

EXEMPTED ☒
DOCUMENTARY STAMPS ☒
COUNTY TAX ☒
AFFIDAVIT FILED ☒
ATTACHED ☒

119

2555

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

2008 AUG 18 P 1:52 CONSERVATION EASEMENT

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

THIS CONSERVATION EASEMENT made this 13th day of AUGUST, 2008, by and between **RMC & Associates, LLC**, a South Carolina limited liability company (referred to herein as "Grantor"), and **The Congaree Land Trust** (referred to herein as "Holder"), a nonprofit corporation organized and existing under the laws of the State of South Carolina.

RECITALS:

A. Grantor is the owner in fee simple of certain real property containing 172.23 acres, more or less, located in Fairfield County, South Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Protected Property"). The Protected Property is also depicted as the "Mitigation Bank Conservation Easement Areas" on a drawing of the Sandy Fork Mitigation Bank attached hereto as Exhibit D.

B. Grantor desires to convey to the Holder a conservation easement placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition forever.

C. Holder is qualified to hold a conservation easement, and is a charitable, not-for-profit or educational corporation, association, or trust qualified under § 501(c)(3) and § 170(h) of the Internal Revenue Code.

D. The purposes of this Conservation Easement include, without limitation, one or more of the following:

- (i) Retaining or protecting natural, scenic, or open-space aspects of real property;
- (ii) Ensuring the availability of real property for recreational, educational, or open-space use;
- (iii) Protecting natural resources;
- (iv) Maintaining or enhancing air or water quality; and
- (v) Preserving the historical, architectural, archaeological, or cultural aspects of real property.

E. Grantor and Holder agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Charleston District and the S.C. Department of Health and Environmental Control ("Third Parties," to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States and the State of South Carolina, and that these rights are in addition to, and do not limit, the rights of enforcement under Department of the Army Permit No. SAC2007-01571 (the "Corps Permit"), or any permit or certification issued by the Third Parties;

F. The Protected Property has been approved by the Third Parties for use as a mitigation bank, to be known as Sandy Fork Mitigation Bank. Grantor and the Third Parties have entered into a Mitigation Banking Instrument in connection with the Corps Permit (the "Mitigation Banking Instrument").

G. The term "natural condition" shall mean the condition of the Protected Property at the time of this grant. The natural condition of the Protected Property may be evidenced by:

(i) A current aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made;

(ii) On-site photographs taken at appropriate locations on the Protected Property, including of major natural features; and

(iii) Such additional documentation as may be used to evidence the natural condition of the Protected Property as of the date of this grant.

NOW, THEREFORE, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, Grantor does hereby freely give, grant, bargain, sell and convey unto Holder, its successors and assigns, forever, a conservation easement in, upon, on and over the Protected Property in accordance with the following terms, conditions, and restrictions hereof.

A. RESTRICTIONS

These Restrictions shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, or other occupiers and users, and are subject to the Reserved Rights which follow.

1. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography in any manner.

2. **Waters and Wetlands.** In addition to the General restrictions above, there shall be no ditching, draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and, no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.

3. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.

4. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed.

5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.

6. **New Roads.** There shall be no construction of new roads, trails or walkways without the prior written approval of the Holder and Third Parties, including of the manner in which they are constructed.

7. **Utilities.** There shall be no construction or placement of utilities or related facilities without the prior written approval of Holder and Third Parties.

8. **Pest Control.** There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Holder and Third Parties.

9. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

B. GRANTOR'S RESERVED RIGHTS

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its heirs, successors, administrators, and assigns the following Reserved Rights, which Reserved Rights may be exercised upon providing prior written notice to Holder and to Third-Parties, except where expressly provided otherwise:

1. **Landscape Management.** Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.

2. **Forest Management.** Harvesting and management of timber by Grantor (a) is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms, and (b) shall not be commenced until such harvesting and management have been approved by Holder and the Third Parties. Such timber harvest and management shall be carried out in accordance with Best Management Practices approved by the South Carolina Forestry Commission or successor agency, as amended.

3. **Recreation.** Grantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Protected Property. No written notice to Holder or Third Parties is required.

4. **Mineral Interests.** Grantor specifically reserves a qualified mineral interest (as defined in § 170(h)(6) of the Internal Revenue Code) in subsurface oil, gas or other minerals and the

right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with or affects the continuing natural condition of the Protected Property.

5. **Road Maintenance.** Grantor reserves the right to maintain existing roads, trails or walkways. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.

