of this Agreement.
26. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (a) hand delivered, or (b) delivered via Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) transmitted via email or facsimile, provided a copy is sent the next business day by method (a) or (b). Notices shall be deemed delivered on the date hand delivered or on the date shown on the receipt. All notices shall be addressed as follows:

County: Taco Pope
County Manager
Nassau County, Florida
96135 Nassau Place, Suite 1
Yulee, Florida 32097
tpope@nassaucountyfl.com

With a copy to: Denise C. May
County Attorney
Nassau County, Florida
96135 Nassau Place, Suite 6
Yulee, Florida 32097
dmay@nassaucountyfl.com

Riverstone: Christopher J. Corrada
Principal
Riverstone Properties
800 East Canal Street
Suite 1900
Richmond, Virginia 23219
CCorrada@riverg.com

With a copy to: T.R. Hainline, Jr.
Rogers Towers, P.A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
thainline@rtlaw.com

27. **Third Party Rights.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the Parties intend to benefit a third party directly or substantially by this Agreement. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement. Nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement, or other obligations, whether known or unknown to the Parties. Notwithstanding the provisions of this Section 27, any non-profit conservation entity specifically identified by the Parties in the conservation easement provided in Section 3 of this Agreement shall have the ability to enforce such conservation easement.
28. **Compromise of Disputed Claim; No Admission of Liability.** The terms and conditions set forth above are in compromise of a disputed Bert Harris Act claim pursuant to Section 70.001(4)(c), Florida Statutes (2021) and shall not be construed as an admission of liability or fault by either party, which is expressly denied.

29. **Breach of Agreement.** For breach of any provision of this Agreement, the Parties will have such remedies and rights as are available at law or in equity, except with regard to prevailing party attorneys' fees and costs as set forth in Paragraph 11 above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the undersigned officials as duly authorized.

ATTEST AS TO CHAIRMAN'S SIGNATURE:

**BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA**

By: _____
JOHN A. CRAWFORD
Its: Ex-Officio Clerk

By: _____
AARON C. BELL
Its: Chairman

Approved as to form:

By: _____
DENISE C. MAY
Its: County Attorney

RIVERSTONE PROPERTIES, LLC, a Virginia limited liability company

By: _____
Its: _____



Legend

- Park Boundary (± 8 Acres)
- Recreation Pod Boundary

- ① 10' Wide Multi-use Trail
- ② ADA Parking Spaces
- ③ Boardwalks
- ④ Drive Access
- ⑤ Parking Space (Natural Surface, Total: 152)
- ⑥ Restroom
- ⑦ Road Network (Unpaved)
- ⑧ Viewing Platform (Major)
- ⑨ Viewing Platform (Minor)

- ⑩ Amelia Island State Park
- ⑪ 100' Wide Buffer/Conservation Easement
- ⑫ Riverstone Property LLC Parcel

Notes:
(X) = Approximate number of parking spaces in each parking area.

Linear Park

Conceptual Park Site Master Plan

Scale: 1"=200'



N



Legend

- Park Boundary (± 8 Acres)
- Recreation Pod Boundary
- Buffer Area

Notes:
(x) = Approximate number of parking spaces in each parking area.

- 10' Wide Multi-use Trail
- ADA Parking Spaces
- Boardwalks
- Drive Access
- Parking Space (Natural Surface, Total: 152)
- Restroom
- Road Network (Unpaved)
- Viewing Platform (Major)
- Viewing Platform (Minor)

