



Development and Services Committee

Norman Jackson	Damon Jeter	Julie-Ann Dixon (Chair)	Bill Malinowski	Seth Rose
District 11	District 3	District 9	District 1	District 5

September 22, 2015 - 5:00 PM
2020 Hampton Street

Call to Order

Approval of Minutes

- 1 Regular Session: July 28, 2015 [PAGES 4-5]

Adoption of Agenda

- 2 Adoption of Agenda

Items for Action

- 3 Motion to request Legal Department assess potential liability of permitting human occupied watercraft at Pinewood Lake [PAGES 6-8]
- 4 Department of Public Works: Private Pond Policy [PAGES 9-26]

- 5 Conservation Department: Conservation Easement on Back Swamp Road [PAGES 27-56]
- 6 Update on the Curbside Recycling Trends Associated with the County's New Recycling Roll Cart Program (Information Only) [PAGES 57-61]

Items Pending Analysis: No Action Required

- 7 Motion to Remedy the Issue of Developers Who Do Not Fulfill Their Obligations [PAGE 62]
- 8 Motion to Pursue the Closure of Businesses Operating Without a Richland County Business License [PAGE 63]
- 9 Motion to Explore all Options for Providing County Assistance with a Public Housing Project [PAGE 64]
- 10 Motion to Name Courtroom 2b in the Judicial Center The Ada Harper James Courtroom [PAGE 65]
- 11 Comprehensive Youth Program [PAGE 66]
- 12 Fund and/or seek a partnership with SCE&G to plant indigenous flowers and plants along transmission line corridors in Richland County [PAGE 67]

Adjournment



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.

RICHLAND COUNTY COUNCIL SOUTH CAROLINA



DEVELOPMENT & SERVICES COMMITTEE

July 28, 2015
5:00 PM
County Council Chambers

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

CALL TO ORDER

Ms. Dixon called the meeting to order at approximately 5:02 PM

APPROVAL OF MINUTES

Regular Session: June 23, 2015 – Mr. Jackson moved, seconded by Mr. Malinowski, to approve the minutes as distributed. The vote in favor was unanimous.

ADOPTION OF AGENDA

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

ITEMS FOR ACTION

Creation of a new Chapter entitled "Vector Control" and creation of the Department of Vector Control – Mr. Malinowski moved, seconded by Mr. Jackson, to forward to Council with a recommendation to approve the ordinances to create Vector Control regulations and the Department of Vector Control. The vote in favor was unanimous.

Motion to request Legal Department assess potential liability of permitting human occupied watercraft at Pinewood Lake – Mr. McDonald stated the backup documentation for this item was forwarded via email to the committee prior to the committee meeting.

Mr. Malinowski moved, seconded by Mr. Jackson, to defer this item until the September Committee meeting in order to review the documentation.

The vote in favor was unanimous.

Public Works - Intergovernmental Agreement with the Town of Eastover – Mr. McDonald stated the request is for an IGA between the Town of Eastover and Richland County, which is similar to other IGAs the County has with other municipalities.

Council Members Present

Julie-Ann Dixon, Chair
District Nine

Bill Malinowski
District One

Seth Rose
District Five

Norman Jackson
District Eleven

Others Present:

Tony McDonald
Sparty Hammett
Warren Harley
Brandon Madden
Michelle Onley
Larry Smith
Amelia Linder
Roxanne Ancheta
Dale Welch
Donny Phipps
Dwight Hanna
Chad Fosnight
Ismail Ozbek
Daniel Driggers
Tammy Brewer

Development & Services Committee

Tuesday, July 28, 2015

Page Two

Mr. Jackson moved, seconded by Mr. Malinowski, to forward to Council with a recommendation to approve entering into an Intergovernmental Agreement with the Town of Eastover to provide road maintenance, plan review and inspections services for the uniformity of roads and storm drainage system improvements, along with the management of "C" funds. The vote in favor was unanimous.

Building Codes & Inspections Department – Intergovernmental Agreement between Richland County and the Town of Eastover – Mr. McDonald stated this item is another IGA between the County and the Town of Eastover. The IGA would provide six months of building inspection and building code services, which will allow the town time to hire their own personnel.

Mr. Jackson moved, seconded by Mr. Malinowski, to forward to Council with a recommendation to approve the request for assistance and service to the Town of Eastover for Inspections and Plan Review on residential commercial property. The vote in favor was unanimous.

ITEMS PENDING ANALYSIS

Comprehensive Youth Program – This item was held in committee.

Fund and/or seek a partnership with SCE&G to plant indigenous flowers and plants along transmission line corridors in Richland County – This item was held in committee.

ADJOURNMENT

The meeting adjourned at approximately 5:10 PM.

The Minutes were transcribed by Michelle M. Onley, Deputy Clerk of Council

Richland County Council Request of Action

Subject:

Motion to request Legal Department assess potential liability of permitting human occupied watercraft at Pinewood Lake

Notes:

This item was held in Committee at the July Committee meeting.

Richland County Council Request of Action

Subject: Motion to request Legal Department assess potential liability of permitting human occupied watercraft at Pinewood Lake

A. Purpose

County Council is requested to consider a motion by Mr. Pearce requesting that the Legal Department assess the potential liability of allowing human occupied watercraft at Pinewood Lake and make a recommendation to Council.

B. Background / Discussion

At the June 16, 2015, Richland County Council meeting Mr. Pearce made the following motion:

Move that Council request the legal department to review the potential liability of permitting any form of human occupied watercraft to operate at Pinewood Lake Park and make a recommendation to Council as to their findings [PEARCE]

Legal opinion provided under separate cover.

C. Legislative / Chronological History

- June 16, 2015 motion by Mr. Pearce.

D. Financial Impact

None associated with this motion.

E. Alternatives

1. Consider the motion and recommendation and proceed accordingly.
2. Consider the motion and recommendation and do not proceed.

F. Recommendation

Recommended by: Councilmember Pearce

Department: County Council, District 6

Date: 7/7/15

G. Reviews

(Please replace the appropriate box with a ✓ and then support your recommendation in the Comments section before routing on. Thank you!)

Please be specific in your recommendation. While “Council Discretion” may be appropriate at times, it is recommended that Staff provide Council with a professional recommendation of approval or denial, and justification for that recommendation, as often as possible.

Finance

Reviewed by: Daniel Driggers
✓ Recommend Council approval
Comments regarding recommendation:

Date: 7/8/15
 Recommend Council denial

Risk Management

Reviewed by: David Chambers
✓ Recommend Council approval
Comments regarding recommendation:

Date: 7-8-15
Recommend Council denial

Capital Projects

Reviewed by: Chad Fosnight
✓ Recommend Council approval
Comments regarding recommendation:

Date: 7/8/15
 Recommend Council denial

Legal

Reviewed by: Elizabeth McLean
 Recommend Council approval
Comments regarding recommendation:

Date: 7/24/15
 Recommend Council denial

Legal's opinion will be provided under separate cover as attorney/client privileged.

Administration

Reviewed by: Tony McDonald
✓ Recommend Council approval
Comments regarding recommendation:

Date: 7/24/15
 Recommend Council denial

Recommend that we proceed based on input from the Legal Department.

Richland County Council Request of Action

Subject:

Department of Public Works: Private Pond Policy

Richland County Council Request of Action

Subject: Department of Public Works Private Pond Policy

A. Purpose

County Council is requested to approve the update to the County's Private Pond Policy (policy), which first went into effect on May 3, 2005 and was reviewed internally by Public Works Staff reviewed and updated on May 3, 2010.

B. Background / Discussion

Requests for the County to maintain privately owned ponds and dry detention basins are a frequent occurrence. The current policy states the County will assistance with cleaning of privately owned lakes by removing sediment that can be reached by County equipment from the pond bank. In some cases the County performed maintenance that goes beyond the scope of this policy, such has hiring engineering firms and contractors to remove sediment from the entire lake, or installing sediment trapping structures. These larger scale maintenance practices were completed on a case-by-case basis with no baseline evaluation to justify which ponds would receive greater maintenance.

Since the adoption of the policy in 2005 and the review of the policy in 2010, the equipment the Public Works Department once had to provide maintenance from the bank was transferred to another department. The equipment transfer eliminated the need for Public Works to seek special permits to transport the equipment from site to site, and the other department utilizes the equipment onsite daily. The loss of the equipment is one reason maintenance performed on privately owned lakes is contracted out to a third party. The other reason for contracts is the work on large scale lakes entails applying permits from the Army Corp of Engineers and approval through the South Carolina Department of Health and Environmental Control which requires engineering studies and plans.

The attached revised policy not only uses a matrix that will give clear guidance on when a pond will qualify for County maintenance assistance, the policy also includes a 50% cost share for the owner of the privately owned lake/pond.

The policy also includes a section which details the County's maintenance responsibilities related to dry detention ponds. This section on dry ponds helps address requirements the County has through the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase I permit. The NPDES MS4 Permit requires the Public Works Stormwater Division to inspect post construction Stormwater best management practices, such as dry detention basins. Many are owned and should be maintained by private owners or a Home Owners Association (HOA). When inspection reports or Notice of Violations are sent to the owner with required maintenance activities, the owner or HOA often requests the County to take the pond into the County's maintenance system and handle it responsibility. The County currently maintains 48 dry detention basins and contracts the maintenance of those ponds out to a private contractor. The revised policy specifies that the County will maintain the infrastructure related to the pond (inlets, outlets, dams, emergency spillways, etc.). This covers infrastructure repair that a HOA or private owner may not be able complete, and is in line with the current

County Ordinance that states the County shall maintain the roads and Stormwater infrastructure in a subdivision.

The policy clearly defines that maintenance does not include cosmetic maintenance such as tree removal, litter control, or wildlife control, which are not requirements of the NPDES permit. Out of the 48 ponds that require maintenance by the County's contractor, the majority of the work is aesthetic (tree and litter removal) and only three ponds have required infrastructure repair.

C. Legislative / Chronological History

May 3, 2005 Richland County Council Meeting: Council unanimously approved the Private Pond Policy.

May 3, 2010: Private Pond Policy was reviewed internally by Public Works Staff.

D. Financial Impact

Since 2007, the Public Works Stormwater Division has spent \$1,721,497 providing maintenance on privately owned lakes/ponds. This cost does not include time/labor of Public Works staff, only engineering and contractor fees. If the current policy was in place, and all of the ponds listed met the criteria for County assisted maintenance, the cost would have been cut in half.

The Public Works Stormwater Division currently spends an average of \$39,633 per year on maintenance of the 48 County owned dry detention basins. The County currently inspects 244 privately owned dry detention basins located in subdivisions. If the County were to include these additional 244 ponds into its contract for yearly routine maintenance the estimated cost will be \$330,000/year. This does not include costs associated if the ponds require an initial cut to bring them up to County standards.

E. Alternatives

1. Approve the request to create a streamlined matrix for evaluating if the County will assist with the maintenance of privately owned lakes and dry detention basins. When a privately owned lake meets criteria for maintenance, the County will be guaranteed a 50% cost match by the lake owner.
2. Do not approve and continue to maintain privately owned lakes and dry detention basins on a case-by-case basis with no standard baseline for evaluation and at full cost to the County.

F. Recommendation

It is recommended that Council approve the request to adopt the revised Private Pond Policy.

Recommended by: Synithia Williams

Department: Public Works Stormwater Division

Date: 8/31/2015

G. Reviews

(Please replace the appropriate box with a ✓ and then support your recommendation in the Comments section before routing on. Thank you!)

Please be specific in your recommendation. While “Council Discretion” may be appropriate at times, it is recommended that Staff provide Council with a professional recommendation of approval or denial, and justification for that recommendation, as often as possible.

Finance

Reviewed by: Daniel Driggers

Date: 8/31/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

Public Works

Reviewed by: Ismail Ozbek

Date: 9/1/2015

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

Legal

Reviewed by: Elizabeth McLean

Date: 9/16/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Policy decision left to Council’s discretion.

Comments on the policy: 1) Even on dry detention basins, a public benefit needs to be articulated before using County funds.
2) The purpose mentions that “the cost share amount will be based on the amount of public benefit achieved by the lake/pond in question which is determined through evaluation by County staff. Cost share is determined on a case by case basis and allocated as funding allows.”
However, in the policy it appears to say that costs will be split 50-50. Should be clarified. If some other cost split is to happen, then that needs to be made clear in the policy and the matrix.

Administration

Reviewed by: Sparty Hammett

Date: 9/16/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend Council approval, and agree with Legal’s comments – a public benefit needs to be shown and cost share will be 50-50.

