

November 29, 2021

Addressees:

Governor of the State of North Carolina  
President Pro Tempore of the Senate  
Speaker of the House of Representatives  
Secretary of the Department of Transportation  
Board of Commissioners of Brunswick County  
Board of Aldermen of the City of Southport  
Village Council of the Village of Bald Head Island

Dear Ladies and Gentlemen:

I am writing in my capacity as Chair of the Board of Trustees of the Bald Head Island Transportation Authority (the "Authority"). Although I am the only signatory on this letter, please be aware that earlier today, the Authority's Board of Trustees (the "Board") approved a Resolution authorizing me to send this letter to you on behalf of the Board as a whole. A copy of that Resolution is attached to this letter.

The Authority's Board is deeply concerned that the Authority has reached an impasse in its proposed acquisition of the ferry transportation system serving Bald Head Island. We are writing to you because you have appointed us as Trustees and we believe you need to be aware of the impasse we are facing. Additionally, we are providing copies of this letter to the members of the LGC and the LGC staff. While we believe much of the content of this letter will be familiar to the LGC members, we want to emphasize that we believe we have met the criteria for approval of the bond issuance, and that we believe the consequences of inaction are likely to have a significant and lasting adverse impact on all the users of the system.

**We believe there is a very real risk that the System will be sold, either as a whole or in parts, to one or more private equity firms or other for-profit enterprises which will have few constraints on their ability to raise rates on the barge and parking components of the System and will have little incentive to keep rates affordable. We do not believe that this is in the best interests of the users of the System, and is not the outcome the General Assembly intended when it enacted the statute that led to the creation of the Authority and mandated that the Authority purchase the System.**

### **Brief Background**

The Village of Bald Head Island (the "Village") is reachable primarily by boat. The developer of the island, Bald Head Island Limited, LLC ("Limited"), and its related company Bald Head Island Transportation, Inc. ("Transportation") have operated the transportation system (the "System") that moves goods and people between the island and the mainland, consisting of:

- The ferry and island tram system, a monopoly regulated by the North Carolina Utilities Commission ("NCUC");
- The barge system, an unregulated monopoly that moves freight; and
- The parking system at the mainland terminal, also functionally an unregulated monopoly.

In 2017, the General Assembly enacted Session Law 2017-120 (the "Act"), establishing a structure for a regional ferry authority with broad representation, similar to other regional transportation authorities in the State. The Bald Head Island Transportation Authority (the "Authority") was formed in 2017 in accordance with the Act; the nine trustees of the Authority include residents of the Village (at least 3), Southport (at least 1), Brunswick County (at least 1), as well as a member of the North Carolina Board of Transportation. As the legislation for the Authority made its way through the General Assembly, the

Board of Commissioners of Brunswick County, the Village Council and the City Council of Southport all passed resolutions giving unanimous support to the creation of this regional Authority.

Beginning in early 2018, the Authority, through third-party consultants, performed extensive due diligence, examined historical revenue, operating expenses, and capital expenditures, examined the condition of the terminals, docks, marinas, and spoils areas, and obtained professional appraisals of the vessels, the equipment, and the real property and improvements. The Authority then negotiated a purchase price for the assets of the System with Limited and Transportation, which by statute is required to be at or below the appraised value of those assets.

The Authority also engaged a feasibility consultant to prepare a Feasibility Study that evaluated the feasibility and affordability of the revenue bonds that would be issued to finance the purchase of the System. The Feasibility Study was based on five economic scenarios, ranging from “low growth with housing recession” to “high growth”, using historical data and a detailed capital expenditure schedule based on both past expenditures and anticipated needs identified in the various appraisals.<sup>1</sup> Based on the Feasibility Study and extensive supporting documentation, Standard and Poor’s rated the revenue bond issuance as BBB-, a result our bond underwriter describes as the best rating that he is aware of for any ferry system not supported by tax revenue.

As with all revenue bonds in the State, the issuance of the Bonds requires approval from the North Carolina Local Government Commission (the “LGC”). The Authority gave an informational presentation to the LGC in December 2020, and then formally filed its application for its revenue bond issuance in November, 2020. The Authority continues to seek approval of the Bonds from the LGC, and, as recently as Monday, November 15, 2021, provided additional information requested by the LGC staff.

### **Valuation of the System**

The Act requires that the assets used and useful in operating the System be acquired at a value that is at or below the appraised value of those assets. The Authority has obtained separate appraisals of the vessels and the real property that make up the bulk of the System. The Authority’s initial asset appraisal resulted in a total value of \$50,940,023. The purchase price negotiated with Limited was \$47,750,000. Since that price was negotiated, Limited has corrected several issues identified in the inspections of the docks and the spoils basin, expanded the parking areas, and agreed to include in the proposed transaction for no extra consideration an additional 2.2 acres for future parking expansion.

Some members of the Local Government Commission have expressed concerns that the negotiated purchase price is too high and that the real property appraisals were not performed properly and are not believable. In response specifically to questions about the methodology of the real estate appraisals, the Authority hired a second real estate appraiser with specific expertise in marine properties. The second set of appraisals resulted in real estate appraised values of \$39,500,000, and thus a total System asset value of \$48,045,923, approximately 7% lower than the first appraisal of asset value, but still above the negotiated purchase price.

During the past year, suggestions have been made by some members of the LGC and others that Limited should simply give the transportation system to the Village; that the appraised value of the real property should be determined by the Brunswick County tax assessor’s assessed value of the land and improvements; that the real property value should be an appraised value but a lower one than the two

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<sup>1</sup> You can find the original feasibility study at:  
[https://www.baldheadassociation.com/Images/bhinews/site/news/BHI%20Ferry%20Transportation%20Authority/2021/BHITA\\_2021\\_Bond\\_Feasibility\\_Dec2020\\_public.pdf](https://www.baldheadassociation.com/Images/bhinews/site/news/BHI%20Ferry%20Transportation%20Authority/2021/BHITA_2021_Bond_Feasibility_Dec2020_public.pdf)

existing sets of appraisals; or that the value of the System should be determined based on the System as a going concern (*i.e.*, an enterprise value) rather than an asset value.

The legislation establishing the Authority set a statutory maximum amount the Authority could pay for the system. After determining the statutory maximum it was permitted to pay, the Authority then sought to negotiate the lowest possible purchase price it could actually obtain from the sellers. The sellers have in turn supported the concept of a regional authority owning the System and agreed to sell to the Authority at a price well below their estimate of fair market value. A clear majority of Trustees believe that the purchase price negotiated with Limited and Transportation is the lowest price at which those entities will sell the System to the Authority and is well below the fair market value at which Limited would sell the system to private purchasers or the Village, given the reported EBITDA multiples paid for transportation infrastructure and the unique monopoly pricing power of the parking and barge operations.

## **Governance**

Both the Village Council and the LGC have expressed concerns about governance, specifically their view that the Village have a greater voice in Authority decisions.<sup>2</sup> In response to these concerns, the Authority has adopted policies to assure a strong voice for island residents on the Operating Committee and the User's Council. The Chair of the Authority has expressed a willingness to recommend Island residents or property owners to be appointees to the Board, or the General Assembly could certainly expand the number of Village residents or property owners required to be on the Board. This concern should not, however, delay action on the Authority's bond proposal.

## **Feasibility and Affordability of the Authority's Proposal**

Revenue bonds issued by local governments, including the Authority, must be approved by the LGC. Under N.C.G.S. § 159-86(b), the LGC shall approve the application if, upon the information and evidence it receives, it finds and determines:

- (1) That the proposed revenue bond issue is necessary or expedient.
- (2) That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
- (3) That the proposed project is feasible.
- (4) That the State's or the municipality's, as the case may be, debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
- (5) That the proposed revenue bonds can be marketed at reasonable interest cost to the State or the municipality, as the case may be.

The Authority believes its application to the LGC and the supporting information meet those criteria. The Sellers are determined to sell the System; if the Authority is to become the owner of the System as contemplated by the Act, issuance of the bonds to finance the sale is both necessary and expedient. The amount to be borrowed is sufficient to pay the purchase price, pay costs of issuance, provide a debt service reserve fund and provide working capital for the Authority as it begins to operate the system. The project is feasible; in fact, the Feasibility Study, using a conservative "low growth" model, and assuming ferry, barge, and parking rates would increase with inflation, demonstrated that the System would generate sufficient revenue to make all the capital expenditures detailed in the study and provide sufficient debt service coverage to maintain an investment grade rating. The Authority has and will continue to manage its books and records in strict compliance with state law. The underwriter's most recent estimate of the interest rate that would be applicable to investment grade revenue bonds is a true

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<sup>2</sup> We point out that when the Authority was first established, six of the eleven members of the Board were residents of the Village, and three of the four members of the subgroup of the Authority that was tasked with negotiating the asset purchase agreement were either Island residents or property owners.

interest cost of 3.185%, which is a reasonable cost. We believe we have satisfied the requirements of the statute for approval by the LGC. The acquisition was feasible and affordable when the bond application was submitted to the LGC, and it remains so today, almost a year later.

We note that since the time the application was filed, the financial performance of the System has been well ahead of budget, reinforcing the feasibility of the acquisition. With the planned rate increases reflecting inflation, the System's financial performance will exceed not only the "low growth" scenario used to test feasibility but also the median and high growth scenarios.

### **The Village Council's Actions**

Following the initial presentation to the LGC, the three Trustees representing the Village Council (the Mayor, the Mayor Pro Tem, and Village Council appointee) expressed concerns to the LGC about the transparency of the process, the purchase price, certain capital needs of the System, and the governance of the Authority. In response to those concerns, the Authority held a public information session on February 17, 2021, sent to the LGC and posted for the public extensive responses to questions raised by LGC members and the Village on February 26, 2021<sup>3</sup>, and continued to request approval from the LGC in order to proceed with the transaction.

Despite the Village Council's previous endorsement of the Authority structure, in the spring of 2021, the Village Council publicly announced for the first time that it had decided to pursue the purchase of the System itself using general obligation bonds, asserting that control by the Village Council would better represent the interests of the users of the System and that the Village's GO credit would result in a lower interest rate for the debt. The referendum authorizing the issuance of general obligation bonds to finance the purchase of the System by the Village was approved by the residents by a margin of 173 in favor and 122 against.

