



# **RICHLAND COUNTY COUNCIL**

## **DEVELOPMENT AND SERVICES COMMITTEE**

|                   |             |                       |             |                 |
|-------------------|-------------|-----------------------|-------------|-----------------|
| Gwendolyn Kennedy | Damon Jeter | Norman Jackson, Chair | Jim Manning | Bill Malinowski |
| District 7        | District 3  | District 11           | District 8  | District 1      |

**JUNE 23, 2009**

**5:00 PM**

**2020 Hampton Street  
Council Chambers**

### **CALL TO ORDER**

### **APPROVAL OF MINUTES**

1. May 26, 2009: Regular Session [Pages 5-7]

### **ADOPTION OF AGENDA**

### **ITEMS FOR ACTION**

2. Presentation: Sewer Extension Policy (MWH Americas, Inc.)
3. Request to accept a conservation easement donation from Mr. George Delk, representing BDH Properties, LLC, for 20 acres in the Lower Richland Community [Pages 10-24]

4. Request to accept a conservation easement donation from Mr. James Mullis for 73 acres in the Twenty-Five Mile Creek Watershed in Northeast Richland County [Pages 26-40]
5. Request to adopt a conservation watershed proposal from the Pebble Creek Community for volunteer land easements in the Pebble Creek Watershed Conservation Area in Northwest Richland County [Pages 42-72]
6. Request to accept 3 acres of conservation property in the Broad River Watershed as a fee simple title donation from Mr. Scott Baker [Pages 74-76]
7. Request to authorize the County Administrator to negotiate and enter into a lease agreement with Hansel Carter for the use of property located at 10531 Garners Ferry Road for the Lower Richland drop off facility [Pages 78-79]
8. Request to authorize the Procurement Department to award and enter into a contract with ASI for the transportation of C&D waste materials and other items collected at the Lower Richland Drop-off Site to an approved C&D facility [Pages 81-82]
9. An ordinance amending the Richland County Code of Ordinances, Chapter 6, Buildings and building regulations; Article III, Building codes, Section 6-82 (A); so as to adopt the 2006 Edition of the International Residential Code [Pages 84-87]
10. Council Motion (Jackson): An ordinance amending the Richland County Code of Ordinances; Chapter 26, Land development; Section 26-54, Subdivision review and approval; so as to require that the delineation of any and/or all flood lines on plats that are submitted pursuant to this section; and to amend section 26-105, FP Floodplain Overlay District; Subsection (B), Applicability/Establishment; so as to delete specific reference to areas along the Congaree River [Pages 89-92]
11. Request to authorize staff to negotiate a contract with the M.B. Kahn Team for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex [Pages 94-96]
12. Council Motion (Jackson): A resolution to support the naming of a bridge that crosses Cabin Creek along Clarkson Road as the Candacy-Darcel Sanders Crossing Bridge [Pages 98-105]
13. An ordinance amending the Richland County Code of Ordinances; Chapter 18, Offenses, so as to clarify requirements pertaining to the smoking of tobacco products in the unincorporated area of Richland County [Pages 107-112]
14. Council Motion (Manning): An ordinance to amend the Richland County Code of Ordinances; Chapter 18, Offenses; Section 18-6, Smoking of tobacco products; In order to establish regulations and requirements relating to designated smoking areas [Pages 114-123]

## **ADJOURNMENT**



# Richland County Council Request of Action

## **Subject**

May 26, 2009: Regular Session [Pages 5-7]

## **Reviews**



**Richland County Council  
Development and Services Committee  
May 26, 2009  
5:00 PM**



*In accordance with the Freedom of Information Act, a copy of the agenda was sent to radio and TV stations, newspapers, persons requesting notification, and was posted on the bulletin board located in the lobby of the County Administration Building.*

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**Members Present:**

Chair: Norman Jackson  
Member: Damon Jeter  
Member: Gwendolyn Davis Kennedy  
Member: Bill Malinowski  
Absent: Jim Manning

**Others Present:** Paul Livingston, Valerie Hutchinson, Joyce Dickerson, Kelvin Washington, Michielle Cannon-Finch, Milton Pope, Tony McDonald, Sparty Hammett, Roxanne Matthews, Joe Cronin, Larry Smith, Pam Davis, Paul Alcatar, Michelle Onley

**CALL TO ORDER**

The meeting was called to order at approximately 5:00 p.m.

**APPROVAL OF MINUTES**

**April 28, 2009 (Regular Session)** – Mr. Malinowski moved, seconded by Mr. Jeter, to approve the minutes as distributed. The vote in favor was unanimous.

**ADOPTION OF AGENDA**

Mr. Malinowski moved, seconded by Ms. Kennedy, to adopt the agenda as published. The vote in favor was unanimous.

**ITEMS FOR ACTION**

**Request to authorize the Richland County Neighborhood Improvement Program (RCNIP) to proceed with six “pilot projects” in approved Neighborhood Master Planning Areas –**

Mr. Jeter moved, seconded by Mr. Manning, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

**An Ordinance amending the Richland County Code of Ordinances; Chapter 18, Offenses; so as to clarify the requirements pertaining to the smoking of tobacco products in the unincorporated area of Richland County** – Mr. Malinowski moved, seconded by Mr. Manning, to defer this item until the June D&S Committee meeting and to incorporate any additional information provided. The vote in favor was unanimous.

**Request to authorize staff to negotiate a contract with the M. B. Kahn Team for the final design, development, financing, construction, and potential management of the proposed Richland County Recreation Complex** – Mr. Jeter moved, seconded by Mr. Malinowski, to defer this item to the June D&S Committee meeting. The vote was in favor.

**An Ordinance of the County Council of Richland County, South Carolina, amending the zoning map of Unincorporated Richland County, South Carolina, to change the zoning designation for the real property described as TMS# 11203-01-02 from RM-HD (Residential, Multi-Family—High Density District) to NC (Neighborhood Commercial District); and providing for severability and an effective date [WASHINGTON]** – Mr. Malinowski moved, seconded by Mr. Jeter, to forward this item to Council with a recommendation for approval. The vote in favor was unanimous.

**An Ordinance amending the 2009 Richland County Comprehensive Plan for the rural portions of the Lower Richland Area by incorporating the study prepared by the Center for Social Inclusion, entitled “Growing Together: Thriving People for a Thriving Columbia” into the Plan [WASHINGTON]** – Ms. Kennedy moved, seconded by Mr. Jeter, to forward this item to Council with a recommendation for approval. A discussion took place.

Mr. Jeter made a substitute motion, seconded by Mr. Malinowski, to direct staff to pull out the areas of conflict between the current Comprehensive Plan and the study by the Center for Social Inclusion. The substitute motion failed.

The main motion was approved.

**An Ordinance Amending the Richland County Code of Ordinances; Chapter 26, Land Development; Section 26-180, Signs; so as to allow legal nonconforming off-premise signs in commercial, manufacturing, and industrial zoning districts to be replaced by surface area digital signs [MANNING]** – Mr. Manning moved, seconded by Ms. Kennedy, to forward this item to Council with a recommendation for approval. The vote was in favor.

#### ITEMS FOR DISCUSSION/INFORMATION

**Council Motion (Jackson): Request to use a portion of the existing Road Maintenance Fee for the purpose of paving dirt roads** – Mr. Sparty Hammett gave a brief update regarding this item.

**Council Motion (Malinowski): Any expenses incurred by Richland County for infrastructure due to development in incorporated areas will be billed to and paid for by**

**the incorporated area creating the expense** – Staff was directed to draft a policy regarding this item.

**Council Motion (Malinowski): Request to explore the feasibility of implementing a Sewer Availability Fee** – Mr. Smith updated the committee regarding this item.

### ADJOURNMENT

The meeting adjourned at approximately 5:56.

Submitted by,

Norman Jackson, Chair

The minutes were transcribed by Michelle M. Onley

# Richland County Council Request of Action

**Subject**

Presentation: Sewer Extension Policy (MWH Americas, Inc.)

**Reviews**

# Richland County Council Request of Action

## **Subject**

Request to accept a conservation easement donation from Mr. George Delk, representing BDH Properties, LLC, for 20 acres in the Lower Richland Community [Pages 10-24]

## **Reviews**

# Richland County Council Request of Action

**Subject:** Conservation Easement

## **A. Purpose**

County Council is requested by the Conservation Commission to accept a conservation easement donation on 20 acres in Lower Richland County in order to protect valuable natural resources, wetlands, floodplains, water quality, and preserve valuable open space.

## **B. Background / Discussion**

Mr. George Delk, representing BDH Properties, LLC, has made a formal application to the Conservation Commission to help protect this valuable property for conservation purposes, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for forestry, wildlife, and scenic open space. The property is a critical segment of the Mill Creek Watershed floodplain and buffer corridor. The property faces development pressures to be converted to high density home units. The property is located in County Council District #11 where extensive development has occurred. BDH Properties, LLC, would like to contribute to a new conservation image for their community. We salute their donation and conservation values.

## **C. Financial Impact- Donation**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. No Commission funds are being used for easement acquisition. The landowner is donating a large percentage of the appraised easement value of which some may be captured by tax incentives. The donation value based on a recent appraisal is \$260,000. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving floodplains, wildlife and valuable green space.

## **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

## **E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 20 acres owned by BDH Properties, LLC.

|   |  |                                  |
|---|--|----------------------------------|
| <b>Recommended by:</b><br><u>Carol Kososki, Chair</u><br><u>Jim Wilson, Program Manager</u> | <b>Department:</b><br><u>Conservation Commission</u><br><u>Richland County</u> | <b>Date:</b><br><u>5-18-2009</u> |
|---|--|----------------------------------|

**F. Reviews**

**Finance**

Reviewed by: Daniel Driggers

Date:

- Recommend Approval
- Recommend Denial
- No Recommendation

Comments:

**Legal**

Reviewed by: Larry Smith

Date:

- Recommend Approval
- Recommend Denial
- No Recommendation

Comments:

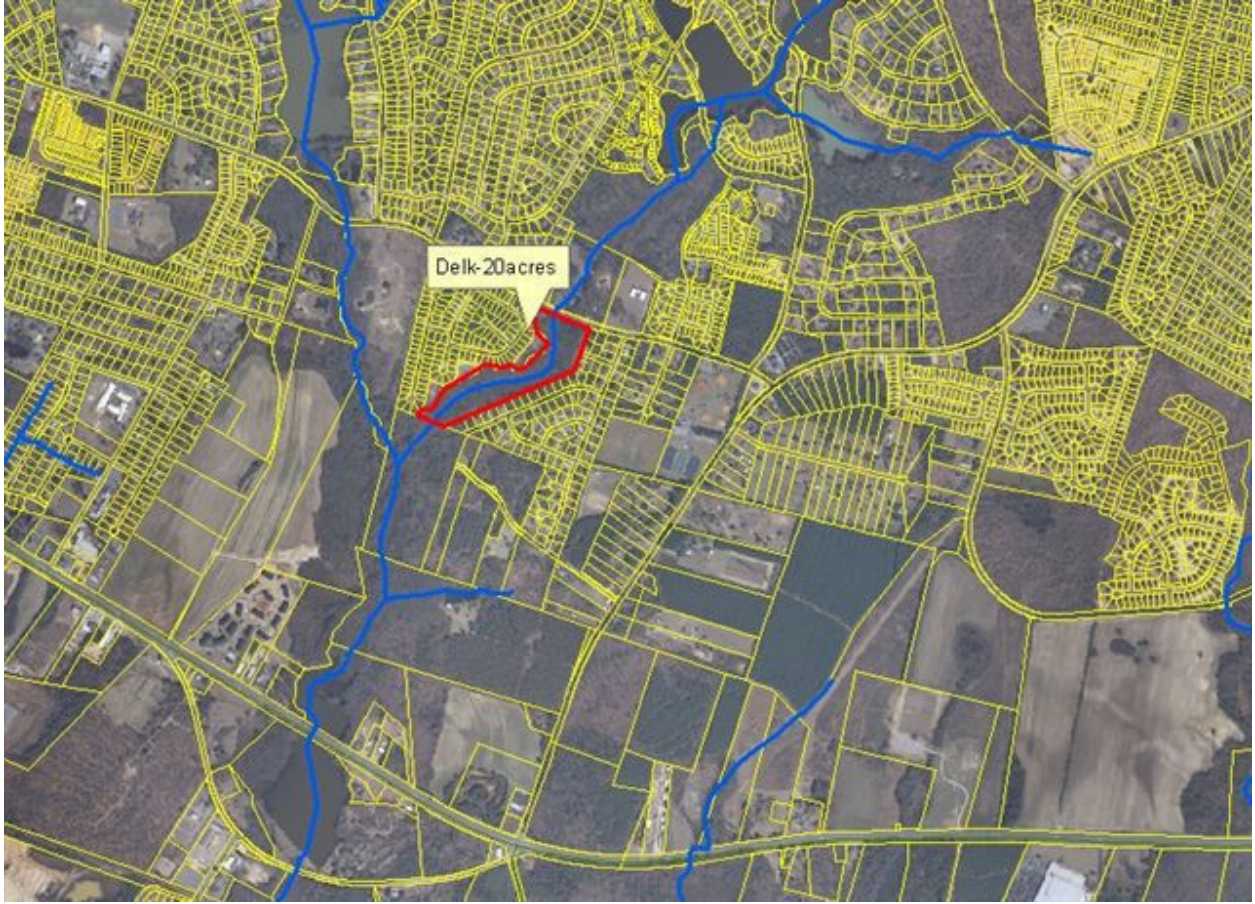
**Administration**

Reviewed by: Sparty Hammett

Date:

- Recommend Approval
- Recommend Denial
- No Recommendation

Comments:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this 18<sup>th</sup> day of May, 2009, by BDH Properties, LLC of 29 Governor's Hill, Columbia, Sc 29201 ("Grantor") to the Richland County Council, ("Grantee") of, Columbia, SC.

### WITNESSETH:

Grantor is the owner of certain 19.97 acres of real property in Richland County, South Carolina more particularly described below.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms are defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses that may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- The preservation of open space for the scenic enjoyment of Mill Creek by the general public.
- The furtherance of the South Carolina Conservation Easement Act, §46-45-10 authorizes the acquisition of conservation easements by non-profit organizations;

- The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.
- The protection of water quality deriving from the property's location in the Mill Creek Watershed, which provides a source of drinking water and recreation for the Midlands of South Carolina and which feeds directly into the Congaree Swamp national park..
- The provision of recreational opportunities as expressed in the Greenway Plan for Richland County, adopted by the Richland County Council.
- The preservation of significant wildlife habitat and traditional flora and fauna in this habitat rich area and providing a wildlife connection to the Lower Richland Community.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, hunting, or historic resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Present Condition Report (the “Report”) prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and §27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

Richland County, South Carolina Tax Map Number R19100-04-03 more fully described;  
*GOING TO NEED A PROPERTY DESCRIPTION*

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of 1989 of the nature and character described herein. Grantor will neither perform, nor knowingly allow another person to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

### **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation and wildlife habitat features. No activity that significantly impairs the conservation purpose of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement are consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and bequest the Property, as

well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

#### **4. Limitation on Subdivision**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. The property may not be subdivided at anytime.