**Department of Public Works
Private Pond Maintenance Policy
DRAFT 08-11-2015**

I. Purpose

- a. To establish a criteria and considerations that will allow Richland County to perform appropriate maintenance activities at private ponds/lakes in order to mitigate or reduce the negative impact of connection of public drainage systems to private water bodies. This policy will also determine what, if any, public benefit is derived from the private pond/lake such as flood control, pollution control, and/or safety.
- b. To establish procedures for when the County may cost share for maintenance activities on the lake/pond to help maintain as a stormwater asset. The cost share amount will be based on the amount of public benefit achieved by the lake/pond in question which is determined through evaluation by County staff. Cost share is determined on a case by case basis and allocated as funding allows.
- c. To outline procedures for county assistance with the maintenance of private detention basins in a single family residential subdivision.

II. Definitions

- a. Dry detention basins – Depressions that are excavated for the purpose of detaining excess stormwater runoff from newly developed land. Basins are also created to act as holding area for the initial runoff of stormwater in order to allow sediment and pollutants to settle out from the stormwater medium. Dry detention basins may serve the same function as a pond, but there are significant differences. As their name suggests, they are most often dry (i.e. – lack standing water). Also, they are not considered an amenity to the community.

- b. Pond – A water body that, under normal circumstances, retains water. This water may be stormwater runoff or groundwater from an active spring. They may be naturally occurring or constructed. Ponds are considered an amenity (as opposed to infrastructure). However, they may be integrated into a drainage system.
- c. Private water bodies – Receiving waters (most often ponds, lakes, or basins) that are privately owned by individuals or an association for which Richland County has no ownership or formal maintenance responsibilities. Private water bodies may be integral to public drainage systems.
- d. Public drainage system – A stormwater conveyance system whose maintenance is the responsibility of a public entity that provides area drainage to a publicly maintained road network. Private water bodies may be integral to these systems.
- e. Water of the state – Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.¹

III. Introduction

Maintenance of the dam and pond of privately owned wet ponds/lakes is the responsibility of the private owner(s). A pond and dam may qualify for County funded improvements and maintenance only when it is determined by the County that the pond/lake provides significant public benefits, such as flood control, pollution control, and/or safety.

Dam structures subject to the SC Dams and Reservoirs Safety Act are under the jurisdiction of the SC Department of Health and Environmental Control. Dam modifications required by the State do not qualify for County funding unless the County Engineer determines appropriate public benefits, as described in Matrix, can also be achieved in accordance with this policy.

The control of algae, nuisance aquatic weeds, mosquitoes, fish kills, and trash removal does not qualify as a public benefit through this policy.

IV. Pond and Lake Policy Criteria

ALL of the following criteria must be met in order to qualify for consideration.

- a. Adjacent development with public road or drainage network discharges stormwater runoff into the pond;
- b. Maintenance activity will not disturb any wetland area;

¹ South Carolina Code of Laws Section 48-1-10

- c. Property owners must grant and sign easement agreements to access each of the established discharge points and surrounding area if needed by County;
- d. There is no existing maintenance easement already in place;
- e. The pond is currently managed by an established home or pond owner's association with a point of contact;
- f. The pond/lake was not constructed as a regulatory requirement associated with residential or commercial development;
- g. The owners dedicate temporary drainage and/or conservation easements AND hold harmless agreements at no cost to the County and sign maintenance agreements, as determined appropriate by the County Engineer.

V. Pond and Lake Additional Criteria

At least ONE of the following criteria must be met in order to qualify for evaluation.

- a. The pond/lake must provide, or be able to provide, a significant flood control benefit downstream of the structure, that represents cost avoidance to the County in the construction and maintenance of drainage infrastructure;
- b. The pond/lake is part of a larger, comprehensive watershed management plan, or water quality plan;
- c. The pond/lake must provide the opportunity to remove at least 10,000 pounds of pollutants annually;
- d. The dam must pose a significant health or environmental threat or hazard to public property or County citizens.

VI. Pond and Lake Implementation

- a. Qualified ponds/lakes will be evaluated by Public Works staff to determine the extent of public benefits that would be achieved by the maintenance;
- b. Qualified ponds/lakes and dams will be ranked by criteria including cost/benefit ratios, flood control benefits, water quality benefits, safety, infrastructure needs, and coordination with other County investments and policies. The attached matrix will be utilized to determine if the pond is eligible for County assistance;
- c. Ponds that meet qualifications and the work required can be accomplished by County staff will be added to the County's project's list in the order that the project is received;

- d. The highest ranking pond improvement projects will be input into the County's Capital Improvement Projects (CIP) matrix and ranked according to the benefits provided based on other CIP projects. There is no guarantee the pond will rank high against other CIP projects;
- e. For projects requiring engineering study and evaluation, the County will cost share, as funding allows, with the pond/lake owners for study and construction not to exceed 50% of the cost of the project and pending approval from Richland County Council;
- f. If the project ranks high and the Pond/Home Owner's Association commits 50% of the funds, the project will be submitted for County funding in accordance with the County's Capital Improvement budgeting process;
- g. The pond owner is responsible for acquiring all necessary permits before any work begins;
- h. All easements and hold harmless agreements shall be recorded prior to any maintenance activity is performed.

VII. Privately Owned Dry Detention Basins

- a. Dry detention basins are the responsibility of the property owner. The County will inspect dry detention basins yearly to ensure compliance with the Stormwater Management Ordinance and the pond maintenance agreement;
- b. Dry detention basins located in a single family residential subdivision that have been adequately maintained by the owner or homeowners association may qualify for maintenance assistance from the County. Maintenance assistance will consist of:
 - i. Repair of structural features of the detention basin including: inlets, outfall structure, emergency spill way, dam;
- c. The owner or home owners association may petition to the County for assistance with maintenance of the structural features of the dry detention pond;
- d. County maintenance does not include litter removal, landscaping including the removal of trees, wildlife control;
- e. The County can refuse maintenance if the owner or home owners association has not performed any of the required maintenance as agreed upon in the pond maintenance agreement;
- f. This will be a one-time maintenance.

Private Pond Policy Matrix			
Attribute	Unit	Amount	Weight
Public Benefit		0	40
County Drainage System Contributes			10
Safety Hazard if Maintenance Not Completed			15
Public Health Hazard			15
Pond Function		0	25
Watershed Size	Acres		10
HOA Actively Managing Pond			15
Pond Management		0	20
Did owner do modifications that effect function	Y/N		5
Ease of access to clean			15
Maintenance Requirement		0	15
County Staff Can Perform			10
Engineering Study Required			5
Total		0	100

Current Private Pond Maintenance Policy

DEPARTMENT OF PUBLIC WORKS BEST MANAGEMENT PRACTICE STANDARD			
			STANDARD # 26.17.1(O)
TITLE:	Private Pond Maintenance Policy	NUMBER OF PAGES: 4	
EFFECTIVE DATE:	May 3, 2005	LEAD AGENCY:	Stormwater Management
PREPARED BY:	Rocky Archer, PE Stormwater Manager	AUTHORIZED BY:	Christopher S. Eversmann, PE Public Works Director
REFERENCES:	None	REVIEW DATE:	May 3, 2010

I. Purpose

To establish criteria and considerations that will allow Richland County to perform appropriate maintenance activity at private ponds in order to mitigate or reduce the negative impact of connection of private water-bodies to public drainage systems

II. Definitions

- A. Dry detention basins – Depressions that are excavated for the purpose of detaining excess stormwater runoff from newly developed land. Basins are also created to act as holding areas for the initial runoff of stormwater in order to allow sediment and pollutants to settle out from the stormwater medium. Dry detention basins may serve the same function as a pond, but there are significant differences. As their name suggests, they are most often dry (*i.e.* – lack standing water). Also, they are not considered an amenity to the community. As such, they are considered infrastructure and, in the case of residential subdivisions, are deeded to the County for perpetual maintenance.
- B. Pond – A water body that, under normal circumstances, retains water. This water may be stormwater runoff or groundwater from an active spring. They may be naturally occurring or constructed. Ponds are considered an amenity (as opposed to infrastructure). However, they may be integrated into a drainage system.
- C. Private water-bodies – Receiving waters (most often ponds, lakes or basins) that are privately owned by individuals or an association for which Richland County has no ownership or formal maintenance responsibilities. Private water-bodies may be integral to public drainage systems.
- D. Public drainage system – A stormwater conveyance system whose maintenance is the responsibility of a public entity that provides area drainage to a publicly maintained road network. Private water-bodies may be integral to these systems.
- E. Waters of the state - Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private,

inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction; *South Carolina Code of Laws Section 48-1-10*.

III. Background

In 1990, the Environmental Protection Agency (EPA) established The National Pollutant Discharge Elimination System (NPDES) to reduce the quantity of pollutants that may be transported through the Storm Sewer Systems to “Waters-of-the-State”. The South Carolina Department of Health and Environmental Control (SCDHEC) Bureau of Water issued a NPDES Permit to Richland County in April 2000. In compliance with that Permit, Richland County has inventoried stormwater drainage systems and the locations to which they outfall into waters-of-the-state.

In the process of performing this inventory, Richland County has identified or been made aware of several areas of concern with respect to private water-bodies. These water bodies are in existence for a variety of reasons including recreation, aesthetics, and utility (water supply and power generation). Concurrently, stormwater retention or detention is also accomplished. It is not uncommon for these private water-bodies to be integral to public drainage systems. As such, they may be adversely affected by both controllable and uncontrollable factors that include adjacent development, discharge from public road drainage network, above average rainfall, and topography of the watershed.

IV. Problem

Among the more negative effects on these private water-bodies from their integration with the area public drainage system are deposits of sediment carried by stormwater flowing into them (or siltation). The accumulation of sediment reduces pond volume and alters or obstructs the natural or designed stormwater flow path. Sedimentation can also impair water quality by providing a medium for the transportation of pollutants into the pond.

Some ponds are dedicated to Richland County at the time of development. This occurs predominantly in residential developments in which the roads and drainage system are to be maintained by Richland County. Whereas other ponds remain private, pre-date any formal maintenance policy, or are natural waters-of-the-state. Consequently, consideration for public maintenance of these ponds has not, heretofore, been addressed.

V. Policy

In order to mitigate or reduce the negative impact of connection of private water-bodies to public drainage systems, it is necessary to develop criteria and considerations that will allow Richland County to perform appropriate maintenance activity at private ponds. These criteria and considerations are as follows:

- A. Adjacent development with public road or drainage network discharges stormwater runoff directly into the pond, and;
- B. The pond or lake should not be “isolated” or contained within a single property, and;
- C. Maintenance activity will not disturb any wetland area, and;
- D. Property owners must grant and sign easement agreements to access each of the established discharge points and surrounding area, and;

E. Hold harmless agreements must be obtained from property owners or Pond Owners Association.

Other considerations that may facilitate County participation for maintenance:

F. The presence of a perennial stream flowing through the pond,

G. The pond is currently managed and maintained by an established Pond Owner's Association with a point of contact.

VI. Procedure

Upon agreement of listed criteria, the County can proceed with the corrective action needed. In order to effectively resolve the problem, the County must first assess the stormwater runoff discharge points and then develop a plan to meet that particular need. County staff will determine the need for structural repair, the extent of sedimentation, or the amount of debris removal.

All easement and hold harmless agreements shall be recorded prior to any maintenance activity is performed.

All dredging activity performed by the County will be limited to the furthest extent of determined sedimentation that can be practically reached from the bank by County equipment.

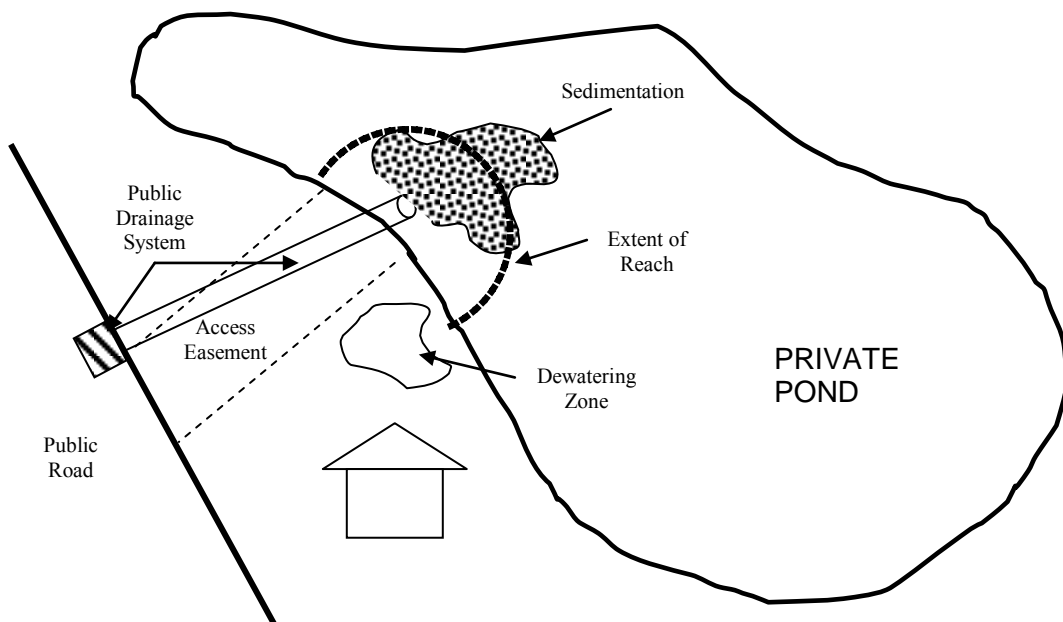


Figure 1. Typical outfall sediment removal activity components.