### **Issues with the Village's Purchase Proposal**

Fundamentally, the Village Council believes the transportation system should be controlled by the five-member Village Council elected by a few hundred residents of the Village. We note that Village residents make up only 10% of the users of the System; the other 90% are not island residents and, therefore, neither were allowed to participate in the bond referendum nor are permitted to vote in the election of the Village Council. We also note that Village residents represent a very small percentage of the property owners on the island, the vast majority of whom also have no voice in the bond referendum or the election of Village Council members.

In contrast, the regional Authority established by the General Assembly, with representatives chosen by not only the Village Council, but also by the City of Southport, Brunswick County, the Governor, the Transportation Secretary, the President of the Senate and the Speaker of the House, gives broad representation to the property owners, renters, workers and tourists who visit and work on the island. In April 2021, both the County of Commissioners of Brunswick County and the Board of Aldermen of the City of Southport adopted resolutions in support of the sale of the System to the Authority rather than to the Village. Meanwhile, the Board of Directors of the Bald Head Association, which represents approximately 2000 property owners on Bald Head Island, has urged the Village Council and the Mayor to work with the Authority in the Authority's acquisition of the System.

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<sup>3</sup> All of the information made public about this transaction, as well as a general chronology of events, communications with the LGC and others, and other relevant documents from the Authority and the Village can be found at: <https://www.baldheadassociation.com/news>

Most importantly, the Village does not have an agreement with the Seller to purchase the System, and the Seller has stated categorically that it will not sell the System to the Village at the price it has negotiated with the Authority. Instead, the Seller has stated clearly and in writing that if the sale to the Authority does not close, it will sell the System at fair market value based on an enterprise valuation, which it maintains (based on an enterprise valuation in 2017 and current negotiations with third party buyers) will be at least \$55,000,000, rather than \$47,750,000 negotiated by the Authority.<sup>4</sup>

The Village obtained a right of first refusal on the System in 1999. There are several issues with this document which give rise to legal questions as to the enforceability of that agreement, including a condition contained within the agreement which states that it becomes effective only after approval of the agreement by the NC Utilities Commission, approval which appears to have never occurred. There is also language in the statutes suggesting that the General Assembly did not intend for municipalities to levy property taxes to support ferry systems. See NCGS 160A-209(c)(27) (property taxes may be levied “to provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry”).

Finally, it is our understanding based the Commission’s published data that if the Village were to acquire the transportation system, its general obligation indebtedness in relation to assessed property value would be in a class of its own, several times that of any other municipality in North Carolina.

### **Where We Are Now**

Despite having received a completed revenue bond application in January 2021, the LGC has still not acted on the Authority’s application. Although, the State Treasurer, the LGC Chair, stated in the LGC’s October meeting that the Authority’s revenue bond application and the Village’s general obligation application would be the primary items on the agenda at the LGC’s December 7, 2021 meeting, the State Auditor, a member of the LGC, has now demanded that consideration of the applications be indefinitely postponed.

### **The Risk of Inaction**

We have received information from several sources that Limited and Transportation are in active discussions with potential private equity purchasers, both for the stand-alone sale of the parking operation and for the sale of the entire System. Limited says that discussions are ongoing with six entities, and that if the Authority’s bond proposal is not approved at the planned December meeting, it will proceed with its Plan B – a sale to private equity. The Village has suggested this plan to proceed with a sale to private equity is merely a negotiating tactic by Limited. Instead, we believe this is a likely outcome of inaction that we should all seek to avert.

We believe a sale to a for-profit owner or owners would be the worst of all outcomes. Given the unique impediments on the ability of any other entity to provide competition for the System, a for-profit owner of the barge and parking monopolies has no constraints on its ability to maximize profits by increasing fares. If the system is sold in parts, the regulated ferry operation would no longer be cross-subsidized by parking and barge operations; ferry fares would rise or service would be curtailed. None of the Village, the City of Southport, Brunswick County, or the State would have a direct voice in the operation of the System.

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<sup>4</sup> See letter from Limited and Transportation to the Village dated October 22, 2021 [https://www.baldheadassociation.com/Images/bhinews/site/news/BHI%20Ferry%20Transportation%20Authority/2021/J\\_A\\_Sayre\\_Correspondence\\_10\\_22\\_21.pdf](https://www.baldheadassociation.com/Images/bhinews/site/news/BHI%20Ferry%20Transportation%20Authority/2021/J_A_Sayre_Correspondence_10_22_21.pdf)

**For reasons outlined above, we believe it is critical that the LCG take up the Authority's application at its December meeting as originally planned, and that this acquisition and financing move forward in accordance with the mandate of the Act. We believe that we have met the statutory requirements for approval, and equally importantly, we believe further delay will produce an outcome that would not be in the best interest of any of the users of the System.**

We would be glad to meet with you to discuss this further.

Sincerely,

Susan Rabon  
Chairman  
Bald Head Island Transportation Authority

cc: Members, North Carolina Local Government Commission