#### **5. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural, recreational, hunting, and single-family residential purposes, or to permit others to use the Property for agricultural, recreational, hunting, or single family purposes, in accordance with applicable law. There shall be no multi-family, industrial, or commercial use of the property.

#### **6. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property. There shall be no general right of public access to the property, provided that, however, grantor retains the right to make such use available at Grantor's sole discretion.

#### **7. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; or firewood distribution, recreational hunting, fishing and river access, so long as such uses are not inconsistent with the purposes of this easement.

#### **8. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

#### **9. Procedure to Construct Buildings and Other Improvements**

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to

undertaking any construction, reconstruction, or other improvement of buildings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its records current.

A) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for reasonable and customary management of pets, livestock and wildlife.

B) New Ancillary Structures & Improvements – New ancillary buildings and other structures and improvements to be used primarily for agricultural, recreational or educational purposes may be built on the Property only with the permission of the Grantee.

C) New Residential Structures –No new residential structures may be built on the property.

D) Recreational Improvements – Passive recreational improvements, such as trails, may be built with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

E) Utility Services and Septic Systems – New and existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be constructed, installed, maintained, repaired, removed and replaced. Grantor may grant reasonable easements over and under the Property for septic or other utility systems serving the improvements permitted herein.

F) Vegetative Buffer - There shall be no development or land clearing activities within 100 feet of a river, stream, creek bed, or wetland, other than that which is permitted below. Such areas shall remain a vegetative buffer for water quality purposes at all times.

## **10. Maintenance and Improvement of Water Sources**

Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law.

## **11. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and at any time the basic type of agricultural operation on the Property is changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable law and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the conservation features and productivity of the Property.

## **14. Forest Management**

Hardwood tree species may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage and for firewood for domestic use. Hardwood species may not be commercially timbered.

## **15. Mining**

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

## **17. Hazardous Waste**

No waste, radioactive, medical, or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(A) Taxes – Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(B) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(C) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

(D) Insurance - Grantor and Grantee shall at all times carry adequate insurance covering their activities on the property.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, ex parte if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(A) Money damages, including damages for loss of the conservation values protected by this Easement; and

(B) Restoration of the Property to its condition existing prior to such violation.

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement of 1991, provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in writing at least thirty (30) days before any easement transfer. Transfer shall not occur before Grantor has given written consent, which will not be unreasonably withheld.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the



unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant. Grantee shall not be entitled to any proceeds from the sale or disposition of the property except pursuant to Section 24.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantors: George Delk  
BDH Properties, LLC  
29 Governor's Hill  
Columbia, SC 29201

To Grantee: Manager  
Conservation Commission  
Richland County  
P.O. Box 192  
Columbia, SC 29202

### **30. Grantor's Title Warranty and Mortgages**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except the lien for current ad valorem taxes and hereby promises to defend the same against all claims that any be made against it. Grantor further warrants that all current or future mortgages shall be subservient to the conditions of this easement.

### **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

### **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the environmental viability or sensitivity of the Property or otherwise impair the conservation values of the Property is prohibited, except with the permission of Grantee.

### **33. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

### **34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

### **35. Acceptance**

As attested by the Seal of Richland County and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Granted:

Witness:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Accepted:

Witness:

\_\_\_\_\_

By \_\_\_\_\_  
Richland County Council

Chairman

\_\_\_\_\_

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2009 and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

# Richland County Council Request of Action

## **Subject**

Request to accept a conservation easement donation from Mr. James Mullis for 73 acres in the Twenty-Five Mile Creek Watershed in Northeast Richland County [Pages 26-40]

## **Reviews**

# Richland County Council Request of Action

**Subject:** Conservation Easement

## **A. Purpose**

County council is requested by the Conservation Commission to accept a conservation easement on 73 acres as a donation in northeast Richland County near Blythewood in the Twenty-Five Mile Creek Watershed in order to protect a valuable floodplain, natural resources, water quality, wildlife, and preserve valuable open space.

## **B. Background / Discussion**

James Mullis, 5820 Capitol Way, Salley, SC, 29137 has made a formal application to the Conservation Commission to help protect his valuable natural resources, wetlands, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic beauty. The property is a critical segment of the Twenty-Five Mile Creek Watershed and floodplain which offers a buffer corridor along a critical perennial stream. The Conservation Commission recommends fair compensation for this easement in Richland County. The property faces development pressures to be converted to high density subdivisions. The property is located in County Council District #2. The Mullis Family would like to contribute to a new conservation image for their community and protect this stream corridor. We salute their partnership and conservation values.

## **C. Financial Impact**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits with fair compensation of \$73,000. The Conservation Commission has current funding available for this easement. The appraisal shows a value of \$328,500. The landowner is donating a large percentage of the appraised easement value of which some may be captured by tax incentives. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space in a floodplain area of Broad River.

## **D. Alternatives**

1. **Approve the request** to accept the conservation easement in perpetuity will protect valuable natural resources and preserve green space for all citizens. Accepting this easement benefits our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

**E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement on 73 acres owned by James Mullis.

|   |  |                                  |
|---|--|----------------------------------|
| <b>Recommended by:</b><br><u>Carol Kososki, Chair</u><br><u>Jim Wilson, Program Manager</u> | <b>Department:</b><br><u>Conservation Commission</u><br><u>Richland County</u> | <b>Date:</b><br><u>5-18-2009</u> |
|---|--|----------------------------------|

**F. Reviews**

**Finance**

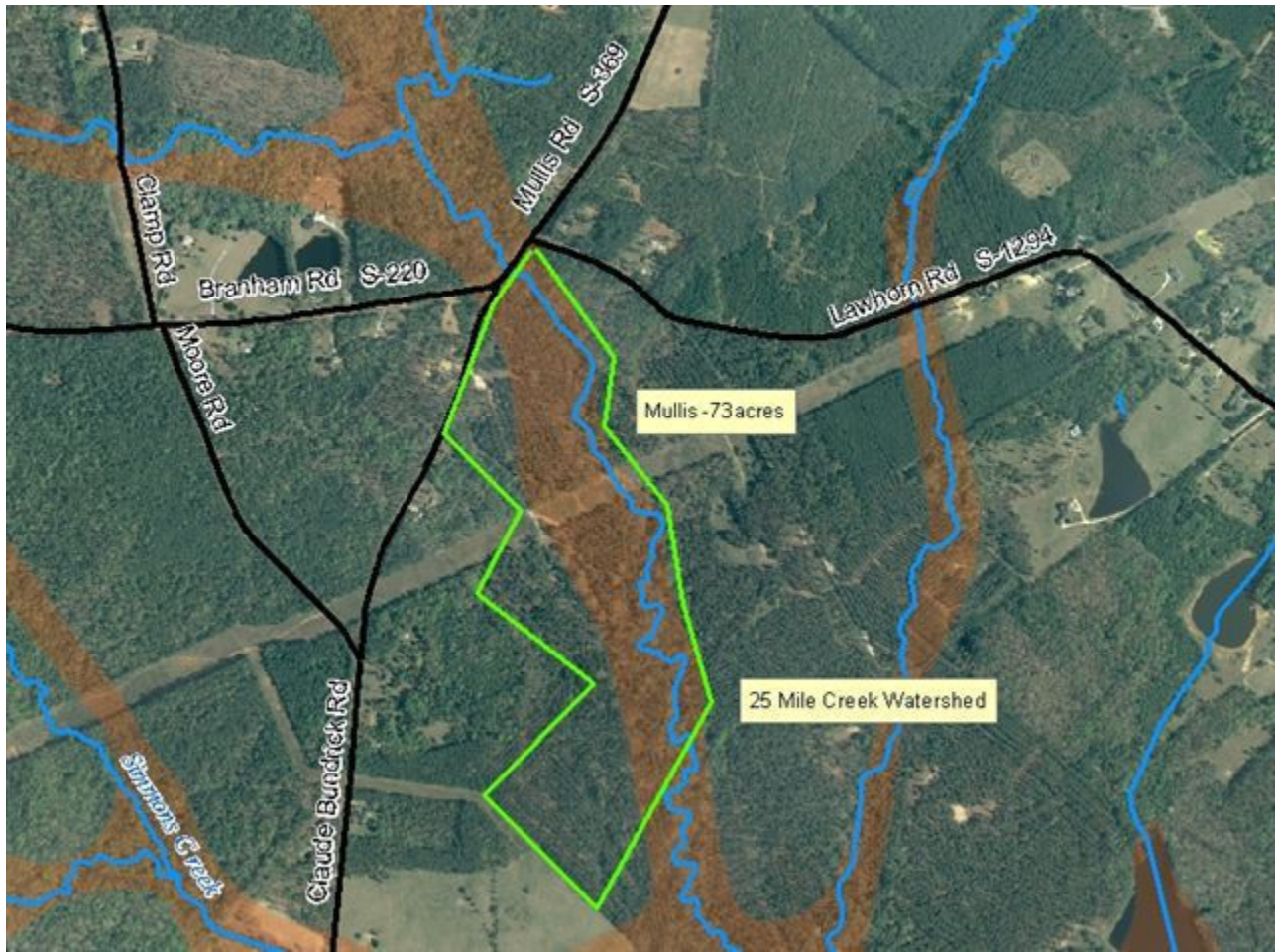
Reviewed by: Daniel Driggers  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:

**Legal**

Reviewed by: Larry Smith  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:

**Administration**

Reviewed by: Sparty Hammett  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:





## CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this 18th day of May 2009, by James K. Mullis, 5820 Capitol Way, Salley, SC 29137 to Richland County, ("Grantee").

### WITNESSETH:

Grantor is the owner of certain real property in Richland County, South Carolina of approximately 92 acres more particularly described on Attachment A.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms is defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses which may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- . The preservation of open space for the scenic enjoyment of the general public.
- . The furtherment of the South Carolina Conservation Easement Act, 27-8-10 et seq authorizes the acquisition of conservation easements by local governments.
- . The fulfillment of the goals of Richland County Town and Country Comprehensive Plan, as adopted in 2003.
- . The fulfillment of the goals of The Richland County Conservation Commission which has identified lands of importance to the community's agricultural heritage as a pressing need.
- . The contribution to the 25 Mile Creek Greenway identified as a policy priority by the Richland County Council as indicated by its adoption in the Greenway Plan for Richland County

The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.

The preservation of water quality related to the provision of buffering the 25 Mile Creek Watershed from development.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, or historic resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Baseline Report prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement. Copies of the Baseline Report on file at the offices of the Grantee

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of \$73,000 and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and section 27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

*Richland County Tax Map Number or more particularly described in Attachment A*

## **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of the nature and character described herein. Grantor will neither perform, nor knowingly allow other to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

## **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation features. No activity which significantly impairs the conservation purpose of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement is consistent with the primary purpose stated above, it is also the

purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and divide the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

### **4. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law.

### **5. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

### **6. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; or firewood distribution.

### **7. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

### **8. Procedure to Construct Building and Other Improvements**

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its record current.

A) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.

B) Existing Agricultural, Recreation or Ancillary Structures & Improvements – Existing agricultural, recreational or ancillary structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown in the Baseline Report.

C) New Ancillary Structures & Improvements – New ancillary building and other structures and improvements to be used primarily for ancillary or agricultural purposes may be built on the Property within the “Developed Area” identified on the Baseline Report. New buildings, structures or improvements proposed for locations outside the “Developed Area” may be built only with the permission of the Grantee.

D) Existing Single-Family Residential Dwellings – All existing single- family residential dwellings may be repaired, reasonably enlarged and replaced at their current locations, which are shown on the Baseline Report.

E) New Single-Family Residential Housing – There may be three (3) new residential dwellings constructed on the Property, provided that no more than one-half acre of land shall be disturbed for this new construction.

F) Recreational Improvements – Recreational improvements may be built within the area identified as “Developed Area” on the Baseline Report. Any new recreational improvements proposed for locations outside the area identified as “Developed area” may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

G) Utility Services and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantee may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

## **9. Maintenance and Improvement of Water Sources**

Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage or agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and are carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Grantee.

## **10. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **11. Subdivision**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels may only be accomplished to create three (3) additional lots, not to exceed two (2) acres, to accomplish the construction of one new residential structure as allowed in section 8(e) above. Upon this subdivision, all provisions of this easement shall apply fully to each newly created lot. Further subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels may only be accomplished to create the additional three (3) lots without the permission of Grantee is prohibited

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes is prohibited. The use of septic tanks for homes on the three permitted lots described in section 11 is specifically allowable.

## **14. Forest Management**

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood for domestic use in dwelling on the Property, for commercial harvesting and for construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees must be in accordance with either the conservation plan referenced in Paragraph 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads and barnyard areas indicated on the Baseline Report, which specifically includes right of ways existing at the time of execution for this document serving home sites on the property, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee.

## **17. Hazardous Waste**

No waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all lose, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) Money damages, including damages for loss of the conservation values protected by this Easement; and

(b) Restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement, provided the transferee expressly agrees to assume the responsibility imposed on Grantor by this Easement.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

### **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

### **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

### **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

### **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

### **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.



## **28. Severability**

Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses or such other addresses as the parties may designate by notice:

To Grantor:

James K. Mullis,  
5820 Capitol Way  
Salley, SC 29137

To Grantee:

Director  
Richland County Conservation Commission  
P.O. Box 918  
Columbia, SC 29201

## **30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except and hereby promises to defend the same against all claims that any be made against it.

## **31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

## **32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise or impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**33. Other Applicable Laws and Regulations**

Nothing in this easement, or its acceptance by Grantee, shall impair or imply the failure of, the application of all applicable land use, environmental, public health or other relative regulations, laws or acts duly enacted by Grantee or other governmental bodies.

**34. Grantor’s Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney’s fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As approved by the Richland County Council and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
James K. Mullis

Accepted:

Witness:

Council Richland County

\_\_\_\_\_

By \_\_\_\_\_

ATTACHMENT A

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of Richland)  
State of South Carolina)

Acknowledgments

County of Richland)  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
and acknowledged that all material statements of fact in fact in the foregoing Deed of Conservation  
Easement are true to the of his/her knowledge and belief, and that the execution of said Deed is  
his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Notary Public (SEAL)  
My commission expires:

# Richland County Council Request of Action

**Subject**

Request to adopt a conservation watershed proposal from the Pebble Creek Community for volunteer land easements in the Pebble Creek Watershed Conservation Area in Northwest Richland County [Pages 42-72]

**Reviews**

# Richland County Council Request of Action

**Subject:** Conservation Easements

## **A. Purpose**

County Council is requested by the Conservation Commission to adopt a conservation watershed proposal for volunteer land easements as a donation in northwest Richland County near the Broad River known as Pebble Creek Watershed Conservation Area in order to protect a valuable floodplains, wetlands, natural resources, water quality, wildlife, and preserve valuable open space.

This pilot watershed project would be an example of community stewardship and partnership with Richland County for conservation.

## **B. Background / Discussion**

The Pebble Creek Community landowners has made a formal application to the Conservation Commission to help protect his valuable natural resources, wetlands, wildlife, and maintain the rural integrity of the landscape. This land is currently managed for timber, wildlife, and scenic beauty in a rural residential area that has a history of land legacy and character. The property is a critical segment of the Wateree Creek floodplain and perennial stream corridor that drains to the Broad River. The Conservation Commission will accept easements for Richland County in this watershed area as donations based on conservation criteria. Currently, ten landowners have requested easement agreements to preserve their conservation values. This area faces development pressures to be converted to high density sub-divisions. The property is located in County Council District #1 where extensive development has already occurred. These landowners would like to contribute to a new conservation image for their community and protect the Broad River Basin. We salute their donation and conservation values.