The County may also provide assistance in the hauling of removed spoil material by private parties provided that the material is accessible from a public road, appropriately dewatered and free of litter, debris or other hazardous substances.

The Department of Public Works is continuing to locate and identify potential sites for the retrofit of Best Management Practices (BMP's) to improve stormwater quality. Thusly, outfall sites that need frequent maintenance may be considered.

These BMPs can be physical or non-physical. Physical BMPs may include installation of structures or planting of natural vegetation to assist in removing sediment, debris, and pollutants. Non-physical BMPs consist of education and awareness. County staff will meet with the community and provide guidance on how each individual can do their part to promote positive stormwater management.

As these processes are developed and followed, Richland County Department of Public Works can continue to promote and deliver quality stormwater management while building positive relationships with its citizens.

By publication of this policy, Richland County assumes no obligation or liability associated with maintenance activity on private ponds.

This policy was approved Richland County Council in their meeting of May 3, 2005.

Original Private Pond Maintenance Policy



DEPARTMENT OF PUBLIC WORKS BEST MANAGEMENT PRACTICE STANDARD

STANDARD # 26.17.1(O)

TITLE: Private Pond Maintenance Policy	NUMBER OF PAGES: 4
EFFECTIVE DATE: Pending	LEAD AGENCY: Stormwater Management
PREPARED BY: Rocky Archer, PE Stormwater Manager	AUTHORIZED BY: Christopher S. Eversmann, PE Public Works Director
REFERENCES: None	REVIEW DATE: Effective Date plus (5) years

I. Purpose

To establish criteria and considerations that will allow Richland County to perform appropriate maintenance activity at private ponds in order to mitigate or reduce the negative impact of connection of private water-bodies to public drainage systems

II. Definitions

- A. Dry detention basins – Depressions that are excavated for the purpose of detaining excess stormwater runoff from newly developed land. Basins are also created to act as holding areas for the initial runoff of stormwater in order to allow sediment and pollutants to settle out from the stormwater medium. Dry detention basins may serve the same function as a pond, but there are significant differences. As their name suggests, they are most often dry (*i.e.* – lack standing water). Also, they are not considered an amenity to the community. As such, they are considered infrastructure and, in the case of residential subdivisions, are deeded to the County for perpetual maintenance.
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- C. Private water-bodies – Receiving waters (most often ponds, lakes or basins) that are privately owned by individuals or an association for which Richland County has no ownership or formal maintenance responsibilities. Private water-bodies may be integral to public drainage systems.

- D. Public drainage system – A stormwater conveyance system whose maintenance is the responsibility of a public entity that provides area drainage to a publicly maintained road network. Private water-bodies may be integral to these systems.
- E. Waters of the state - Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction; *South Carolina Code of Laws Section 48-1-10*.

III. Background

In 1990, the Environmental Protection Agency (EPA) established The National Pollutant Discharge Elimination System (NPDES) to reduce the quantity of pollutants that may be transported through the Storm Sewer Systems to “Waters-of-the-State”. The South Carolina Department of Health and Environmental Control (SCDHEC) Bureau of Water issued a NPDES Permit to Richland County in April 2000. In compliance with that Permit, Richland County has inventoried stormwater drainage systems and the locations to which they outfall into waters-of-the-state.

In the process of performing this inventory, Richland County has identified or been made aware of several areas of concern with respect to private water-bodies. These water bodies are in existence for a variety of reasons including recreation, aesthetics, and utility (water supply and power generation). Concurrently, stormwater retention or detention is also accomplished. It is not uncommon for these private water-bodies to be integral to public drainage systems. As such, they may be adversely affected by both controllable and uncontrollable factors that include adjacent development, discharge from public road drainage network, above average rainfall, and topography of the watershed.

IV. Problem

Among the more negative effects on these private water-bodies from their integration with the area public drainage system are deposits of sediment carried by stormwater flowing into them (or siltation). The accumulation of sediment reduces pond volume and alters or obstructs the natural or designed stormwater flow path. Sedimentation can also impair water quality by providing a medium for the transportation of pollutants into the pond.

Some ponds are dedicated to Richland County at the time of development. This occurs predominantly in residential developments in which the roads and drainage system are to be maintained by Richland County. Whereas other ponds remain private, pre-date any formal maintenance policy, or are natural waters-of-the-state. Consequently, consideration for public maintenance of these ponds has not, heretofore, been addressed.

V. Policy

In order to mitigate or reduce the negative impact of connection of private water-bodies to public drainage systems, it is necessary to develop criteria and considerations that will allow Richland County to perform appropriate, limited maintenance activity on private ponds. These criteria and considerations are as follows:

- A. Adjacent development with public road or drainage network discharges stormwater runoff directly into the pond, and;
- B. The pond or lake should not be “isolated” or contained within a single property, and;
- C. Maintenance activity will not disturb any wetland area, and;
- D. Property owners must grant and sign easement agreements to access each of the established discharge points and surrounding area, and;
- E. Hold harmless agreements must be obtained from property owners who provide access easements and the Pond Owners Association.

Other considerations that may facilitate County maintenance participation:

- F. The presence of a perennial stream flowing through the pond, or;
- G. Recommendation by County Public Works Staff and approval by County Council.

VI. Procedure

Upon agreement of listed criteria, the County can proceed with the corrective action needed. In order to effectively resolve the problem, the County must first assess the stormwater runoff discharge points and then develop a plan to meet that particular need. County staff will determine the need for structural repair, the extent of sedimentation, or the amount of debris removal.

All easement and hold harmless agreements shall be recorded prior to any maintenance activity is performed.

All dredging activity performed by the County will be limited to the furthest extent of determined sedimentation that can be practically reached using excavation equipment organic to the County Public Works fleet.

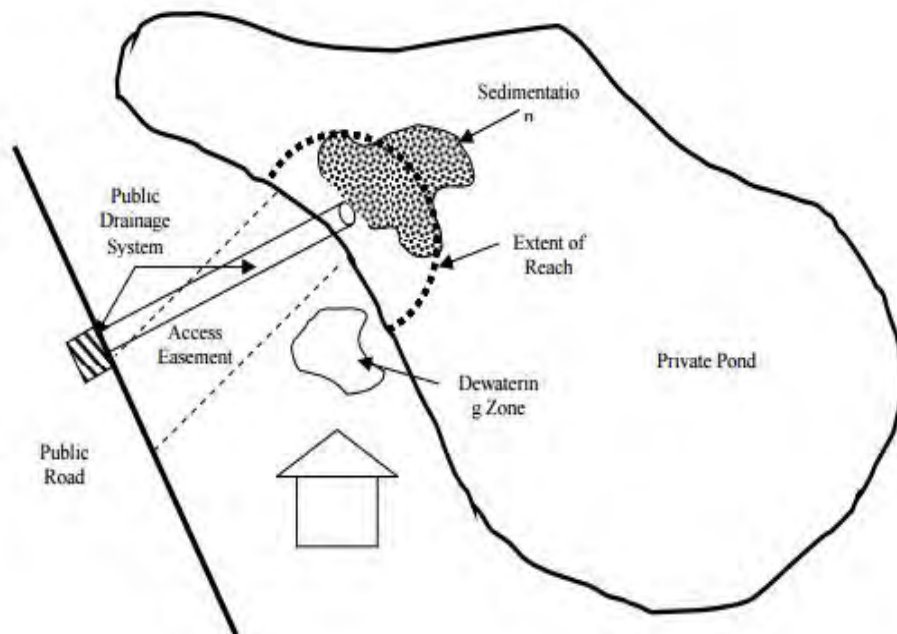


Figure 1. Typical outfall sediment removal activity components.

The Department of Public Works is continuing to locate and identify potential sites for the retrofit of Best Management Practices (BMP's) to improve stormwater quality. Outfall sites that need frequent maintenance may be considered.

These BMPs can be physical or non-physical. Physical BMPs may include installation of structures or planting of natural vegetation to assist in removing sediment, debris, and pollutants. Non-physical BMPs consist of education and awareness. County staff will meet with the community and provide guidance on how each individual can do their part to promote positive stormwater management.

By publication of this policy, Richland County assumes no obligation or liability associated with maintenance activity on private ponds.

Richland County Council Request of Action

Subject:

Conservation Department: Conservation Easement on Back Swamp Road

Richland County Council Request of Action

Subject: Conservation Department: Conservation Easement on Back Swamp Road

A. Purpose

County Council is requested to approve a conservation easement on 251 acres of property owned by Ted Hopkins on Back Swamp Road in Lower Richland.

B. Background / Discussion

Richland County Conservation Commission (RCCC) recommends placing a conservation easement on “The Pincushion” property owned by Mr. Ted Hopkins in Lower Richland.

On Back Swamp Road, near Old Hopkins Road and Lower Richland Blvd., RCCC proposes to place a conservation easement on 251 acres, known locally as The Pincushion. This consists of parcels 21600-04-05, 21500-01030, and a portion of 21600-04-02. The property contains wetlands characteristic of Pocosin ecosystems, also known as shrub bogs, which are rich in organic material and provide valuable habitat for species adapted to living in unaltered forests. The property also has historic components, comprising a portion of an 18th century plantation and surrounding the Hopkins Family Cemetery which is listed on the National Register of Historic Places. Myers Creek flows through one of the parcels and this easement will help protect water quality in the creek as it flows into Cedar Creek and then into Congaree National Park.

Benefits of protecting this land in perpetuity include:

- A 300ft vegetated buffer on both branches of Myers Creek that protects water quality and provides wildlife corridors
- A right-of-way for a public trail through the vegetated buffer on the main course of Myers Creek
- Large wooded tracts that provide a diversity of natural habitats for fish, wildlife and plants
- The preservation of open space, the protection of critical natural assets, and the maintenance of the rural character of the land as recommended in the Lower Richland Strategic Community Master Plan

In a conservation easement, landowners give up specific development or property rights, limiting what they can do with their land; this applies to all future owners as well. In return for “donating” specific property rights, the landowner may qualify for federal and state tax benefits. Another option is to receive some compensation for the donation, often called a purchase of development rights. In placing a conservation easement on a property, RCCC has frequently paid for the development rights which are negotiated on a case by case basis.

At its July 27, 2015, RCCC unanimously approved placing a conservation easement on the Pincushion property. A \$500/acre purchase of development rights was negotiated for a total cost of \$125,500 to be paid in equal payments over three (3) years.

C. Legislative / Chronological History

This is a staff initiated request; therefore, there is no legislative history.

D. Financial Impact

Funds are available in the RCCC Capital Acquisition Fund.

E. Alternatives

1. Approve the request to place a conservation easement on 251 acres of wetlands and high ground on Back Swamp Road thus preserving in perpetuity water quality protection for Myers Creek, public trail access, and high quality wildlife habitat.
2. Do not approve the conservation easement and forfeit the opportunity to preserve the land in perpetuity with all its attendant benefits.

F. Recommendation

It is recommended that Council approve the request to place a conservation easement on 251 acres owned by Mr. Ted Hopkins on Back Swamp Road and to purchase the development rights for a total sum of \$125,500 to be paid in three (3) equal payments over three (3) years from the RCCC Capital Acquisition Fund.

Recommended by: Quinton Epps, Director

Department: Conservation

Date: September 2, 2015

G. Reviews

(Please replace the appropriate box with a ✓ and then support your recommendation in the Comments section before routing on. Thank you!)

Please be specific in your recommendation. While “Council Discretion” may be appropriate at times, it is recommended that Staff provide Council with a professional recommendation of approval or denial, and justification for that recommendation, as often as possible.

Finance

Reviewed by: Daniel Driggers

Date: 9/8/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation:

Legal

Reviewed by: Elizabeth McLean

Date: 9/15/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Policy decision left to Council’s discretion; however, Legal would appreciate this itemed being approved with the condition that the Legal department be allowed to work with the Conservation Department on the actual wording of the easement, as is customary.

Administration

Reviewed by: Sparty Hammett

Date: 9/16/15

Recommend Council approval

Recommend Council denial

Comments regarding recommendation: Recommend Council approval with the condition that the Legal department be allowed to work with the Conservation Department on the actual wording of the easement, as is customary.