6. **Other Reserved Rights.** Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems.

7. **Mitigation Banking.** Grantor reserves the sole and unrestricted right to sell credits or other entitlements or interests in the Protected Property in order to perfect and carry out the purpose of a mitigation bank.

C. GENERAL PROVISIONS

The following General Provisions shall be binding upon, and inure to the benefit of, the Grantor, Holder and Third-Parties, and the heirs, successors, administrators, assigns, lessees, licensees and agents of each:

1. **Rights of Access and Entry.** Holder and Third Parties shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions. Holder shall also have the rights of visual access and view, and to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. This Conservation Easement conveys no right of access or entry by the general public to any portion of the Protected Property.

2. **Enforcement.** In the event of a breach of the Restrictions by Grantor or another party, the Holder or one of the Third Parties must notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Grantor fails to take such corrective action within thirty (30) days, or fails to complete the necessary corrective action, the Holder and/or the Third Parties may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Among other relief, Holder and/or Third Parties shall be entitled to a complete restoration for any breach of the Restrictions. Breaches of General Provisions of this Conservation Easement shall be actionable without notice. The costs of a breach, correction or restoration, including the Holder's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Holder and/or Third Parties, and no omission or delay in acting shall

constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

3. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Holder or Third-Parties to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes.

4. **Obligations of Ownership.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantor shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantor. Holder shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

5. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

6. **Eminent Domain.** Whenever all or part of the Protected Property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, the Grantor and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

7. **Proceeds.** This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Holder shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Protected Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Protected Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

8. **Notification.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor:

RMC & Associates, LLC
161 Morning Lake Drive
Lexington, SC 29072
Attn: Charles P. Watson

To Holder:

Congaree Land Trust
Post Office Box 232
Columbia, SC 29202
Attn: Executive Director

To Third Parties:

U.S. Army Corps of Engineers
Charleston District
1835 Assembly Street
Room 865 B1
Columbia, SC 29202

S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

9. **Assignment.** This Conservation Easement is transferable, but only to a qualified holder under S.C. Code Title 7, Chapter 8 and § 170(h) of the Internal Revenue Code. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement under paragraph 12.

10. **Failure of Holder.** If at any time Holder is unable or fails to enforce this Conservation Easement, or if Holder ceases to be a qualified holder under S.C. Code Title 7, Chapter 8 and § 170(h) of the Internal Revenue Code, and if within a reasonable period of time after the occurrence of one of these events the Holder fails to make an assignment pursuant to paragraph 9, then the Holder's interest shall become vested in another qualified holder in accordance with an appropriate proceeding in a court of competent jurisdiction.

11. **Subsequent Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Protected Property. Grantor agrees to provide written notice of such transfer to Holder and all Third Parties at least thirty (30) days prior to the date of transfer. The failure of Grantor to comply with this paragraph shall not impair the validity or enforceability of this Conservation Easement.

12. **Amendment.** This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including S.C. Code Title 7, Chapter 8 and § 170(h) of the Internal Revenue Code, and is consistent with the conservation purposes of this grant.

13. **Severability.** Should a court of competent jurisdiction find any separable part of this Conservation Easement void or unenforceable, the remainder shall continue in full force and effect.

14. **Warranty.** Grantor warrants that (a) it owns the Protected Property in fee simple absolute, (b) Grantor either owns all interests in the Protected Property which may be encumbered, conveyed or impaired by the granting of this Conservation Easement, and (c) there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property that have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Holder shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

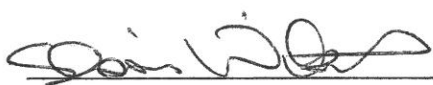
TO HAVE AND TO HOLD, this Conservation Easement unto Holder, its successors and assigns, forever.

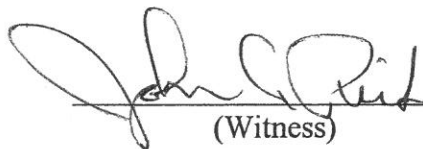
IN WITNESS WHEREOF, Grantor and Holder have executed this Conservation Easement, and the Third Parties have approved this Conservation Easement, on the date written above. By its execution and acceptance of this Conservation Easement, Holder accepts the third-party rights of enforcement herein.