## **C. Financial Impact- Donation**

The Conservation Commission voted unanimously voted to make this project request to County Council as a private donation for tax benefits only. The landowner is donating a large percentage of the appraised easement value of which some may be captured by tax incentives. The Conservation Commission will not expend any funds for easement compensation. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving wildlife and valuable green space in a floodplain area of Wateree Creek and Broad River Basin.

## **D. Alternatives**

1. **Approve the request** to accept the conservation easements in perpetuity will protect valuable area natural resources and preserve green space for all citizens. Approve this watershed as a conservation area to accept volunteer land easements by the Conservation Commission which will not have to go to County Council on an individual basis.

2. Accepting these easements will benefit our communities and set an example of volunteer partnership with landowners. The county will reduce stormwater runoff, improve water quality, achieve volunteer stream buffers, and enhance wildlife habitat and rural landscapes.
3. Do not approve this request will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

**E. Recommendation**

It is recommended that Council approve the request to accept this conservation easement area known as Pebble Creek Watershed for volunteer land easements.

|                                    |                                |                  |
|------------------------------------|--------------------------------|------------------|
| <b>Recommended by:</b>             | <b>Department:</b>             | <b>Date:</b>     |
| <u>Carol Kososki, Chair</u>        | <u>Conservation Commission</u> | <u>5-18-2009</u> |
| <u>Jim Wilson, Program Manager</u> | <u>Richland County</u>         |                  |

**F. Reviews**

**Finance**

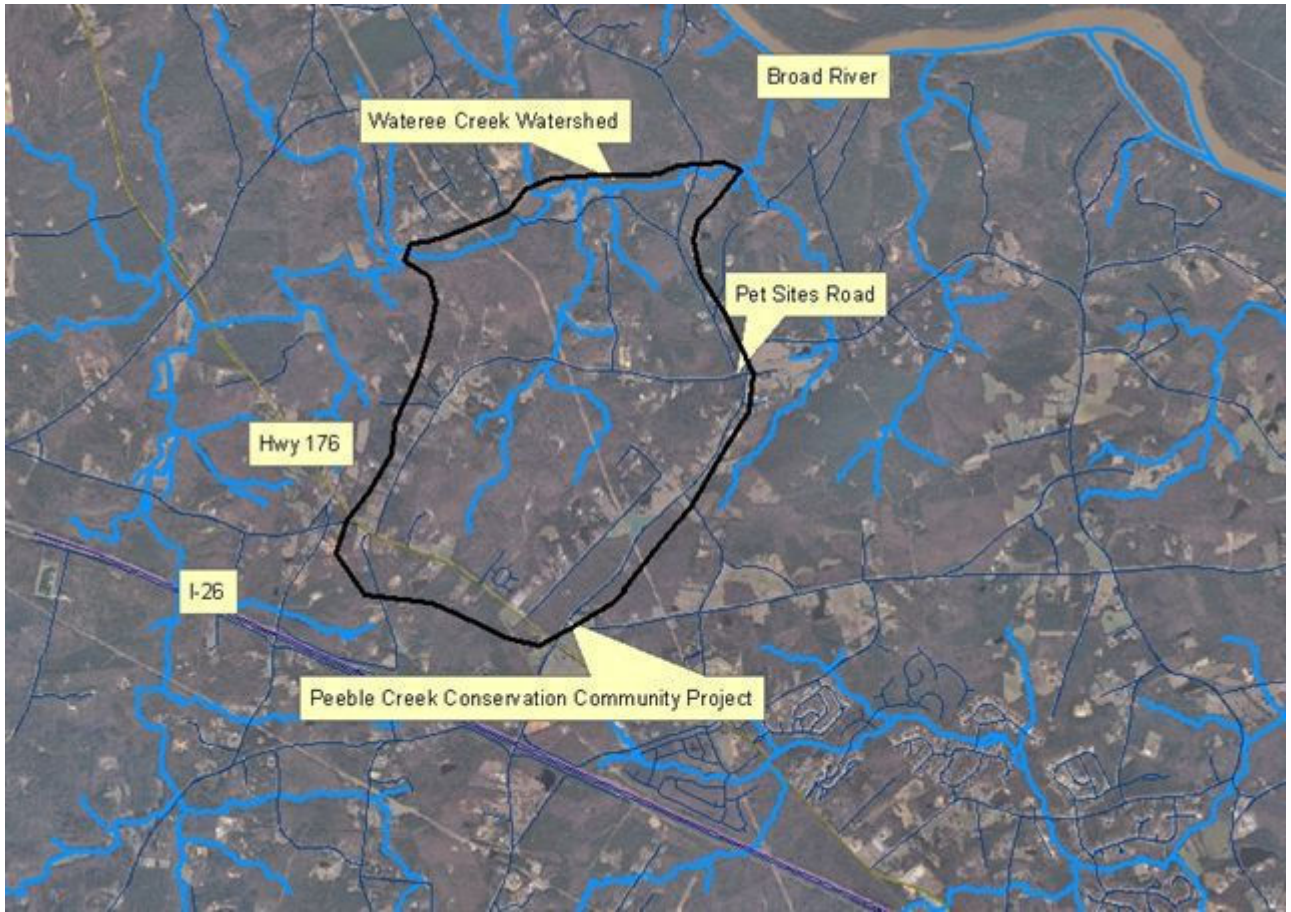
Reviewed by: Daniel Driggers  
 Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
 Comments:

**Legal**

Reviewed by: Larry Smith  
 Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
 Comments:

**Administration**

Reviewed by: Sparty Hammett  
 Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
 Comments:





# PEBBLE CREEK CONSERVATION PLAN

PREPARED BY THE RICHLAND COUNTY CONSERVATION COMMISSION



The Richland County Conservation Commission (RCCC) has identified the Pebble Creek area in northwestern Richland County as a conservation Area in need of concern and protection. Designation as a Conservation Area by the RCCC allows the properties within the boundaries to be given priority for use of the RCCC's resources for protection. The Pebble Creek Conservation Area Plan outlines how these resources shall be used to foster conservation in this area.

The Richland County Conservation Commission was created by County Council in 1998 to focus the community's efforts on natural resource conservation and historic preservation. The RCCC works with landowners, community groups, non-profit organizations and local government to achieve its objectives.

The program is governed by an 11 member Commission appointed by County Council. Members serve three year terms and bring a broad based background and knowledge to its functions.

The RCCC has a number of tools available to achieve its objects. It receives an annual appropriation from Council that allows it to form partnerships with organizations with similar goals. It operates two grant programs: a preservation grant program for historic resources and a community conservation grant program. It also has limited funding to purchase conservation easements in significant properties.

The RCCC offers technical assistance to groups for conservation projects. This Pebble Creek Focus area is the result of this technical assistance program.

## **Objectives of Pebble Creek Community Conservation Area**

The Pebble Creek Conservation Area is designed to:

Protect valuable natural resources such as bottom land forest and vegetation.

Improve water quality of streams by providing a buffer to prevent runoff and erosion and reduce pollutants

Protect ecological systems in the Wateree Creek Watershed by providing for proper hydrological function.

Preserve historic and archeological features associated with the history of Richland County, South Carolina.

Protect existing community green space and trees by providing incentives to landowners to keep vegetation.

Maintain rural scenic vistas and beautification by ensuring development consistent with the rural character and natural beauty of Northwest Richland County

Reduce land clearing and disturbance activities associated with development through partnerships.

Improve county wide recreation by providing corridors for greenways and access greenways and by improving the esthetics associated with these community efforts.

Support the Richland County Comprehensive Plan which promotes growth consistent with the natural beauty and community character of Richland County.



Rural landscapes, scenic road vistas, and family legacy





Stream corridors, natural forest buffers, and wildlife habitat

## AVAILABLE CONSERVATION TOOLS

The RCCC has identified the following tools to achieve its objectives for the Pebble Creek Conservation Area.

1. Technical Assistance – RCCC staff will offer technical assistance to landowners interested in pursuing the goals of this conservation area.
2. Conservation Easements – The RCCC will assist in the preparation of and will accept valid conservation easements from landowners that further the objectives of the Conservation area. A model conservation easement encouraged for use by Pebble Creek Conservation land owners is included as Attachment B.
3. Identification – The RCCC will recognize the area as a conservation priority which will assist in the regulation and protection of its resources.

THE RCCC ranks properties it considers allocating resources to according to a matrix developed by the staff. The Pebble Creek Conservation Area was subjected to his ranking and received a value of 35. The ranking sheet is included as Attachment C.

## THE PEBBLE CREEK CONSERVATION AREA

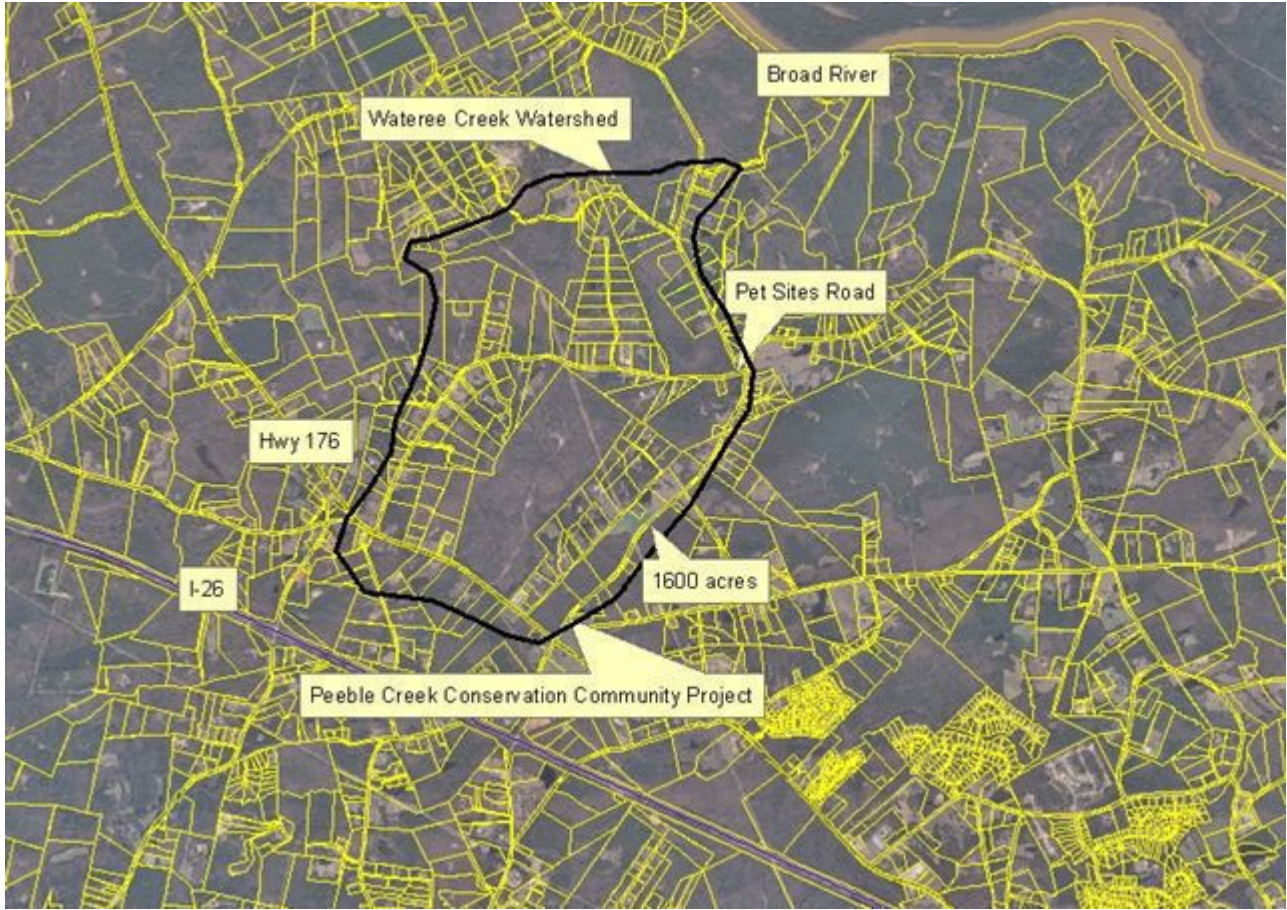
The Pebble Creek Conservation Area is located in northwestern Richland County. This is a fast growing area which was formerly a location of farms and rural lifestyles.

The area is within County District One and is represented on Council by Councilman Bill Malinowski. Managing growth and protecting the areas natural beauty has been a focus for the community for the past several years.

The area is best identified by three features:

- 1) Its relationship to the Broad River and the Wateree Creek Watershed.
- 2) The rolling topography and the remaining evidence of the traditional agricultural history of the area. A map indicating the topography is included.
- 3) The rapid growth of traditional subdivision development, which takes advantage of easy access to the employment base in Columbia via (I-26 and the availability of open land.