PINCUSHION ON MYERS CREEK

2015 DEED OF CONSERVATION EASEMENT

STATE OF SOUTH CAROLINA)
) DEED OF CONSERVATION EASEMENT
COUNTY OF RICHLAND)

THIS DEED OF CONSERVATION EASEMENT (the “Deed” or “Easement”) is made, granted and conveyed as of the Effective Date provided herein, by Theodore J. Hopkins Jr. (hereinafter “**Grantor**”), having an address at 141 Edisto Avenue, Columbia, South Carolina 29205, in favor of Richland County, South Carolina (hereinafter “**Grantee**”), having an address at c/o Richland County Conservation Commission, Post Office Box 192, Columbia, SC 29202 (**Grantor** and **Grantee** sometimes together referred to as the “**Parties**”).

WHEREAS, Grantor is the sole owner in fee simple of certain real property containing approximately two hundred and fifty-one (251.0) acres in Richland County, South Carolina, included in and historically referred to as “Myers Creek” or “The Pincushion on Myers Creek,” and more particularly described in *Exhibit A* attached hereto and incorporated herein by this reference (hereinafter the “Property” or the “Protected Property”);

WHEREAS, Grantee is a political subdivision of the State of South Carolina and meets the requirements of Sections 170(b)(1)(A) and 170(c)(1) of the United States Internal Revenue Code (the “Code”) and the regulations (“Treasury Regulations” or “Treas. Reg.”) promulgated thereunder by the United States Department of the Treasury; **Grantee** is a “qualified organization” as such term is defined in Section 170(h)(3)(A) of the Code; and **Grantee** is qualified to hold conservation easements under the laws of the State of South Carolina;

WHEREAS, the general intent of this Easement is the conservation and preservation of the Property as agricultural land, forest, wetlands, open space, and wildlife habitat;

WHEREAS, the Property is rich in historic content by virtue of its (i) comprising a portion of an 18th century plantation composed of royal grants ca. 1760s to John Hopkins (1739-1775), (ii) being adjacent to and surrounding the site of the 1764 home of John Hopkins, (iii) being adjacent to and surrounding the Hopkins Family Cemetery, an historic site listed on the National Register of Historic Places, (iv) consisting of 18th and 19th century wetlands dedicated to the cultivation of rice and indigo, and (v) being adjacent to Norfolk and Southern Railroad, the same being a portion of the former South Carolina Railroad that was destroyed in February, 1865 by federal troops under the command of Gen. William T. Sherman;

WHEREAS, the Property is situated on the edge of the City of Columbia and other fast growing, densely populated areas; thus, absent the protection provided by the instant Easement, the area’s projected growth, development and “urban sprawl” present a threat to the environmental and historical integrity of the Property;

WHEREAS, the Property is located on Back Swamp Road, near Old Hopkins Road and Lower Richland Boulevard, and is visible by the public; and notwithstanding its close proximity to the City of Columbia, the Property provides a view of the topography, the bucolic beauty and the agricultural and rural character of Lower Richland County and the Central Midlands of South Carolina, as evidenced in the photographs in the Baseline Documentation;

WHEREAS, the Property is located in close proximity to the Cabin Branch Conservation Corridor and other conservation easements held by Richland County, which easements together protect a substantial and very valuable conservation land space in Lower Richland County, South Carolina and serve an essential role in preserving the agricultural, rural, natural and ecological values of a substantial part of the community;

WHEREAS, the Property is situated in central South Carolina on Myers Creek which is part of the Myers Creek – Cabin Branch Watershed which, upon joining Cedar Creek, becomes a major waterway through the Congaree National Park to the Congaree River – the area considered of international ecological importance in its designation as an International Biosphere Reserve;

WHEREAS, the Property is a significant ecological, agricultural and silvicultural resource as evidenced by (i) its historic and productive use as a farm and timber preserve that has been in the same family for over 250 years, (ii) its consisting of the a segment of Myers Creek, which is a thriving natural habitat for fish, ducks, geese, and aquatic life, and (iii) its serving as a prime example of the Pocosin ecosystems found in the Carolinas, as described in the following paragraph, the same being particularly important for wintering birds because of the high amount of soft mast available;

WHEREAS, the Property, known locally as “The Pincushion,” has a diversity of natural habitats that include wetlands characteristic of Pocosin ecosystems – the term “Pocosin” (interestingly similar in pronunciation to the term “Pincushion”) being Algonquin in origin and meaning “swamp on a hill”; and these palustrine, naturally occurring freshwater evergreen wetlands in the Atlantic coastal plain of North America, spanning from southeastern Virginia through North Carolina and into South Carolina, have been described as one of the most endangered of the nation’s many wetland types;

WHEREAS, the Property contains forested and non-forested wetlands, which function to improve water quality by providing for nutrient uptake and sediment deposition from runoff draining from upstream lands, which function to provide many wildlife habitat components such as breeding grounds, nesting sites and other critical habitat for a variety of fish and wildlife species, unique habitat requirements of threatened and endangered plants and animals, and which also function to provide an irrigation resource for agricultural lands, especially the Pocosin ecosystems described above, the same being particularly important for wintering birds because of the high amount of soft mast available;

WHEREAS, the Property provides a diversity, quality and combination of natural habitats significant to wildlife habitat functions including feeding, nesting and roosting areas for native and migratory birds, wild turkeys and waterfowl, and also including feeding, breeding and resting areas for deer and other native large and small game and non-game animals;

WHEREAS, the past and present use of the Property in its natural, agricultural condition is consistent with the Conservation Purpose of this Easement inasmuch as the Property has been and is used entirely for the preservation of open space, including growing of timber and raising of crops, as well as the preservation of water quality by providing a vital, protective buffer for Myers Creek, which is a major, integral part of the Myers Creek – Cabin Branch Watershed, the protection and preservation of which waterways and ecosystems are recommended and designated a top priority of Federal, State and local government;

WHEREAS, arrowheads, pieces of pottery and other ancient Indian artifacts, as well as Civil War relics, have been discovered on the Property from time to time, giving reason for the Property's possibly, if not probably, containing significant archeological materials and having significant archeological value;

WHEREAS, the natural habitat, water quality protection, agricultural viability and productivity, archeological, open space and scenic character of the Property (collectively referred to herein as the "Conservation Values") are of great importance to the environmental integrity of the Property, to the **Grantor**, the **Grantee**, the people of South Carolina and the nation;

WHEREAS, the **Parties** agree that with the careful use of conservation easements, the resources, habitat, beauty and unique ecological and agricultural character of the Property can be preserved and protected from development, while at the same time **Grantor** retains the right of continuing private ownership, use and enjoyment of the Property;

WHEREAS, by act of the General Assembly of the State of South Carolina, as enacted in South Carolina Code Annotated (1976, as amended) (hereinafter the "SC Code") Section 27-8-10, *et seq.* (The South Carolina Conservation Easement Act of 1991) (hereinafter the "Act"), South Carolina recognizes and authorizes the creation of conservation restrictions and easements; and as described in SC Code Section 27-8-20, also recognizes and authorizes **Grantee** to hold conservation easements;

WHEREAS, the **Parties** recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Property; the **Parties** share the mutual intent and common purpose of the conserving, preserving and protecting the Property *in perpetuity* as "a relatively natural habitat of...fish, wildlife or plants or similar ecosystem" as that phrase is used in Code Section 170(h)(4)(A)(ii), and as "open space (including farmland and forest land)...for the scenic enjoyment of the general public...pursuant to clearly delineated...governmental conservation policy" as those phrases are used in Code Section 170(h)(4)(A)(iii) and the Treasury Regulations thereunder; and the **Parties** agree that these purposes can be accomplished by placing voluntary restrictions upon the use of the Property and by providing for the transfer from the **Grantor** to the **Grantee** of affirmative rights for the protection of the Property so as to be considered a "qualified conservation contribution" as such term is defined in Code Section 170(h) and the Treasury Regulations thereunder;

WHEREAS, the **Parties** agree that current and historical uses of the Property are compatible with the Conservation Purpose and Conservation Values (collectively referred to herein as "Conservation Interests") described herein; and they intend to protect and preserve the Property and maintain the Conservation Interests therein, *in perpetuity*, in accordance with the provisions of Treas. Reg. Section 1.170A-14(g);

WHEREAS, the **Grantor** intends that this transaction - the deed and conveyance of this Easement, the cash consideration and the contribution herein - shall be treated so that the transaction (i) is in part a sale of the Easement and in part a contribution of the Easement and (ii) is a "bargain sale transaction" or "bargain sale"; and

WHEREAS, the cash consideration for the sale part of the Easement is One hundred twenty-five thousand five hundred (\$125,500.00) dollars, the payment of which shall be made in

three (3) amounts as follows: (i) Forty-one thousand eight hundred thirty-four (\$41,834.00) dollars upon execution of this Easement; (ii) Forty-one thousand eight hundred thirty-three (\$41,833.00) dollars on October 30, 2016; and Forty-one thousand eight hundred thirty-three (\$41,833.00) dollars on October 30, 2017;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, in consideration of **Grantee's** cash payment to **Grantor**, as described in the paragraph immediately above, of One hundred twenty-five thousand five hundred (\$125,500.00) dollars, with regard to the sale portion of this Easement, for no consideration with regard to the charitable contribution portion of this Easement, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of South Carolina and Sections 170(h) and 2031(c) of the Code, **Grantor** hereby voluntarily deeds and conveys to **Grantee** a conservation easement *in perpetuity* over the Property of the nature and character and to the extent hereinafter set forth (the "Easement"); and, in recognition thereof, the **Parties** declare and agree that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements hereinafter set forth, which covenants, conditions, restrictions shall be deemed to run with the land *in perpetuity* and shall be a burden on the Property *in perpetuity*.

STATEMENT OF CONSERVATION PURPOSE AND INTENT.

Conservation Purpose. The purposes (referred to herein as the "Conservation Purpose") of this Deed and Easement, as defined in Section 170(h)(4)(A)(ii) and (iii) of the Code, shall be and are as follows:

"The protection of a relatively natural habitat of...fish, wildlife, or plants or similar ecosystem; and

The preservation of open space (including farmland and forest land) where such preservation is (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State or local governmental conservation policy, and will yield a significant public benefit."

Intent. The intent of the Parties is to convey, accept and maintain perpetual limitations, restrictions and conditions on the uses that may be made of the Property by way of this Easement, so that: (i) the Property is perpetually preserved and protected from development other than agricultural development; (ii) the Conservation Interests herein are enforceable *in perpetuity*, in accordance with the provisions of Treas. Reg. Section 1.170A-14(g); and (iii) the Conservation Interests are satisfied in a manner consistent with clearly delineated conservation and agricultural programs, purposes, policies and statutes.

GRANTEE'S WARRANTIES, REPRESENTATIONS AND CERTIFICATIONS.

Property Deemed Worthy of Protection for Conservation Purpose. **Grantee** warrants, represents and certifies that it has evaluated the Property and that the Property is deemed worthy of protection in accordance with the Conservation Purpose stated herein.

Consideration Limited to Cash Amount Paid by Grantee to Grantor. Grantee warrants, represents and certifies that the cash amount of One hundred twenty-five thousand five hundred (\$125,500.00) dollars, paid to **Grantor** constitutes the entire consideration provided by **Grantee** to **Grantor** with regard to the sale portion of this Easement. **Grantee** further warrants, represents and certifies that, (i) there has been, is and shall be no *quid pro quo*, goods, services or other consideration provided to the **Grantor** by or from the **Grantee**, its affiliates and assigns, and (ii) **Grantee** will provide **Grantor** with a separate letter so stating, pursuant to the requirements of Section 170(f)(8) of the Code.

Terms of Easement in Accord with Grantee's Policies, Rules & Regulations. Grantee warrants, represents and certifies that the terms of this Easement, including but not limited to the determination and amount of consideration paid by **Grantee** to **Grantor** as described herein, are pursuant to and in accordance with current policies, rules and regulations promulgated by the **Grantee**.

Acceptance of Terms of Easement. By execution of this Deed, **Grantee** warrants, represents and certifies that it accepts the terms, conditions and limitations of this Easement and the rights and obligations recited herein.

Commitment and Resources to Enforce Terms of Easement. By accepting the terms, rights and obligations of this Easement, **Grantee** warrants, represents and certifies that **Grantee** has the commitment and resources to enforce, and will enforce the terms of this Easement.

GRANTEE'S RIGHTS AND REMEDIES.

The following rights and remedies are conveyed to **Grantee**:

Preservation and Protection of Conservation Purpose. The right to preserve and protect the Conservation Interests of the Easement in accordance with the provisions of Treas. Reg. Section 1.170A-14(g)(5), to wit:

Grantor's Documentation Prior to Donation. Grantor shall make available to Grantee, prior to the time the donation is made, maps and materials sufficient to establish baseline documentation and the condition of the Property (the "Baseline Documentation") at the time of the gift. [See generally, Treas. Reg. Section 1.170A-14(g)(5)(i), and *Section 5(R)* herein.]