GRANTOR:

RMC & Associates, LLC, a
South Carolina limited liability company

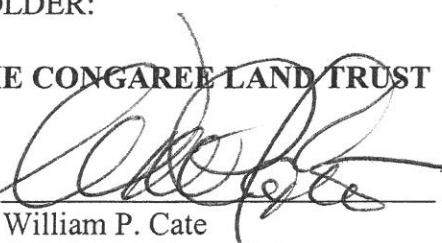
By:  (SEAL)
Charles P. Watson
Title:


(Witness)

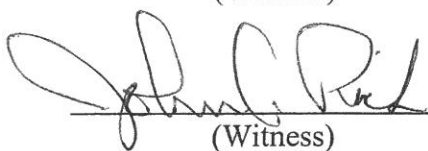

(Witness)

HOLDER:

THE CONGAREE LAND TRUST

By:  (SEAL)
William P. Cate
Executive Director


(Witness)


(Witness)

APPROVAL BY THIRD PARTIES

**U.S. ARMY CORPS OF ENGINEERS,
CHARLESTON DISTRICT**

Amy Cappellaro
(Witness)

Luca Nuhra
(Witness)

By: [Signature] (SEAL)
Name: Peter Bruce McKay
Title: USACE Northwest Branch Chief

**S.C. DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL**

Margaret W. Douglas
(Witness)

Jess Lucas Longshore
(Witness)

By: G. Earl Hunter (SEAL)
Name: G. EARL HUNTER
Title: Commissioner

STATE OF SOUTH CAROLINA)
COUNTY OF)

The foregoing Conservation Easement was acknowledged before me this 13 day of August, 2008, by Charles Watson, the Manager of **RMC & Associates, LLC**, a South Carolina liability company, on behalf of such entity.

Ramond A. Kile
Notary Public for South Carolina
My Commission Expires: 8/15/2018

(SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The foregoing Conservation Easement was acknowledged before me this 13 day of August, 2008, by William P. Cate, the Executive Director of **The Congaree Land Trust**, a South Carolina nonprofit corporation, on behalf of said entity.

Ramond A. Kile
Notary Public for South Carolina
My Commission Expires: 8/15/2018

(SEAL)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)

The foregoing Conservation Easement was acknowledged before me this 18 day of August, 2008, by PETER BRYCE MCCOY, the _____ of U. S. Army Corps of Engineers, Charleston District, on behalf of such entity.

[Signature]
 Notary Public for South Carolina

My Commission Expires: _____
 My Commission Expires
 February 25, 2009

(SEAL)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)

The foregoing Conservation Easement was acknowledged before me this 18th day of August, 2008, by C. Earl Hunter, the Commissioner of SC Department of Health and Environmental Control, on behalf of such entity.

[Signature]
 Notary Public for South Carolina

My Commission Expires: Aug. 25, 2015

(SEAL)

EXHIBIT A

Legal Description:

All that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Fairfield near Salem Crossroads and being shown and delineated as 321.67 Acres on a Plat prepared for Boise Cascade dated September 1, 1981 and recorded in the Fairfield County Clerk of Court / Register of Deeds Office in Book 10, Page 247.

LESS AND EXCEPTING that certain parcel shown and delineated as 8.38 Acres on a Boundary Survey prepared for RMC & Associates, LLC by Mark E. Mills, PLS dated July 22, 2008, a copy of which is hereto attached as Exhibit B.

ALSO LESS AND EXCEPTING that certain parcel shown and delineated as 7.00 Acres on Plat prepared for RMC and Associates, LLC by Freeland & Associates, Inc. dated January 16, 2008, a copy of which is hereto attached as Exhibit C.

Derivation:

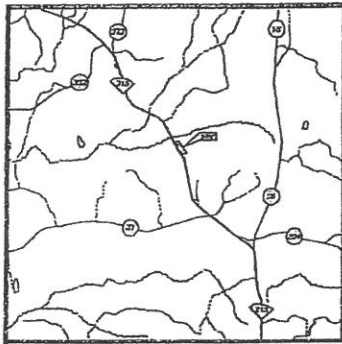
This being a portion of the property conveyed to RMC & Associates, LLC by deed of Central Carolina Land and Timber, LLC recorded April 20, 2007 in Book 840 at Page 250 in the Clerk of Court / Register of Deeds Office for Fairfield County.

