

**Bulk Email message sent by KICA President Faith Dodge  
On Tuesday, October 4, 2005**

Dear Members:

As you know, the Town of Kiawah Island and the island's master developer, KRA, have been negotiating a new Development Agreement which is scheduled for second reading at the October 12, 2005 Town Council meeting.

On September 13, the KICA Property Owner Directors sent you a list of the items we had asked the Town to negotiate on our behalf, as well as the results of those negotiations. Since that time we have met with legal counsel to go through additional proposed Development Agreement provisions.

The Property Owner Directors met with Trenholm Walker, KICA legal counsel, to go through the proposed Development Agreement provisions and discuss how each item relates to the existing 1994 Development Agreement and the KICA Covenants.

KICA Vice President, Dick Sula, and I have also met with the Mayor and Mayor Pro Tem to discuss many items for clarification, and to request changes we believed were needed to protect our members.

We asked for the following changes to be made:

EXHIBIT 18.1, DEVELOPER'S WAIVING RIGHTS TO APPOINT MAJORITY OF BOARD

We have asked to have the word "permanently" added, and to include Section 2 of our Covenants in this Exhibit. The last sentence on page 2 of Exhibit 18.1 now reads:

"NOW, THEREFORE, in return for the mutual promises and other consideration set forth in the Development Agreement, Kiawah Resort Associates, LP, does for itself, its successors, and assigns, in its capacity as the Company under the KICA Covenants, hereby permanently waive its right to appoint a majority of the board of directors of KICA under Article III, Sections 2 and 4 of the KICA Covenants on the terms and conditions described herein:"

We requested the word permanently be added to insure the developer's waiver to appoint a majority of the KICA Board of Directors is a permanent waiver.

EXHIBIT 18.1, USE OF LEGAL COUNSEL

The proposed item 3 of Exhibit 18.1 stated that KICA will use Trenholm Walker as its legal counsel unless he declines such representation due to a conflict of interest for a given matter. We requested and received the additional wording "or if a majority of the board of KICA determines that there is a conflict of interest with respect to a particular matter."

We felt that a situation could arise where the Property Owner Directors believed a conflict existed, and counsel and KRA may not agree. In that case the Property Owner Directors would have had no recourse. The revised wording gives us the right to decide if there is a conflict of interest.

The KICA Operating Standards Manual is a part of the existing 1994 Development Agreement. Exhibit 3 of the Standards Manual addressed the conflict of interest issue. The Standards Manual is not a part of the proposed Development Agreement, because a dual majority is no longer required. Therefore, we believed this wording needed to be added to Exhibit 18.1. This insures that if a majority of the Property Owner Directors wish to engage outside legal counsel at any time, they have the right to do this.

#### SECTION 18 (a), WAIVER

The proposed language provided that KRA waive its right to appoint a majority of the board "within 30 days after effective date of this agreement...."

We requested this language be changed so the waiver takes effect immediately upon signing of the new Development Agreement. Therefore, there is no 30-day waiting period for this waiver to take effect.

#### SECTION 18 (d), EXTENSION OF KICA COVENANTS

This section deals with the extension of KICA covenants to nonmember properties. Specifically it was regarding the developer's ability to exercise its rights under the existing KICA Covenants to submit contiguous or nearly contiguous properties to the KICA covenants. The Property Owner Directors requested language that would include the membership having to vote on the addition of contiguous or nearly contiguous property to the Association.

Rather than simply stating that such extension could occur after "prior notification," we requested and received the following language revision:

"Unless there has been prior approval by a simple majority vote of the members present at a duly called meeting of the membership under the KICA Covenants..." there could be no extension of covenants.

In this way, to request the addition of property to KICA, the Developer would be required to submit its request to the Board, where a majority of the Board would have to approve its submission for vote at a duly held meeting of the membership. Such a meeting is defined by the covenants as requiring ample advance notice to all the membership, with ballots and proxies. At the meeting with quorum present in person, by absentee ballot, or by proxy, a majority of the membership would need to vote their approval.

This revision to the proposed Development Agreement allows ample time and full notification of, and the opportunity to vote on, any proposed extension of the KICA covenants

#### OLD DA - 15. SECTION (a) (vi), GOLF COURSE/TENNIS COURTS:

Item 15 of the existing Development Agreement reaffirmed that in 1989 KRA had "placed certain matters of record in the Charleston County RMC office which require - among other things - the 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, to use the lands currently devoted to golf and tennis purposes to only such golf course and tennis center purposes (and reasonable, related retail and commercial activities) for a period of approximately 95 years from the date hereof."

This language was not included in the proposed Development Agreement. We understand that there are recorded instruments restricting the use of these lands to golf and tennis "until January 1, 2088, without the prior written consent of Grantor (KRA), which consent may be withheld or given in Grantor's sole

discretion."

So, while there was a feeling of contentment with the 95 years, and therefore the wording was not included, the KICA PO Directors believed language should be included to protect these recreational amenities from a change in purpose which could be given in the Grantor's sole discretion. We understand this is being worked on at the present time.

#### 16 (f), CAPTAIN SAM'S SPIT:

We have also spoken to Dennis Rhodes, the Town's legal counsel, regarding the requested wording to protect KICA's interests regarding possible maintenance and erosion problems at Captain Sam's Spit.

We understand the wording presented in the October 3 draft provides that prior to conveyance of any roadway and rights-of-way, KRA will obtain and provide to the board a certification from a licensed civil engineer with at least 20 years experience in South Carolina coastal development, that such roadway/right-of-way, in such engineer's considered professional opinion, will not unreasonably be subject to tidal erosion from the Kiawah River."

We are interested in additional consideration in this regard.

#### EXHIBIT 10.3 AND EXHIBIT 13.5, DISCREPANCY - THE SETTLEMENT

There is only one curb cut approved by the Town Planning Commission for The Settlement subdivision off Kiawah Island Parkway. This is shown on Exhibit 10.3. We have asked and the Town has indicated they will delete the last sentence of Item No. 4 of Exhibit 13.5, which referred to three curb cuts. This would assure that only one curb cut would occur.

#### CASSIQUE SUBDIVISION

The matter of the Cassique subdivision's right to access Kiawah Island has been raised incidental to the Development Agreement. In 2001, KICA negotiated an agreement whereby Cassique property owners would pay a partial assessment to KICA in exchange for access. KRA had the right to grant this access without compensation and agreed to do so as a concession to additional traffic across our roads. That agreement stipulates that KRA would not extend bulk access privileges to other off-island developments. The Cassique agreement is not part of but does reference the 1994 Development Agreement. An addendum has been requested by KICA to reference any future Development Agreements as well.

We appreciate the cooperation of legal counsel and the Town Council in responding to our requests that these items be changed. The latest draft of the proposed Development Agreement is now available on the Town's website at [www.kiawahisland.org](http://www.kiawahisland.org).

If you have further questions or need further clarification on KICA items, please let us know. I am sure the Town Council would be happy to respond to any questions or points of clarification on any portion of the proposed Development Agreement. It is a complex document, and while we did not receive everything we asked for, we do want you to know that we have been working on these additional changes on your behalf.

Sincerely,  
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