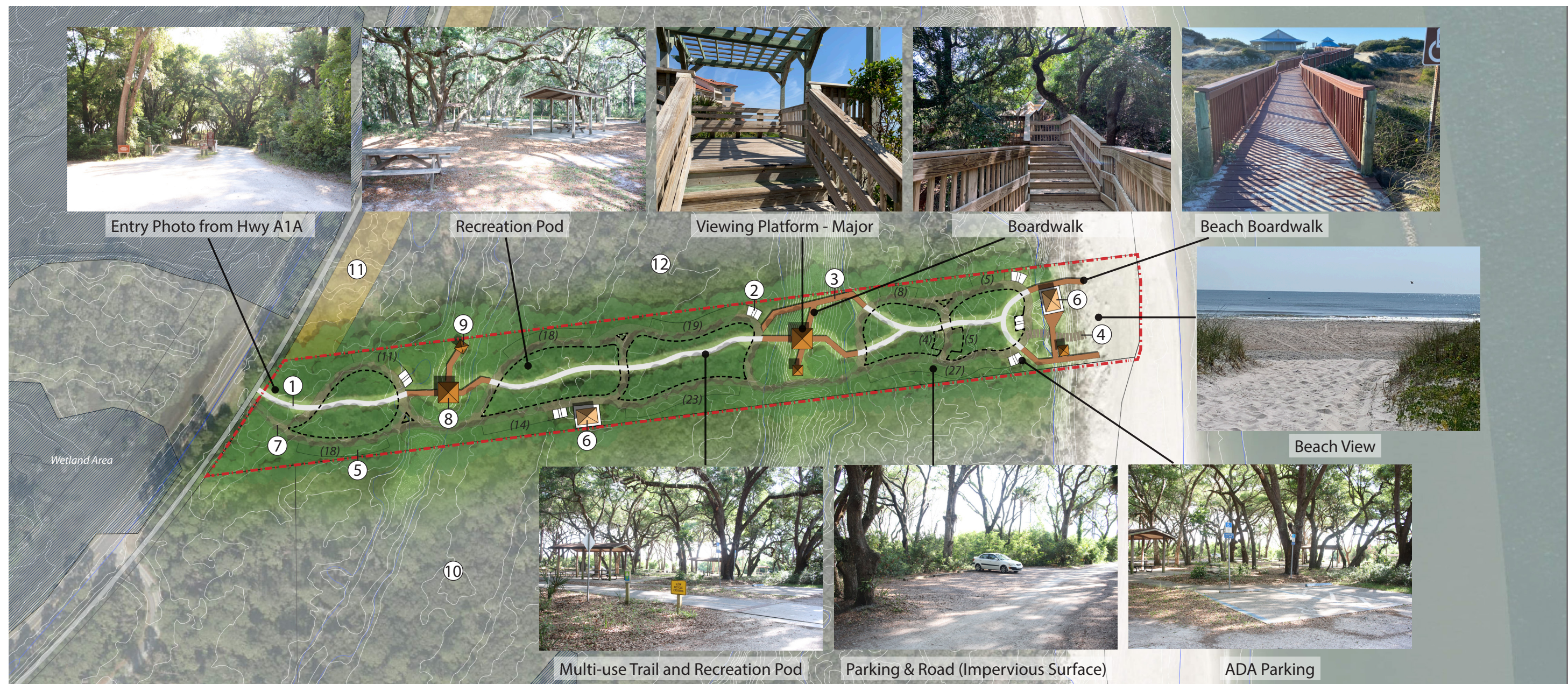
- Amelia Island State Park
- 100' Wide Buffer/Conservation Easement
- Riverstone Property LLC Parcel
- 25' Wide Sanctuary Buffer

- Park Size:** ± 8 Acres
- Park Dimensions:** 200' x 1,840'
- Park Land Value:** ± \$ 11,400,000
- 100' Wide Buffer Size:** ± 4.0 Acres (3.6 Acres)
- Buffer Land Value:** ± \$5,600,000

Linear Park

Conceptual Park Site Master Plan





Legend

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- **Park Land Value:** ± \$ 11,400,000
- **100' Wide Buffer Size:** ± 4.0 Acres (3.6 Acres)
- **Buffer Land Value:** ± \$5,600,000

Notes:

(X) = Approximate number of parking spaces in each parking area.

Linear Park

Conceptual Park Site Master Plan

Scale: 1"=200'



N

Barth Associates
PUBLIC REALM PLANNING, DESIGN, AND FACILITATION