TMS #: 068-00-00-029

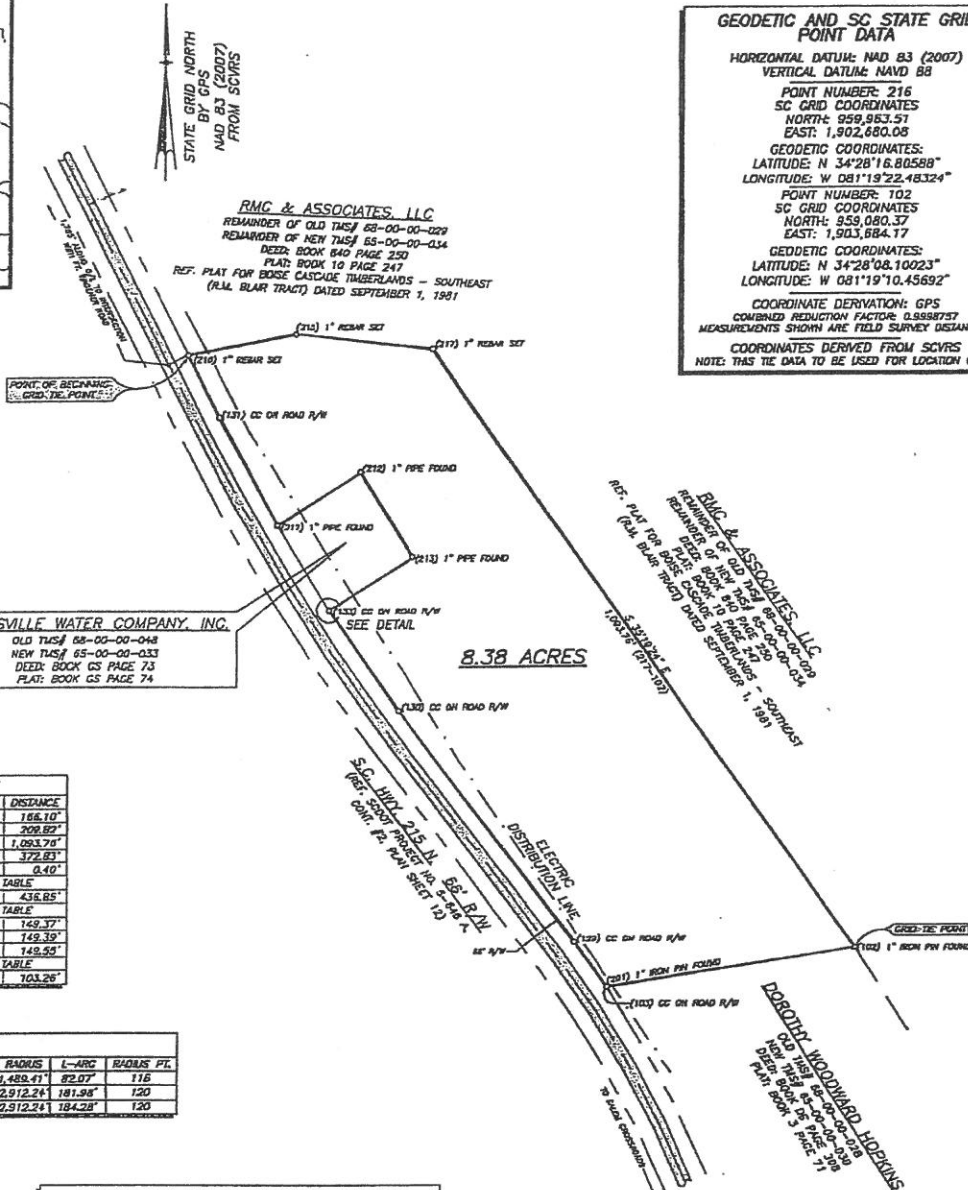
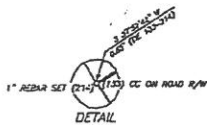
DATE 6/8/08
**SUBDIVISION REGULATIONS
 DO NOT APPLY**

EXHIBIT B

By [Signature]
 Administrative Official



LOCATION SKETCH
 SCALE: 1 INCH = 1 MILE



**GEODETIC AND SC STATE GRID
 POINT DATA**

HORIZONTAL DATUM: NAD 83 (2007)
 VERTICAL DATUM: NAVD 88

POINT NUMBER: 216

SC GRID COORDINATES

NORTH: 959,963.51

EAST: 1,902,680.08

GEODETIC COORDINATES:

LATITUDE: N 34°28'16.80588"

LONGITUDE: W 081°19'22.48324"

POINT NUMBER: 102

SC GRID COORDINATES

NORTH: 959,080.37

EAST: 1,903,684.17

GEODETIC COORDINATES:

LATITUDE: N 34°28'08.10023"

LONGITUDE: W 081°19'10.45692"

COORDINATE DERIVATION: GPS

COMBINED REDUCTION FACTOR: 0.988757

MEASUREMENTS SHOWN ARE FIELD SURVEY DISTANCES.