Grantor's Notification to Grantee; Certain Terms of Donation. Grantor shall agree to notify Grantee, in writing, before exercising any reserved right that may have an adverse impact on the Conservation Interests herein; and the terms of the donation shall provide for the Grantee's rights (i) to enter the Property at reasonable times to inspect the Property to determine if there is compliance with the terms of the donation, and (ii) to enforce the conservation restrictions by appropriate legal proceedings, including but not limited to, the right to require the restoration of the Property to its condition at the time of the donation. [See generally, Treas. Reg. Section 1.170(A)-14(g)(5)(ii) and *Sections 3(B)-(F)* herein.]

Assurance that Use is Consistent with Conservation Interests and Prevention of Inconsistent Uses. The right to determine that any activity on or use of the Property is consistent with the Conservation Interests of this Easement, as well as the right to prevent Grantor or third parties from conducting any activity or use inconsistent with the Purposes herein. Grantee shall specifically have the right, and Grantor hereby acknowledges such right, to enforce the purpose, terms and restrictions of this conservation easement against third parties with or without the permission of the Grantor.

Visual Access. The right of visual access across the Property, *provided, however*, said right (i) shall not be construed to permit physical access by the general public to, over, across or upon the Property, (ii) shall not expand the Grantee's right of entry and physical access to or over the Property as described in *Section 3(D)*;

Physical Access, Entry and Quiet Enjoyment. The right to enter the Property in a reasonable manner and at reasonable times, solely in order to monitor compliance with the provisions of the Easement; *provided, however*, such entry shall be upon prior reasonable written notice (i.e., not less than seven days prior written notice) to Grantor; *provided further*, Grantee shall not interfere with the use and quiet enjoyment of the Property by Grantor or Grantor's guests, invitees and licensees; *provided further*, such access/entry shall be limited to Grantee's passage or transit over that certain easement/corridor designated "Protected Property Access/Entry," and described and illustrated on the baseline map captioned "The Pincushion on Myers Creek" and attached to and made a part of *Exhibit A* of this Easement (the "Baseline Map"), which access/entry shall be a permanent, non-exclusive easement and right-of-way conveyed to Grantee and its successors for the purpose of providing Grantee access/entry from Back Swamp Road to the Property; and the Parties hereby agree that Grantee's use of such access/entry shall be for the sole purpose of Grantee's monitoring and enforcing this Easement. (See also, *Section 4(J)(2)(a)* of this Easement.)

Potential Public Trail. **Grantor** hereby grants a right-of-way on Parcel C of the Property for use as a Public Trail as described in this paragraph, which trail would pass through the Vegetated Buffer on Parcel C of the Property along the Main Course of Myers Creek as indicated in the Baseline Map; *provided, however*, this right-of-way may be used only as the Public Trail described in this paragraph and only on the condition and in the event that (i) a potential public greenway and/or trail designed for pedestrian walking/jogging/foot paths, biking paths, equestrian riding paths and related structures along or near one side of the Main Course of Myers Creek (the “Public Trail” or “Potential Public Trail”) is proposed and authorized by **Grantee** or a local governmental agency, and (ii) all of the landowners who own property over which the Public Trail would pass agree to the proposed location of the Public Trail and grant permission to **Grantee** or a local governmental agency for the construction and maintenance of and public access over the segment of the Public Trail that would pass through their respective properties.

Grantee’s Remedies. If **Grantee** determines that **Grantor** is in violation of the terms of this Easement or that a violation is threatened, the **Grantee** shall notify the **Grantor** of the violation (hereinafter, “First Notice”) and request voluntary compliance. In the event that voluntary compliance is not agreed upon within sixty (60) days of receipt of First Notice, the **Grantee** shall give written notice to **Grantor** of such violation (hereinafter, “Second Notice”) and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Interests herein, to restore the portion of the Property so injured.

If **Grantor** fails to cure the violation within thirty (30) days after receipt of Second Notice thereof from **Grantee** [or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, if **Grantor** shall fail to begin curing such violation within said thirty (30) day period, or fail to continue diligently to cure such violation until finally cured], **Grantee** may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of the Conservation Interests, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting **Grantor’s** liability therefore, **Grantee**, in its sole discretion, may either apply any damages recovered to the cost of undertaking any corrective action on the Property or may apply any damages recovered towards activities relating to Richland County’s conservation easement program.

If **Grantee**, in its sole but reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Interests herein, **Grantee** may pursue its legal and equitable remedies under this *Section 3(F)* without prior notice to **Grantor** or without waiting for the period provided for cure to expire.

Grantee’s rights under this *Section 3(F)* apply equally in the event of either actual or threatened violations of the terms of this Easement. **Grantor** agrees that if

Grantee's remedies at law for any violation of the terms of this Easement are inadequate, **Grantee** shall be entitled to seek the injunctive relief described in this *Section 3(F)*, both prohibitive and mandatory in addition to such other relief to which **Grantee** may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. **Grantee's** remedies described in this *Section 3(F)* shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

If **Grantee** prevails in an action to enforce the terms of this Easement, any costs incurred by **Grantee** in enforcing the terms of this Easement against **Grantor**, including without limitation, costs of suit and reasonable attorney's fees, and any reasonable costs of restoration necessitated by **Grantor's** violation of the terms of this Easement, shall be borne by **Grantor**.

GRANTOR'S RESERVED/RETAINED RIGHTS.

The following rights, uses and activities of the **Grantor** with regard to the Property (collectively the "Reserved Rights"), some of which are currently not being exercised or conducted but which are or may be contemplated by **Grantor** for implementation in the future, shall be and hereby are specifically retained by and reserved unto the **Grantor** and the **Grantor's** successors, personal representatives, heirs, and assigns; *provided, however*, the Reserved Rights shall be exercised in a manner that is in full accordance with and subject to the provisions, limitations and restrictions of this Easement, including but not limited to the provisions which protect the Conservation Interests associated with the Property, and all applicable local, state and federal laws and regulations, including but not limited to Treas. Reg. Section 1.170(A)-14(g)(5). Therefore, subject to the Conservation Interests herein and all other provisions, limitations and restrictions of this Easement, including but not limited to *Section 4(L)* below, **Grantor** reserves/retains the following rights with regard to the Property:

General. The rights, uses and activities inherent in fee simple ownership of the Property, including but not limited to the right of continuing private use and enjoyment of the Property. Upon request by **Grantor**, **Grantee** shall not unreasonably withhold any document that may be requested by **Grantor**, including an estoppel certificate or compliance certificate, to certify to the best of **Grantee's** knowledge **Grantor's** compliance with any obligation of **Grantor** contained in this Easement or otherwise to evidence the status of this Easement.

Grant, Sale or Other Transfer of Fee Simple Interest. The right to grant, sell or otherwise transfer fee simple interest in all or a portion of the Property, subject to the subdivision limitations in *Section 4(K)(1)* below, and to receive all of the revenues from such transfer.

Grant, Lease or Other Transfer of Less Than Fee Simple Interest. The right to grant, lease, or otherwise transfer less than fee simple interest(s) in all or a portion of the Property and to receive all of the proceeds from such transfer.

Non-Commercial Activities. The right to engage in the following activities and events on the Property:

Outdoor, Recreational and Educational Activities. Non-commercial outdoor, recreational and educational activities and events compatible with the Conservation Interests herein, including but not limited to photography, scenic viewing, bird-watching, wildlife observation and feeding, horseback riding, camping, fishing, hunting, clay and trap field and shooting sports, swimming, boating, cycling, ropes and obstacle courses, hiking, jogging, running, cross-country, archery and other similar non-commercial outdoor events and activities that do not use impervious surfaces and that are compatible with the Conservation Interests herein;

Social, Cultural and Community Activities. Non-commercial, social, cultural and community activities and events, including but not limited to private gatherings of families and friends.

Development of Certain Permitted Areas, Buildings, Facilities and Structures. The right to develop, construct and maintain certain areas, buildings, facilities and structures (the “Permitted Structures”), as follows:

Two (2) development areas, each area comprising up to but no more than one (1) acre, (the “Development Areas”), which areas may include the following Permitted Structures:

One (1) caretaker’s house near Hopkins Family Cemetery;

One (1) hunting lodge; and

Agricultural buildings (e.g., barn, shed, utility building).

Related structures (e.g., garage, storage building, well, pump house, dog kennel) within the Development Areas, with the permission of the **Grantee**.

Except as provided in *Sections 4(E)(1)(a)&(b)* above, no other residential structures shall be permitted. No impervious paving to these structures shall be permitted. Permitted Structures may be repaired, reasonably enlarged and replaced in their same locations. Permitted Structures must be located on the Property in such a manner as not to negatively impact that public scenic enjoyment of the Property allowed in this Easement. All Permitted Structures and their locations must receive approval from the **Grantee** prior to construction.

Minor structures intended or used for scenic viewing, bird watching, fishing, hunting (e.g., deer stands and duck blinds), or wildlife observation and feeding, are expressly permitted and are not included in the Development Areas restrictions and limitations herein; provided, however, **Grantee** shall be notified of their construction.

Natural Habitat, Wildlife and Wildlife Habitat Management. The right to engage in the following activities on the Property, in accordance with the then-current, generally accepted, scientifically-based standards and practices recommended by the U.S. Cooperative Extension Service, U.S. Natural Resources Conservation Service, or other government or private natural resource conservation and management agencies then active:

Natural Habitat Management. Management of habitat in its natural state, including the controlled burning of field and forest brush, the stocking, maintenance and enhancement of natural waters, pools, green tree reservoirs and creeks, and the planting of native species; and

Wildlife and Wildlife Habitat Management. Management of wildlife and wildlife habitat, including non-commercial hunting and fishing activities.

Conservation, Preservation and Mitigation Programs. The right to engage or participate in conservation, preservation and mitigation programs existing now or permitted in

the future with regard to any activity or use permitted (or restricted, as the case may be) on the Property under this Easement, including but not limited to credits or other benefits, including but not limited to endangered species credits, water quality credits, wetland mitigation and/or ground water credits. Such participation shall be subject to approval of the **Grantee** and consistent with the Conservation Interests herein.

Agriculture and Silviculture. The right to engage or participate in the following uses and activities on the Property:

Farming, Agriculture and “Agricultural Use(s).” Farming and agriculture [collectively referred to as “Agricultural Use(s)”] defined and described as follows:

“Agricultural Use(s)” is defined as the commercial cultivation, production (organic and conventional), planting, gathering, harvesting, storage, sale, distribution or retail marketing of crops, including but not limited to field and grain crops, rice, indigo, fruits and citrus, horticultural specialties, trees and timber.

“Agricultural Use(s)” is further defined to include agricultural practices such as (i) the pasturing, grazing, feeding, breeding and raising of livestock; and (ii) the breeding and raising of bees and the harvesting and sale of honey. The use of agrichemicals, consistent with Federal and State law, in connection with the aforesaid Agricultural Use(s), including but not limited to, noxious weed control, chemical fertilizers, herbicides, pesticides, fungicides and rodenticides, will be permitted, but only in those amounts and with that frequency of application necessary to accomplish agricultural activities permitted by the terms of this Easement and only in accordance with label instructions; *provided, however*, no use of agrichemicals will be made if such use would result in (i) unlawful contamination of any source of water, (ii) any significant impairment of any natural ecosystem or process on the Property, or (iii) violation or breach of federal, state and local statutes and regulations or the Conservation Interests, limitations and restrictions provided in this Easement.

Silviculture. Silvicultural uses and activities and the management of timberland in order to establish and maintain healthy stands of commercially viable trees (“Silviculture”) shall be permitted on the Property, including but not limited to tree farming, the planting, harvesting, timbering, cutting and selling of pine and hardwood trees, and the maintaining of logging roads and logging decks. **Grantor** reserves the right to timber, cut, harvest and sell any tree, in accordance with applicable county, state, and federal regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a Permitted Structure is in danger. There shall be no timbering within one

hundred fifty (150) feet of either side/bank of both courses of Myers Creek in Parcels B and C, as indicated on the Baseline Map as the “Vegetated Buffer;” provided, however, such timbering shall be allowed as may be reasonable and necessary to construct and maintain the Public Trail described in *Section 3(E)* herein.

Conservation Plan. All agricultural and silvicultural uses and activities 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 the Grantee. This plan shall be provided to the Grantee and updated 1) at least once every ten (10) years, 2) any time the basic type of agricultural or silvicultural operation changes, or 3) ownership of the Property changes. **Grantor** and **Grantee** recognize that changes in agricultural technologies, including accepted management practices, may result in an evolution of agricultural activities; and such changes shall be permitted as long as they are consistent with federal, state and local laws, and the perpetual protection of the Conservation Interests described in this Easement.