**Land Use Patterns in the Conservation Area**

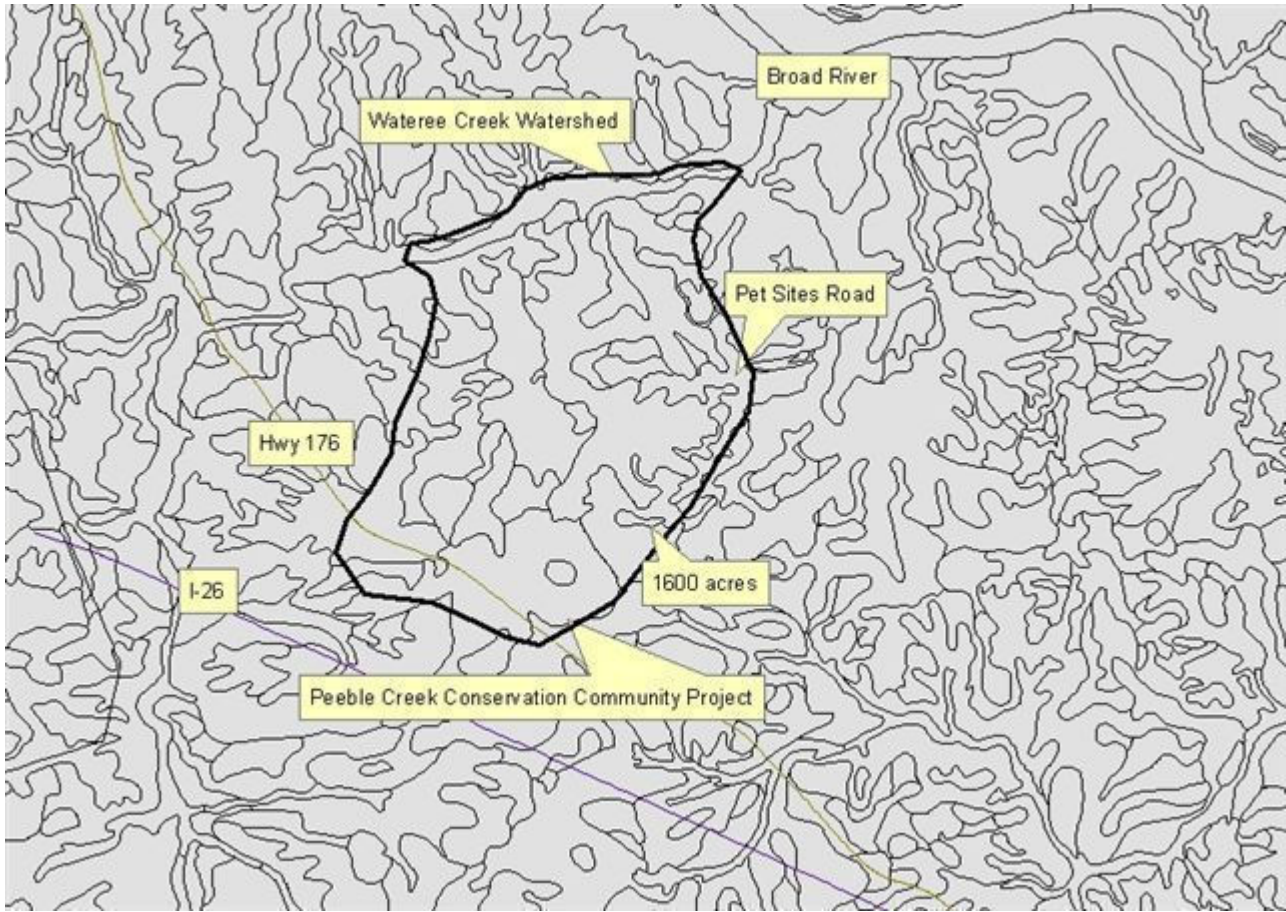


## **SOIL TYPES**

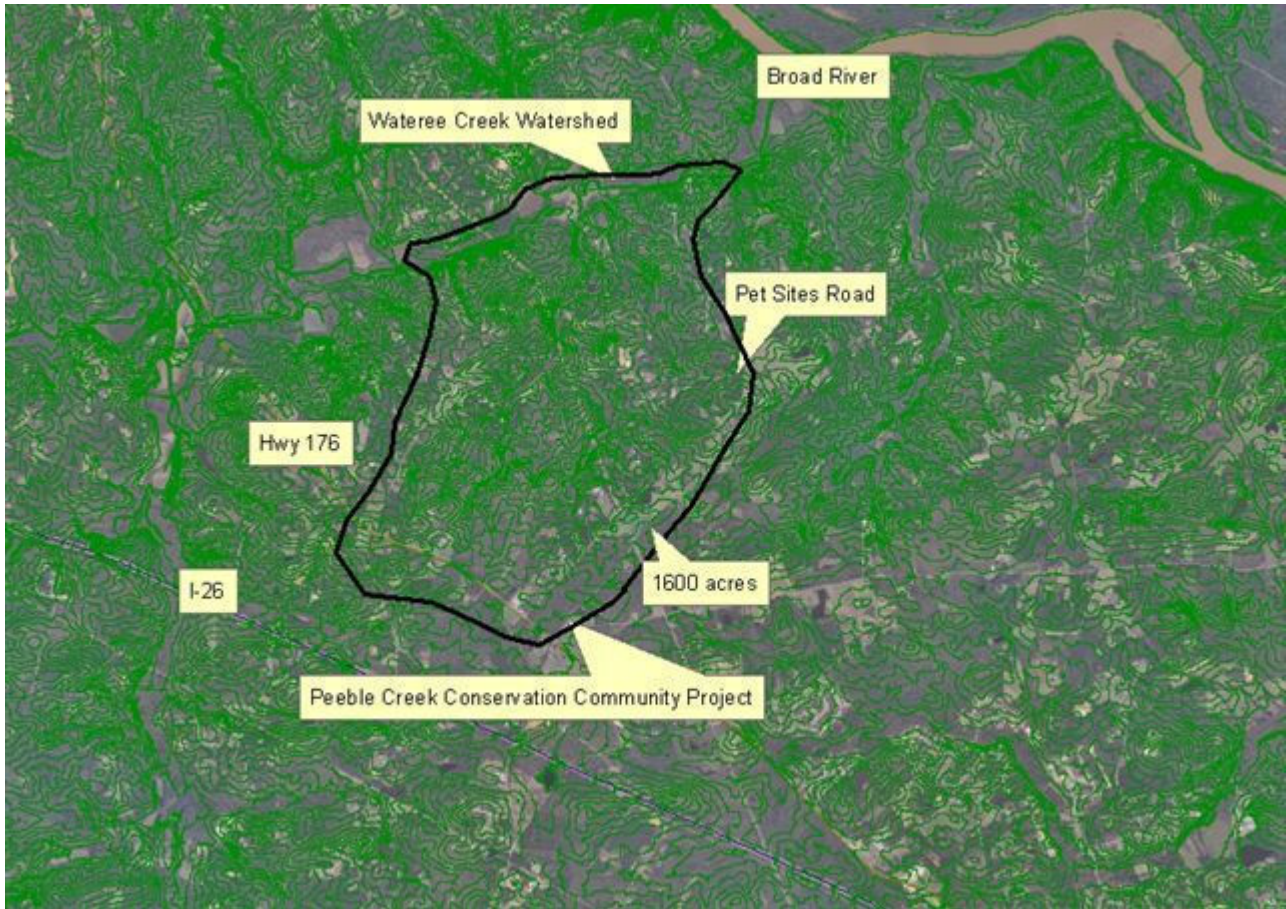
There are two primary soil types found in the study area: Nason and Georgeville.

Nason soils are nominally found in a setting of Hill slopes, with a slope of 6-10%. They are well drained with non frequency of flooding.

Georgeville (GeB) are silt loam Soils, 2 to 6 % slopes. They found on uplands with a slope of 2-6%. They are well drained with little flooding.

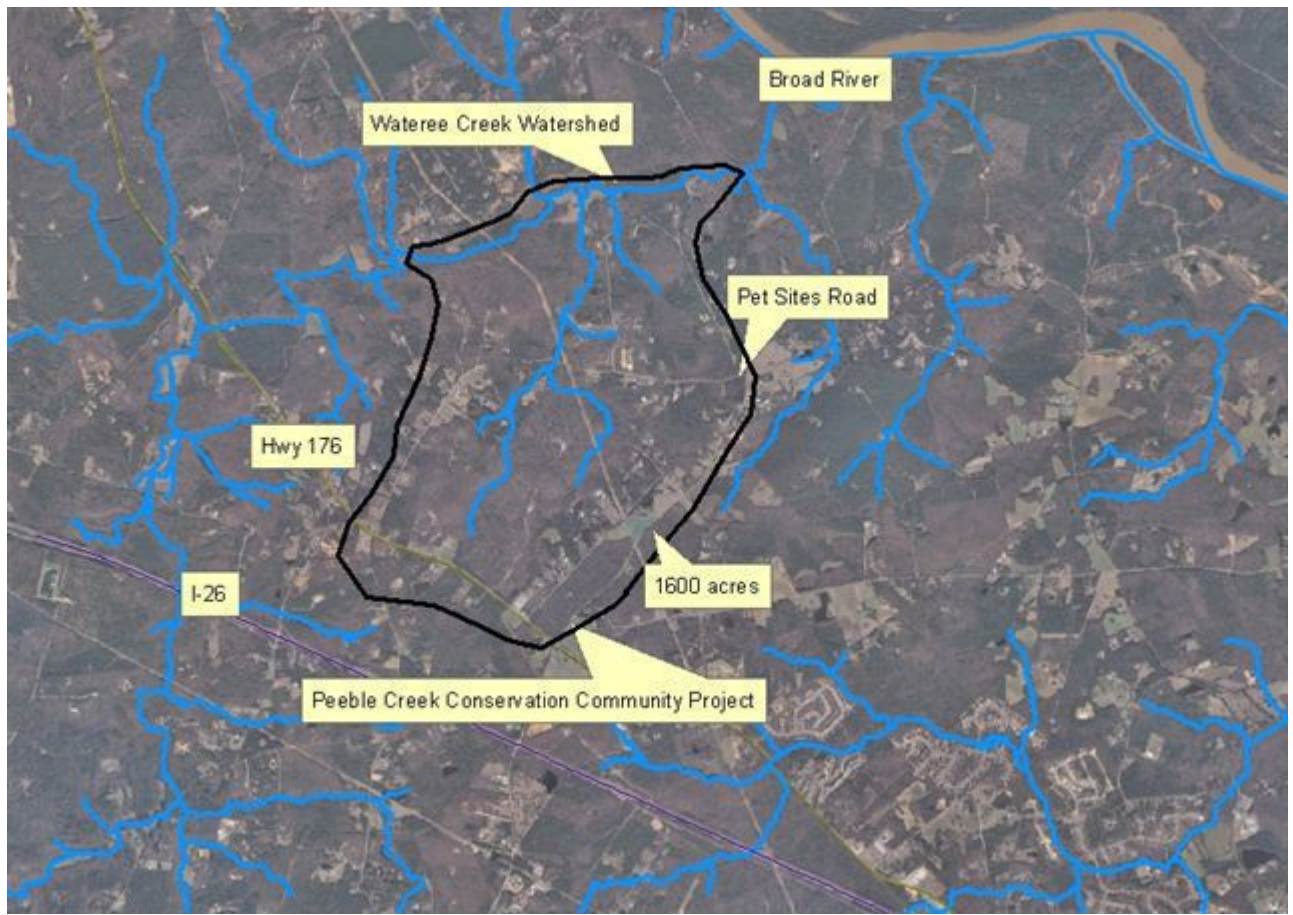


**Soils in the Conservation Area**

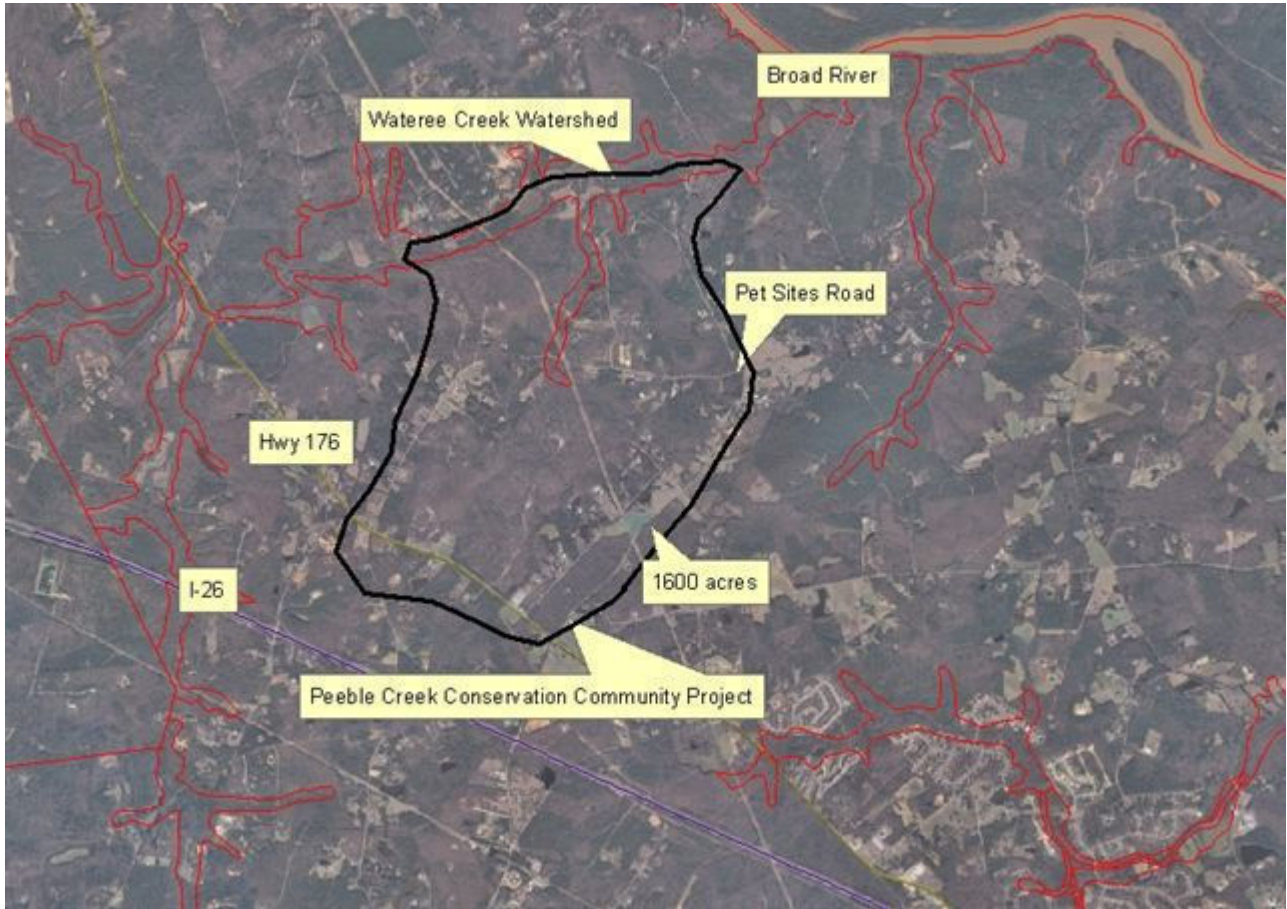


**Topography of the Conservation Area**





**Streams in the Conservation Area**



**Flood Zones in the Conservation Area**

## Appendix A

### Pebble Creek Community Conservation Project

Several landowners have indicated an interest of conserving their property. The following is an initial list of landowners for conservation donations:

1. Mike Kilpatrick
2. Mike Neal
3. Ted Borg
4. Maurine Hightower
5. Debbie Wooster
6. Billy DuRant
7. Donald Mattox
8. Bob Strickland
9. Blair Wilson
10. Gary Atkinson

## APPENDIX B

Draft: For Discussion only  
Richland/Conservation Commission/Easement/Atkinson (1)  
Friday, June 19, 2009

### CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") granted this 18 day of May, 2009, by \_\_\_\_\_ having an address as, Irmo, South Carolina, 29036, to Richland County, ("Grantee").

#### WITNESSETH:

Grantor is the owner of certain real property in Richland County, South Carolina known as \_\_\_\_\_ more particularly described on Attachment A.

Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a) (2) of the Code. Grantee is a "qualified organization," as such terms is defined in Section 170(h) (3) of the Code, and is qualified to hold conservation easements under the laws of the State of South Carolina.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the uses which may be made of the Property.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h) (4) (A) of the Code:

- . The preservation of open space for the scenic enjoyment of the general public. The property fronts historic U.S. Highway \_\_\_\_\_. The traveling public can continue to enjoy the historic agricultural buildings and livestock in their historic state.
- . The furtherment of the South Carolina Conservation Easement Act, 27-8-10 et seq authorizes the acquisition of conservation easements by local governments;
- . The fulfillment of the goals of Richland County Town and Country Comprehensive Plan, as adopted in 2003, including the protection of quality of life which this easement fulfills by providing an undeveloped buffer to a traditional communities of the County.
- . The fulfillment of the goals of The Richland County Conservation Commission which has identified lands of importance to the community's continued high water quality as a pressing need, with the preservation of this land on Wateree Creek will help to fulfill.
- . The preservation of land of historic importance to Richland County because of its relationship to the agrarian past and historic development of the community.