COORDINATES DERIVED FROM SCGRS

NOTE: THIS DATA TO BE USED FOR LOCATION ONLY.

8.38 ACRES

PT-PT	BEARING	DISTANCE
216-215	N 79°11'16" E	166.10'
215-217	S 83°58'31" E	209.82'
217-102	S 35°19'24" E	1,003.29'
102-201	S 81°04'01" W	372.83'
201-103	S 81°04'01" W	0.40'
103-129	SEE CURVE TABLE	
129-130	N 37°21'40" W	436.85'
130-133	SEE CURVE TABLE	
133-213	N 57°32'42" E	149.37'
213-212	N 37°14'22" W	149.39'
212-211	S 57°35'08" W	149.55'
211-131	SEE CURVE TABLE	
131-216	N 27°12'36" W	703.26'

CURVE TABLE

PT-PT	CHORD	DELTA	RADIUS	L-ARC	RADIUS PT.
103-129	N 35°45'57" W	82.06°	3709.26' LT.	1,489.41'	82.07'
130-133	N 35°34'15" W	181.95°	3734'49" RT.	2,912.24'	181.96'
211-131	N 29°01'25" W	184.25°	3737'32" RT.	2,912.24'	184.26'

SUBJECT PROPERTY REFERENCES

PORTION OF OLD TMS# 68-00-00-029

PORTION OF NEW TMS# 65-00-00-034

DEED: BOOK 840 PAGE 250

PLAT: BOOK 10 PAGE 247

REF. PLAT FOR BOISE CASCADE TIMBERLANDS - SOUTHEAST

(R.M. BLAIR TRACT) DATED SEPTEMBER 1, 1981

BOUNDARY SURVEY FOR
RMG & ASSOCIATES, LLC
 LOCATED APPROXIMATELY 3 MILES NORTHWEST OF SALEM CROSSROADS
 FAIRFIELD COUNTY, SOUTH CAROLINA
 JULY 22, 2008

SCALE: 1 INCH = 100 FEET

0 100' 200' 300' 400' 500' 600'

SURVEYED BY GLENN ASSOCIATES SURVEYING, INC.

P.O. BOX 12 JENKINSVILLE, S.C. 29065 telephone (803) 345-5297

MARK E. MILLS: S.C.P.L.S. # 10779

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF THAT THE SURVEY DATA HEREON HAS BEEN MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MAPPING STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SET FORTH THEREIN.



DRAWING BY JEE G. FROST JR.

SURVEYOR SEAL		C.O.A. SEAL		REVISION SCHEDULE	
GLENN ASSOCIATES SURVEYING, INC.	GLENN ASSOCIATES SURVEYING, INC.	GLENN ASSOCIATES SURVEYING, INC.	GLENN ASSOCIATES SURVEYING, INC.	NO.	DATE

REF. 675



DETAIL

Sandy Fork Mitigation Bank

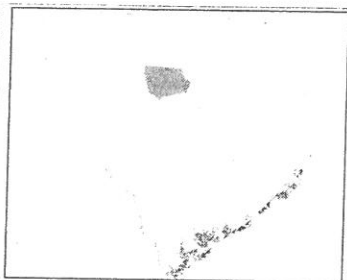
Mitigation Bank Conservation Easement Areas

DATE 8/18/08
**SUBDIVISION REGULATIONS
 DO NOT APPLY**

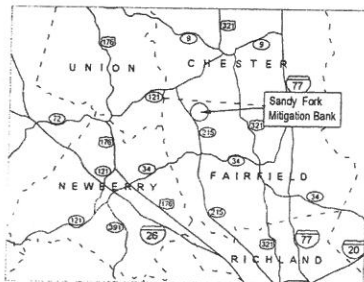
By [Signature]
 Administrative Official

The With Conservation Easement
 recorded this 18 day of August 2008
 in RECORD BOOK 921 PAGE 119
Betty Jo Beckham
 Betty Jo Beckham
 Clerk of Court of Common Pleas & General Sessions
 Fairfield County, S. C.

