

September 15, 2021

J. Andrew Sayre, Mayor
Village of Bald Head Island
106 Lighthouse Wynd
Bald Head Island, NC 28461

RE: Bald Head Island Transportation System

Dear Mayor Sayre:

We understand from our CEO, Chad Paul, that you have requested an opportunity to meet personally with the Mitchell family and our Boards to discuss the Village of Bald Head Island's desire to purchase the ferry transportation system. For reasons outlined in this letter, we respectfully decline that invitation. All communications or negotiations relating to the sale of the ferry transportation system or any other assets or operations of Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc. should be coordinated and conducted, directly and only with our CEO and CFO, Chad Paul and Shirley Mayfield, and legal counsel to the companies.

After expending more than \$1 million and a considerable amount of time and resources for over five years to effectuate a public trust solution representative of all constituents for the ferry transportation system pursuant to the North Carolina Ferry Transportation Authority Act (SB#391), we have collectively decided, after careful deliberation and evaluation of public comments-presentations and certain comments made at Village of Bald Head Island (Village) and Local Government Commission (LGC) meetings, to pursue a competitive sale process for the disposition of the remaining operations we have relating to Bald Head Island, to include the ferry, parking, barge and transportation-related real estate assets. In the interim, we will continue to support the Bald Head Island Transportation Authority (Authority) as the preferred buyer of some or all of the transportation system; however, we will no longer allow the personal or political agendas of a few individuals to be used to delay the sale process.

Our dedicated employees and staff, the Bald Head Island property owners and the ridership and users of the transportation system deserve to have finality to this process and to have capable stewardship governing the transportation system going forward. A key factor in reaching this decision is that an overwhelming number of ferry riders, barge customers, and Island property owners oppose a Village owned and/or operated transportation system controlled by a small group of Island voting residents that represent approximately five percent (5%) of Island property ownership and less than ten percent (10%) of annual ferry ridership. Moreover, we note that all governmental jurisdictions associated with the creation and operation of the Authority, to include, the North Carolina General Assembly, Brunswick County, City of Southport, and the Village of Bald Head Island, have by execution of several unanimous consents and resolutions supported the enactment of the North Carolina Ferry Transportation Authority Act, the Authority's subsequent incorporation and commencement and underwriting of its operations. Additionally, the North Carolina Utilities Commission, North Carolina Department of


Transportation, and the current and former Governors of North Carolina have supported both the passage of the North Carolina Ferry Transportation Authority Act and the Authority's subsequent efforts to acquire the transportation system. For reasons noted in the March 26, 2021 letter attached, the undersigned find the Village's withdrawal of its unanimous support and consent for the acquisition of the system by the Authority after almost five years into the process ill-considered and its reasons for doing so unpersuasive.

Should LGC approval of the Authority's financing not be forthcoming in the near future, we believe it highly likely that parts of the system will be sold at a substantially higher collective price than the entire system has been offered in the past to the Authority. Consequently, it is unrealistic to believe that the Authority (or any other party) would have an opportunity to acquire the entirety of the system in that case.


Sincerely,

For the Mitchell Family Corporation


C. Grant Mitchell, President


Spiros N. Vassilakis,
Chief Operating Officer

**For the Board of Directors of
Bald Head Island Transportation, Inc.**


M. Kent Mitchell, Director



Mark D. Mitchell, Director

**For the Board of Managers of
Bald Head Island Limited, LLC**


M. Kent Mitchell, Manager


Mark D. Mitchell, Director


C. Grant Mitchell, Director


Spiros N. Vassilakis, Manager


Charles A. Paul, III, Manager


Shirley A. Mayfield, Manager

Attachment: March 26, 2021 Charles A. Paul, III correspondence to LGC

Cc: Susan Rabon



March 26, 2021

The Local Government Commission
North Carolina Department of State Treasurer
3200 Atlantic Avenue
Raleigh, North Carolina 27604

Dear Members of the Local Government Commission:

Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc. (collectively, "Limited"), would like to provide this information to the Local Government Commission (the "LGC") for your consideration regarding the proposed sale of the ferry transportation system to the Bald Head Island Ferry Transportation Authority (the "Authority"). This transaction has been thoroughly and properly vetted through a lengthy planning and sale process spanning more than four years and expenditure of significant funds on due diligence and professional advisors, and the devotion of countless hours (many by volunteers) at public meetings and informational sessions. The financial valuation and projections have been exhaustively reviewed and the proposed financing has received an investment grade rating from Standard & Poor's. Moreover, from a policy perspective, only a sale from Limited to the Authority adheres to the statutory mandate set forth in the "Ferry Transportation Authority Act" that, following the formation of a Ferry Transportation Authority like the Authority, an existing private ferry transportation service operating in the service area "*shall be acquired . . . by that Authority . . . such purchase to be financed by bonds or notes issued by the Authority or other financing mechanisms . . .*" (emphasis added). Furthermore, for reasons discussed below, Limited is confident that a sale to the Authority (a regional public trust) offers the best solution for the continued operation and management of these key transportation and infrastructure assets for the benefit of all involved stakeholders.