The current use of the Property and its current improvements are consistent with the conservation purposes of this Easement. The agricultural, natural habitat, scenic, open space, or historic

resources of the Property are collectively referred to herein as the “conservation values” of the Property.

The conservation values of the Property and its current use and state of improvement are described in a Baseline Report prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement. Copies of the Baseline Report on file at the offices of the Grantee

Grantor intends that the conservation values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

THEREFORE, in consideration of One (1) dollar and no cents and other good and valuable consideration, receipt of which is hereby acknowledged, pursuant to Section 170(h) of the Code and section 27-8-10 et seq. of South Carolina Code of Laws of 1976, as amended; Grantor does hereby voluntarily grant and convey unto the Grantee, a preservation and conservation easement in gross in perpetuity over the Protected Property, owned by the Grantor, and more particularly described as:

*Richland County Tax Map Number or more particularly in Attachment A*

### **1. Grant of Conservation Easement**

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the South Carolina Conservation Easement Act of the nature and character described herein. Grantor will neither perform, nor knowingly allow other to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

### **2. Statement of Purpose**

The primary purpose of this Easement is to enable the Property to remain in traditional use by preserving and protecting its rural nature and other conservation features. No activity which significantly impairs the conservation purpose of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement is consistent with the primary purpose stated above, it is also the purpose of this Easement to protect those values, and no activity which shall significantly impair those values shall be permitted.

### **3. Rights and Responsibilities Retained by Grantor**

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and divide the Property, as well as any other rights consistent with the conservation values of the Property and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement



shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation in respect to the Property or restriction in the use of the Property imposed by law.

#### **4. Rights to Use Property for Traditional Purposes**

Grantor retains the right to use the Property for traditional agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law.

#### **5. Right to Privacy**

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

#### **6. Right to Use the Property for Customary Rural Enterprises**

Grantor retains the rights to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; or firewood distribution.

#### **7. Permission of Grantee**

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the conservation values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

## **8. Procedure to Construct Building and Other Improvements**

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction, or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Grantee to keep its record current.

A) Fences – Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.

B) Existing Agricultural, Recreation or Ancillary Structures & Improvements – Existing agricultural, recreational or ancillary structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, which are shown in the Baseline Report.

C) New Ancillary Structures & Improvements – New ancillary building and other structures and improvements to be used primarily for ancillary or agricultural purposes may be built on the Property within the “Developed Area” identified on the Baseline Report. New buildings, structures or improvements proposed for locations outside the “Developed Area” may be built only with the permission of the Grantee.

D) Existing Single-Family Residential Dwellings – The existing “historic homestead” residential dwellings may be repaired, reasonably enlarged and replaced at its current location, which is shown on the Baseline Report. There may be no new residential dwellings constructed on the Property.

F) Recreational Improvements – Recreational improvements may be built within the area identified as “Developed Area” on the Baseline Report. Any new recreational improvements proposed for locations outside the area identified as “Developed area” may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

G) Utility Services and Septic Systems – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantee may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

## **9. Maintenance and Improvement of Water Sources**

Grantor maintains the rights to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage or agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Grantee.

## **10. Water Rights**

Grantor retains and reserves the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantor shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

## **11. Subdivision**

The Property is currently comprised of the parcel shown on Attachment A, which is all contained on one tax map. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels is prohibited

## **12. Conservation Practices**

All agricultural or timbering operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional approved by Grantee. This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changed or ownership of the Property changes. All agricultural operations shall be conducted in accordance with applicable law.

## **13. Application of Waste Materials**

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes is prohibited.

## **14. Forest Management**

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood for domestic use in dwelling on the Property, for commercial harvesting and for construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees must be in accordance with either the conservation plan referenced in Paragraph 12 above or a forest management plan prepared by a qualified professional forester.

## **15. Mining**

Exploration for, or development and extraction of, minerals and hydrocarbons from the Property by any method are prohibited.

## **16. Paving and Road Construction**

Construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the permission of Grantee

## **17. Hazardous Waste**

No waste, or radioactive or hazardous waste, shall be placed, stored, dumped, buried, or permitted to remain on the Property.

## **18. Ongoing Responsibilities of Grantor and Grantee**

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any other way affect any obligations of Grantor as owner of the Property, including but not limited to, the following:

(a) Taxes – Grantor shall be solely responsibility for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance – Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification – Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all lose, cost, claim, liability, or expense (including reasonable attorneys' fee) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

## **19. Extinguishment of Development Rights**

Except as otherwise reserved to the Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.

## **20. Enforcement**

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the conservation values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) money damages, including damages for loss of the conservation values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limiting to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

## **21. Transfer of Easement**

Grantee shall have, with the permission of the Grantor, the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under the S.C. Conservation Easement, provided the transferee expressly agrees to assume the responsibility imposed on Grantor by this Easement. Grantor shall not unreasonably withhold approval of such a transfer.

## **22. Transfer of Property**

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

## **23. Amendment of Easement**

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Statement of Purpose of this Easement and with Grantee's easement amendment policies, and shall comply with Section 170(h) of the Code or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with all applicable state statutes or any regulations promulgated pursuant to that law. Any such amendment shall be duly recorded.

## **24. Extinguishment**

If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to a portion of the proceeds from any subsequent sale or other disposition of the Property, calculated in accordance with Paragraph 25 below. Grantee shall use its portion of said proceeds in a manner consistent with the general conservation purposes of this Easement.

## **25. Proceeds**

The donation of this Easement gives rise to a property right, immediately vested in Grantee which, for purposes of calculating proceeds from a sale or other disposition of the Property as contemplated under Paragraph 24 above, shall have a value equal to a percentage (the "Proportionate Share") of the value of the Property unencumbered by this Easement. The Proportionate Share shall be determined by dividing the value of this Easement, calculated as of the date hereof, by the unencumbered value of the Property, also calculated as of the date hereof. The Proportionate Share shall remain constant.

Unless state law provides otherwise, if this Easement is terminated and the Property is subsequently sold, exchanged, or taken in condemnation then, as required by Treas. Reg. Sec. 1.170A-14(g)(6), Grantor shall be entitled to a portion of the proceeds from the sale, exchange or condemnation equal to the Proportionate Share.

All expenses related to the termination of this Easement shall be paid out of any recovered proceeds prior to distribution of the net proceeds as provided above.

## **26. Interpretation**

This Easement shall be interpreted under the laws of the State of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## **27. Successors**

Every provision of this Easement that applies to Grantor and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.

## **28. Severability**

Invalidation of any of the covenants, terms or conditions of this Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

## **29. Notices**

Any notices required by this Easement shall in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, or such other addresses as the parties may designate by notice:

To Grantor:

\_\_\_\_\_

Irmo, SC 29063

To Grantee:

Director

Richland County Conservation Commission  
P.O. Box 918  
Columbia, SC 29201

**30. Grantor's Title Warranty**

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except and hereby promises to defend the same against all claims that any be made against it.

**31. Subsequent Liens on Property**

No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

**32. Subsequent Encumbrances**

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise or impair the conservation values of the Property is prohibited, except with the permission of Grantee.

**33. Other Applicable Laws and Regulations**

Nothing in this easement, or its acceptance by Grantee, shall impair or imply the failure of, the application of all applicable land use, environmental, public health or other relative regulations, laws or acts duly enacted by Grantee or other governmental bodies.

**34. Grantor’s Environmental Warranty**

Grantor warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney’s fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.

**34. Perpetuation of Easement**

Except as expressly otherwise provided herein, this Easement shall be of perpetual duration, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Property now or hereafter held by Grantee.

**35. Acceptance**

As approved by the Richland County Council and the signature of its Chairman affixed hereto, Grantee hereby accepts the rights and responsibilities conveyed by this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to be legally bound hereby, have hereunto set their hands on the date first above written.

REMAINDER OF THIS PAGE LEFT BLANK



Witness:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
LAND OWNER

Accepted:

Witness:

\_\_\_\_\_

Council Richland County

By \_\_\_\_\_

Acknowledgments

County of Richland  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, and acknowledged that all material statements of fact in the foregoing Deed of Conservation Easement are true to the best of his/her knowledge and belief, and that the execution of said Deed of Conservation Easement is his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

County of Richland)  
State of South Carolina)

Acknowledgments

County of Richland)  
State of South Carolina,

Personally appeared before me \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
and acknowledged that all material statements of fact in fact in the foregoing Deed of Conservation  
Easement are true to the of his/her knowledge and belief, and that the execution of said Deed is  
his/her free act and deed.

\_\_\_\_\_  
Notary Public (SEAL)  
My commission expires:

Notary Public (SEAL)  
My commission expires:



# Richland County Council Request of Action

## **Subject**

Request to accept 3 acres of conservation property in the Broad River Watershed as a fee simple title donation from Mr. Scott Baker [Pages 74-76]

## **Reviews**

# Richland County Council Request of Action

**Subject:** Conservation Easement

## **A. Purpose**

County Council is requested by the Conservation Commission to accept 3 acres of conservation property in the Broad River Watershed as a fee simple title donation from Mr. Scott Baker in Richland County in order to protect valuable natural resources, floodplains, water quality, and preserve valuable open space. This property could serve as a community park and green space near the Hyatt Park Community off Westwood Avenue.

## **B. Background / Discussion**

Mr. Scott Baker with Insite Development, LLC, 111 Executive Center Drive, Columbia, SC 29210, has made a formal application to the Conservation Commission to donate valuable property for conservation purposes, natural resources, wildlife, and maintain the rural integrity of the landscape. This land is currently used for forestry, wildlife, and scenic beauty. The property is a critical drainage segment of the Broad River Watershed. The property faces development pressures to be converted to high density home units. The property is located in County Council District #4. We salute their donation and conservation values.

## **C. Financial Impact- Donation**

The Conservation Commission voted unanimously to make this easement request to County Council as a private donation for tax benefits only. The landowner is donating a large percentage of the appraised easement value of which some may be captured by tax incentives. No Commission funds will be used for property compensation. We consider this agreement to be beneficial to both parties and it meets the goals of Richland County in a true volunteer partnership. The indirect benefits and cost to Richland County will be less storm water issues, improved water quality, and preserving floodplains, wildlife and valuable green space.

## **D. Alternatives**

1. **Approve the request** to accept this property that will protect valuable natural resources and preserve green space for all citizens. Accepting this property provides benefits to our communities and sets an example of volunteer partnership with landowners.
2. Do not approve will allow high density development, reduce green space, remove wildlife habitat, and change our rural landscape character forever.

## **E. Recommendation**

It is recommended that Council approve the request to accept this conservation property of 3 acres owned by Insite Development, LLC.

**Recommended by:**  
Carol Kososki, Chair  
Jim Wilson, Program Manager

**Department:**  
Conservation Commission  
Richland County

**Date:**  
5-18-2009

**F. Reviews**

**Finance**

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Administration**

Reviewed by: Sparty Hammett

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:







# Richland County Council Request of Action

**Subject**

Request to authorize the County Administrator to negotiate and enter into a lease agreement with Hansel Carter for the use of property located at 10531 Garners Ferry Road for the Lower Richland drop off facility [Pages 78-79]

**Reviews**

## Richland County Council Request of Action

**Subject:** Lease agreement for the Lower Richland drop off site

### A. Purpose

County Council is requested to authorize County Administration to negotiate and enter into a 10 year Lease agreement with Hansel Carter for the use of the property located at 10531 Garners Ferry Road. This 1.3 acres of property is the current location of the Lower Richland drop off site.

### B. Background / Discussion

- This is the current location of the Lower Richland drop off facility
- The Lower Richland Drop off site has been located at this site for many years

### C. Financial Impact

Funds for the lease of this property are budgeted yearly and expenditure of these funds does not create an adverse effect on the solid waste budget.

### D. Alternatives

1. Approve lease
2. Locate and purchase of similar type property in the lower Richland area
3. Do not approve

### E. Recommendation

It is recommended that County Council approve the request to allow Administration to negotiate and enter into a 10 year lease agreement with Hansel Carter, owner of the 1.3 acres of property that is the current location of the Lower Richland drop off site.

**Recommended by:**  
Paul F. Alcantar

**Department:**  
Solid Waste

**Date:**  
06/05/2009

### F. Reviews

#### Finance

Reviewed by: Daniel Driggers

Date:

- Recommend Approval  
 Recommend Denial  
 No Recommendation

Comments: Recommendation contingent upon budget approval

#### Legal

Item# 7

Attachment number 1  
Page 1 of 2

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: Recommend that the lease periods be in five year increments, consistent with our procurement code.

**Administration**

Reviewed by: Tony McDonald

Date: 6/16/09

Recommend Approval

Recommend Denial

No Recommendation

Comments: Concur with the County Attorney's comments regarding the term of the lease.

# Richland County Council Request of Action

**Subject**

Request to authorize the Procurement Department to award and enter into a contract with ASI for the transportation of C&D waste materials and other items collected at the Lower Richland Drop-off Site to an approved C&D facility [Pages 81-82]

**Reviews**

# Richland County Council Request of Action

**Subject:** Solid Waste Transportation Contract

## A. Purpose

County Council is requested to authorize the Procurement Department to award and enter into a Contract with ASI for the transportation services of C&D waste materials and other items collected at the Lower Richland Drop-off Site to an approved C&D facility.

## B. Background / Discussion

- The hauling contract with the current vendor for the county landfill patron area containers and Lower Richland Drop-off Site containers expires July 1, 2009. Richland County does not have the equipment to haul the debris from the sites so services must be procured.
- The request to put the transportation contract out to bid was sent to procurement in October 2008. The proposals have been received and negotiations for best value have been completed with ASI being the successful proposer.

## C. Financial Impact

The Solid Waste Division is an enterprise fund. Funds are projected and included with this year's request.

## D. Alternatives

1. Approve the request to...authorize the procurement department to award and enter into a contract with ASI for transportation services of C & D materials to a permitted C&D Facility
2. Do not approve and allow to discontinue.

## E. Recommendation

It is recommended that Council approve the Procurement Department to award and enter into a contract with ASI for transportation services of C&D materials.

**Recommended by:** Paul Alcantar

**Department:** Solid Waste

**Date:** 06/05/09

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: Recommendation contingent upon budget approval

**Procurement**

Reviewed by: Rodolfo Callwood

Date: 6/15/09

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Administration**

Reviewed by: Tony McDonald

Date: 6/16/09

Recommend Approval

Recommend Denial

No Recommendation

Comments:

# Richland County Council Request of Action

**Subject**

An ordinance amending the Richland County Code of Ordinances, Chapter 6, Buildings and building regulations; Article III, Building codes, Section 6-82 (A); so as to adopt the 2006 Edition of the International Residential Code [Pages 84-87]

**Reviews**

## Richland County Council Request of Action

**Subject:** Adoption of the 2006 edition of the International Residential Code.

### A. Purpose

To adopt the 2006 edition of the International Residential Code as the standard for all residential construction.

### B. Background/Discussion

The Building Codes and Inspections Department is currently enforcing the 2003 International Residential Code for all one- and two-family dwelling structures.