Historical, Archeological and Paleontological Activities. The right to engage in the following activities on the Property:

Historical Study and Preservation. Research, study, restoration and preservation of historically important land areas or historic sites.

Archeological and Paleontological Study and Preservation. Excavation, digs, research, study and preservation of significant archeological and paleontological sites; *provided, however*, all such excavation, study and preservation shall be conducted in accordance with the prevailing acceptable standards and principles of the science and profession of archeology and paleontology; *provided further*, any archeological or paleontological site shall, upon completion of any excavation, be returned to, or as close as possible to, its previous state, unless the site is to be maintained in an excavated condition for interpretive purposes related to education. Archeological or paleontological structures, artifacts, fossils and objects excavated or discovered on the Property shall be preserved and retained on the Property or shall be transferred, conveyed, sold or donated to a recognized and accredited museum or educational institution. **Grantor’s** transfer, conveyance, sale or donation of personal property (other than archeological or paleontological structures, artifacts, fossils and objects) excavated or discovered on the Property, including objects and items of a financial nature, such as jewelry, china, silverware, coins, bullion and other forms of legal tender, shall be permitted; *provided, however*, such personal property, objects and items of a financial nature shall remain the property of **Grantor** until transferred, conveyed, sold or donated.

Necessary, Incidental and Compatible Uses and Activities. The right to engage in uses and activities on or adjacent to the Property, which are necessary, incidental to or compatible with the Conservation Interests described in this Easement, including but not limited to, the following:

Ordinary Maintenance. Repairing and performing ordinary maintenance on the structures, access/entry ways, passageways, logging roads and roadways existing, described, designated, contemplated and permitted under this Easement, without notification to or approval of the **Grantee**; and if any such structure or way shall be destroyed by fire, weather, act of God or neglect, it may be rebuilt upon notification to the **Grantee** and maintained substantially in accordance with the dimensions existing at the time of such destruction and at the same location;

Certain Structures, Sites, Facilities and Supportive Elements. Landscaping, designing, building and erecting, repairing, clearing, eliminating, restoring, replacing and maintaining and providing structures, sites, wells, utilities, facilities and supportive elements, including tree/hedge/fence rows noted on the Baseline Map, as well as the following existing or future structures, areas/sites and facilities on or adjacent to the Property:

Use of Hopkins Family Cemetery Trust Property. Hopkins Family Cemetery Trust (“HFCT”) property adjacent/contiguous to the Property in this Easement shall be used in accordance with Section 501(c)(13) of the Internal Revenue Code; and the driveway/roadway over and through Parcel A of this Easement, from Back Swamp Road, through the HFCT property and thence through Parcels A and B (the “Protected Property Access/Entry”), shall be used to provide access to/from the HFCT property as well as access to/from Parcels A, B and C, as illustrated in the Baseline Map (See also *Section 3(D)* of this Easement);

Fences, Walls, Gates, Entrances and Exits. Fences, walls, gates, entrances and exits, including private fences, brick walls, hedges, lanes, gateways and entrance and exit ways;

Landscaped Areas and Sites. Gardens, orchards, terraces and other landscaped areas and sites, together with the maintenance and improvement (*e.g.*, mowing, pruning, trimming, gardening, etc.) of landscaped areas and sites as shall be necessary;

Mulch, Fertilizer, Fill Material and Soil Areas. Not more than three (3) mulch, fertilizer, soil amendments such as lime, fill material, and soil areas or sites on the Property which are intended to and shall provide a location for depositing, storing or housing fill or roadway materials, soil or amended soil, minerals, fertilizers and soil nutrients for general use on the Property, *e.g.*, repairing roads, causeways and dams, and establishing and maintaining landscaped and gardened areas and sites

used for non-commercial purposes; *provided, however*, the aforesaid materials, soil areas and/or sites shall not exceed in the aggregate a “ground/foundation footprint” greater than 15,000 square feet and such areas or sites must be located in the rear of the Property so as not to negatively impact the public’s scenic enjoyment of the Property;

Signage. Signage indicating the historic, cultural, recreational, agricultural or natural significance of the Property, including its protection under this Easement; and signage giving directional, informational, educational and safety information; *provided, however*, signs shall be placed so as to minimally impact the scenic view as seen from any public roadway; *provided further*, there shall be no billboards or other off-site advertising on the Property;

Supportive Elements. Supportive elements necessary or incidental to the reasonable, orderly and safe access to and transit on, over or through the Property, or which provide or enhance supportive safety, security and services to or for the benefit of the Property; *provided, however*, such elements shall be limited to the following:

Access and Transit Ways. Pervious access and transit ways, entranceways, gateways, passage-ways, driveways, roads, logging roads, roadways, logging decks, parking areas and related structures, including the Protected Property Access/Entry over and through Parcel A from Back Swamp Road to and through the property of Hopkins Family Cemetery Trust, (collectively referred to herein as “Access Ways”) shall be permitted to provide for reasonable, orderly and safe access to and transit over, through and upon the Property by automobiles, service vehicles, trucks, tractors, farm machinery and equipment;

“Low Impact” Access and Transit Ways. Pervious/permeable small vehicular and pedestrian walking/foot paths, biking paths, jogging paths, equestrian paths and related structures shall be permitted to provide for orderly and safe access to and transit over, through and upon the Property in connection with “low impact,” non-commercial, recreational and outdoor activities, including but not limited to walking, jogging, biking and horseback riding, as well as the operation and use of small electric and gasoline-powered vehicles and carts.

Conservation Construction Activities on the Property. Conservation construction activities, including but not limited to the following: (i) protecting, preserving, restoring, enhancing and improving natural watercourses, pools

and green tree reservoirs to sustain and increase fish, waterfowl, other wildlife and wetland-dependent flora and fauna; (ii) maintaining, grading and stabilizing existing access roads, logging roads and existing logging decks and other open spaces and cultivating same to provide food plots and habitat for wildlife; *provided, however, Grantor* shall (i) incorporate conservation practices in connection with construction activities that are consistent with the Conservation Interests of this Easement and (ii) immediately after construction activities, any of the Property disturbed by construction activities shall be restored to a condition or state that is better than or at least reasonably consistent with its pre-disturbed state and is consistent with the Conservation Interests of this Easement.

Irrigation and Water Management. By utilizing sound irrigation and water management techniques recognized by the Parties as beneficial to agriculture, silviculture, fish, waterfowl and/or wetland-dependent flora and fauna and in order to preserve and enhance the scenic and ecological integrity of the Property, **Grantor** reserves the right to maintain, improve and enhance existing water features and to install and maintain water control structures and irrigation systems, subject to all applicable local, state and federal statutes and regulations; *provided, all such irrigation and water management systems and techniques shall be constructed, maintained and operated in a manner that is consistent with the provisions of Section 4(J)(3) above.*

Consistent and Contemplated Uses and Activities. The right to engage in any and all acts or uses that are not expressly prohibited herein and that are consistent with the perpetual protection of the Conservation Interests of this Easement, including the right to engage in certain uses, activities and transfers, some of which are not presently being conducted but which are contemplated by Grantor for exercise in the future, including but not limited to the following:

Division of the Property. The Property is composed of three parcels designated "Parcel A," "Parcel B" and "Parcel C" in *Exhibit A* and illustrated in the Baseline Map included therein and attached thereto. Ownership of the Property by **Grantor's** successors shall be determined in a manner consistent with an equitable reconfiguration, partition or division of the Property; *provided, however, successive ownership shall be such that not more than four (4) parcels comprise the entire Property (i.e., the Property now or formerly constituting all of Parcels A, B and C); provided further, any partition, reconfiguration, division, transfer or conveyance described in this paragraph shall be in accordance with and subject to the covenants, conditions, restrictions and limitations set forth in this Easement, which covenants, conditions, restrictions and limitations shall run with the land in perpetuity and shall be a burden on the Property and any improvements thereon in perpetuity.* At a time of reconfiguration, partition or division of the Property, any reserved rights running to the full property shall be allocated to a specific parcel.

Certain Business Uses and Activities. The term “business” is used herein in the generally accepted context with regard to the production and sale of crops, fruits and vegetables, timber and animals (e.g., horses and cattle). Business uses and activities in connection with the farming, agriculture and silviculture activities described herein shall be permitted; *provided, however*, business uses or activities shall be compatible with local agricultural zoning ordinances.

Inconsistent, Incompatible and Prohibited Uses and Activities.

Residential. Except for the facilities described in *Section 4(E)(1)* and as provided therein, there shall be no other residential structures erected on the Property.

Industrial. The terms “industry” or “industrial” are used in the generally accepted context of heavy, large-scale manufacturing or factory production of goods. There shall be prohibited on the Property all such industrial uses, activities or structures, and access through or upon the Property shall be allowed if such right of passage is used in conjunction with industrial uses or activities on or near the Property.

Confined or Concentrated Animal Feeding Operation. The production operation of animals that concentrates large numbers of animals in relatively small and confined places, and that substitutes structures and equipment (for feeding, temperature controls, and manure management) for open land grazing or feeding, is prohibited.

Landfill. There shall be no temporary or permanent landfills on the Property. The retention, placing or burying of non-biodegradable, unusable or discarded items, including but not limited to glass, plastic, vehicle bodies or parts, metal, junk or any non-biodegradable refuse is prohibited; *provided, however*, biodegradable refuse generated on the Property shall be permitted as long as it is handled and disposed in accordance with federal, state and local policies, laws and regulations.

Mining. Mining, exploration and recovery of oil, gas, natural gas or minerals is prohibited pursuant to Section 170(h)(5)(B) of the Code.

GENERAL COVENANTS.

Grantor’s Warranty of Title. The **Grantor** warrants and represents that **Grantor** is seized of the Property in fee simple and has good right to grant and convey this Easement, that the Property is free and clear of any and all encumbrances, except existing easements of record and prescriptive easements, if any, and that **Grantee** shall have the use of and enjoy all of the benefits derived from and arising out of this Easement, subject to the limitations, conditions and provisions herein.

Grantor’s Environmental Warranty. The **Grantor** warrants that it has no knowledge of a release or threatened release of hazardous substances or wastes on the Property and promises to defend and indemnify the **Grantee** against all litigation, claims,

demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.

Third Party Uses and Activities. The **Grantor** shall keep the **Grantee** reasonably informed as to uses and activities by third parties [*e.g.*, **Grantor's lessee(s)**] with regard to the Property. The **Grantor** shall see that third parties are fully and properly informed as to the covenants, restrictions and limitations contained in this Easement with regard to contemplated third party uses and activities.

Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle **Grantee** to bring any action against **Grantor** for any injury to or change in the Property resulting from causes beyond **Grantor's** control, including, without limitation, fire, hurricane, flood, storm and earth movement, or from any prudent action taken by **Grantor** under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

No Public Access. No right of public or any other access to any portion of the Property is or shall be contemplated or conveyed by this Easement, other than the following: (i) the potential access as provided in *Section 3(E)* herein; and (ii) such access as shall be reasonably necessary for **Grantee** to monitor compliance with this Easement.

Costs, Liabilities and Taxes. **Grantor** retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including but not limited to, clean up or remediation costs due to chemical contamination and the maintenance of general liability insurance coverage.

(G) Extinguishment and Proceeds; Condemnation.

- (1) Extinguishment.** If a subsequent unexpected change in the conditions surrounding the property that is the subject of the donation herein can make impossible or impractical the continued use of the property for conservation purposes, the conservation purposes can nonetheless be treated as protected in perpetuity if the restrictions contained herein are extinguished by judicial proceeding and all of the donee's proceeds (determined under the paragraph immediately following this) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution. If sufficient funds are not available for **Grantee** to be paid its entire proportionate share out of the proceeds, or if for any other reason **Grantee** is not paid its entire proportionate share, **Grantee** has the right to recover such deficiency (including the right to record a lien to secure its recovery of such deficiency) from the record owner of the Property at the time of such sale. In the event of extinguishment of this Easement in whole or in part, the provisions of this paragraph shall survive such extinguishment. [*See generally*, Treas. Reg. Section 1.170A-14(g)(6)(i).]

(2) **Percentage Interest in and Proportionate Share of Proceeds.** For purposes of this paragraph, the **Parties** hereto stipulate that, as of the Effective Date of this Deed, the Easement and the donation of the perpetual conservation restrictions in the Property give rise to a restricted fee interest in the Property, immediately vested in the **Grantee**, and represent a percentage interest in the fair market value of the Property (**Grantee's** percentage interest is referred to herein as **Grantee's** "proportionate share"). The percentage interests of the **Parties** shall be determined by the ratio of the value of the Easement on the effective date of this Deed (determined pursuant to the provisions of Section 170(h) of the Code) to the value of the Property, without deduction for the value of the Easement, on the Effective Date of this Deed. The **Parties** shall include the ratio of those values with the Baseline Documentation of the Property (on file at **Grantee's** offices) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction in any appeal of the final determination by the Internal Revenue Service. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and **Grantee's** proportionate share of the fair market value of the Property thereby determinable shall remain constant. [*See generally*, Treas. Reg. Section 1.170A-14(g)(6)(ii).]

(3) **Condemnation.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, **Grantor** and **Grantee** shall join in appropriate proceedings at the time of such taking to recover the full fair market value (without regard to any diminution in value attributable to the Easement) of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. Prior to the payment of any expenses reasonably incurred by the **Parties** to this Easement in connection with such taking, **Grantee** shall be entitled to its proportionate share from the recovered proceeds in conformity with the provisions of *Section 6(G)(2)* herein (with respect to the allocation of proceeds). The respective rights of **Grantor** and **Grantee** set forth in this paragraph shall be in addition to, and not in limitation of, any rights they may have at common law. All such proceeds used by **Grantee** shall be used by **Grantee** in a manner consistent with the Conservation Interests of this Easement as of the Effective Date of this Deed.

(H) **Limitations on Amendment.** If unforeseen circumstances arise, including any change or modification to state or federal laws or regulations especially as they relate to the Code, under which an amendment to, or modification of, this Easement would be appropriate to clarify any ambiguities or to maintain or enhance the Conservation Interests herein, **Grantor** and **Grantee** may, by mutual written agreement, jointly amend this Easement; provided that no amendment shall be allowed that will adversely affect the eligibility of this Easement as a "qualified conservation easement" under any applicable laws, including §§170(h) and 2031(c) of the Code and the Treasury Regulations thereunder. Any such amendment shall be consistent

with the purposes of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the Property other than development or improvements permitted by this Easement on its Effective Date, and shall not have any adverse impact on the perpetual protection of the Conservation Interests herein. **Grantor** and **Grantee** agree to a reasonable consideration of any such proposed amendment, however, neither **Grantor** nor **Grantee** shall be bound to agree to any amendment. Any such amendment shall be recorded in the official land records of Richland County, South Carolina.

- (I) **Benefits and Burdens; Successors and Assigns.** The covenants, terms, conditions, easements, benefits, and burdens of this Easement shall be binding upon and inure to the **Parties** hereto and their respective successors, personal representatives, heirs, and assigns and shall continue as a restriction running in perpetuity with the Property. An owner of the Property shall only be responsible for those violations first occurring on the Property during such owner's ownership, and while still an owner of the Property (although notwithstanding the foregoing, a subsequent owner may also be held responsible for those violations first occurring during another's prior ownership of the Property unless an estoppel or compliance certificate was obtained by such subsequent owner prior to or at the time of the transfer of the Property's ownership to such subsequent owner). In the event of a breach of the terms hereof by the owner or owners of any divided portion of the Property, no owner or owners of any other portion of the Property shall be liable for such breach. Any of the rights herein reserved to **Grantor** maybe exercised by any owner or owners from time to time.

The benefits and burdens of this Easement shall not be assignable by **Grantee**, except and unless (i) if as a condition of any assignment, **Grantee** requires that the terms and conditions of this Easement continue to be carried out in full as provided herein, (ii) the assignee has a commitment to protect and carry out the Conservation Interests herein as well as the resources to enforce the restrictions contained herein, and (iii) the assignee, at the time of assignment, qualifies under §170(h) of the Code, and applicable Treasury Regulations promulgated thereunder, and under State of South Carolina law, as an eligible donee to receive this Easement directly.

- (J) **Transfers; Incorporation by Reference.** **Grantor** agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which **Grantor** transfers any interest in all or a portion of the Property, including, without limitation, a leasehold interest. **Grantor** shall give **Grantee** notice of any change of possession, ownership or control of the Property within thirty (30) days of such change, including without limitation notice of any transfer, lease, or sale of all or a part of the Property. The failure of **Grantor** to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- (K) **Communication.** All notices, demands, requests, consents, approvals, offers, statements, and other instruments or communications required or permitted to be given hereunder (individually or collectively "Correspondence") shall be deemed sufficiently given or rendered only if in writing delivered personally, sent by a

nationally recognized overnight courier or sent by United States Postal Service first class certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Grantor:

Theodore J. Hopkins Jr.
141 Edisto Avenue
Columbia, SC 29205

To Grantee:

Chair
Richland County Conservation Commission
2020 Hampton Street
Columbia, SC 29204

Or to such other person or place as a **Party** may designate by Correspondence as aforesaid. Correspondence by mail or overnight courier service shall be deemed given on the date of receipt as shown on the return receipt, or receipt or records of the courier service, as the case may be. In the event any such Correspondence is mailed via the United States Postal Service or shipped by overnight delivery service to a party in accordance with this paragraph and is returned to the sender as undeliverable, then such Correspondence shall be deemed to have been delivered or received on the third day following the deposit of such Correspondence in the United States Mail or the delivery of such Correspondence to the overnight delivery service.

- (L) **Effective Date of Deed and Easement.** This Deed of Conservation Easement shall take effect after the signatures of **Grantor** and **Grantee** have been affixed hereto, properly witnessed and probated, and as of the date the Deed is first recorded in the R.O.D. Office for Richland County, South Carolina, which date shall be and is referred to herein as the “Effective Date” of this Deed and Easement.
- (M) **Recordation.** This instrument shall be recorded by **Grantee** in timely fashion in the R.O.D. Office for Richland County, South Carolina, and **Grantee** may re-record it at any time as may be required to preserve the rights herein.
- (N) **Counterparts.** This Deed of Conservation Easement may be executed in several counterparts and by each **Party** on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall, collectively, constitute a single instrument which will not be effective until executed by all **Parties** hereto.
- (O) **Governing Law.** The interpretation and performance of this Deed of Conservation Easement shall be governed by the laws of South Carolina.
- (P) **Reasonableness Standard.** **Grantor** and **Grantee** shall follow a reasonableness standard and shall use their best efforts to make any determinations that are

necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner, and shall cooperate with one another and shall take all other reasonable action suitable to that end.

- (Q) **Severability; Liberal Construction.** If any provision of this Deed or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Deed shall not be affected thereby. Any general rule of construction to the contrary notwithstanding, if any provision in this instrument is found to be ambiguous, an interpretation consistent with the perpetual protection of the Conservation Interests of this Deed shall be favored over any interpretation that would be inconsistent with the perpetual protection of the Conservation Interests herein. This Deed shall be construed and interpreted with the intention of conforming to the requirements of Section 170(h) of the Code and SC Code Section 27-8-10, *et seq.*
- (R) **Baseline Documentation.** The **Parties** agree that the Baseline Map, attached to and made an integral part of **Exhibit A** of this Agreement, together with the information contained in this Easement (all such information referred to collectively as the “Baseline Documentation”) provides an accurate description and representation of the Property and establishes the condition of the Property as of the Effective Date, so that (i) the Conservation Interests of this Deed and Easement are satisfactorily carried out and maintained in perpetuity, and (ii) future uses of the Property are properly monitored in order to ensure compliance with the terms therein and with Treas. Reg. Section 1.170A-14(g)(5). Following execution, the Deed and Easement, including all Exhibits attached thereto, shall be (i) recorded in the R.O.D. Office, Richland County, South Carolina and (ii) retained on file at the **Grantee’s** office. The **Parties** agree that in the event a controversy arises with respect to the nature and extent of **Grantor’s** use of the Property, in order to assist in the resolution of the controversy, the **Parties** may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions and use of the Property as of the Effective Date of the Easement.
- (S) **Terminology.** All terms used in this Easement, regardless of the number or gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Easement, any Section, Subsection, or clause herein may require as if such terms had been fully and properly written in such number or gender.

TO HAVE AND TO HOLD, the said Deed and Conservation Easement, unto the said **Grantee** and its successors and assigns forever.

IN WITNESS WHEREOF, **Grantor** and **Grantee** have set their hands to multiple duplicate original copies of this Deed and Easement under seal on the day and in the year evidenced in the Probate below.

WITNESSES:

GRANTOR:

(Witness #1)

THEODORE J. HOPKINS JR.

(Witness #2/Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deposed and said that (s)he saw Theodore J. Hopkins Jr. sign, seal and deliver the foregoing Deed of Conservation Easement, and that (s)he, together with the other witness subscribing above, witnessed the execution thereof.

SWORN to and subscribed before me
this ____ day of _____, 2015

(Witness #1)

Notary Public for South Carolina
My Commission Expires: _____

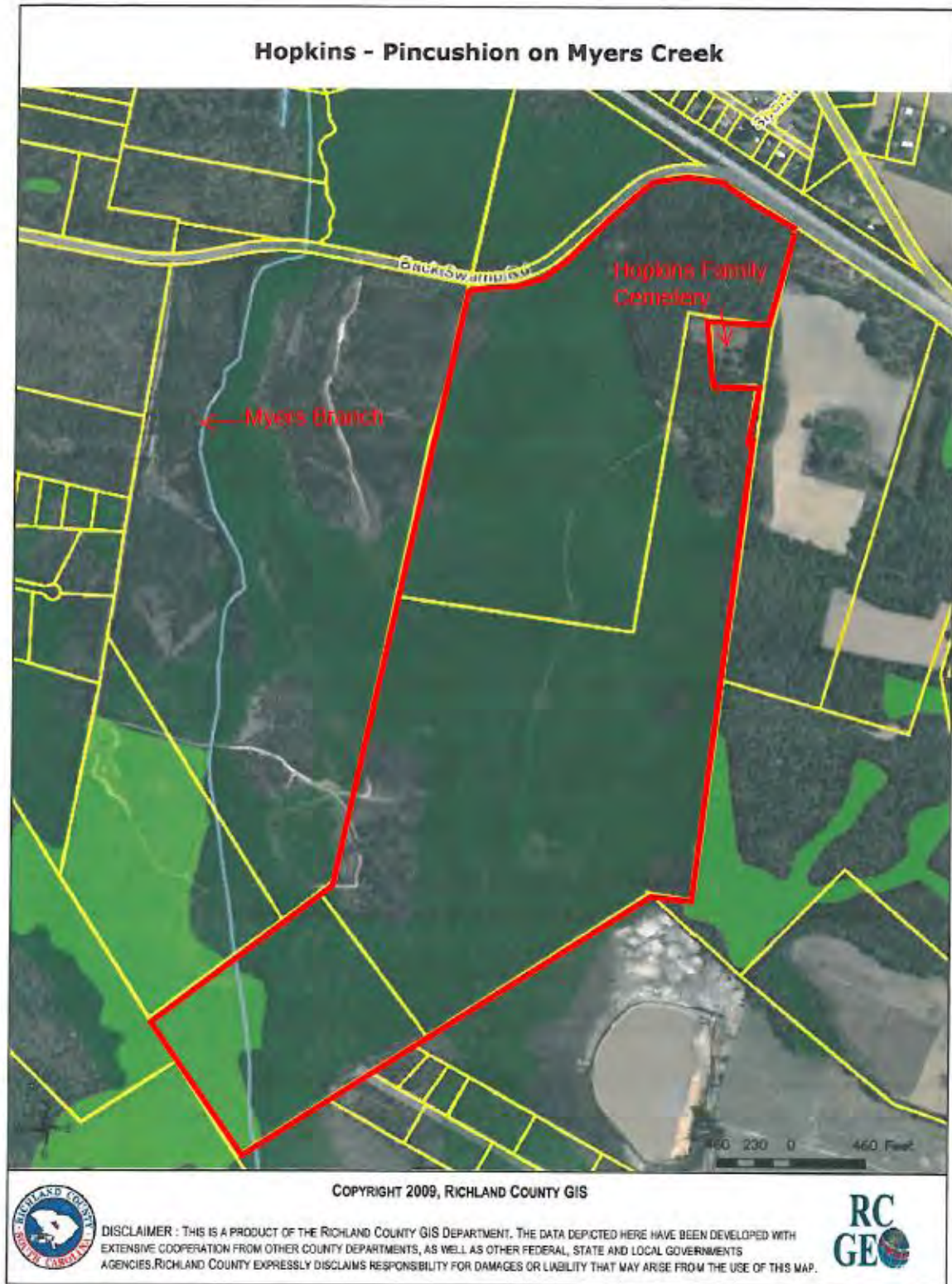
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EXHIBIT A

THE PROPERTY

For purposes of this Deed and Easement, the term “Property” is defined as the below described land areas and any improvements thereon owned by Theodore J. Hopkins Jr. (the “Grantor” herein), which land area (i) comprises approximately two hundred and fifty-one (251.0) acres and (ii) is defined as certain tracts of land designated “Parcel A,” “Parcel B” and “Parcel C” as illustrated on the attached map of conservation easement prepared by Michael R. Mills, P.L.S., of Glenn Associates Surveying, Inc., dated _____, 2015, captioned “The Pincushion on Myers Creek” and further designated “Map of Conservation Easement for Theodore J. Hopkins Jr.”, which map is referred to in this Easement as the “Baseline Map” and is attached to and made an integral part of this Exhibit A. The Property is further described as follows:

- | | |
|-----------------|---|
| Parcel A | Est. 78.7 acres, which is a portion of Richland County Tax Map No. 21600-04-02, and which may be further described by reference to pertinent deeds and plats. |
| Parcel B | Est. 125.4 acres, which is a portion of Richland County Tax Map No. 21600-04-05, and which may be further described by reference to pertinent deeds and plats. |
| Parcel C | Est. 46.9 acres, which is a portion of Richland County Tax Map No. 21500-01-30, and which may be further described by reference to pertinent deeds and plats |
| Total: | Estimated 251.0 acres |



Richland County Council Request of Action

Subject:

Update on the Curbside Recycling Trends Associated with the County's New Recycling Roll Cart Program
(Information Only)

Notes:

At the October 7, 2014 Richland County Council meeting, Council directed Staff to proceed with providing educational materials to residents regarding the benefits of recycling and the recyclable items that can be placed in each recycling cart, instead of placing stickers on each recycling cart. Additionally, Council requested that staff evaluate the success of these efforts at six and twelve month intervals and report back to the D&S Committee.