Since the early 1980s, the George P. Mitchell family has devoted substantial time and resources toward the stewardship and preservation of Bald Head Island and its natural resources. When Mr. Mitchell passed away in 2013, the Mitchell family resolved to find a viable and long-term solution for an orderly transition of ownership and operation of the ferry transportation system.

The ferry, barge, tram, terminals, parking and related assets (the "Transportation System") uniquely function as a regional transportation system, serving both on-island residents *as well as* off-island property owners, visitors, contractors and employees, almost all of whom live on

BALD HEAD ISLAND LIMITED, LLC
P.O. Box 3069 • Bald Head Island, North Carolina 28461
910-457-5000 • 800-234-1666 • www.BaldHeadIsland.com

the mainland and use the ferry system daily. Recognizing the diverse stakeholders to be served by the Transportation System, the North Carolina General Assembly (after much deliberation and public input) unanimously passed Senate Bill 391 creating an ownership and governance solution that afforded the three local units of government where the assets are situated – the Village of Bald Head Island (the “Village”), the City of Southport and Brunswick County – representation on the Authority’s Board of Trustees. This structure assures all stakeholders fair representation in the setting of rates, fees, charges, routes and schedules. The Village Council serves and represents its constituency, the permanent residents of Bald Head Island (who constitute less than 10% of the annual ferry ridership); however, the composition of the Board of Trustees of the Authority assures a broader and more balanced representation and a voice for all members of the communities served by the Transportation System.

From the beginning (February, 2017) and through the informational session with the LGC on December 1, 2020, the process for the sale of the Transportation System to the Authority has been collaborative and conducted with substantial involvement and support of the Village. Only recently did Limited learn, by way of a December 15, 2020 letter from the Village to the LGC, of the Village’s concern with the Authority’s purchase of the Transportation System.¹ Considering the sequence of events over the last four years, as outlined on Schedule 1 attached to this letter, Limited is both surprised and disturbed by the Village’s most recent shift from collaborative stakeholder acting through its representatives on the Board of Trustees of the Authority to that of a competitive bidder.²

Limited has received no formal offer to purchase the Transportation System from the Village and Limited does not intend to engage in negotiations with the Village. Limited is convinced, and believes third parties would perceive, that abandoning a transaction with the Authority at this late stage would be inappropriate, irresponsible and in bad faith in the face of the legislation passed by the General Assembly (as signed into law by the Governor of North Carolina) and in light of the amount of time, effort and financial resources expended on the pending transaction. Limited stands ready, willing and able to close the transaction with the Authority, and only the Authority, upon the terms and conditions set forth in the Asset Purchase Agreement finalized and approved by the Authority at its December 8, 2020 meeting. We respectfully request that

¹ Please note, the December 15, 2020 letter from the Village was sent two weeks *after* the LGC Information Session of December 1, 2020. *Authority working group members that were present at the December 1, 2020 LGC Information Session did not misrepresent the circumstances, context or facts of the situation as has been alleged.*

² Noteworthy, is the contrast between the Village’s position stated in its January 19, 2021 letter to the LGC and that put forth in its March 22, 2021 letter to the LGC. On January 19, 2021, the Village states that “the Village supported the formation of the Authority and believes it is a good structure for the long-term ownership and operation of the transportation system assets.” Two months later, in its March 22, 2021 letter to the LGC, the Village declares that the “Village Council is unanimously committed to pursuing the Village’s acquisition of the Transportation System” and “will work closely with the Seller, the Authority and the Local Government Commission to close the transaction quickly.” (emphasis added)

the LGC place this matter on its April 13, 2021 agenda for approval of the Authority's public bond financing which, as previously stated, has received an investment grade rating.

We appreciate your time and consideration of this matter.

Sincerely,

Bald Head Island Limited, LLC



Charles A. Paul, III, CEO

Bald Head Island Transportation, Inc.



Charles A. Paul, III, President

cc: Dale R. Folwell, CPA, Treasurer
Sharon Edmundson, Deputy Treasurer
Tim Romocki, Director, Debt Management
Village of Bald Head Island Council
 J. Andrew Sayre, Mayor
 Michael Brown, Mayor Pro Tempore
 Scott Gardner, Councilor
 Emily Hill, Councilor
 Peter Quinn, Councilor
K. Christopher McCall, Bald Head Island Village Manager
City of Southport Board of Aldermen
 Joseph P. Hatem, MD, MPH, Mayor, City of Southport
 Thomas Lombardi, Alderman
 Karen Mosteller, Alderman
 Marc Spencer, Alderman
 Lora Sharkey, Alderman
 John Allen, Alderman
 Lowe Davis, Alderman
Gordon Hargrove, Southport City Manager
Brunswick County Board of Commissioners
 Randy Thompson, Chairman
 Mike Forte, Vice Chairman
 J. Martin (Marty) Cooke, Commissioner
 Pat Sykes, Commissioner
 Frank Williams, Commissioner
Randell Woodruff, County Manager, Brunswick County
Senator William Rabon