State Law enables the South Carolina Building Codes Council to regulate the adoption and enforcement of building codes in the state of South Carolina. The Building Codes Council has mandated that the 2006 International Residential Code be adopted by July 1, 2009. In order to be in compliance with the S.C. Building Codes Council's mandate and to ensure that the most current code series is being enforced, the 2006 International Residential Code should be adopted.

In addition, staff recommends that Chapter 1 (Administration) also be adopted.

### C. Financial Impact

There is no financial impact associated with this request.

### D. Alternatives

- 1.) To continue to enforce the outdated 2003 International Residential Code – in violation of the S.C. Building Codes Council's mandate.
- 2.) To amend Section 6-82 (a) of the Richland Council Code of Ordinances to adopt the 2006 International Residential Code.

### E. Recommendation

It is recommended that County Council adopt the 2006 International Residential Code for all one- and two-family construction so that the most current codes can be enforced in Richland County, as well as to ensure compliance with the mandate of the S.C. Building Codes Council.

**Recommended by:** Donny Phipps      **Department:** Building Codes and Inspections      **Date:** 6/1/09

### F. Reviews

#### Finance

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Item# 9

Attachment number 1  
Page 1 of 4



- Recommend Denial
  - No Recommendation
- Comments:

**Legal**

- Reviewed by: Larry Smith  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:

**Administration**

- Reviewed by: Sparty Hammett  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-09HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS; ARTICLE III, BUILDING CODES, SECTION 6-82 (A); SO AS TO ADOPT THE 2006 EDITION OF THE INTERNATIONAL RESIDENTIAL CODE.

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE COUNTY COUNCIL FOR RICHLAND COUNTY:

SECTION I. The Richland County Code of Ordinances, Chapter 6, Buildings and Building Regulations; Article III, Building Codes; Section 6-82, Adopted; Paragraph (a); is hereby amended to read as follows:

(a) There is hereby adopted by the County Council the 2006 International Residential Code, including Chapter 1 (Administration), and all amendments thereto, as published by the International Code Council, Inc. The construction, alteration, repair, or demolition of every one- and two- family dwelling structure and accessory structures shall conform to the requirements of this Code.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be effective from and after July 1, 2009.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_ DAY  
OF \_\_\_\_\_, 2009

\_\_\_\_\_  
Michielle R. Cannon-Finch

Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: July 7, 2009 (tentative)  
Public Hearing:  
Second Reading:  
Third Reading:

# Richland County Council Request of Action

## **Subject**

Council Motion (Jackson): An ordinance amending the Richland County Code of Ordinances; Chapter 26, Land development; Section 26-54, Subdivision review and approval; so as to require that the delineation of any and/or all flood lines on plats that are submitted pursuant to this section; and to amend section 26-105, FP Floodplain Overlay District; Subsection (B), Applicability/Establishment; so as to delete specific reference to areas along the Congaree River [Pages 89-92]

## **Reviews**

## Richland County Council Request for Action

**Subject:** Ordinance requiring plats to show contour lines of flood areas

### **A. Purpose**

County Council is requested to consider an Ordinance to amend the Richland County Code of Ordinances; Chapter 26, Land Development; Section 26-54, Subdivision Review and Approval; so as to require the delineation of any and/or all flood lines on plats that are submitted.

### **B. Background / Discussion**

Currently, the Land Development Code does not require sketch plans and plats to show contour delineation of any and/or of all flood areas as shown on the County's Flood Insurance Rate maps. As a result, citizens sometimes purchase property without the knowledge that there are potential flood concerns. This results in additional survey expense to the citizen when the County's flood information indicates floodplain is shown on the property during the permitting process.

On May 19, 2009, the following motion was made by Councilman Jackson to address this concern. "An approved subdivision plat by Richland County should not require additional survey or engineering. Once a plat is approved by the County's Planning Department, it is unfair for a citizen who purchase a lot to be told by the County that they are not sure the approved plat is accurate therefore the new owner should spend additional funds proving it's accuracy. Anything approved by this County should be final as the citizens are not experts and looks to the department for professionalism. Plats submitted by engineers and architects bearing their seal is sufficient unless challenged by another registered professional engineer or architect."

An ordinance was drafted to address this change, and is scheduled on the July Planning Commission agenda. A copy of the proposed ordinance is attached for Council's consideration.

### **C. Financial Impact**

No financial impact.

### **D. Alternatives**

1. Approve the amended language to the Land Development Code, and forward it to the Planning Commission for their recommendation.
2. Do not approve and leave existing language "as is".

### **E. Recommendation**

This request is at Council's discretion.

**Recommended by:** Norman Jackson **Department:** County Council **Date:** May 19, 2009

## F. Reviews

### Planning

Reviewed by: Joe Kocy

Date: June 15, 2009

Recommend Approval

Recommend Denial

No Recommendation

Comments: Requiring elevation contours and floodplain delineations on subdivisions provide necessary information to citizens buying property, educating customers on potential problems before they purchase property.

### Finance

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

### Legal

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

### Administration

Reviewed by: Sparty Hammett

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_-09HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 26, LAND DEVELOPMENT; SECTION 26-54, SUBDIVISION REVIEW AND APPROVAL; SO AS TO REQUIRE THE DELINEATION OF ANY AND/OR ALL FLOOD LINES ON PLATS THAT ARE SUBMITTED PURSUANT TO THIS SECTION; AND TO AMEND SECTION 26-105, FP FLOODPLAIN OVERLAY DISTRICT; SUBSECTION (B), APPLICABILITY/ESTABLISHMENT; SO AS TO DELETE SPECIFIC REFERENCE TO AREAS ALONG THE CONGAREE RIVER.

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ENACTED BY THE RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances, Chapter 26, Land Development; Article IV, Amendments and Procedures; Section 26-54, Subdivision Review and Approval; Subsection (b), Processes; is hereby reordered to read as Subsection (c), Processes; and a new subsection (b) shall read as follows:

(b) *Sketch plans and plats to show contour lines of flood areas.* All sketch plans and plats submitted for approval pursuant to this section shall be prepared by a licensed surveyor and shall contain a contour delineation of any and/or all flood areas, as shown on the County's Flood Insurance Rate maps [see Section 26-105 (b)] for each lot indicated on such plat.

SECTION II. The Richland County Code of Ordinances, Chapter 26, Land Development; Article V, Zoning Districts and District Standards; Section 26-105, FP Floodplain Overlay District; Subsection (b), Applicability/Establishment; is hereby amended to read as follows:

- (b) *Applicability/establishment.* The FP Overlay District shall function as an overlay district providing additional requirements to the regulations of the underlying general use zoning classification(s). It shall be applied to those areas designated on the Federal Emergency Management Agency's Flood Insurance Study, dated February 20, 2002, with accompanying Flood Insurance Rate Maps (FIRM), dated February 20, 2002, as areas of special flood hazard. ~~Provided, however, those base flood elevation determinations that were included in the Federal Emergency Management Agency's Flood Insurance Study, dated July 17, 1995, shall apply along the Congaree River only. Floodplain and floodway boundary determinations along the Congaree River will be based on those boundaries depicted in the FIRM dated February 20, 2002, derived from the Federal Emergency Management Agency's Flood Insurance Study, dated February 20, 2002.~~ In addition to other required development approvals, development applicants subject to the FP Overlay District must also receive a floodplain development permit from the county's flood coordinator. Review of developments subject to these requirements shall be conducted as part of

the review for a grading or land development permit, whichever is applicable.

SECTION III. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION IV. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION V. Effective Date. This ordinance shall be effective from and after \_\_\_\_\_, 2009.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2009.

\_\_\_\_\_  
**Michelle R. Cannon-Finch**  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

Public Hearing:  
First Reading:  
Second Reading:  
Third Reading:



# Richland County Council Request of Action

## **Subject**

Request to authorize staff to negotiate a contract with the M.B. Kahn Team for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex [Pages 94-96]

## **Reviews**

## Richland County Council Request of Action

**Subject:** Contract Negotiation: Richland County Recreation / Entertainment Complex

### **A. Purpose**

The purpose of this report is to obtain Council's approval to authorize staff to negotiate the contract for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex with the M.B. Kahn Team.

### **B. Background / Discussion**

The Hospitality Tax Ordinance authorizes the development of a 'recreation facility in northern Richland County' that should attract regional visitors. The site, containing approximately 206 acres, for this facility was purchased on June 15, 2006.

A lengthy process was undertaken to determine appropriate uses for the facility. Regional and county-wide surveys were created, distributed, and analyzed; a financial analysis was completed; and a preliminary master plan, based on the results of the surveys and financial analysis, was created.

After the aforementioned activities were completed, an RFP for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex was created. The RFP, which is the final step towards the creation of the Recreation / Entertainment Complex, stressed the desire for a public-private partnership, as well as bold, innovative, creative ideas that would promote and garner tourism for this proposed project. The RFP stated that the County "envisions a unique, innovative, world-class modern facility that will bring in tourists from across the region, as well as the nation. Richland County would like to be the number one destination point for regional and national tournaments in numerous sports."

Part One of the RFP required submitters to present their Management Summary, Team Experience, and Key Personnel Management and Structure. Part Two of the RFP required submitters to present their Cost and Fee Schedule, their Methodology / Business Plan, and their Work Schedule / Time of Completion.

The following teams submitted proposals:

1. M.B. Kahn Team
2. Kenneth B. Simmons Associates

The evaluation team reviewed the 2 responses. Based upon its proposal, the M.B. Kahn Team was determined to be the most advantageous to the County's needs. Therefore, it is at this time that staff is requesting that Council authorize staff to negotiate the contract for the final

design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex with the M.B. Kahn Team.

### C. Financial Impact

This is a negotiated process. Therefore, the exact financial impact is not available at this time. Staff's negotiations will result in a proposed cost for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex. Once negotiations are complete, staff will bring back the results, including cost, to Council for final review and approval.

### D. Alternatives

1. Authorize staff to negotiate the contract for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex with the M.B. Kahn Team.
2. Direct staff to negotiate the contract with another firm.
3. Do not pursue negotiations for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex at this time.

### E. Recommendation

It is recommended that Council authorize staff to negotiate the contract for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex with the M.B. Kahn Team.

**Recommended by:** Roxanne Matthews    **Department:** Administration    **Date:** 5-7-09

### F. Reviews

#### Finance

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: How funds are appropriated is a policy decision for council. During the current budget process, Council restricted \$5 million of the hospitality tax fund balance to fund a recreation complex therefore those funds are available as long as the project is consistent with the allowable use of hospitality tax dollars. Approval of use of those funds would require a budget amendment. As a reminder, effective July 1, 2009 a portion of the hospitality tax has been suspended for two years reducing the expected recurring revenues to cover existing commitments. Therefore I would

recommend council review an impact analysis prior to any funding in excess of the current restriction.

**Procurement**

Reviewed by: Rodolfo Callwood

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: This is a matter that is within Council's discretion. However, I concur with the Finance Directors comments regarding the funding for this project.

**Administration**

Reviewed by: Roxanne Matthews

Date: May 22, 2009

Recommend Approval

Recommend Denial

No Recommendation

Comments: Staff recommends that Council authorize staff to negotiate the contract for the final design, development, financing, construction, and potential management / operations of the proposed Richland County Recreation / Entertainment Complex with the M.B. Kahn Team. Contract negotiations will yield a project cost, at which time staff will perform a review of the numbers and the potential impact to the hospitality tax fund. The outcome of the contractual negotiations and hospitality tax examination will be reviewed with Council prior to final negotiations.

# Richland County Council Request of Action

**Subject**

Council Motion (Jackson): A resolution to support the naming of a bridge that crosses Cabin Creek along Clarkson Road as the Candacy-Darcel Sanders Crossing Bridge [Pages 98-105]

**Reviews**

# Richland County Council Request of Action

**Subject:** Bridge Naming

## A. Purpose

County Council is requested to approve a resolution to support the renaming of a bridge on Clarkson Road that travels over Cabin Creek in memory of Candacy Wyanaica and Darcel Sanders.

## B. Background / Discussion

During the motion period on June 2, 2009, Councilman Norman Jackson referred the attached resolution to the D&S Committee for consideration.

On August 27, 2002 Candacy Wyanaica and Darcel Sanders of Hopkins, South Carolina lost their lives while traveling in the Lower Richland Community. Friends and family members in the Lower Richland community have requested that the sisters be honored in by naming the bridge that crosses Cabin Creek in their honor.

If approved, this resolution would be forwarded to the SC Department of Transportation with council's support of renaming the bridge in the sisters' honor.

## C. Financial Impact

There is no financial impact associated with this request.

## D. Alternatives

1. Approve the resolution and support the renaming of the bridge.
2. Do not approve the resolution in support of renaming the bridge.

## E. Recommendation

This request is at council's discretion.

**Recommended by:**  
Norman Jackson

**Department:**  
County Council

**Date:**  
June 2, 2009

## F. Reviews

### Finance

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation  
Comments:

**Legal**

Reviewed by: Larry Smith  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:

**Administration**

Reviewed by: Sparty Hammett  
Date:  
 Recommend Approval  
 Recommend Denial  
 No Recommendation  
Comments:





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A CONCURRENT RESOLUTION

TO REQUEST THAT THE DEPARTMENT OF TRANSPORTATION NAME THE BRIDGE THAT CROSSES CABIN CREEK ALONG CLARKSON ROAD IN RICHLAND COUNTY THE "CANDACY-DARCEL SANDERS CROSSING BRIDGE" AND ERECT APPROPRIATE MARKERS OR SIGNS AT THIS BRIDGE THAT CONTAIN THE WORDS "CANDACY-DARCEL SANDERS CROSSING BRIDGE".

Be it resolved by the House of Representatives, the Senate concurring:

That the Department of Transportation name the bridge that crosses Cabin Creek along Clarkson Road in Richland County the "Candacy-Darcel Sanders Crossing Bridge" and erect appropriate markers or signs at this bridge that contain the words "Candacy-Darcel Sanders Crossing Bridge".

Be it further resolved that a copy of this resolution be forwarded to the Department of Transportation.

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On August 27, 2002, Candancy Wyanaica and Darcel Dawn Sanders were reported missing. On October 27, 2002, two fishermen, Isaiah "Chris" Caldwell and Roosevelt Higgins were fishing from the Cabin Creek Bridge, located on Clarkson Road, Hopkins South Carolina. In the process, the fishermen discovered a car submerged upside down in the water, immediately local authorities were called, and shortly afterward, law enforcement confirmed their findings of the two missing sisters. On November 2, 2002, the Candancy and Darcel Sanders were laid to rest. Therefore, this petition is an official request to rename the Cabin Creek Bridge in honor of Candancy Wyanaica and Darcel Dawn Sanders. The Candancy-Darcel Sanders Crossing Bridge.