As requested, Staff is providing a six month evaluation to the Committee.



RICHLAND COUNTY
Solid Waste & Recycling Department
1070 Caughman Road North
Columbia, South Carolina 29203
Voice: (803) 576-2440 Facsimile (803) 576-2495



DATE: September 22, 2015

To: Richland County Development and Services Committee

CC: Warren Harley, Assistant County Administrator

From: Rudy Curtis, Interim Solid Waste & Recycling Director

A handwritten signature in black ink that reads "Rudy Curtis".

Subject: Curbside Recycling Trends with New Recycling Roll Cart Program

In 2011 County Council directed the Solid Waste & Recycling Department to issue new 95 gallon recycling roll carts to county residents receiving curbside collection services. The new lime green carts served to replace the 18 gallon red bins that had been used for recycling since January 1995. The first recycling roll carts were dropped off for two service areas in January 2013. Deployment to the last of the eight service areas within the county was completed on February 1, 2015. The program took two years to be fully implemented.

Staff informed Council that data would be collected and analyzed periodically to track any trends in our recycling rates. This update is presented to Council as a snapshot of the effectiveness of the new program. Solid Waste & Recycling staff has been collecting data for the past 2 years. The resulting annual comparative curbside recycling data is hereby offered for your consideration.

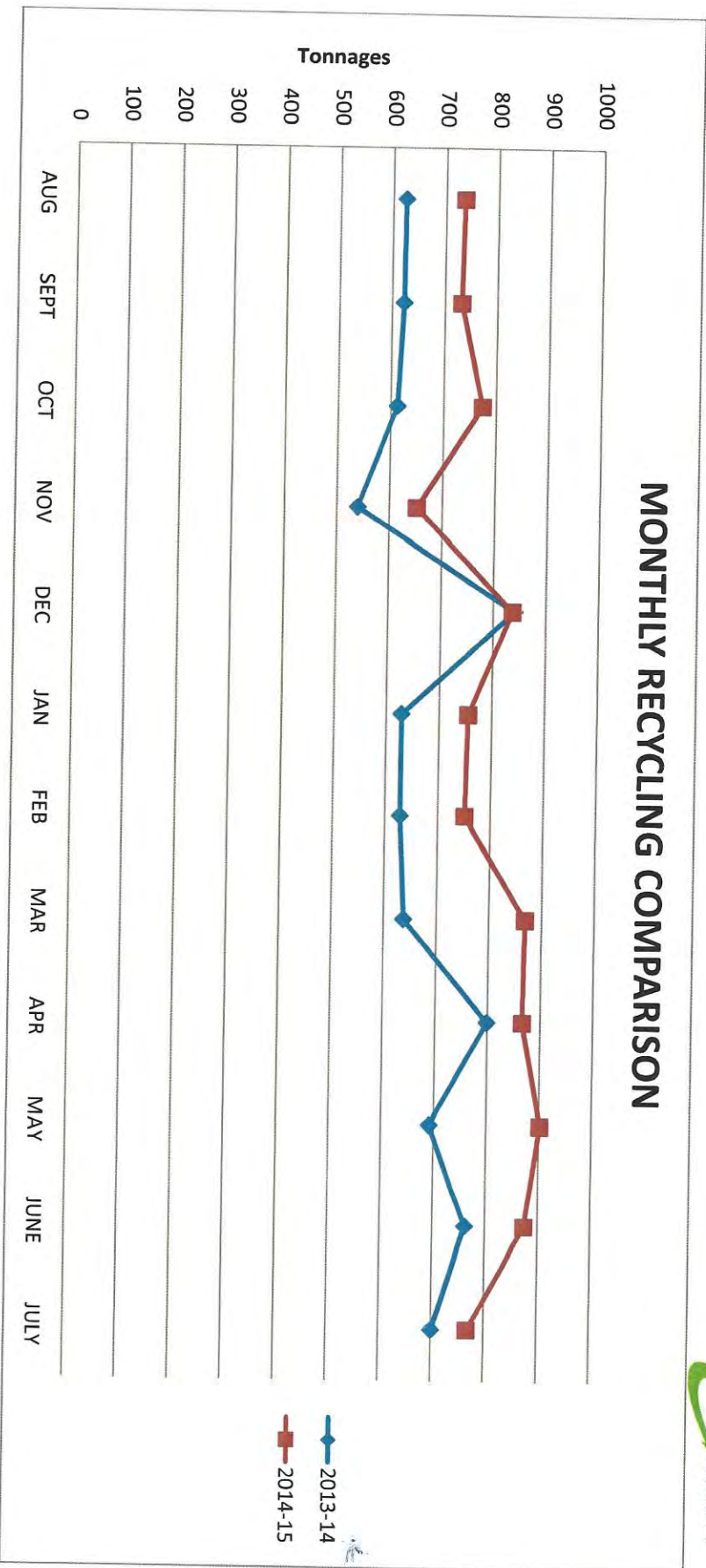
The end of July marked the completion of the initial six (6) months of using the new roll carts in Service Areas 1, 3 and 4 (about 60% of the homes in the county), eighteen (18) months for Service Areas 5A, 5B and 7 (about 20% of the homes) and thirty (30) months for Service Areas 2 and 6 (about 20% of the homes). For this presentation the recycling data comparison was for the periods August 1, 2013 through July 31, 2014 and August 1, 2014 through July 31, 2015. Please refer to the attachments for specific trends. Countywide, the past 12 months has shown more than a 17% increase in recycling over the previous twelve months. We fully expect that number to be even higher next year as we begin to focus more resources on recycling especially with the likely addition of a new Recycling Program Manager in the coming months.



RICHLAND COUNTY SOLID WASTE & RECYCLING



MONTHLY RECYCLING COMPARISON





RICHLAND COUNTY SOLID WASTE & RECYCLING



Yearly Tonnages For Areas

<u>YEAR *</u>	<u>AREA 1</u>	<u>AREA 2</u>	<u>AREA 3</u>	<u>AREA 4</u>	<u>AREA 5A</u>	<u>AREA 5B</u>	<u>AREA 6</u>	<u>AREA 7</u>	<u>TOTAL</u>
Households	17,003	9,150	14,154	17,667	9,570	1,717	10,642	6,225	86,128
2013-2014	1,565	671	1,239	2,140	782	266	1,130	287	8,080
Households	17,188	9,316	14,311	17,824	9,614	1,707	10,646	6,187	86,793
2014-2015	1,859	804	1,671	2,273	1,213	307	970	419	9,516
Yearly Average Curbside Recycling Pounds Per Household									
<u>YEAR *</u>	<u>AREA 1</u>	<u>AREA 2</u>	<u>AREA 3</u>	<u>AREA 4</u>	<u>AREA 5A</u>	<u>AREA 5B</u>	<u>AREA 6</u>	<u>AREA 7</u>	<u>TOTAL</u>
2014-2015	216	173	234	255	252	360	182	135	219
2013-2014	184	147	175	242	163	310	212	92	188
% Difference	18%	18%	33%	5%	54%	16%	-14%	47%	17%

* Note: August 1 - July 31

Richland County Solid Waste Service Areas and Council Districts



Legend


- Interstates
- Highways
- Arterial Roads
- Roads
- Council Districts
- Railroads
- State / Federal Parks
- Lakes / Rivers
- County Boundary

Municipalities

- Arcadia Lakes
- Blythewood
- Cayce
- Columbia
- Eastover
- Forest Acres
- Irmo

Solid Waste Areas

- 1
- 2
- 3
- 4
- 5A
- 5B
- 6
- 7



DISCLAIMER: This is a product of the Richland County Public Works Department. The data depicted here have been developed with extensive cooperation from other county departments, as well as other federal, state and local government agencies. Reasonable efforts have been made to ensure the accuracy of this map. Richland County expressly disclaims responsibility for damages or liability that may arise from the use of this map.

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400 Powell Rd.
Columbia, SC 29203

NOT TO SCALE

Richland County Council Request of Action

Subject:

Motion to Remedy the Issue of Developers Who do not Fulfill Their Obligations

Notes:

At the September 9, 2015 Richland County Council meeting, Mr. Malinowski made the following motion:

Any developer who does not fulfill their obligations regarding road construction or maintenance prior to turning roads over to Richland County, will have the name of the company and primary owners placed on a list in Richland County and will be prohibited from receiving approval for future developments until they have cured the original problems according to county requirements.

Staff is working to identify processes to remedy the concerns described in Mr. Malinowski's motion. Staff will present this information to the Committee at the October Committee meeting for their consideration.

Richland County Council Request of Action

Subject:

Motion to Pursue the Closure of Businesses Operating Without a Richland County Business License

Notes:

At the September 9, 2015 Richland County Council meeting, Mr. Jackson made the following motion:

Review and pursue the closure of all businesses operating without Richland County business license also businesses operating as other type business than that was approved. All SOB's that violate Richland County Ordinance and State laws.

Staff is exploring potential options regarding Mr. Jackson's motion. Staff will present this information for the Committee's consideration at their October Committee meeting.

Richland County Council Request of Action

Subject:

Motion to Explore all Options for Providing County Assistance with a Public Housing Project

Notes:

At the September 9, 2015 Richland County Council meeting, Mr. Rose brought forth the following motion:

Move to have staff explore all options to provide County assistance with an important public housing project. The Columbia Housing Authority (CHA) completed its Choice Neighborhood Plan in August, 2014. HUD awarded the Planning Grant to CHA in 2012 for this project. The CHA plans to demolish Gonzales Gardens (GG) and Allen-Benedict Court (ABC) public housing communities as soon as funding is available. In preparation for losing 520 units, the CHA is currently identifying housing to purchase so GG/ABC residents can be relocated. CHA purchased a 123 units at Village at Rivers Edge. CHA plans to acquire and/or construct an additional 127 units of housing in the near future, but that still leaves the need for 270 more units for relocation purposes.

Staff is working to identify possible funding options pertaining to Mr. Rose's motion. Staff will bring this item to the Committee for their consideration at their October Committee meeting.

Richland County Council Request of Action

Subject:

Motion to Name Courtroom 2b in the Judicial Center The Ada Harper James Courtroom

Notes:

At the September 8, 2015 Richland County Council meeting Mr. Rose made the following motion:

Move Council to name courtroom 2b of the Richland County Judicial Center located at 1701 Main Street the Ada Harper James courtroom in honor of her distinguished 21 years of service to the Honorable Judge Casey Manning and Richland County.

Staff will present this item for the Committee's consideration at a future Committee meeting.

Richland County Council Request of Action

Subject:

Comprehensive Youth Program

Notes:

Staff and the Clerk's Office are working in conjunction with the Sheriff's Department, Magistrate's Office, Solicitor's Office and the Alvin S. Glenn Detention Center to develop a plan of action regarding a comprehensive youth program. Once completed, Staff and the Clerk's Office will report this information back to the Committee for their review and action.

Richland County Council Request of Action

Subject:

Fund and/or seek a partnership with SCE&G to plant indigenous flowers and plants along transmission line corridors in Richland County

Notes:

At the February Committee meeting, the Committee directed staff to explore potential partnership opportunities with the Electricity Companies, explore potential grant funding opportunities, perform a cost analysis and identify the manner in which this request may impact farmers that traverse through transmission line corridors. Staff is working to complete the Committee's directives regarding this item. Staff will report this information back to the Committee for their consideration at a future Committee meeting.