Representative Frank Iler

Representative Charles W. Miller

Bald Head Island Transportation Authority Board of Trustees

Susan Rabon, Chair, appointed by NC Governor

Robert Howard, Vice Chair, appointed by Brunswick County

Landon Zimmer, Secretary, appointed by NCDOT

David Jessen, Treasurer, appointed by NC General Assembly

Rex Cowdry, Trustee, appointed by NCDOT and resident of Bald Head Island

Jed Dixon, Trustee, appointed by NCDOT

Paul Cozza, Trustee, appointed by NC General Assembly

Jim Powell, Trustee, appointed by City of Southport

Mayor J. Andrew Sayre, Trustee, Village of Bald Head Island

Mayor Pro Tem Michael Brown, Trustee, Village of Bald Head Island

Claude Pope, Trustee, appointed by Village of Bald Head Island

Schedule 1

1. From a very early stage, representatives of the Village, including its legal counsel, were kept informed and provided meaningful and substantive input into the drafting of the legislation and full support for passage of Senate Bill 391 and the eventual formation of the Authority itself. By way of example:

March 2017

Village's Mayor and Mayor Pro Tem and the Village's counsel meet with representatives of Limited for an informational session and detailed presentation on the current structure and operation of the Transportation System and the benefits of formation and consolidating ownership and operation of the Transportation System under a to-be-formed transportation authority.

March 25, 2017

Counsel to the Village, provides comments and suggested changes to Senate Bill 391 on behalf of the Village.

April 2017

After public notice and hearing, the Village unanimously passes a "Resolution in Support of Creation of a Ferry Transportation Authority" supporting and calling upon the General Assembly to pass Senate Bill 391. Upon the effectiveness of the legislation, the Village further indicated its intent to conduct a public hearing on a Resolution to Form an Authority and have the Village serve as an incorporator.

June 7, 2017

Counsel to the Village drafts Articles of Incorporation of the Ferry Transportation Authority, Bylaws, Public Notice and Concurrent Resolution.

August 18, 2017

After public notice and hearing and providing a timeline, the Village unanimously passes "A Concurrent Resolution Whereby the Village of Bald Head Island, the City of Southport, and the County of Brunswick Signify their Determination to Organize the Bald Head Island Ferry Transportation Authority". Such Resolution, among other things, states that:

WHEREAS, the Village, Southport, and Brunswick County are engaging to coordinate and plan for the Authority that will operate a reliable and safe ferry and barge transportation system to transport passengers and freight between Southport and the Village; to provide parking facilities for those passengers on the mainland, and to provide

tram service on the island; to enhance the quality of life, mobility, and circumstances of residents of the Village, Southport, and Brunswick County; and to promote economic development and tourism throughout the Cape Fear region, while protecting and preserving the environment;

WHEREAS, the Village, Southport, and Brunswick County have duly afforded the general public, and other interested parties, both public and private, the opportunity to participate in public hearings regarding the formation of the Authority, which public hearings were noticed as required by G.S. 160A-683 and properly conducted pursuant to all applicable laws;

2. The Village agreed to act as a conduit of funds for the benefit of the Authority, accepting grants to be used for the benefit of the Authority. Starting with the first Interlocal Agreement on March 16, 2018, the Village entered into a series of Interlocal Agreements with the Authority to provide “certain accounting, administrative, and support services” to the Authority and to “allow the Authority to pay basic operating expenses until such time as the Authority has completed the acquisition of and is operating the System”. The Village financed its obligations to the Authority under these Interlocal Agreements using Grant Funds appropriated by the Village pursuant to G.S. 160A-685(b) for the purpose of supporting “the establishment and operation of the Authority”. The funding was provided to the Village by Limited pursuant to six Funding Agreements, the first of which was signed February 19, 2018. To date, Limited has advanced Grant Funds of \$415,000 to the Village for the express purposes set forth in the Interlocal and Funding Agreements.

3. On August 21, 1999 the Village and Limited entered into a Right of First Refusal (“ROFR”) relating to parts of the Transportation System and that, by its express terms, would become effective only upon approval of the North Carolina Public Utilities Commission. In order to facilitate the transaction between the Authority and Limited, the Village executed a termination of the ROFR in August, 2020 to be held in escrow pending the closing of the sale of the Transportation System to the Authority.

4. Approval of the Board of Trustees has been obtained. The Board of Trustees of the Authority approved the acquisition of the Bald Head Island Transportation System on December 8, 2020 by a 7 to 4 vote, passed a resolution authorizing the filing of the application for approval of the bond financing for the acquisition of the Transportation System with the LGC and making certain findings as to the feasibility of the financing by resolution passed December 16, 2020 by a 9 to 2 vote. Finally, and more recently, the Trustees of the Authority, by unanimous vote (i.e., an 11 to 0 vote) on March 17, 2021, approved of an update to the Asset Purchase Agreement which resulted in the inclusion of additional land to be acquired from Limited as part of the transaction.