Name: address: phone: email:

1. Paula G. Giddens - Lady 1204 Clarkson Rd (803) 717-7910
2. William D. Pichler " " " " 913-1399
3. Shirley J. Pridgen 5630 Bluff Rd. 776-7123/917-5501
4. James P. Bell 1204 Clarkson Rd 803-397-1096
5. Julian G. Daniels 1908 MLK Blvd Hopkins SC 29061
6. Elaine Daniels 1900 Martin L King Blvd Hopkins SC 29061
7. Eleanor Jordan-Patterson 6727 Bluff Rd. 783-9945
9. Dece D. Sims 6739 Bluff Rd Hopkins SC
10. William J. Sims 6739 Bluff Rd Hopkins SC
11. Helen Bradley 1916 Martin L King Blvd Hopkins 776-2819
12. William F. Robinson 1522 MLK Blvd Hopkins, SC 29061
14. Blair Bruford 1327 Clarkson Rd Hopkins, SC 29061-695-2842
15. James Caldwell 2500 Pageant Rd - 783-09
16. Janie Hoodum 1539 Clarkson Rd 29061 (783) 0132 Hopkins
17. Hattie M. Dixon 1521 Clarkson Rd Hopkins 783-6447
18. E. L. Dintins 1456 Triner/Venille Rd Hopkins, SC 776-0644
19. Patricia Jackson 1439 Clarkson Rd. 783-1861
20. MARY McEachern 1431 Clarkson Rd. 29061 - 803-926-6233
21. Arlie Williams 1211 Wendell V. Neal Rd
22. Yun Gordon 1553 Clarkson Hopkins, SC 29061 803-785-7191
23. Wilma Hoodum 1558 Clark Hopkins 1558 783-217
24. SATRENE R. JENKINS 1324 Clarkson Rd 803-776-0353
25. Frank A. Bell 101 Wendell V. Neal Rd 803-776-1999

2009 APR 19 PM 3:30

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 KIRKLAND & BELL

On August 27, 2002, Candancy Wyanaica and Darcel Dawn Sanders were reported missing. On October 27, 2002, two fishermen, Isaiah "Chris" Caldwell and Roosevelt Higgins were fishing from the Cabin Creek Bridge, located on Clarkson Road, Hopkins South Carolina. In the process, the fishermen discovered a car submerged upside down in the water, immediately local authorities were called, and shortly afterward, law enforcement confirmed their findings of the two missing sisters. On November 2, 2002, the Candancy and Darcel Sanders were laid to rest. Therefore, this petition is an official request to rename the Cabin Creek Bridge in honor of Candancy Wyanaica and Darcel Dawn Sanders. The Candancy-Darcel Sanders Crossing Bridge.

Name: address: phone: email:

1. Estelle Godson 1437 ZC Clarkson 803-776-7013
2. Karen Rich 101 Acie Ave. 783-0972
3. Julian Davis 1201 Clarkson Rd 776-1644
4. Jacqueline D. Bryant 101 Wendell V. Neal Rd 776-1499
5. Debrae Howell Caster, 116 Santee Loop, Hopkins, S.C. 290
6. Phillip Howell Emon 110 Fernwood Cir Hopkins, SC 290
7. Robert Emon 110 Fernwood Cir Hopkins S.C.
9. Jackie Barden 1443 Clarkson Rd Hopkins, SC
10. Katal Buba 1442 Clarkson Hopkins SC 783-9552
11. Anna Poleson 1314 Clarkson Rd Hopkins, S.C., 29061
12. Pamela Patterson 6727 Bluff Road Hopkins SC 29061 783-9953
14. Ollie D REESE 1022 Crosswats Crk Rd Hopkins SC 29061 783-4116
15. Mary D. Kirkland 1870 Martin L. King Blvd Hopkins SC 29061 (776-5
16. Andrea Reese 6801 Bluff Rd Hopkins SC 29061 (695-
17. ANTHONY LINDO 6805 BLUFF RD HOPKINS SC 29061 783-80
18. Mary Lindo 6805 Bluff Rd Hopkins, S.C. 29061
19. Ella Y. Sunter 7104 Bluff Rd Hopkins, SC 29061 (776-
20. VIVIAN BROWN 1870 Martin L. King Blvd Hopkins SC 29061
21. Leanna B. Wmms 6758 Bluff Rd Hopkins SC 29061
22. ~~Joe Burt~~ 4228 Shorecrest dr Columbia SC 29904 776-7,
23. Branch N. Barker 12156 Clarkson Rd. 29061-776-6107
24. Sylvester Bitting ~~1070 Clarkson Rd~~ 1070 Clarkson Rd 29061
25. Lucile Bitting 1070 Clarkson Rd Hopkins Rd

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 RICHLAND COUNTY

On August 27, 2002, Candancy Wyanaica and Darcel Dawn Sanders were reported missing. On October 27, 2002, two fishermen, Isaiah "Chris" Caldwell and Roosevelt Higgins were fishing from the Cabin Creek Bridge, located on Clarkson Road, Hopkins South Carolina. In the process, the fishermen discovered a car submerged upside down in the water, immediately local authorities were called, and shortly afterward, law enforcement confirmed their findings of the two missing sisters. On November 2, 2002, the Candancy and Darcel Sanders were laid to rest. Therefore, this petition is an official request to rename the Cabin Creek Bridge in honor of Candancy Wyanaica and Darcel Dawn Sanders. The Candancy-Darcel Sanders Crossing Bridge.

Name: address: phone: email:

1. Cynthia Hunt 307 Brewster 804-5251 [Wynellaw@Yahoo.com](mailto:Wynellaw@Yahoo.com)
2. Home Worlds - 113 S. PerKim 776-6885
3. Harold Hall 1002 Weston RD 695-9335
4. Jimmie L. Morris 353-2440
5. Pansy Anderson 1024 Elm Ave 771-7850 [pansyhamme@aol.com](mailto:pansyhamme@aol.com)
6. James Blount po Box 143 Godsdon SC 2902 353-8019
7. Estelle Blount P.O. Box 143 Godson, S.C. 353-8019
9. Lawrence Myers 7334 Bluff Rd 29061-776312
10. VONTA Smith 220 Smith
11. Thomas Mapp 7332 Bluff Rd 776-3101
12. Mary J. Myers 7332 Bluff Rd Hopkins, SC 29061
14. Dea Selham Myers Dr 7330 Bluff Rd Hopkins SC 29061
15. Medred Myers Same as above
16. Joseph Myers 7318 Bluff Rd Hopkins SC 29061
17. Arthur J. McBeth Jr. 7318 1/2 Bluff Rd. Hopkins, S.C. 29061
18. Christine Myers 7316 Bluff Rd Hopkins SC 29061
19. Betty Myers 1015 Smith Myers Rd Hopkins 29061
20. John Smith Sr. 1072 Dry Branch Road
21. James E. Smith 1072 Dry Branch Road Hopkins, S.C. 29061
22. Justine Smith 1072 Dry Branch Rd Hopkins SC
23. Welton Goodwin 1422 Dry Branch Rd Hopin, S.
24. Bettye Goodwin 1422 Dry Branch Rd Hopin, S.
25. Celia Bax 7100 Hwy 6072 Hopkins SC 782-7783

24 cont, missing names  
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 RICHLAND COUNTY

On August 27, 2002, Candancy Wyanaica and Darcel Dawn Sanders were reported missing. On October 27, 2002, two fishermen, Isaiah "Chris" Caldwell and Roosevelt Higgins were fishing from the Cabin Creek Bridge, located on Clarkson Road, Hopkins South Carolina. In the process, the fishermen discovered a car submerged upside down in the water, immediately local authorities were called, and shortly afterward, law enforcement confirmed their findings of the two missing sisters. On November 2, 2002, the Candancy and Darcel Sanders were laid to rest. Therefore, this petition is an official request to rename the Cabin Creek Bridge in honor of Candancy Wyanaica and Darcel Dawn Sanders. The Candancy-Darcel Sanders Crossing Bridge.

- | Name:                | address:                     | phone:   | email: |
|----------------------|------------------------------|----------|--------|
| 1. Hollie Wright     | 300 BERTHA AVE               | 758-1275 |        |
| 2. Bull              | 1111 Bull Street             | 799-1010 |        |
| 3. J. Brown          | 1111 Bull Street             | 799-1010 |        |
| 4. J. Fur            | 1111 Bull St                 | 758-1207 |        |
| 5. Thomas Cyle       | "                            | 758-1291 |        |
| 6. JOHN DENISE       | 7891 BROAD RIVER RD IRMO     | 706-4900 |        |
| 7. Rhonda Kow        | PO Box 143, Colo.            | 361-7295 |        |
| 9. NADINE S Taylor   | 3015 Eastway Drive Col/SC    | 29209    |        |
| 10. Marybess Myers   | 1139 Clarkson Rd Hopkins     | 82506    |        |
| 11. William Williams | 6135 Clarkson Rd, Hopkins    | SC 2906  |        |
| 12. Pamela S. Jones  | 1119 Clarkson Rd,            |          |        |
| 14. Marcus Adams     | 1655 M. L. King Blvd Hopkins | 29201    |        |
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# Richland County Council Request of Action

**Subject**

An ordinance amending the Richland County Code of Ordinances; Chapter 18, Offenses, so as to clarify requirements pertaining to the smoking of tobacco products in the unincorporated area of Richland County [Pages 107-112]

**Reviews**

## Richland County Council Item for Information / Discussion

**Subject:** Smoking Ban Ordinance Amendments

### A. Purpose

Council is requested to approve the Smoking Ban ordinance amendments as presented to clarify Council's intent and provide policy direction to staff and the public.

### B. Background / Discussion

At the March 24, 2009 A&F Committee meeting, the Committee requested the following amendments be made to the smoking ban ordinance.

- 1) Does Council intend for businesses that consistently violate the smoking ban ordinance to have the business' business license denied or revoked? If so, how many violations should be documented prior to this action being initiated? If this is Council's intention, specific language to this effect will be needed to be added as a Smoking Ban ordinance amendment.

A business that consistently violates the smoking ban ordinance is to have its business license denied or revoked. If a business is ticketed four times within 3 months, the business license denial or revocation process will be initiated.

- 2) The \$25 civil penalty will be written by whichever Code Enforcement Officer observes the violation. However, there is no direction as to which department shall collect this penalty. Shall this be an administrative department as the County Administrator deems appropriate, or should this be a responsibility of the County Treasurer? It is recommended that this be clarified within the smoking ban ordinance. All infractions punished according to the smoking ban ordinance shall be adjudicated through the State's normal magisterial judicial process, culminating in the collection of any fines levied.

- 3) The ordinance Section 18-6 (h)(3) currently reads "Each day on which a violation of this Section occurs shall be considered a separate and distinct infraction." Is it Council's intention that, once a person or business is written a ticket on a given day, that person or business may continue to smoke or to allow smoking for the remainder of that day, since no additional tickets may be written?

If this is not Council's intention, it is recommended that Council amend this section of the Smoking Ban ordinance to read, "Each incidence of violation (i.e., each person that a business allows to smoke, or each lighted tobacco product) of this Section shall be considered a separate and distinct infraction." Each incidence of violation by an individual or business is to be considered a separate and distinct infraction.

- 4) The current Smoking Ban ordinance does not indicate how much time an offender has to pay the \$25 civil penalty. How many calendar or business days does Council intend to allow a person to pay the penalty before additional enforcement is initiated? What is Council's intention that the additional enforcement should be - a doubling of the civil penalty every ten days, for example? What is Council's intention that the final enforcement action should be,

if no civil penalties are ever paid by a person or a business for a violation?

Council's intentions regarding the payment and enforcement of the civil penalty needs to be added as a Smoking Ban ordinance amendment. All infractions punished according to the smoking ban ordinance shall be adjudicated through the State's normal magisterial judicial process, culminating in the collection of any fines levied.

- 5) Is it Council's intention that every "Workplace shall post a conspicuous sign at the main entrance to the Workplace, which shall contain the words "No Smoking" and the universal symbol for no smoking", as currently required by the ordinance? If so, is this to be considered an infraction as well, with an associated \$25 fine?

If so, language to this effect needs to be added to the Smoking Ban ordinance. If it is not Council's intention that every workplace in the unincorporated County should have this signage, then it is recommended that this language be removed from the ordinance. The owner, manager, or person in control of a Workplace shall post a conspicuous sign at the main entrance to the Workplace, which shall contain the universal symbol for no smoking. Signs shall be no smaller than five inches by five inches.

- 6) What is Council's intention in Section 18-6(h)(3) that "A violation of this Section is furthermore declared to be a public nuisance"? Is a single violation of this section a public nuisance? What is the consequence to the person or to the business of being considered "a public nuisance"? Council is recommended to clarify in the ordinance its intentions with this "public nuisance" language. Recommend the removal of this language. A violation of this Section is furthermore declared to be a public nuisance.

- 7) What is Council's intention or desire regarding the level of enforcement? If every complaint is to be investigated, i.e., sending an inspector out to determine if a violation is witnessed, this may have consequences on staffing levels as well as overtime costs. The Business Service Center will respond to complaints within seven calendar days. Any staff conducting follow-up involving a visit to a business outside of normal working hours will do such follow-up according to a flexible work schedule so that no overtime pay is earned or required to be paid. However, staff reserves the right to request additional overtime funds if the overtime level of enforcement becomes greater than 5 hours per week.

### C. Financial Impact

If a business has its business license revoked or denied, there will be a loss of revenue to the County. That loss cannot be determined until such revocation or denial occurs. The number of infractions will determine the revenue brought in to the County via the magisterial judicial process. That amount cannot be determined until violations are adjudicated. The Business Service Center reserves the right to request overtime funds if the overtime level of enforcement becomes greater than 5 hours per week.

### D. Alternatives

1. Amend the Smoking Ban ordinance as presented to clarify Council's intentions and to answer important policy questions.



2. Amend the Smoking Ban ordinance differently than presented.
3. Do not amend the Smoking Ban ordinance at this time. This is not recommended.

**E. Recommendation**

It is recommended that the Smoking Ban ordinance be amended as presented to answer the policy questions that have been raised.

**Recommended by:** Roxanne Matthews **Department:** Administration **Date:** 4-1-09

**F. Reviews**

(Please **SIGN** your name, ✓ the appropriate box, and support your recommendation before routing. Thank you!)

**Business Service Center**

Reviewed by: Pam Davis

Date: 04/13/09

Recommend Approval

Recommend Denial

No Recommendation

Comments: This clarification and amendment to the Smoking Ban ordinance is critical for effective, and consistent, enforcement.

**Finance**

Reviewed by: Daniel Driggers

Date: 4/13/09

Recommend Approval

Recommend Denial

No Recommendation

Comments:

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: Items 1-4 are legally sufficient and are left to Council's discretion. Both items reflecting the use of Magistrate system are highly recommended for Council approval in light of the opinion of the Chief Justice.

Under item 6 it is recommended that this language not be removed from the ordinance.

Item 7 is purely a policy decision and left to the discretion of Council.

**Administration**

Reviewed by: Roxanne Matthews

Date: April 23, 2009

Recommend Approval

Recommend Denial

No Recommendation

Comments: In light of the comments from Legal, staff recommends that the language in Item 6 not be removed from the ordinance. The other items (1-5 and 7) are recommended for approval.

**STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. XXX-09HR**

**AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 18, OFFENSES, SO AS TO CLARIFY REQUIREMENTS PERTAINING TO THE SMOKING OF TOBACCO PRODUCTS IN THE UNINCORPORATED AREA OF RICHLAND COUNTY.**

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

**SECTION I.** The Richland County Code of Ordinances, Chapter 18, Offenses, is hereby amended as follows:

**Section 18-6. Smoking of tobacco products**

(f) Posting of signs The owner, manager, or person in control of a Workplace shall post a conspicuous sign at the main entrance to the Workplace, which shall contain ~~the words “No Smoking” and~~ the universal symbol for no smoking. Signs shall be no smaller than five inches by five inches.