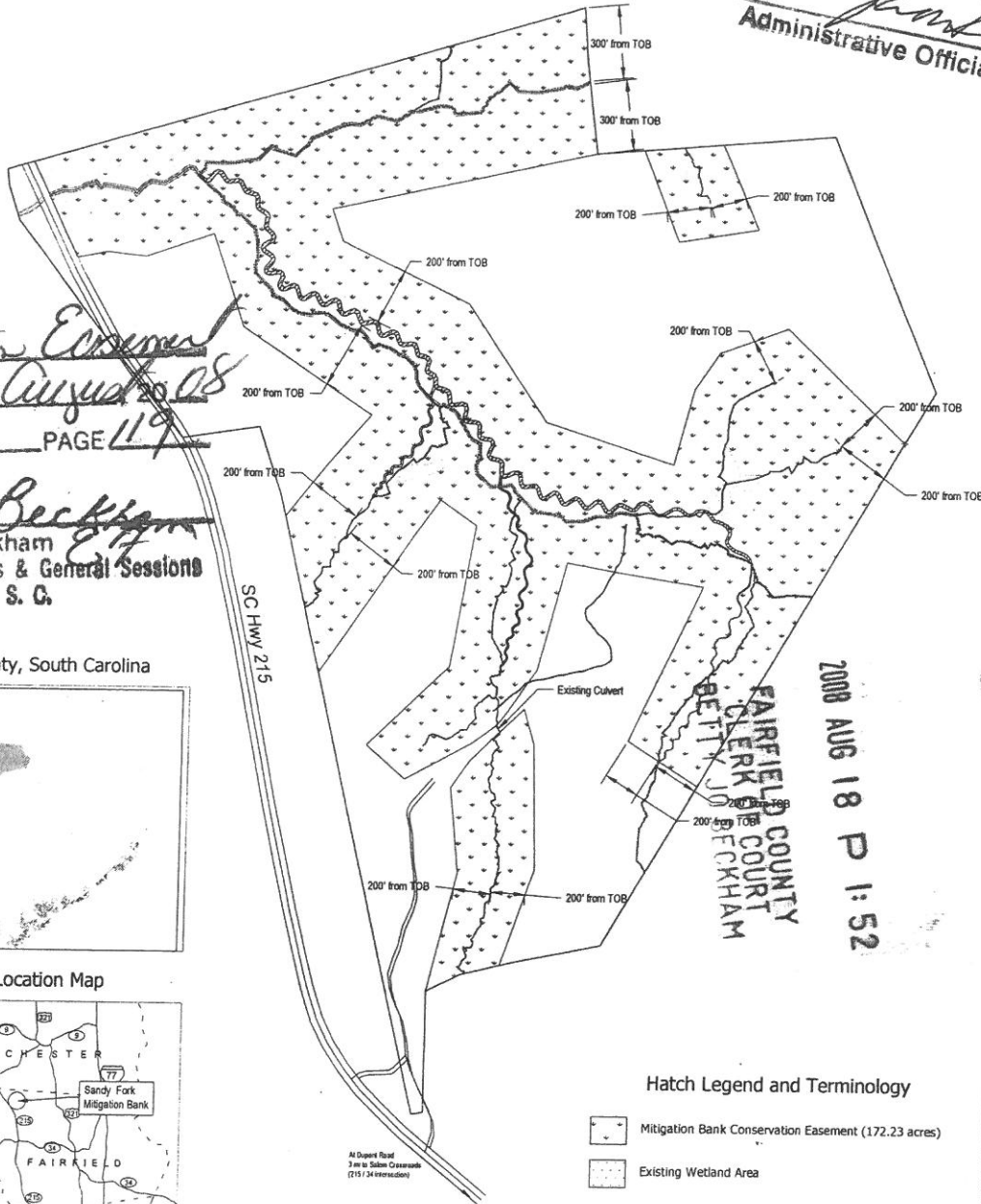
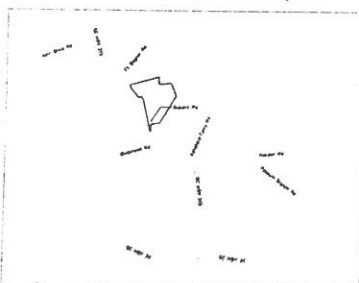
Fairfield County, South Carolina



Highway Location Map



Local Road Location Map



Hatch Legend and Terminology

- Mitigation Bank Conservation Easement (172.23 acres)
- Existing Wetland Area
- TOB - Top of Bank

SCALE
 0 1 2 3 inches
 0 300 600 900 feet

**ENVIRONMENTAL
 PERMITTING
 CONSULTANTS, INC.**