(h) Jurisdiction, Enforcement, and Penalties

3) An infraction is punishable by a fine of twenty-five dollars (\$25). ~~Each day on which a violation of this Section occurs~~ Each incidence of violation of this Section, whether by an individual or by a business, shall be considered a separate and distinct infraction. A violation of this Section is furthermore declared to be a public nuisance. All infractions punished according to this Section shall be adjudicated through the State’s normal magisterial judicial process, culminating in the collection of any fines levied.

4) Businesses that are ticketed four (4) times for any violation(s) of this section within three months are deemed to be habitual offenders and shall have their business license revoked, if one has already been issued, or denied, if a business license application has been received.

**SECTION II. Severability.** If any section, subsection, or clause of this article shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

**SECTION III. Conflicting Ordinances.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION IV. Effective Date.** All sections of this ordinance shall be effective on and after \_\_\_\_\_

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2009

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: May 5, 2009 [Tentative]  
Second Reading: May 19, 2009 [Tentative]  
Public Hearing: May 19, 2009 [Tentative]  
Third Reading: June 2, 2009 [Tentative]

# Richland County Council Request of Action

## **Subject**

Council Motion (Manning): An ordinance to amend the Richland County Code of Ordinances; Chapter 18, Offenses; Section 18-6, Smoking of tobacco products; In order to establish regulations and requirements relating to designated smoking areas [Pages 114-123]

## **Reviews**

## Richland County Council Item for Information / Discussion

**Subject:** Smoking Ban Ordinance Amendment – Consideration of HVAC Units

### A. Purpose

Council has requested that staff investigate the feasibility of allowing additional or separate HVAC (heating, ventilation, and air conditioning) units to serve as a basis for possible exemption from the Smoking Ban ordinance.

### B. Background / Discussion

A Richland County business owner has expressed an interest in County Council considering amending the Smoking Ban ordinance to allow HVAC units to be considered as cause for exemption from the Smoking Ban. The D&S Committee, at its May meeting, directed staff to explore the feasibility of allowing such an exemption.

Following are staff's findings:

1) The County Council, in its Smoking Ban ordinance, indicated that it has

“now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 is appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace and therefore enacts this Section [the Smoking Ban ordinance].”

Allowing an exemption for HVAC units would be contrary to the expressed intent of County Council in its Smoking Ban ordinance:

- 1) to preserve and improve the health, comfort, and environment of the people of the unincorporated areas of the County by limiting exposure to secondhand smoke in the workplace, and
- 2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.”

Allowing an exemption for HVAC units would subject employees in businesses with such an exemption to the hazards of secondhand smoke well-documented by

- the US Environmental Protection Agency,
- the US Centers for Disease Control and Prevention,
- the National Toxicology Program's Report on carcinogens,
- the National Cancer Institute, and
- the International Agency for Research and Cancer.

2) Many businesses are currently required to have more than one HVAC unit to provide the necessary airflow for the size and use of the facility. Allowing a business with more than

one HVAC unit to be exempted from the Smoking Ban would substantially increase the number of businesses that would be covered by such an exemption.

- 3) Allowing businesses with more than the required minimum number of HVAC units would add an additional regulatory burden on County staff due to the need to inspect and document whether or not a business meets any HVAC criteria that may be approved by the County Council.
- 4) Due to the way HVAC units operate, having more HVAC units will not remove smoke from the air to prevent the flow of secondhand smoke into the general facility. HVAC units do not improve air quality or remove smoke; only high-tech air filters will remove smoke.
- 5) The only feasible way to allow certain businesses to allow its patrons to smoke and not subject other patrons, not including the employees who would be required to serve the smoking patrons, is to have completely sealed, separate facilities. These separate facilities would have to include separate entrances, restrooms, even separate employee areas, such as kitchens. Having the two facilities share any part of these areas would result in the flow of air between these facilities, bringing secondhand smoke from the smoking area to the nonsmoking area.

### **C. Financial Impact**

A financial impact cannot be determined until further direction is provided by the County Council regarding implementation of any such exemption.

### **D. Alternatives**

1. Amend the Smoking Ban ordinance to exempt businesses with additional or separate HVAC units from the Smoking Ban ordinance, thus allowing patrons within certain businesses to smoke within the facility.
2. Do not amend the Smoking Ban ordinance.

### **E. Recommendation**

Referred by the D&S Committee.

### **F. Reviews**

#### **Building Codes & Inspections**

Reviewed by: Donny Phipps

Date: 6/10/2009

Recommend Approval

Recommend Denial

No Recommendation

Comments: (Per Joe Webb: The '06 International Mechanical Code does not allow the transfer of air from indoor smoking rooms, Sec. 403.2.1 (3) states, in part, "recirculation from such spaces shall be prohibited. All air supplied to such spaces shall be

exhausted..." Based on this and the requirements of other building codes, here, in my opinion, are the minimum requirements for indoor smoking rooms based on the current ordinance and building codes.

1. The enclosure would have to be floor to ceiling. Depending on the type ceiling in existing establishments, a smoke proof ceiling may have to be installed.

2. There would have to be an entrance and exit independent of the rest of the building, to prevent smoke from entering the parts of the building that are not part of the smoking room. This would either require an engineered airlock or separate exterior doors.

3. A separate heating and cooling system that pulls air from, and exhausts air to, the outside. It would have to meet all normal requirements of HVAC installations as well, relative to sizing, vent locations and installation.

4. Restrooms will have to be provided, and they must meet the requirements of the '06 International Plumbing Code as well as the handicap accessibility requirements of the '03 ANSI A117.1. Depending on travel distance, it is possible that smokers could exit the smoking room, re-enter the establishment, and use the existing facilities.

5. Service. While it would be possible to design and airlock serving window, the real world requirements of customer service would almost assuredly require the staff to come into contact with smoke. Since this would defeat the purpose of a smoking room, perhaps the county attorney should be contacted about possible ramifications of service staff coming in contact with smokers. And then there's the problem of customers paying their bills, can't put staff in to accept payment, and with an exit to the outside, the owners may have some issues getting payment.

6. If sprinklers are required for the other portions of the building, they would be required in the smoking rooms as well.

7. All normal requirements for seating, service counter height, tables etc. would have to meet handicap accessibility requirements per '03 ANSI A117.1.

As is evident, a smoking room would be an involved design. In almost all cases, requiring signed and sealed plans from S. C. registered architects and engineers, and reviewed and approved by the plans review section of the Building Inspections Department.

#### **Business Service Center**

Reviewed by: Pam Davis

Date: 06/17/09

Recommend Approval

Recommend Denial

No Recommendation

Comments: This exemption would require a greater degree of coordination between the business license inspectors and the Planning Department to determine which businesses are exempted from the smoking ban and which are not. While this is not a problem, it

Item# 14



would result in less time spent by the inspectors in the revenue-generating activity of inspecting businesses for business licenses, Hospitality Taxes, and other county requirements.

**Finance**

Reviewed by: Daniel Driggers

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: This is a policy decision. As suggested in the financial impact section, we would recommend a financial impact review once further direction is determined.

**Legal**

Reviewed by: Larry Smith

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: Council discretion

**Administration**

Reviewed by: Sparty Hammett

Date:

Recommend Approval

Recommend Denial

No Recommendation

Comments: This is a policy decision. Joe Webb's comments (under Building Codes and Inspections) address the building code requirements that would need to be addressed.

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-09HR

AN ORDINANCE TO AMEND THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 18, OFFENSES; SECTION 18-6, SMOKING OF TOBACCO PRODUCTS; IN ORDER TO ESTABLISH REGULATIONS AND REQUIREMENTS RELATING TO DESIGNATED SMOKING AREAS.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances; Chapter 18, Offenses; Section 18-6, Smoking of tobacco products; is hereby amended to read as follows:

**Section 18-6. Smoking of tobacco products.**

(a) Findings. As an incident to the adoption of this Section, the County Council ("County Council") of the County of Richland, South Carolina (the "County") makes the following findings:

- (1) Secondhand smoke is the third leading cause of preventable death in the United States, killing 53,000 Americans prematurely each year; and
- (2) The U.S. Environmental Protection Agency, U.S. Centers for Disease Control and Prevention, National Toxicology Program's Report on carcinogens, National Cancer Institute, and the International Agency for Research and cancer have all reported that secondhand smoke is a group A human carcinogen, a cancer causing substance, of which there is no safe level of exposure; and
- (3) The health consequences of involuntary smoking have been reported by the U.S. Surgeon General to be a cause of disease, including lung cancer, in healthy non-smokers; and
- ~~(4) The U.S. Surgeon General has concluded that a simple separation of smokers and non-smokers within the same airspace does not eliminate the exposure of non-smokers; and~~
- (5) Numerous medical and scientific studies show substantial levels of exposure to secondhand smoke among the United States population, and over the past two decades, the health hazards resulting from exposure to secondhand smoke have been increasingly recognized; and
- (6) Secondhand smoke increases the risk of developing breast cancer in younger, pre-menopausal women; and when inhaled by pregnant women, secondhand smoke increases the risk for low-weight babies, pre-term delivery, and Sudden Infant Death Syndrome (SIDS); and

- (7) Exposure to secondhand smoke by children leads to decreased lung function, asthma, pneumonia, ear infections, bronchitis and even sudden infant death syndrome; and
- (8) Studies of hospital admissions for acute myocardial infarction in Helena, Montana and Pueblo, Colorado before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and
- (9) Workplaces have been shown to be locations of significant exposure to secondhand tobacco smoke by employees working in the unincorporated areas of Richland County; and
- (10) There are laws, ordinances, and regulations in place that protect workers from other environmental hazards, including Class A carcinogens, asbestos, arsenic and benzene, but none which regulate exposure to secondhand smoke; and
- (11) The South Carolina General Assembly at Section 44-95-10 et seq. (the "Clean Indoor Air Act of 1990") imposed certain limitations on smoking. For example, it limited smoking in Government Buildings (the definition of which includes County-owned buildings) except where the owner of such building shall designate smoking areas;

County Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 is appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace and therefore enacts this Section.

(b) Intent. County Council finds that it is in the best interest of the people of the unincorporated areas of the County to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, County Council declares that the purpose of this act is: 1) to preserve and improve the health, comfort, and environment of the people of the unincorporated areas of the County by limiting involuntary exposure to secondhand smoke in the workplace; and 2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

(c) Definitions.

- (1) "Employee" means any person who performs services for an employer in return for wages, profit or other valuable consideration, and/or a person who volunteers his or her services for a non-profit entity.
- (2) "Employer" means any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer, any manager,

supervisor, and all other persons charged with control, supervision, and operation of any Workplace, Work Space, or Work Spaces as defined herein, that employs one (1) or more persons.

- (3) "Enclosed" means a space bounded by walls (with or without windows), a ceiling or roof, and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls.
- (4) "Secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".
- (5) "Retail Tobacco Store" means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of eighteen (18) is prohibited at all times.
- (6) "Smoking" means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.
- (7) "Smoking Materials" includes cigars, cigarettes and all other manner of smoking devices intended to be used for the purpose of inhaling, burning, carrying or exhaling lighted tobacco products.
- (8) "Workplace" means any enclosed indoor area, structure, building or facility or any portion thereof at which one (1) or more employee(s) perform services for their employer, including but not limited to: retail food stores, retail stores, restaurants, bars, cabarets, cafes, public or private clubs, pool halls, and bowling alleys.
- (9) "Work space" or "work spaces" means any enclosed area occupied by an employee during the course of his or her employment, including but not limited to: offices, customer service areas, common areas, hallways, waiting areas, restrooms, lounges, and eating areas.

(10) "Designated Smoking Area" means an area of a workplace or work space which is separate and distinct from other areas and in which smoking of tobacco products is permitted.

(d) Prohibition of Smoking in the Workplace.

- (1) All employers shall provide a smoke-free environment for all employees working in any work space or workplace as those terms are defined herein. Further, the employer shall prohibit any persons present in any work space or workplace that is not a Designated Smoking Area from smoking tobacco products therein.

(2) No person shall smoke or possess a lighted tobacco product in any work space or workplace that is not a Designated Smoking Area.

(e) Exceptions. Notwithstanding the provisions of subsection (d) herein, smoking may be permitted in the following places under the following circumstances:

(1) Private residences;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Section. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

(3) Retail tobacco stores as defined herein; and

(4) Religious ceremonies where smoking is part of the ritual.

(5) Designated Smoking Area. An employer which desires to operate a portion of its workplace or work space as an area within which smoking is permitted, may apply to the Richland County Business Service Center for a Designated Smoking Area, certify compliance with air quality standards of \_\_\_\_\_, and provide a certification by a licensed HVAC provider that the air handling equipment is in good working order. The Designated Smoking Area and non-smoking areas shall be separate and have a separate HVAC air quality systems, and notice of permitted smoking within that space shall be prominently displayed at every entrance. The business shall have in effect employee applications advising prospective employees of the fact of their employment environment as smoking or non-smoking, and receive from such employee at the time of employment an acknowledgement of agreement to work in a Designated Smoking Area. No employee shall be required to work in a Designated Smoking Area on even a temporary or substitute basis unless such employee shall have executed a required acknowledgement of waiver of objection to employment in the Designated Smoking Area. Such acknowledgement shall be kept on file on the workplace at all times and be available. A violation of this subpart shall constitute a violation of this ordinance punishable under subsection (h)(3).

(f) Posting of Signs. The owner, manager or person in control of a Workplace shall post a conspicuous sign at the main entrance to the Workplace, which shall contain the words "No Smoking" and the universal symbol for no smoking. If a Designated Smoking Area has been established, the owner, manager or person in control of a Workplace shall

post a conspicuous sign at every entrance of the Designated Smoking Area denoting it as a Designated Smoking Area.

(g) Reasonable Distance. Smoking outside a Workplace, and any other indoor area where smoking is prohibited, shall be permitted, provided that tobacco smoke does not enter any Work Spaces and/or Workplaces through entrances, windows, ventilation systems, or other means.

(h) Jurisdiction, Enforcement and Penalties.

1) A person who owns, manages, operates, or otherwise controls a Workplace or Work Space and who fails to comply with the provisions of this Section shall be deemed guilty of an infraction.

2) A person smoking or possessing a lighted tobacco product in any Work Space or Workplace, which is not a Designated Smoking Area, shall be guilty of an infraction.

3) An infraction is punishable by a fine of twenty-five (\$25) dollars. Each day on which a violation of this Section occurs shall be considered a separate and distinct infraction. A violation of this Section is furthermore declared to be a public nuisance.

(i) Governmental Agency Cooperation. The County Administrator shall appropriately request other governmental and educational agencies having facilities with the unincorporated areas of the County to establish local operating procedures in cooperation and compliance with this Section. This includes urging all Federal, State, County, City, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

SECTION II. Severability. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION IV. Effective Date. This ordinance shall be enforced from and after October 1, 2008.

RICHLAND COUNTY COUNCIL

BY: \_\_\_\_\_  
Paul Livingston, Chair

ATTEST THIS THE \_\_\_\_ DAY

OF \_\_\_\_\_, 2009

\_\_\_\_\_

Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading:  
Second Reading:  
Public Hearing:  
Third Reading: