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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

Consolidated Case Nos. 2023-CP-42-01221, 2023-CP-42-01226, 2023-CP-42-01367, 2023-CP-42-01545

Appellate Case No. 2024-001828

South Carolina Native Plant Society, Appellant,

vs.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms RV Park, Respondents,

and

The Enclave at Fairview Farm Homeowners' Associations, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a/ Caroland Farms, Appellants

vs.

Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents,

RECORD ON APPEAL
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH CIRCUIT
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South Carolina Native Plant Society,) Case No. 2023-CP-42-01221
)
Appellant,)
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vs.) **Opinion and Order**
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The Spartanburg County Planning)
Commission and Blue Sky Associates,)
LLC d/b/a T. Tree Farms RV Park,)
)
Respondents.)
)

STATE OF SOUTH CAROLINA)
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COUNTY OF SPARTANBURG) FOR THE SEVENTH CIRCUIT
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South Carolina Native Plant Society,) Case No. 2023-CP-42-01367
)
Appellant,)
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vs.) **Opinion and Order**
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The Spartanburg County Planning)
Commission and Blue Sky Associates,)
LLC d/b/a T. Tree Farms RV Park,)
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG The Enclave at Fairview Farm Homeowners' Association, Inc., *et al.*, Appellants, vs. Spartanburg County, SC, *et al.*, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-01226 **Opinion and Order**

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG The Enclave at Fairview Farm Homeowners' Association, Inc., *et al.*, Appellants, vs. Spartanburg County, SC, *et al.*, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-01545 **Opinion and Order**

The consolidated appeals before the Court seek reversal and vacatur of the Spartanburg County Planning Commission's conditional approval of the T. Tree Farms RV Park in Campobello, South Carolina. The parties to the appeal are Appellants South Carolina Native Plant Society (the "Society" or "Native Plant Society"), the Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc.,

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Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Chales D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz Trust, and Slater Properties, Inc. (collectively, "HOAs and landowners"), as well as Respondents Spartanburg County Planning Commission (the "Commission") and Blue Sky Associates, LLC ("Blue Sky"). For the following reasons, the Court grants the appeals in part and denies the appeals in part.

FACTUAL BACKGROUND

In February 2023, Blue Sky applied to the Commission for approval of its site plan for the T. Tree Farms RV Park (the "RV park"). Blue Sky, Application at 2 (Feb. 7, 2023) (App. A to Native Plant Society Opening Br. ("App. A") at 5) (amended application). This application replaced an earlier one submitted in 2021 which was abandoned because Blue Sky was unable to obtain public water as required in the 2021 application. Blue Sky, Major Land Development Application (Jan. 29, 2021) (App. A at 1) (original application). Particularly relevant to the appeals before the Court, Blue Sky's 2023 site plan for the RV Park provided that the RV Park would be serviced by a well rather than a public water service provider and did not include any comfort station. Application at 2 (Feb. 7, 2023) (App. A at 5) (amended application); *see also* Blue Sky, Major Land Development Application (Jan. 29, 2021) (App. A at 1) (original application). Blue Sky's earlier 2021 application had provided for water from a public water system, but Blue Sky was unable to obtain public water service for the RV park site.

The Commission considered Blue Sky's application at its March 7, 2023, meeting. Commission Agenda at 3 (Mar. 7, 2023) (App. A at 186). The Commission voted 6-2 to approve Blue Sky's site plan, with standard conditions that Blue Sky obtain approvals from Spartanburg County Public Works for engineering, stormwater, and encroachment, and from DHEC for well construction. *Id.* at 30 (App. A at 178).

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On March 31, 2023, Appellants asked the Commission to reconsider its decision. Southern Environmental Law Center, Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC (Mar. 31, 2023) (App. A at 187–93); Concerned Citizens, Cover Letter to Request for Reconsideration of Conditional Approval (Mar. 28, 2023) (App. A at 229). At its next meeting on April 4, 2023, the Commission decided not to reconsider its conditional approval of the RV park site plan. *See* Commission Meeting Minutes (Apr. 4, 2023) (App. A at 212–20).

Appellant Native Plant Society and Appellants HOAs and landowners each timely filed two appeals challenging the Commission's conditional approval of the RV park site plan and the Commission's decision not to reconsider that conditional approval. These four appeals were subsequently consolidated and are now before the Court.

LEGAL BACKGROUND

The ordinance governing the Commission's review of Blue Sky's site plan is the Spartanburg County Unified Land Management Ordinance (the "Ordinance"), which includes a preamble setting forth the purposes of the Ordinance and a section dedicated to "Camps and Recreational Vehicle Parks." *See* Ordinance Preamble, Ordinance § 3.13. The Preamble establishes that one goal of the Ordinance is to protect "ecologically sensitive areas." App. A at 35. With respect to RV parks, Section 3.13 of Ordinance requires, among other things, that all RV parks "preserve natural features and landscape"; that RV parks be "serviced by public water"; that RV parks be serviced by "sewer or other systems approved by DHEC"; and that no RV park site "be located less than 150 feet from drinking water supply or 300 feet from a comfort station." Ordinance § 3.13 (2), (4), and (8) (App. A at 49). The Ordinance further details certain procedural measures. The Ordinance also sets forth requirements for granting a variance from

any of the requirements of the Ordinance. *See* Ordinance §§ 1.02–04, 5.01–02 (App. A at 36-37, 43-44). In addition to the Ordinance, the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, sets forth certain elements for local comprehensive planning.

JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act. S.C. Code Ann. § 6-29-1150(D)(1).

Decisions of a county planning commission are reviewed in the Circuit Court. S.C. Code § 6-29-1150; *Town of Hollywood v. Floyd*, 403 S.C. 466 (2013); *Kurschner v. City of Camden*, 376 S.C. 165 (2008), *Rest Row Assocs. v. Horry County*, 335 S.C. 209 (1999); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). A decision of a county planning commission will be overturned on appeal when "it is based on errors of law," where the commission "acts arbitrarily or unreasonably," where the commission "has abused its discretion," or when "there is no evidence to support" the Commission's decision. *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637 (2020); *Kurschner*, 376 S.C. at 173–174.

ANALYSIS

Appellant South Carolina Native Plant Society and Appellants HOAs and landowners each argue that the Commission's conditional approval of the RV Park violated the Ordinance Preamble and Section 3.13 of the Ordinance. Specifically, they argue that the Commission wrongly approved a site plan that failed to protect ecologically sensitive areas and to preserve the natural features and landscapes of the site; that was not serviced by public water; that was not serviced by a sewer system approved by DHEC; and that lacked any comfort station. Appellants

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further argue that the Commission's decision not to reconsider its conditional approval and its failure to provide any explanation for parts of its decisions were arbitrary and capricious.

Appellants HOAs and landowners also argue that the Commission's March 2023 meeting and approval violated certain procedural requirements, that the Commission based its conditional approval on the wrong site plan, that the Ordinance fails to fulfill the South Carolina Local Government Comprehensive Planning Enabling Act, and that the roads proposed to be used to access the RV Park were not dedicated by the relevant landowners.

The appeals are granted as to the issues involving public water and comfort stations and denied as to all other issues.

I. Whether the Commission violated the Ordinance Preamble and Section 3.13

The Court finds that the Commission's conditional approval of the RV Park violated Section 3.13(8) of the Ordinance requiring public water and Section 3.13(4) requiring comfort stations but that the Commission's decision did not violate the Ordinance Preamble, Section 3.13(2) requiring the preservation of "natural features and landscape," or the part of Section 3.13(8) requiring "sewer or other systems approved by DHEC."

Public Water. The Ordinance provides that "[e]ach park site shall be serviced by public water," Ordinance § 3.13 (8). The Ordinance provides that "[t]he word 'shall' is always mandatory." Ordinance Article 6 (App. A at 92). Blue Sky's 2021 application was based on the RV park being serviced by a public water system, but when Blue Sky was unable to obtain public water, it submitted the 2023 application with the RV park being serviced by a well. The Commission approved the 2023 application with the RV park being serviced by a well.

In this respect, the Commission committed an error of law, acted arbitrarily and capriciously, and made a decision with no evidence to support it. The Ordinance by its plain

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language mandates that RV parks be serviced by public water. But the approved 2023 RV Park site plan fails to provide for public water and instead relies upon a well.

Blue Sky and the Commission argue that the definition of "public water" as used in the Spartanburg County Ordinance should be governed by the definition of "Public Water System" contained in a regulation of the state Department of Health and Environmental Control ("DHEC"), S.C. Code Ann. Regs. 61-58 (B) (150). Respondents' Br. at 7. The DHEC regulation defines a Public Water System as "any public or privately owned waterworks system which provides drinking water, whether bottled or piped, for human consumption, including the source of supply whether the source of supply is of surface or subsurface origin."

However, the requirements for RV parks in the County's Ordinance does not reference or mention the DHEC regulation or its definition of "Public Water Systems," and the Ordinance uses a different term, "public water." "In interpreting a statute, words must be given their plain and ordinary meaning. . . ." *Rowe v. Hyatt,* 321 S.C. 366, 369 (1996).

Moreover, the County Ordinance and the DHEC regulation serve different purposes. The Ordinance sets out mandatory standards to prescribe how RV parks are built, whereas the DHEC state regulation is written broadly to encompass all conceivable drinking water sources to ensure water quality. See S.C. Code Ann. Regs 61-58 (A) ("The Department finds the standards and procedures prescribed are necessary to maintain reasonable standards of purity of the drinking water of the State consistent with the public health, safety, and welfare of its citizens"). By requiring public water, the Ordinance ensures an adequate reliable supply for an RV park. In addition, the DHEC regulation includes bottled water within its definition of Public Water Systems, and there is no indication that the County's Ordinance would contemplate an RV park serviced through bottled water.

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The Commission's application form shows that, unlike the state DHEC water quality regulation, the county Ordinance regulates the source of water for various developments. The form asks the applicant to designate "water or well." When "water" is designated, the applicant must identify the provider. Blue Sky, Application at 2 (Feb. 7, 2023) (App. A at 5). The County is thus concerned about the source—water or well. Section 3.13 specifies that for RV parks, public water must be the water source.

Further, the Ordinance imposes the "public water" requirement in other places for multi-unit developments like an RV park. The Ordinance requires "public water" for the operation of manufactured home parks, mandating that "[a]ll proposed Manufactured Home Parks shall be served by public water. . . ." Ordinance § 3.04-4 (2) (App. F to Native Plant Society Reply Br. ("App. F") at 10). The Ordinance similarly requires "public water" for patio and zero lot line homes. Ordinance § 3.01 (5) (App. F at 7). If the Ordinance were read to substitute the state DHEC regulation definition of "Public Water Systems" for the ordinary meaning of "public water," throughout the County Ordinance protective requirements for "public water" would be eliminated and various types of multi-unit developments could now be serviced by bottled water or private wells when the Ordinance mandates "public water"—with corresponding risk to public health and safety and loosening of development standards.

By approving an RV park not serviced by public water, the Commission violated the Ordinance and the ordinary and natural plain meaning of its "public water" requirement.

Comfort Stations. As with public water, the Ordinance contains an unqualified mandate that RV parks provide for comfort stations. The Ordinance provides that no RV park site "shall be located less than 150 feet from drinking water supply or 300 feet from a comfort station,"

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Ordinance § 3.13 (4). App. A at 49. The approved 2023 site plan for the RV park does not include a comfort station.

Respondents Blue Sky and the Commission argue that because each RV site will have individual hookups for water and sewage, this requirement is excused. Respondents' Br. at 8–9. The Court disagrees. There is nothing in the Ordinance that allows RV Parks to ignore the mandatory comfort station requirement because RVs often have sewer and water hookups. Indeed, it is always the case that RVs may have these hookups, yet the Ordinance requires RV parks to have one or more comfort stations regardless. Moreover, all parties agree that the Commission did not issue a variance to excuse compliance with any of the Ordinance's provisions. *See* Respondents' Br. at 10; Appellants HOAs and landowners' Opening Br. at 7–8; Appellant Native Plant Society's Opening Br. at 24–25. Blue Sky, Application at 2 (Feb. 7, 2023) (App. A at 5); Commission Meeting Minutes at 18–19 (Mar. 7, 2023) (App. A at 166–67). The plain language of the Ordinance governs.

When it conditionally approved an RV park site plan with no comfort station, the Commission violated the plain language of the Ordinance, committed an error of law, acted arbitrarily and capriciously, and made a decision with no evidence to support it.

Sewer or other system approved by DHEC. In Section 3.13(8), the Ordinance requires that RV park sites shall be serviced by "sewer or other systems approved by DHEC." App. A at 49. The RV park site is not serviced by sewer, and the application for the RV park provided for a septic system instead. Appellants contend that the Commission approved a plan for the RV park that included a septic system that had been rejected and not approved by DHEC. Appellant Native Plant Society's Opening Br. at 4–6; Appellants HOAs and landowners' Opening Br. at 4. Specifically, Appellants point to the fact that the DHEC Board, which is the highest authority of

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DHEC, overturned the DHEC staff's decision granting a permit for the RV park's septic system. The DHEC Board concluded that the septic system did not meet the minimum requirements of South Carolina law and had less than half the treatment capacity required by state regulation. App. A at 123-125; *see also* S.C. Code Reg. 61.56-501.

Appellants acknowledge that the DHEC Board's decision was subsequently overturned by the Administrative Law Court, but they contend that the Administrative Law Court's decision, which has been appealed, does not render the RV park's septic system "approved by DHEC." Appellants point out that the Administrative Law Court's decision, App. A at 127-147, was based on a procedural error in that the Administrative Law Court found that the request for Board review was filed too late, rather than a determination that the proposed septic system met the substantive requirements of South Carolina law. Appellant Native Plant Society's Opening Br. at 6. Appellants argue that the proposed RV park septic system is still not "approved by DHEC" since the Administrative Law Court's decision did not question or overrule the substance of the DHEC's Board's decision.

The Court concludes that the Commission's decision satisfies the Ordinance's requirement that the RV park be serviced by sewer or other system approved by DHEC. It is reasonable to assume that the Commission was well aware of the substantive issues being argued to DHEC. Thus, under an appellate review analysis, the Court cannot find a sufficient basis for reversing, even if it disagrees with the Commission, on the sole bases that the DHEC decision was or is being challenged, even if the challenge is classified as only technical rather than substantive. The Court notes that DHEC permit for this septic system is the base minimum for the RV Park. The arguments and information offered by Appellants are not being determined irrelevant and immaterial by this Court. The Commission may consider that information upon its

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consideration of the RV park in the future. Simply because a site may have received approval from DHEC does not conclude the analysis that the Commission may conduct when it conditionally approves a development site.

Ecologically Sensitive Areas and Natural Features. The Preamble to the Ordinance sets out a goal to protect "ecologically sensitive areas," and Section 3.13(2) of the Ordinance provides that RV park sites "shall be developed in a manner that preserves natural features and landscape." App. A at 35, 49.

Appellants argue that the RV park site plan violates these provisions of the Ordinance because it fails to preserve or acknowledge the presence of a plant protected as threatened by the federal Endangered Species Act, *Hexastylic naniflora* (Dwarf-flower Heartleaf), and its habitat on the RV park site. Appellant Native Plant Society's Opening Br. at 3; Appellants HOAs and landowners' Opening Br. at 4. Appellants explain that this plant is one of the nation's rarest plants, is also designated a Highest Priority Species by the South Carolina Department of Natural Resources, and is found in South Carolina only in limited areas within three counties, including on the RV park site. *Id.* *See also* App. A at 48-83; Apps. B-E to Native Plant Society Opening Br.; S.C. Dep't of Nat. Res., South Carolina's State Wildlife Action Plan (SWAP) at 2–9 (Oct. 14, 2014)

The Court concludes that the standard of review does not support the conclusion that the Commission acted unlawfully or abused its discretion in granting conditional approval on this basis. Notwithstanding, this Court acknowledges the broad goals of protecting ecologically sensitive areas as discussed by Appellants. As with Appellants' substantive arguments related to the proposed septic system, the Court notes that the information presented by Appellants

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regarding rare plants and habitat on the RV park site may prove to be material to the Commission when determining future specific site plans.

Accordingly, Appellants' appeal is granted as to the issues of public water and comfort stations and denied as to the issues of septic system approved by DHEC and preservation of natural features, landscapes, and ecologically sensitive areas.

II. Whether the Commission's decision not to reconsider its conditional approval and failure to provide reasons for decision were arbitrary and capricious

Appellants contend that because the Commission is charged with carrying out the Ordinance and complying with its terms and was informed by Appellants of multiple violations of the Ordinance, its decision not to reconsider the conditional approval was arbitrary and capricious and an abuse of discretion. Appellants also contend that the Commission acted unlawfully and arbitrarily and capriciously and abused its discretion when it failed to address the request for reconsideration and provided no explanation for its decision not to reconsider and when it failed to address some of the provisions of the Ordinance and provide the bases for its decision as to those provisions when it conditionally approved the RV park site plan. Appellant Native Plant Society's Opening Br. at 22–24. The Court concludes that the record does not support the conclusion that the Commission acted unlawfully, arbitrarily, or capriciously or abused its discretion in these respects. Accordingly, Appellants' appeal is denied on these grounds.

III. Whether the Commission's March 2023 meeting and conditional approval violated the Ordinance's procedural requirements

The Court finds that the Commission's March 2023 meeting and conditional approval complied with procedural requirements. Appellants HOA and landowners first argue that the Commission's March 2023 meeting violated the Ordinance because it "locked out many members of the public" from a meeting that was required to be open to the public. Appellants

HOA and landowners' Opening Br. at 5. Appellants HOA and landowners further argue that the Commission did not allow members of the public to speak for a mandated 30 minutes and the Commission failed to provide notice of a public hearing. *Id.* Respondents argue that there was sufficient due process provided at the March 2023 meeting, noting that the Commission afforded a representative for the HOAs an opportunity to speak and allowed the public to submit written comments. Respondents' Br. at 12. The Court concludes that the record does not support the conclusion that open meetings requirements or due process rights were violated or abused by the Commission. Accordingly, Appellants HOAs and landowners' appeal is denied on this basis.

IV. Whether the Ordinance fulfills the requirements of the South Carolina Local Government Comprehensive Planning Enabling Act

The South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*, sets forth certain elements that must be considered in local comprehensive plans, such as "fire protection" and "transportation." *Id.* § 2-29-510. Appellants HOA and landowners contend that the Ordinance fails to fulfill these requirements of the Enabling Act and that the Enabling Act has independent force. Appellants HOA and landowners Opening Br. at 8–9 and Reply Br. At 10-11. Regardless of whether the Ordinance properly reflects these elements, the Court need not consider this argument because it has reversed the Commission's decision on other grounds. The Respondents' assertion that the Appellants HOA and landowners challenged the validity of the Ordinance based upon the Enabling Act goes beyond these Appellants' argument; and it is likewise not necessary for the Court to consider this assertion otherwise. Appellants HOA and landowners Reply Br. at 10-11.



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V. Whether the roads used to access the RV Park were dedicated by the relevant landowners

Appellants HOA and landowners contend that the roads that would be used for the RV Park are private, not public, roads and that the individuals who own the roads have not dedicated the roads to use by RVs. Appellants HOA and landowners Opening Br. at 11–12. The decision of the Commission did not involve a taking or dedication of the roads and that issue is not before the Court. The appeal concerning them is without merit.

VI. Whether the Commission considered the wrong site plan

This matter was not raised to the Commission before it made its decision. Therefore, it falls under this Court's decision concerning the Commission's refusal to reconsider, and therefore the record does not support the conclusion that the Commission acted unlawfully, arbitrarily, or capriciously or abused its discretion in these respects. Accordingly, Appellants' appeal is denied on this ground.

CONCLUSION

For these reasons, the Court grants Appellants' appeal in part and reverses and vacates the Commission's conditional approval of the T. Tree Farms RV Park site plan dated March 7, 2023.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Circuit Judge

April 22 2024

ELECTRONICALLY FILED - 2024 Sep 26 4:43 PM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4201221

South Carolina Native Plant Society	**Blue Sky Associates, LLC**
The Enclave at Fairview Farm Homeowner's Association, Inc., et al	**Spartanburg County Zoning Commission, et al**
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

These consolidated appeals came before this court on Sptbg County's, Sptbg County Planning Commission's, and Blue Sky's Motion for Reconsideration of an Order electronically issued on April 22, 2024. After receiving briefing and arguments from all parties, the motion is granted to the extent that the court needs to clarify the term "vacate". The term vacates means that the matter is remanded to the commission. This court declined the invitation to give further direction to the commission.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : **See page 2 for additional information. Formal Order to follow.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$
		$

		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2132	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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Spartanburg Common Pleas

Case Caption: South Carolina Native Plant Society , plaintiff, et al VS Blue Sky Associates, Llc , defendant, et al

Case Number: 2023CP4201221

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

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January 13, 2025

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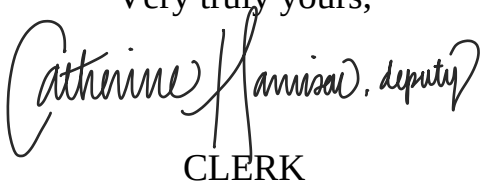
Emily Wyche, Esquire
525 East Bay Street
Suite 200
Charleston SC 29403

Re: SC Native Plant Society v. The Spartanburg County Planning Commission
Appellate Case No. 2024-001828

Dear Counsel:

Enclosed is the Court's decision on respondent Blue Sky Associates, LLC's motion to dismiss. You must provide a status update regarding the transcript within 30 days from the date of this letter to allow for the appropriate briefing schedule to be set.

Very truly yours,



CLERK

The South Carolina Court of Appeals

South Carolina Native Plant Society, Appellant,

v.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms RV Park, Respondents,

and

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowners Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants,

v.

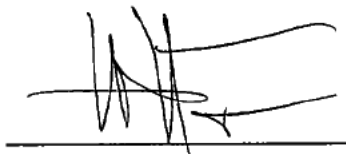
Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.

Appellate Case No. 2024-001828

ORDER

On November 20, 2024, Respondent Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park (Respondent Blue Sky) filed a motion to dismiss the appeal, arguing the order on appeal was "not final and is not immediately appealable." Appellants filed a return, opposing the dismissal and arguing that the Form 4 order addressing Respondents' motion to reconsider was a final order and there was no

"[f]ormal order to follow." Respondent Blue Sky filed a reply, explaining it sought to dismiss the case on two grounds and Appellants had only argued against one in their return. Appellants filed a joint surreply, arguing Respondent Blue Sky had raised only one ground in its motion to dismiss. After careful consideration, we deny Respondent's motion to dismiss without prejudice to the parties addressing appealability in their briefs.



FOR THE COURT

Columbia, South Carolina

cc:
Carl F. Muller, Esquire
A. Todd Darwin, Esquire
Alexander George Shissias, Esquire
Frank S. Holleman, III, Esquire
Emily Wyche, Esquire

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

T. Tree Farms RV Park (Blue Sky Associates, LLC), Petitioner, v. South Carolina Department of Health and Environmental Control, Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc., Respondents.	)	Docket No. 22-ALJ-07-0010-CC **ORDER ON MOTIONS TO DISMISS**

Appearances: Alexander G. Shissias, Esquire, for Petitioner

Mathew Richardson, Esquire and Carl F. Muller Esquire for Respondents Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc.

Sara Martinez, Esquire for Respondent South Carolina Department of Health and Environmental Control

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to a request for contested case hearing filed by T. Tree Farms RV Park (Blue Sky Associates, LLC) ("Blue Sky" or Petitioner") challenging the decision of Respondent South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to deny Blue Sky's application for an onsite wastewater system ("septic tank") permit. Blue Sky plans to construct a recreational vehicle park ("RV Park") in Spartanburg County, South Carolina; the wastewater system will supply the sewage needs of the proposed RV Park, allowing for up to 52 vehicle sewage hookups On or about June 22, 2021, DHEC staff of the Bureau of Environmental Health Services Division issued the septic tank permit to Blue Sky. Respondents Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of

FILED
11/29/2022
SC Admin. Law Court

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Fairview, LLC and North Pacolet Association, Inc (collectively "Homeowners") filed a request for review ("RFR") with the South Carolina State Board of Health and Environmental Control ("Board") to review the staff decision to grant the permit. On or about January 12, 2022, after a final review conference, the Board overruled the staff decision and denied the septic tank permit. Blue Sky thereafter filed its request for contested case hearing with the ALC on January 14, 2022.

On or about April 13, 2022, Blue Sky filed a Motion to Dismiss Pursuant to SCALC Rules 23(B) and 68 and SCRCP Rule 12(b)(1). Respondent Homeowners filed a response to Blue Sky's Motion to Dismiss on April 25, 2022. Respondent Homeowners filed their own Motion to Dismiss on April 26, 2022, contending that the case should be dismissed pursuant to SCALC Rule 23(B) and SCRCP 12(b)(1). Blue Sky filed a responsive memorandum on May 6, 2022. On May 12, 2022, the Court convened a hearing on the motions at which time, all parties appeared, represented by counsel as indicated. The Department declined to take a position on either of the pending motions. On July 18, 2022, Blue Sky submitted additional legal authority to the Court in support of its position. The Homeowners provided additional memoranda on July 26, 2022 and July 29, 2022.

BACKGROUND

Blue Sky's proposed RV Park is to be located at 1970 Landrum Mill Road in Campobello, South Carolina. Respondent Homeowners represent groups of homeowners living in areas adjacent to the proposed RV Park. Based on the pleadings and memoranda filed, the following is a chronology of events pertinent to the resolution of this case**:**

- **April 23, 2021** – Blue Sky filed its permit application with DHEC for an onsite wastewater system.
- **May 14, 2021** – Madelon Wallace, an area resident, emailed a request under the Freedom of Information Act (FOIA) to the Department addressed to "David Vaughan, Director of Onsite Wastewater Management for SC," seeking "copies of all documents concerning a proposed recreational vehicle park … to be located at or near Landrum Mill Road from Sept 20, 2020 to present." In the May 14, 2021 email that served as a cover letter to her FOIA request, Ms. Wallace wrote: "Please see the attached FOIA request. Among other things there are serious concerns about the waste that would be channeled to Gold Mine Creek that feeds into the North Pacolet River and runs thru a residential development." Although her request for information did not reveal in what capacity she was seeking this information, Ms Wallace was listed in other documents as a Manger of Greenspace of Fairview, LLC. Ms. Wallace's FOIA request did not state that she wanted to be considered an "affected person" for purposes of a

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septic tank permit and it did not ask that she be notified of the issuance of any such permit.

- **May 17, 2021** – In a reply email to Ms. Wallace, Mr. Vaughn acknowledged receipt of her May 14, 2021 FOIA request and indicated that he would forward it to the Department's FOIA office.
- **May 27, 2021** – Blue Sky filed an updated septic tank permit application in response to the Department's requests.
- **June 8, 2021** – Blue Sky electronically filed updated septic tank plans with the Department.
- **June 18, 2021** – Final septic tank plans delivered to the Department by Blue Sky's Engineer.
- **June 22, 2021** – DHEC's Bureau of Environmental Health Services issued the septic tank permit to Blue Sky.
- **October 14, 2021** – DHEC responded to the May 14, 2021 FOIA request submitted by Ms. Wallace and disclosed the septic tank permit issued to Blue Sky.
- **October 26, 2021** – Homeowners filed their RFR with Board.
- **December 20, 2021** – Board holds review conference with Blue Sky and Respondent Homeowners.
- **January 13, 2022** – Board issues final agency determination overruling the staff decision and denying Blue Sky's septic tank permit.

Both Blue Sky and the Homeowners cite SCALC Rule 23(B) and SCALC Rule 68, as well as SCRCP Rule 12(b)(1), in support of their motions. SCALC Rule 23(B), "Dismissal of Contested Case for Failure to Comply with Rules, states that:

> Upon motion of any party, or on its own motion, the Court may dismiss a contested case or resolve the contested case adversely to the offending party for failure to comply with any of the rules of procedure for contested cases, including the failure to comply with any of the time limits provided in these rules or by order of the Court.

SCRCP 12(b)(1) provides that:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

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Finally, SCALC Rule 68 provides that the South Carolina Rules of Civil Procedure, in the discretion of the presiding administrative law judge, may be used at the ALC to resolve questions not addressed by the Administrative Law Court rules.

Although both parties assert that the Court lacks jurisdiction under SCRCP Rule 12(b)(1), they complain about different steps in the administrative process. [1] Blue Sky maintains that the Homeowners failed to timely file their RFR to the Board to challenge the June 22, 2021 DHEC staff decision granting the permit. The Homeowners assert that Blue Sky's request for contested case hearing was insufficient to invoke this Court's jurisdiction.

Whether or not a court has jurisdiction to decide a case is a question of law. "The proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, rather than a motion for summary judgment pursuant to Rule 56, SCRCP." *Posey v. Proper Mold & Engineering, Inc*., 378 S.C. 210, 217, 399, 661 S.E.2d 395, 399 (Ct. App. 2008). Furthermore, "affidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on a lack of jurisdiction." *Baird v. Charleston County*, 333 S.C. 519, 528-529, 511 S.E.2d 69, 74 (1999). Because there is no rule under the Administrative Law Court Rules of Procedure comparable to SCRCP Rule 12(b)(1), this Court may apply SCRCP Rule 12(b)(1) pursuant to SCALC Rule 68.

I. Homeowners' Motion to Dismiss.

Because this case must be properly filed at the ALC, the Court will initially address the Homeowners' contentions that Blue Sky's case should be dismissed because Blue Sky failed to comply with certain procedural requirements. First, Homeowners assert that the case should be dismissed because Blue Sky named (and served) only the Department and Russell Rock as respondents before the ALC. [2] None of the Homeowners were listed as respondents in the Request

[1] The delicts raised by the parties should properly be characterized as challenges to this Court's procedural jurisdiction and not subject matter jurisdiction. Subject matter jurisdiction refers to a court's power to hear a particular kind of case. *Allison v. Gore & Associates*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 ("A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question."). S.C. Code Ann. § 44-1-60-60(G) gives the ALC the authority to hear contested cases involving the issuance of permits by the Department. Procedural jurisdiction refers to whether the case has been properly brought before the court so that it may exercise jurisdiction. *See FA Logic SC, LLC d/b/a FA Logic v. S.C. Dep't of Revenue*, Docket No. 19-ALJ-17-0002-CC, 2020 WL 1166875 (S.C. Admin. Law Ct. March 3, 2020).

[2] Russell Rock was identified in the DHEC cover letter communicating the Board decision as the Secretary of Golden Hills of Fairview Homeowners Association, Inc. Blue Sky's actual Request for Contested Case Hearing form, however, did not list Mr. Rock's representative capacity, only that he was being served as

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for Contested Case Hearing form filed by Blue Sky. Homeowners allege that these omissions are fatal to Blue Sky's action. The Court must disagree. [3]

Homeowners cite SCALC Rule 11(B) which states, in pertinent part, that "[a] copy of the request [for contested case hearing] must be served on each party and on the affected agency or county official…" (Emphasis added). When the party is a corporation, Rule 4(d)(3), SCRCP, allows service "by delivering to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process…" [4] Here, Russell Rock was identified as the Secretary for the Golden Hills of Fairview Homeowner's Association (Golden Hills) in the Homeowners' collective RFR to the Board and he is listed at the bottom of the signature page as the "contact person", presumably on behalf of all of the Homeowners. Moreover, Mr. Rock was identified as acting for Golden Hills in the Homeowners' separate efforts to challenge the permit locally through their county zoning commission. [5] The Court finds that although Blue Sky did not directly serve all possible parties to the action, it made sufficient service on the Department and Golden Hills to avoid dismissal for the proffered reason.

If a litigant initiates its case against a proper respondent at the ALC, the fact that there are other respondents who could have been named in the case, but who were not, is not such a fatal defect that the Court should dismiss a case for a lack of procedural jurisdiction. In such a situation, the Court may simply add the omitted entities who wish to participate as parties as needed for a fair and complete adjudication of the issues. Here, even if not initially named and served as parties to the contested case hearing, the Court may add the other Homeowners as respondents because the case was properly initiated against the Department and Golden Hills.

"Russell Rock." Given the Board decision – which listed all of the Homeowners – the ALC Clerk's Office interpreted Blue Sky's request as naming the Department and Golden Hills of Fairview Homeowners Association, Inc., as Respondents. At some point, Mr. Rock filed a motion to dismiss which the Court returned to him as he was not a named party.

[3] For the purposes of their motion, the Court has assumed, without deciding, that the Homeowners are "affected persons."

[4] The South Carolina Secretary of State's Office website identifies a "Sally S. Rock" of 255 Night Lark Lane, Campobello, SC, as the registered agent for Golden Hills of Fairview Homeowners Association, Inc. Ms. Rock is a member of the California State Bar; the Court granted her petition for pro hac vice in this case on July 19, 2022.

[5] The Homeowners filed an Application for Appeal with the Spartanburg County Planning and Development Department contesting an approval issued to Blue Sky for the RV Park. That document also identifies Mr. Rock as "Secretary, GHHAOS, 255 Night Lark Ln, Campobello, SC 29322."

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The addition of the other Homeowners as parties, cannot, however, happen involuntarily at this point in the proceedings. Blue Sky had thirty days after the Board decision to file its request for contested case hearing with the Court and to serve opposing parties. It only served the Department and Golden Hills within this time frame. The question that must be addressed is whether the remaining Homeowners are indispensable under Rule 19, SCRCP, such that without these entities as parties, the action must be dismissed. In pertinent part, Rule19, SCRCP, provides:

> a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.
>
> (b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

"[I]f the party is not indispensable under Rule 19(a), then the considerations listed in SCRCP 19(b) are never reached." *Stewart v. State Crop Pest Com'n*, 307 S.C. 133, 139, 414 S.E.2d 121, 125 (1992). Pursuant to Rule 19(a), a party is indispensable if: (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. Here, the other Homeowners are not indispensable

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parties under SCRCP 19(a). This case involves the issuance of a septic tank permit. The Court believes that complete relief can be afforded among the entities already parties to the action – Blue Sky as the applicant, Golden Hills in opposition to the permit, and the Department as the issuing agency. The ability of Golden Hills to seek revocation of the permit issued to Blue Sky is not dependent on inclusion of the omitted Homeowners' associations, and the absence of the other Homeowners as parties does not ultimately preclude complete relief from being obtained in the action.

Finally, consideration of the second prong of the Rule 19(a) test mitigates toward Blue Sky. While the other Homeowners arguably "claim an interest relating to the subject of the action," the test requires that these entities be "so situated that the disposition of the action in their absence may as a practical matter impair or impede their ability to protect that interest." The interests of the other Homeowners are aligned with Golden Hills such that they are adequately protected by Golden Hills' presence. Furthermore, nothing prevents these entities from voluntarily joining the case as parties or participating as witnesses supporting Golden Hills.

To the extent the Homeowners' argue that service of the request for contested case hearing on Russel Rock in his capacity as Secretary of Golden Hills was insufficient because it was served by certified mail, restricted delivery, this argument must also fail. In pertinent part, SCRCP Rule 4(d)(8) specifies that "[s]ervice of a summons and complaint upon a defendant of any class referred to in paragraph (1)[individuals] or (3) [corporations] of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process … by registered or certified mail, return receipt requested and delivery restricted to the addressee." The method of service by mail at the ALC, however, is less exacting. SCALC Rule 5 addresses service and states that " [s]ervice shall be made by actual delivery, by mail to the last known address, or as otherwise approved by the Court through administrative order." (Emphasis added). According to Blue Sky's Certificate of Service filed with its Request for Contested Case Hearing form, Mr. Rock was served by U.S. Mail at 255 Night Lark Lane, Campobello, SC 29322. The ALC rule contains no requirement that service by mail be sent registered or by certified mail, restricted delivery. The 2021 Revised Notes to SCALC Rule 5 indicate that service by mail at the ALC is broader than under SCRCP Rule 5 by stating that "[a]ny service that satisfies Rule 5, SCRCP, also satisfies this [SCALC] Rule." Accordingly, the manner of service on Russell Rock was sufficient.

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The remaining procedural jurisdiction argument to be addressed is whether Blue Sky's Notice of Appeal itself is insufficient because, as posited by the Homeowners, it did not set forth relief requested as required under SCALC Rule 11(D)(4).[6] The Court rejects this contention, as well. In answer to the prompt, "please provide a brief statement regarding why the hearing is sought and relief sought," contained on the Request for Contested Case Hearing form, Blue Sky wrote: "DHEC Board lacked jurisdiction to consider an untimely filed request for RFR on the merits; the staff decision had become the final agency decision 15 days after mailing on July 7, 2022 [2021]. In the alternative, the Board erred in reversing staff's decision to grant Petitioner's septic tank permit."

The Court believes that this statement adequately conveys that Blue Sky is seeking reversal of the Board's decision to deny the septic tank permit at issue for the reason set forth – the RFR was untimely filed. In the alternative, Blue Sky requests a hearing on the merits which it contends would show that the permit should be granted.

In their July 29, 2022 submission to the Court, the Homeowners offer the new argument that the time frames under § 44-1-60(E) are not applicable because the Board, in rescinding Blue Sky's septic tank permit, exercised its authority under the Pollution Control Act, S.C. Code Ann. § 48-1-100, et al. (PCA). The Board decision cites the PCA as the basis for its jurisdiction in matters concerning septic tanks: "Pursuant to 48-1-100(C), DHEC is the state agency with jurisdiction over septic tanks." [7] Relying on § 48-1-100(C) for the proposition that the proposed Blue Sky septic tank constituted "real or potential threats to the health of the people of South Carlina, the Homeowners assert that S.C. Code Ann. § 48-1-50(5), empowered the Board to rescind the permit:

> Issue, deny, revoke, suspend or modify permits, under such conditions as it may prescribe for the discharge of sewage, industrial waste or other waste or air contaminants or for the installation or operation of disposal systems

[6] Under the SCALC Rules in effect when Blue Sky filed its request for contested case hearing, this Rule was denominated as SCALC Rule 11(D)(3).

[7] Section 48-1-100(C) reads:

> The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately owned systems for the disposal of offal and human or animal wastes.

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> or sources or parts thereof; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing;

Generally, the Homeowners are correct that the Department has broad authority under the PCA. "[W]here an administrative agency such as DHEC is acting for the protection of the health and welfare of the public, the delegation of authority to that agency should construed liberally." *City of Columbia v. Bd. of Health & Env't Control*, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987)). However, the Homeowners' argument here is misplaced.

The Homeowners seek to bypass the specific procedures contained in S.C. Code Ann. § 44-1-60 for Board review of matters pertinent to the issuance, denial, renewal or revocation of permits and licenses. While the Department has jurisdiction over septic tanks under the PCA, in the context of a third party challenging the issuance of a septic tank permit, the Board must still adhere to the procedural requirements of § 44-1-60 to give effect to that jurisdiction. [8] The Board decision itself recites that § 44-1-60 is the statutory procedure invoked: "This matter comes before the South Carolina Board of Health and Environmental Control for final review pursuant to S.C. Code Ann. § 44-1-60." Moreover, the Homeowners' contention that § 44-1-60 does not apply to actions under the PCA would work to impliedly repeal § 44-1-60. There is absolutely no evidence that the General Assembly intended such a result. Instead the Court must read § 44-1-60 and the PCA together. *See City of Rock Hill v. South Carolina Dept. of Health and Environmental Control*, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990)("Repeals by implication are not favored by courts and to repeal a statute on account of an asserted conflict or repugnancy with another, 'the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement; for if they can be construed so that both can stand, the Court will so construe them.'(citing *Pearson v. Mils Manufacturing Co*., 82 S.C. 596, 509, 64 S.E. 407, 409 (1909)) Compliance with § 44-1-60 was thus, a prerequisite to invoking the Board's review of the septic tank permitting decision.

Accordingly, the Homeowners' Motion to Dismiss is **DENIED**.

II. Blue Sky's Motion to Dismiss

[8] This matter is distinct from the Department's enforcement powers under the PCA to issue administrative cease and desist orders, seek civil damages, and in some instances, recommend criminal charges, against violators. *See* S.C. Code Ann. §§ 48-1-90, 48-1-130, 48-1-310- and 48-1-330.

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Blue Sky argues that this Court must grant its Motion to Dismiss because the Homeowners' RFR was not filed with the DHEC Board in a timely manner. Subsections (E)(1) and (2) of S.C. Code Ann. § 44-1-60 provide as follows:

> (E)(1) Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.
>
> (2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.

Blue Sky points out that the Department issued the septic tank permit on June 22, 2022, and that this date triggered the fifteen (15) day window for filing an RFR. It further contends that the staff decision to issue the permit became a final decision on July 7, 2022, meaning that the opportunity to file a RFR closed. The Homeowners' filing of an RFR on October 26, 2021 was thus, too late so that the Board should not have granted the Homeowners a forum to challenge the septic tank permit. Nonetheless, the Board did conduct a final review and decided that the septic tank permit was issued improperly. [9]

The Homeowners dispute that their RFR was filed beyond the time period provided by statute. Instead, they assert that the time for them to file an RFR did not actually begin until the Department provided a copy of the septic tank permit as part of its FOIA disclosure to Ms. Wallace on October 14, 2021. The Homeowners filed their RFR on October 26, 2022, twelve days after receipt of the permit.

The Homeowners' argument is predicated upon their contention that the FOIA request submitted by Ms. Wallace on May 14, 2021, was sufficient to put the Department on notice that

[9] The Board rescinded the septic tank permit because the application relied upon consumption data from a campground that was not comparable to that proposed by Blue Sky. Although the Board's written decision did not discuss timeliness of the RFR, the Homeowners offer the issue was vigorously argued by both parties. The decision notes the date the septic tank permit was issued and the date the RFR was filed which indicates the Board was aware of the timeliness issue and still chose to consider the merits of the case.

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the Homeowners were affected persons within the meaning of § 44-1-60(E). As recited earlier, Ms. Wallace's May 14, 2021 FOIA request asked for "all documents concerning a proposed recreational vehicle park ("RV Park") to be located at or near 1970 Landrum Mill Road, Campobello, SC, in Spartanburg County, Block Map Reference #1-09-00-020.03. You may confine your search from September 20, 2020 though the date of your response. The RV Park may be listed under one or more of the following names or a derivative of such names: T. Tree RV Park, T. Tree Farms RV Park, …" Pursuant to the FOIA statute, the response date for Ms. Wallace's FOIA request was June 27, 2021; however, no responsive documents were submitted until October 14, 2021. The septic tank permit was issued to Blue Sky on June 22, 2021, five days before the Department should have responded to the FOIA request.

S.C. Code Ann. § 44-1-60(E) does not explain how to become an "affected person" except that "affected persons" are those "who have requested in writing to be notified" and that affected persons "may request in writing to be notified by regular mail or electronic mail in lieu of certified mail." § 44-1-60(E)(1),(2). The statute also fails to identify the area within the Department that such a request for affected person status should be directed. [10]

The question before this Court then, is whether Ms. Wallace's FOIA request can be considered sufficient to establish her as an affected person for purposes of § 44-1-60. Blue Sky cites a recent ALC decision, *Gullah/Geechee Fishing Association, Inc. v. South Carolina Department of Health and Environmental Control, and Bay Point Island, LLC*, 22-ALJ-07-0080-CC)(S.C. Admin. Law Ct. July 15, 2021), in support of its position that a FOIA request does not equate to a request for affected person status under § 44-1-60. The facts in *Bay Point* are remarkably similar to the instant case. There, on August 31, 2021, Bay Point Island, LLC (Bay Point) submitted an application to the Department for a septic tank system to serve a single residential dwelling. Previously, on or about July 19, 2021, Gullah/Geechee Fishing Association, Inc (Gullah) filed a FOIA request to the "Bureau of Water, OCRM [Ocean & Coastal Resource Management]" within the Department for "any and all applications and file documents for NPDES

[10] It is noteworthy, however, that the Wallace FOIA request was emailed to "David Vaughan, Director of Onsite Wastewater Management for SC." Although Mr. Vaughan's signature block indicates that he is with DHEC's "Legislative Affairs" office, during the motions hearing there was the indication that Mr. Vaughan had some responsibility for the Bureau of Environmental Health Services, the Department section which issues septic tank permits. Further the Homeowners apparently met with Mr. Vaughn at some point in August 2021 and September 2021 concerning matters related to the proposed RV Park.

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[National Pollutant Discharge Elimination system] or land disturbance permits for Bay Point Island, likely submitted by Bay Point Island, LLC or for any request or file document relating to a Coastal Zone Consistency Certification for Bay Point Island, LLC." On August 3, 2021, and again, on August 31, 2021, the Department responded that it had no documents related to septic tank applications. Gullah filed a second FOIA request on August 31, 2021 which specifically sought "any applications for permits or permits issued by DHEC for septic tanks or land disturbance permits or coastal zone consistency certifications…We are also seeking specifically septic tank applications in addition to any other NPDES permits." The Department issued a septic tank permit to Bay Point on September 23, 2021. Nonetheless, the Department's FOIA response on October 20, 2021 continued to deny it had the requested documents. Gullah did not become aware of the permit's issuance until October 27, 2021; it filed a RFR with the Board on November 9, 2021. The Board declined to conduct a review hearing and Gullah subsequently filed for a contested case hearing at the ALC.

Gullah argued that its FOIA requests were sufficient to achieve affected person status for the purposes of § 44-1-60(E) and further maintained that had DHEC provided accurate FOIA responses within the statutory deadlines, it would have had the information to file a RFR in a timely manner. The presiding Administrative Law Judge, however, declined to allow the FOIA requests to serve the purpose advocated by Gullah.

Several reasons supported the ALC decision in *Bay Point*. First, allowing Gullah to rely upon a FOIA request to establish affected person status would ignore the procedure providing for such status spelled out in § 44-1-60(E)(1) which plainly states that "affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail." Furthermore, despite there being a plain and straightforward procedure set forth in the statute, Gullah never availed itself of that procedure, and instead sought information only through FOIA without mentioning "affected person" under § 44-1-60. The ALC pointed out that allowing the use of FOIA in the manner asserted by Gullah would be inconsistent with the procedure established by the General Assembly to gain such status under § 44-1-60. In addition, the ALC noted that violations of FOIA are handled in the circuit court and not the ALC so that it would be improper for the ALC to attempt to fashion a FOIA remedy by excusing the requirements of § 44-1-60. Finally, the ALC pointed out that even if Gullah's reliance solely on FOIA was not unreasonable, the FOIA requests

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themselves were inadequate inasmuch as the first FOIA request was sent prior a septic tank application having been filed and both requests were sent to the "wrong Department division."

The logic of the *Bay Point* decision would seem to compel the same result here. Inasmuch as the septic tank permit was issued to Blue Sky on June 22, 2021, and the Homeowners' RFR was not filed until October 26, 2021, it is apparent that the Homeowners missed the fifteen day window of opportunity to make a proper request for RFR. *See* S.C. Code Ann. § 44-1-60(E)(2)("The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.") However, both parties have cited appellate cases which give the Court some reservations such that additional analysis is necessary.

In *South Carolina Coastal Conservation League v. South Carolina Department of Health and Environmental Control, et al*., 390 S.C. 418, 702 S.E.2d 246 (2010), the South Carolina Supreme Court evaluated whether the Coastal Conservation League (League) was an affected person under § 44–1–60 with regard to the issuance of certain permits to the States Ports Authority (Ports Authority) and the Department of Transportation (DOT). DHEC issued a final permit to the Ports Authority on November 2, 2006; the permit to DOT was issued on November 13, 2006. The Ports Authority filed a RFR with the Board on November 13, 2006 to seek clarification. *Id*., 390 S.C. at 248-249, 702 S.E.2d at 422. Notice that the permits had been issued had not been provided to the League, and on November 17, 2006, its counsel contacted DHEC to determine their status. A DHEC employee sent an email in reply "making it plain that DHEC was aware of the League's involvement and desire to be notified on the agency decision" and further stating that "you all were on the mailing list and should have received a copy." *Id*., 390 S.C. at 249, 702 S.E.2d at 422. The League was provided notice of the permits on November 20 and filed its RFR regarding the Ports Authority permit that same day. The League filed its RFR concerning the Department of Transportation Permit on November 30, 2006. Significantly, "the League filed its RFRs of the DHEC staff decisions regarding SPS's and DOT's permits more than fifteen days after the staff decisions were mailed to SPA and DOT – the applicants – but within fifteen days of the League receiving notice of the decisions." *Id*. Before the Board, DHEC argued that the League's RFRs were untimely; the Board ruled that the RFRs were timely and, on the merits, of the case, upheld the issuance of the permits. *Id*.

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The ALC found that the League's RFRs were untimely, ruling "that the League had a statutory right to request to be notified of the decision and there was no evidence that the League filed a request to be notified of the decision per section 44-1-60(E)." *Id*., 390 S.C. at 423-424, 702 S.E.2d at 249. On appeal, in upholding the ALC, the South Carolina Court of Appeals found that the "League failed to request notification of the staff decision as delineated in Section 44-1-60(E)". *Id*.

The South Carolina Supreme Court, after noting that "the statute [44-1-60(E)] is not clear as to how an individual or entity acquires the status of "affected persons who have asked to be notified," [11] observed the following:

> The ALC and the court of appeals found that the League failed to avail itself of the right to be notified under § 44–1–60(E) because the League failed "to make a formal request to be notified of a decision" and "failed to request notification of the staff decision as delineated in section 44–1 60(E)." We believe the November 17th email acknowledgement by DHEC refutes the suggestion that the League failed to request to be notified of the agency decision.
>
> In our view, the ALC's and the court of appeals' foray into the degree of "formality" needed for § 44–1–60(E) "affected person" status is not necessary for deciding this appeal. DHEC's concession that the League was on the "mailing list and should have received a copy [of the permit decision]" is sufficient for purposes of acquiring "affected person" status. Therefore, given DHEC's concession, we hold the League had asked to be notified of the DHEC staff decision on the permits.

Id., 390 S.C. at 427-428, 702 S.E.2d at 251.

The quoted language from *Conservation League* raises at least two points pertinent to the resolution of the instant case. First, the ALC found that the League had made no formal request to be notified under § 44-1-60(E). Nevertheless, based upon the DHEC email acknowledging that the "League was on the mailing list and should have been notified" the Court rejected the ALC's rationale for not considering the League to be an affected person. *Id*. Secondly, the Supreme Court eschewed the degree of "formality" the ALC and Court of Appeals believed to be necessary to request for affected person status, emphasizing "that throughout the permit application process in

[11] Section 44-1-60(E) has been amended since *Coastal League* to read "affected persons who have requested in writing to be notified."

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this matter, the League was not an obscure or unknown party. The League has been involved in this particular permitting process from the beginning." *Id.* [12]

Since *Coastal Conservation*, § 44-1-60(E) has been amended to require that an affected person make a written request to the Department in order to gain that status. The current version of the statute does not, however, define the content of such a written request, [13] and as mentioned earlier, also does not tell an affected person where within the Department such a request is to be filed. The Homeowners argue that there was compliance with this element through Ms. Wallace's written FOIA request. Ms. Wallace's written request – "for all documents concerning a proposed recreational vehicle park" at or near 1970 Landrum Mill Road: – was certainly broad enough to encompass septic tank permits, as well as any applications for such permits. [14] Furthermore, she submitted the request to the Department division responsible for issuing septic tank permits and received a response from its chief acknowledging receipt. In the May 14, 2021 email to Mr. Vaughn accompanying her FOIA request, Ms. Wallace also explained that "Among other things there are serious concerns about the waste that would be channeled to Gold Mine Creek that feeds into the North Pacolet River and runs thru a residential development."

In *Coastal Conservation*, in the absence of a finding that a formal request for affected person status was made to the Department, the Supreme Court placed emphasis on the League's involvement in the permitting process. In response to the public notice issued at the Department's receipt of the disputed permit applications, the League submitted comments to the proposed permits during the comment period. In addition, the League participated in public hearings. These factors, even in the absence of a formal request for affected person status, coupled with the Department's aforementioned acknowledgments of the League's involvement, lead the *Coastal*

[12] The League attended public hearings held pursuant to the Department's public notice requirements and submitted written comments during the public comment period. *Id*., 390 S.C. at 422, 702 S.E.2d at 248.

[13] While it is reasonable that a person who wishes to request affected person status under § 44-1-60(E) would use the language "affected person" in his or her request to the Department, the absence of such a specific requirement in the statute suggests that a person may make a sufficient affected person request without articulating those exact words.

[14] In noting that the septic tank permit had not yet been issued at the time of the FOIA request, Blue Sky argues that FOIA requires the disclosure of documents in an agency's current possession, not documents that the agency may produce in the future. The efficacy of this contention is undermined here where the septic tank application filed by Blue Sky was certainly in the Department's possession at the time Ms. Wallace filed her FOIA request. Had the Department properly responded to the May 14, 2021 FOIA request, the Homeowners would have at least obtained the septic tank application.

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Conservation Court to find that the League was an affected person within the meaning of § 44-1-60(E). *Id*., 390 S.C. at 428, 702 S.E.2d at 251.

Here, accepting their allegations as true, the involvement of the Homeowners thereof, is not as pronounced in the permitting stage as was the League's participation in *Coastal Conservation*. Blue Sky submitted its septic tank application to the Department on April 13, 2021. Ms. Wallace filed her FOIA request on May 14, 2021. Although the FOIA request was sent to the division responsible for issuing septic tank permits, other than the vague reference to "waste" in the accompanying email, there is no evidence that Ms. Wallace or the Homeowners wanted information specifically related to septic tank permits. [15] At the motions hearing, Homeowners suggested that they made inquiries of the Department after submitting the FOIA request regarding septic tank permits but were told no permit had been issued. These inquiries, however, apparently occurred after the June 22, 2021 issuance date of the permit to Blue Sky. In the Homeowners' pre-hearing statement filed with this Court, they allege that "after the permit was issued on June 22, 2021, DHEC provided inaccurate information. In multiple phone inquiries initiated by members of Respondent HOAs, the DHEC staff repeatedly stated that "no permit" had been issued." [16] At

[15] It is the specificity of a request under §44-1-60 (E)(1) that differentiates it from a general request for documents through FOIA. As alluded to earlier, while there are no magic words to trigger affected person status, the Department also cannot be expected to grope in the dark. It is the degree and specificity of the concern communicated to the Department about some permitting decision that places the requestor in the class of affected persons and puts the Department on notice that he seeks such status.

[16] The Homeowners indicated during the motions hearing that a Circuit Court had enjoined further development of Blue Sky's RV Park. The circuit court case file in The Enclave at Fairview Farm Homeowners Association, Inc., et al. v. Spartanburg County, SC, et al., Case No. 2021-CP-42-02713, filed in the Spartanburg County Court of Common Pleas on or about August 19, 2021, is available to the Court on the Spartanburg County Seventh Judicial Circuit Public Index at https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42002&Casenum=2021CP4202713&CaseType=V&HKey=1076590116878771118491046610911065971128581109431111098511552774710866906976835481985550881118649 48. In an exhibit to documents filed in the Circuit Court case, the Homeowners included an "Application for Appeal" to the Spartanburg County Planning & Development Commission, dated July 12, 2021. That exhibit contains a pleading entitled "Appeal of the Planning and Development Commission's Conditional Approval of T Tree Farms RV Park" which references a March 2, 2021 Conditional Approval issued by the Commission to allow Blue Sky to develop and operate the RV park. This same pleading states that "[o]n or about March 16, 2021, Madelon Wallace received a message from a third party that the Commission had granted conditional approval of a commercial RV Park at 1970 Landrum Mill Road." The Conditional Approval, dated March 3, 2021 and included in the Circuit Court case file, was made contingent upon Blue Sky showing that it had obtained approvals from a number of Spartanburg County entities, approval of an architectural design package, water systems and a septic tank permit from DHEC. This pleading continues to make reference to the Homeowners having attended public Commission meetings to complain about the Conditional Approval, the earliest of which was April 2021; however, there is no indication that a representative from

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no point have the Homeowners suggested that they were given false information about the status of the permit prior to its issuance or during the fifteen day period between issuance and July 7, 2021. While this Court does not countenance a state agency providing inaccurate information to the public, it is apparent that this alleged inaccurate information did not cause the Homeowners' failure to submit a timely request for affected person status regarding Blue Sky's permit. [17]

Both Blue Sky and the Homeowners cite *Pickens County v. South Carolina Department of Health and Environmental Control*, et al., 435 S.C. 99, 866 S.E.2d 537 (2021), a case involving landfill permits, in support of their respective positions. Blue Sky asserts *Pickens County* stands for the proposition that the time to request an RFR under § 44-1-60(E) begins to run upon the mailing of the staff decision to the permittee, not upon receipt of actual notice of the decision by an affected person. The Homeowners assert that the case affirms the rationale of *Conservation League* with regard to both the amorphous nature of achieving "affected person status" under § 44-1-60(E) and disavowal of the formality of an affected person status request. This Court believes the Supreme Court's decision in *Pickens County* could actually support both parties' positions in this case. Based on the record, however, the result in *Pickens County* compels the Court to grant Blue Sky's Motion to Dismiss.

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the Department was in attendance. While the Homeowners acknowledge public opposition to Blue Sky's development as early as April 2021, they have provided no indication that opposition to any septic tank permit was voiced to the Department at any time prior to the septic tank permit being issued. This is far different from the circumstances present in *Conservation League* where the League actively participated in Department public hearings and submitted written comments to the Department prior to the issuance of the permits.

[17] The Homeowners' also offered the following allegation in their pre-hearing statement:

> In fact, for several month, various members of the DHEC staff discussed the May 14 FOIA request repeatedly with at least 4 members of the Respondent HOAs and their hydrogeologist in person, in a video teleconference, and in emails. The DHEC staff had actual knowledge that the FOIA request and other inquiries were connected with Respondent HOAs.

The pre-hearing statement further makes mention of an in-person meeting with Department personnel on August 4, 2021 and a videoconference on September 30, 2021. These dates are after the issuance of the septic tank permit to Blue Sky. Moreover, it is significant that Ms. Wallace did not exercise available remedies under FOIA and file suit in a circuit court to force the Department to disclose. S.C. Code Ann. 30-4-100 ("A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later.")

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In *Pickens County*, the South Carolina Supreme Court again construed § 44-1-60(E)'s phraseology "Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified." In 2007, the County of Pickens, South Carolina (County) entered into agreements with MRR Pickens, LLC to allow the operation of a Class Two landfill. DHEC issued a Class Two Landfill permit to MRR Pickens which authorized it to accept certain types of low level waste. More harmful wastes such as municipal and industrial solid waste were not authorized to be stored in a Class Two landfill. The County did not file a request in writing to DHEC to be notified as an affected person of future decisions related to MRR's landfill permit. *Id*., 435 S.C. at 102-103, 866 S.E.2d at 538-539.

In 2015, MRR applied to DHEC for a "minor permit modification" that would allow it to install a liner required for Class III landfills that accept more harmful waste. Because the modification was characterized as "minor", no public notice of the application was required to be published. [18] DHEC issued the modified permit to MMR on August 10, 2015. *Id*. The County did not learn of the permit until December 2015 and it received a copy of the same from DHEC on January 11, 2016. *Id*. The County filed its request for an RFR on March 23, 2016. The DHEC Board declined to review the case. *Id*.

After the County filed for a contested case hearing, the ALC granted MRR's motion to dismiss based upon the untimely submitted RFR. *Id*., 435 S.C. at 103-104, 866 S.E.2d at 538. On appeal, the South Carolina Court of Appeals reversed based upon the ALC's failure to determine whether MRR misclassified the modification as "minor" and whether the Department had followed public notice requirements. *Id*. On certiorari, the Supreme Court reiterated that under § 44-1-60(E) the fifteen day time period for an affected person to request board review begins on the date the staff permitting decision is mailed to the applicant and not when the affected person receives actual notice of the decision. *Id*., 436 S.C. at 105, 866 S.E.2d at 540. The *Pickens County* ruling thus undermines the Homeowners' arguments that their time period for requesting a RFR did not begin until the actual receipt of the permit through the FOIA disclosure in October 2021. Here, Blue Sky's septic tank permit was mailed to it on June 22, 2021. The fifteen day period to request Board

[18] *See* S.C. Code Ann. § 44-1-60(B) which provides that "The department staff shall comply with all requirements for public notice, receipt of public comments and public hearings before making a department decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings."

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review under § 44-1-60(E) began to run at that time and ended on July 7, 2021. The Homeowners' RFR was not filed until October 26, 2021, and as such, without more, was not timely.

However, *Pickens County* also stands for the proposition that the Department must adhere to any public notice requirements regarding applications for permits. The *Pickens County* Court remanded the case to the ALC to make the factual determinations whether the landfill permit was actually "minor" and, whether public notice provisions were followed. *Id*., 435 S.C. at 107-108, 866 S.E.2d at 541. Applications for "minor" permit modifications did not require notice to the public. To the contrary, applications making major landfill modification did require public notice. As articulated by the Court of Appeals:

> The filing deadlines of § 44-1-60 are contingent upon DHEC's compliance with the procedural and notice requirements of its own regulations. See e.g., S.C. Code Ann. § 44-1-60(B) ("The department staff shall comply with all requirements for public notice, receipt of public comments and public hearings before making a department decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment and public hearings."). Our supreme court reiterated this in *South Carolina Coastal Conservation League v. South Carolina Department of Health & Environmental Control*, 390 S.C. 418, 702 S.E.2d 246 (2010), in which the Coastal Conservation League sought review of a critical area permitting decision more than fifteen days after DHEC issued the staff decision. DHEC failed to notify the Coastal Conservation League as required by statute; thus, the time limitations for review did not start to run until DHEC corrected its notice error. Id. at 430, 702 S.E.2d at 253. The plain language of § 44-1-60(A) supports this conclusion here as well: "All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits ... shall be made using the procedures set forth in this section." The procedures in § 44-1-60 particularly emphasize public notification, as reflected in § 44-1-60(B). Only after DHEC issues a staff decision in compliance with the procedural and notice dictates of its own regulations and of § 44-1-60 subsections (A) through (E), does subsection (E)(1) trigger the fifteen day deadline for an appeal of the decision to the DHEC Board.).

Pickens County v. South Carolina Department of Health and Environmental Control, et. al., 429 S.C. 92, 104, 837 S.E.2d 743, 749 (Ct. App. 2020) (Emphasis added).

Although it vacated certain findings of fact entered by the Court of Appeals and remanded the case to the ALC, the Supreme Court approved of the Court of Appeals' rationale regarding notice:

> The ALC must determine on remand whether DHEC properly classified the Permit Modification as a minor modification. [] Only after resolving that

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> question can the ALC determine whether the County's request for a contested case hearing was untimely under subsection 44-1-60(E)(2). On remand, the parties may conduct discovery on relevant issues, and the ALC should consider the County's request to intervene on behalf of the neighboring landowners. If the ALC upholds DHEC's classification of the Permit Modification and concludes DHEC complied with all notice requirements, the fifteen-day limitations period began running on August 10, 2015, and the County's challenge should be dismissed. If the ALC determines the Permit Modification was major and DHEC did not fulfill its notice requirements, then the fifteen-day limitations period has not started. (Emphasis added).

Pickens County, 435 S.C. at 107-108, 866 S.E.2d at 541.

While it may seem incongruous given the size of the proposed RV Park at issue here, the Court has not found public notice requirements in either statute or regulation attendant to the Department's issuance of septic tank permits.[19] During the hearing on Blue Sky's Motion, counsel for the Department informed the court that no public notice requirements existed for septic tank applications. Further, the Homeowners have not pointed to any public notice requirements with which the Department was supposed to comply. Therefore, because the Department has not violated § 44-1-60(B), the fifteen day period to file a RFR of the staff decision to grant the permit began on June 22, 2021 and ended on July 7, 2021. The Homeowners' RFR was filed on October 26, 2021 and is thus, untimely.

Under § 44-1-60, the General Assembly clearly set forth a procedure by which the Board could review and take up matters pertinent to the issuance, denial, renewal or revocation of permits, licenses, or other actions. Namely, this statutory provision allots a window of time for affected parties to invoke the authority of the Board before DHEC staff decisions regarding permitting become final. After this window has closed, any action by the Board to review staff decisions is outside of its jurisdiction and void. *See Knight Pub. Co. v. Univ. of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) ("A statute that creates a new liability and affixes the time within which an action may be commenced is not a statute of limitation but a statute of creation; commencement within the time affixed is then an indispensable condition of the action. (internal citation omitted) Unless the action was timely commenced under § 30–4–100(a), the trial judge lacked subject matter jurisdiction and any order issued in this action is void."). Here, given the Homeowners' untimely

[19] *See* Regulation 61-56, Onsite Wastewater Systems.

RFR, the Board acted outside of its authority when it reviewed the staff decision to grant Blue Sky's septic tank permit.

CONCLUSION

For the specified reasons, the Homeowners Associations' Motion to Dismiss is **DENIED**. The Motion to Dismiss filed by Blue Sky is **GRANTED**. Furthermore, the Court hereby vacates the Board decision and reinstates the Department's staff decision to grant the Blue Sky permit.

AND IT IS SO ORDERED.

November 29, 2022
Columbia, S.C.

_____
Milton G. Kimpson, Judge
South Carolina Administrative Law Court

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CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Anthony R. Goldman

November 29, 2022
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

ELECTRONICALLY FILED - 2023 Apr 04 4:14 PM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201226

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-_____ **SUMMONS**
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	

TO THE RESPONDENT BLUE SKY ASSOCIATES, LLC D/B/A T. TREE FARMS RV PARK:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this

action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, 607 Pendleton Street, Suite 201, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

_____s/Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
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Attorney for Appellants

Greenville, SC
April 4, 2023

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**SUMMONS**

TO RESPONDENTS SPARTANBURG COUNTY PLANNING COMMISSION:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the

subscribers at their offices, 607 Pendleton Street, Suite 201, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

_____s/Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	**SUMMONS**

TO THE RESPONDENT SPARTANBURG COUNTY, SC:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the

subscribers at their offices, 607 Pendleton Street, Suite 201, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

_____s/Carl F. Muller _____
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NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA

SPARTANBURG COUNTY CIRCUIT COURT

APPEAL FROM THE SPARTANBURG COUNTY PLANNING COMMISSION

Site Plan Parcel – RV Park (1-09-00-020.03)

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms,

Appellants,

v.

Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,

Respondents.

NOTICE OF APPEAL

Appellants hereby submit notice to Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park of their

appeal of the Spartanburg County Planning Commission's conditional approval of the site plan for the T. Tree RV Park on Landrum Mill Road in Campobello, South Carolina, (1-09-00-020.03) by vote on March 7, 2023.

_____s/Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
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carl@carlmullerlaw.com
Attorney for Appellants

Greenville, SC
April 4, 2023

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**APPEAL FROM SPARTANTBURG COUNTY PLANNING COMMISSION AND REQUEST FOR DECLARATORY RELIEF**

Appellants The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms hereby appeal the decision of the Respondent Spartanburg County Planning Commission ("Commission") to conditionally approve the site plan for an RV Park at 1970

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Landrum Mill Road in Campobello, South Carolina, proposed by Respondent Blue Sky Associates d/b/a T. Tree Farms RV Park ("Blue Sky") and respectfully show the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Appellants The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc., are not for profit homeowners' association entities incorporated in South Carolina. Appellants Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust are individuals who are members of the Appellant homeowners' associations and property owners therein. Appellants Greenspace of Fairview, LLC and Slater Properties, Inc., d/b/a Caroland Farms are entities which own property within or adjacent to the Appellant homeowners' associations. Appellant homeowners' association members reside in the County of Spartanburg and/or own property either adjacent to or near the site of T. Tree Farm RV Park ("RV Park"). All of the Appellants are impacted by the decision of the Commission granting conditional approval for this development.

2. Appellants homeowners' associations, through their members, and all other Appellants have a significant interest in the outcome of the decision at issue here and have standing to bring this action on the basis of that interest.

3. The South Carolina Local Government Comprehensive Planning Enabling Act ("the State Planning Act") provides a right to appeal from a planning commission decision for any "party in interest," including opponents of a development. *See* S.C. Code § 6-29-1150; *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019) ("The plain language of section 6-29-1150 as a whole provides Appellant the right to appeal the Commission's decision to the circuit court.").

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4. Each Appellant is a "party in interest" under section 6-29-1150(D)(1) of the South Carolina Code.

5. Appeal from a decision of the planning commission must be initiated "within thirty days after actual notice of the decision." S.C. Code § 6-29-1150(D)(1).

6. The Commission rendered its decision granting conditional approval of Blue Sky's major land development application on March 7, 2023.

7. Following the Commission's decision to grant conditional approval of the application, Blue Sky moved forward with construction of a commercial well and gravel roads on the subject parcel and is seeking permits. Broad River Electric Cooperative has initiated eminent domain proceedings against multiple adjoining property owners. Appellants' nearby drinking water wells, federally-protected threatened plant species, and the natural features of the RV Park parcel are currently being threatened with negative, irreversible impact by the actions of Blue Sky since the Commission granted conditional approval.

8. Spartanburg County ("the County") is a body politic and corporate of the State of South Carolina.

9. Respondent Commission consists of nine members appointed by the governing body of the County, County Council, as defined in the State Planning Act, and was created through authority granted by the South Carolina legislature to local governments.

10. Respondent Blue Sky is a for-profit business entity registered in South Carolina and doing business in Spartanburg County.

11. Blue Sky is the developer named on the major development plan which received conditional approval by the Commission and which is the subject of this appeal. Blue Sky is accordingly a necessary party to this appeal.

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12. The property to be developed into the RV Park is situated in Spartanburg County and consists of 38.68 acres of unzoned land.

13. The circuit court is vested with subject matter jurisdiction over appeals from local planning commissions pursuant to S.C. Code § 6-29-1150(D)(1).

14. Venue is proper in this Court, as the property at issue in this appeal is situated within Spartanburg County, the Commission is appointed by the Spartanburg County governing body, the Appellant homeowners' associations are duly incorporated in South Carolina and represent residents and property owners in Spartanburg County, the properties of the individual and business entity Appellants are situated within Spartanburg County, and Blue Sky is registered in South Carolina and conducts business in Spartanburg County.

15. This Court has personal jurisdiction over the parties due to their location or activities in Spartanburg County.

FACTS AND PROCEDURAL HISTORY

16. In 2021, Blue Sky submitted its first application for its proposed RV Park at 1970 Landrum Mill Road, which is between Campobello and Landrum in a rural section of Northern Spartanburg County, naming the proposed RV Park, "T. Tree Farms." There were many legal issues with the application, including insufficient public notice of the Commission's meeting agenda for consideration of the development and Blue Sky's misrepresentation of a non-existent right of way for a public water line. The Commission granted conditional approval of the first site plan on March 2, 2021 without Appellants' knowledge. A complaint and appeal of this conditional approval was filed by Appellants in the circuit court against the County and the Commission. Blue Sky was unable to acquire public water and failed to meet this and other conditions as set forth by the Commission. Blue Sky recently withdrew the 2021 application. A stipulated dismissal of the

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2021 appeal to the circuit court is being filed.

17. On February 7, 2023, Blue Sky filed a second application for approval of its site plan to build the RV Park at the same location.

18. The proposed RV Park site plan includes 49 RV spaces, 86 parking spaces for other vehicles, a future swimming pool, a stormwater detention pond near Goldmine Creek that would discharge into the creek, and a septic field that runs down the hill toward Goldmine Creek.

19. The parcel is surrounded by the properties of the Appellants, which consist of approximately 5,000 acres of lands with conservation-focused restrictive covenants and easements. More than 1,400 acres are under formal conservation easements with two land trusts, Upstate Forever and Conserving Carolina. The conservation area hosts a sensitive environment.

20. All residents within the Appellant homeowners' associations are totally dependent upon wells for their drinking water supply and water for their agricultural and livestock purposes.

21. The roads which are the primary GPS route to and from the proposed RV park to Interstate 26, Exit #1 are privately owned by citizens. These roads are narrow (16 feet wide) with blind curves, no shoulder, ditches three to four feet deep, and have grades of 5.6 degrees to 8.3 degrees. About two miles of the GPS route to and from the proposed RV Park are totally contained within the 1330 acres under conservation easement with Upstate Forever. Landrum Mill Road, which is the location of the proposed RV park, is 17 feet, 4 inches wide and owned to the center by citizens.

22. Goldmine Creek is a first-order headwater tributary of the North Pacolet River, which is an integral part of the watershed for public water supply to the County and City of Spartanburg. Goldmine Creek forms the boundary of the RV Park parcel with properties contained within one of the Appellant homeowners' associations. The creek flows through the properties of

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two of the Appellant homeowners' associations.

23. Federally-protected threatened plant species have been identified along the banks of Goldmine Creek and observed on the RV Park parcel.

24. The RV Park parcel is bounded on one side by Appellant Greenspace of Fairview, LLC, which consists of approximately 1330 acres under conservation easement with Upstate Forever.

25. The RV Park parcel is bounded on one side by properties of Appellant The Enclave at Fairview Farm Homeowners' Association, Inc, and all of its properties are subject to conservation-focused covenants and restrictions.

26. As part of its 2021 application, Blue Sky sought a septic permit from the South Carolina Department of Environmental Control ("DHEC"). Appellant homeowners' associations who were affected parties submitted a Request for Review of the permit to the South Carolina Board of Health and Environmental Control ("DHEC Board") with concerns that Blue Sky's proposed septic system was undersized, lacked capacity, and risked failure. The DHEC Board granted the request for review of the permit. The DHEC Board is the highest environmental authority in South Carolina whose members are appointed by the Governor and approved by the Senate.

27. On December 21, 2021, a hearing was held by the DHEC Board to review the septic permit. Blue Sky and its attorney participated in the hearing along with the DHEC staff and the affected parties. At the conclusion of the hearing, the DHEC Board rescinded Blue Sky's septic permit for this RV park on the basis that the data submitted by Blue Sky did not support a reduction in size of the septic system. (Exhibit A, DHEC's Final Agency Decision). Blue Sky appealed the decision to the Administrative Law Court ("ALC") on the issue of timeliness of the request for

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review to the DHEC Board. On November 29, 2022, the ALC overturned the DHEC Board's decision based upon the issue of a statutory interpretation of a time limit to seek review by the DHEC Board and the legal effect of a Freedom of Information Act request to the agency. The substance of the septic permit and the sufficiency of the septic system were not addressed by the ALC. The ALC's decision on this procedural rule has been appealed to the Court of Appeals by the Appellant homeowners' associations and is pending review. The Appellant homeowners' associations are represented by the South Carolina Environmental Law Project in that appeal. The DHEC Board's determination that the septic system is undersized remains unrefuted.

28. On February 7, 2023, Blue Sky filed a second application with the County for this same land development. In this new application, Blue Sky submitted the same septic permit which the DHEC Board rescinded. In addition to relying on the undersized septic system and the rescinded septic permit, Blue Sky now proposes to supply its RV Park with water from a commercial well rather than public water and has deleted the comfort stations/public restrooms. These are modifications to the DHEC septic permit. The septic permit is void on its face per the developer's own statements, which were certified as accurate, on its DHEC permit application. (Exhibit B, Septic Permit Application submitted to DHEC by Blue Sky). Also, the pre-printed terms on the permit itself render the septic permit void. (Exhibit C, DHEC septic permit issued to Blue Sky.)

(a) The DHEC septic permit states that "*Any changes to the system must be approved by DHEC. Any unapproved changes will void this permit.*"

(b) Blue Sky stated on its application form submitted to DHEC that the water source for its proposed RV park was "*public water*." The blank application provides for boxes for an applicant to check and select between "*public*

water" or "*well - public or private.*" Blue Sky checked "*public water.*"

(c) Blue Sky stated on its application form submitted to DHEC that there would be "*2 public rest rooms*" at the RV Park.

(d) In its current application to the County, Blue Sky has changed its water source to a "well" and has deleted the comfort stations/restrooms in its plans.

29. On March 7, 2023, the Commission considered the new application for approval of site plans to develop the RV Park at the same location.

30. One week prior to the Commission meeting, a written, four-page Request for a Public Hearing was submitted to the members of the Commission by 449 citizens on February 28, 2023. The request outlined multiple issues including due process, status of the septic permit, road safety, fire suppression, water issues, harmonious and compatible development, conservation group support, negative impacts to health, safety, and the environment. The request was denied by persons yet to be revealed but apparently without vote by the Commission members.

31. On February 28, 2023, Citizens submitted a request to the Director of the County's Planning and Development Department that the RV Park application be postponed from the Commission's upcoming meeting agenda because a Freedom of Information Act request by citizens for the public file was outstanding. The Director did not respond.

32. On Friday, March 3, 2023, which was four days before the Commission meeting, the County posted revised site plans dated March 1, 2023. These revised site plans increased the overall footprint of the proposed RV Park by 250% from 15.79 acres to 38.68 acres when comparing the three sets of February and March 2023 site plans. The footprint of the RV Park

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was tripled in size from the 2021 plans.

33. On Friday, March 3, 2023, two citizens emailed the Director and Planning Manager at the Planning and Development Department about the fact that there were no comfort stations on the 2023 site plans as required by ULMO Section 3.13(8). The Director and the Planning Manager did not reply.

34. On Friday, March 3, 2023, County Councilman Jack Mabry left a voice mail message for his constituent, Judie Klapholz, in response to her call. Councilman Mabry stated in his message that there would not be a public hearing and advised that "you can push it to the Circuit Court."

35. On Tuesday, March 7, 2023, about 80 to 100 community members attended the Commission meeting to express opposition and concerns about the application. The Chairman was absent. The Vice Chairman announced that the Commission would not hold a public hearing. There was no vote taken by the Commission in open forum.

36. At the meeting, citizens presented each Commissioner with a packet of materials that included a 10-page Road Safety Audit (Exhibit D) that identified "danger" from RV traffic on the narrow roads, photographs of 16-foot-wide, privately owned roads that are the primary GPS route to the park, photographs of school buses and cars going off the pavement of the narrow roads to pass when oncoming, photograph of an RV unable to turn on the roads, the developer's Traffic Impact Analysis ("TIA") which projects adding 75,000 vehicles to the narrow roads leading to the RV Park, sections of the Spartanburg County Unified Land Management Ordinance ("ULMO") which require enforcement, DHEC Regulation 61-51, the County's blank online application form which differentiates between public water and well water, the DHEC Board's Final Agency Decision rescinding the septic permit, and a duplicate copy of the Request for Public Hearing

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submitted to all Commissioners on February 28, 2023. The Commissioners ignored this packet of materials at the meeting.

37. Appellants are awaiting the County's response to their Freedom of Information Act request for an audio recording of the meeting to confirm the statements made during the meeting.

38. Before the presentation of the RV Park agenda item by staff from the Planning and Development Department ("staff"), the Commission Vice Chairman made an opening remark to the Commission members, the staff, and the audience about "this RV park that is *going in.*"

39. The Commission declined to allow citizens to speak and moved the RV Park agenda item to the end of the meeting. About half of the community members went into the hall outside the chambers while the meeting continued. The doors were locked, and citizens were denied re-entry by a uniformed guard/officer. Many of the attendees were senior citizens and went home.

40. When the RV Park item came back on the agenda at the end of the meeting, staff presented its recommendation on the application. Staff stated that the ULMO requirement for a comfort station (public restroom) was being waived. In prior communications with the developer, staff stated that if the comfort station was removed, "*we will not be able to approve the plan.*" (Exhibit E, Email from Planning and Development Department to the developer's engineer dated April 15, 2021.) At the meeting, staff also stated to the Commission that the septic permit was "*approved.*" The Commission disregarded the written Final Agency Decision by the DHEC Board which rescinded the septic permit and which was in the packet provided by citizens to Commissioners.

41. The Commission Vice Chairman spontaneously designated one citizen from the audience to speak, Russell Rock, and only for five minutes. Mr. Rock did not request to be recognized to speak and was not prepared to speak. Mr. Rock requested to yield the allotted 5

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minutes to citizens who were prepared to speak on specific topics. This request was denied by the Vice Chairman.

42. The Vice Chairman stated that the developer's "*engineer*" could speak. The developer's attorney went to the podium and addressed the Commission about multiple aspects of the application, including water, septic permit, and legal proceedings. The attorney did not request to be recognized, was not invited to speak, was not sworn, and no time limit was imposed upon him. The attorney may not have stated his name, and citizens are seeking to confirm through a Freedom of Information Act request for an audio recording of the meeting. When the developer's attorney approached the podium to speak without being recognized or invited, the Commission took no action to enforce the requirements of its Rules and Procedures, Art. II, Section 7.

43. The Commission voted 6-2 to grant Conditional Approval to Blue Sky for its RV Park development. The Commission imposed specific conditions for final approval.

44. The minutes of the March 7, 2023 meeting are not yet publicly available.

45. Citizens are informed and believe that the Commission reviewed the wrong and incorrect site plans at the meeting.

a) At the conclusion of the meeting and after most Commissioners departed, several citizens observed multiple sets of 24" x 36" site plans left behind on the desk at the Commissioner's chairs.

b) The plans were from the developer's first application in 2021 and dated February 24, 2021.

c) Citizens saw no site plans on the table with a date in 2023.

d) In 2021, the County acknowledged in writing that there was a "*misrepresentation*"

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on the 2021 site plans, which called out a non-existent right of way and misrepresented the ownership of Landrum Mill Road.

e) The County stated in writing in 2021 that these site plans needed to be "*corrected.*" (Exhibit F, Email from the Director of Public Works to John Harris, County Attorney.)

46. On March 28, 2023, citizens submitted a written Request for Reconsideration to the Commission regarding its decision to grant conditional approval of the RV Park development plan. The request contained 55 pages of attachments, which included the information citizens were denied the opportunity to directly present to the Commission at the meeting.

47. The public minutes and audio recording of the Commission meeting were not available prior to the filing of this Appeal. Appellants reserve the right to modify their pleading based upon the minutes or audio recording as these become available and to supplement the record for the Court.

STANDARD OF REVIEW

48. A planning commission decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a planning commission decision). Further, a decision of the planning commission will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*, 335

S.C. 209, 216, 516 S.E.2d 442, 446 (1999). An abuse of discretion occurs when the Commission's decision is based upon an error of law or, when based on factual conclusions, without evidentiary support. *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001).

GROUNDS FOR APPEAL

I. The Commission violated the ULMO by approving a site plan for an RV park not serviced by sewer or other systems "approved" by DHEC.

49. All prior paragraphs of this Appeal are incorporated by reference.

50. For an RV park, ULMO Section 3.13.(8) requires that "*each park site shall be serviced by .... sewer of other system **"approved"** by DHEC.*" (Emphasis added.) This requirement is mandatory and was violated by the Commission.

a) For an RV park, Section 3.13(8) provides that "each park site shall be serviced by . . . sewer or other systems approved by DHEC." This is mandatory.

b) The septic system design contained in the February 7, 2023 development application and plan was rejected by the DHEC Board as having only one-half the capacity that is required for this development.

c) The septic system for this development has been rejected by DHEC, not "approved by DHEC." The DHEC Board rejected this septic system as being severely inadequate and inappropriate for this development.

d) The Commission accepted without question the statement by the developer's attorney that the ALC had ruled against the DHEC Board's decision. But the ALC did not address the determination of the DHEC Board that the septic system was severely inadequate. The ALC only ruled on legalistic and procedural grounds that

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the request for the DHEC Board to review the permit was filed too late. The DHEC Board did not agree that the request for review was late and held a hearing to review the permit. The DHEC Board cited the Pollution Control Act, Section 100(c) concerning "real or potential threats" to health and addressed the permit and the engineering design of the system itself.

e) As the record stands today, the septic system for this development has been rejected by DHEC, regardless of the issue of timing of a paper filing.

f) This unapproved septic system and Blue Sky's development plan violate the County's own ordinance.

51. The Commission's reliance on a septic system disapproved by DHEC and without any verification of the legal proceedings regarding Blue Sky's claim that the septic system was "*approved*" by DHEC constitutes an abuse of discretion. The factual conclusions by the Commission about the septic permit status lacked evidentiary support.

52. The Commission refused to review and disregarded the written Final Agency Decision of the DHEC Board which rescinded the permit and which citizens were denied the opportunity to present to the Commission members at the meeting. The Commission's action was an abuse of discretion.

53. The Commission's approval of the RV Park site plans without a septic system "approved" by DHEC fails to consider public health and the threat to drinking water, especially with the DHEC Board's rescission of the septic permit because the septic system was undersized.

54. The Commission's decision to approve the RV Park site plans without a septic system "approved" by DHEC does not follow or respect the purpose and policy of the State

Planning Act to consider public health and general welfare and violates the ULMO.

55. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

II. The Commission violated the ULMO by approving a site plan for an RV park not serviced by public water.

56. All prior paragraphs of this Appeal are incorporated by reference.

57. For an RV park, ULMO Section 3.13.(8) requires that "*Each park site shall be serviced by **public water**.*" (Emphasis added.) This provision is mandatory and was violated by the Commission.

a) The County's online application form requires an applicant to select between "*water or well*" as the water source for a major land development. The form contains a box to check and another drop down box that provides the option of "water" or "well". The application form clearly differentiates between water or well. (Exhibit G, Spartanburg County online Application Form for Major Land Development.)

b) Blue Sky misrepresented a non-existent right of way for a water line in its first application in 2021 and was unable to obtain ICW public water. ICW is Inman Campobello Water District. There is no right of way for a public water line to the proposed RV park over the private properties.

c) In its new application on February 7, 2023, Blue Sky applied for a "well" as a water source for its RV Park. This is in violation of the clear language of the ULMO,

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which requires public water. Blue Sky marked "well" as the water source on its application for the proposed RV Park.

d) Blue Sky curiously completed this application stating "ICW" as its "water source." ICW would not be relevant to a well. Neither the Commission nor staff inquired about this inconsistency. Blue Sky's actions in pursuing a test well permit from DHEC clearly indicate that its plans include a commercial "well" for its water source.

e) Pursuant to the ULMO and the distinct language of the blank application form, a well is not "public water."

f) In fact, Blue Sky's septic permit is based upon "public water." Similar to the County's form, DHEC's blank application form has separate boxes to check for "public water" or "well- public or private." Blue Sky checked "public water." (Exhibit B, Blue Sky Application for Septic Permit.) The septic permit which Blue Sky now seeks to use and which the Commission accepted is irrefutably based upon "public water" as the water source and not a "well- public or private." (Exhibit C, Septic Permit.) As noted above, the DHEC Board rescinded this permit even when Blue Sky said it would have public water and two restrooms. Currently, Blue Sky's site plans do not have either.

g) "Public water" is piped with pressure and is an essential part of an adequate fire suppression plan. The RV Park and the surrounding conservation lands are densely wooded and a significant distance from the fire station. In the fire-fighting

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profession, RV fires are known to present unique challenges for firefighters due to lithium batteries, on board propane tanks, and electrical circuitry. Adequate fire suppression is a matter of public safety. Citizens were not afforded the opportunity to address this concern with the Commission.

58. The Commission's decision expressly allows a well and violates this mandatory requirement for "public water" as set forth in the ULMO.

59. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

III. The Commission violated the ULMO by approving a site plan for an RV park that omits a comfort station.

60. All prior paragraphs of this Appeal are incorporated by reference.

61. ULMO Section 3.13(4) requires for an RV park that "*no site shall be located... less than 300 feet **from a comfort station**.*" (Emphasis added.) This requirement is mandatory and was violated by the Commission.

a) A comfort station is a "bathroom" or "restroom." A comfort station is not an RV sewer connection hose as suggested by the developer to the staff.

b) At the Commission meeting, staff arbitrarily and unlawfully recommended a waiver of the comfort station/restroom requirement. This is a public health issue and contrary to the public interest, which the Commission and staff chose to unlawfully disregard. The Commission is unlawfully promoting the creation of unsanitary and unhealthy conditions at the proposed RV Park. The RV Park will

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c) host 49 RVs and have additional parking for 86 other vehicles. Patrons will surely relieve themselves outdoors in the park and in the pristine waters of Goldmine Creek. The Commission is unlawfully creating health and environmental threats and avoiding the purpose and policy of the ULMO requirement.

d) The elimination of a comfort station is a variance and waiver of ULMO Section 3.13(4). Notice and a public hearing are required by Art. III, Public Hearings, Section 2 of the Commission's Rules and Procedures. The Commission did not follow the variance section of the ULMO.

e) In 2021, staff informed the developer that a comfort station must be included *"**or we will not be able to approve the plan**"* per ULMO 3.13.(4). (Emphasis added.) (Exhibit E, Email from Planning and Development Department to the developer's engineer).

62. The Commission's decision expressly approves the deletion of a comfort station from the RV Park and violates this mandatory requirement of the ULMO.

63. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

IV. The Commission violated the ULMO by approving a site plan that does not preserve natural features and landscape.

64. All prior paragraphs of this Appeal are incorporated by reference.

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65. ULMO Section 3.13(2) requires for an RV park that "*the site shall be developed in a manner that* ***preserves natural features and landscape.***" (Emphasis added.) This requirement is mandatory and was violated by the Commission.

66. The site plan and the Commission's decision does not preserve the natural features and landscape. These natural features include federally-protected threatened plants and the pristine waters of Goldmine Creek.

67. On the contrary, the Commission's decision affords absolutely no consideration of the natural features and landscape of the RV Park parcel. With an undersized septic system and no public restroom, the rare, federally-protected plants, their habitat, and pristine waters of Goldmine Creek are threatened.

68. The Commission's decision does not follow or respect the purpose and policy of the State Planning Act and the ULMO to consider the natural resources as criteria in implementing a land development program. The Commission's decision violates the State Planning Act and the ULMO.

69. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

V. The Commission violated the ULMO by approving a site plan for an RV park that allows an RV to be used as a residence.

70. All prior paragraphs of this Appeal are incorporated by reference.

71. The ULMO, Section 3.03-2 states that an RV may not be used as a residence for more than 90 days in a 12-month period and only while a residence is being built on site. This requirement is mandatory and was violated by the Commission.

72. Blue Sky's application states that the business will have one employee, a camp host,

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who will reside in an RV and that the developer herself will function as the camp host living in an RV for the first 6 months of operation. No residence is being constructed.

73. The developer's application for a camp host to live in an RV violates the ULMO.

74. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion which requires reversal.

VI. The Commission violated the State Planning Act and the ULMO by approving a site plan that does not consider public safety and road conditions.

75. All prior paragraphs of this Appeal are incorporated by reference.

76. Citizens attempted to present a 10-page, comprehensive Road Safety Audit by J.M. Teague Engineering to the Commission.

a) The Road Safety Audit was the product of an on-site investigation by a qualified road safety engineer of the narrow, privately owned roads which are the primary GPS route to/from the proposed RV Park and Exit #1 of I-26.

b) These roads are 16 feet wide and present hills, steep slopes, blind curves, no shoulders, and deep ditches, which are challenging for vehicular traffic.

c) These roads are used for recreational purposes by local citizens, including cycling, jogging, walking (by senior citizens), dog walking, hiking, horseback riding, and training by the Landrum High School cross country teams. Designated walking and horseback riding trails cross over these roads.

d) The road safety engineer concluded that siting an RV park with the related RV traffic at the proposed location on Landrum Mill Road "***adds additional danger to already dangerous roads.***"

e) This report and the road safety engineer's conclusions were provided in the Citizens' Request for Public Hearing, which was submitted to the Commissioners on February 28, 2023.

f) The report was provided to each Commissioner in advance of the meeting but was disregarded. The Commission totally ignored the public safety issue.

g) The report was provided to three County Councilmen and five County officials on August 4, 2021 at a community meeting. Staff possessed this report and did not provide it to the Commission as part of the staff presentation and recommendation.

77. At the Commission meeting, the staff discussed the developer's TIA, which addresses traffic volume and directional flow only. Staff stated that there was "*no problem*" with the roads. The TIA is a separate report from the Road Safety Audit. From a dialogue between the Commissioners and the staff, it was clear that the two reports were improperly conflated by the staff in their statements to the Commission. Citizens attempted to speak out about there being two separate reports, but the Vice Chairman denied citizens the opportunity to clarify this public safety issue.

78. The Commission received incorrect, incomplete information about road conditions and ignored public safety.

79. The entrance to the proposed RV Park is on Landrum Mill Road, which is 17 feet 4 inches wide. The other routes of access to the park are 16 feet wide.

a) Citizens wished to present photographs of vehicles going off the pavement to pass in oncoming directions on Landrum Mill Road and Fairwinds Road.

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b) One photograph depicted a school bus going off the pavement with its right wheels to pass an oncoming school bus on Landrum Mill Road near the entrance to the proposed RV Park.

c) One photograph illustrated a small car going off the pavement close to a ditch to pass an oncoming pickup truck on Fairwinds Road and another showed an RV which was unable to make a turn on these roads toward I-26.

d) These photographs were in the packet provided by citizens for each Commissioner at the meeting and were attached to the Citizens' Request for a Public Hearing on February 28, 2023. These photographs were ignored by the Commission.

80. The Commission's decision does not follow or respect the purpose and policy of the State Planning Act and the ULMO and failed to consider safety and general welfare.

81. The Commission's approval of the RV Park site plans without considering safety and deliberately disregarding the comprehensive Road Safety Audit, which concluded that RVs on the narrow, curvy, steep rural roads posed "***danger,***" violates the State Planning Act and the ULMO.

82. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

VII. The Commission violated the ULMO and the South Carolina Constitution by approving a site plan that violated citizens' private property rights and ignored their ownership of roads which are the primary GPS route to and from the RV Park to Interstate 26.

83. All prior paragraphs of this Appeal are incorporated by reference.

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84. All portions of the roads which are the primary GPS routes to and from Interstate 26, Exit #1 to and from the RV Park are privately owned. These roads include Turkoman Trail, Racetrack Road, and Fairwinds Road. Turkoman Trail and Racetrack Road are about two miles long and are situated on property which is completely under private conservation easement with Upstate Forever. As noted above, these narrow, rural roads are used for recreational purposes and include trails which cross over the roads. A qualified road safety engineer concluded that these old farm-to-market roads are not safe for RV Park traffic and that RVs would add "*danger.*"

85. The County maintains these roads for habitual, low-volume, agri-residential traffic under a prescriptive easement, as asserted by the County.

86. The RV Park will add 75,000 vehicles per year, including large RVs with vehicles in tow, to these roads per the developer's traffic projections.

a) This volume of commercial traffic consisting of large RVs will unlawfully interfere with the road owners' private property rights and is not harmonious and compatible development.

b) Such traffic would not be habitual, not be low-volume, and not be rural-residential.

c) The RV Park traffic (75,000 vehicles) would be high-volume, commercial, for-profit traffic, all day and all night (24/7) with vehicle lights and traffic noise. This exceeds, abuses, and overburdens any prescriptive easement claimed by the County, particularly on roads through the formal conservation area of Upstate Forever.

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d) Such traffic would not be compatible use of the privately owned, rural-residential roads as set forth in the Comprehensive Plan for Spartanburg County Land Use Goals and Objectives ("Comprehensive Plan").

e) The addition of 75,000 vehicles, including large RVs, poses an undue and unreasonable liability and insurance burden on the citizens who own the road particularly with the road safety engineer's opinion concerning the "*danger*" posed by RV traffic with road conditions.

87. Concerned Citizens were denied the opportunity to present information about their private property rights and road ownership to the Commission. Their Request for a Public Hearing was summarily denied. The County is aware of the road ownership. Staff did not present this information to the Commission.

88. The Commission failed to consider the unlawful infringement upon citizens' private property rights from the developer's for-profit, commercial traffic over their properties, all day and all night (24/7) . The Commission failed to afford citizens due process and the opportunity to be heard in a meaningful way on this issue of their private property rights.

89. The Commission's failure to consider private property rights and citizens' rights to due process violated the United States Constitution and the South Carolina Constitution, Art. I, Section 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except upon due notice and an opportunity to be heard.")

90. The Commission's decision violates the South Carolina Constitution, Art. I, Section 13. The Commission's decision constitutes an unlawful taking of private property,

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namely the roads belonging to Appellants, for a private purpose, namely the financial gain of Blue Sky in its commercial operations.

91. The Commission failed to follow the purpose and policy of the State Planning Act, the Comprehensive Plan, the ULMO, and the Mission Statement of the Planning Department regarding specific criteria of harmonious and compatible development. The Commission failed to consider these criteria with regard to the volume of unsafe, commercial traffic, all day and all night (24/7), being imposed in a community which is and has been one with low volume traffic in a low density, agri-residential area with narrow, privately owned roads that present dangerous conditions with RV commercial traffic.

92. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

VIII. The Commission reviewed the wrong and incorrect site plans at the meeting.

93. After the March 7, 2023 meeting concluded, citizens observed and picked up multiple sets of full-size 24" x 36" site plans which were left behind by the Commissioners on the table at their chairs.

a) Citizens did not observe any site plans dated 2023 on the table in front of the chairs.

b) The site plans that were picked up by citizens are dated February 24, 2021.

c) The February 24, 2021 site plans are from the prior application submitted by Blue Sky.

d) The 2021 site plans from the prior application were acknowledged by the County to contain a "*misrepresentation*" about a non-existent right of way which needed "*to be corrected.*" (Exhibit F, Email from the Director of Public Works to John

Harris, County Attorney.)

94. Appellants are informed and believe that the Commissioners did not have the full-size 2023 site plans in front of them for review at the meeting.

95. Appellants are informed and believe that the Commissioners were given the 2021 site plans by staff. The 2021 site plans are materially and substantially different from the 2023 site plans. The 2021 site plans contained a "*misrepresentation*" that needed "*to be corrected*" according to an internal County communication.

96. The Commission's review of the incorrect, irrelevant 2021 site plans was a critical error.

97. The relevant site plans, which should have been reviewed by the Commission, were those dated March 1, 2023 and posted by the County on March 3, 2023. These revised site plans increased the overall footprint of the proposed RV Park by 250% from 15.79 acres to 38.68 acres when comparing the three sets of February and March 2023 site plans. The footprint of the RV Park was tripled in size from the 2021 plans.

98. Appellants are informed and believe that this last minute and significant increase in the RV Park footprint was not addressed by the staff or the Commission at the meeting.

99. Citizens were precluded by the Commission from speaking and inquiring about this last minute, 250% to 300% increase in the footprint of the RV Park.

100. The Commission's decision was not based upon competent evidence but rather erroneous information. The Commission's decision was based upon errors and factual conclusions without proper evidentiary support.

101. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires

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reversal.

IX. The Commission violated the citizens' rights to due process.

102. All prior paragraphs of this Appeal are incorporated by reference.

103. The Commission refused to consider the Request for Public Hearing, which was submitted by 449 concerned citizens one week before the meeting. This request summarized the many concerns with this RV Park, including due process, health, safety, the septic system, road safety, fire suppression, water issues, harmonious development, private rights, and negative impacts upon the community, residents, and the conservation environment. Citizens were denied the opportunity to be heard in a meaningful way through a public hearing.

104. The Commission did not allow citizens to speak at the meeting, but for its spontaneous appointment of one person, who was not prepared to speak, to address the Commission for five minutes. About 80-100 citizens were present, and several wished to be heard and were denied by the Commission.

105. The Commission's decision and its failure to consider private property rights and to allow citizens to be heard in a meaningful way denied citizens the right to due process and violated the United States Constitution and the South Carolina Constitution, Art. I, Sections 13 and 22.

106. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

X. The Commission violated the Freedom of Information Act. The doors to the meeting were locked and citizens were denied entry by a uniformed guard/officer. No vote was held in open forum on the Request for Public Hearing by 449 citizens.

107. All prior paragraphs of this Appeal are incorporated by reference.

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108. About 80-100 citizens attended the meeting hoping for a meaningful discourse on the key issues concerning the RV Park development plan. At the meeting, the Commission moved the RV Park item to the end of the agenda.

109. About half of the citizens who were present for the RV Park item then stepped into the hall. The doors to the meeting chambers were locked, and a uniformed guard/officer denied re-entry to citizens. Many of those persons, who were senior citizens, departed for home as a result.

110. The Commission's meeting violated Section 30-4-60 of the South Carolina Freedom of Information Act ("Every meeting of a public body shall be open to the public unless closed pursuant to Section 30-4-70"). This meeting was not one which qualified to be closed to the public. The meeting also violated the Commission Rules of Procedure, Art. II, Section 2 ("the Commission shall comply with the requirements of the State of South Carolina Freedom of Information Statute…."). A complaint has been filed by citizens with the South Carolina Attorney General.

111. The written, four-page Request for Public Hearing by 449 Citizens was addressed and submitted to all members of the Commission one week prior to the meeting. At the beginning of the meeting, the Vice Chairman summarily denied the request. There was no vote by the full Commission in open forum.

112. The Commission's failure to vote in open forum on the Citizens' Request for Public Hearing violated Section 30-4-60 of the South Carolina Freedom of Information Act and violated the Commission Rules of Procedure, Art. II, Section 2.

113. The actions of the Commission were unlawful, unreasonable, arbitrary, capricious, and an abuse of discretion. The Commissions actions and the conduct of the meeting were

statutory violations of the South Carolina Freedom of Act. These actions require that all decisions at this meeting be reversed.

XI. The Commission violated its own Rules of Procedure at the meeting of March 7, 2023.

114. All prior paragraphs of this Appeal are incorporated by reference.

115. The Commission Rules and Procedures, Section 7, provide:

> "Except for public hearings, no person other than Commission members and appointed staff shall speak at Commission meetings **unless recognized by the Chairman and invited to speak.** All persons speaking **shall state their name** for the public record." (Emphasis added.)

116. The Commission allowed the developer's attorney to approach the podium and take the microphone without requesting to be recognized. The Commission allowed the attorney to speak without being invited and without being sworn. The attorney may not have stated his name for the record. As of the time of this appeal, the minutes and public record of the meeting are not available. Appellants are seeking the minutes and public record of the meeting through a Freedom of Information Act request.

117. The Commission violated its own Rules and Procedures, which are adopted pursuant to SC Code 6-29-360(B). The Commission allowed the developer's attorney to speak and address the Commission with details about his client's application. This action was unlawful and prejudicial. The Commission refused to recognize the many citizens who wished to speak and attempted to be recognized pursuant to Section 7 of the Rules of Procedure.

118. The developer's attorney was unlawfully afforded the opportunity to impact and influence the Commission's deliberations.

119. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

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XII. Prejudicial remakes were made by the Commission Vice Chairman.

120. All prior paragraphs of this Appeal are incorporated by reference.

121. The Vice Chairman conducted the meeting in the absence of the Chairman.

122. At the beginning of the RV Park application coming up on the meeting agenda, the Vice Chairman made an introductory statement to the Commission members, the staff and audience about, "*this RV park **that is going in***." (Emphasis added.) This statement was made before the presentation of the application by staff and before any discussion and deliberation by the Commission.

123. The statement by the Vice Chairman at the outset was improper. A basic tenet of meeting procedure is for the presiding officer to conduct the meeting in an impartial manner. The Commission Rules and Procedures refer to the County Council, Rules and Procedures, which state that the desire is "*to conduct the public's business in a forthright manner.*"

124. The statement at the outset by the Vice Chairman, who was the presiding officer, was not impartial but rather highly prejudicial, inherently influential on other Commission members, and displayed a pre-conceived notion about approval.

125. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

XIII. The Commission violated the State Planning Act, the Comprehensive Plan, and the ULMO.

126. All prior paragraphs of this Appeal are incorporated by reference.

127. The County of Spartanburg is enabled and empowered to establish and implement a local government land development plan by the State legislature as set forth in the State Planning Act. The County created the Commission pursuant to that legislation. The Commission must

follow the policy and purpose of the State Planning Act, and the Commission's functions, powers, and duties are set forth therein.

128. SC Code 6-29-340 provides that the duty of the Commission is to promote "**public health, safety, ...or general welfare.**" (Emphasis added.) The Commission totally disregarded these elements and breached its duty to promote public safety, health, and general welfare. On the contrary, the Commission's decision poses identified, objective threats to public safety, health, and general welfare as detailed above.

129. The State Planning Act requires Spartanburg County to implement its Comprehensive Plan, which requires the County to use measurable criteria to limit the impact of adjacent land uses on one another and consider incompatibility resulting from factors such as traffic, intensity of use, and environmental impact. These criteria include a natural resources element, community facilities element (water and sewage), and land use element. A stated goal of the Comprehensive Plan is to "prohibit intense incompatible nonresidential development from location on roads where the majority of the activities are residential." The Commission totally disregarded these criteria.

130. The Mission Statement of the Planning and Development Department is "to plan comprehensively for the orderly growth and harmonious development" of Spartanburg County. The Commission disregarded its mission, policy, and purpose to plan for "harmonious" development and refused to allow citizens to provide information about their agri-residential conservation area, which is immediately adjacent to and surrounds the proposed commercial RV Park. The land that surrounds the proposed RV Park is a 5,000-acre conservation-focused area with thousands of acres under formal, private, conservation easements with two land trusts. These lands are subject to deeded, conservation-focused covenants and restrictions. The commercial RV

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Park is not harmonious and compatible development in this area. The Commission totally disregarded the mission of the Planning and Development Department.

131. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, has no reasonable relation to a lawful purpose, and is an abuse of discretion. The decision requires reversal.

REQUEST FOR DECLARATORY RELIEF

132. All prior paragraphs of this Appeal are incorporated by reference.

133. Pursuant to S.C. Code Section 15-53-10, et seq., Appellants have standing to request a declaratory judgment based upon their interests and the impact of the Commission's decision upon their health, safety, environment, and private property rights.

134. Appellants request that this Court determine and declare:

a) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider the purpose, policy, and intent of the State Planning Act, the ULMO, the Comprehensive Plan and all land development regulations as adopted by Spartanburg County Council and as set forth in the Mission Statement of the Spartanburg County Planning and Development Department;

b) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider specific statutory and planning elements including health, safety, general welfare, environmental impact, natural resources, harmonious and

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c) compatible development, existing land uses of surrounding properties, and private property rights;

d) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider and review the Road Safety Audit by J. M. Teague Engineering, the Final Agency Decision by the DHEC Board, the presence of threatened plant species, the conditions of Goldmine Creek, the environmental reports of Kevin Caldwell and L.L. Gaddy, and any other competent evidence and reports concerning health, safety, general welfare, the environment, natural resources, harmonious and compatible development, noise, lights, traffic, roads, road conditions, existing land uses of surrounding properties, fire suppression, and private property rights as related to the proposed RV Park;

e) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to afford citizens a public hearing with due notice and an opportunity to be heard in a meaningful way as part of its review and deliberation; and

f) that the Commission has the duty to conduct its meetings in accordance with the South Carolina Freedom of Information Act.

WHEREFORE, the Appellants request that this Court:

a) issue an order reversing the decision of the Spartanburg County Planning Commission granting conditional approval to T. Tree Farms RV Park;

b) issue a declaratory judgment providing the relief requested, and

c) issue an order awarding costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

_____s/Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
Telephone: (864) 991-8904
carl@carlmullerlaw.com
Attorney for Appellants

Greenville, SC
April 4, 2023

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SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

Docket No. 21-RFR-81
T. Tree Farms RV Park (Blue Sky Associates, LLC)

This matter comes before the South Carolina Board of Health and Environmental Control ("Board") for final review pursuant to S.C. Code Ann. § 44-1-60. The Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc. ("Requestors") filed a request for final review of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") staff decision to issue Permit to Construct Onsite Wastewater System, File No. 2021040112 ("Permit) to Blue Sky Associates, LLC ("Blue Sky") for the construction of an onsite wastewater system. On December 20, 2021, the Board conducted a Final Review Conference regarding the matter. After hearing presentations from the Department, Requestors, and Blue Sky, the Board overturns the staff decision for the reasons stated herein.

BACKGROUND

On April 23, 2021, the Department received the permit application for the construction of an onsite wastewater system to serve the T. Tree Farms RV Park located at 1970 Landrum Mill Road in Campobello, South Carolina in Spartanburg County ("Site"). The onsite wastewater system was designed to treat and dispose of a limited quantity of domestic wastewater discharged from 52 lots located at the Site.

After conducting its review, the Department determined that the permit application met all aspects of S.C. Code Ann. Regs. 61-56, *Onsite Wastewater Systems* ("R. 61-56") and issued the

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Permit on June 22, 2021. The Requestors filed a request for review of the staff decision on October 14, 2021.

DISCUSSION

Pursuant to S.C. Code 48-1-100(c), DHEC is the state agency with jurisdiction over septic tanks. As authorized by S.C. Code 44-1-140(11), the Department promulgated S.C. Code of Regs. 61-56 ("R 61-56") to ensure onsite wastewater systems are appropriately designed to treat and dispose of domestic wastewater through a combination of natural processes that ultimately result in effluent being transmitted through the soil, renovated, and ultimately discharged to groundwater. The Department's review of onsite wastewater system permit applications is conducted in accordance with the permitting requirements set forth in R.61-56.

Pursuant to R. 61-56, onsite wastewater systems must be sized according to estimated peak sewage flow, as set forth in Appendix R of the regulation. Appendix R sets the peak sewage flow rate standards for campgrounds with no laundry and full water/sewer at 120 gallons per unit per day, but allows for the peak flow rate for non-residential facilities to be increased or reduced when comparable peak water consumption data for similar establishments in similar locations vary from the requirement. When considering such data, at least twelve (12) consecutive months must be presented with the maximum month of consumption and the days of operation per month being utilized to arrive at the peak flow rate.

In its permit application, Blue Sky presented consumption data for a KOA campground in Traveler's Rest, South Carolina ("KOA Campground") and calculations of a peak flow rate of 50.19 gallons per unit per day for the maximum month of consumption over a 12 month period. The Board finds that the KOA Campground is not a similar establishment to the proposed T. Tree Farms RV Park. Therefore, the peak flow rate standard utilized in designing the onsite wastewater

system in the permit application cannot be supported by the peak flow rate data for the KOA Campground.

CONCLUSION

After reviewing the written materials submitted to the Board, including the Administrative Record, and considering all arguments and evidence presented, the Board overturns and rescinds the staff decision in this matter.

Seema Shrivastava-Patel, Vice-Chairwoman
Board of Health and Environmental Control
For the Board

January 15, 2021

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Onsite Wastewater System Application

Bureau of Environmental Health Services

Blue Sky Associates, LLC, PO Box 5930
(Name) (Mailing Address)

Spartanburg SC 29304 kbbbil07@yahoo.com
(City/Town) (State) (Zip Code) (Email Address)

Phone No.: 864-809-6484 ☒ Mobile ☐ Home ☐ Work Alternate Phone No.: ☐ Mobile ☐ Home ☐ Work

hereby make application for a Permit to Construct an Individual Sewage Disposal System to serve a:

House: ☐ Mobile Home: ☐ Other (Specify): ☐ RV Park

If in subdivision, give name: _____, Lot #: _____

Property Address: 1970 Landrum Mill Rd Campobello City: _____

County: Spartanburg Tax Map/Property Identification #: 1-09-00-020.03

Check all that apply:

Public Water: ☑ **Well:** ☐ Public ☐ Private ☐ Existing ☐ Proposed **Public Sewer Accessible:** ☐

If residential establishment, answer following:

No. Bedrooms: _____ Basement: ☐ Full ☐ Partial ☐ None Plumbing in Basement: ☐

If commercial establishment, answer following:

Type of Business: RV Park Number of Occupants: ~~50~~ 52 As per P.E. Number of Employees: _____

Public Restrooms: 2 Number of Hours of Daily Operation: 24 Other: _____
(i.e., seating capacity, meals per day)

Lot Identification and Preparation

In order for your application to be processed, stake the corners of the proposed building and property corners with distinctive markers. In clear, sealed bags, place the site location card at the front of the property in a conspicuous location and place the septic location card at the proposed septic location. A legal description (plat, deed, surveyor site plan, etc.) with dimensions of the property must also be submitted with the application. Contact the regional EA office to activate your application when the lot has been staked, house site located, and lot posted. The lot should also be properly prepared by clearing all underbrush, thick vegetation, and any other features that may inhibit the site evaluation within a 150 ft radius of the proposed septic location.

Please give exact directions to lot: .4 miles NE of E Frontage Road on the Southern side of Landrum Mill Road.

I understand that the property must be properly prepared for evaluation and that I must confirm property preparation to activate the application. I also understand a reevaluation fee may be assessed if the above parameters for lot identification and preparation are not met. I certify to the best of my knowledge that the information submitted in this document is true and accurate. Permission and authority is hereby granted for DHEC representatives to enter the above-described property at reasonable hours for the purpose of onsite wastewater system inspection and/or site evaluation.

Property will be ready for activation/evaluation by DHEC on 4/23/21 (Date).

4/23/21 (Date) _____ (Applicant/Representative Signature)

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EXHIBIT B

dhec

PERMIT TO CONSTRUCT
Onsite Wastewater System

File Nbr: 2021040112
County: Spartanburg

Name: T. Tree Farms RV Park (Blue Sky Associates LLC)

Type Facility: 52 Space RV Park
Subdivision:
Block: Lot:
TM#: 1-09-00-020.03

Address: PO Box 5930
Spartanburg, S.C. 29304

Site: 1970 Landrum Mill Rd.
Campabello, S.C.

Program Code: 360
System Code: 150
Water Supply: Public

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

Daily Flow (gpd): 3120 Tank Sizes (gal): Septic Tank: 5000 Pump Chamber: Grease Trap:

LTAR: .3 Trenches: Length (ft): 2600 Width (in): 36 Max. Depth (in): 45 Agg. Depth (in.):

Min. Pump Capacity: gpm at ft. of Head Alternative Product: 1203 EZ Flow

SPECIAL INSTRUCTIONS/CONDITIONS
(See Attached Page(s))

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Large and Community Onsite Wastewater Systems for Peak Flows greater than 1500 GPD.

Issuance of this Large Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property.

PERMIT TO CONSTRUCT

See engineered system design and supporting documentation.

Grey Engineering
(Engineering Company)

Zachary D. Johnson
(Consulting Engineer)

SC 30735
(State and License Number)

Dennis J. DeFrancesco
(Soil Classifier)

SC 31
(State and License Number)

06/17/2021
(Plan Date)

2021006
(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By: Brett A. Lee Date: June 22, 2021

DHEC 1781 (01/2014)

This Permit will Expire and Become Null and Void Five (5) Years from the Issuance Date.

This Permit is Appealable Under the Administrative Procedures Act. There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.

Information collected on this form is subject to public scrutiny.

EXHIBIT C

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J.M. TEAGUE
Engineering & Planning
— Est. 2010 —

1155 North Main Street
Waynesville, NC 28786
(P) 828.456.8383
(F) 828.456.8797
www.jmteagueengineering.com

JMTE WAYN 1182

TECHNICAL MEMORANDUM

AUGUST 3, 2021

To: Steve Wood
Homeowner's Association Contact
220 Night Lane
Campobello, SC 29322
swood@allegromc.om

From: David W. Hyder, P.E., Engineering Director *David W. Hyder*
J.M. Teague Engineering & Planning

SUBJECT: Landrum Mill Road Recreational Vehicle (RV) Park Proposal Access and Safety Audit (WAYN 1182)

JMTE was retained to perform a safety and access review for a proposed RV Park at 1970 Landrum Mill Road in Campobello, South Carolina. We understand that the proposed facility is situated on 38 acres of property adjacent to Landrum Mill Road in Spartanburg County, South Carolina.

Our review includes:

- ✓ A site visit and field reconnaissance of the area including driving the potential access roads,
- ✓ Evaluate the quality of access to the proposed RV Park from I-26 at Exit 5 and at Exit 1,
- ✓ Evaluating potential safety impacts of the proposed RV park on nearby roads,
- ✓ Identify current users and potential safety conflicts with new users of the access roads,
- ✓ Measuring the existing sight distance at key points,
- ✓ Measuring roadway widths and documenting conditions, and
- ✓ Developing an opinion of the effect on safety of adding Class A and B recreational vehicles to the traffic mix on roads in the area.

OPINION

The purpose of this review is to assess the potential impact of an RV facility that is proposed on Landrum Mill Road. *Based upon current roadway conditions we believe that siting an RV park at 1970 Landrum Mill Road adds additional danger to already dangerous roads. This opinion is based upon the potential*

EXHIBIT D

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Hey Brandy,

Thank you for the below. Does the county have any specific requirements for the comfort stations? Size or how many toilets required?

Happy Friday,

Waverly

Waverly Wilkes, P.E.
Project Engineer | Gray Engineering
m: 864.706.7268
p: 864.297.3027 ext. 128
e: wwilkes@grayengineering.com
132 Pilgrim Road
Greenville, SC 29607
www.grayengineering.com

------ Original Message ------
From: "Blake, Brandy" <bblake@spartanburgcounty.org>
To: "Waverly Wilkes" <wwilkes@grayengineering.com>; "Weathers, Darrell" <dweathers@spartanburgcounty.org>
Cc: "Holliday, Joan" <jholliday@spartanburgcounty.org>
Sent: 4/15/2021 12:48:34 PM
Subject: RE: Re[2]: t- tree

Hi Waverly. I just left you a few voicemails about this. See Section 3.13 in the ULMO (4) – the site must have a comfort station, a room or building with toilet and lavatory facilities for public use, at a minimum of 300 feet from every site location. If you remove this building we will not be able to approve the plan. Please consult your client and let me know as soon as you can.

Thank you.

Brandy Blake
Planner II
Spartanburg County
Planning and Development
864-598-7053
366 N. Church St, Suite 700
Spartanburg SC 29303

EXHIBIT E

00092

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Brown, Travis

From: Brown, Travis
Sent: Tuesday, July 13, 2021 4:42 PM
To: Harris, John
Cc: Alverson, Cole
Subject: ****Attorney Client Privileged****RE: 1970 Landrum Mill Rd

Thanks Cole.

In speaking with our folks the project is at a point where the engineer can submit 5 sets of final drawings. The only caveat is that there is a misrepresentation of the ROW along Landrum Mill Rd. that needs to be corrected as part of the final submission. The current drawings illustrate a 55' foot wide ROW along Landrum Mill Rd.. Since we only have prescriptive rights, we have asked the engineering (Waverly Wilkes with Gray Engineering) to correct the misrepresentation and/or have the owner properly dedicate the property. Our folks reached out to the engineer last week and it is our understanding that she was on vacation. To date we have not received a final submission.

In regards to the issuance of the grading permit there are several other items that should be addressed prior to the permit being issued. These are contingencies set forth by the Planning Commission and historically, a grading permit has not been issued until all of the contingencies have been addressed.

1. There are still outstanding issues and/or questions concerning architectural standards. This should be pretty straight forward but the decision needs to be made regarding whether a permanent building(s) will be constructed at the site.
2. The project still needs SCDHEC approval for septic services. I do know that this was specifically conveyed by Chairman Kennedy during the last Planning Commission meeting.
3. Correspondence from the local water service provider (Inman Campobello) stating that water is or will be available for the project. Final construction does not have to be complete but Planning Commission does require a statement that water services will be available.

If our department receives the noted 5 sets of final drawings there would not be any further items that are needed from Public Works. However, I do believe the above contingencies would need to be addressed before a formal grading permit would be issued. It is also my understanding that a formal appeal has been submitted to the Planning Department. I am not sure how and/or if that will have any bearing on the issuance of the grading permit.

Thanks and please let me know if there any questions.

Travis

From: Alverson, Cole
Sent: Tuesday, July 13, 2021 2:53 PM
To: Brown, Travis <twbrown@spartanburgcounty.org>
Subject: FW: 1970 Landrum Mill Rd

1

Travis,
See below and please advise on anything remaining on the permitting side when you are able. Thanks

-Cole

EXHIBIT F

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SPARTANBURG COUNTY – ONLINE APPLICATION – MAJOR LAND DEVELOPMENT

Type of Current Activity

- [x] Vacant
- [ ] Residential
- [ ] Industrial
- [ ] Commercial
- [ ] Office
- [ ] Institutional

Water or Well? Water

Water
Well
N/A

If water above, list water provider.

Septic or Sewer?

COUNTY'S BLANK DEV. APPLICATION – DIFFERENTIATES "WATER OR WELL"

EXHIBIT G

00094

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties Inc., d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT Case No. 2023-CP-42-_____ **SUMMONS**

TO THE RESPONDENT SPARTANBURG COUNTY, SC:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal and Request for Declaratory Relief in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscriber at his office, 607 Pendleton Street, Suite 201, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal and Request.

____s/Carl F. Muller _____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
Telephone: (864) 991-8904
carl@carlmullerlaw.com
Attorney for Appellants

April 27, 2023

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties Inc. d/b/a Caroland Farms,	)	**SUMMONS**
Appellants,	)	
vs.	)	
Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,	)	
Respondents.	)	

TO THE RESPONDENT SPARTANBURG COUNTY PLANNING COMMISSION:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal and Request for Declaratory Relief in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscriber at his office, 607 Pendleton Street, Suite 201, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal and Request.

_____s/Carl F. Muller_____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
Telephone: (864) 991-8904
carl@carlmullerlaw.com
Attorney for Appellants

April 27, 2023

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties Inc. d/b/a Caroland Farms,	)	**SUMMONS**
Appellants,	)	
vs.	)	
Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,	)	
Respondents.	)	

TO THE RESPONDENT BLUE SKY ASSOCIATES, LLC D/B/A T. TREE FARMS RV PARK:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal and Request for Declaratory Relief in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscriber at his office, 607 Pendleton Street, Suite 201, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal and Request.

____s/Carl F. Muller_____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
Telephone: (864) 991-8904
carl@carlmullerlaw.com
Attorney for Appellants

April 27, 2023

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT Case No. 2023-CP-42-_____
The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties, Inc. d/b/a Caroland Farms, Appellants, vs. Spartanburg County, SC, Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**APPEAL FROM SPARTANBURG COUNTY PLANNING COMMISSION AND REQUEST FOR DECLARATORY RELIEF**

Appellants The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc. d/b/a Caroland Farms hereby appeal the decision of Respondent Spartanburg Planning Commission ("Commission") to not reconsider its conditional approval of the site plan for an RV park at 1970 Landrum Mill Road in Campobello, South Carolina, proposed by Respondent Blue

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Sky Associates d/b/a T. Tree Farms RV Park ("Blue Sky") and respectfully show the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Appellants The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc., are not for profit homeowners' association entities incorporated in South Carolina. Appellants Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust are individuals who are members of the Appellant homeowners' associations and property owners therein. Appellants Greenspace of Fairview, LLC and Slater Properties, Inc. d/b/a Caroland Farms are entities which own property within or adjacent to the Appellant homeowners' associations. Appellant homeowners' association members reside in the County of Spartanburg and/or own property either adjacent to or near the site of T. Tree Farm RV Park ("RV Park"). All of the Appellants are impacted by the decision of the Commission granting conditional approval for this development and the Commission's decision to not reconsider its granting conditional approval.

2. Appellants homeowners' associations, through their members, and all other Appellants have a significant interest in the outcome of the Commission's decision to not reconsider the conditional approval at issue here and have standing to bring this action on the basis of that interest.

3. The South Carolina Local Government Comprehensive Planning Enabling Act ("the State Planning Act") provides a right to appeal from a planning commission decision for any "party in interest," including opponents of a development. *See* S.C. Code § 6-29-1150; *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721

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(Ct. App. 2019) ("The plain language of section 6-29-1150 as a whole provides Appellant the right to appeal the Commission's decision to the circuit court.").

4. Each Appellant is a "party in interest" under section 6-29-1150(D)(1) of the South Carolina Code.

5. The Commission rendered its conditional approval of the RV Park site plan on March 7, 2023. Thereafter, Appellants asked the Commission to reconsider its decision. The Request for Reconsideration of Conditional Approval dated March 28, 2023 and exhibits thereto are attached as Exhibit A and incorporated herein. The South Carolina Native Plant Society also asked the Commission to reconsider its decision, and its letter of request is attached hereto as Exhibit B.

6. The Commission has clear authority to reconsider its decision. Section 5 of Article II of the Commission's Rules and Procedures adopts Spartanburg County Council's Rules of Procedure. Under Section 12-4 of the Spartanburg County Council's Rules of Procedure, motions to reconsider may be made at the next regular meeting. The Commission's next regular meeting was on April 4, 2023, and the Commission did not reconsider its conditional approval at that meeting. The Commission's decision to not reconsider the conditional approval is the subject of this appeal.

7. The Appellants filed their appeal of the Commission's decision to grant the conditional approval on April 4, 2023.

8. This appeal of the Commission's decision to not reconsider its conditional approval decision is filed within thirty days after actual notice of the decision to not reconsider as provided in S.C. Code § 6-29-1150(D)(1).

9. Following the Commission's decision to grant conditional approval of the

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application, Blue Sky moved forward with construction of a commercial well and gravel roads on the subject parcel and is seeking permits. Broad River Electric Cooperative has initiated eminent domain proceedings against multiple adjoining property owners to install a power line and several commercial electricity meters to the site. Appellants' nearby drinking water wells, the waters of Goldmine Creek, federally-protected threatened plant species, and the natural features of the RV Park parcel are currently being threatened with negative, irreversible impact by the actions of Blue Sky since the Commission granted conditional approval.

10. Spartanburg County ("the County") is a body politic and corporate of the State of South Carolina.

11. Respondent Commission consists of nine members appointed by the governing body of the County, County Council, as defined in the State Planning Act, and was created through authority granted by the South Carolina legislature to local governments.

12. Respondent Blue Sky is a for-profit business entity registered in South Carolina and doing business in Spartanburg County.

13. Blue Sky is the developer named on the major development plan which received conditional approval by the Commission and which is the subject of this appeal. Blue Sky is accordingly a necessary party to this appeal.

14. The property to be developed into the RV Park is situated in Spartanburg County and consists of 38.68 acres of unzoned land.

15. The circuit court is vested with subject matter jurisdiction over appeals from local planning commissions pursuant to S.C. Code § 6-29-1150(D)(1).

16. Venue is proper in this Court, as the property at issue in this appeal is situated within Spartanburg County, the Commission is appointed by the Spartanburg County governing body,

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the Appellant homeowners' associations are duly incorporated in South Carolina and represent residents and property owners in Spartanburg County, the properties of the individual and business entity Appellants are situated within Spartanburg County, and Blue Sky is registered in South Carolina and conducts business in Spartanburg County.

17. This Court has personal jurisdiction over the parties due to their location or activities in Spartanburg County.

FACTS AND PROCEDURAL HISTORY

18. In 2021, Blue Sky submitted its first application for its proposed RV Park at 1970 Landrum Mill Road, Campobello, in a rural section of Northern Spartanburg County, naming the proposed RV Park, "T. Tree Farms." There were many legal issues with the application, including insufficient public notice of the Commission's meeting agenda for consideration of the development and Blue Sky's misrepresentation of a non-existent right of way for a public water line. The Commission granted conditional approval of the first site plan on March 2, 2021 without due process and without Appellants' knowledge. A complaint and appeal of that conditional approval was filed by Appellants in the circuit court against the County and the Commission. Blue Sky was unable to acquire public water and failed to meet this and other conditions as set forth by the Commission. Blue Sky recently withdrew the 2021 application. The circuit court action is being dismissed by stipulation.

19. On February 7, 2023, Blue Sky filed a second application for approval of its site plan to build the RV Park at the same location.

20. The proposed RV Park site plan includes 49 RV spaces, 86 parking spaces for other vehicles, a future swimming pool, a stormwater detention pond near Goldmine Creek that would discharge into the creek, and a septic field that runs down the hill toward Goldmine Creek.

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21. The parcel is surrounded by the properties of the Appellants, which consist of approximately 5,000 acres of lands with conservation-focused restrictive covenants and easements. More than 1,400 acres are under formal conservation easements with two land trusts, Upstate Forever and Conserving Carolina. The conservation area hosts a sensitive environment.

22. All residents within the Appellant homeowners' associations are totally dependent upon wells for their drinking water supply and water for their agricultural and livestock purposes.

23. The roads which are the primary GPS route to and from the proposed RV Park to I-26, Exit #1 are privately owned by citizens. These roads are narrow (16 feet wide) with blind curves, no shoulder, ditches three to four feet deep, and have grades of 5.6 degrees to 8.3 degrees. About two miles of the GPS route to and from the proposed RV Park are totally contained within the 1330 acres under conservation easement with Upstate Forever. Landrum Mill Road, which is the location of the proposed RV Park, is 17 feet, 4 inches wide and owned to the center by citizens.

24. Goldmine Creek is a first-order headwater tributary of the North Pacolet River, which is an integral part of the watershed for public water supply to the County and City of Spartanburg. Goldmine Creek forms the boundary of the RV Park parcel with properties contained within one of the Appellant homeowners' associations. The creek flows through the properties of two of the Appellant homeowners' associations.

25. Federally-protected threatened plant species have been identified along the banks of Goldmine Creek and observed on the RV Park parcel.

26. The RV Park parcel is bounded on one side by Appellant Greenspace of Fairview, LLC, which consists of approximately 1330 acres under conservation easement with Upstate Forever.

27. The RV Park parcel is bounded on one side by properties of Appellant The Enclave

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at Fairview Farm Homeowners' Association, Inc, and all of its properties are subject to conservation-focused covenants and restrictions.

28. As part of its 2021 application, Blue Sky sought a septic permit from the South Carolina Department of Environmental Control ("DHEC"). Appellant homeowners' associations who were affected parties submitted a Request for Review of the permit to the South Carolina Board of Health and Environmental Control ("DHEC Board") with concerns that Blue Sky's proposed septic system was undersized, lacked capacity, and risked failure. The DHEC Board granted the request for review of the permit. The DHEC Board is the highest environmental authority in South Carolina whose members are appointed by the Governor and approved by the Senate.

29. On December 21, 2021, a hearing was held by the DHEC Board to review the septic permit. Blue Sky and its attorney participated in the hearing along with the DHEC staff and the affected parties. At the conclusion of the hearing, the DHEC Board rescinded Blue Sky's septic permit for this RV Park on the basis that the data submitted by Blue Sky did not support a reduction in size of the septic system. Blue Sky appealed the decision to the Administrative Law Court ("ALC") on the issue of timeliness of the request for review to the DHEC Board. On November 29, 2022, the ALC overturned the DHEC Board's decision. However, the ALC's decision was based upon a statutory interpretation of the Administrative Procedures Act regarding a time limit to seek review by the DHEC Board and the legal effect of a Freedom of Information Act request to the agency. The substance of the septic permit and the sufficiency of the septic system were not addressed by the ALC. The ALC's decision on this procedural rule has been appealed to the Court of Appeals by the Appellant homeowners' associations and is pending review. The Appellant homeowners' associations are represented by the South Carolina Environmental Law Project in

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that appeal. The DHEC Board's determination that the septic system is undersized remains unrefuted.

30. On February 7, 2023, Blue Sky filed a second application with the County for this same land development. In this new application, Blue Sky submitted the same septic permit which the DHEC Board rescinded. In addition to relying on the undersized septic system and the rescinded septic permit, Blue Sky now proposes to supply its RV Park with water from a commercial well rather than public water and has deleted the comfort stations/public restrooms. These are modifications to the DHEC septic permit. The septic permit is void on its face per the developer's own statements, which were certified as accurate, on its DHEC permit application. Also, the pre-printed terms on the permit itself render the septic permit void.

a) The DHEC septic permit states that "*Any changes to the system must be approved by DHEC. Any unapproved changes will void this permit.*"

b) Blue Sky stated on its application form submitted to DHEC that the water source for its proposed RV Park was "*public water*." The blank application provides for boxes for an applicant to check and select between "*public water*" or "*well - public or private*." Blue Sky checked "*public water.*"

c) Blue Sky stated on its application form submitted to DHEC that there would be "*2 public rest rooms*" at the RV Park.

d) In its current application to the County, Blue Sky has changed its water source to a "well" and has deleted the comfort stations/restrooms in its plans.

e) The septic permit is void on its face per DHEC's stated terms.

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31. On March 7, 2023, the Commission considered the new application for approval of site plans to develop the RV Park at the same location.

32. One week prior to the Commission meeting, a written, four-page Request for a Public Hearing was submitted to the members of the Commission by 449 citizens on February 28, 2023. The request outlined multiple issues including due process, status of the septic permit, road safety, fire suppression, water issues, harmonious and compatible development, conservation group support, negative impacts to health, safety, and the environment. The request was denied by persons yet to be revealed but apparently without vote by the Commission members.

33. On February 28, 2023, citizens submitted a request to the Director of the County's Planning and Development Department that the RV Park application be postponed from the Commission's upcoming meeting agenda because a Freedom of Information Act request by citizens for the public file was outstanding. The Director did not respond.

34. On Friday, March 3, 2023, which was four days before the Commission meeting, the County posted revised site plans dated March 1, 2023. These revised site plans increased the overall footprint of the proposed RV Park by 250% from 15.79 acres to 38.68 acres when comparing the three sets of February and March 2023 site plans. The footprint of the RV Park was tripled in size from the 2021 plans.

35. On Friday, March 3, 2023, two citizens emailed the Director and Planning Manager at the Planning and Development Department about the fact that there were no comfort stations on the 2023 site plans as required by ULMO Section 3.13(8). The Director and the Planning Manager did not reply.

36. On Friday, March 3, 2023, County Councilman Jack Mabry left a voice mail message for his constituent, Judie Klapholz, in response to her call. Councilman Mabry stated in

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his message that there would not be a public hearing and advised that "you can push it to the Circuit Court."

37. On Tuesday, March 7, 2023, about 80 to 100 community members attended the Commission meeting to express opposition and concerns about the application. The Chairman was absent. The Vice Chairman announced that the Commission would not hold a public hearing. No vote was taken by the Commission in open forum on the Request for Public Hearing.

38. At the meeting, citizens presented each Commissioner with a packet of materials that included a 10-page Road Safety Audit that identified "*danger*" from RV traffic on the narrow roads, photographs of 16-foot-wide, privately owned roads that are the primary GPS route to the park, photographs of school buses and cars going off the pavement of the narrow roads to pass when oncoming, photograph of an RV unable to turn on the roads, the developer's Traffic Impact Analysis ("TIA") which projects adding 75,000 vehicles to the narrow roads leading to the RV Park, sections of the Spartanburg County Unified Land Management Ordinance ("ULMO") which require enforcement, DHEC Regulation 61-51, the County's blank online application form which differentiates between public water and well water, the DHEC Board's Final Agency Decision rescinding the septic permit, and a duplicate copy of the Request for Public Hearing submitted to all Commissioners on February 28, 2023. The Commissioners ignored this packet of materials at the meeting.

39. Appellants are awaiting the County's response to their Freedom of Information Act request for an audio recording of the meeting to confirm the statements made during the meeting.

40. Before the presentation of the RV Park agenda item by staff from the Planning and Development Department ("staff"), the Commission Vice Chairman made an opening remark to the Commission members, the staff, and the audience about "this RV Park that is *going in.*"

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41. The Commission declined to allow citizens to speak and moved the RV Park agenda item to the end of the meeting. About half of the community members went into the hall outside the chambers while the meeting continued. The doors were locked, and citizens were denied re-entry by a uniformed guard/officer. Many of the attendees were senior citizens and went home.

42. When the RV Park item came back on the agenda at the end of the meeting, staff presented its recommendation on the application. Staff stated that the ULMO requirement for a comfort station (public restroom) was being waived. In prior communications with the developer, staff stated that if the comfort station was removed, "*we will not be able to approve the plan.*" At the meeting, staff also stated to the Commission that the septic permit was "*approved.*" The Commission disregarded the written Final Agency Decision by the DHEC Board which rescinded the septic permit and which was in the packet provided by citizens to Commissioners.

43. The Commission Vice Chairman spontaneously designated one citizen from the audience to speak, Russell Rock, and only for five minutes. Mr. Rock did not request to be recognized to speak and was not prepared to speak. Mr. Rock requested to yield the allotted 5 minutes to citizens who were prepared to speak on specific topics. This request was denied by the Vice Chairman.

44. The Vice Chairman stated that the developer's "*engineer*" could speak. The developer's attorney went to the podium and addressed the Commission about multiple aspects of the application, including water, septic permit, and legal proceedings. The attorney did not request to be recognized, was not invited to speak, was not sworn, and no time limit was imposed upon him. The attorney may not have stated his name, and citizens are seeking to confirm through a Freedom of Information Act request for an audio recording of the meeting. When the developer's attorney approached the podium to speak without being recognized or invited, the Commission

took no action to enforce the requirements of its Rules and Procedures, Art. II, Section 7.

45. The Commission voted 6-2 to grant Conditional Approval to Blue Sky for its RV Park development. The Commission imposed specific conditions for final approval.

46. Citizens are informed and believe that the Commission reviewed the wrong and incorrect site plans at the meeting.

a) At the conclusion of the meeting and after most Commissioners departed, several citizens observed multiple sets of 24" x 36" site plans left behind on the desk at the Commissioner's chairs.

b) The plans were from the developer's first application in 2021 and dated February 24, 2021.

c) Citizens saw no site plans on the table with a date in 2023.

d) In 2021, the County acknowledged in writing that there was a "*misrepresentation*" on the 2021 site plans, which called out a non-existent right of way and misrepresented the ownership of Landrum Mill Road.

e) The County stated in writing in 2021 that these site plans needed to be "*corrected.*"

47. On March 28, 2023, citizens submitted a written Request for Reconsideration to all members of the Commission regarding the decision to grant conditional approval of the RV Park development plan. The Request was 23 pages with over 50 pages of exhibits, which included the information citizens were denied the opportunity to directly present to the Commission at the meeting on March 7, 2023. The Request detailed how the Commission's decision violates the ULMO. (Exhibit A) The Native Plant Society also submitted a request for reconsideration to the

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Commission. (Exhibit B) However, at its April 4, 2023 meeting, the Commission decided to disregard the Request and failed to reconsider its illegal decision.

48. Appellants reserve the right to modify their pleading based upon outstanding FOIA requests and to supplement the record for the Court.

STANDARD OF REVIEW

49. A planning commission decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a planning commission decision). Further, a decision of the planning commission will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). An abuse of discretion occurs when the Commission's decision is based upon an error of law or, when based on factual conclusions, without evidentiary support. *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001).

GROUNDS FOR APPEAL

I. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the ULMO by approving a site plan for an RV Park not serviced by sewer or other systems "approved" by DHEC.

50. All prior paragraphs of this Appeal are incorporated by reference.

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51. For an RV park, ULMO Section 3.13.(8) requires that "*each park site shall be serviced by .... sewer of other system* ***"approved"*** *by DHEC.*" (Emphasis added.) This requirement is mandatory and was violated by the Commission.

a) For an RV park, Section 3.13(8) provides that "each park site shall be serviced by . . . sewer or other systems approved by DHEC." This is mandatory.

b) The septic system design contained in Blue Sky's February 7, 2023 development application and plan was rejected by the DHEC Board as having only one-half the capacity that is required for this development.

c) The septic system for this development has been rejected by DHEC, not "approved by DHEC." The DHEC Board rejected this septic system as being severely inadequate and inappropriate for this development.

d) The Commission accepted without question the statement by the developer's attorney that the ALC had ruled against the DHEC Board's decision. But the ALC did not address the determination of the DHEC Board that the septic system was severely inadequate. The ALC only ruled on legalistic and procedural grounds that the request for the DHEC Board to review the permit was filed too late. The DHEC Board did not agree that the request for review was late and held a hearing to review the permit. The DHEC Board cited the Pollution Control Act, Section 100(c) concerning "real or potential threats" to health and addressed the permit and the engineering design of the system itself.

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e) As the record stands today, the septic system for this development has been rejected by DHEC, regardless of the issue of a time limit for requesting review by the DHEC Board.

f) This unapproved septic system and Blue Sky's development plan violate the County's own ordinance.

52. The Commission's reliance on a septic system disapproved by DHEC and without any verification of the legal proceedings regarding Blue Sky's claim that the septic system was "*approved*" by DHEC constitutes an abuse of discretion. The factual conclusions by the Commission about the septic permit status lacked evidentiary support.

53. The Commission refused to review and disregarded the written Final Agency Decision of the DHEC Board which rescinded the permit and which citizens were denied the opportunity to present to the Commission members at the meeting. The Commission's action was an abuse of discretion.

54. The Commission's approval of the RV Park site plans without a septic system "approved" by DHEC fails to consider public health and the threat to drinking water, especially with the DHEC Board's rescission of the septic permit because the septic system was undersized.

55. The Commission's decision to approve the RV Park site plans without a septic system "approved" by DHEC does not follow or respect the purpose and policy of the State Planning Act to consider public health and general welfare and violates the ULMO.

56. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the ULMO.

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57. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

II. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the ULMO by approving a site plan for an RV Park not serviced by public water.

58. All prior paragraphs of this Appeal are incorporated by reference.

59. For an RV park, ULMO Section 3.13.(8) requires that "*Each park site shall be serviced by **public water**.*" (Emphasis added.) This provision is mandatory and was violated by the Commission.

a) The County's online application form requires an applicant to select between "*water or well*" as the water source for a major land development. The form contains a box to check and another drop down box that provides the option of "water" or "well". The application form clearly differentiates between water or well.

b) Blue Sky misrepresented a non-existent right of way for a water line in its first application in 2021 and was unable to obtain ICW public water. ICW is Inman Campobello Water District. There is no right of way for a public water line to the proposed RV Park over the private properties.

c) In its new application on February 7, 2023, Blue Sky applied for a "well" as a water source for its RV Park. This is in violation of the clear language of the ULMO, which requires public water. Blue Sky marked "well" as the water source on its application for the proposed RV Park.

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d) Blue Sky curiously completed this application stating "ICW" as its "water source." ICW would not be relevant to a well. Neither the Commission nor staff inquired about this inconsistency. Blue Sky's actions in pursuing a test well permit from DHEC clearly indicate that its plans include a commercial "well" for its water source.

e) Pursuant to the ULMO and the distinct language of the blank application form, a well is not "public water."

f) In fact, Blue Sky's septic permit is based upon "public water." Similar to the County's form, DHEC's blank application form has separate boxes to check for "public water" or "well- public or private." Blue Sky checked "public water." The septic permit which Blue Sky now seeks to use and which the Commission accepted is irrefutably based upon "public water" as the water source and not a "well- public or private." As noted above, the DHEC Board rescinded this permit even when Blue Sky said it would have public water and two restrooms. Currently, Blue Sky's site plans do not have either.

g) "Public water" is piped with pressure and is an essential part of an adequate fire suppression plan. The RV Park and the surrounding conservation lands are densely wooded, in a rural area, and a significant distance from the fire station. Adequate fire suppression is a matter of public safety.

    i. There is no public water to the RV Park site.

ii. In 2022 and before the 2023 application was filed, the developer submitted three different fire protection plans to the County dated January 13, 2022, March 24, 2022, and May 31, 2022. All were prepared by the developer's engineer, Ralph Foster, Foster Engineering and Consulting, and contain different fire suppression plans. (Exhibit C, three Fire Protection Plans)

iii. The three different Foster fire plans pre-date the 2023 application. The developer changed from public water in the 2021 application to a well system for the water supply in its 2023 application.

iv. The public file on this development does not specify which of the three different fire protection plans submitted in 2022 or other plans were reviewed and approved by the County as part of the February 7, 2023 application.

v. The 2021 application was withdrawn by the developer. The public file on this development does not contain any evidence of County approval of a fire plan as part of the 2023 application.

vi. **Staff did not present any information to the Commission on a fire protection plan** at the meeting on March 7, 2023.

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h) Citizens were not afforded the opportunity by the Commission to address concerns about the public water requirement, adequacy of critical fire protection, fire hazards, and threats to public safety. The Commission ignored public safety.

60. The Commission's decision of March 7, 2023 expressly allows a well and violates this mandatory requirement for "public water" as set forth in the ULMO. Allowing a well instead of public water is a variance and waiver of ULMO Section 3.13(8). Notice and a public hearing are required by Art. III, Public Hearings, Section 2 of the Commission's Rules and Procedures. The Commission did not follow the variance section of the ULMO.

61. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the ULMO and ignores public safety.

62. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

III. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the ULMO by approving a site plan for an RV Park that omits a comfort station.

63. All prior paragraphs of this Appeal are incorporated by reference.

64. ULMO Section 3.13(4) requires for an RV park that "*no site shall be located... less than 300 feet* ***from a comfort station.***" (Emphasis added.) This requirement is mandatory and was violated by the Commission.

a) A comfort station is a "bathroom" or "restroom." A comfort station is not an RV sewer connection hose as suggested by the developer to the staff.

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b) At the Commission meeting, staff arbitrarily and unlawfully recommended a waiver of the comfort station/restroom requirement. This is a public health issue and contrary to the public interest, which the Commission and staff chose to unlawfully disregard. The Commission is unlawfully promoting the creation of unsanitary and unhealthy conditions at the proposed RV Park.

c) The RV Park will host 49 RVs and have additional parking for 86 other vehicles. Patrons will surely relieve themselves outdoors in the park and in the pristine waters of Goldmine Creek. The Commission is unlawfully creating health and environmental threats and avoiding the purpose and policy of the ULMO requirement.

d) The elimination of a comfort station is a variance and waiver of ULMO Section 3.13(4). Notice and a public hearing are required by Art. III, Public Hearings, Section 2 of the Commission's Rules and Procedures. The Commission did not follow the variance section of the ULMO.

e) In 2021, staff informed the developer that a comfort station must be included *"**or we will not be able to approve the plan**"* per ULMO 3.13.(4). (Emphasis added.)

65. The Commission's decision expressly approves the deletion of a comfort station from the RV Park and violates this mandatory requirement of the ULMO.

66. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the ULMO.

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67. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

IV. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the ULMO by approving a site plan for an RV Park that does not preserve natural features and landscape.

68. All prior paragraphs of this Appeal are incorporated by reference.

69. ULMO Section 3.13(2) requires for an RV park that "*the site shall be developed in a manner that **preserves natural features and landscape.**"* (Emphasis added.) This requirement is mandatory and was violated by the Commission.

70. The site plan and the Commission's decision does not preserve the natural features and landscape. These natural features include federally-protected threatened plants and the pristine waters of Goldmine Creek, which are part of the City of Spartanburg's drinking water supply.

71. On the contrary, the Commission's decision affords absolutely no consideration of the natural features and landscape of the RV Park parcel. With an undersized septic system and no public restroom, the rare, federally-protected plants, their habitat, and pristine waters of Goldmine Creek are threatened.

72. The Commission's decision does not follow or respect the purpose and policy of the State Planning Act and the ULMO to consider the natural resources as criteria in implementing a land development program. The Commission's decision violates the State Planning Act and the ULMO.

73. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the State Planning Act and the ULMO.

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74. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

V. <u>The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the ULMO by approving a site plan for an RV Park that allows an RV to be used as a residence</u>.

75. All prior paragraphs of this Appeal are incorporated by reference.

76. The ULMO, Section 3.03-2 states that an RV may not be used as a residence for more than 90 days in a 12-month period and only while a residence is being built on site. This requirement is mandatory and was violated by the Commission.

77. Blue Sky's application states that the business will have one employee, a camp host, who will reside in an RV and that the developer herself will function as the camp host living in an RV for the first 6 months of operation. No residence is being constructed.

78. When staff contacted the developer about ULMO Section 3.03-2, the developer stated that an "office" will be in place. Staff did not resolve the living quarters issue. The developer did not clarify or change the living space for the camp host from an RV. The Commission ignored this mandatory provision of the ULMO.

79. The developer's application for a camp host to live in an RV violates the ULMO.

80. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the ULMO.

81. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

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VI. <u>The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the State Planning Act and the ULMO by approving a site plan for an RV park that does not consider public safety and road conditions</u>.

82. All prior paragraphs of this Appeal are incorporated by reference.

83. Citizens attempted to present a 10-page, comprehensive Road Safety Audit by J.M. Teague Engineering to the Commission.

a) The Road Safety Audit was the product of an on-site investigation by a qualified road safety engineer of the narrow, privately owned roads which are the primary GPS route to/from the proposed RV Park and Exit #1 of I-26.

b) These roads are 16 feet wide and present hills, steep slopes, blind curves, no shoulders, and deep ditches, which are challenging for vehicular traffic.

c) These roads are used for recreational purposes by local citizens, including cycling, jogging, walking (by senior citizens), dog walking, hiking, horseback riding, and training by the Landrum High School cross country teams. Designated walking and horseback riding trails cross over these roads.

d) The road safety engineer concluded that siting the RV Park with the related RV traffic at the proposed location on Landrum Mill Road "***adds additional danger to already dangerous roads.***"

e) This report and the road safety engineer's conclusions were provided in the citizens' Request for Public Hearing, which was submitted to the Commissioners on February 28, 2023.

f) The report was provided to each Commissioner in advance of the March 7, 2023

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meeting but was disregarded. The Commission totally ignored the public safety issue.

g) The report was provided to three County Councilmen and five County officials on August 4, 2021 at a community meeting. Staff possessed this report and did not provide it to the Commission as part of the staff presentation at the March 7, 2023 meeting.

84. At the Commission meeting on March 7, 2023, the staff discussed the developer's TIA, which addresses traffic volume and directional flow only. Staff stated that there was "*no problem*" with the roads. The TIA is a separate report from the Road Safety Audit. From a dialogue between the Commissioners and the staff, it was clear that the two reports were improperly conflated by the staff in their statements to the Commission. Citizens attempted to speak out about there being two separate reports, but the Vice Chairman denied citizens the opportunity to clarify this public safety issue.

85. The entrance to the proposed RV Park is on Landrum Mill Road, which is 17 feet 4 inches wide. The other routes of access to the park are 16 feet wide.

a) At the March 7, 2023 meeting, citizens wished to present photographs of vehicles going off the pavement to pass in oncoming directions on Landrum Mill Road and Fairwinds Road.

b) One photograph depicted a school bus going off the pavement with its right wheels to pass an oncoming school bus on Landrum Mill Road near the entrance to the proposed RV Park.

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c) One photograph illustrated a small car going off the pavement close to a ditch to pass an oncoming pickup truck on Fairwinds Road and another showed an RV which was unable to make a turn on these roads toward I-26.

d) These photographs were in the packet provided by citizens for each Commissioner at the March 7, 2023 meeting and were attached to the citizens' Request for a Public Hearing on February 28, 2023. These photographs were ignored by the Commission.

86. The Commission received incorrect, incomplete information about road conditions and ignored public safety.

87. The Commission's decision to grant conditional approval does not follow or respect the purpose and policy of the State Planning Act and the ULMO. The Commission's decision to grant conditional approval failed to consider safety and general welfare.

88. The Commission's conditional approval of the RV Park site plans without considering safety and deliberately disregarding the comprehensive Road Safety Audit, which concluded that RVs on the narrow, curvy, steep rural roads posed "***danger,***" violates the State Planning Act and the ULMO.

89. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the State Planning Act and the ULMO.

90. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

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VII. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the United States Constitution, the South Carolina Constitution, the State Planning Act, the Comprehensive Plan, the ULMO, and the Mission Statement of the Planning Department by approving a site plan that violates citizens' private property rights and ignored their ownership of roads which are the primary GPS route to and from the RV Park to I-26.

91. All prior paragraphs of this Appeal are incorporated by reference.

92. All portions of the roads which are the primary GPS routes to and from I-26, Exit #1 to and from the RV Park are privately owned. These roads include Turkoman Trail, Racetrack Road, and Fairwinds Road. Turkoman Trail and Racetrack Road are about two miles long and are situated on property which is completely under private conservation easement with Upstate Forever. As noted above, these narrow, privately owned, rural roads are used for recreational purposes and include trails which cross over the roads. A qualified road safety engineer concluded that these old farm-to-market roads are not safe for the RV Park traffic and that RVs would add "*danger.*"

93. The County maintains these roads for habitual, low-volume, agri-residential traffic under a prescriptive easement, as asserted by the County.

94. The RV Park will add 75,000 vehicles per year, including large RVs with vehicles in tow, to these roads per the developer's traffic projections.

a) This volume of commercial traffic consisting of large RVs will unlawfully interfere with the road owners' private property rights and is not harmonious and compatible development.

b) Such traffic would not be habitual, not be low-volume, and not be rural-residential.

c) The RV Park traffic (75,000 vehicles) would be high-volume, commercial, for-profit traffic, all day and all night (24/7) with vehicle lights and traffic noise. This

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exceeds, abuses, and overburdens any prescriptive easement claimed by the County, particularly on the privately owned roads through the formal conservation area of Upstate Forever.

d) Such traffic would not be compatible use of the privately owned, rural-residential roads as set forth in the Comprehensive Plan for Spartanburg County Land Use Goals and Objectives ("Comprehensive Plan").

e) The addition of 75,000 vehicles, including large RVs, poses an undue and unreasonable liability and insurance burden on the citizens who own the road particularly with the road safety engineer's opinion concerning the "*danger*" posed by RV traffic with road conditions.

95. Citizens were denied the opportunity to present information about their private property rights and road ownership to the Commission. Their Request for a Public Hearing was summarily denied. The County is aware of the road ownership. Staff did not present this information to the Commission at the March 7, 2023 meeting.

96. The Commission failed to consider the unlawful infringement upon citizens' private property rights from the developer's for-profit, commercial traffic over their properties, all day and all night (24/7). The Commission failed to afford citizens due process and the opportunity to be heard in a meaningful way on this issue of their private property rights.

97. The Commission's failure to consider private property rights and citizens' rights to due process violates the United States Constitution and the South Carolina Constitution, Art. I, Section 22 ("No person shall be finally bound by a judicial or quasi-judicial decision of an

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administrative agency affecting private rights except upon due notice and an opportunity to be heard.")

98. The Commission's decision to grant conditional approval violates the South Carolina Constitution, Art. I, Section 13. The Commission's decision constitutes an unlawful taking of private property, namely the roads belonging to Appellants, for a private purpose, namely the financial gain of Blue Sky in its commercial operations.

99. The Commission failed to follow the purpose and policy of the State Planning Act, the Comprehensive Plan, the ULMO, and the Mission Statement of the Planning Department regarding specific criteria of harmonious and compatible development. The Commission failed to consider these criteria regarding the volume of unsafe, commercial traffic, all day and all night (24/7), being imposed in a community which is and has been one with low volume traffic in a low density, rural, agri-residential area with narrow, privately owned roads that present dangerous conditions with RV commercial traffic.

100. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause and despite the fact that its conditional approval violates the United States Constitution, the South Carolina Constitution, the State Planning Act, the Comprehensive Plan, the ULMO, and the purpose and policy of the Mission Statement of the Planning Department.

101. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

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VIII. <u>The Commission's decision to not reconsider its conditional approval is unlawful because the Commission reviewed the wrong and incorrect site plans at its March 7 meeting</u>.

102. After the March 7, 2023 meeting concluded, citizens observed and picked up multiple sets of full-size 24" x 36" site plans which were left behind by the Commissioners on the table at their chairs.

a) Citizens did not observe any site plans dated 2023 on the table in front of the chairs.

b) The site plans that were picked up by citizens are dated February 24, 2021.

c) The February 24, 2021 site plans are from the prior application submitted by Blue Sky.

d) The 2021 site plans from the prior application were acknowledged by the County to contain a "*misrepresentation*" about a non-existent right of way which needed "*to be corrected.*"

103. Appellants are informed and believe that the Commissioners did not have the full-size 2023 site plans in front of them for review at the meeting.

104. Appellants are informed and believe that the Commissioners were given the 2021 site plans by staff. The 2021 site plans are materially and substantially different from the 2023 site plans. The 2021 site plans contained a "*misrepresentation*" that needed "*to be corrected*" according to an internal County communication.

105. The Commission's review of the incorrect, irrelevant 2021 site plans was a critical error.

106. The relevant site plans, which should have been reviewed by the Commission, were those dated March 1, 2023 and posted by the County on March 3, 2023. These revised site plans increased the overall footprint of the proposed RV Park by 250% from 15.79 acres to 38.68 acres

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when comparing the three sets of February and March 2023 site plans. The footprint of the RV Park was tripled in size from the 2021 plans.

107. Appellants are informed and believe that this last minute and significant increase in the RV Park footprint was not addressed by the staff or the Commission at the meeting.

108. Citizens were precluded by the Commission from speaking and inquiring about this last minute, 250% to 300% increase in the footprint of the RV Park.

109. The Commission's decision to grant conditional approval was not based upon competent evidence but rather erroneous information. The Commission's decision was based upon errors and factual conclusions without proper evidentiary support.

110. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause, including the Commission's review of the wrong, incorrect site plans. The Commission further ignored the fact that its conditional approval violates the State Planning Act and the ULMO.

111. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

IX. The Commission's decision to not reconsider its conditional approval is unlawful because the Commission violated the citizens' rights to due process.

112. All prior paragraphs of this Appeal are incorporated by reference.

113. The Commission refused to consider the Request for Public Hearing, which was submitted by 449 concerned citizens one week before the meeting. This request summarized the many concerns with this RV Park, including denial of due process, health, safety, the septic system, road safety, fire suppression, water issues, harmonious development, private rights, and negative

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impacts upon the community, residents, and the conservation environment. Citizens were denied the opportunity to be heard in a meaningful way through a public hearing.

114. The Commission did not allow citizens to speak at the meeting on March 7, 2023, but for its spontaneous appointment of one person, who was not prepared to speak, to address the Commission for five minutes. About 80-100 citizens were present, and several wished to be heard and were denied by the Commission.

115. In its decision of March 4, 2023, the Commission failed to respect private property rights and refused to allow citizens to be heard in a meaningful way. The Commission denied citizens the right to due process in violation of the United States Constitution and the South Carolina Constitution, Art. I, Sections 13 and 22.

116. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause, including the Commission's denial of due process to citizens. The Commission further ignored the fact that its conditional approval violates the United States Constitution and the South Carolina Constitution, Art. I, Sections 13 and 22.

117. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

X. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval was rendered at a meeting where the Commission violated the Freedom of Information Act.

118. All prior paragraphs of this Appeal are incorporated by reference.

119. About 80-100 citizens attended the meeting on March 7, 2023 hoping for a meaningful discourse on the key issues concerning the RV Park development plan. At the meeting,

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the Commission moved the RV Park item to the end of the agenda.

120. About half of the citizens who were present for the RV Park item then stepped into the hall. The doors to the meeting chambers were locked, and a uniformed guard/officer denied re-entry to citizens. Many of those persons, who were senior citizens, departed for home as a result.

121. The Commission's meeting on March 7, 2023 violated Section 30-4-60 of the South Carolina Freedom of Information Act ("Every meeting of a public body shall be open to the public unless closed pursuant to Section 30-4-70"). This meeting was not one which qualified to be closed to the public. The meeting also violated the Commission Rules of Procedure, Art. II, Section 2 ("the Commission shall comply with the requirements of the State of South Carolina Freedom of Information Statute…."). A complaint was filed by citizens with the South Carolina Attorney General.

122. The written, four-page Request for Public Hearing by 449 citizens was addressed and submitted to all members of the Commission one week prior to the March 7, 2023 meeting. At the beginning of that meeting, the Vice Chairman summarily denied the request. There was no vote by the full Commission in open forum.

123. The Commission's failure to vote in open forum on the citizens' Request for Public Hearing violates Section 30-4-60 of the South Carolina Freedom of Information Act and violates the Commission Rules of Procedure, Art. II, Section 2.

124. The Commissions actions and the conduct of the meeting on March 7, 2023 were statutory violations of the South Carolina Freedom of Act. These actions require that all decisions at this meeting be vacated.

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125. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause. The Commission further ignored the fact that its conditional approval violates the South Carolina Freedom of Information Act.

126. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

XI. The Commission's decision to not reconsider its conditional approval is unlawful because the Commission violated its own Rules of Procedure at the meeting of March 7, 2023.

127. All prior paragraphs of this Appeal are incorporated by reference.

128. The Commission Rules and Procedures, Section 7, provide:

> "Except for public hearings, no person other than Commission members and appointed staff shall speak at Commission meetings **unless recognized by the Chairman and invited to speak.** All persons speaking **shall state their name** for the public record." (Emphasis added.)

129. At the March 7, 2023 meeting, the Commission allowed the developer's attorney to approach the podium and take the microphone without requesting to be recognized. The Commission allowed the attorney to speak without being invited and without being sworn. The attorney may not have stated his name for the record. Appellants are seeking an audio recording of this meeting through a Freedom of Information Act request.

130. At the March 7, 2023 meeting the Commission violated its own Rules and Procedures, which are adopted pursuant to SC Code 6-29-360(B). The Commission allowed the developer's attorney to speak and address the Commission with details about his client's application. This action was unlawful and prejudicial. The Commission refused to recognize the many citizens who wished to speak and attempted to be recognized pursuant to Section 7 of the

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Rules of Procedure.

131. At the March 7, 2023 meeting, the developer's attorney was unlawfully afforded the opportunity to impact and influence the Commission's deliberations.

132. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause. The Commission further ignored the fact that its conditional approval violates its own Rules and Procedures.

133. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

XII. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval was rendered in the meeting where prejudicial remarks were made by the Commission Vice Chairman.

134. All prior paragraphs of this Appeal are incorporated by reference.

135. The Vice Chairman conducted the March 7, 2023 meeting in the absence of the Chairman.

136. At the March 7, 2023 meeting and the beginning of the RV Park application coming up on the meeting agenda, the Vice Chairman made an introductory statement to the Commission members, the staff and audience about "*this RV Park **that is going in***." (Emphasis added.) This statement was made before the presentation of the application by staff and before any discussion and deliberation by the Commission.

137. The statement by the Vice Chairman at the outset was improper. A basic tenet of meeting procedure is for the presiding officer to conduct the meeting in an impartial manner. The Commission Rules and Procedures refer to the County Council, Rules and Procedures, which state that the desire is "*to conduct the public's business in a forthright manner.*"

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138. The statement at the outset by the Vice Chairman, who was the presiding officer, was not impartial but rather highly prejudicial, inherently influential on other Commission members, and displayed a pre-conceived notion about approval.

139. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause.

140. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

XIII. The Commission's decision to not reconsider its conditional approval is unlawful because its conditional approval violates the State Planning Act, the Comprehensive Plan, and the ULMO.

141. All prior paragraphs of this Appeal are incorporated by reference.

142. The County of Spartanburg is enabled and empowered to establish and implement a local government land development plan by the State legislature as set forth in the State Planning Act. The County created the Commission pursuant to that legislation. The Commission must follow the policy and purpose of the State Planning Act, and the Commission's functions, powers, and duties are set forth therein.

143. SC Code 6-29-340 provides that the duty of the Commission is to promote "**public health, safety, ...or general welfare.**" (Emphasis added.) The Commission totally disregarded these elements and breached its duty to promote public safety, health, and general welfare. The Commission's decision to grant conditional approval of the RV Park site plans poses identified, objective threats to public safety, health, and general welfare as detailed above.

144. The State Planning Act requires Spartanburg County to implement its Comprehensive Plan, which requires the County to use measurable criteria to limit the impact of

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adjacent land uses on one another and consider incompatibility resulting from factors such as traffic, intensity of use, and environmental impact. These criteria include a natural resources element, community facilities element (water and sewage), and land use element. A stated goal of the Comprehensive Plan is to "prohibit intense incompatible nonresidential development from location on roads where the majority of the activities are residential." The Commission completely disregarded these criteria and made no effort whatsoever to address such criteria.

145. The Mission Statement of the Planning and Development Department is "to plan comprehensively for the orderly growth and harmonious development" of Spartanburg County. The Commission totally disregarded its mission, policy, and purpose to plan for "harmonious" development and refused to allow citizens to provide information about their agri-residential conservation area, which is immediately adjacent to and surrounds the proposed commercial RV Park. The land that surrounds the proposed RV Park is a 5,000-acre conservation-focused area with thousands of acres under formal, private, conservation easements with two land trusts. These lands are subject to deeded, conservation-focused covenants and restrictions. The commercial RV Park is not harmonious and compatible development in this area. The Commission totally disregarded the mission of the Planning and Development Department and made no effort whatsoever to address the element of "harmonious and compatible development."

146. The Commission decided to not reconsider its conditional approval at its April 4, 2023 meeting despite two requests based upon detailed good cause. The Commission further ignored the fact that its conditional approval violates the State Planning Act, the Comprehensive Plan, and the ULMO.

147. The Commission's decision to not reconsider its conditional approval is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an

abuse of discretion.

REQUEST FOR DECLARATORY RELIEF

148. All prior paragraphs of this Appeal are incorporated by reference.

149. Pursuant to S.C. Code Section 15-53-10, et seq., Appellants have standing to request a declaratory judgment based upon their interests and the impact of the Commission's decision to not reconsider its conditional approval. The Commission's decision to not reconsider its conditional approval impacts their health, safety, environment, Constitutional rights, and private property rights.

150. Appellants request that this Court determine and declare:

a) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider the purpose, policy, intent, mandatory provisions, and requisite land development criteria set forth in the State Planning Act, the ULMO, the Comprehensive Plan and all land development regulations as adopted by Spartanburg County Council and as set forth in the Mission Statement of the Spartanburg County Planning and Development Department;

b) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider specific statutory and planning elements including health, safety, general welfare, environmental impact, natural resources, harmonious and compatible development, existing land uses of surrounding properties, and private property rights;

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c) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to consider and review the Road Safety Audit by J. M. Teague Engineering, the Final Agency Decision by the DHEC Board, the presence of threatened plant species, the conditions of Goldmine Creek, the environmental reports of Kevin Caldwell and L.L. Gaddy, and any other competent evidence and reports concerning health, safety, general welfare, the environment, natural resources, harmonious and compatible development, noise, lights, traffic, roads, road conditions, existing land uses of surrounding properties, fire protection, and private property rights as related to the proposed RV Park;

d) In the review of the T. Tree Farms RV Park application for site plan approval, the Commission has the duty to afford citizens a public hearing with due notice and an opportunity to be heard in a meaningful way as part of its review and deliberation;

e) that the Commission has the duty to conduct its meetings in accordance with the South Carolina Freedom of Information Act;

f) that, pursuant to the United States Constitution, the South Carolina Constitution, the State Planning Act, and the ULMO, good cause exists for the Commission to reconsider its decision to grant conditional approval of the T. Tree Farms RV Park stie plans submitted by Blue Sky; and

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g) that the Commission has the duty to reconsider its decision to grant conditional approval of the T. Tree Farms RV Park site plans submitted by Blue Sky.

WHEREFORE, the Appellants request that this Court:

a) issue an order reversing and vacating the decision of the Spartanburg County Planning Commission to not reconsider its March 7, 2023 decision granting conditional approval of T. Tree Farms RV Park site plans submitted by Blue Sky;

b) issue an order directing the Spartanburg County Planning Commission to reconsider its decision granting conditional approval of T. Tree Farms RV Park site plans submitted by Blue Sky;

c) issue a declaratory judgment providing the relief requested; and

d) issue an order awarding costs of this action and such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

_____s/Carl F. Muller _____
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Attorney for Appellants

Greenville, SC
April 27, 2023

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NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY COURT OF COMMON PLEAS

APPEAL FROM THE SPARTANBURG COUNTY PLANNING COMMISSION

Site Plan – RV Park (1-09-00-020.03)

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of The Judie R. Klapholz Trust, and Slater Properties Inc. d/b/a Caroland Farms,

Appellants,

v.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,

Respondents.

NOTICE OF APPEAL

Appellants hereby submit notice to Spartanburg County, SC, the Spartanburg County Planning Commission, and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park of their appeal of the Spartanburg County Planning Commission's decision to not reconsider its conditional approval of the site plan for the T. Tree RV Park on Landrum Mill Road in Campobello, South Carolina, (1-09-00-020.03) at its meeting on April 4, 2023.

_____s/Carl F. Muller_____
Carl F. Muller, Esq. SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
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Attorney for Appellants

Greenville, SC
April 27, 2023

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EXHIBIT A

REQUEST FOR RECONSIDERATION TO PLANNING COMMISSION DATED FEBRUARY 28, 2023

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March 28, 2023

Joan Holliday, Director
Spartanburg County Planning & Development
366 N. Church Street
Spartanburg, SC 29303

Re: **Request for Reconsideration of Conditional Approval**
T. Tree Farms, Blue Sky Associates, LLC

Dear Ms. Holliday:

Enclosed is a Request for Reconsideration of the Conditional Approval of the above major land development by the Planning Commission on March 7, 2023. This Request is made directly to the Members of the Planning Commission.

Concerned Citizens are not aware of any cover sheets/forms or filing fees being required by the Planning and Development Department for their Request for Reconsideration. Please advise if such is required.

Sincerely,
CONCERNED CITIZENS

For communications, please contact Larry Jankins, ljankins@aol.com, 954-520-9229.

Enclosure
cc w/enclosure: All Planning Commission Members
Leigh McDonald, Planning Manager
Blue Sky Associates, LLC
Bob Walker, County Council
Jack Mabry, County Council

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REQUEST FOR RECONSIDERATION OF CONDITIONAL APPROVAL GRANTED BY PLANNING COMMISSION ON MARCH 7, 2023

RE: Application for Major Land Development
T. Tree Farms RV Park (Blue Sky Associates, LLC)
William A. McDaniel and Kimberli Burnett, Managers of Blue Sky Associates, LLC

TO: MEMBERS OF THE SPARTANBURG COUNTY PLANNING COMMISSION

Concerned Citizens are Spartanburg County residents, taxpayers, and/or parties in interest in the matter of T. Tree Farms RV Park (Blue Sky Associates, LLC). Many Concerned Citizens own or reside on contiguous property or property in the vicinity of the proposed RV park. Concerned Citizens' health, safety, general welfare, and rights are substantially affected and threatened by the Planning Commission's ("Commission") unlawful granting of Conditional Approval for the above project on March 7, 2023.

Concerned Citizens recognize that the Commission members are volunteers. Concerned Citizens are grateful for their service to the County. However, the meeting of March 7, 2023 was fraught with critical errors, misrepresentations, and omissions. Incorrect and incomplete information was presented to the Commission by the developer and the Planning and Development Department staff ("staff") for its deliberation and decision. This resulted in an unlawful and improper action by the Commission to grant Conditional Approval of the above project.

The Commission is bound to perform its duties as set forth by the State legislature in the SC Local Government Comprehensive Planning Enabling Act, SC Code 6-29-310, et seq. ("State Planning Act"). The Commission must implement land development programs which are designed **to promote public health, safety, and general welfare** of its area of jurisdiction. In the discharge of its responsibilities, the Commission must consider and effectuate these and other criteria set forth in the State Planning Act when reviewing a major land development application. The Commission also has the duty to correct errors in any staff decision or determination made in the administration of major land development applications pursuant to the Spartanburg County Unified Land Management Ordinance ("ULMO"), Section 5.01-2. Staff action to approve a land development plan may be appealed to the Commission by any party in interest pursuant to the Planning Act, Section 6-29-1150(C).

The actions of the Commission in reviewing and deliberating upon this major development application were arbitrary, unreasonable, in clear abuse of its discretion, not supported by competent evidence, and unlawful. The Conditional Approval granted by the Commission on March 7, 2023 is unlawful for many reasons which are more completely described herein and include the following:

- The Commission violated Sections 3.13(8), 3.13(4), 3.13(2), and 3.03-2 of the ULMO.
    - The developer does not have the required septic system "approved" by DHEC; the DHEC Board rescinded the septic permit.
    - The developer does not have the required "public water" to the site.
    - The developer does not have the required "comfort station" (restroom) on site plans.

- The developer's plan does not consider the natural features of the site, including federally-protected threatened plant species and waters of Goldmine Creek.

- The Commission violated its own Rules and Procedures at the meeting of March 7, 2023.
  - The Commission refused to recognize several Concerned Citizens who wished to speak.
  - The Commission allowed the developer's attorney to speak without his requesting to speak, without being invited to speak, without being sworn, and without any time limits.

- The Commission disregarded public health and received incorrect and incomplete information on the status of the developer's septic permit. The Commission refused to review:
  - The DHEC Board's Final Agency Decision rescinding the septic permit;
  - Information that the developer's septic system is half the size as required by DHEC regulations (as determined by the DHEC Board);
  - Information that the undersized septic system and harmful odor suppressing chemicals discharged from RV holding tanks into the septic system pose a threat to citizens' drinking water (wells and public water system); and
  - Information about the appeal by the developer of the DHEC Board's decision, which is solely related to procedural rules and not the substance of the septic permit;

- The Commission disregarded public safety and received incorrect and incomplete information on road safety and fire safety. The Commission refused to review:
  - The road safety engineer's comprehensive 10-page report concluding that "danger" is created by RVs on the very narrow (16 feet wide), steep (5.6° to 8.3°grade), curvy, old farm-to-market roads, which are privately owned and the primary GPS routes to/from Exit #1 of I-26 to the proposed RV park;
  - Evidence that these narrow, rural roads are used regularly for recreational purposes, including jogging, cycling, horseback riding, and training by the Landrum High School cross-county teams;
  - Evidence that RVs (8.5 feet to 9 feet wide) cannot physically and safely fit, especially with oncoming RV traffic, on the very narrow roads to/from Exit #1 of I-26 to/from the proposed park;
  - Photograph of a school bus going off the road to pass an oncoming school bus near the entrance to the proposed RV park on Landrum Mill Road, which is 17'4" wide;
  - Photograph of a car going off the road to pass an oncoming pickup truck on Fairwinds Road, which is 16 feet wide;
  - Photographs of the subject roads which have no shoulders and are bordered by 3 to 4 feet deep ditches; and
  - Information about the questionable sufficiency of the developer's fire suppression plan.

- The Commission violated the Freedom of Information Act by locking citizens out of its regularly scheduled meeting on March 7, 2023.

- The Commission reviewed the wrong and incorrect site plans from a prior application.

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- The Commission failed to vote in open forum on a Request for Public Hearing by 449 Concerned Citizens.

- The Commission Vice Chairman made improper introductory remarks which were prejudicial and improper and which preceded review and deliberation by the Commission members.

- The Commission failed to consider the required statutory criteria and violated the State Planning Act, the Comprehensive Plan for Spartanburg County Land Use Goals and Objectives ("Comprehensive Plan"), and the ULMO.
    - The Commission failed to follow and respect the policy and purpose of the State Planning Act, the ULMO, the Comprehensive Plan, and the Mission Statement of the Planning and Development.
    - The Commission ignored public health, public safety, general welfare, and the private property rights of citizens in the roads of ingress and egress to the proposed RV park;
    - The Commission ignored threats to public health and safety including citizens' drinking water (wells and public water system) and fire suppression (densely wooded conservation area).
    - The Commission disregarded the fact that about 2 miles of the roads for primary ingress and egress to the proposed RV park are privately owned and are wholly contained within property under private conservation easement with Upstate Forever.
    - The Commission disregarded the criteria of harmonious and compatible development, including the fact that the RV park parcel is surrounded by 5,000 acres which represent the largest formal conservation area in the Upstate with conservation easements and conservation-focused covenants and restrictions.

- The Commission violated the fundamental principles of due process as set forth in the United States Constitution and the SC Constitution.
    - The Commission denied citizens a meaningful opportunity to be heard.
    - The Commission unlawfully disregarded the Constitutional rights and private property rights of citizens who own the roads that are the primary GPS routes leading directly to the entrance to the proposed RV park.

- The Commission refused to allow Concerned Citizens to correct information, note misrepresentations, and to provide information on health, safety, general welfare, and private property rights.

- The errors, violations, and unlawful actions of the Commission are also derivative of and attributable to actions, errors, and misrepresentations to the Commission by the Spartanburg County Planning and Development Department and the Spartanburg County Administration. These include violations of the State Planning Act, the ULMO, and the SC Freedom of Information Act.

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Concerned Citizens provided packets of material and relevant information to each Commissioner at the March 7, 2023 meeting. Before the meeting started, the packets were placed at each Commissioner's chairs but were wholly and unlawfully disregarded by Commissioners. The packets contained the following items:

- Road Safety Audit: an expert engineer's review of proposed RV traffic on the primary route to/from the park; the road safety engineer concluded that "siting an RV park at 1970 Landrum Mill Road **"adds additional danger to already dangerous roads;"**

- Photographs of roads which are the primary route to the RV park: vehicles going off the very narrow roads to pass other oncoming vehicles, including school buses near the RV park entrance on Landrum Mill Road (17'4" wide); and an RV stuck on Racetrack Road (16' wide) where it could not make the turn toward I-26;

- Developer's Traffic Impact Analysis: an engineer's projection for 75,190 vehicles per year to be added to Landrum Mill Road and other private roads from the RV park;

- ULMO Section 3.13: the requirements for public water, comfort stations, approved DHEC septic system, and preservation of natural features and landscape;

- DHEC Regulation 61-51: the requirement that public swimming pools be supplied from a Public Drinking Water System;

- The County's Blank Online Application for Development: illustrates differentiation between water and well selection; the form states "water or well" and reiterates this difference in a drop down box;

- The DHEC Board's Final Agency Decision (3 pages) rescinding the developer's septic permit; and

- The Request for Public Hearing submitted by 449 Concerned Citizens on February 28, 2023.

For all the reasons set forth herein, the Concerned Citizens request reconsideration of the Conditional Approval of the above noted major development on March 7, 2023. Concerned Citizens offer the following in support of their request.

A. THE PLANNING COMMISSION VIOLATED SPECIFIC REQUIREMENTS OF THE ULMO.

Specific requirements of Section 3.13 of the ULMO were violated by the Commission in its Conditional Approval and the staff in its recommendation for the above project. Concerned Citizens have previously informed the Commission and the staff of these provisions and these violations, but here is what we would have summarized for the Commission had we had a chance to explain these violations to it:

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1. "**SEWER OR OTHER SYSTEM APPROVED BY DHEC**:" For an RV park, Section 3.13(8) provides that "each park site shall be serviced by . . . sewer or other systems **approved by DHEC**." This is mandatory.

   a) The septic system contained in the development plan was **rejected by the DHEC Board as having only one-half the capacity that is required for this development.** The DHEC Board is the highest authority and the governing authority at DHEC. It is the highest authority for public health and the environment in S.C. state government, with its members appointed by the Governor and approved by the S.C. Senate.

   b) The septic system for this development has been rejected by DHEC, **not "approved by DHEC."**

   c) The DHEC Board rejected this septic system not for some minor reason but as being severely inadequate and inappropriate for this development.

   d) The Commission accepted without question the statement by the developer's counsel that the Administrative Law Court had ruled against the DHEC Board's decision. But the Administrative Law Court did **NOT** address the determination of the DHEC Board that the septic system was severely inadequate. The Administrative Law Court only ruled on legalistic and procedural grounds that the request for the DHEC Board to review the permit was filed too late. The DHEC Board did not agree and addressed the system itself.

   e) As the record stands today, the septic system for this development has been rejected by DHEC, regardless of the issue of timing of a paper filing. **Therefore, this septic system and this development plan violate the County's own ordinance.** Pending litigation over whether a particular piece of paper was filed timely or late does not address the substance of the DHEC Board's determination.

   f) The Commission Vice Chairman mistakenly thought that all that mattered was the legal posture of the subsequent legal wrangling in reviewing the DHEC Board's decision; but those legal fights are based purely on technical procedural issues, and those legal proceedings have not questioned the substantive decision of the DHEC Board that the septic system for this development has only half the capacity that it should have. But the County ordinance is understandably not written just to follow some legalistic technical process. It **requires a system "approved by DHEC."** This system has been **rejected by DHEC's highest authority as severely inadequate**. See the attached Final Agency Decision of the DHEC Board.

To protect public health and safety and to follow the law, the Commission could not approve this development plan, yet it went ahead and did so in haste and without hearing fully from the Concerned Citizens about the many problems with this development plan.

Staff failed to present the complete and accurate status of the septic permit to the Commission. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

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The Commission violated this very clear requirement of the ULMO that the developer have a septic permit "approved" by DHEC. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, not based upon competent evidence, in clear abuse of its discretion, and unlawful.

2. "**COMFORT STATIONS:**" For an RV park, Section 3.13(4) provides that **"no site shall be located...less than 300 feet from a comfort station."** This is mandatory.

   a) A comfort station is a "bathroom" or "restroom." A comfort station is not an RV sewer connection hose as suggested by the developer to the staff.

   b) Concerned Citizens noted that there were no comfort stations on any of the developer's site plans posted by the County on March 3, 2023. Concerned Citizens emailed staff on March 6, 2023. Staff did not reply. (See attached emails.)

   c) The proposed RV park will have sites for 49 RVs and an additional 75 parking spaces for other vehicles. The number of park patrons in part illustrates the public health reason for a comfort station/restroom. Up to 75 carloads of patrons will be in the park without a camper containing a toilet.

   d) At the Commission meeting, staff arbitrarily and unlawfully recommended a waiver of the comfort station/restroom requirement. This is a public health issue and contrary to the public interest, which the Commission and staff chose to unlawfully disregard.

   e) The Commission never questioned this arbitrary and unlawful waiver of the requirement for a comfort station/restroom, and it never inquired as to who authorized this waiver of a specific ULMO requirement.

   f) The elimination of a comfort station is a variance and waiver of ULMO Section 3.13(4). Notice and a public hearing are required by Art. III, Public Hearings, Section 2 of the Commission's Rules and Procedures. The variance and waiver were arbitrarily and unlawfully decided by the staff. The Commission acted arbitrarily and unlawfully in failing to follow the proper procedure for deviations from the specific ULMO requirements.

   g) In 2021, **staff informed the developer that a comfort station must be included "or we will not be able to approve the plan" per ULMO 3.13.(4).** (See attached 2 emails from Brandy Blake, Planning and Development Department, to the developer's engineer in 2021.)

The staff's recommendation to conditionally approve this project without a comfort station and to summarily disregard this ULMO requirement was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

In fact, the evidence is that the Planning and Development Department previously informed the developer that the County would "not be able to approve the plan" without the inclusion of a comfort station/restroom at the RV park.

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Concerned Citizens were denied the opportunity to speak and address the Commission on this public health issue and the spontaneous and unlawful variance by staff regarding the comfort station/restroom requirement of the ULMO. The decision by the Commission to waive this requirement of the ULMO Section 3.13(4) was completely arbitrary and not supported by substantial evidence. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

3. **"PUBLIC WATER:"** For an RV park, Section 3.13(8) provides **that "Each park site shall be serviced by public water."** This is mandatory.

   a) The County's blank application for a major site plan **differentiates between public water and a well**. (See attached blank application form.) A copy of the blank application was provided by Concerned Citizens to each Commissioner in a packet before the meeting started and was ignored.

   b) The application form requires the applicant *to select between "water or well."*

   c) The requirement of public water is a public health issue.

   d) Public water (piped with pressure) is a critical component of an adequate fire suppression system.

   e) The developer stated in its application that its "water source" was "ICW" (Inman Campobello Water District), which is piped water from a public water district system. This is a significant inconsistency. Yet, the Commission approved a "well."

   f) **For purposes of ULMO compliance, a well is not public water**. The common meaning of "public water" is piped water from a public water district system. The blank application form fully supports this meaning of "public water" by differentiating "water" or "well" in the selections to be made on the form.

   g) In fact, the developer's DHEC septic permit is based upon "public water" and not a well. On the agency's form application, DHEC provides a box to check for "public water" **or** "well. The developer **checked "public water"** on its application. The developer also stated that there will be "**2 public restrooms**" on the septic permit application. The developer has now made significant modifications: changing to a well for its water source and eliminating all rest rooms. (See attached application by the developer to DHEC for its septic permit.)

   h) The situation presents a public health and public safety matter in Spartanburg County. Potential negative impact of a commercial well on nearby residential and agricultural wells is also posed. Concerned Citizens have consulted with a hydrogeologist on this issue.

   i) DHEC does not have jurisdiction over what source is required for water for a local land development. That is within the power of local government. ULMO Section 3.13(8) is controlling as to what water source is required for the RV park.

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j) The septic permit issued by DHEC on June 22, 2021 contains a condition:

> **"Any changes to the system must be approved by DHEC. Any unapproved changes will *VOID* this permit."** (See attached septic permit).

k) The developer has **changed its water source from public water to a well and deleted the 2 public restrooms.** Any modification to the developer's permit must be approved by DHEC. Absent DHEC's approval of these modifications, the permit is VOID. The Commissioners asked questions about staff discussions with DHEC but did not inquire whether these changes had been approved by DHEC.

l) The failure of the staff to require proof from the developer of DHEC's approval of these 2 significant changes in the septic permit was in error and unlawful.

Concerned Citizens were denied the opportunity to speak and address the Commission on this public health and safety issue.

The staff's recommendation to disregard this ULMO requirement for "public water" was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

The Commission must enforce the County's requirement that an RV park must be supplied with "public water" as set forth in ULMO 3.13(8). The Commission's action to grant Conditional Approval with a well as the water source and to disregard the explicit requirement of the ULMO for "public water" was arbitrary, unreasonable, is not supported by substantial evidence, poses a public health risk, poses a public safety (fire) risk, and is unlawful.

4. "**NATURAL FEATURES and LANDSCAPE:**" For an RV park, Section 3.13(2) provides that **"The site shall be developed in a manner that preserves natural features and landscape."** This is mandatory.

a) The proposed RV park is located immediately adjacent to the largest parcel under private conservation easement with Upstate Forever. The parcel is surrounded by thousands of acres of land with private conservation easements and conservation-focused covenants and restrictions.

b) Threatened species of plants exist on the site. Hexastylis naniflora (Dwarf Flowered Heartleaf) is a federally-protected threatened species and a high priority species in South Carolina's State Wildlife Action Plan. (See attached reports: Terra Incognita-L.L. Gaddy and Mountains to Sea Ecological, which identifies "several hundred clumps" of the dwarf heartleaf on the embankments on both sides of Goldmine Creek, which flows through the RV park parcel.) The developer has not conducted a survey to locate the plants on the site and has not conducted a study to determine what must be done to preserve these natural features on the site or to prevent adverse impact on plants off the site and downstream. The development plan contains absolutely nothing to preserve these natural features or these parts of the landscape, and there is no mention of these natural features or the landscape in the conditions.

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c) In fact, the current plan includes a detention pond which is to be built very near the stream and land disturbance and construction on the hillside. **It is obvious that this plan will destroy federally-protected and state-listed plants or their habitat or both.**

d) In addition, Goldmine Creek, which runs along the property, is a high-quality Piedmont headwaters stream that provides habitat and clean water for this species as well as the Ashy Hydrangea, another rare species listed in the State Wildlife Action Plan. Again, nothing in the development plan or the conditions provides for protections of this special water resource or for its function as an essential part of the habitat for these rare species downstream.

e) Goldmine Creek is a first-order, freshwater tributary of the North Pacolet River, which feeds into Lake Bowen and the Spartanburg water supply. The creek is one of the last few "pure streams" in the State. Stormwater and runoff issues exist with the proposed RV park. Also, the discharge of odor suppressing chemicals from RV wastewater holding tanks into a septic system above this creek is a major pollution concern.

f) Four conservation organizations have joined in this matter to protect the natural resources and environment from the harm which this RV park poses: Upstate Forever, the South Carolina Environmental Law Project, the Southern Environmental Law Center, and the South Carolina Native Plant Society.

g) Staff and the Commission failed to address this requirement of the ULMO in its review of the application. The staff had been made aware of this parcel being located in a conservation area and next to Goldmine Creek in 2021 and continued to ignore these facts of the rare plant species and of Goldmine Creek.

The staff's failure to address this ULMO requirement in its review of the application was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

Concerned Citizens were denied the opportunity to speak and address the Commission on this requirement of the ULMO. Concerned Citizens were denied the opportunity to provide an ecological report identifying the federally-protected and state listed species of plants as well as the unique environmental conditions of Goldmine Creek. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

5. **RV NOT TO BE USED AS RESIDENCE:** ULMO Section 3.03-2 states that **an RV may not be used as a residence** for more than 90 days within a 12-month period and only while building a residence on site.

   a) The developer's application states that "The business will have one employee," i.e., the "work camper" or "camp host" living onsite in an RV to check guests in and out and take payments.

   b) The developer stated in the application documents that she will be living on-site in an RV to manage the RV park for the first 6 months. No residence is being constructed.

c) Staff arbitrarily and unreasonably failed to enforce this ULMO provision in reviewing the specifics provided by the developer in its application.

d) This is a violation of the ULMO Section 3.03-2 and constitutes a staff error to overlook this provision.

The staff's failure to address this ULMO requirement in its review of the application was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

Concerned Citizens were denied the opportunity to speak and address the Commission on these requirements of the ULMO. The violation of these requirements of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

B. THE COMMISSION VIOLATED ITS OWN RULES OF PROCEDURE.

1. SC Code 6-29-360 and the Planning Commission Rules and Procedures were violated at the Commission Meeting on March 7, 2023. Section 7 of the Commission's Rules, which must be adopted and followed per the State Planning Act, SC Code 6-29-360, provides:

> "Except for public hearings, no person other than Commission members and appointed staff shall speak at a Commission meeting **unless recognized by the Chairman and invited to speak.** All persons speaking shall state their name for the public record."

State law and the Commission's Rules and Procedures were violated by permitting the developer's attorney to speak without being recognized, invited, or sworn, and no time limit was imposed upon him.

The Commission Rules and Procedures were also violated by imposing a limitation on which person(s) could speak on behalf of the 80-100 Concerned Citizens who were present, when a few planned to request to be invited to speak as provided in the Commission Rules and Procedures.

a) During the staff presentation of this application to the Commission, Vice Chairman McCall stated the developer's "engineer" would be allowed to speak.

b) Vice Chairman McCall then allowed the developer's attorney, Alex Shissias, to speak and address the Commission on multiple issues. The developer's attorney walked from the back of the room to the podium and took the microphone.

c) The developer's attorney was allowed by the Vice Chairman to speak and to present detailed statements and opinions to the Commission related to the DHEC septic permit, on-site well drilling, obtaining a public water line, opposition from residents, action by the State Administrative Law Court regarding the septic permit issued in June 2021, and legal proceedings. The developer's attorney advised the Commission that a septic permit need not be specified as a new condition for approval.

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d) The developer's attorney did **not ask to be recognized, was not invited to speak by the Vice Chairman, was not sworn in, and no time limit was imposed upon him.** This was all in violation of the Commission's Rules and Procedures.

e) The developer's attorney may not have even stated his name or identified himself as the developer's attorney. Concerned Citizens are seeking an audio recording of the meeting to confirm.

f) The RV park developers' attorney was seated at the Commission meeting next to the developers, William A. McDaniel and Kimberli Burnett, managers of Blue Sky Associates, LLC. William A. McDaniel is well known to officials and staff within County government. Mr. McDaniel has been appointed by County Council to sit on a County Board for multiple terms since 2019. Mr. McDaniel was also appointed by County Council in 2020 to serve on an ad hoc committee with several other County Councilmen concerning water issues in Lake Bowen.

g) Several days prior to the meeting, a Concerned Citizen emailed Chairman Kennedy and Vice Chairman McCall and requested that a few Concerned Citizens and he be allowed to speak in accordance with the Commission Rules of Procedure. (See attached email from William P. Mills, Jr.) The Commissioners did not reply.

h) On March 3, 2023, the County posted a new site plan dated March 1, 2023 which increased the site for this RV park by 250%. The March 1 site plan significantly altered prior plans dated February 7 and February 16, 2023. Citizens were not allowed to speak or ask questions about this major increase in size of the park being announced 2 business days before the Commission meeting. The Commission did not inquire about this significant increase.

i) At the meeting, Vice Chairman McCall first announced that he would not allow Concerned Citizens to speak. After the matter was tabled to the end of the meeting, Vice Chairman McCall stated that he would allow Russell Rock, a Concerned Citizen, to speak for 5 minutes, but Mr. Rock would not be allowed to ask any questions. Mr. Rock was not prepared to speak and asked to yield the allotted 5 minutes to other Concerned Citizens who had prepared to speak on specific issues including the septic permit litigation update and road safety. Vice Chairman McCall denied the request stating, "You and only you."

j) Mr. Rock requested that Concerned Citizens be allowed to provide useful information to the Commission so that it could make a "well-reasoned, informed decision" as to the proposed RV park.

k) Vice Chairman McCall asserted that no other Concerned Citizens would be allowed to address the Commission and refused information from Concerned Citizens about the many issues, including private ownership of the roads, misrepresentations, errors by staff, accurate status of the septic permit, road safety report, health, safety, and non-harmonious and incompatible development in the subject agri-residential conservation area.

l) Mr. Rock did not know all of the Concerned Citizens in attendance and did not know what they may have wished to speak to the Commission about.

m) Mr. Rock swore himself before speaking.

n) Vice Chairman McCall imposed a 5-minute time limit on Mr. Rock.

o) Vice Chairman McCall cut Mr. Rock off at the 5-minute mark.

2. The Commission allowed the developer's attorney to speak and present information and opinions. Yet, the Commission unlawfully constrained Concerned Citizens and ignored their Constitutional rights to be heard on critical safety and health issues as well as private property rights (ownership of roads which are the route to/from the RV park).

These actions violated the Citizens' Constitutional rights, the Planning Commission Rules and Procedures, the State Planning Act, and the ULMO. These actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

C. INCORRECT AND INCOMPLETE INFORMATION WAS RECEIVED BY THE COMMISSION ON ROAD SAFETY. THE COMMISSION ERRED IN GRANTING CONDITIONAL APPROVAL WITHOUT ADEQUATELY ADDRESSING PUBLIC SAFETY.

1. The Commission improperly conflated 2 separate reports dealing with traffic flow and road safety.

a) In open discussion, the Commissioners confused the developer's Traffic Impact Analysis ("TIA") and the separate Road Safety Audit.

b) These are 2 <u>separate</u> reports. (See attached pages from the TIA and the Road Safety Audit.)

c) The TIA simply addresses projected volume and direction of traffic generated from the RV park.

d) The 10-page Road Safety Audit by J.M. Teague Engineers assessed the hazardous impact ("danger") of RVs on the narrow roads that are the direct GPS routes to and from the proposed RV park. RVs will not physically fit on the 16-foot-wide roads, which are <u>owned</u> by citizens whose properties include the roads.

e) Richie Smith, County Development Coordinator in the Stormwater Department, addressed the TIA, and said there was no problem. He <u>did not address the Road Safety Audit</u>.

f) From the dialogue between Commissioners and Mr. Smith, it was clear that there was confusion about the separate Road Safety Audit.

g) Incorrect, incomplete, and misleading information was presented to the Commission by staff.

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h) Concerned Citizens were not allowed to speak and address this incorrect, incomplete, and misleading information and clarify that the TIA and Road Safety Audit were separate.

i) The Road Safety Audit was provided by Concerned Citizens to each Commissioner in a packet, which Commissioners wholly ignored and disregarded at the meeting.

j) The Road Safety Audit was given to several County staff members, including the County Administrator, 3 County Councilmen, and the County Attorney in August 2021 at a community meeting. The road safety engineer presented his findings in person. This written Road Safety Audit is in the County's possession and has been for 18 months.

k) It was evident at the meeting that the Commissioners were not provided with the Road Safety Audit by staff.

l) In the Road Safety Audit, the qualified road safety engineer concluded that that RV traffic from the proposed RV park over the only routes to/from the park **"adds additional danger to already dangerous roads." These roads are privately owned by the citizens.**

m) This poses a major danger to health, safety, and general welfare of all persons using these privately owned roads for travel and daily recreational purposes, including jogging, cycling, horseback riding, and training by the Landrum High School track team.

n) Concerned Citizens were denied the opportunity to speak and address the Commission on this major public safety issue involving their privately owned roads. Concerned Citizens attempted to present photos (contained in the packet for each Commissioner) of a school bus going off Landrum Mill Road (17 feet wide) onto the shoulder to pass another bus as well as a car and pickup truck not being able to stay on the pavement next to ditches on another narrow, privately owned road (16 feet wide). These roads are the primary GPS routes to and from I-26 to the RV park. RVs cannot physically fit and present a major safety hazard on these roads, especially with no shoulders, deep ditches, steep slopes, blind curves, and hills.

2. Concerned Citizens submit that the Commission must consider the Road Safety Audit in its deliberations on this project pursuant to the US Constitution, SC Constitution, the State Planning Act and the ULMO. Specifically, the State Planning Act's purpose and policy imposes a duty upon the Commission to promote "safety."

3. To ignore these road conditions and expert findings regarding the significant danger and hazards of the proposed RV park traffic is in conscious disregard of the rights of citizens, public safety, and public well-being.

4. The Commission totally and unlawfully disregarded the citizens' private property rights/ownership in the subject roads which will be saddled with major hazards from RVs and park traffic.

The Commission deliberated upon erroneous, incomplete, and misleading information presented to it by the staff. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

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The Commission erred in granting Conditional Approval of the plan without fully addressing public safety and private property rights. The actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, not based upon competent evidence, and unlawful.

D. THE COMMISSION TOTALLY DISREGARDED THE FACT THAT CONCERNED CITIZENS OWN THE SUBJECT ROADS. MILES OF THESE ROADS ARE IN LANDS UNDER CONSERVATION EASEMENT WITH UPSTATE FOREVER.

1. The proposed RV park is located on Landrum Mill Road. The commercial traffic to/from the RV park, including large RVs, will travel on Landrum Mill Road.

   a) Citizens **own to the center line of Landrum Mill Road**, except for a few feet at the RV Park entrance.

   b) About one-half mile of Landrum Mill Road at the RV Park entrance is owned to the center by Greenspace, LLC and **under formal conservation easement with Upstate Forever.**

2. **All portions** of the roads which are the GPS routes to/from I-26, Exit #1 to/from the RV park, are **privately owned.**

   a) These roads include Turkoman Trail, Racetrack Road, and Fairwinds Road.

   b) Turkoman Trail and Racetrack Road are about 2 miles long, totally contained within Greenspace, and are **under private conservation easement with Upstate Forever.** These roads are used for recreational purposes and include trails which cross over the roads.

   c) These roads are 16 feet wide and present hills, steep slopes, curves, no shoulders, and deep ditches. These roads are not safe for RV traffic as concluded by a qualified road safety engineer.

   d) The county maintains these roads for habitual, low-volume, rural-residential traffic under a prescriptive easement, as asserted by the county.

   e) The RV park will add 75,000 vehicles per year, including large RVs with vehicles in tow, to these roads per the developer's traffic projections.

3. This enormous volume of commercial traffic consisting of large RVs will unlawfully interfere with the road owners' private property rights and is non-harmonious development. Such traffic would not be habitual, not be low-volume, and not be rural-residential. Such RV park traffic would be high-volume commercial, for-profit traffic which exceeds, abuses, and overburdens any prescriptive easement claimed by the county, particularly through a formal conservation area. Such traffic would not be compatible use of the privately owned, rural-residential roads as set forth in the Comprehensive Plan.

4. This enormous volume of commercial traffic consisting of large RVs would pose an undue and

unreasonable liability and insurance burden on the road owners particularly with the road safety engineer's opinion concerning the danger posed by RV traffic with road conditions.

5. Concerned Citizens were denied the opportunity to present information on their private property rights and road ownership to the Commission. The county is totally aware of private ownership of the roads. This issue was addressed in 2021 in the Road Safety Audit, which was provided to multiple members of county staff in person. The staff failed to present this information to the Commission on March 7, 2023 and misrepresented to the Commission that there was "no problem."

The Commission disregarded the fact that the subject roads are privately owned and refused to allow citizens to present this information on March 7, 2023. These actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, not based upon competent evidence, and unlawful. The actions by the Commission to deny due process to Citizens and disregard private property rights is a violation of the United States Constitution and the SC Constitution.

E. THE SC FREEDOM OF INFORMATION ACT WAS VIOLATED: Citizens were locked out from the Commission Meeting.

1. Section 30-4-60 of the SC Freedom of Information Act ("FOIA") was violated by the County Administration, County Staff, the County Attorney, and the Commission at its regularly scheduled meeting on March 7, 2023.

   a) At the meeting, the Commission moved the RV park matter to the end of the agenda. There were 80-100 Concerned Citizens in attendance who were hoping for a meaningful discourse on the key issues.

   b) Upon this change in the agenda order, about half of the Concerned Citizens stepped into the hall outside of chambers.

   c) Many Concerned Citizens were then locked out and refused re-entrance to the meeting by a uniformed guard/officer.

   d) The doors to the County chambers were locked so as to prohibit entering from the hall.

   e) The County Attorney was present at the Commission meeting and acted to oversee the procedures at this meeting. Other County staff members were also present.

   f) When Concerned Citizens knocked on the door, a uniformed guard/officer refused to let them enter and stated that the meeting had to be finished (without them entering).

   g) About half of the Concerned Citizens, many who are senior citizens, left when the RV park item was moved to the end of the agenda by the Commission and re-entry was denied.

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2. The open meeting provision of the SC Freedom of Information Act, Section 30-4-30, provides that every meeting of all public bodies "shall be open to the public" unless closed pursuant to specific provisions of the Act.

   a) This statute was violated, and actions taken by the Commission at the March 7, 2023 meeting may be deemed null and void.

   b) SC Code 6-29-360 and the Planning Commission Rules and Procedures (Art. II, Section 2-Compliance with SC Freedom of Information Act) were also violated.

Concerned Citizens have filed a complaint about this FOIA violation with the SC Attorney General's office.

F. THE PLANNING COMMISSIONERS WERE GIVEN INCORRECT SITE PLANS (from 2021) FOR THEIR DELIBERATIONS ON MARCH 7, 2023. THIS CONSTITUTES ERROR IN THEIR REVIEW AND DECISION.

1. At the meeting on March 7, 2023, the Commissioners were to review a new application submitted by the developer on February 7, 2023 for its proposed RV park. From all indications, the Commissioners reviewed incorrect site plans from a prior application in 2021, which contained errors about ownership of the roads (owned by citizens) and a misrepresentation about a non-existent right of way. This misrepresentation was acknowledged by the County in 2021.

   a) The developer previously applied for development of this RV park on the same parcel in February 2021 with site plans dated February 24, 2021. Those 2021 site plans are substantially different from the March 1, 2023 site plans.

   b) Of utmost importance, **the 2021 site plans contain a material misrepresentation of a non-existent right of way (for a water line). This misrepresentation was acknowledged by the County**.

   c) On July 13, 2021, the Director of Public Works wrote to the County Attorney that the site drawings contained a "misrepresentation of the ROW along Landrum Mill Road," and that needs to be "corrected." (See attached County internal email communication.)

   d) A condition of the Conditional Approval of March 7, 2023 was that that the prior 2021 application be withdrawn. The 2021 application was not on the Commission meeting agenda for March 7, 2023.

   e) After the March 7, 2023 meeting concluded, Concerned Citizens observed and picked up full-size site plans which were left behind by the Commissioners on the table at their chairs. **These site plans are dated February 24, 2021.** Concerned Citizens did **not** observe any site plans dated **2023** on the table in front of the chairs.

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f) In 2021, the February 24, 2021 site plans were acknowledged by the County to contain a misrepresentation. The plans contain a **material misrepresentation** of private property rights and a non-existent right of way.

g) Concerned Citizens are informed and believe that the County staff presented **these incorrect and misleading site plans from 2021, which contained a critical error**, to the Commission on March 7, 2023 for its deliberations. On July 6, 2021, Concerned Citizens alerted the Commission to the critical misrepresentations in these and other site plans, and the County internal communication about the misrepresentations followed a week later on July 13, 2021.

h) The fact that the Commissioners had the February 2021 site plans in front of them raises the question as to whether they were reviewing the proper site plans associated with the 2023 application under deliberation.

i) Concerned Citizens are informed and believe that the Commissioners were given the wrong site plans by County staff and that the Commissioners did not properly deliberate upon the March 1, 2023 site plans for the pending application.

2. If the Commissioners did not have the correct site plans of March 1, 2023 to review and rather deliberated upon the incorrect plans of February 2021 with material misrepresentations, then the Commission erred. The Conditional Approval issued by the Commission on March 7, 2023 would be null and void as a violation of the State Planning Act and the ULMO.

3. Even if the Commissioners reviewed the 2023 plans, they should not have been given the 2021 site plans **which were acknowledged by the County (in an internal communication) to contain misrepresentations about private property rights, a non-existent right of way, and road ownership.** To review and deliberate upon incorrect site plans with misrepresentations was an error by the Commission. This error renders the Conditional Approval null, void, and unlawful.

4. Of equal importance about site plans: The site plans of March 1, 2023 were posted with the Commission's agenda on March 3, 2023. These site plans **increased the overall footprint of the proposed RV park by 250%** (15 acres to 38 acres). In its new 2023 application dated February 7, 2023, the developer submitted 3 or more sets of original and revised site plans. Concerned Citizens are aware of site plans dated February 7, 2023, February 16, 2023, and March 1, 2023. The later revised plan was posted by the County on March 3, 2023 on its website (Agenda Center) and contained the 250% increase in the size of the acreage to be used for the RV park.

   a) The 250% increase in size of the proposed RV park (posted 2 business days prior to the Commission meeting on the internet) was not discussed or considered by the Commission.

   b) No questions were asked by the Commissioners.

Concerned Citizens were not permitted to ask questions about this substantial increase in size of the proposed RV park footprint. The Commission's failure to address this last minute, major change in the site plans was in error and unlawful.

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G. NO VOTE WAS HELD IN OPEN FORUM WITH REGARD TO CONCERNED CITIZENS' REQUEST FOR PUBLIC HEARING.

1. On February 28, 2023, a written Request for Public Hearing was submitted by 449 Concerned Citizens **specifically to the Members of the Planning Commission**. The request was not based exclusively on the ULMO but also the SC Constitution and the State Planning Act.

   a) Prior to the start of the Planning Commission meeting on March 7, 2023, Vice Chairman McCall told Concerned Citizen Russell Rock that the Commission would not hold the requested public hearing.

   b) On March 3, 2023, Councilman Jack Mabry advised a constituent that there would not be a public hearing with the Commission and that "if it does not turn out, you can push it to the Circuit Court of Appeals."

   c) The Commission did not discuss, consider, or vote on the Citizens' Request for Public Hearing in open forum at the meeting on March 7, 2023.

   d) Despite repeated inquiries, Concerned Citizens have not been informed of who reviewed and made decisions on the 449 Citizens' Request for a public hearing pursuant to the SC Constitution, the State Planning Act, and the ULMO.

2. This action by the Commission violates the SC Freedom of Information Act (open meetings per SC Code 30-4-60) and the SC Constitution. This action is unlawful.

H. PREJUDICIAL AND BIASED REMARKS WERE MADY BY THE COMMISSION VICE CHAIRMAN.

1. Introductory remarks by Vice Chairman McCall at the Commission meeting on March 7, 2023 were prejudicial, inherently influential, and improper.

   a) At the beginning of the T Tree Farms RV park application coming up on the meeting agenda, Vice Chairman McCall made a general statement to the Commission, staff, and audience about **"this RV park <u>THAT IS GOING IN</u>."**

   b) This statement was highly prejudicial, biased, displayed a preconceived notion about approval, was not impartial and inherently influential. This remark by the Vice Chairman cast undue influence on the Commissioners <u>before</u> any presentation on the project by staff and <u>before</u> any deliberation by the Commissioners.

2. This improper, prejudicial, and biased remark by the Vice Chairman, who was the presiding officer conducting the meeting, tainted the Commission's deliberations. The Vice Chairman exceeded his function and duty to conduct the meeting. Outside of a formal discussion, the Vice Chairman is not authorized to express his personal opinions in the meeting. His improper, prejudicial, and conclusory remark renders the Conditional Approval and the vote thereon null, void, and unlawful.

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I. THE PLANNING COMMISSION VIOLATED THE STATE PLANNING ACT, THE COMPREHENSIVE LAND USE PLAN, and the ULMO.

1. The County is required by the State Planning Act, Section 6-29-510, to implement its Comprehensive Plan and to establish a planning commission to function for a specific purpose.

   a) In granting Conditional Approval, the Commission violated the State Planning Act by not following the policy, purpose, and requisite elements of the State Planning Act, the Comprehensive Plan, and the ULMO. These elements include a natural resources element, community facilities element (water supply, sewage system/wastewater treatment), and land use element (consideration of existing land use).

   b) The State Planning Act requires the County to adopt and implement its Comprehensive Plan. That plan requires the County to use measurable criteria to limit the impact of adjacent land uses on one another and consider incompatibility resulting from traffic, noise, light, intensity of use, visual impact, and environmental impact. A stated goal of the Comprehensive Plan is to "prohibit intense incompatible nonresidential development from location on roads where the majority of the activities are residential." The Staff Recommendation to the Commission did not contain any of these evaluations, and the Commission failed to review, evaluate, and deliberate on the application with consideration of these criteria. This failure to so act violates the State Planning Act.

   c) The Mission Statement of the Planning and Development Department is "to plan comprehensively for the orderly growth and harmonious development" of Spartanburg County. The Commission disregarded its mission, policy, and purpose to plan for "harmonious" development and refused to allow citizens to provide information about their agri-residential area, which is immediately adjacent to and surrounds the proposed RV park. The land that surrounds the proposed RV park is a 5,000-acre conservation-focused area with thousands of acres under formal, private, conservation easements with 2 land trusts. These lands are subject to deeded, conservation-focused covenants and restrictions. The commercial RV park is NOT harmonious and compatible development in this area. This violates the State Planning Act and the ULMO.

   d) Under State law, the County's ULMO, the county's land development program is implemented by the Commission and must promote public health, safety, and general welfare. The Commission unlawfully failed to consider public health, safety, and general welfare in its review and deliberations on the subject application.

   e) The Commission's Conditional Approval does not promote public health, safety, and general welfare. On the contrary, the Conditional Approval poses a threat to these elements. The septic permit and septic system pose a threat to public health as determined by the State DHEC Board. The septic system poses a threat to the environment and the federally-protected threatened species on and near the RV park parcel. The RVs on the roads owned by Concerned Citizens pose a threat to public safety and add "additional danger to already dangerous roads" as determined by a road safety engineer. This violates the State Planning Act and the ULMO.

f) As a matter of public safety, the Fire Plan for this proposed RV park warrants further review. Concerned Citizens were not given time to speak and address this at the Commission meeting on March 7, 2023. Local engineers reviewed the plan. On its face (with 3,000 gallons of water in an underground storage tank that is not pressurized, dry hydrants, and no public water to the site), the plan appears insufficient for an RV park. Concerned Citizens recently received a copy of the Fire Plan and must be afforded a reasonable opportunity to review the plan for adequacy. The safety and properties of Concerned Citizens are at stake. To prevent Citizens from providing input on the issue of fire suppression for this large commercial RV park development is a violation of their Constitutional rights, the State Planning Act, and the ULMO.

2. The Commission violated specific requirements of the State Planning Act and the ULMO in its Conditional Approval of this major land development. The Commission disregarded information and competent evidence from Concerned Citizens and other sources concerning these requirements.

The Commission's decision was arbitrary, not supported by competent evidence, and is unlawful.

J. CITIZENS' RIGHTS TO DUE PROCESS WERE VIOLATED.

1. The South Carolina Constitution, Article I, Section 22 provides:

> "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard."

2. The United States Constitution imposes constraints on governmental decisions which deprive individuals of liberty or property interests.

3. The fundamental requirements of due process include notice and an opportunity to be heard in a meaningful way.

4. The Commission has the duty to afford Concerned Citizens their Constitutional rights including due notice and an opportunity to be heard in meaningful way.

5. The Vice Chairman summarily and unlawfully denied the request of 449 Concerned Citizens for a Public Hearing and further denied the requests of many Concerned Citizens to be heard at the March 7, 2023 meeting. If time constraints were an issue, the Commission should have rescheduled this major land development application to another date and given Concerned Citizens the opportunity to speak and be heard.

6. The Commission failed to afford Concerned Citizens their fundamental Constitutional rights under the United States Constitution and the South Carolina Constitution. The Conditional Approval granted by the Commission is unlawful.

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7. The Commission violated its own Rules and Procedures. Commission Rules, Art. III, Public Hearings, Sections 2.3 provide that a public hearing before the Commission is a "forum for people interested in the subject matter to present information to the Commission for their consideration as they deliberate an issue." Concerned Citizens were not afforded a public hearing by the Commission.

REQUEST FOR RECONSIDERATION

In summary, the State Planning Act provides that the function and duty of the Commission is to promote public health, safety, and the general welfare of its area of jurisdiction. The Commission is obligated to perform that duty.

The actions of the Commission at the meeting of March 7, 2023 and review of the above application failed to comply with the State Planning Act as well as the United States Constitution, the South Carolina Constitution, the SC Freedom of Information Act, and the ULMO. The actions of the Commission on March 7, 2023 were in error, arbitrary, not supported by substantial, credible evidence, and unlawful. The Commission breached its statutory duty, and the Conditional Approval of March 7, 2023 is unlawful.

This major land development poses a very real threat to citizens' safety, health, general welfare, private property rights, and the environment. Concerned Citizens have been denied their Constitutional rights. Concerned Citizens have also been denied the opportunity to provide correct, relevant, competent evidence to remediate the incorrect, misleading, and erroneous material and lack of proper information upon which the Commission deliberated.

The *South Carolina Guide to Land Use Planning*, which is published by the South Carolina Association of Counties, states that a local planning commission "serves as the citizen advisory group" to the County. A commission exists to carry out "a continuing planning program for the benefit of the community it serves." The Guide further notes that there is a need for public input and plans require a "close and continuous collaboration between citizens and local government."

Public safety is a valid concern and is a matter of public policy in any land development. Safety must be a consideration for the Commission as required by the policy and purpose of the State Planning Act as well as the ULMO. Many of Concerned Citizens <u>own the roads</u> which are the primary routes of ingress and egress to the park. The RV park traffic will flow over the private roads owned by Concerned Citizens and present real safety hazards and "danger" as identified by a qualified road safety engineer after a comprehensive, on-site study. Concerned Citizens will be directly impacted by the safety hazards imposed by the RV park traffic on their private roads, which are too narrow to physically and safely accommodate the RVs. Concerned Citizens will also be impacted by the additional traffic (75,000 vehicles per year) generated by the park. The Commission's Conditional Approval is in total disregard of the safety of Concerned Citizens and their property rights. Thus, the Conditional Approval is unlawful.

Health of citizens is a valid concern and is a matter of public policy in any land development. Public health must be a consideration by the Commission as required by the policy and purpose of the State

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Planning Act as well as the ULMO. The health of Concerned Citizens is irrefutably threatened by a septic system which the SC Board of Health and Environmental Control determined to be undersized and lacking capacity. The Board did not approve the permit but rather rescinded it, citing the State Pollution Control Act Section 101 (C) (real or potential threats to the health of citizens). The Commission is permitting a major land development to go forward with this deficient septic permit. The Commission's Conditional Approval is in conscious disregard of the rights and health of Concerned Citizens. Thus, the Conditional Approval is unlawful.

The environment and natural resources of the State of South Carolina are valid concerns and matters of public policy in any land development. The impact upon the environment, including federally-protected threatened plant species, pollution of citizens' drinking water wells, and pollution of the public drinking water system, must be a consideration by the Commission as required by the policy and purpose of the State Planning Act as well as the Federal Clean Water Act, the State Pollution Control Act, and the ULMO. The environment and citizens' drinking water are clearly threatened by the septic system proposed by the developer. The SC Board of Health and Environmental Control made that determination on December 21, 2021 when it rescinded the septic permit under the State Pollution Control Act. (This may be the first time in the State's history that the Board so acted to rescind a septic permit.) The odor suppressing chemicals used in RV wastewater holding tanks are harmful, contain carcinogens, and will be discharged into the ground above Goldmine Creek through an undersized, deficient septic system.. These harmful chemicals have been banned from use in RVs in other states and have been the subject of an EPA bulletin and numerous research studies. The Commission's Conditional Approval is allowing a major land development to go forward in conscious disregard of the environment, natural resources, and drinking water of this State. Thus, the Conditional Approval is unlawful.

The County Administration, the County Attorney, County Council, and the Commission seem to contend that no public hearing is required by the ULMO and that the citizens do not have a right to be heard in this matter solely based upon the ULMO. Such a contention supports the argument that the entire ULMO, Spartanburg County land development program, and Commission Rules and Procedures are unconstitutional and violate the fundamental principles of due process of the United States Constitution and the South Carolina Constitution.

This RV park project is not a routine land development application but yet was pushed forward by the County in 28 days. The Commission acted hastily and unlawfully disregarded many critical issues.

- An identified, serious threat to citizens' safety on the roads is involved.
- The largest private conservation area in the Upstate is involved.
- Identified, serious threats to citizens' health, drinking water, and the environment are involved.
- Federally-protected and State-listed threatened species of plants are involved.
- Development which is not harmonious and not compatible is involved.

- Violations of the mandatory provisions of the State Planning Act and ULMO are involved.
- Private property rights of citizens are involved.
- Of great importance, fundamental Constitutional rights of citizens are involved.

For the foregoing reasons and good cause:

We, the People, who are the affected and Concerned Citizens, request (1) that the Commission acknowledge the numerous errors and violations in its review of the subject application; (2) that the Commission immediately stay its Conditional Approval of March 7, 2023 until such time as the Commission can fully review and reconsider the issues raised herein in light of the irreparable harm being threatened to citizens' health, safety, private property rights, and the environment; and following such reconsideration (3) that the Commission declare its Conditional Approval of March 7, 2023 null and void. The Commission's Conditional Approval is unlawful, and too much is at stake to risk this project going forward at this time.

A reply to the above is requested from the Planning Commission Members to the person noted on the cover letter herewith.

Submitted By Concerned Citizens March 28, 2023

To: Planning Commission Members
Douglas C. Brackett, Secretary
Donna Turner Williams
Whit Kennedy, Jr., Chairman
James William Hamilton
James Les Green
Toby Mark McCall, Vice-Chairman
Lewis Allen Newman
Stewart Winslow
Francis Parker Champion

cc: Joan Holliday, Director, Planning & Development Dept.
Leigh McDonald, Planning Manager, Planning & Development Dept.
William A. McDaniel, Manager, Blue Sky Associates, LLC
Kimberli Burnett, Manager, Blue Sky Associates, LLC

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ATTACHMENTS

SECTION	DESCRIPTION OF ITEM
A-1	FINAL AGENCY DECISION OF DHEC BOARD - re Rescission of Septic Permit
A-2	EMAILS (2) FROM CONCERNED CITIZENS TO P & D - re omitted comfort station
A-2	EMAILS (2): FROM B. BLAKE, P & D, TO DEVELOPER - re Requirement of Comfort Station
A-3	COUNTY'S BLANK APPLICATION FORM: Differentiation between "Water OR Well"
A-3	DEVELOPER'S APPLICATION TO COUNTY: states a "well" as the water source and also states "ICW" (public water district) in contradiction as the water source
A-3	DEVELOPER'S APPLICATION TO DHEC FOR SEPTIC PERMIT - states *"public water"* as source
A-3	DHEC SEPTIC PERMIT – states *"any changes to system must be approved by DHEC"*
A-4	REPORT BY TERRA INCOGNITA – L.L. Gaddy- identifies federally-protected plant species
A-4	REPORT BY MOUNTAINS TO SEA ECOLOGICAL – identifies federally-protected plant species and characteristics of Goldmine Creek
B-1	EMAIL TO CHAIRMAN AND VICE CHAIRMAN: re Citizens requesting to speak at meeting
C-1	DEVELOPER'S TRAFFIC IMPACT ANALYSIS (TIA) (2 pages)
C-1	ROAD SAFETY AUDIT (Cover page)
F-1	INTERNAL COUNTY STAFF EMAIL – re "misrepresentations" on developer's 2021 Site Plans

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SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

Docket No. 21-RFR-81
T. Tree Farms RV Park (Blue Sky Associates, LLC)

This matter comes before the South Carolina Board of Health and Environmental Control ("Board") for final review pursuant to S.C. Code Ann. § 44-1-60. The Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc. ("Requestors") filed a request for final review of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") staff decision to issue Permit to Construct Onsite Wastewater System, File No. 2021040112 ("Permit) to Blue Sky Associates, LLC ("Blue Sky") for the construction of an onsite wastewater system. On December 20, 2021, the Board conducted a Final Review Conference regarding the matter. After hearing presentations from the Department, Requestors, and Blue Sky, the Board overturns the staff decision for the reasons stated herein.

BACKGROUND

On April 23, 2021, the Department received the permit application for the construction of an onsite wastewater system to serve the T. Tree Farms RV Park located at 1970 Landrum Mill Road in Campobello, South Carolina in Spartanburg County ("Site"). The onsite wastewater system was designed to treat and dispose of a limited quantity of domestic wastewater discharged from 52 lots located at the Site.

After conducting its review, the Department determined that the permit application met all aspects of S.C. Code Ann. Regs. 61-56, *Onsite Wastewater Systems* ("R. 61-56") and issued the

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Permit on June 22, 2021. The Requestors filed a request for review of the staff decision on October 14, 2021.

DISCUSSION

Pursuant to S.C. Code 48-1-100(c), DHEC is the state agency with jurisdiction over septic tanks. As authorized by S.C. Code 44-1-140(11), the Department promulgated S.C. Code of Regs. 61-56 ("R 61-56") to ensure onsite wastewater systems are appropriately designed to treat and dispose of domestic wastewater through a combination of natural processes that ultimately result in effluent being transmitted through the soil, renovated, and ultimately discharged to groundwater. The Department's review of onsite wastewater system permit applications is conducted in accordance with the permitting requirements set forth in R.61-56.

Pursuant to R. 61-56, onsite wastewater systems must be sized according to estimated peak sewage flow, as set forth in Appendix R of the regulation. Appendix R sets the peak sewage flow rate standards for campgrounds with no laundry and full water/sewer at 120 gallons per unit per day, but allows for the peak flow rate for non-residential facilities to be increased or reduced when comparable peak water consumption data for similar establishments in similar locations vary from the requirement. When considering such data, at least twelve (12) consecutive months must be presented with the maximum month of consumption and the days of operation per month being utilized to arrive at the peak flow rate.

In its permit application, Blue Sky presented consumption data for a KOA campground in Traveler's Rest, South Carolina ("KOA Campground") and calculations of a peak flow rate of 50.19 gallons per unit per day for the maximum month of consumption over a 12 month period. The Board finds that the KOA Campground is not a similar establishment to the proposed T. Tree Farms RV Park. Therefore, the peak flow rate standard utilized in designing the onsite wastewater

system in the permit application cannot be supported by the peak flow rate data for the KOA Campground.

CONCLUSION

After reviewing the written materials submitted to the Board, including the Administrative Record, and considering all arguments and evidence presented, the Board overturns and rescinds the staff decision in this matter.

Seema Shrivastava-Patel, Vice-Chairwoman
Board of Health and Environmental Control
For the Board

January 13, 2021

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From: Madelon Wallace <madelonwwe@aol.com>
To: Joan Holliday <jholliday@spartanburgcounty.org>; lmacdonald@spartanburgcounty.org <lmacdonald@spartanburgcounty.org>
Sent: Monday, March 6, 2023 at 10:59:23 AM EST
Subject: T Tree Farms UMLO requirement 3.13 (4) Comfort Station

T Tree Farms RV Park: Comfort Stations

Dear Joan and Leigh:

Where are the required comfort stations in the developer's application ? We see none on the site plans. The developer told P & D that
the "office" will have a bathroom and that it might not be open for a year. How does this comply with the UMLO 3.13 (4) ? Are you really ready to go forward and recommend conditional approval to the commission tomorrow ? Dozens of citizens plan to attend the meeting.
Please reply by 3:00 PM today whether or not you are going forward with presenting this project to the commission tomorrow with no apparent comfort station. When you asked the developer about this, she replied that there are sewer hooks ups to each RV. **These are not comfort stations.**

Thanking you for your quick reply.

Respectfully, Madelon Wallace

EMAIL TO COUNTY P & D (1 of 2)
RE ULMO 3.13: REQUIREMENT FOR COMFORT STATION
- NO STATIONS SHOWN ON SITE PLANS -

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From: Judie Klapholz <13judierose@gmail.com>
Date: March 6, 2023 at 10:46:16 AM EST
To: jholliday@spartanburgcounty.org, lmacdonald@spartanburgcounty.org
Subject: **T Tree Farms ULMO 3.13 (4) Comfort Stations**

Dear Ms Holliday and Ms MacDonald,

RE: T Tree Farms RV Park

Where are the required comfort stations in the developers application?
We see none in the site plans.
The developer told P & D that the "the office will have a bathroom and it might not be open for a year."
How does this comply with the ULMO 3.13 (4)?

Are you really ready to go forward to recommend conditional approval to the commission tomorrow?

Dozens of citizens plan to attend the meeting. Please reply by 3:00pm today whether or not you are moving forward with presenting this project to the Commission tomorrow with no apparent comfort station. When you asked the developer about this, she replied "there are sewer hookups to each RV." **These are not comfort stations.**

Thank you for a quick reply.

Judie Klapholz
323-702-2877
13judierose@gmail.com

EMAIL TO COUNTY P & D (2 of 2)
RE ULMO 3.13: REQUIREMENT FOR COMFORT STATION
- NO STATIONS SHOWN ON SITE PLANS -

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APRIL 2021

Hey Brandy, FROM THE DEVELOPER TO COUNTY:

Thank you for the below. Does the county have any specific requirements for the comfort stations? Size or how many toilets required?

Happy Friday,

Waverly

Waverly Wilkes, P.E.
Project Engineer | Gray Engineering
m: 864.706.7268
p: 864.297.3027 ext. 128
e: wwilkes@grayengineering.com
132 Pilgrim Road
Greenville, SC 29607
www.grayengineering.com

FROM THE COUNTY TO THE DEVELOPER

------ Original Message ------
From: "Blake, Brandy" <bblake@spartanburgcounty.org>
To: "Waverly Wilkes" <wwilkes@grayengineering.com>; "Weathers, Darrell" <dweathers@spartanburgcounty.org>
Cc: "Holliday, Joan" <jholliday@spartanburgcounty.org>
Sent: 4/15/2021 12:48:34 PM
Subject: RE: Re[2]: t- tree

Hi Waverly. I just left you a few voicemails about this. See Section 3.13 in the ULMO (4) – the site must have a comfort station, a room or building with toilet and lavatory facilities for public use, at a minimum of 300 feet from every site location. If you remove this building we will not be able to approve the plan. Please consult your client and let me know as soon as you can.

Thank you.

Brandy Blake
Planner II
Spartanburg County
Planning and Development
864-598-7053
366 N. Church St, Suite 700
Spartanburg SC 29303

EMAIL #1 FROM COUNTY P & D TO DEVELOPER – RE COMFORT STATION REQUIRED

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- What buffer's would be required in this case? I'm not sure what an RV park falls under, light commercial bordering agriculture with residence? The project is bordered by horse farms and wooded land. ***[Blake, Brandy]*** See Table 4, ULMO. The only parcel that you may need to buffer is 1-09-00-020.07 if the house is within 100 feet of the property line. All the other residences are far enough away but we are not sure what if the structure closest to the property line on this parcel is a residence. Please list any residences within 100ft of the property line on official plan submitted and the distance from that structure.
    - Following the buffer question and I could be missing this, existing trees and vegetation can be used if we are planning to disturbed the area that would be the buffer yard. ***[Blake, Brandy]*** If screening is required, we always encourage leaving undisturbed areas of trees and vegetation. That area must still meet the screening requirements found on Table 4. If there is a requirement for a buffer, contact Darrell Weathers, Landscape Administrator. He can assist you with this further.
- In order for them to obtain a CO in the end, will they need to have built and complete the office/bath houses? The owner is thinking that they will have the utilities to each parking spot completed and roads finished but the buildings will take a little longer. He's received a good amount of interest in the development from people and was hoping to open prior to those buildings being completed. ***[Blake, Brandy]*** I spoke with Leigh about this one. They will be required to complete these buildings prior to Planning's final sign off and approval of this project.

Thank you so much,

Waverly

Waverly Wilkes, E.I.T.
Project Engineer | Gray Engineering
m: 864.706.7268
p: 864.297.3027 ext. 128
e: wwilkes@grayengineering.com
132 Pilgrim Road
Greenville, SC 29607
www.grayengineering.com

------ Original Message ------
From: "Waverly Wilkes" <wwilkes@grayengineering.com>
To: "Blake, Brandy" <bblake@spartanburgcounty.org>
Sent: 1/20/2021 10:30:16 AM
Subject: Re[2]: Landrum RV Park

EMAIL #2 FROM COUNTY P & D TO DEVELOPER – RE COMFORT STATION REQUIRED

SPARTANBURG COUNTY – ONLINE APPLICATION – MAJOR LAND DEVELOPMENT

Type of Current Activity

- [x] Vacant
- [ ] Residential
- [ ] Industrial
- [ ] Commercial
- [ ] Office
- [ ] Institutional

Water or Well? Water

- Water
- Well
- N/A

elected water above, list water provider.

Septic or Sewer?

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COUNTY'S BLANK DEV. APPLICATION – DIFFERENTIATES "WATER OR WELL"

Proposed Maintenance of New Road	Private

General Info

This Application is for	New Construction
Project Name	T. Tree Farms
Proposed Activity	Campground or RV Park
Type of Current Activity	Vacant Residential Industrial Commercial Office Institutional
Water or Well?	Well
If selected water above, list water provider.	ICW
Septic or Sewer?	Septic
If selected sewer above, list sewer provider.	
Number of Stories	0
Number of Units	49

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DEVELOPER'S APPLICATION – DIFFERENTIATES "WATER OR WELL" AND STATED "ICW"

Onsite Wastewater System Application

Bureau of Environmental Health Services

Blue Sky Associates, LLC, PO Box 5930
(Name) (Mailing Address)

Spartanburg (City/Town) SC (State) 29304 (Zip Code) kbbbil07@yahoo.com (Email Address)

Phone No.: 864-809-6484 ☒ Mobile ☐ Home ☐ Work Alternate Phone No.: ☐ Mobile ☐ Home ☐ Work

hereby make application for a Permit to Construct an Individual Sewage Disposal System to serve a:

House: ☐ Mobile Home: ☐ Other (Specify): ☐ RV Park

If in subdivision, give name: _____ Lot #: _____

Property Address: 1970 Landrum Mill Rd Campobello City: _____

County: Spartanburg Tax Map/Property Identification #: 1-09-00-020.03

Check all that apply:

Public Water: ☑ **Well:** ☐ Public ☐ Private ☐ Existing ☐ Proposed **Public Sewer Accessible:** ☐

If residential establishment, answer following:

No. Bedrooms: _____ Basement: ☐ Full ☐ Partial ☐ None Plumbing in Basement: ☐

If commercial establishment, answer following:

Type of Business: RV Park Number of Occupants: ~~50~~ 52 As per P.E. Number of Employees: _____

Public Restrooms: 2 Number of Hours of Daily Operation: 24 Other: _____
(i.e., seating capacity, meals per day)

Lot Identification and Preparation

In order for your application to be processed, stake the corners of the proposed building and property corners with distinctive markers, in clear, sealed bags, place the site location card at the front of the property in a conspicuous location and place the septic location card at the proposed septic location. A legal description (plat, deed, surveyor site plan, etc.) with dimensions of the property must also be submitted with the application. Contact the regional EA office to activate your application when the lot has been staked, house site located, and lot posted. The lot should also be properly prepared by clearing all underbrush, thick vegetation, and any other features that may inhibit the site evaluation within a 150 ft radius of the proposed septic location.

Please give exact directions to lot: .4 miles NE of E Frontage Road on the Southern side of Landrum Mill Road.

I understand that the property must be properly prepared for evaluation and that I must confirm property preparation to activate the application. I also understand a reevaluation fee may be assessed if the above parameters for lot identification and preparation are not met. I certify to the best of my knowledge that the information submitted in this document is true and accurate. Permission and authority is hereby granted for DHEC representatives to enter the above-described property at reasonable hours for the purpose of onsite wastewater system inspection and/or site evaluation.

Property will be ready for activation/evaluation by DHEC on 4/23/21 (Date).

4/23/21 (Date) _____ (Applicant/Representative Signature)

DEVELOPER'S APPLICATION TO DHEC FOR SEPTIC PERMIT

SPECIFIES "PUBLIC WATER" (Not a "Well")

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PERMIT TO CONSTRUCT
Onsite Wastewater System

File Nbr: 2021040112
County: Spartanburg

Name: T. Tree Farms RV Park (Blue Sky Associates LLC)
Program Code: 360
Type Facility: 52 Space RV Park
Address: PO Box 5930 Spartanburg, S.C. 29304
System Code: 150
Subdivision:
Water Supply: Public
Block: Lot:
Site: 1970 Landrum Mill Rd. Campobello, S.C.
TM#: 1-09-00-020.03

PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS

Daily Flow (gpd): 3120 **Tank Sizes (gal):** Septic Tank: 5000 Pump Chamber: Grease Trap:

LTAR: .3 **Trenches:** Length (ft): 2600 Width (in): 36 Max. Depth (in): 45 Agg. Depth (in.):

Min. Pump Capacity: gpm at ft. of Head Alternative Product: 1203 EZ Flow

SPECIAL INSTRUCTIONS/CONDITIONS
(See Attached Page(s))

THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.

This Permit To Construct and Operate is issued pursuant to the SCDHEC Large and Community Onsite Wastewater Systems for Peak Flows greater than 1500 GPD.

Issuance of this Large Onsite Wastewater System Permit To Construct does not relinquish the property owner of responsibility in attaining any and all necessary approvals or permits required to develop this property.

PERMIT TO CONSTRUCT

See engineered system design and supporting documentation.

Grey Engineering
(Engineering Company)

Zachary D. Johnson
(Consulting Engineer)

SC 30735
(State and License Number)

Dennis J. DeFrancesco
(Soil Classifier)

SC 31
(State and License Number)

06/17/2021
(Plan Date)

2021006
(Project Number)

Any Permit To Construct and Operate that is issued pursuant to this Standard shall be based upon the consulting engineer's design, certification, and other supporting documentation.

Reviewed By: Date: June 22, 2021

OCRS 1721 (01/2014)
This Permit will Expire and Become Null and Void Five (5) Years from the Issuance Date.

This Permit is Appealable Under the Administrative Procedures Act. There may be an Additional Fee for Changes to this Permit that Require a Site Reevaluation.

Information collected on this form is subject to public record

DEVELOPER'S DHEC SEPTIC PERMIT DATED 6-22-21 SPECIFIES: "ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ANY UNAPPPROVED CHANGES VOID THIS PERMIT." (THIS PERMIT WAS RESCINDED BY THE DHEC BOARD ON 12-20-21)

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terra incognita
125 South Edisto Avenue, Columbia, SC 29205
llgaddy2@gmail.com 803 629-6128

December 17, 2021

To: Mr. Brad Wyche, Founder and Consultant
Upstate Forever
bwyche@upstateforever.org

re: Proposed RV Park; *Hexastylis naniflora*

Brad et al.:

My son, L.L. Gaddy III, and I were met and hosted by Ms. Madelon Wallace and Ms. Judy Klapholz at the Enclave at Fairview Farm in Spartanburg County yesterday. Our objective there was to determine the presence and abundance of the federally-listed threatened herbaceous plant, dwarf-flowered heartleaf (*Hexastylis naniflora*)(Aristolochiaceae) in the general area and on Gold Mine Creek. *Hexastylis naniflora* is found on sandy, acidic Piedmont soils at springheads, along streams, and sometimes under mountain laurel (*Kalmia latifolia*) considerably upslope from water. It is a two-state endemic found only in South Carolina and North Carolina, and its distribution is centered in the middle Piedmont of the two states.

The proposed RV Park Tract is bounded on the northwest by Landrum Mill Road and on the south and east by a headwaters branch of Gold Mine Creek (which flows into the North Pacolet River). On the west, the RV Park area is adjacent to the Spiegel Farm, and, finally, on the northwest by the Klapholz property and Gold Mine Creek again.

Our inventory began on the eastern side on Goldmine Creek on the Klapholz property. From the small pond on Goldmine Creek (Klapholz property) southward along the creek *Hexastylis naniflora* is common on both sides of the creek (the RV Tract and the Klapholz's property). The population continues southward following the creek and gradually turns southward proceeding toward the Spiegel Tract. As one moves south (upstream), the plants become rarer, found only here and there. Finally, at the springhead that forms the beginning of the south fork of Goldmine Creek, the plant is present, but quite rare.

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We then drove around to Landrum Mill Road and walked to property line between the RV Tract and the Spiegel Property. When we reached a large ravine and springhead that forms the beginning of the north fork of Goldmine Creek (primarily on the RV Park property), we again inventoried the disturbed woods for the presence of *Hexastylis naniflora*. It was present here, though very rare. We predict, however, that it is probably more common downstream as there is abundant habitat along the stream on RV Property.

In summary, *Hexastylis naniflora* was found to be associated with Gold Mine Creek and its springheads on the west, south, and eastern sides of the proposed RV Park Tract. (We have been told that *Hexastylis* is also quite common below the Klapholz pond to the north of the RV Park Tract although we did not inventory that area.) While walking along the eastern side of the creek, plants of the rare herb could be seen growing on the RV Tract. A detailed inventory of the RV Tract would clear up the abundance and location of the plant there. *Based on the habitats present on the RV Tract and our observations on adjacent lands, we predict the federally-listed threatened dwarf-flowered heartleaf is probably scattered over most of the lowlands (and possibly as far as 75 feet upslope) on the proposed RV Tract.*

Sincerely,



L. L. Gaddy, President

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Goldmine Creek Water Quality Assessment

JULY 2021

Mountains-to-Sea Ecological

MOUNTAINS TO SEA ECOLOGICAL

REPORT RE PRESENCE OF FEDERALLY-PROTECTED DWARF HEARTLEAF AND QUALITY OF GOLDMINE CREEK – 34 PAGES

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Goldmine Creek Water Quality Assessment

INTRODUCTION

At the request of The Enclave at Fairview Farm Home Owners Association (HOA) of Campobello SC, MTS Ecological performed a Water Quality Assessment of Goldmine Creek headwaters in June and July 2021 (See Map 1,p.2). The study area includes ~312 acres of the 360-acre Enclave HOA and ~2 miles (10,560 linear feet) of 3.5 miles of upper Goldmine Creek of the North Pacolet River.

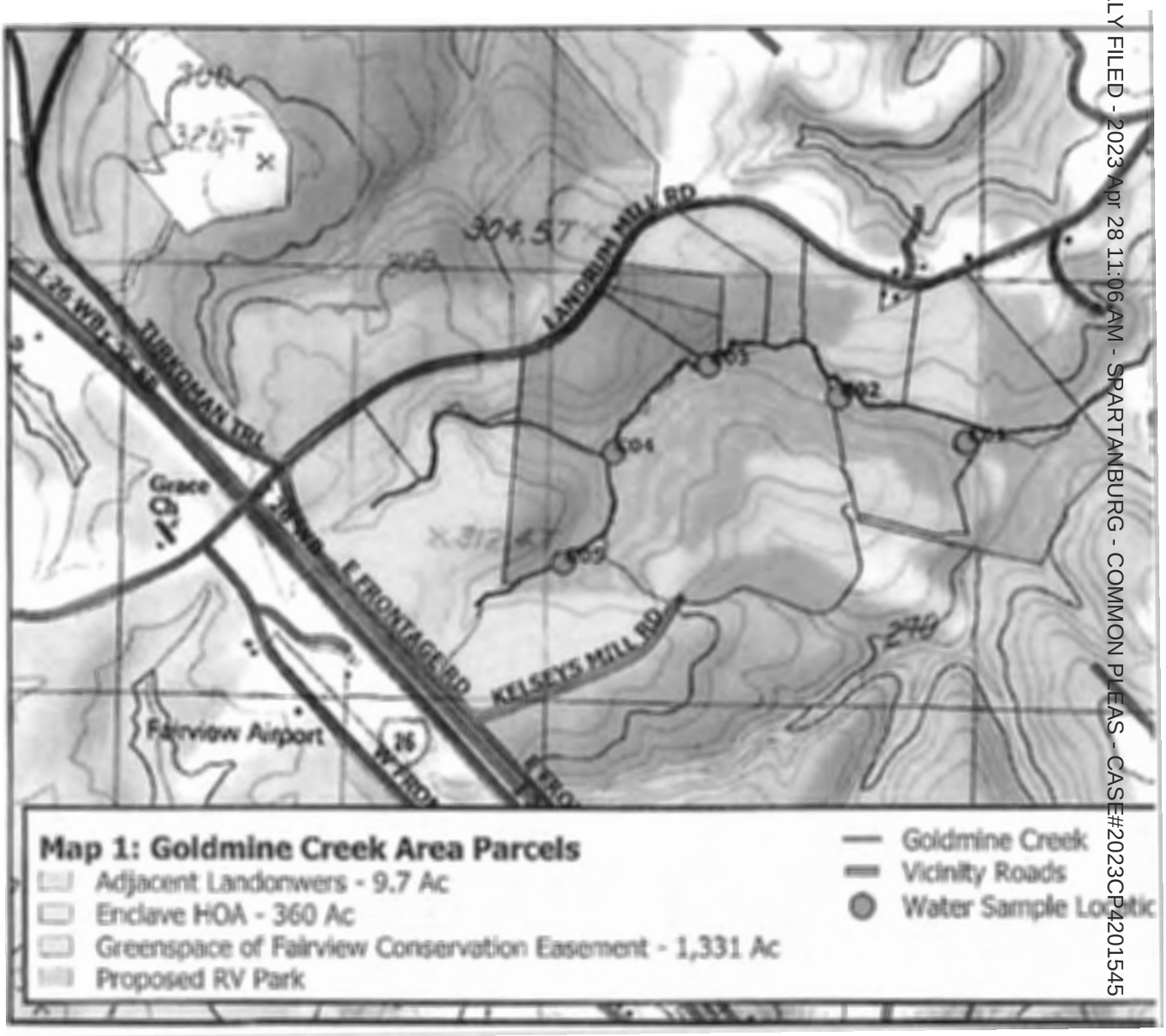
A 52-slip RV Park with 87 parking spaces is proposed bordering Goldmine Creek at its headwaters directly in the center of the HOA ownerships and directly abutting the southern boundary of the 1,331-acre GreenSpace of Fairview Conservation Easement Conservation Area. All streams and bordering wetlands of Goldmine Creek are "Wetlands of the United States" and regulated by the US Corps of Engineers Section 404 Clean Water Act and SC 401 wetland regulations.

Goldmine Creek is a first-order headwater tributary of the North Pacolet River, with headwaters located ¼ to ½ mile east of the SC Welcome Center and Fairview Airport between Landrum Mill Road and Kelseys Mill Roads east of I-26. The primary Goldmine channel drains approximately 2.5 miles east into the North Pacolet. A secondary tributary to Goldmine drains approximately one mile east, bisecting the proposed RV Park, joining the primary channel at the Klapholz property.

Though engineering plans and documentation for the proposed development appear to depict stream boundaries & setbacks, they do not document streams and bordering wetlands, water quality, stream health, embankment structure, or permanent affects the development would produce. The Water Quality Assessment provides this additional information.

The HOA wishes to prevent incompatible, intensive commercial development benefitting temporary RV residents that will permanently deliver trash, pollution, fertilizer, sediment and permanently destroy water quality and stream integrity of Goldmine Creek and the North Pacolet River. The HOA wishes to protect, maintain, and improve stream quality and integrity of Goldmine Ck and maintain existing low-density residential, farm, and compatible rural land uses.

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METHODOLOGY

Water quality assessments were performed on June 28 and July 25, 2021. Prior to field assessments, relevant information and data for the site was reviewed including engineering plans for the proposed RV Park, National Wetland Inventory (NWI) data, South Carolina Dept. of Health and Environmental Control (DHEC) Regulation 61-68, Water Classifications and Standards and Regulation 61-69, Classified Waters, and other relevant data sources. The assessment consisted of:

- Chemical and fecal coliform assessment via water samples – five on 1,000-foot intervals
- Biological assessment of in-stream aquatic communities (biota) at sample collection points
- Physical assessment of stream and embankment structure, riffle and pool complexes, sedimentation, and embankment collapse or undercut locations
- Classification of "natural communities" onsite such as alluvial forest and bordering wetlands
- Incidental documentation of ecological communities, bordering wetlands, and SC-listed rare species as they were located and observed
- Photographic documentation of existing stream conditions on 500-foot intervals including water sample and biological assessment locations and their midpoints

In July 2021, water samples were collected at five locations on approximately 1,000-foot intervals and submitted to the Environmental Quality Institute (Black Mountain, NC) for analysis following the methods of APHA (2012). Dissolved oxygen was measured at each sample collection site using a Extech DO600 Waterproof ExStik II Dissolved Oxygen Meter. Nutrient, water quality, and physical structure sampling and survey are a subset of methodology outlined by Scott, et al. (2009). Pollution and man-made chemical analysis was not performed within the study.

Biological assessment of stream biota was also performed at the three eastern-most collection points along the stream channel where cobble could be located. Sampling was not performed in the highest headwater locations with sand substrates as aquatic insects do not occur in these locations due to the substrate. Each collection point using kicknet, D-net and minnow traps in pools. Physical assessment was performed by walking the stream channel between sample collection and baseline condition documentation points. Ecological community classification and inventory was performed in June 2021 with supplemental observations in July 2021.

Natural communities were classified using the National Vegetation Classification (NVC) classification system developed by NatureServe - the repository for all state Natural Heritage Program natural community and rare species data in the US. NVC serves as the standard natural community classification system for the United States Forest Service (USFS), the US

National Park Service (NPS), Bureau of Land Management (BLM), and most US land management agencies.

Data and mapping for wetlands, streams, water sample, biological assessment, and permanent photo locations was collected in the field using handheld GPS and generated in Quantum GIS (QGIS). Acreage and linear footage calculations were calculated in QGIS.

SUMMARY OF FINDINGS

Overall, Goldmine Creek in the study area is an excellent quality wetland resource with many high-quality features and parameters including water quality, in-stream biotic community, stream structure, exceptionally mature and intact forest and bordering wetlands. It is easily among the best of its kind remaining in the area where the majority of headwater streams have been historically destroyed and ditched for agriculture and damaged in poorly planned development.

- The proposed RV park sits directly within the "Landrum and Campobello" Conservation Focus Areas (CFA) – one of only six CFA's in Spartanburg County identified by Upstate Forever (2010) Special Places Inventory (SPI)

- As a North Pacolet River tributary, Goldmine Creek is high-quality Freshwater (FW) system, as classified by DHEC, and should be recognized, protected, and managed to improve its existing quality condition

- Among 3.5 miles of North Pacolet River headwaters onsite streams are clean, harboring normal nutrient and physical parameters, a healthy aquatic-invertebrate community, cool temperatures, and exceptionally mature globally ranked rare globally "vulnerable" (G3) **Piedmont Headwater Stream Forest** and high-quality, globally "imperiled" (G2) **Piedmont Springhead Seep** wetland communities

- The terrain is moderately to gently sloped with high elevation of 1,015 feet at the western headwaters to low of 810 feet at the North Pacolet River confluence - a 205-foot total elevation change to the Pacolet River

- Two abandoned beaver ponds at the central stream confluence offer high quality naturally occurring early-successional habitat and greatly help filter and trap sediments and nutrients that might otherwise flow to the North Pacolet

- Remarkably, exotic-invasive plant species that degrade habitat are almost completely absent from the stream bottomland except for Japanese stiltgrass, and a few small kudzu and privet shrubs in the eastern region

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I. **Water Quality Classification and Standards Application**

- The primary & secondary headwaters of Goldmine Creek in this assessment comprises 3.5 miles before confluence with the North Pacolet River
- Goldmine Creek is classified as a Freshwaters (FW), as a tributary of the North Pacolet River which is a formally classified Freshwater system
- Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68 (2014), Water Classifications and Standards

II. **Nutrients and Water Quality Parameters**

- Water Quality is surprisingly excellent for the western Piedmont where most streams are of very poor or fair quality
- Nutrient and Water Quality parameters all within range of SC Freshwater Standards as described in Regulation 61-69 (2020) for all relevant parameters with only Orthophosphate being low
- Ammonia (NH3) and Nitrates (NO2/NO3) are very low which is excellent and atypical of most drainages in horse-country which are overloaded
- Orthophosphate (PO4) - the bioavailable form of phosphorus - is lower than the recommended 0.15 mg/L (or 0.05 mg/l) to prevent downstream eutrophication or nutrient overload
- Total suspended solids (TSS) are moderate and turbidity (water clarity) values for all sites are between general range of 10 NTU for trout streams and 50 NTU for aquatic life
- Dissolved Oxygen is surprisingly excellent, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive
- Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors
- E.coli measurements are very low ranging from 35 to 61 Cfu/100ml

III. **Biological Assessment**

- Goldmine Creek scored a total biological index value of 24. Index value over 22 to be an indicator of "Excellent" water quality
- Water temperatures ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) which is excellent for peak-summer

- 103 macroinvertebrate individuals were collected at three sampling locations along Goldmine Creek (C1 to C3) most of which are pollution intolerant. Of those:

  - five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health
  - Four macroinvertebrate types found considered somewhat, or less, sensitive: crayfish, craneflies, dragonflies and net-spinning caddisflies
  - Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey

- As a family, roach stoneflies (detected here) are present only in streams and rivers of good to excellent water quality

IV. Physical Stream Conditions

- The Goldmine Creek headwaters are in very good condition overall and represent the best of their kind in the region

- The upper primary channel rests fully within 28 acres of excellent ("A" quality) mature forest and bordering wetlands including the globally "vulnerable" (G3) Piedmont Headwater Stream Forest in which six globally "critically imperiled" (G2) Piedmont Springhead Seep wetland communities are embedded

- Over 110 natural stream oxbows and over 50 riffle-pool complexes occur throughout

- Embankment structure is good to very good and less than 20 exposed embankment zones were observed, many of which are of historical origin

- Three small ponds occur in the upper and central watershed. These serve to catch and store sediments; however they may also heat up and discharge water at higher temperatures in mid-summer which may deplete in-stream oxygen below the pond

- Non-point stormwater velocity and sedimentation is likely exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelseys Mill Roads and adjacent mowed lawns at the top of the western watershed

- Headwater ravines of the primary channel harbor steep, 15 to 20-foot height embankments which have been eroded due to historical forest canopy removal. Though forested and slowly restoring, they appear to be the primary sediment input

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DISCUSSION

I. WATER QUALITY CLASSIFICATION AND STANDARDS APPLICATION

All South Carolina streams are classified according to their water quality. Goldmine Creek is classified as a "Freshwaters" (FW) in the state of South Carolina.

In Regulation 61-69, Classified Waters, Goldmine Creek is not formally listed, however it carries the Freshwaters classification of the formally classified North Pacolet River that it supplies. FW classified waters are those utilized for secondary recreation or which may serve as drinking supplies if treated.

Freshwaters (FW) are non-saline freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses. Quality Standards for Freshwaters are defined by DHEC Regulation 61-68 (See https://scdhec.gov/sites/default/files/media/document/R.61-68_0.pdf)

As a Freshwater stream, Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68, Water Classifications and Standards.

II. NUTRIENT AND WATER QUALITY PARAMETERS

Water samples were collected in July 2021 to document existing conditions of primary in-stream nutrient and water quality measurements, and to alert the HOA of any potential issues that may arise from HOA or other adjacent ownership inputs. In order to establish trends, sampling would need to occur on a routine basis, however the following parameters and results provide a snapshot of stream water quality.

II.A Nutrient and Water Quality Results

Sampled nutrient and water quality parameters are listed below with water sample data from five sample sites listed in Table 1 below:

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Table 1: Water Sample Nutrient and Chemical Findings, Enclave HOA, 2021

Site #	NH3	NO2/ NO3	PO4	E. Coli	Turb	TSS	D.O.	Cond	Alk	pH
	mg/L	mg/L	mg/L (PO4)	Cfu/ 100ml	NTU	mg/ L	mg/ L	umhos/ cm	mg/L	
1	0.11	0.0	0.07	61	26.0	15.6	9.3	38.8	18.0	6.7
2	0.11	0.0	0.05	47	37.0	21.6	9.2	38.4	18.0	6.7
3	0.13	0.1	0.07	36	17.0	7.2	9.1	44.9	22.0	6.7
4	0.13	0.1	0.07	35	18.0	9.2	9.1	33.0	20.0	6.6
5	0.11	0.3	0.04	51	15.0	7.6	9.1	34.1	16.0	6.6

Ammonia (NH3) measurements are normal, and close to the regional average for the western Piedmont. NH3 is the principal form of toxic ammonia. NH3 is toxic to freshwater organisms at concentrations between 0.53 to 22.8 mg/L. Toxic NH3 is both pH and temperature dependent: toxicity increases as pH and temperature decrease. Plants are more NH3 tolerant than wildlife, and aquatic invertebrates have greater tolerance than fish. In toxic conditions, hatching and growth rates of fish may be affected as well as structural development such as flaws in gills, liver, and kidneys tissues.

Nitrites (NO2) and Nitrates (NO3) - Measure of the Nitrogen present as Nitrite and Nitrate. NO2 and NO3 are very low in Goldmine Creek which is excellent and atypical of most drainages in horse-country which are overloaded. As part of the nitrogen cycle, bacteria first convert Ammonia to Nitrite (NO20 before other bacteria convert Nitrite to Nitrate. Nitrite in elevated levels is toxic to aquatic organisms and usually indicate contamination from fertilizer run-off.

Bacteria convert Ammonia to Nitrite (NO2) and then Nitrite to Nitrate (NO#) as part of the natural nitrogen cycle. Nitrate becomes toxic to most aquatic life at extremely elevated levels (>10 mg/L – far higher levels than found in Goldmine Creek). NO3 is also a necessary nutrient for plant and algae growth, but high nitrate levels in water are an indicator of fertilizer run-off contamination from adjacent lands or from elevated levels of waste water. They are almost always associated with algal blooms, excess plant growth and oxygen depletion (which kills aquatic life).

Orthophosphate (PO4) - the bioavailable form of phosphorus, used by plants and algae for growth - is well below recommended base levels of 0.15 mg/L (or 0.05 mg/L P only) which is excellent and also unexpected in horse country.

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E. Coli – measurements fell far below measurable "safe" CFU's (colony forming units) in all samples. Acceptable levels of E. coli commonly include both a 30 day mean (126 cfu/100mL) and a single-sample number (235 cfu/100mL – 575 cfu/100mL). Thus samples ranging between 36 and 61 cfu/100mL are well below the safe threshold.

Turbidity – Turbidity, a measure of water clarity, is measured in Nephelometric Turbidity Units (NTU's). Low NTUs signify relatively clear water during or after rain events while higher numbers represent less water clarity and higher levels of suspended solids. NTU levels of ten or lower are characteristic of relatively clean, clear water with low sedimentation.

Total suspended solids (TSS) – similar to Turbidity but a slightly more accurate measurement, TSS measures the actual dry-weight of solids larger than 2 microns within a 1-liter sample rather than light penetration through water (turbidity). Thus, sites ranged from a low of 7.2 and 7.6mg/L at site #3 and #5 to a high of 21.6 at site #2. Site #2 probably contained higher TSS because of proximity to mowed meadows and input from this area. The state has no TSS standards however.

Dissolved Oxygen is excellent, ranging from 9.1 to 9.3, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive (though none likely exist in the headwaters).

Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors.

II.B SC Freshwater Standards and Goldmine Creek Nutrients and Water Quality Findings

The following section highlights primary SC Freshwater Standards with findings from Goldmine Creek, per Regulation 61-68 (p.29).

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Table 2: Freshwater Standards and Existing Goldmine Creek Conditions, Enclave HOA, July 2021

ITEMS	SC STANDARDS	GOLDMINE CREEK EXISTING CONDITIONS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed	*None detected*
b. Treated wastes, toxic wastes, deleterious substances, colored or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this	*None detected*
c. Toxic pollutants listed in the appendix	As prescribed in Section E of this regulation	*Sampling beyond scope of this assessment*
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with antidegradation rules	*None detected*
e. Dissolved oxygen	Daily average not less than 5.0 mg/l with a low of 4.0 mg/1	*9.3 and 9.2 (sites 1 and 2); 9.1 at sites 3-5; avg of 9.16*
f. E. coli	Not to exceed a geometric mean of 126/100 ml based on at least four samples collected from a given sampling site over a 30-day period, nor shall a single sample maximum exceed 349/100 ml	*61, 47, 36, 35, and 51 from C1-C5, respectively*
g. pH.	Between 6.0 and 8.5.	*pH 6.7 at 3 sites and 6.6 at 2 sites*
h. Temperature	The water temperature of all Freshwaters which are free flowing shall not be increased more than 5 degrees (F) above natural temperature conditions and shall not exceed a maximum of 90 deg (F)	*69.6 deg. – Sites 1-3; 69.8 – Sites 4-5; avg of 69.56 deg.*
i. Turbidity	Not to exceed 50 NTUs provided existing uses are maintained	*Turbidity NTUs = 15, 17, 18, 26 and 37; avg of 22.6*

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III. BIOLOGICAL ASSESSMENT

Summary - Using the Izaak Walton League's formula for calculating biotic values (see attached), which weights sensitive species over pollution-tolerant ones, Goldmine Creek scored a total index value of 24. The IWL (2020) considers any index value over 22 to be an indicator of "Excellent" water quality.



Figure 1: Stream Invertebrate Sampling on Goldmine Creek, July 2021

Biological Assessment includes review of the presence and numbers of stream "macroinvertebrates" or insects, crayfish, salamanders and other life forms (i.e. "biota") at suitable sample points. Three representative sample points – C1, C2, and C3 - having rock substrates where insects and their predators may thrive were sample and results were surprising for western Piedmont streams which are typically badly damaged. Biological monitoring of streams using benthic macroinvertebrates is a well-established technique that assesses the condition of water bodies using aquatic insects as bioindicators, or "canaries in the coal mine." (Voshell, 2002)

Water temperature ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) – easily lower than expected for late July in the western Piedmont where streams can range from mid-70 to lower 80 degrees on summer days. On the sampling date, the water was moderately stained from a thunderstorm the evening before. Visibility was less than a 12-inches in deeper holes early in the day and clearing within a couple of hours.

The stream channel of Goldmine Creek is normal to moderately incised in places, while areas lacking vegetation (naturally or by removal) show signs of bank widening from natural tree-falls, floods, and historical canopy clearing for agriculture and more recent "flashiness" from storm events have caused some of this damage. One of the three sample-sites (C1) was within 75 feet of a horse pasture and adjacent mown grassy areas north of the eastern creek channel, which sheds water far more rapidly forested or mature meadow zones. Two of the sample-sites (C2 and C3) were in deep forest conditions.

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Results – In total, we collected 104 macroinvertebrates at three sampling locations along Goldmine Creek including 26 individuals at Sites #1 and 2 and 52 individuals at Site #3.

Of those, five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health by the Izaak Walton League and most water quality agencies.

Four types we found are considered somewhat, or less, sensitive to pollution: crayfish, cranefiies, dragonflies and net-spinning caddisflies. Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey.

In addition to the macroinvertebrate fauna, several vertebrates were found in the course of seining. A single creek chub (*Semotilus atromaculatus*) was picked up in a kick net at Site 2. A minnow trap dropped just above a small pond in the headwaters netted 11 bluehead chubs (*Nocomis leptocephalus*.) Both of these species are tolerant of a wide range of environmental conditions (Tracy, 2020).

Additionally, our survey collected four adults and six larval (gilled) salamanders, all appearing to be Two-Lined Salamanders (*Eurycea cirrigera*). Goldmine Creek harbors a rich stream invertebrate fauna with some very pollution-intolerant genera. As a family, roach stoneflies "will be present only in streams and rivers of good to excellent water quality," according to Steven R. Beaty of NCDEQ's Biological Assessment Branch.

Table 3. Aquatic Invertebrates Collected in Goldmine Creek, Enclave HOA, July 2021.

Invertebrate type	Site 1	Site 2	Site 3	subtotal
Water Temperature	68.6	68.6	68.8	
Tipulidae - cranefly larva	7	5	9	21
Cambarus - crayfish	1	3	8	12
Eurycea – two-lined salamander	3	3	4	10
Ophiogomphus - dragonflies	3	7	2	12
Hydropsyche - caddis larva	4	4	6	14
Maccaffertium sp. - mayflies	0	3	6	9
Stenacron sp. - mayflies	2	0	0	2

Perlesta sp. - stoneflies	3	1	7	11
Tallaperla sp. – roach stoneflies	0	8	0	8
Isoperla sp. – stoneflies	0	1	0	1
Lymnaeid – gilled snails	2	2	6	10
Chimarra – caddisfly larva	0	0	1	1
Annelida - annelid worm	1	0	0	1
Psephenidae - Water penny	0	0	1	1
TOTAL	26	26	52	104

IV. PHYSICAL STREAM CONDITIONS

Overview: The Goldmine Creek headwaters are in very good condition overall and they represent the best of their kind in the region in terms of water quality, stream invertebrate biota, and structure. That E.coli is currently found in low number is remarkable – a condition that will not possibly continue with an RV Park at the headwaters.



Figure 2: Typical high-quality Goldmine Creek embankments

Stream Physical Structure - Goldmine Creek contains 2 abandoned beaver ponds, six "imperiled" seep locations, an astonishing 110 natural stream oxbows and 50+ riffle-pool and plunge-pool complexes, and extensive woody debris which indicate complex and high-quality streams.

Embankments - Embankment structure is mostly very good to good with less than 20 exposed embankment exposures observed. Aside from 75-80% sloped ravines at the western headwaters, which are naturally eroding, most embankment exposures along Goldmine Creek are caused by natural treefalls where flooding has scoured

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embankments downstream of the root zone, except in the lower eastern zone where potential historical channel straightening may have artificially caused recent collapsed zones.

Substrate – Streambed substrate consists of approximately 75% sand with approximately 25% small-to-medium-sized gravel from ½ inch to 6 to 10-inch block-shaped diameters.

Erosion - Headwater ravines of the primary southwestern channel contain steep, 15 to 20-foot height embankments at extreme slopes (75-80%) which are highly eroded due to natural, sandy soils and likely exacerbated by historical forest canopy removal (Photo Doc images #10-1 and 10-2). Though forested and slowly restoring, these banks are the primary in-stream sediment input to Goldmine Creek. Other embankment undercut or erosion zones are minor compared to this zone. Several forested, upland ravines deliver sediment to the stream. Given their steep, wooded condition and natural sandy soil types, sediments here are possibly exacerbated by increased velocity above them from lawn or structural areas.

Pollution - Non-point stormwater velocity and sedimentation is exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelsey Mill Roads and adjacent mowed lawns at the top of the western watershed.

V. ECOLOGICAL CONDITIONS

The Enclave HOA and Greenspace of Fairview Conservation Block – an approximate 1,643+ acre zone – consists of numerous documented high-quality features such as mature forest, wetlands, rare plant species, high quality wildlife and extensive streams.

While this study does not assess these resources on the proposed RV park, it does include a summary of information from GreenSpace and HOA lands, which completely surround the proposed park.

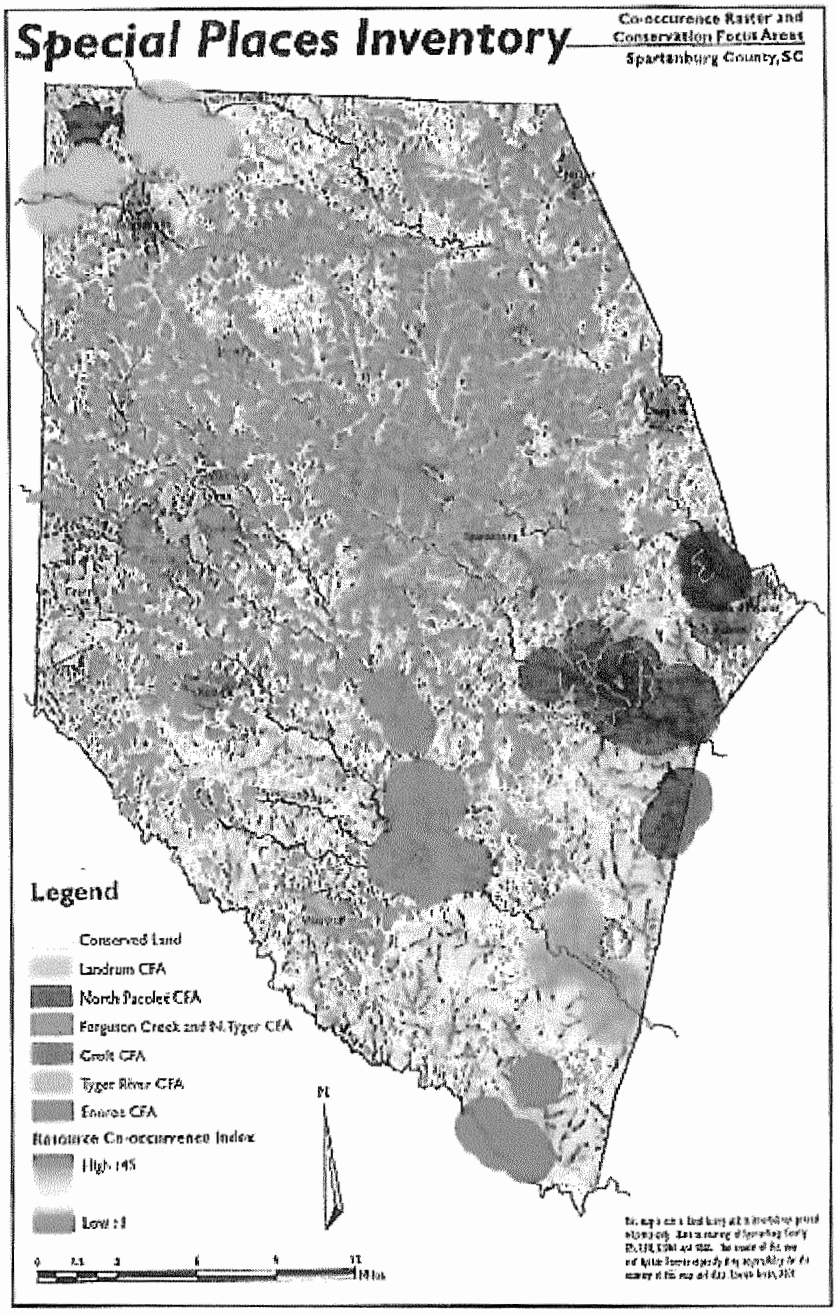
Upstate Forever "Conservation Focus Area" (CFA) – in 2010, Upstate Forever, the largest conservation organization in the SC Upstate, published a Special Places Inventory (SPI) designed to "document the remaining historical and natural assets before making decisions that could negatively impact those resources permanently." The SPI analysis is based on data developed over decades by The Nature Conservancy (TNC) – the leading conservation organization in the world.

The proposed RV park sits directly within the one of these key areas - the "Landrum and Campobello" Conservation Focus Area (CFA) - one of only six critical Special Areas identified by Upstate Forever in all of Spartanburg County (image above, 2010). These six CFA's include the final remaining, undeveloped natural and cultural heritage areas and key conservation target regions in the County.

Figure 3: Upstate Forever CFA's in Spartanburg County, SC

CFAs are identified by Upstate Forever *specifically* to help alert city and county planners and citizens of key ecological and historical heritage resources to the resources *that have already been lost* in order to protect these remaining Special Places in the future. Upstate Forever states:

> *"If we do not protect the remaining Special Places, we will lose them permanently. We will lose their ecosystem services, their wildlife, their history – indeed, we will lose the very elements that made Spartanburg County special then and will continue to make our home special in the future"* (2010, p3).



High-Quality and Rare Natural Communities

Ecological inventories performed by Gaddy, et al (2000) and MTS Ecological (2021) reveal significant biological richness in the GreenSpace of Fairview property and Enclave HOA, which have been mostly extirpated from the greater region since colonization and eradicated from cultural memory for the majority of residents. This includes 10 federal and state listed rare plant species, rare Headwater Stream Forest and Piedmont Springhead Seep natural communities, and extensive wetland resources and streams. Only some of these resources are formally protected within the GreenSpace properties as formal Conservation Easement and the Enclave HOA, and similar resources probably exist on the proposed RV park itself.

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All of Goldmine Creek in the HOA is contained within 28 acres of globally "rare" floodplain habitats (aka "natural communities") including a mature, globally "vulnerable" (G3) **Piedmont Headwater Stream Forest**. and six "critically imperiled" **Piedmont Springhead Seep** (G1) wetlands. The proposed RV park directly abuts these critical habitats. These are classified as rare "natural communities" or distinct and permanent plant alliances by NatureServe – the national consortium of all US Natural Heritage Programs and the global and international clearinghouse for all conservation data regarding plant and wildlife species and natural communities.

G2 – "Imperiled" — At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.

G3 – "Vulnerable" At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.

The global (or national) conservation ranking system ("G") ranges on a scale 1 to 5. Ranks of 1-3 the rarest while ranks of 4-5 are "secure", respectively. Ranks of 1-3 are of the highest conservation value for protection and restoration for government agencies and conservation organizations. Though South Carolina Natural Heritage Trust (SCNHT) is currently in process of developing natural community classifications and cross-referencing these with NatureServe classifications, NHT and DHEC do not formally protect rare or high-quality natural habitats or rare species by law except for federally listed species for projects that acquire federal funding.

Habitat Descriptions

Wetland cover types consist of open water (ponds), Piedmont Springhead Seeps, and all streams. Piedmont Headwater Stream Forest is a semi-wetland habitat, consisting of both upland and wetland-dependent plant species ("obligate" [OBL] and "facultative" [FACW]) with Seeps embedded.

Piedmont Springhead Seep (G2)
NatureServe Code: CEGL007041

Six locations of this globally "imperiled" wetland community are dotted along Goldmine Creek, the majority of which are downstream of the proposed RV park and thus subject to severe damage and extirpation from the RV Park, if approved.



Creek

As a "small patch" community (<1 acres in size) seeps are rare communities that typically occur through the region, the vast majority of them have long lost to ditching, agriculture, historical damage rendering them extirpated and/or unrecognizable. Thus, having high quality, intact seeps with native vegetation and structure dominant are extremely rare, six of them even more so.

Large diameter trees are rooted around seeps and occur as saplings but they never grow large within them due to mucky soils which cause large trees to topple easily. Sphagnum moss (which forms peat) is common. The shrub layer contains a few stems of Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum*), Black Chokecherry (*Aronia arbutifolia*), and Yellowroot (*Xanthorhiza simplicissima*).

The herb layer is dense and lush with herbs, sedges and grasses including Fowl Mannagrass (*Glyceria striata*), and numerous sedges (*Carex debilis, C. crinita, C. lurida, C. atlantica*), Jewelweed (*Impatiens capensis*), Virginia Bugleweed (*Lycopus virginicus*), False Nettle (*Boehmeria cylindrica*), Cardinal Flower (*Lobelia cardinalis*), Royal Fern (*Osmundastrum regalis*) and Cinnamon Fern (*O. cinnamomea*), Jack-in-the-Pulpit (*Arisaema triphyllum*), Chainfern (*Woodwardia areolata*), Virginia Wild-Rice (*Leersia virginica*), and White Turtlehead (*Chelone* glabra).



Piedmont Headwater Stream Forest (G3)
NatureServe Code: CEGL004900

Approximately 28 acres of this exceptionally mature, high-quality forest dominates the flattest, low elevation bottomlands buffering Goldmine Creek. Here, shallow water table depth combined with elevated "hummocks" provide both wetland and upland habitat for a wide variety of wetland and upland species. Typical trees are Sweet-Gum (*Liquidambar styraciflua*), White Oak (*Quercus alba*), Northern Red Oak (*Quercus rubra*), Green Ash (*Fraxinus pensylvanica*), Red Maple (*Acer rubrum*), Umbrella Magnolia (*Magnolia tripetela*) and American Beech (*Fagus grandifolia*) above an understory of American Holly (*Ilex opaca*), Ironwood (*Carpinus caroliniana*), Sourwood (*Oxydendrum arboreum*), and Dogwood (*Cornus florida*).

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The shrub zone is equally as variable, harboring numerous wetland and upland shrubs like Highbush Blueberry (*Vaccinium fuscatum*), Spicebush (*Lindera benzoin*), Yellowroot (*Xanthorhiza simplicissima*), Doghobble (*Leucothoe axillaris*), Witch-Hazel (*Hamamelis virginiana*), Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum*), and Mountain Laurel (*Kalmia latifolia*). The state "critically imperiled" (S1) Ashy Hydrangea (*H. cinerea*) occurs throughout bluffs south of Goldmine Creek. (See VI. Photographic Documentation for photograph).

Herbs dominating in patches and colonies include sometimes huge colonies of Rivercane (*Arundinaria gigantea*), Christmas Fern (*Polystichum acrostichoides*), Lady Fern (*Athyrium filix-femina ssp. asplenioides*), New York Fern (*Thelypteris noveboracensis*), numerous sedge species (*Carex* spp.), Wood Oats (*Chasmanthium laxum*), *Leersia virginica*, Cinnamon Fern (*Osmunda cinnamomea*), and Royal Fern (*O. regalis*). Most notably – this habitat is almost entirely free from exotic-invasive (EI) species invasion that dominates most headwater stream forests regionwide. A few stems of privet, kudzu, and multiflora rose were detected, but in such low levels that removal could likely be performed in one or two field dates.

Several hundred clumps of the federally Threatened (T) and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora*) occur throughout this forest type and adjacent embankments on both sides of Goldmine Creek. South Carolina comprises the smallest, southern-most portion of its US range, as the species occurs only in Spartanburg, Greenville, and Cherokee Counties (See VI. Photographic Documentation for photograph).

Beaver Impoundments

Two locations of this now-abandoned beaver-developed wetland occur onsite in the central-to-upper Goldmine Creek adjacent to the proposed RV Park and Klapholz property. The impoundment zones are a complex, high-quality mixture of standing dead trees (a key missing component of most natural area today) and a mosaic of boggy and upland zones determined by drainage patterns after abandonment. This is easily the highest quality natural "early successional" or full-sun, non-forested habitat onsite.



Figure 6: abandoned Beaver Impoundment, central Goldmine Creek

Typical herbs are Cattail (*Typha latifolia)*, Needle-rush (*Juncus effusus)*, bulrush (*Scirpus cyperinus)*, American Bur-reed (*Sparganium americanum)*, Jewelweed (*Impatiens capensis)*, Virginia Wild Rice (*Leersia oryzoides)* and numerous Sedges *(Carex crinita, C. stipata, C. crinita, C. scabrata, C. lupulina*), Lizard's Tail (*Saururus cernuus)*, *Carex lupulina*, False Nettle (*Boehmeria cylindrica)*, Three-way Grass (*Dulichium arundinaceum),* Virginia Bugleweed (*Lycopus virginicus,* Beggars-Ticks (*Bidens discoides*, B. *laevis),* Fowl Mannagrass (*Glyceria striata),* Bog St.Johnswort (*Hypericum mutilum)*, sensitive Fern (*Onoclea sensibilis)*, Cardinal Flower (*Lobelia cardinalis)*, Clearweed (*Pilea pumila)* and Cinnamon Fern (*Osmundastrum cinnamomea).*

Open Water/ Ponds

Three ponds (2.6 acres) occur in the HOA adjacent to Goldmine Creek, though these were not the subject of the water quality assessment and were not inventoried for vegetation or wildlife. These fabricated, still-water systems may still affect stream integrity and health in several ways:

1) collect and store freshwater that helps charge groundwater and regulate stream-flows

2) collect and store sediments and chemical discharges (especially those from I-26) that may otherwise enter the stream.

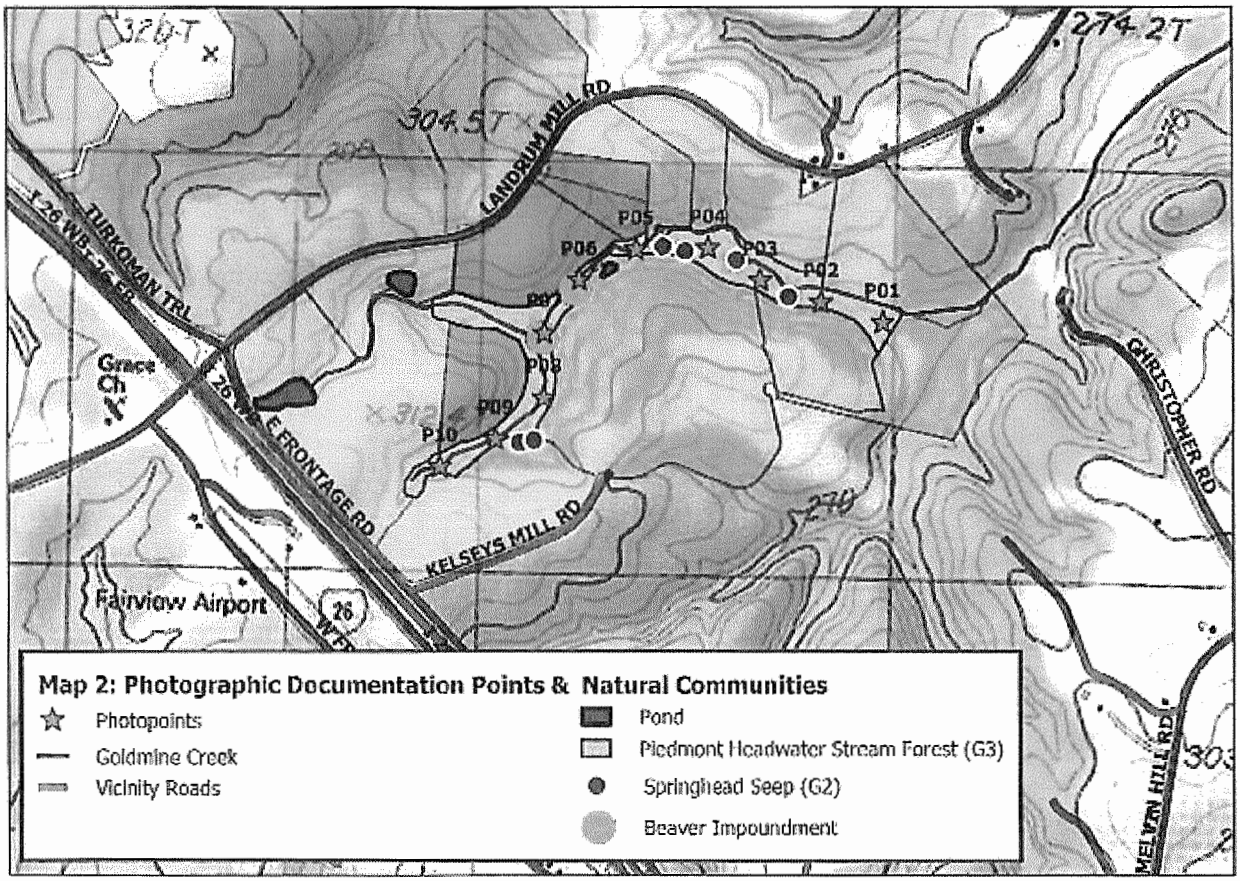
3) offer flatwater and non-moving water sources for a variety of wildlife that would otherwise not occur in the immediate vicinity such as waterfowl and other birds, reptiles, amphibians, small mammals such as bats, and high numbers of insects.

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VI. PHOTOGRAPHIC DOCUMENTATION

A "baseline" photographic documentation at 10 locations on approximate 500-foot intervals, plus rare plant photographs, was performed to document Goldmine Creek existing conditions prior to potential RV Park development (Figure 2). While it is hoped that structural ecological integrity of Goldmine Creek will not be impacted if the RV Park is approved, the likelihood of permanent damage from heavy stormwater, chemical, fertilizer, sewage, sediment, and trash outputs as is inevitable – and measurable. Recent flash flooding (July 18, 2021) caused some tree and embankment damage. Photos are taken from down to upstream from 01 to 10 and are shown in order of up and downstream.



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Photo #1: view of the state "critically imperiled" (S1) Ashy Hydrangea (*Hydrangea cinerea*) *with diagnostic "ashy" under-leaf surface*



Photo #2: view of the federally Threatened and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora)*

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Photopoint 1, Photo 1: view upstream of typical stream and embankment conditions. Width range 4 to 7 feet



Photopoint 1, Photo 2: view downstream, typical stream and embankment conditions. Width range 4 to 7 feet

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Photopoint 2, Photo 1: view upstream of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow



Photopoint 2, Photo 2: view downstream, of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow

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Photopoint 3, Photo 1: view upstream of typical stream and embankment conditions in dense mountain laurel covered banks. Stream width range 3 to 6 feet



Photopoint 3, Photo 2: view downstream, of typical stream and embankment conditions with newly fallen woody debris

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Photopoint 4, Photo 1: view upstream of "ideal" stream, riffle-pool, and embankment conditions in Headwater Stream Forest. Stream width range 4-5 feet



Photopoint 4, Photo 2: view downstream, of typical stream, cobble, and embankment conditions

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Photopoint 5, Photo 1: view upstream of in a natural slough / pool zone under dense mountain laurel shrub cover. Stream widths range from 6-8 feet



Photopoint 5, Photo 2: view downstream of in a natural slough / pool zone under dense mountain laurel shrub cover

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Photopoint 6, Photo 1: view upstream with cobble, rivercane, alluvial bench, and forested conditions. Stream width range 3-4 feet



Photopoint 6, Photo 2: view downstream of oxbow deposit with newly fallen woody debris

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Photopoint 7, Photo 1: view upstream of Piedmont Springhead Seep and sandy flood deposits in Headwater Stream Forest. Stream width range 2-3 feet



Photopoint 7, Photo 2: view downstream below Piedmont Springhead Seep, oxbow in Headwater Stream Forest and abandoned beaver impoundment

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Photopoint 7, Photo 3: supplemental view - upstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-3 feet



Photopoint 7, Photo 4: supplemental view - downstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-4 feet

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Photopoint 8, Photo 1: view upstream; Goldmine Creek narrowing and smaller with dense in upper headwaters. Stream width range 1.5-2 feet



Photopoint 8, Photo 2: view downstream, upper headwaters of Goldmine Creek and dense rivercane. Stream width range 1.5-2 feet

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Photopoint 9, Photo 1: view upstream of Goldmine Creek with steeper natural embankments. Stream width range 2-3 feet



Photopoint 9, Photo 2: view downstream, upper headwaters of Goldmine Creek and alluvial benches. Stream width range 1.5-2 feet

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Photopoint 10, Photo 1: view upstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 3-6 feet, artificially wide



Photopoint 10, Photo 2: view downstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 1-2 feet, artificially narrow

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From: William Mills <drwpmills@hotmail.com>
Date: March 6, 2023 at 8:53:00 AM EST
To: whitnerk@bellsouth.net, tmcplumb@bellsouth.net, tmccall@randerson.org
Subject: Planning Commission (PC) Meeting 7 March 2023

Planning Commission Chairman Kennedy and Vice Chairman McCall,

I am requesting that a few concerned citizens and I be recognized by the PC Chairman and invited to speak at the March 7, 2023 PC Meeting. This would be in accordance with the PC Rules and Procedures Article II, Section 7. We are requesting to speak regarding the T. Tree Farms major land development project listed on the published agenda at 7,B,3. Please advise by reply if you will allow us to address the PC as to road safety, public safety/health/welfare, flawed septic permit, water source, fire prevention, a warranted Public Hearing, ULMO violations, and other relevant concerns.
In that it is March 6th, a quick reply to this request will be appreciated.

The Staff Report and Recommendation dated March 7, 2023, which is included with the published agenda materials, is distorted, inaccurate, and incomplete. A new, revised site plan dated March 1, 2023 is included with the published agenda materials, which were published on March 3, 2023. The revised site plan more than doubles the size of the project per the application from 15 to 38 acres without comment or explanation. There is a clear and alarming lack of transparency to the PC and to affected citizens.

You and the other PC commissioners have been provided a formal *Request for Public Hearing before the Planning Commission* signed by or on behalf of 449 residents, taxpayers, and/or interested parties. The PC deserves to have all relevant information in order to have a meaningful review and make an informed decision. All sides should be heard.

By way of brief personal background, my parents moved our family to Spartanburg county in 1951. I attended public schools and was raised in Spartanburg County. I am a U.S. Army veteran having retired as a Colonel after 27 years of service. I am also a retired Oral and Maxillofacial Surgeon after practicing in Spartanburg County for 23 years. My wife and I reside in Spartanburg County a short distance from the proposed RV park. We have loved living here for 27 years, and raised our daughter here. She is now an Oral and Maxillofacial Surgeon and took over my practice in Spartanburg. She resides in Spartanburg County with her husband, a General Dentist, and my four grandchildren. We all, as many others, signed the request for a Public Hearing and expect our county government to be inclusive, to listen to others, and to act lawfully and responsibly.

By way of project background, the developer first filed an application for this proposed RV park in February, 2021. The PC granted conditional approval in March 2021. In June 2021, concerned citizens came to the regular PC meeting to appeal the PC's granting of conditional approval. Chairman Kennedy was not at the meeting and so Vice Chair McCall asked the concerned

EMAIL TO VICE CHAIRMAN – REQUEST BY CITIZENS TO SPEAK (2 PAGES)

citizens to return for the July meeting. The concerned citizens complied. At the July PC meeting, a few individuals were recognized and invited to speak regarding the proposed RV park project. A formal Appeal was made to the PC and a copy provided to each commissioner and to other key county officials. A few days later, on July 12, 2021, Joan Holliday emailed advising that an official Appeal Form and an appeal fee had to be in to her by 4:30PM the following day in order to be on the August 2, 2021 PC agenda. The concerned citizens hustled and complied, meeting Joan and Senior Planner Darrell Weathers at their office on July 13, 2021. Joan helped complete the Appeal application, which concerned citizens submitted with a check in the amount of $105.00. The check was cashed and all appeared in order to present issues and concerns to the PC at their August 3, 2021 meeting. On the afternoon of July 27, 2021, the PC Agenda for August 3, 2021 was published. The Agenda did not include the Appeal. Later that evening, Joan emailed with an attached letter informing that the PC would not hear the appeal and that a formal Appeal must be filed with the Circuit Court. I refer you to a letter emailed to Joan Holliday on July 30, 2021 providing even more disturbing details on this bungled ball of confusion. I encourage you to obtain a copy and read it for context. An Appeal was filed. It has been in a pending status for some time. Many conditions of the PC's conditional approval remain unfulfilled.

Thank you for your time and for your community service

Best Regards

William P. Mills, Jr. DMD

William P. Mills Jr.,DMD
drwpmills@hotmail.com

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Traffic Impact Analysis Report

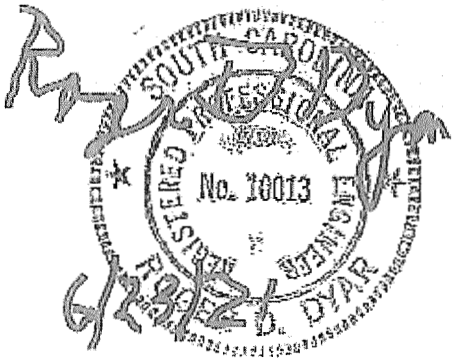
Landrum RV Park (T Tree Farms)

For: Ms. Kim Burnett

Prepared by:

Roger D. Dyar, P.E., P.A.
231 Tollison Road
Seneca, SC 29672
(864) 360-7921
dyartraffic@gmail.com

June 23, 2021





DyarTraffic
864-360-7921



Roger Dyar

Digitally signed by Roger Dyar
DN: cn=Roger Dyar, o=Roger D. Dyar, P.E, P.A., ou=Main, email=dyartraffic@gmail.com, c=US
Date: 2021.06.23 08:06:19 -04'00'

DEVELOPER'S TIA: 75,190 VEHICLES PER YEAR ADDED TO LANDRUM MILL RD.

Trip Generation

Trip generation was estimated using the ITE Trip Generation manual, 10th Edition, along with information from other studies done for similar developments in other states. The ITE land use code 416 for an RV park was used to determine the values for input into the equations for predicting trip generation. See the appendices for additional information on trip generation from other studies. The data from the noted reports as well as ITE data were combined to get the rates used in Table 2. Using the ITE manual and the referenced reports, the following table was derived for trip generation for the new project.

Table 2 Trip Generation Rates for Multi-family Residential ITE Code 416

Weekday (1)		AM Peak Hour		PM Peak Hour	
Total Daily Trips = 4.10 (X)		Total Trips= 0.29 (X)		Total Trips = 0.41 (X)	
In	Out	In	Out	In	Out
50%	50%	42%	58%	69%	31%

(1) Note: Units: X = Units = 50 total

sing the ITE Trip Generation manual we get the following predicted trips for the new evelopment.

Table 3 Predicted Trip Generation for the Spartanburg County RV Project

Subdivision	Units	Total Daily Trips			A.M. Peak Hour			P.M. Peak Hour		
		Total	In	Out	Total	In	Out	Total	In	Out
Landrum RV	50	206	103	103	14	6	8	21	14	7

↓

75,190 per year

DEVELOPER'S TIA: 75,190 VEHICLES PER YEAR ADDED TO LANDRUM MILL RD.

00217

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J.M. TEAGUE
Engineering & Planning
— Est. 2010 —

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Waynesville, NC 28786
(P) 828.456.8383
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JMTE WAYN 1182
TECHNICAL MEMORANDUM
AUGUST 3, 2021

The FULL 10-page REPORT was provided to each Commissioner in advance of the March 7, 2023 Meeting

To: Steve Wood
Homeowner's Association Contact
220 Night Lane
Campobello, SC 29322
swood@allegromc.om

From: David W. Hyder, P.E., Engineering Director *David W. Hyder*
J.M. Teague Engineering & Planning

SUBJECT: **Landrum Mill Road Recreational Vehicle (RV) Park Proposal Access and Safety Audit (WAYN 1182)**

JMTE was retained to perform a safety and access review for a proposed RV Park at 1970 Landrum Mill Road in Campobello, South Carolina. We understand that the proposed facility is situated on 38 acres of property adjacent to Landrum Mill Road in Spartanburg County, South Carolina.

Our review includes:

- ✓ A site visit and field reconnaissance of the area including driving the potential access roads,
- ✓ Evaluate the quality of access to the proposed RV Park from I-26 at Exit 5 and at Exit 1,
- ✓ Evaluating potential safety impacts of the proposed RV park on nearby roads,
- ✓ Identify current users and potential safety conflicts with new users of the access roads,
- ✓ Measuring the existing sight distance at key points,
- ✓ Measuring roadway widths and documenting conditions, and
- ✓ Developing an opinion of the effect on safety of adding Class A and B recreational vehicles to the traffic mix on roads in the area.

OPINION

The purpose of this review is to assess the potential impact of an RV facility that is proposed on Landrum Mill Road. *Based upon current roadway conditions we believe that siting an RV park at 1970 Landrum Mill Road adds additional danger to already dangerous roads. This opinion is based upon the potential*

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Brown, Travis

From:	Brown, Travis
Sent:	Tuesday, July 13, 2021 4:42 PM
To:	Harris, John
Cc:	Alverson, Cole
Subject:	****Attorney Client Privileged****RE: 1970 Landrum Mill Rd

Thanks Cole.

In speaking with our folks the project is at a point where the engineer can submit 5 sets of final drawings. The only caveat is that there is a misrepresentation of the ROW along Landrum Mill Rd. that needs to be corrected as part of the final submission. The current drawings illustrate a 55' foot wide ROW along Landrum Mill Rd.. Since we only have prescriptive rights, we have asked the engineering (Waverly Wilkes with Gray Engineering) to correct the misrepresentation and/or have the owner properly dedicate the property. Our folks reached out to the engineer last week and it is our understanding that she was on vacation. To date we have not received a final submission.

In regards to the issuance of the grading permit there are several other items that should be addressed prior to the permit being issued. These are contingencies set forth by the Planning Commission and historically, a grading permit is not been issued until all of the contingencies have been addressed.

1. There are still outstanding issues and/or questions concerning architectural standards. This should be pretty straight forward but the decision needs to be made regarding whether a permanent building(s) will be constructed at the site.
2. The project still needs SCDHEC approval for septic services. I do know that this was specifically conveyed by Chairman Kennedy during the last Planning Commission meeting.
3. Correspondence from the local water service provider (Inman Campobello) stating that water is or will be available for the project. Final construction does not have to be complete but Planning Commission does require a statement that water services will be available.

If our department receives the noted 5 sets of final drawings there would not be any further items that are needed from Public Works. However, I do believe the above contingencies would need to be addressed before a formal grading permit would be issued. It is also my understanding that a formal appeal has been submitted to the Planning Department. I am not sure how and/or if that will have any bearing on the issuance of the grading permit.

Thanks and please let me know if there any questions.

Travis

From: Alverson, Cole
Sent: Tuesday, July 13, 2021 2:53 PM
To: Brown, Travis <twbrown@spartanburgcounty.org>
Subject: FW: 1970 Landrum Mill Rd

Travis,
See below and please advise on anything remaining on the permitting side when you are able. Thanks

-Cole

INTERNAL COUNTY EMAIL – RE "MISREPRESENTATION" ON 2021 SITE PLANS

EXHIBIT B

REQUEST FOR RECONSIDERATION TO PLANNING COMMISSION BY THE SOUTH CAROLINA NATIVE PLANT SOCIETY DATED MARCH 31, 2023

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SOUTHERN ENVIRONMENTAL LAW CENTER

525 East Bay Street, Suite 200
Charleston, SC 29403

Telephone 843-720-5270
Facsimile 843-414-7039

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March 31, 2023

Members of the Spartanburg County Planning Commission
Ms. Joan Holliday, Planning and Development Director
Spartanburg County Planning Commission
Spartanburg County Administration Building
366 North Church Street
Spartanburg, SC 29303

Re: Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC

Members of the Commission and Ms. Holliday:

On behalf of the South Carolina Native Plant Society and the Southern Environmental Law Center, we are writing to ask that the Commission reconsider its conditional approval of the site plan for this RV park. The conditional approval is in direct violation of Spartanburg County's Unified Land Management Ordinance. The conditional approval also does serious harm to one of Spartanburg County's most important ecologically sensitive areas and its natural features and landscape.

The Commission has clear authority to reconsider this decision. Section 5 of Article II of the Commission's Rules and Procedures adopts Spartanburg County Council's Rules of Procedure. Under Section 12-4 of the Spartanburg County Council's Rules of Procedure, motions to reconsider may be made at the next regular meeting. The Commission will be meeting on April 4 and can vote to reconsider this conditional approval at that meeting.

Ecologically Sensitive Area and Natural Features and Landscape: The proposed site for the T Tree Farms RV Park is on Goldmine Creek in Campobello, South Carolina. The proposed site features rare plants and important ecologically sensitive habitat and natural features. This area of Spartanburg County and the watershed of Goldmine Creek have not been subject to intensive development. Nearby and adjacent properties are protected by conservation easements.

The banks of Goldmine Creek and the area around Goldmine Creek include damp, rich forests. This damp, rich forest provides important habitat for rare species. There are numerous populations of one of the nation's and South Carolina's rare plants Dwarf Flowered Heartleaf (*Hexastylis naniflora*)—along the banks of Goldmine Creek and in the forest near Goldmine Creek. Because of the plant's rarity and the threats to its continued existence, the South Carolina Department of Natural Resources has designated it as a Highest Priority Species in the South Carolina Wildlife Action Plan. For the same reasons, since 1989 this rare plant has been listed as a Threatened Species under the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

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Spartanburg County contains especially important habitat for this rare species. In South Carolina, the Dwarf Flowered Heartleaf exists only in parts of the Piedmont of Greenville, Spartanburg, and Cherokee Counties. It also exists in some North Carolina Piedmont counties near South Carolina. This plant exists nowhere else in the world. Spartanburg County is the home of the Peters Creek Heritage Preserve of the South Carolina Department of Natural Resources. The preserve was established principally to protect populations of this plant and one area of its habitat. According to the Department of Natural Resources, the preserve is home to the second-largest known population of Dwarf-Flowered Heartleaf.

These rare plants are dependent upon the ecology of their habitats. Specifically, they depend on rich forests; are affected by the quality and amount of groundwater, which determines the hydrology of the plant's habitat; and are affected by the water quality and overall health of the streams that flow through their habitat. The principal threats to the survival of the Dwarf Flowered Heartleaf are construction of roads, facilities, and infrastructure, associated erosion, and conversion of habitat to agricultural, residential, commercial, and industrial uses.

Attached are two studies by scientists familiar with the plant and its habitat. There are populations of this rare plant up and down Goldmine Creek, and these studies and other observations indicate that there are populations of Dwarf Flowered Heartleaf on the proposed RV Park site, including on the hillside above Goldmine Creek. There are also populations of the rare plants on properties next to the RV Park site, upstream and downstream from the RV Park site, and across the creek from the RV Park site.

Ashy Hydrangea (*H. cinerea*) is also present along Goldmine Creek. Ashy Hydrangea is a critically imperiled plant in South Carolina. The presence of this plant underscores the ecologically sensitive nature of this area.

In addition to the rare plants, the RV site includes important water resources. The site encompasses one side of Goldmine Creek, as well as part of the Goldmine Creek watershed. Goldmine Creek is a first order headwater tributary of the North Pacolet River. At present, the creek is a high-quality freshwater system and is among the best quality Piedmont streams in the area. The areas surrounding the proposed RV Park site similarly contain important habitat. There are Piedmont Springhead Seeps downstream of the proposed RV Park site, which are designated as imperiled habitat at high risk of extinction or elimination under the NatureServe classification. There is also a mature, high-quality forest along the creek. It is a Piedmont Headwater Stream Forest designated as vulnerable habitat at moderate risk of elimination under the NatureServe classification.

In other situations in our areas, developments have been required to protect this rare plant and habitats like this one. The Greenville County Planning Commission rejected the development plan for the Crestfield II subdivision because the developer did not take steps to protect Dwarf Flowered Heartleaf and its forest habitat. In one subdivision in Spartanburg County and another in Greenville County, the developer was required to set aside and protect these rare plants and their habitat. Materials related to those sites are attached.

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Violations of the Ordinance. The County's Unified Land Management Ordinance contains provisions specifically designed to protect the natural features of sites like this RV park site. Yet, the developer provided no information and no protections for the plant and its habitat, did no studies of the natural features of the site and the impacts of components of its proposed site plan on the natural features, and did not bring them to the Commission's attention. The Commission's application does not require that RV park developers conduct studies to identify ecologically sensitive areas and their natural features and landscapes or to include protections for them. And the Commission's conditional approval in this instance includes no conditions to protect the rare plants, their habitat, or the important water resources on which they depend

1. **Ecologically Sensitive Areas**. In its Preamble, the Ordinance states that one of its principal purposes is to facilitate the creation of "ecologically sensitive areas." Yet the developer and the Commission have not even considered the ecologically sensitive aspects of this site and have included no requirements or conditions to protect the rare plants and their forest habitat.

Specifically, nothing has been done to identify plant populations on the site. No study has been done to determine the impact of water withdrawal from the site's groundwater supplies through a well for all the large RVs that are projected to come to this site. The plant, its forest, and Goldmine Creek depend upon the groundwater.

This project has been allowed to go forward with a septic system that the DHEC Board determined was only half as large as it needed to be, with the result that polluted water will be discharged into the groundwater just uphill from Goldmine Creek and into the hydrology on which the plant and its habitat depend. This septic system will also receive harsh chemicals, like formaldehyde, because RV's use those chemicals to deal with odor in their sewage storage systems. Those chemicals harm the bacteria that make a septic system work, and septic systems do not treat for harsh chemicals.[1] No study has been done to determine the effect of these chemicals on the rare plants, their habitat, the septic system, and Goldmine Creek.

A detention pond and a septic field are being built down the hillside into the plant's habitat and the forest, and this activity will inevitably destroy plants and their habitat. There are no comfort stations on the site, so it is entirely predictable that visitors and campers will wander down into the forest and relieve themselves in the plants' habitat, maybe on the plants themselves, and just uphill from Goldmine Creek.

This site plan and the Commission's conditional approval violate a basic principle of the entire Ordinance.

---

[1] University of Arizona Extension Service, *RV Holding Tank Treatments and Deodorizers in Septic Systems*, RV Holding-Tank Treatments & Deodorizers in Septic Systems (arizona.edu); Soudra Larson and Sara Heger, *Analysis of Recreational Vehicle Holding Tank Treatment Products*, University of Minnesota (2020), rv_report_final.pdf - Google Drive

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2. **Natural Features and Landscape**. The Ordinance includes Section 3.13 which details specific requirements applicable to "Camps and Recreational Vehicle Parks." These provisions are mandatory. Ordinance, Section 3.13 ("Camps and recreational vehicles (RV) parks shall comply with the following site and design standards.").

Section 3.13 (2) sets out a mandatory requirement that provides: "The site **shall** be developed in a manner that **preserves natural features and landscape**" (emphasis added).

Yet, the developer and the Commission entirely ignored this mandatory provision expressly applicable to RV parks. There is no mention of this requirement in the application. The site plan does not address this requirement; instead, it will destroy natural features and landscape of the site. The Commission did not mention this provision during its deliberations, and the staff recommendation memo makes no mention of it. The conditions in the conditional approval include nothing about the natural features and landscape.

In short, the Commission is operating in total violation of the Unified Land Management Ordinance, and its conditional approval here is a striking violation of the Ordinance. The Commission should reconsider this approval, step back, reform its process, require the necessary studies for the ecologically sensitive natural features and landscape, and determine whether the many problems with this site plan can be corrected so that the Ordinance will be complied with.

3. **Public Water**. The Commission ignored another mandatory requirement of the Ordinance.

Section 3.13 (8) contains a mandatory requirement that "[e]ach park site shall be serviced by public water."

Blue Sky initially complied with this provision and in 2021 submitted an application that provided, as mandated by the Ordinance, that the RV Park would be serviced by public water. When that proved to be impossible, the result under the plain language of the Ordinance is that this RV Park cannot be built on this site.

However, in 2023 Blue Sky submitted a new application providing that the park will be serviced by a well and not by public water, in violation of the Ordinance.

This change will harm this ecologically sensitive area and the natural features and landscape, because a well for this large RV Park will remove clean groundwater from the site and the forested creekside and damage the hydrology of the site and the forest. The hydrology of the area is an essential part of the plant's habitat, the forest's ecosystem, and Goldmine Creek's water quantity and quality.

As a result, the Commission's action to ignore the requirement for public water also violates the mandatory requirement that the natural features and landscape be preserved and the Commission's mandate to protect ecologically sensitive areas.

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4. **Sewage System Approved by DHEC**. Section 3.13 (8) of the Ordinance contains the mandatory requirement that "[e]ach park shall be serviced by . . . sewer or other systems approved by DHEC." There is no sewer service at this site. Under the Ordinance, the RV park must be serviced by another system "approved by DHEC." The DHEC Board is the highest authority and the governing authority of DHEC. Its members are appointed by the Governor and approved by the South Carolina Senate.

The DHEC Board decided to review the permit for the septic system proposed by Blue Sky and put forward by DHEC staff. The DHEC Board does not always grant requests to review staff decisions and rarely overturns staff decisions. In this instance, the DHEC Board felt compelled to act. The DHEC Board found that the septic system for this RV Park was grossly inadequate and had only half the capacity necessary for the RV Park. Therefore, the septic system for this site is not "approved by DHEC" but instead has been expressly disapproved by DHEC's highest authority.

Blue Sky appealed the DHEC Board's decision to the Administrative Law Court, and that court found only that the request for DHEC Board review had been filed too late. But the Administrative Law Court did not contradict the DHEC Board's determination that the septic system is woefully inadequate. That timing decision of the Administrative Law Court is now being appealed to the South Carolina Court of Appeals.

The language of the Ordinance does not turn on legal technicalities or procedural issues. The RV Park must have a septic system "approved by DHEC." The highest authority at DHEC has disapproved this septic system. The Ordinance does not allow a septic system that is put in place by a procedural order of the Administrative Law Court or a septic system approved by anyone other than "DHEC." The legal technicalities that Blue Sky is litigating do not deal with the substantive defects in the septic system identified by the DHEC Board.

This aspect of the Commission's conditional approval also violates the mandate to protect ecologically sensitive areas and the requirement to preserve natural features and landscape. This septic system and its drain field will be built in the plant's habitat and likely among and very near populations of the plant. It will also be built just uphill from Goldmine Creek. Inadequately treated sewage effluent will be discharged from the septic system into the groundwater system within the plant's habitat and very near the Creek.

Under the plain and direct language of the Ordinance, the RV Park cannot be approved to operate with a septic system disapproved by DHEC's highest authority, the DHEC Board.

5. **No Comfort Stations**. Section 3.13 (4) contains another mandatory requirement: "No site shall be located less than . . . 300 feet from a comfort station."

Blue Sky's site plan and the Commission's decision provide for no comfort stations for this RV Park. Apparently, the Commission chose to "waive" this requirement, but Section 3.13

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does not provide for waiver of this mandate.

The reasons for this requirement are obvious. Many people visit RV parks and campsites. Not all of them have access to RV toilets, and even those who do may find themselves away from their RV when they need to visit a bathroom. The only way to ensure that an RV park of this size remains sanitary is to have available comfort stations.

This aspect of the Commission's decision will also harm this ecologically sensitive area, the rare plants, their habitat, and Goldmine Creek. This requirement discourages visitors from using the grounds of the RV Park—here, the forest, the habitat of the rare plants, and the slope leading down to Goldmine Creek as an outdoor bathroom. The Commission's decision virtually ensures that some of the many, many visitors to this site will relieve themselves among and on the plants, in their habitat, in the forest, and uphill of Goldmine Creek. This raw human waste will flow through the forest and the plants and into the creek when it rains.

In this respect also, the Commission's decision harms this ecologically sensitive site and does not preserve but instead harms the natural features and landscape.

The March 7 Meeting. In advance of the March 7 hearing, over 400 citizens asked the Commission to hear public comments on the problems with this application, specifically including the natural features of the site, the environmental issues, and the issues regarding the rare plants. Counsel for the South Carolina Native Plant Society attended the March 7 meeting prepared to provide this information. But the Commission refused to receive any information at the meeting and then postponed consideration until the end. At the end of the meeting, the Commission allowed only Mr. Rock to speak, and only for five minutes. During his remarks he asked that counsel for the South Carolina Native Plant Society be allowed to speak concerning the environmental issues, but the Commission summarily rejected that request. Counsel for the South Carolina Native Plant Society raised his hand to ask to be recognized, but the Commission Chair did not recognize him.

The Commission violated these clear mandates and requirements of its own Ordinance and refused to hear and receive information that could have informed it of the mistakes it was making.

We ask that the Commission reconsider its decision, step back, follow the express terms of the Ordinance, and ensure that the specific provisions of the Ordinance that protect this ecologically sensitive area, its natural features and landscape, and the water resources of the site are followed as set out in the Ordinance.

Sincerely,

Frank S. Holleman III
Senior Attorney

fholleman@selcsc.org
Emily Wyche
Staff Attorney
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270

Cc: Carl Muller, Esq.
Sally Rock, Esq.
John Harris, Esq., County Attorney
Alex Shissias, Esq.

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terra incognita
125 South Edisto Avenue, Columbia, SC 29205
llgaddy2@gmail.com 803 629-6128

December 17, 2021

To: Mr. Brad Wyche, Founder and Consultant
Upstate Forever
bwyche@upstateforever.org

re: Proposed RV Park: *Hexastylis naniflora*

Brad et al.:

My son, L L Gaddy III, and I were met and hosted by Ms. Madelon Wallace and Ms. Judy Klapholz at the Enclave at Fairview Farm in Spartanburg County yesterday. Our objective there was to determine the presence and abundance of the federally-listed threatened herbaceous plant, dwarf-flowered heartleaf (*Hexastylis naniflora*)(Aristolochiaceae) in the general area and on Gold Mine Creek. *Hexastylis naniflora* is found on sandy, acidic Piedmont soils at springheads, along streams, and sometimes under mountain laurel (*Kalmia latifolia*) considerably upslope from water. It is a two-state endemic found only in South Carolina and North Carolina, and its distribution is centered in the middle Piedmont of the two states.

The proposed RV Park Tract is bounded on the northwest by Landrum Mill Road and on the south and east by a headwaters branch of Gold Mine Creek (which flows into the North Pacolet River). On the west, the RV Park area is adjacent to the Spiegel Farm, and, finally, on the northwest by the Klapholz property and Gold Mine Creek again.

Our inventory began on the eastern side on Goldmine Creek on the Klapholz property. From the small pond on Goldmine Creek (Klapholz property) southward along the creek *Hexastylis naniflora* is common on both sides of the creek (the RV Tract and the Klapholz's property). The population continues southward following the creek and gradually turns southward proceeding toward the Spiegel Tract. As one moves south (upstream), the plants become rarer, found only here and there. Finally, at the springhead that forms the beginning of the south fork of Goldmine Creek, the plant is present, but quite rare.

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We then drove around to Landrum Mill Road and walked to property line between the RV Tract and the Spiegel Property. When we reached a large ravine and springhead that forms the beginning of the north fork of Goldmine Creek (primarily on the RV Park property), we again inventoried the disturbed woods for the presence of *Hexastylis naniflora*. It was present here, though very rare. We predict, however, that it is probably more common downstream as there is abundant habitat along the stream on RV Property.

In summary, *Hexastylis naniflora* was found to be associated with Gold Mine Creek and its springheads on the west, south, and eastern sides of the proposed RV Park Tract. (We have been told that *Hexastylis* is also quite common below the Klapholz pond to the north of the RV Park Tract although we did not inventory that area.) While walking along the eastern side of the creek, plants of the rare herb could be seen growing on the RV Tract. A detailed inventory of the RV Tract would clear up the abundance and location of the plant there. *Based on the habitats present on the RV Tract and our observations on adjacent lands, we predict the federally-listed threatened dwarf-flowered heartleaf is probably scattered over most of the lowlands (and possibly as far as 75 feet upslope) on the proposed RV Tract.*

Sincerely,



T. T. Gaddy, President



Goldmine Creek Water Quality Assessment

JULY 2021

Mountains-to-Sea Ecological

REPORT RE PRESENCE OF FEDERALLY-PROTECTED DWARF HEARTLEAF AND QUALITY OF GOLDMINE CREEK – 34 PAGES

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Goldmine Creek Water Quality Assessment

INTRODUCTION

At the request of The Enclave at Fairview Farm Home Owners Association (HOA) of Campobello SC, MTS Ecological performed a Water Quality Assessment of Goldmine Creek headwaters in June and July 2021 (See Map 1,p.2). The study area includes ~312 acres of the 360-acre Enclave HOA and ~2 miles (10,560 linear feet) of 3.5 miles of upper Goldmine Creek of the North Pacolet River.

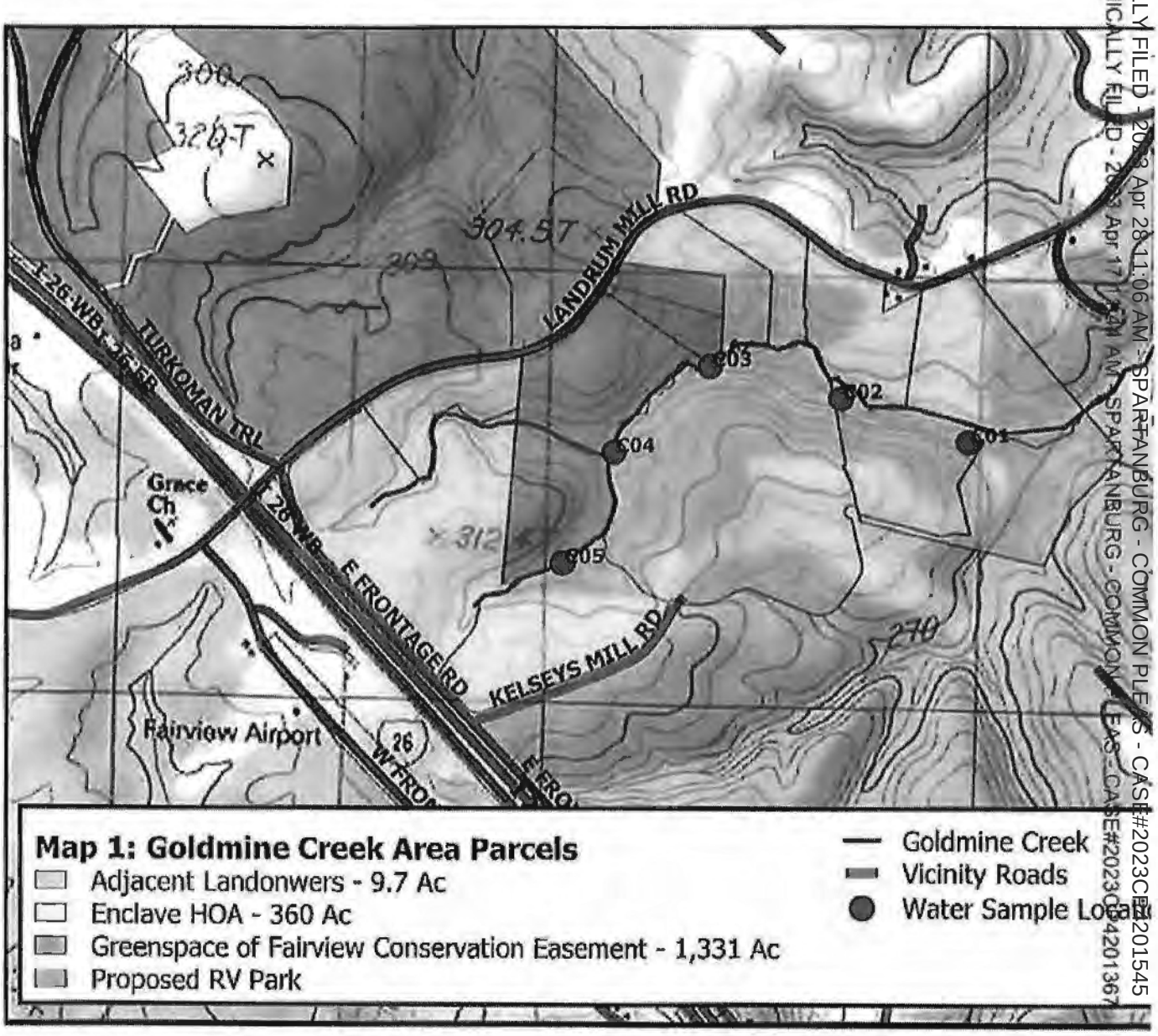
A 52-slip RV Park with 87 parking spaces is proposed bordering Goldmine Creek at its headwaters directly in the center of the HOA ownerships and directly abutting the southern boundary of the 1,331-acre GreenSpace of Fairview Conservation Easement Conservation Area. All streams and bordering wetlands of Goldmine Creek are "Wetlands of the United States" and regulated by the US Corps of Engineers Section 404 Clean Water Act and SC 401 wetland regulations.

Goldmine Creek is a first-order headwater tributary of the North Pacolet River, with headwaters located ¼ to ½ mile east of the SC Welcome Center and Fairview Airport between Landrum Mill Road and Kelseys Mill Roads east of I-26. The primary Goldmine channel drains approximately 2.5 miles east into the North Pacolet. A secondary tributary to Goldmine drains approximately one mile east, bisecting the proposed RV Park, joining the primary channel at the Klapholz property.

Though engineering plans and documentation for the proposed development appear to depict stream boundaries & setbacks, they do not document streams and bordering wetlands, water quality, stream health, embankment structure, or permanent affects the development would produce. The Water Quality Assessment provides this additional information.

The HOA wishes to prevent incompatible, intensive commercial development benefitting temporary RV residents that will permanently deliver trash, pollution, fertilizer, sediment and permanently destroy water quality and stream integrity of Goldmine Creek and the North Pacolet River. The HOA wishes to protect, maintain, and improve stream quality and integrity of Goldmine Ck and maintain existing low-density residential, farm, and compatible rural land uses.

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METHODOLOGY

Water quality assessments were performed on June 28 and July 25, 2021. Prior to field assessments, relevant information and data for the site was reviewed including engineering plans for the proposed RV Park, National Wetland Inventory (NWI) data, South Carolina Dept. of Health and Environmental Control (DHEC) Regulation 61-68, Water Classifications and Standards and Regulation 61-69, Classified Waters, and other relevant data sources. The assessment consisted of:

- Chemical and fecal coliform assessment via water samples – five on 1,000-foot intervals
- Biological assessment of in-stream aquatic communities (biota) at sample collection points
- Physical assessment of stream and embankment structure, riffle and pool complexes, sedimentation, and embankment collapse or undercut locations
- Classification of "natural communities" onsite such as alluvial forest and bordering wetlands
- Incidental documentation of ecological communities, bordering wetlands, and SC-listed rare species as they were located and observed
- Photographic documentation of existing stream conditions on 500-foot intervals including water sample and biological assessment locations and their midpoints

In July 2021, water samples were collected at five locations on approximately 1,000-foot intervals and submitted to the Environmental Quality Institute (Black Mountain, NC) for analysis following the methods of APHA (2012). Dissolved oxygen was measured at each sample collection site using a Extech DO600 Waterproof ExStik II Dissolved Oxygen Meter. Nutrient, water quality, and physical structure sampling and survey are a subset of methodology outlined by Scott, et al. (2009). Pollution and man-made chemical analysis was not performed within the study.

Biological assessment of stream biota was also performed at the three eastern-most collection points along the stream channel where cobble could be located. Sampling was not performed in the highest headwater locations with sand substrates as aquatic insects do not occur in these locations due to the substrate. Each collection point using kicknet, D-net and minnow traps in pools. Physical assessment was performed by walking the stream channel between sample collection and baseline condition documentation points. Ecological community classification and inventory was performed in June 2021 with supplemental observations in July 2021.

Natural communities were classified using the National Vegetation Classification (NVC) classification system developed by NatureServe - the repository for all state Natural Heritage Program natural community and rare species data in the US. NVC serves as the standard natural community classification system for the United States Forest Service (USFS), the US

National Park Service (NPS), Bureau of Land Management (BLM), and most US land management agencies.

Data and mapping for wetlands, streams, water sample, biological assessment, and permanent photo locations was collected in the field using handheld GPS and generated in Quantum GIS (QGIS). Acreage and linear footage calculations were calculated in QGIS.

SUMMARY OF FINDINGS

Overall, Goldmine Creek in the study area is an excellent quality wetland resource with many high-quality features and parameters including water quality, in-stream biotic community, stream structure, exceptionally mature and intact forest and bordering wetlands. It is easily among the best of its kind remaining in the area where the majority of headwater streams have been historically destroyed and ditched for agriculture and damaged in poorly planned development.

- The proposed RV park sits directly within the "Landrum and Campobello" Conservation Focus Areas (CFA) – one of only six CFA's in Spartanburg County identified by Upstate Forever (2010) Special Places Inventory (SPI)

- As a North Pacolet River tributary, Goldmine Creek is high-quality Freshwater (FW) system, as classified by DHEC, and should be recognized, protected, and managed to improve its existing quality condition

- Among 3.5 miles of North Pacolet River headwaters onsite streams are clean, harboring normal nutrient and physical parameters, a healthy aquatic-invertebrate community, cool temperatures, and exceptionally mature globally ranked rare globally "vulnerable" (G3) **Piedmont Headwater Stream Forest** and high-quality, globally "imperiled" (G2) **Piedmont Springhead Seep** wetland communities

- The terrain is moderately to gently sloped with high elevation of 1,015 feet at the western headwaters to low of 810 feet at the North Pacolet River confluence - a 205-foot total elevation change to the Pacolet River

- Two abandoned beaver ponds at the central stream confluence offer high quality naturally occurring early-successional habitat and greatly help filter and trap sediments and nutrients that might otherwise flow to the North Pacolet

- Remarkably, exotic-invasive plant species that degrade habitat are almost completely absent from the stream bottomland except for Japanese stiltgrass, and a few small kudzu and privet shrubs in the eastern region

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I. **Water Quality Classification and Standards Application**

- The primary & secondary headwaters of Goldmine Creek in this assessment comprises 3.5 miles before confluence with the North Pacolet River
- Goldmine Creek is classified as a Freshwaters (FW), as a tributary of the North Pacolet River which is a formally classified Freshwater system
- Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68 (2014), Water Classifications and Standards

II. **Nutrients and Water Quality Parameters**

- Water Quality is surprisingly excellent for the western Piedmont where most streams are of very poor or fair quality
- Nutrient and Water Quality parameters all within range of SC Freshwater Standards as described in Regulation 61-69 (2020) for all relevant parameters with only Orthophosphate being low
- Ammonia (NH3) and Nitrates (NO2/NO3) are very low which is excellent and atypical of most drainages in horse-country which are overloaded
- Orthophosphate (PO4) - the bioavailable form of phosphorus - is lower than the recommended 0.15 mg/L (or 0.05 mg/l) to prevent downstream eutrophication or nutrient overload
- Total suspended solids (TSS) are moderate and turbidity (water clarity) values for all sites are between general range of 10 NTU for trout streams and 50 NTU for aquatic life
- Dissolved Oxygon is surprisingly excellent, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive
- Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors
- E.coli measurements are very low ranging from 35 to 61 Cfu/100ml

III. **Biological Assessment**

- Goldmine Creek scored a total biological index value of 24. Index value over 22 to be an indicator of "Excellent" water quality
- Water temperatures ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) which is excellent for peak-summer

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- 103 macroinvertebrate individuals were collected at three sampling locations along Goldmine Creek (C1 to C3) most of which are pollution intolerant. Of those:

  - ➢ five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health
  - ➢ Four macroinvertebrate types found considered somewhat, or less, sensitive: crayfish, craneflies, dragonflies and net-spinning caddisflies
  - ➢ Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey

- As a family, roach stoneflies (detected here) are present only in streams and rivers of good to excellent water quality

IV. **Physical Stream Conditions**

- The Goldmine Creek headwaters are in very good condition overall and represent the best of their kind in the region

- The upper primary channel rests fully within 28 acres of excellent ("A" quality) mature forest and bordering wetlands including the globally "vulnerable" (G3) Piedmont Headwater Stream Forest in which six globally "critically imperiled" (G2) Piedmont Springhead Seep wetland communities are embedded

- Over 110 natural stream oxbows and over 50 riffle-pool complexes occur throughout

- Embankment structure is good to very good and less than 20 exposed embankment zones were observed, many of which are of historical origin

- Three small ponds occur in the upper and central watershed. These serve to catch and store sediments; however they may also heat up and discharge water at higher temperatures in mid-summer which may deplete in-stream oxygen below the pond

- Non-point stormwater velocity and sedimentation is likely exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelseys Mill Roads and adjacent mowed lawns at the top of the western watershed

- Headwater ravines of the primary channel harbor steep, 15 to 20-foot height embankments which have been eroded due to historical forest canopy removal. Though forested and slowly restoring, they appear to be the primary sediment input

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DISCUSSION

I. WATER QUALITY CLASSIFICATION AND STANDARDS APPLICATION

All South Carolina streams are classified according to their water quality. Goldmine Creek is classified as a "Freshwaters" (FW) in the state of South Carolina.

In Regulation 61-69, Classified Waters, Goldmine Creek is not formally listed, however it carries the Freshwaters classification of the formally classified North Pacolet River that it supplies. FW classified waters are those utilized for secondary recreation or which may serve as drinking supplies if treated.

Freshwaters (FW) are non-saline freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses. Quality Standards for Freshwaters are defined by DHEC Regulation 61-68 (See https://scdhec.gov/sites/default/files/media/document/R.61-68_0.pdf)

As a Freshwater stream, Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68, Water Classifications and Standards.

II. NUTRIENT AND WATER QUALITY PARAMETERS

Water samples were collected in July 2021 to document existing conditions of primary in-stream nutrient and water quality measurements, and to alert the HOA of any potential issues that may arise from HOA or other adjacent ownership inputs. In order to establish trends, sampling would need to occur on a routine basis, however the following parameters and results provide a snapshot of stream water quality.

II.A Nutrient and Water Quality Results

Sampled nutrient and water quality parameters are listed below with water sample data from five sample sites listed in Table 1 below:

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Table 1: Water Sample Nutrient and Chemical Findings, Enclave HOA, 2021

Site #	NH3	NO2/ NO3	PO4	E. Coli	Turb	TSS	D.O.	Cond	Alk	pH
	mg/L	mg/L	mg/L (PO4)	Cfu/ 100ml	NTU	mg/ L	mg/ L	umhos/ cm	mg/L	
1	0.11	0.0	0.07	61	26.0	16.6	9.3	38.8	18.0	6.7
2	0.11	0.0	0.05	47	37.0	21.6	9.2	38.4	18.0	6.7
3	0.13	0.1	0.07	36	17.0	7.2	9.1	44.9	22.0	6.7
4	0.13	0.1	0.07	35	18.0	9.2	9.1	33.0	20.0	6.6
5	0.11	0.3	0.04	51	15.0	7.6	9.1	34.1	16.0	6.6

Ammonia (NH3) measurements are normal, and close to the regional average for the western Piedmont. NH3 is the principal form of toxic ammonia. NH3 is toxic to freshwater organisms at concentrations between 0.53 to 22.8 mg/L. Toxic NH3 is both pH and temperature dependent: toxicity increases as pH and temperature decrease. Plants are more NH3 tolerant than wildlife, and aquatic invertebrates have greater tolerance than fish. In toxic conditions, hatching and growth rates of fish may be affected as well as structural development such as flaws in gills, liver, and kidneys tissues.

Nitrites (NO2) and Nitrates (NO3) - Measure of the Nitrogen present as Nitrite and Nitrate. NO2 and NO3 are very low in Goldmine Creek which is excellent and atypical of most drainages in horse-country which are overloaded. As part of the nitrogen cycle, bacteria first convert Ammonia to Nitrite (NO20 before other bacteria convert Nitrite to Nitrate. Nitrite in elevated levels is toxic to aquatic organisms and usually indicate contamination from fertilizer run-off.

Bacteria convert Ammonia to Nitrite (NO2) and then Nitrite to Nitrate (NO#) as part of the natural nitrogen cycle. Nitrate becomes toxic to most aquatic life at extremely elevated levels (>10 mg/L – far higher levels than found in Goldmine Creek). NO3 is also a necessary nutrient for plant and algae growth, but high nitrate levels in water are an indicator of fertilizer run-off contamination from adjacent lands or from elevated levels of waste water. They are almost always associated with algal blooms, excess plant growth and oxygen depletion (which kills aquatic life).

Orthophosphate (PO4) - the bioavailable form of phosphorus, used by plants and algae for growth - is well below recommended base levels of 0.15 mg/L (or 0.05 mg/L P only) which is excellent and also unexpected in horse country.

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E. Coli – measurements fell far below measurable "safe" CFU's (colony forming units) in all samples. Acceptable levels of E. coli commonly include both a 30 day mean (126 cfu/100mL) and a single-sample number (235 cfu/100mL – 575 cfu/100mL). Thus samples ranging between 36 and 61 cfu/100mL are well below the safe threshold.

Turbidity – Turbidity, a measure of water clarity, is measured in Nephelometric Turbidity Units (NTU's). Low NTUs signify relatively clear water during or after rain events while higher numbers represent less water clarity and higher levels of suspended solids. NTU levels of ten or lower are characteristic of relatively clean, clear water with low sedimentation.

Total suspended solids (TSS) – similar to Turbidity but a slightly more accurate measurement, TSS measures the actual dry-weight of solids larger than 2 microns within a 1-liter sample rather than light penetration through water (turbidity). Thus, sites ranged from a low of 7.2 and 7.6mg/L at site #3 and #5 to a high of 21.6 at site #2. Site #2 probably contained higher TSS because of proximity to mowed meadows and input from this area. The state has no TSS standards however.

Dissolved Oxygen is excellent, ranging from 9.1 to 9.3, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive (though none likely exist in the headwaters).

Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors.

II.B SC Freshwater Standards and Goldmine Creek Nutrients and Water Quality Findings

The following section highlights primary SC Freshwater Standards with findings from Goldmine Creek, per Regulation 61-68 (p.29).

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Table 2: Freshwater Standards and Existing Goldmine Creek Conditions, Enclave HOA, July 2021

ITEMS	SC STANDARDS	GOLDMINE CREEK EXISTING CONDITIONS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed	*None detected*
b. Treated wastes, toxic wastes, deleterious substances, colored or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this	*None detected*
c. Toxic pollutants listed in the appendix	As prescribed in Section E of this regulation	*Sampling beyond scope of this assessment*
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with antidegradation rules	*None detected*
e. Dissolved oxygen	Daily average not less than 5.0 mg/l with a low of 4.0 mg/l	*9.3 and 9.2 (sites 1 and 2); 9.1 at sites 3-5; avg of 9.16*
f. E. coli	Not to exceed a geometric mean of 126/100 ml based on at least four samples collected from a given sampling site over a 30-day period, nor shall a single sample maximum exceed 349/100 ml	*61, 47, 36, 35, and 51 from C1-C5, respectively*
g. pH.	Between 6.0 and 8.5.	*pH 6.7 at 3 sites and 6.6 at 2 sites*
h. Temperature	The water temperature of all Freshwaters which are free flowing shall not be increased more than 5 degrees (F) above natural temperature conditions and shall not exceed a maximum of 90 deg (F)	*69.6 deg. – Sites 1-3; 69.8 – Sites 4-5; avg of 69.56 deg.*
i. Turbidity	Not to exceed 50 NTUs provided existing uses are maintained	*Turbidity NTUs = 15, 17, 18, 26 and 37; avg of 22.6*

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III. BIOLOGICAL ASSESSMENT

Summary - Using the Izaak Walton League's formula for calculating biotic values (see attached), which weights sensitive species over pollution-tolerant ones, Goldmine Creek scored a total index value of 24. The IWL (2020) considers any index value over 22 to be an indicator of "Excellent" water quality.



Figure 1: Stream Invertebrate Sampling on Goldmine Creek, July 2021

Biological Assessment includes review of the presence and numbers of stream "macroinvertebrates" or insects, crayfish, salamanders and other life forms (i.e. "biota") at suitable sample points. Three representative sample points – C1, C2, and C3 - having rock substrates where insects and their predators may thrive were sample and results were surprising for western Piedmont streams which are typically badly damaged. Biological monitoring of streams using benthic macroinvertebrates is a well-established technique that assesses the condition of water bodies using aquatic insects as bioindicators, or "canaries in the coal mine." (Voshell, 2002)

Water temperature ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) – easily lower than expected for late July in the western Piedmont where streams can range from mid-70 to lower 80 degrees on summer days. On the sampling date, the water was moderately stained from a thunderstorm the evening before. Visibility was less than a 12-inches in deeper holes early in the day and clearing within a couple of hours.

The stream channel of Goldmine Creek is normal to moderately incised in places, while areas lacking vegetation (naturally or by removal) show signs of bank widening from natural tree-falls, floods, and historical canopy clearing for agriculture and more recent "flashiness" from storm events have caused some of this damage. One of the three sample-sites (C1) was within 75 feet of a horse pasture and adjacent mown grassy areas north of the eastern creek channel, which sheds water far more rapidly forested or mature meadow zones. Two of the sample-sites (C2 and C3) were in deep forest conditions.

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Results – In total, we collected 104 macroinvertebrates at three sampling locations along Goldmine Creek including 26 individuals at Sites #1 and 2 and 52 individuals at Site #3.

Of those, five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health by the Izaak Walton League and most water quality agencies.

Four types we found are considered somewhat, or less, sensitive to pollution: crayfish, cranefflies, dragonflies and net-spinning caddisflies. Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey.

In addition to the macroinvertebrate fauna, several vertebrates were found in the course of seining. A single creek chub (*Semotilus atromaculatus*) was picked up in a kick net at Site 2. A minnow trap dropped just above a small pond in the headwaters netted 11 bluehead chubs (*Nocomis leptocephalus*.) Both of these species are tolerant of a wide range of environmental conditions (Tracy, 2020).

Additionally, our survey collected four adults and six larval (gilled) salamanders, all appearing to be Two-Lined Salamanders (*Eurycea cirrigera*). Goldmine Creek harbors a rich stream invertebrate fauna with some very pollution-intolerant genera. As a family, roach stoneflies "will be present only in streams and rivers of good to excellent water quality," according to Steven R. Beaty of NCDEQ's Biological Assessment Branch.

Table 3, Aquatic Invertebrates Collected in Goldmine Creek, Enclave HOA, July 2021.

Invertebrate type	Site 1	Site 2	Site 3	subtotal
Water Temperature	68.6	68.6	68.8	
Tipulidae - cranefly larva	7	5	9	21
Cambarus - crayfish	1	3	8	12
Eurycea – two-lined salamander	3	3	4	10
Ophiogomphus - dragonflies	3	7	2	12
Hydropsyche - caddis larva	4	4	6	14
Maccaffertium sp. - mayflies	0	3	6	9
Stenacron sp. - mayflies	2	0	0	2

Perlesta sp. - stoneflies	3	1	7	11
Tallaperla sp. – roach stoneflies	0	8	0	8
Isoperla sp. – stoneflies	0	1	0	1
Lymnaeid – gilled snails	2	2	6	10
Chimarra – caddisfly larva	0	0	1	1
Annelida - annelid worm	1	0	0	1
Psephenidae - Water penny	0	0	1	1
TOTAL	26	26	52	104

IV. PHYSICAL STREAM CONDITIONS

Overview: The Goldmine Creek headwaters are in very good condition overall and they represent the best of their kind in the region in terms of water quality, stream invertebrate biota, and structure. That E.coli is currently found in low number is remarkable – a condition that will not possibly continue with an RV Park at the headwaters.



Figure 2: Typical high-quality Goldmine Creek embankments

Stream Physical Structure - Goldmine Creek contains 2 abandoned beaver ponds, six "imperiled" seep locations, an astonishing 110 natural stream oxbows and 50+ riffle-pool and plunge-pool complexes, and extensive woody debris which indicate complex and high-quality streams.

Embankments - Embankment structure is mostly very good to good with less than 20 exposed embankment exposures observed. Aside from 75-80% sloped ravines at the western headwaters, which are naturally eroding, most embankment exposures along Goldmine Creek are caused by natural treefalls where flooding has scoured

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embankments downstream of the root zone, except in the lower eastern zone where potential historical channel straightening may have artificially caused recent collapsed zones.

Substrate – Streambed substrate consists of approximately 75% sand with approximately 25% small-to-medium-sized gravel from ½ inch to 6 to 10-inch block-shaped diameters.

Erosion - Headwater ravines of the primary southwestern channel contain steep, 15 to 20-foot height embankments at extreme slopes (75-80%) which are highly eroded due to natural, sandy soils and likely exacerbated by historical forest canopy removal (Photo Doc images #10-1 and 10-2). Though forested and slowly restoring, these banks are the primary in-stream sediment input to Goldmine Creek. Other embankment undercut or erosion zones are minor compared to this zone. Several forested, upland ravines deliver sediment to the stream. Given their steep, wooded condition and natural sandy soil types, sediments here are possibly exacerbated by increased velocity above them from lawn or structural areas.

Pollution - Non-point stormwater velocity and sedimentation is exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelsey Mill Roads and adjacent mowed lawns at the top of the western watershed.

V. ECOLOGICAL CONDITIONS

The Enclave HOA and Greenspace of Fairview Conservation Block – an approximate 1,643+ acre zone – consists of numerous documented high-quality features such as mature forest, wetlands, rare plant species, high quality wildlife and extensive streams.

While this study does not assess these resources on the proposed RV park, it does include a summary of information from GreenSpace and HOA lands, which completely surround the proposed park.

Upstate Forever "Conservation Focus Area" (CFA) – in 2010, Upstate Forever, the largest conservation organization in the SC Upstate, published a Special Places Inventory (SPI) designed to "document the remaining historical and natural assets before making decisions that could negatively impact those resources permanently." The SPI analysis is based on data developed over decades by The Nature Conservancy (TNC) – the leading conservation organization in the world.

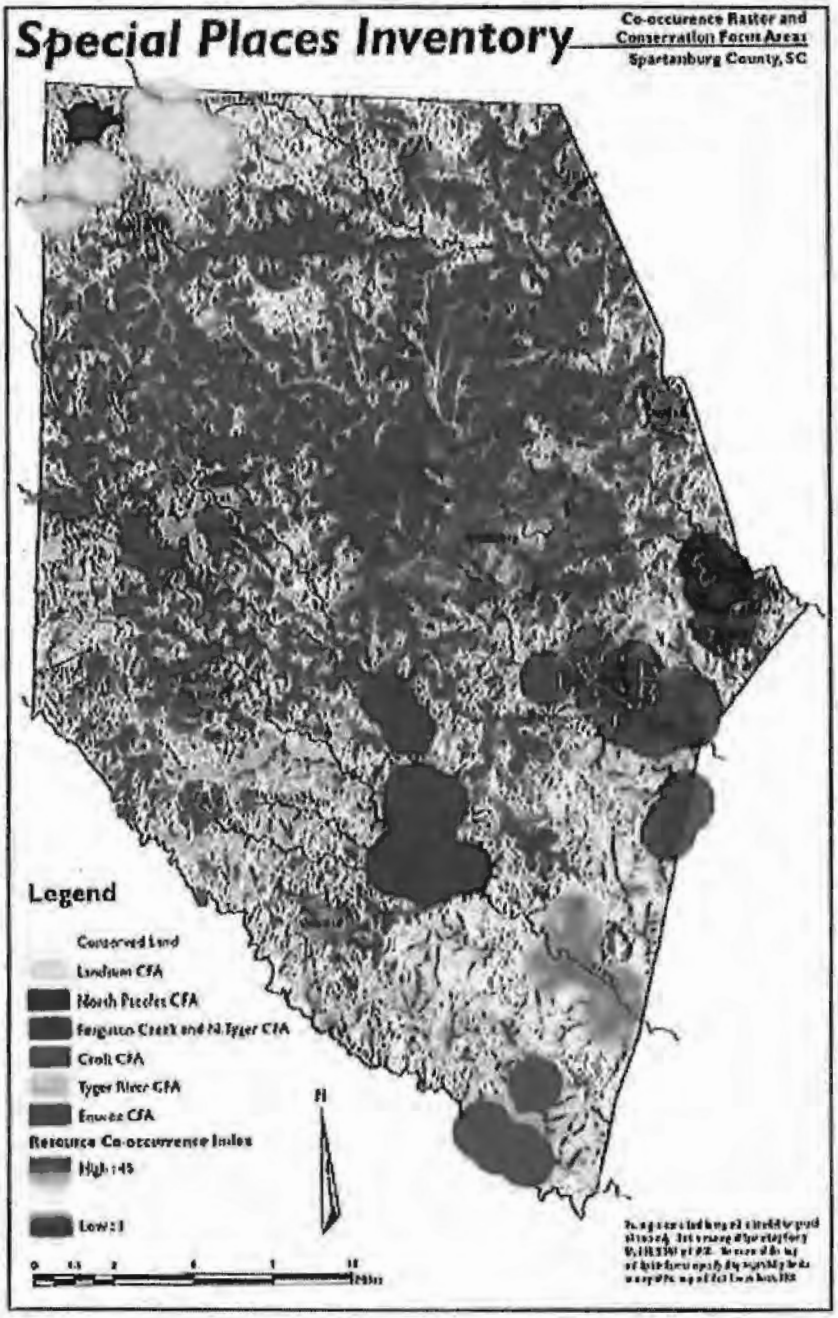
The proposed RV park sits directly within the one of these key areas - the "Landrum and Campobello" Conservation Focus Area (CFA) - one of only six critical Special Areas identified by Upstate Forever in all of Spartanburg County (image above, 2010). These six CFA's include the final remaining, undeveloped natural and cultural heritage areas and key conservation target regions in the County.

Figure 2: Upstate Forever CFA's In Spartanburg County, SC

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CFAs are identified by Upstate Forever *specifically* to help alert city and county planners and citizens of key ecological and historical heritage resources to the resources *that have already been lost* in order to protect these remaining Special Places in the future. Upstate Forever states:

> *"If we do not protect the remaining Special Places, we will lose them permanently. We will lose their ecosystem services, their wildlife, their history – indeed, we will lose the very elements that made Spartanburg County special then and will continue to make our home special in the future"* (2010, p3).



High-Quality and Rare Natural Communities

Ecological inventories performed by Gaddy, et al (2000) and MTS Ecological (2021) reveal significant biological richness in the GreenSpace of Fairview property and Enclave HOA, which have been mostly extirpated from the greater region since colonization and eradicated from cultural memory for the majority of residents. This includes 10 federal and state listed rare plant species, rare Headwater Stream Forest and Piedmont Springhead Seep natural communities, and extensive wetland resources and streams. Only some of these resources are formally protected within the GreenSpace properties as formal Conservation Easement and the Enclave HOA, and similar resources probably exist on the proposed RV park itself.

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All of Goldmine Creek in the HOA is contained within 28 acres of globally "rare" floodplain habitats (aka "natural communities") including a mature, globally "vulnerable" (G3) **Piedmont Headwater Stream Forest.** and six "critically imperiled" **Piedmont Springhead Seep** (G1) wetlands. The proposed RV park directly abuts these critical habitats. These are classified as rare "natural communities" or distinct and permanent plant alliances by NatureServe – the national consortium of all US Natural Heritage Programs and the global and international clearinghouse for all conservation data regarding plant and wildlife species and natural communities.

G2 – "Imperiled" — At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.

G3 – "Vulnerable" At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.

The global (or national) conservation ranking system ("G") ranges on a scale 1 to 5. Ranks of 1-3 the rarest while ranks of 4-5 are "secure", respectively. Ranks of 1-3 are of the highest conservation value for protection and restoration for government agencies and conservation organizations. Though South Carolina Natural Heritage Trust (SCNHT) is currently in process of developing natural community classifications and cross-referencing these with NatureServe classifications, NHT and DHEC do not formally protect rare or high-quality natural habitats or rare species by law except for federally listed species for projects that acquire federal funding.

Habitat Descriptions

Wetland cover types consist of open water (ponds), Piedmont Springhead Seeps, and all streams. Piedmont Headwater Stream Forest is a semi-wetland habitat, consisting of both upland and wetland-dependent plant species ("obligate" [OBL] and "facultative" [FACW]) with Seeps embedded.

<u>Piedmont Springhead Seep (G2)</u>
NatureServe Code: CEGL007041

Six locations of this globally "imperiled" wetland community are dotted along Goldmine Creek, the majority of which are downstream of the proposed RV park and thus subject to severe damage and extirpation from the RV Park, if approved.



Figure 4: globally "imperiled" Springhead Seep community along Goldmine Creek

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As a "small patch" community (<1 acres in size) seeps are rare communities that typically occur through the region, the vast majority of them have long lost to ditching, agriculture, historical damage rendering them extirpated and/or unrecognizable. Thus, having high quality, intact seeps with native vegetation and structure dominant are extremely rare, six of them even more so.

Large diameter trees are rooted around seeps and occur as saplings but they never grow large within them due to mucky soils which cause large trees to topple easily. Sphagnum moss (which forms peat) is common. The shrub layer contains a few stems of Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum*), Black Chokecherry (*Aronia arbutifolia*), and Yellowroot (*Xanthorhiza simplicissima*).

The herb layer is dense and lush with herbs, sedges and grasses including Fowl Mannagrass (*Glyceria striata*), and numerous sedges (*Carex debilis, C. crinita, C. lurida, C. atlantica*), Jewelweed (*Impatiens capensis*), Virginia Bugleweed (*Lycopus virginicus*), False Nettle (*Boehmeria cylindrica*), Cardinal Flower (*Lobelia cardinalis*), Royal Fern (*Osmundastrum regalis*) and Cinnamon Fern (*O. cinnamomea*), Jack-in-the-Pulpit (*Arisaema triphyllum*), Chainfern (*Woodwardia areolata*), Virginia Wild-Rice (*Leersia virginica*), and White Turtlehead (*Chelone* glabra).



Piedmont Headwater Stream Forest (G3)
NatureServe Code: CEGL004900

Approximately 28 acres of this exceptionally mature, high-quality forest dominates the flattest, low elevation bottomlands buffering Goldmine Creek. Here, shallow water table depth combined with elevated "hummocks" provide both wetland and upland habitat for a wide variety of wetland and upland species. Typical trees are Sweet-Gum (*Liquidambar styraciflua*), White Oak (*Quercus alba*), Northern Red Oak (*Quercus rubra*), Green Ash (*Fraxinus pensylvanica*), Red Maple (*Acer rubrum*), Umbrella Magnolia (*Magnolia tripetela*) and American Beech (*Fagus grandifolia*) above an understory of American Holly (*Ilex opaca*), Ironwood (*Carpinus caroliniana*), Sourwood (*Oxydendrum arboreum*), and Dogwood (*Cornus florida*).

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The shrub zone is equally as variable, harboring numerous wetland and upland shrubs like Highbush Blueberry (*Vaccinium fuscatum*), Spicebush (*Lindera benzoin*), Yellowroot (*Xanthorhiza simplicissima*), Doghobble (*Leucothoe axillaris*), Witch-Hazel (*Hamamelis virginiana*), Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum*), and Mountain Laurel (*Kalmia latifolia*). The state "critically imperiled" (S1) Ashy Hydrangea (*H. cinerea*) occurs throughout bluffs south of Goldmine Creek. (See VI. Photographic Documentation for photograph).

Herbs dominating in patches and colonies include sometimes huge colonies of Rivercane (*Arundinaria gigantea*), Christmas Fern (*Polystichum acrostichoides*), Lady Fern (*Athyrium filix-femina ssp. asplenioides*), New York Fern (*Thelypteris noveboracensis*), numerous sedge species (*Carex* spp.), Wood Oats (*Chasmanthium laxum*), *Leersia virginica*, Cinnamon Fern (*Osmunda cinnamomea*), and Royal Fern (*O. regalis*). Most notably – this habitat is almost entirely free from exotic-invasive (EI) species invasion that dominates most headwater stream forests regionwide. A few stems of privet, kudzu, and multiflora rose were detected, but in such low levels that removal could likely be performed in one or two field dates.

Several hundred clumps of the federally Threatened (T) and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora*) occur throughout this forest type and adjacent embankments on both sides of Goldmine Creek. South Carolina comprises the smallest, southern-most portion of its US range, as the species occurs only in Spartanburg, Greenville, and Cherokee Counties (See VI. Photographic Documentation for photograph).

Beaver Impoundments

Two locations of this now-abandoned beaver-developed wetland occur onsite in the central-to-upper Goldmine Creek adjacent to the proposed RV Park and Klapholz property. The impoundment zones are a complex, high-quality mixture of standing dead trees (a key missing component of most natural area today) and a mosaic of boggy and upland zones determined by drainage patterns after abandonment. This is easily the highest quality natural "early successional" or full-sun, non-forested habitat onsite.



Figure 6: abandoned Beaver Impoundment, contral Goldmine Creek

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Typical herbs are Cattail (*Typha latifolia)*, Needle-rush (*Juncus effusus)*, bulrush (*Scirpus cyperinus)*, American Bur-reed (*Sparganium americanum)*, Jewelweed (*Impatiens capensis)*, Virginia Wild Rice (*Leersia oryzoides)* and numerous Sedges *(Carex crinita, C. stipata, C. crinita, C. scabrata, C. lupulina*), Lizard's Tail (*Saururus cernuus)*, *Carex lupulina*, False Nettle (*Boehmeria cylindrica)*, Three-way Grass (*Dulichium arundinaceum)*, Virginia Bugleweed (*Lycopus virginicus*, Beggars-Ticks (*Bidens discoides*, B. *laevis)*, Fowl Mannagrass (*Glyceria striata)*, Bog St.Johnswort (*Hypericum mutilum)*, sensitive Fern (*Onoclea sensibilis)*, Cardinal Flower (*Lobelia cardinalis)*, Clearweed (*Pilea pumila)* and Cinnamon Fern (*Osmundastrum cinnamomea)*.

Open Water/ Ponds

Three ponds (2.6 acres) occur in the HOA adjacent to Goldmine Creek, though these were not the subject of the water quality assessment and were not inventoried for vegetation or wildlife. These fabricated, still-water systems may still affect stream integrity and health in several ways:

1) collect and store freshwater that helps charge groundwater and regulate stream-flows

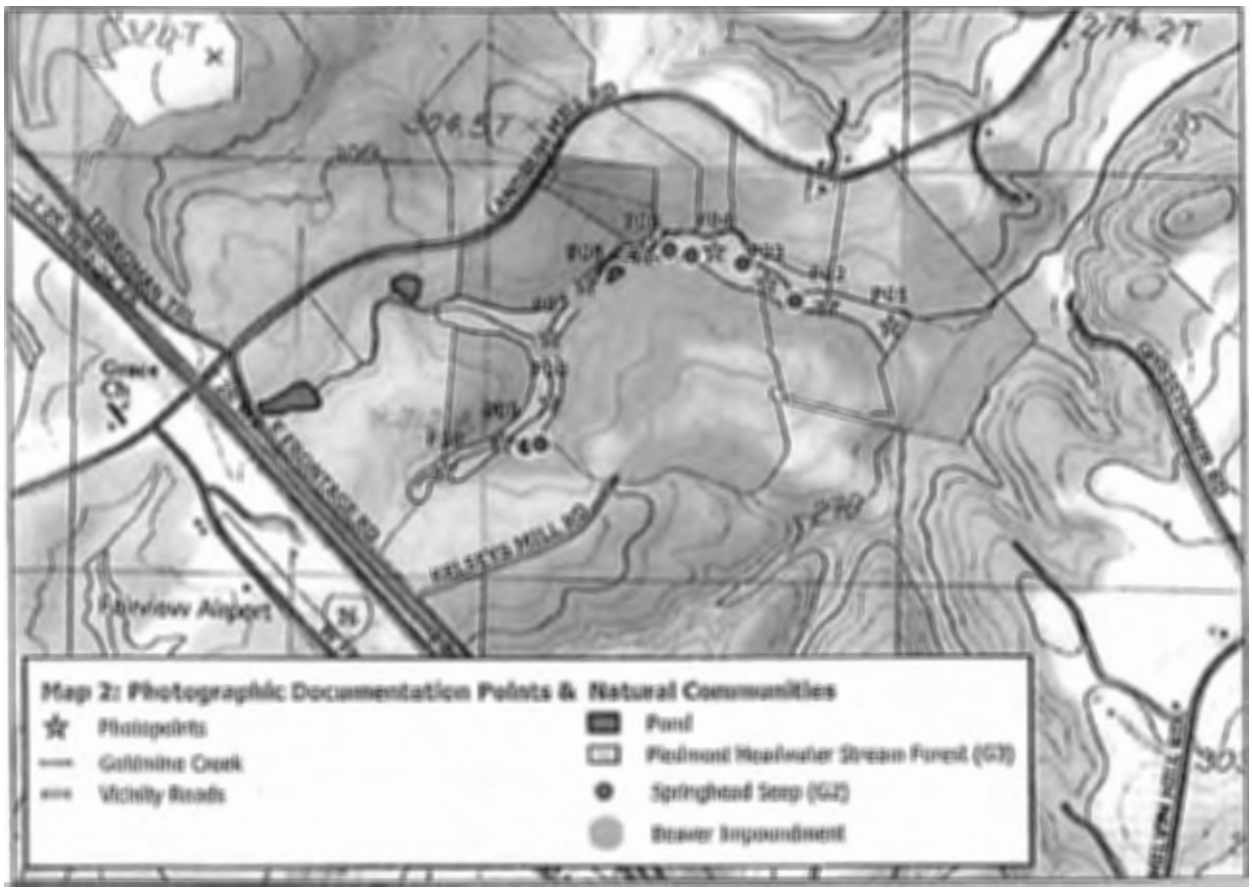
2) collect and store sediments and chemical discharges (especially those from I-26) that may otherwise enter the stream.

3) offer flatwater and non-moving water sources for a variety of wildlife that would otherwise not occur in the immediate vicinity such as waterfowl and other birds, reptiles, amphibians, small mammals such as bats, and high numbers of insects.

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VI. PHOTOGRAPHIC DOCUMENTATION

A "baseline" photographic documentation at 10 locations on approximate 500-foot intervals, plus rare plant photographs, was performed to document Goldmine Creek existing conditions prior to potential RV Park development (Figure 2). While it is hoped that structural ecological integrity of Goldmine Creek will not be impacted if the RV Park is approved, the likelihood of permanent damage from heavy stormwater, chemical, fertilizer, sewage, sediment, and trash outputs as is inevitable – and measurable. Recent flash flooding (July 18, 2021) caused some tree and embankment damage. Photos are taken from down to upstream from 01 to 10 and are shown in order of up and downstream.



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Photo #1: view of the state "critically imperiled" (S1) Ashy Hydrangea (*Hydrangea cinerea*) *with diagnostic "ashy" under-leaf surface*



Photo #2: view of the federally Threatened and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora*)

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Photopoint 1, Photo 1: view upstream of typical stream and embankment conditions. Width range 4 to 7 feet



Photopoint 1, Photo 2: view downstream, typical stream and embankment conditions. Width range 4 to 7 feet

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Photopoint 2, Photo 1: view upstream of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow



Photopoint 2, Photo 2: view downstream, of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow

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Photopoint 3, Photo 1: view upstream of typical stream and embankment conditions in dense mountain laurel covered banks. Stream width range 3 to 6 feet



Photopoint 3, Photo 2: view downstream, of typical stream and embankment conditions with newly fallen woody debris

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Photopoint 4, Photo 1: view upstream of "ideal" stream, riffle-pool, and embankment conditions in Headwater Stream Forest. Stream width range 4-5 feet



Photopoint 4, Photo 2: view downstream, of typical stream, cobble, and embankment conditions

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Photopoint 5, Photo 1: view upstream of in a natural slough / pool zone under dense mountain laurel shrub cover. Stream widths range from 6-8 feet



Photopoint 5, Photo 2: view downstream of in a natural slough / pool zone under dense mountain laurel shrub cover

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Photopoint 6, Photo 1: view upstream with cobble, rivercane, alluvial bench, and forested conditions. Stream width range 3-4 feet



Photopoint 6, Photo 2: view downstream of oxbow deposit with newly fallen woody debris

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Photopoint 7, Photo 1: view upstream of Piedmont Springhead Seep and sandy flood deposits in Headwater Stream Forest. Stream width range 2-3 feet



Photopoint 7, Photo 2: view downstream below Piedmont Springhead Seep, oxbow in Headwater Stream Forest and abandoned beaver impoundment

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Photopoint 7, Photo 3: supplemental view - upstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-3 feet



Photopoint 7, Photo 4: supplemental view - downstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-4 feet

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Photopoint 8, Photo 1: view upstream; Goldmine Creek narrowing and smaller with dense in upper headwaters. Stream width range 1.5-2 feet



Photopoint 8, Photo 2: view downstream, upper headwaters of Goldmine Creek and dense rivercane. Stream width range 1.5-2 feet

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Photopoint 9, Photo 1: view upstream of Goldmine Creek with steeper natural embankments. Stream width range 2-3 feet



Photopoint 9, Photo 2: view downstream, upper headwaters of Goldmine Creek and alluvial benches. Stream width range 1.5-2 feet

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Photopoint 10, Photo 1: view upstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 3-6 feet, artificially wide



Photopoint 10, Photo 2: view downstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 1-2 feet, artificially narrow

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EXHIBIT C

Respondent Blue Sky's Three Fire Protection Plans

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Foster Engineering & Consulting, LLC
[redacted]
Columbia, SC 29204

January 13, 2022

Waverly Wilkes, P.E.
Gray Engineering
132 Pilgrim Road
Greenville, SC 29607

Re: T Tree Farms RV Park – Required Fire Flow – Landrum Mill Road, Spartanburg, SC

Dear Ms Wilkes:

We need the County Code official to provide us with two decisions to progress the fire protection part of the project.

1. We need the County Fire Code Official to tell us what the required fire flow if for this site per South Carolina Fire Code (SCFC) section 507.1.

2. We need the County Fire Code Official to tell us if they will use the arriving fire truck to pressurize the hydrant system for the site or if we have to pressurize the hydrant system.

Below is an explanation of how I arrived at a suggested fire flow for the project.

These are the assumptions I made developing the required fire flow.

- The largest RV is around 428 SF (9.5 ft wide x 45 ft long)
- Assume a maximum of 3 RVs are involved in a fire (one directly and two from exposure fire)
- Three RVs would equal approximately 1284 SF involved in the fire
- The heat release rate and fuel load of three RVs would approximate an R-3 occupancy.
- The RV fuel would not be involved in the fire until the fuel tank is compromised.

Proceeding with the above assumptions, we would be equating the fire to an R-3 occupancy of less than 3,000 ft^2 Even though Appendix B of the SCFC is not adopted, it does offer a methodology for calculating Required Fire Flows. Looking at Table B105.1(1) we would need 1,000 gpm of flow for 1 hour. This creates a 60,000-gallon requirement. For this project we would need a reservoir or a tank with 60,000 gallons of an available water for firefighting.

Pressurizing the hydrant system may be done one of two ways. The first would be to use the fire arriving fire apparatus to draft from the water source and pump into the hydrant system for the site. The second method would be to use a fire pump to pressurize the hydrant system.

Using the fire apparatus to draft from the water source and pressurize the hydrant system is similar a situation to conducting water shuttles. It does commit the first apparatus to suppling

SFPE Engineering A Fire Safer World FELLOW

AFSA American Fire Sprinkler Association

NFPA MEMBER 2020–2021

the hydrant system and presumes the fire department would have more than one responding fire truck for a fire.

If the County does not agree to using the fire truck, we will need a fire pump to pressurize the hydrant system on the site. The type of pump needed will also depend on if the tank/reservoir is above or below grade.

Please let me know if you have questions or need additional information. Feel free to contact me at [redacted]

Sincerely,



Ralph K. Foster, III, PE, FSFPE
Principal Fire Protection Engineer

Encl SCFC Table B105.2(1)

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TABLE B105.1(1)
REQUIRED FIRE FLOW FOR ONE- AND TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES

FIRE-FLOW CALCULATION AREA (square feet)	AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE FLOW (gallons per minute)	FLOW DURATION (hours)
0–3,600	No automatic sprinkler system	1,000	1
3,601 and greater	No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2) at the required fire-flow rate
0–3,600	Section 903.3.1.3 of the *South Carolina Fire Code* or Section P2904 of the *South Carolina Residential Code*	500	$^1/_2$
3,601 and greater	Section 903.3.1.3 of the *South Carolina Fire Code* or Section P2904 of the *South Carolina Residential Code*	$^1/_2$ value in Table B105.1(2)	1

For SI: 1 square foot = 0.0929 m^2, 1 gallon per minute = 3.785 L/m.

TABLE B105.1(2)
REFERENCE TABLE FOR TABLES B105.1(1) AND B105.2

FIRE-FLOW CALCULATION AREA (square feet)					FIRE FLOW (gallons per minute)[b]	FLOW DURATION (hours)
Type IA and IB[a]	Type IIA and IIIA[a]	Type IV and V-A[a]	Type IIB and IIIB[a]	Type V-B[a]		
0-22,700	0-12,700	0-8,200	0-5,900	0-3,600	1,500	2
22,701-30,200	12,701-17,000	8,201-10,900	5,901-7,900	3,601-4,800	1,750	
30,201-38,700	17,001-21,800	10,901-12,900	7,901-9,800	4,801-6,200	2,000	
38,701-48,300	21,801-24,200	12,901-17,400	9,801-12,600	6,201-7,700	2,250	
48,301-59,000	24,201-33,200	17,401-21,300	12,601-15,400	7,701-9,400	2,500	
59,001-70,900	33,201-39,700	21,301-25,500	15,401-18,400	9,401-11,300	2,750	
70,901-83,700	39,701-47,100	25,501-30,100	18,401-21,800	11,301-13,400	3,000	3
83,701-97,700	47,101-54,900	30,101-35,200	21,801-25,900	13,401-15,600	3,250	
97,701-112,700	54,901-63,400	35,201-40,600	25,901-29,300	15,601-18,000	3,500	
112,701-128,700	63,401-72,400	40,601-46,400	29,301-33,500	18,001-20,600	3,750	
128,701-145,900	72,401-82,100	46,401-52,500	33,501-37,900	20,601-23,300	4,000	4
145,901-164,200	82,101-92,400	52,501-59,100	37,901-42,700	23,301-26,300	4,250	
164,201-183,400	92,401-103,100	59,101-66,000	42,701-47,700	26,301-29,300	4,500	
183,401-203,700	103,101-114,600	66,001-73,300	47,701-53,000	29,301-32,600	4,750	
203,701-225,200	114,601-126,700	73,301-81,100	53,001-58,600	32,601-36,000	5,000	
225,201-247,700	126,701-139,400	81,101-89,200	58,601-65,400	36,001-39,600	5,250	
247,701-271,200	139,401-152,600	89,201-97,700	65,401-70,600	39,601-43,400	5,500	
271,201-295,900	152,601-166,500	97,701-106,500	70,601-77,000	43,401-47,400	5,750	
295,901-Greater	166,501-Greater	106,501-115,800	77,001-83,700	47,401-51,500	6,000	
—	—	115,801-125,500	83,701-90,600	51,501-55,700	6,250	
—	—	125,501-135,500	90,601-97,900	55,701-60,200	6,500	
—	—	135,501-145,800	97,901-106,800	60,201-64,800	6,750	
—	—	145,801-156,700	106,801-113,200	64,801-69,600	7,000	
—	—	156,701-167,900	113,201-121,300	69,601-74,600	7,250	
—	—	167,901-179,400	121,301-129,600	74,601-79,800	7,500	
—	—	179,401-191,400	129,601-138,300	79,801-85,100	7,750	
—	—	191,401-Greater	138,301-Greater	85,101-Greater	8,000	

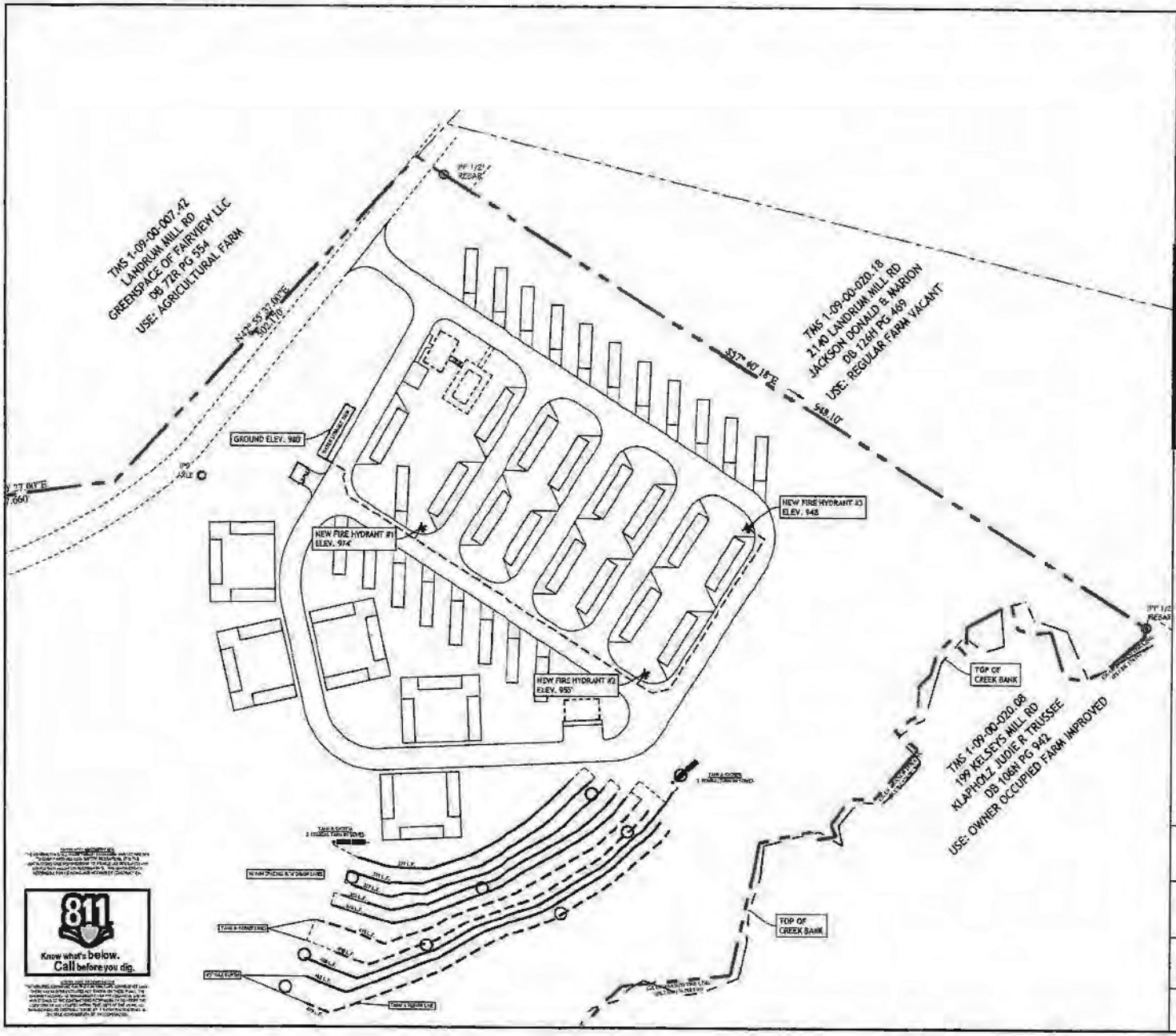
For SI: 1 square foot = 0.0929 m^2, 1 gallon per minute = 3.785 L/m, 1 pound per square inch = 6.895 kPa.

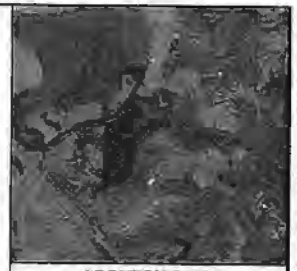
a. Types of construction are based on the *South Carolina Building Code*.

b. Measured at 20 psi residual pressure.

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LOCATION MAP

UTILITY PLAN LEGEND

	PROPERTY BOUNDARY
	LOT LINES
	NEW ROAD/CURB & GUTTER
	DRAINAGE/UTILITY EASEMENTS
EX ELEC	EXISTING OVERHEAD ELECTRIC
EX GAS	EXISTING GAS
OHP	EXISTING OVERHEAD POWER
	EXISTING STORM DRAINAGE
	PROPOSED STORM DRAINAGE
W	PROPOSED WATERLINE
SS	EXISTING SANITARY SEWER
	PROPOSED SANITARY SEWER
	PROPOSED SANITARY SEWER SERVICE LINE

T. TREE FARMS
PROPOSED RV PARK

DEVELOPER	ENGINEER
BLUE SKY VENTURES, LLC PO BOX 5830 SPARTANBURG, SC 29304 864-809-5482	GRAY ENGINEERING ZACH JOHNSON, P.E. 132 PROGRESS ROAD GREENVILLE, SC 29607

SETBACK CHART	SITE INFORMATION
FRONT: 40' SIDE: 10' REAR: 50'	PRIVATE PARK NO OPEN SPACE REQUIRED NO EXISTING STRUCTURES ON THE PROPERTY

SCALE: 1"=50'

Gray Engineering

132 PROGRESS ROAD GREENVILLE, SC 29607
864.232.8563 GRAY-ENG.COM NC COA P1633 SC COA 4760 TN COA P1633

UTILITY PLAN

T. TREE FARMS
RV PARK
LANDRUM MILL ROAD
SPARTANBURG COUNTY, SC

PROJECT MANAGER:	ZJ
DRAWN BY:	MSS
PROJECT DATE:	2/1/22
SCALE:	1"=50'
JOB NO.:	102302s
PLOT DATE:	12/8/22

SHEET
CV-3

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Foster Engineering & Consulting, LLC
[redacted]
Columbia, SC 29204

March 24, 2022

[redacted]
Spartanburg County
366 N. Church St.
Spartanburg, SC 29303

Re: T Tree Farms RV (Recreational Vehicle) Park – Required Fire Flow – Landrum Mill Road, Spartanburg, SC

Dear Ms Jolley:

Below is my analysis of required fire flow for the T Tree Farms RV. The current plan has no buildings constructed on site (See enclosure #1). The South Carolina Fire Code (SCFC) 507.1 requires an approved water supply capable of supplying the required fire flow to premises on which facilities, buildings, or parts of buildings are constructed or moved into the jurisdiction to meet the necessary fire flow determined by the fire code official.

SCFC section 202 defines a Building as any structure utilized or intended for sheltering any occupancy. SCFC 201.4 instructs us to use Merriam Webster's Collegiate Dictionary, 11th edition to define terms in the code. The first definition for vehicles is "a means of carrying or transporting something planes, trains, and other vehicles. Part 1a states Motor Vehicle. A Recreational Vehicle is defined as ": a vehicle designed for recreational use (as in camping) especially : Motor Home". For this analysis, I will assume that a Fire Code Official classifies a Recreational Vehicle as a structure.

One method of calculating the required fire flow is using NFPA 1142. This standard is not adopted in South Carolina nor is it a referenced standard through the SCFC but is a recognized national standard for calculating required fire flow for in areas where there is no water or inadequate water for firefighting. Using the 2022 edition of the standard, we used the following inputs:

1) Occupancy hazard – 7 (dwelling)
2) Type of construction – 1.0 (NFPA 1142 – 6.2.2)
3) Structure dimensions (length, width, and height) – 45 ft x 9.5 x 10 ft = 4,275 ft^3 *
4) Exposures – 1.5 (another RV within 50 ft)

*I used the largest dimensions found on the https://campergrid.com/average-rv-length-width/. I also did not deduct for the volume under the vehicle.

The attached spreadsheet shows the calculated required fire water as 916 gallons. This number is modified by NFPA 1142 - 4.3.2 which requires the minimum water supply for a

SFPE Engineering A Fire Safe World FELLOW

AFSA American Fire Sprinkler Association

NFPA MEMBER 2022

structure with exposures to be not less than 3,000 gallons. Enclosure #2 with this letter is a spreadsheet summarizing the calculations.

NFPA 1142 7.1 discusses approved water supply. Section 7.1.5 permits areas without municipal water supply have the minimum water supply in the designated area or transportable to the designated area. Section 7.1.6 permits non-pressurized water supply to be accessible by dry hydrants when approved by the Authority Having Jurisdiction (AHJ). The water source must also be accessible by Fire Apparatus Access Road (NFPA 1142 7.5 & SCFC 503).

SCFC 507.2 permits the water supply for required fire flow to be from reservoirs. A buried tank with a dry hydrant connection and fire department apparatus access road per 503 is one method of meeting the water supply requirements.

My recommendation if the fire code official enforces "Required Fire Flow" for the site is to allow a single wall underground tank with 3,000 gallons of available water for fire department use. The fire department would draft from the tank and distribute the water for on scene operations. The tank would be approximately 8 feet in diameter and 12.5 feet long. An example of this style tank is enclosure #4. The tank would need to be accessible by an approve Fire Apparatus Access Road.

Please let me know if you have questions or need additional information. Feel free to contact me at [redacted]

Sincerely,

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 23127 24-Mar-22 RALPH K. FOSTER, III

SOUTH CAROLINA FOSTER ENGINEERING AND CONSULTING LLC No. 3285 CERTIFICATE OF AUTHORIZATION

Ralph K. Foster, III, PE, FSFPE
Principal Fire Protection Engineer

Encl Site Plan CV-3
NFPA 1142 Spreadsheet
Xerxes Fire Water Vertical Suction Tank

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

T Tree Farms RV Park
Required Fire Water Calculations

As of 3/22/2022

Enclosure # 2

NFPA 1142 Formula 4.3.1: $$WS = \frac{VS}{OHC}(CC) * 1.5$$

Building Foot Print	**Length =**	45	**Width =**	9.5	**Sq. Ft. =**	428
					Total Sq. Ft. =	428
Height for each floor	**Ceiling Height =**	10			**Cu. Ft. =**	4,275
Take 1/2 of pitched roof ht	**Attic Height =**	0			**Cu. Ft. =**	-
Additional space: (porch, etc.)	0 Length	0 Width		0 Height	**Cu. Ft. =**	-
					{VS} Total Cu. Ft. =	4,275

Total Cu. Ft. = 4,275 **OHC =** 7 **Gallons =** 611

Occupancy Hazard Classification number is 7 for dwellings {NFPA 1142 5.2.5.2 (5)}

Gallons = 611 **CC =** 1.0 **Gallons =** 611

Dwellings max 1.0 CC {NFPA 1142 6.2.2}

Gallons = 611 **Exp =** 1.5 **Gallons =** 916.07

Any structure within 50' of burn structure is considered an exposure and requires total gallons multiplied by 1.5. DO NOT add .5 for each additional exposures.

NFPA 1142 section 4.3.2 requires not less than 3,0000 gal for structures with exposures

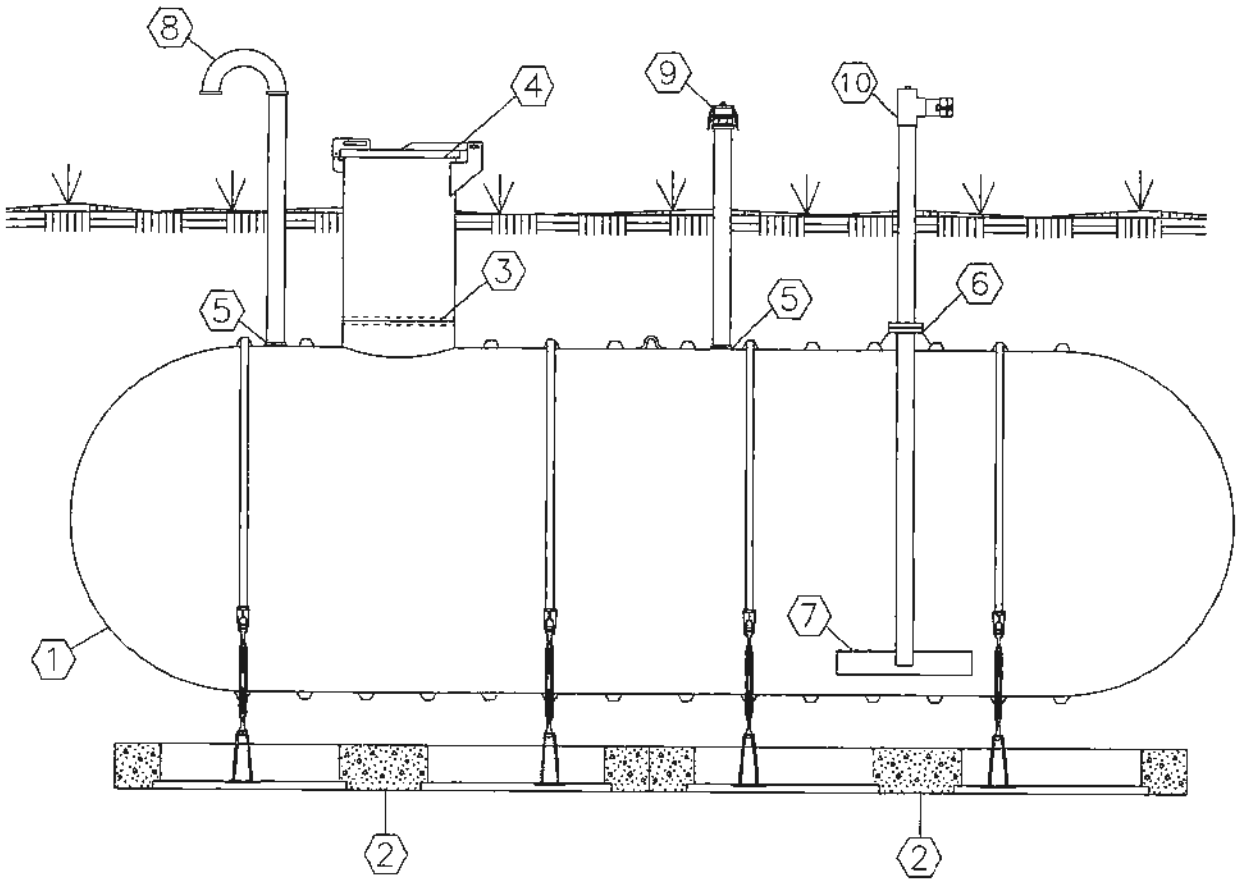
Total Gallons Required	GPM
Up to 2,499 Gallons	250 GPM
2,500 to 9,999 Gallons	500 GPM
10,000 to 19,999 Gallons	750 GPM
20,000 or more	1000 GPM

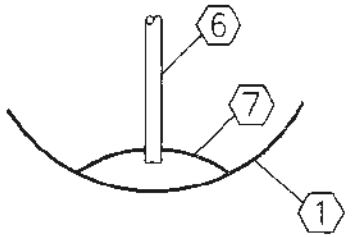
Total GPM for NFPA 1142 500

Gallons = 3,000 **at** 500 **GPM** 6.0 **Minutes**

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Enclosure # 3





NO.	DESCRIPTION
1	XERXES SINGLE WALL FRP TANK
2	XERXES PRECAST DEADMAN SYSTEM W/ HOLD DOWN STRAP AND TURNBUCKLE ASSEMBLY
3	30" I.D. ACCESS OPENING WITH ALIGNMENT RING
4	30" FRP RISER PIPE WITH HINGED & LOCKABLE TOP & GEL COAT
5	4" NPT SERVICE FITTING
6	4" FRP FLANGED & GUSSETED DOWN PIPE
7	FRP ANTI-VORTEX PLATE
8	4" VENT PIPE WITH BIRD SCREEN
9	4" FILL W/CAM LOCK CONNECTION
10	4" SUCTION W/FDC

FIRE WATER

This drawing is for illustrative purposes only.
Consult with an engineer for specific applications.

XERXES®
a ZCL company

TITLE
FIRE WATER STORAGE
VERTICAL SUCTION
WITH ANTI-VORTEX PLATE

DATE 9-14

DR. NO. S20-311-01

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ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

Foster Engineering & Consulting, LLC
[redacted]
Columbia, SC 29204

May 31, 2022

[redacted]
Spartanburg County
366 N. Church St.
Spartanburg, SC 29303

Re: T Tree Farms Recreational Vehicle Park – Required Fire Flow – Landrum Mill Road, Spartanburg, SC

Dear Mr. Jolley:

I appreciate your assistance throughout this process of determining the required fire flow for the T Tree Farms Recreational Vehicle (RV) Park. This letter is to document the agreed approach for providing the required fire flow for this site based on our discussions and Chief Caruso's input.

SCFC section 202 defines a Facility as a building or use in a fixed location including . . . and similar uses. This term includes *recreational vehicles*, . . . and storage lots.

The South Carolina Fire Code (SCFC) 507.1 requires an approved water supply capable of supplying the required fire flow to premises on which facilities, buildings, or parts of buildings are constructed or moved into the jurisdiction to meet the necessary fire flow determined by the fire code official. The fire official requested an engineer determine the required fire flow for this project.

I reviewed the National Fire Protection Association (NFPA) Research Foundation paper on Evaluation of Fire Flow Methodologies as you suggested. After reviewing the standard, I selected NFPA 1142 method of calculating the required fire flow. This standard is not adopted in South Carolina nor is it a referenced standard through the SCFC. NFPA 1142 is a recognized national standard for calculating required fire flow for in areas where there is no water or inadequate water for firefighting. Using the 2022 edition of MFPA 1142, I used the following inputs:

1) Occupancy hazard – 7 (dwelling)
2) Type of construction – 1.0 (NFPA 1142 – 6.2.2)
3) Structure dimensions (length, width, and height) – 45 ft x 9.5 x 10 ft = 4,275 ft^3 *
4) Exposures – 1.5 (another RV within 50 ft)

*I used the largest dimensions for an RV found on the https://campergrid.com/average-rv-length-width/. I also did not deduct for the volume under the vehicle.

SFPE FELLOW

AFSA American Fire Sprinkler Association

NFPA MEMBER 2022

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

Foster Engineering & Consulting, PLLC

T Tree Farms RV Park Required Fire Flow

The attached spreadsheet shows the calculated required fire water as 916 gallons. This number is modified by NFPA 1142 - 4.3.2 which requires the minimum water supply for a structure with exposures to be not less than 3,000 gallons. I considered adjacent RV as exposures. NFPA 1142 does not require a time duration for the fire water calculation. Enclosure #1 is a spreadsheet summarizing these calculations.

NFPA 1142 7.1 discusses approved water supply. Section 7.1.5 permits areas without municipal water supply have the minimum water supply in the designated area (the RV park) or transportable to the designated area. Section 7.1.6 permits non-pressurized water supply to be accessible by dry hydrants when approved by the Authority Having Jurisdiction (AHJ).

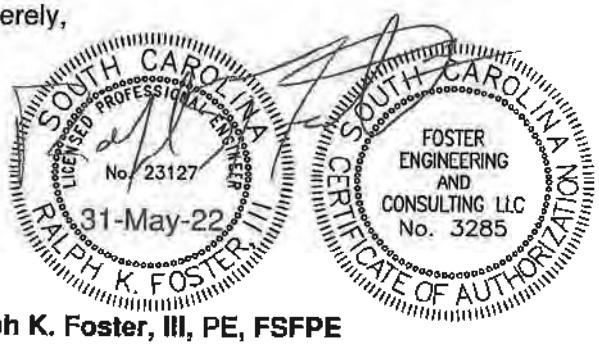
Our plan is to provide:

- A 3,000 gallon underground tank. The tank would be approximately 8 feet in diameter and 12.5 feet long. The tank will be covered with a minimum of 3 feet of earth.
- The installation will have an elevation pressure of 1-1.5 psi provided to the highest hydrant when the tank is full.
- We will provide a 5-inch Stortz Connection at a 30 degree angle for fire department use.
- There will be an all-weather roadway to provide access to the Stortz connection.

An example of this style tank is enclosure # 3. The water source must be accessible by Fire Apparatus Access Road (NFPA 1142 7.5 & SCFC 503).

Please let me know if you have questions or need additional information. Feel free to contact me at [redacted]

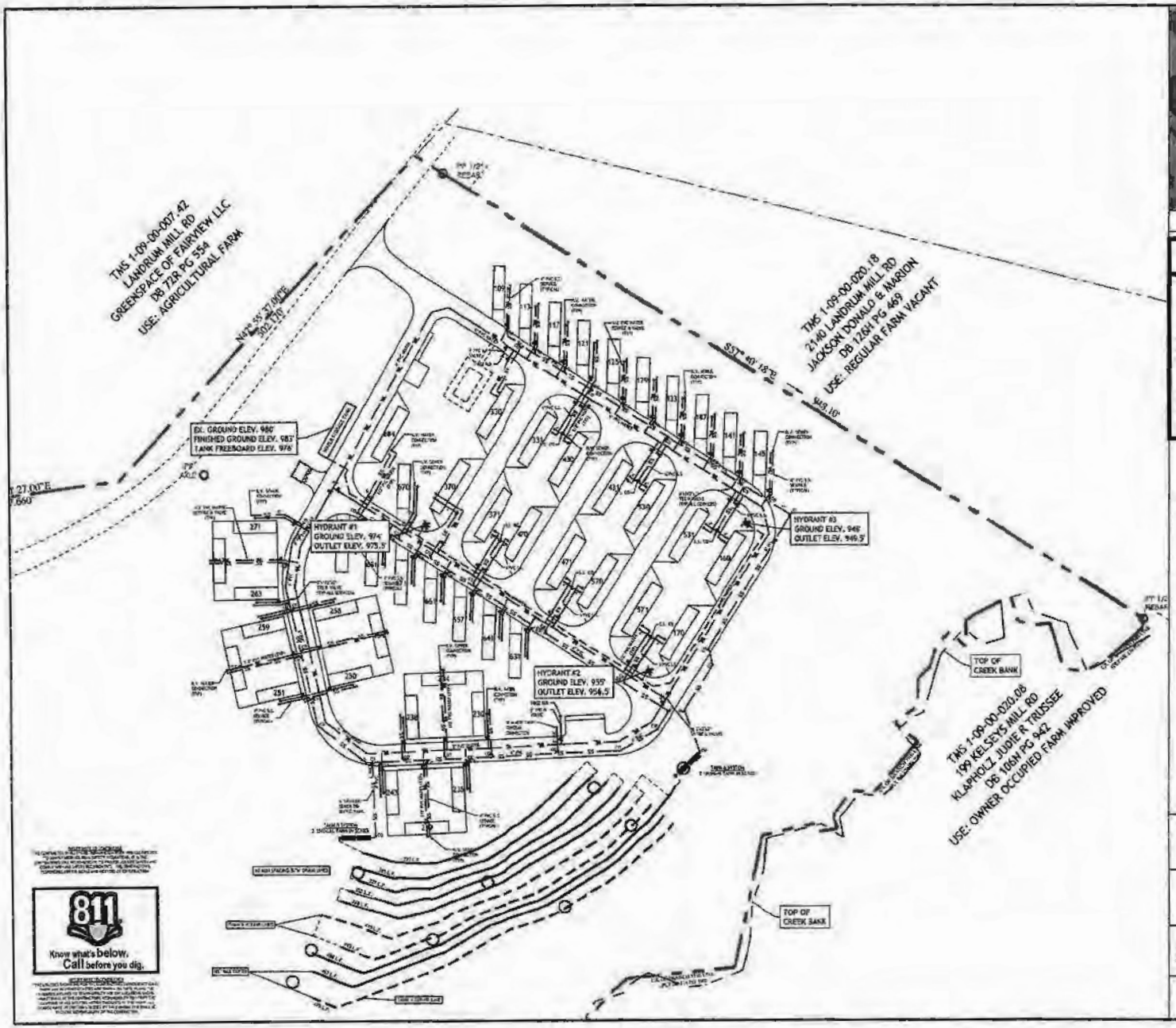
Sincerely,

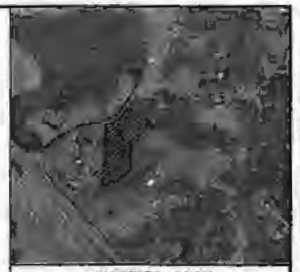


Ralph K. Foster, III, PE, FSFPE
Principal Fire Protection Engineer

Encl Site Plan CV-3
NFPA 1142 Spreadsheet
Fire Water Storage Tank

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LOCATION MAP

UTILITY PLAN LEGEND

PROPERTY BOUNDARY
LOT LINES
NEW ROAD/CURB & GUTTER
DRAINAGE/UTILITY EASEMENTS
EX. ELEC — EXISTING OVERHEAD ELECTRIC
EX. GAS — EXISTING GAS
OHP — OHP — EXISTING OVERHEAD POWER
EXISTING STORM DRAINAGE
PROPOSED STORM DRAINAGE
PROPOSED WATERLINE
SS — SS — EXISTING SANITARY SEWER
PROPOSED SANITARY SEWER
PROPOSED SANITARY SEWER SERVICE LINE

T. TREE FARMS
PROPOSED RV PARK

OWNER/DEVELOPER
SALE SEY ASSOCIATES, LLC
PO BOX 1995
SPARTANBURG, SC 29304
864-909-6454

ENGINEER
GRAY ENGINEERING
ZACH HOWARD, P.E.
142 PERIMETER ROAD
GREENVILLE, SC 29607

ZONING DATA
- FRONT: 40'
- SIDE: 10'
- REAR: 35'

SITE INFORMATION
- PRIVATE ONLY
- NO OPEN SPACE REQUIRED
- NO EXISTING STRUCTURES ON THE PROPERTY

SCALE: 1" = 50'

Gray Engineering

UTILITY PLAN
T. TREE FARMS
RV PARK
LANDRUM MILL ROAD
SPARTANBURG COUNTY, SC

PROJECT MANAGER: ZH
DRAWN BY: MM
PROJECT DATE: 4/3/23
SCALE: 1"=50'
GRAY JOB No.: 2023006
FILE DATE: 4/28/23

SHEET:
CV-3

T Tree Farms RV Park
Required Fire Water Calculations

As of 3/22/2022

Enclosure # 2

NFPA 1142 Formula 4.3.1: $$WS = \frac{VS}{OHC}(CC) * 1.5$$

Building Foot Print	**Length =**	45	**Width =**	9.5	**Sq. Ft. =**	428
					Total Sq. Ft. =	428
Height for each floor	**Ceiling Height =**	10			**Cu. Ft. =**	4,275
Take 1/2 of pitched roof ht	**Attic Height =**	0			**Cu. Ft. =**	-
Additional space: (porch, etc.)	0 Length	0 Width		0 Height	**Cu. Ft. =**	-
					{VS} Total Cu. Ft. =	4,275

Total Cu. Ft. = 4,275 **OHC =** 7 **Gallons =** 611

Occupancy Hazard Classification number is 7 for dwellings {NFPA 1142 5.2.5.2 (5)}

Gallons = 611 **CC =** 1.0 **Gallons =** 611

Dwellings max 1.0 CC {NFPA 1142 6.2.2}

Gallons = 611 **Exp =** 1.5 **Gallons =** 916.07

Any structure within 50' of *burn structure is considered an exposure and* requires total gallons multiplied by 1.5. DO NOT add .5 for each additional exposures.

NFPA 1142 section 4.3.2 requires not less than 3,0000 gal for structures with exposures

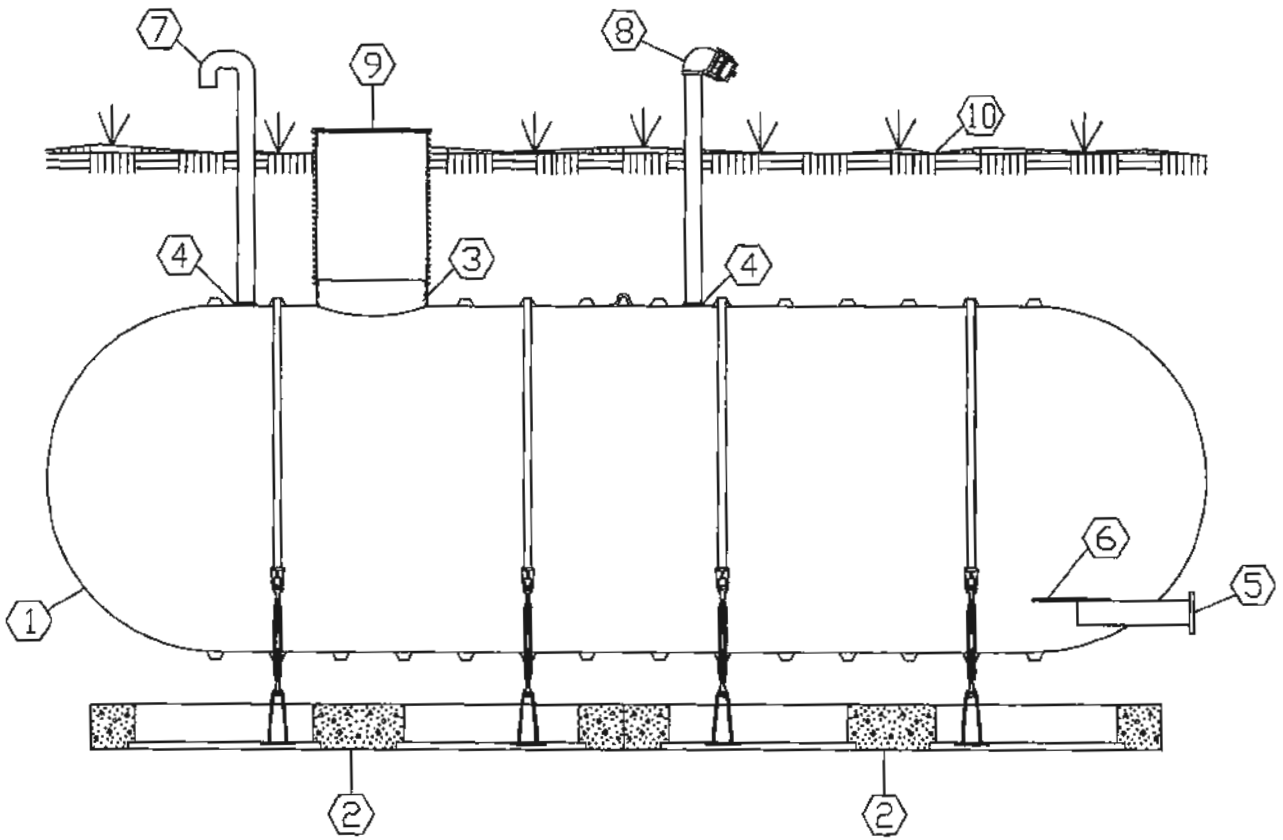
Total Gallons Required	GPM
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10,000 to 19,999 Gallons	750 GPM
20,000 or more	1000 GPM

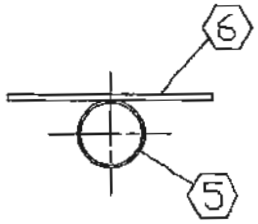
Total GPM for NFPA 1142 500

Gallons = 3,000 **at** 500 **GPM** 6.0 **Minutes**

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Enclosure # 3





INTERNAL VIEW
(ENLARGED)

NO.	DESCRIPTION
1	SINGLE WALL FRP TANK
2	PRECAST DEADMAN SYSTEM W/ HOLD DOWN STRAP AND TURNBUCKLE ASSEMBLY
3	30" FRP OPENING
4	4" NPT SERVICE FITTING
5	6" HORIZONTAL DRAIN NOZZLE
6	FRP ANTI-VORTEX PLATE
7	4" VENT PIPE WITH GOOSENECK & BIRD SCREEN
8	5" STORZ CONNECTION TURNED DOWN 30 DEGREE, MINIMUM 18 IN. ABOVE GRADE
9	30" RIBBED PVC RISER W/ FRP LID
10	TANK FREEBOARD ELEVATION 977 FT PROVIDE 3 FT OF EARTH COVER OVER TOP OF TANK

FIRE WATER

FOSTER ENGINEERING &
CONSULTING, LLC
2711 MIDDLEBURG DRIVE SUITE 214
COLUMBIA, SC
(803) 787-4757

TITLE: FIRE WATER STORAGE
HORIZONTAL DRAIN
WITH ANTI-VORTEX PLATE

DATE: 05/22

DR. NO.: FP101

ELECTRONICALLY FILED - 2023 Apr 28 11:06 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201545

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT
COUNTY OF SPARTANBUIRG	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society, Appellant, vs. The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park Respondents.	)	**SUMMONS**

TO THE RESPONDENT SPARTANBURG COUNTY PLANNING COMMISSION:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, 525 East Bay Street, Suite 200, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

April 4, 2023

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH CIRCUIT
COUNTY OF SPARTANBUIRG	)	
	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society,	)	
	)	
Appellant,	)	**SUMMONS**
	)	
vs.	)	
	)	
The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park	)	
	)	
Respondents.	)	
	)	

TO THE RESPONDENT BLUE SKY ASSOCIATES, LLC D/B/A T. TREE FARMS RV PARK:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, 525 East Bay Street, Suite 200, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

April 4, 2023

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY CIRCUIT COURT

_____

APPEAL FROM THE SPARTANBURG COUNTY PLANNING COMMISSION

_____

Site Plan – RV Park (1-09-00-020.03)

_____

The South Carolina Native Plant Society,

Appellant,

v.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,

Respondents.

_____

NOTICE OF APPEAL

_____

Appellant hereby submits notice to the Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park of its appeal of the Spartanburg County Planning Commission's conditional approval of the site plan for the T. Tree RV Park on Landrum Mill Road in Campobello, South Carolina, (1-09-00-020.03) by vote on March 7, 2023.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

Charleston, South Carolina
April 4, 2023

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society, Appellant, vs. The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**APPEAL FROM SPARTANBURG COUNTY PLANNING COMMISSION**

Appellant the South Carolina Native Plant Society ("Native Plant Society") hereby appeals the decision of Respondent the Spartanburg Planning Commission ("Commission") to conditionally approve the site plan for an RV park at 1970 Landrum Mill Road in Campobello, South Carolina, proposed by Respondent Blue Sky Associates d/b/a T. Tree Farms RV Park ("Blue Sky") and respectfully shows the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Appellant Native Plant Society is a South Carolina non-profit conservation organization with members throughout the State.

2. The Native Plant Society has members who are residents of Spartanburg County and other parts of the Upstate of South Carolina. The Native Plant Society and its members are parties in interest with respect to the Commission's conditional approval of the T. Tree Farms RV Park site plan and are impacted by the decision of the Commission.

3. The South Carolina Local Government Comprehensive Planning Enabling Act provides a right to appeal from planning commission decisions for any "party in interest,"

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including opponents of the proposed site plan. *See* S.C. Code § 6-29-1150; *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97 (Ct. App. 2019).

4. The Native Plant Society, itself and through its members, is a "party in interest" under S.C. Code § 6-29-1150(D)(1), has a significant interest in the outcome of the decision at issue here, and has standing to bring this action.

5. The Commission rendered its conditional approval of the RV Park site plan on March 7, 2023. A copy of the letter setting out that decision is attached as Exhibit A. The Native Plant Society has filed its appeal of the Commission's decision within thirty days after actual notice of the decision as provided in S.C. Code § 6-29-1150(D)(1).

6. The Commission was created pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*

7. Blue Sky is a limited liability company incorporated in South Carolina and doing business in Spartanburg County.

8. Blue Sky is the developer that sought approval of the site plan at issue in this appeal.

9. The Circuit Court has subject matter jurisdiction over appeals from local planning commissions. S.C. Code § 6-29-1150(D)(1).

10. Venue is proper in this Court. The property at issue in this appeal is located within Spartanburg County and the appealed decision was rendered in Spartanburg County. In addition, the Native Plant Society is a South Carolina organization that operates in and has members in Spartanburg County and is concerned about and seeks to protect natural resources in Spartanburg County. Blue Sky has its principal place of business in Spartanburg County.

11. This Court has personal jurisdiction over the parties due to their location or activities in Spartanburg County.

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FACTS AND PROCEDURAL HISTORY

NATURAL FEATURES OF THE PROPOSED RV PARK SITE

12. The proposed site for the T. Tree Farms RV Park is on Goldmine Creek in Campobello, South Carolina. The proposed site features rare plants and important, ecologically sensitive habitat and natural features.

13. This area of Spartanburg County and the watershed of Goldmine Creek have not been subject to intensive development. Nearby and adjacent properties are protected by conservation easements.

14. The banks of Goldmine Creek and the area around Goldmine Creek include damp, rich forests. This damp, rich forest provides important habitat for rare species.

15. There are numerous populations of one of the nation's and South Carolina's rare plants—Dwarf Flowered Heartleaf (*Hexastylis naniflora*)—along the banks of Goldmine Creek and in the forest near Goldmine Creek.

16. Because of its rarity and the threats to its continued existence, this rare plant has been listed as a Threatened Species under the Endangered Species Act since 1989, 16 U.S.C. §§ 1531 *et seq*.

17. The plant's rarity and the threats to its continued existence have also led the South Carolina Department of Natural Resources to designate it as a Highest Priority Species in the South Carolina Wildlife Action Plan.

18. Spartanburg County contains especially important habitat for this rare species. In South Carolina, the Dwarf Flowered Heartleaf exists only in a portion of the Piedmont of Greenville, Spartanburg, and Cherokee Counties. It also exists in some North Carolina Piedmont counties near South Carolina.

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19. The Peters Creek Heritage Preserve of the South Carolina Department of Natural Resources is located in Spartanburg County. The preserve was established principally to protect populations of this plant and one area of its habitat. According to the Department of Natural Resources, the preserve is home to the second-largest known population of Dwarf Flowered Heartleaf.

20. These rare plants are dependent upon the ecology of their habitats. Specifically, they depend on rich forests; are affected by the quality and amount of groundwater, which determines the hydrology of the plant's habitat; and are affected by the water quality and overall health of the streams that flow through their habitat.

21. The principal threats to the survival of the Dwarf Flowered Heartleaf are construction of roads, facilities, and infrastructure, associated erosion, and conversion of habitat to agricultural, residential, commercial, and industrial uses.

22. There are populations of Dwarf Flowered Heartleaf on the proposed RV Park site, including on the hillside above Goldmine Creek.

23. There are also populations of the rare plants on properties next to the RV Park site, upstream and downstream from the RV Park site, and across the creek from the RV Park site.

24. Ashy Hydrangea (*H. cinerea*) is also present along Goldmine Creek. Ashy Hydrangea is a critically imperiled plant in South Carolina.

25. In addition to the rare plants, the RV site includes important water resources. The site encompasses one side of Goldmine Creek, as well as part of the Goldmine Creek watershed. Goldmine Creek is a first order headwater tributary of the North Pacolet River. At present, the creek is a high-quality freshwater system and is among the best quality Piedmont streams in the area.

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26. The areas surrounding the proposed RV Park site similarly contain important habitat. There are Piedmont Springhead Seeps downstream of the proposed RV Park site, which are designated as imperiled habitat at high risk of extinction or elimination under the NatureServe classification. There is also a mature, high-quality forest along the creek. It is a Piedmont Headwater Stream Forest designated as vulnerable habitat at moderate risk of extinction under the NatureServe classification.

27. Attached as Exhibits B and C are two studies which detail the presence of the rare plants and the special ecologically sensitive areas, natural features, and landscapes of the proposed RV Park, as well as the qualities of Goldmine Creek, and the important forests that exist on the proposed RV Park site and along Goldmine Creek.

THE PROPOSED RV PARK

28. The developer first submitted an application to the Spartanburg Planning Commission for site plan approval of the proposed RV Park in 2021. That plan contemplated that the RV Park would be served by a septic system and public water.

29. Staff of the S.C. Department of Health and Environmental Control (DHEC) proposed a permit for the RV Park's septic system in June 2021. Local homeowner associations sought review by the DHEC Board of that decision on the grounds that the proposed septic system was inadequate for the RV Park. The DHEC Board granted that request for review.

30. In addition to the homeowner associations, the Native Plant Society appeared at the DHEC Board review hearing and objected to the proposed septic permit. The Native Plant Society's objections were based on the impact the proposed septic system would have on the rare plants and their habitat on the site and in surrounding areas, as well as on the groundwater and creek upon which the plants and forest depend. Attached as Exhibit D is the memorandum

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submitted by the Native Plant Society to the DHEC Board, which is incorporated herein by reference.

31. The DHEC Board determined that Blue Sky's proposed septic system was in fact inadequate because it had only half the capacity required for the RV Park. As a result, the DHEC Board rejected the proposed permit for the septic system. That decision is attached as Exhibit E.

32. Blue Sky appealed the Board's decision to the Administrative Law Court, which overturned the DHEC Board's decision on timeliness grounds, rather than substantive grounds. Specifically, the Administrative Law Court concluded that the homeowner associations had filed their request for DHEC Board review too late even though the DHEC Board did not determine that the timing of the filing prevented it from reviewing the proposed septic system for the system's impact on public health and the environment. The Administrative Law Court did not address or question the substance of the DHEC Board's decision that Blue Sky's proposed septic system was inadequate for the RV Park. The Administrative Law Court's decision is on appeal to the South Carolina Court of Appeals. Again, that litigation deals with the narrow issue of whether the request for review was timely filed, not the substance of the DHEC Board decision. DHEC's conclusion that Blue Sky's proposed septic system is inadequate has not been contradicted.

33. In addition to a septic system, Blue Sky's 2021 application for site approval relied upon public water to service the RV Park. Blue Sky was unable to obtain public water service for the proposed RV Park.

34. Blue Sky submitted a new application for site approval in 2023. The 2023 application continues to rely upon the inadequate septic system, but now proposes to service the RV Park with well water rather than public water.

35. The proposed site consists of 38.68 acres. The proposed site plan (attached as

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Exhibit F) includes spaces for 49 campsites, 86 parking spaces, a stormwater detention pond near Goldmine Creek that would discharge into the creek, and a septic field that runs down the hill toward Goldmine Creek. The overall footprint of the proposed RV Park sprawls across almost the entire northeast portion of the property.

36. The application does not contain a survey of natural features on the property, including where rare plants are located; does not set aside areas designed to protect rare plants and ecologically sensitive natural features; does not include any barriers to protect rare plants and ecologically sensitive areas from activities in the RV Park; does not include plans to protect the forest; and in general does not at all discuss the natural features and landscape of the site. The application contains no study or analysis of the impact that the large septic field and the well, which would withdraw substantial high-quality groundwater from the site, will have on the groundwater, forest, plants, and creek.

37. On March 7, 2023, the Commission considered the application for approval of this site plan.

38. In advance of the Commission meeting, over 400 citizens sent the Commission a request for public hearing and specifically informed the Commission of the sensitive ecological nature of the area and the existence of a threatened species of rare plants in the area. That request is attached as Exhibit G.

39. Many community members attended the Commission meeting to express opposition to the application. The Native Plant Society attended through counsel prepared to address the defects in the proposed site plan; however, the Commission rejected the request for public hearing, refused to accept public comment on the application, and deferred deliberation on the application to the end of the meeting, resulting in the departure of a number of community

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members from the meeting. At the end of the meeting, the Commission allowed only one spokesperson for the homeowner associations to speak and only for five minutes. The spokesperson asked that counsel for the Native Plant Society be allowed to explain the environmental issues to the Commission, but the Commission refused to hear that information.

40. By a 5-2 vote, the Commission granted conditional approval of the application. The Commission's decision is attached as Exhibit A. None of the conditions provide for any consideration or protection of the rare plants, groundwater, the forest, or Goldmine Creek.

ADVERSE IMPACT ON NATURAL FEATURES AND LANDSCAPE

41. The site plan and the Commission's conditional approval have serious adverse impacts on natural features and landscape.

42. Nothing has been done to determine where the rare plants are located on the site; to protect the forest on the site and the plant's habitat; to analyze the impacts of the septic system and well on the hydrology, groundwater, and Goldmine Creek; or to set aside areas for the plants and the forest and to protect them from the activities on the site.

43. Instead, the RV Park proposed in the site plan occupies almost the entire northeast portion of the property; the stormwater detention pond is built near Goldmine Creek in the forest and will discharge into the creek; the septic field is built on the hillside in the forest with Goldmine Creek downhill and downstream from the septic field; and no barriers exist between the RVs, visitors, and campers and the rare plants, the forest, and the creek. This site plan adversely impacts rare plants and their habitat, and the site plan and associated construction activities will eliminate populations of rare plants and harm water quality on the site and in Goldmine Creek.

44. Likewise, neither the site plan nor the Commission's conditional approval contains or requires an analysis or study of the impacts of the site plan on plants near the site, on Goldmine

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Creek, or on downstream natural resources and rare plants.

45. By allowing the use of a well rather than public water, the site plan and the Commission's conditional approval will remove clean groundwater from the site, harming the forest, the plants, and their habitat.

46. In addition to human waste, sewage from an RV park contains harsh chemicals, such as formaldehyde, used by RV owners to reduce odor from sewage accumulated in the RVs, which they discharge into the RV park sewage system when they visit the RV park. Most states require RV parks to be connected to public sewer systems. The odor-fighting chemicals in RV sewage inhibit the ability of bacteria in septic systems to treat human waste. In addition, septic systems are not designed to treat for harsh chemicals like formaldehyde. There are no provisions in the requirements for sewage treatment to deal with the harsh chemicals that will be discharged into the septic system.

47. The DHEC Board also determined that the septic system proposed for this RV Park has only half the capacity it should have.

48. This septic system does not protect the groundwater and hydrology on which the plants, their habitat, the forest, and the water quality of Goldmine Creek depend.

49. The site plan and the Commission's conditional approval do not provide for comfort stations on the site. Campers and visitors who do not have access or easy access to RV toilets will inevitably resort to using the forest and the plants' habitat as a place to relieve themselves. This activity will further pollute and harm the plants, the forest, and the water quality of Goldmine Creek.

50. In contrast to Blue Sky's site plan and the Commission's conditional approval in this instance, on at least two occasions subdivision developers in Greenville and Spartanburg

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Counties conducted surveys of development sites for Dwarf Flowered Heartleaf and were required to set aside and protect the plants and their habitats as part of the site plan. In another instance, the Greenville County Planning Commission rejected a subdivision site plan when the developer refused to take steps to protect populations of Dwarf Flowered Heartleaf and their forest habitat. In this instance, these natural features of the Blue Sky RV Park site have been ignored and will be adversely impacted, harmed, and destroyed by the site plan and the Commission's conditional approval.

THE SOUTH CAROLINA NATIVE PLANT SOCIETY

51. The Native Plant Society is a non-profit organization committed to the preservation and protection of native plant communities in South Carolina.

52. The Native Plant Society has members throughout South Carolina, including Spartanburg County and the Upstate. Its Upstate Chapter sometimes holds its regular meeting in Spartanburg County.

53. The Dwarf Flowered Heartleaf is particularly relevant to the mission and work of the Native Plant Society and its members because important parts of the plant's habitat exist in South Carolina, only in three counties in the Upstate, and only in a limited part of the Piedmont of the Carolinas.

54. The Native Plant Society and its members have worked to study and protect the Dwarf Flowered Heartleaf and enjoy observing this rare plant and visiting the plants and their habitat. The Society and its members have been involved in establishing and expanding the Peters Creek Heritage Preserve; in removing invasive exotic plants from Dwarf Flowered Heartleaf populations and their habitat; in educating its members about the plant; in studying, photographing, and writing about this plant; in surveying for the plant; in advocating for the protection of

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populations of the plants and their habitat; in opposing development that would harm the plant and its habitat; and in supporting the protected status of this plant. The Society appeared at the DHEC Board hearing in opposition to the proposed septic system for the RV Park to protect the Dwarf Flowered Heartleaf and its habitat.

55. Protection of the Dwarf Flowered Heartleaf on and near the RV Park site, of the plant's habitat in that vicinity, and of Goldmine Creek is part of the mission of the Native Plant Society and its members.

STANDARD OF REVIEW

56. A planning commission decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a Planning Commission decision). Further, a decision of the planning commission will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

GROUNDS FOR APPEAL

Ground I: The Commission's Decision Violates a Fundamental Purpose of the Spartanburg County Unified Land Management Ordinance.

57. All prior paragraphs of this Appeal are incorporated by reference.

58. Spartanburg County has adopted a Unified Land Management Ordinance ("Ordinance") that governs Blue Sky's application for site plan approval and the Commission's decision. In its Preamble, the Ordinance states that one of its principal purposes is to facilitate the

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creation of "ecologically sensitive areas."

59. The Commission's conditional approval of Blue Sky's site plan does not facilitate the creation or protection of this ecologically sensitive area. Instead, the site plan that the Commission approved will harm and adversely impact a special and rare ecologically sensitive area, rare plants, the special rich forest, and high-quality Goldmine Creek.

60. The Commission's decision does not make any mention whatsoever of the ecological sensitive aspects of the site and does not make provisions that will protect or facilitate the creation of the special ecologically sensitive qualities of the site.

61. The Commission entirely failed to address, consider, carry out, or observe this fundamental purpose and requirement of the Ordinance.

62. The Commission's decision violates a fundamental purpose of the Ordinance; violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground II: The Commission Violated the Ordinance by Approving a Site Plan that Does Not Preserve Natural Features and Landscape.

63. All prior paragraphs of this Appeal are incorporated by reference.

64. The Ordinance includes Section 3.13 which details specific requirements applicable to "Camps and Recreational Vehicle Parks." These provisions are mandatory. *See* Ordinance, Section 3.13 ("Camps and recreational vehicles (RV) parks **shall** comply with the following site and design standards.").

65. Section 3.13 (2) sets out a mandatory requirement that provides: "The site **shall** be developed in a manner that **preserves natural features and landscape**" (emphasis added).

66. The site plan and the Commission's decision does not preserve the natural features and landscape.

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67. Instead, the Commission's decision and the site plan do not even consider, address, or discuss natural features and landscape, specifically the rare plants, their habitat, the rich ecologically important forest, and high-quality Goldmine Creek.

68. In fact, the Commission's decision and the site plan adversely impact, eliminate, harm, and destroy natural features and landscape.

69. The Commission's decision violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground III: The Commission Violated the Ordinance by Approving a Site Plan for an RV Park Not Serviced by Public Water.

70. All prior paragraphs are incorporated by reference.

71. Section 3.13 (8) contains a requirement that "[e]ach park site shall be serviced by public water."

72. Blue Sky initially complied with this provision and submitted an application that provided, as mandated by the Ordinance, that the RV Park would be serviced by public water.

73. When that proved to be impossible, the result under the plain language of the Ordinance is that this RV Park cannot be built on this site.

74. However, in 2023 Blue Sky submitted a new application providing that the park will be serviced by a well and not by public water, in violation of the Ordinance.

75. This change will harm this ecologically sensitive area and the natural features and landscape, because a well for this large RV Park will remove clean groundwater from the site and the forested creek side and damage the hydrology of the site and the forest. The hydrology of the area is an essential part of the plant's habitat, the forest's ecosystem, and Goldmine Creek's water quantity and quality.

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76. The Commission's decision expressly allows a well and violates these mandatory requirements of the Ordinance.

77. The Commission's decision violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground IV: The Commission Violated the Ordinance by Approving a Site Plan for an RV Park Not Serviced by Sewer or Other Systems Approved by DHEC.

78. Section 3.13 (8) of the Ordinance also contains the mandatory requirement that "[e]ach park shall be serviced by . . . sewer or other systems approved by DHEC."

79. There is no sewer service at this site. Under the Ordinance, the RV park must be serviced by another system "approved by DHEC."

80. The DHEC Board is the highest authority and the governing authority of DHEC. Its members are appointed by the Governor and approved by the South Carolina Senate.

81. The DHEC Board decided to review the permit for the septic system proposed by Blue Sky and put forward by DHEC staff. The DHEC Board found that the septic system for this RV Park was grossly inadequate and had only half the capacity necessary for the RV Park. Therefore, the septic system for this site is not "approved by DHEC" but instead has been expressly disapproved by DHEC.

82. Blue Sky appealed the DHEC Board's decision to the Administrative Law Court, and that court found only that the request for DHEC Board review had been filed too late. But the Administrative Law Court did not contradict the DHEC Board's determination that the septic system is woefully inadequate.

83. The language of the Ordinance does not turn on legal technicalities or procedural issues. The RV Park must have a septic system "approved by DHEC." The highest authority at

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DHEC has disapproved this septic system. The Ordinance does not allow a septic system that is put in place by a procedural order of the Administrative Law Court or a septic system approved by anyone other than "DHEC."

84. Under the plain and direct language of the Ordinance, the RV Park cannot be approved to operate with a septic system disapproved by DHEC's highest authority, the DHEC Board.

85. This inadequate septic system will harm the natural features and the landscape of the site by polluting the groundwater, the habitat of the plants, the forest, and Goldmine Creek with inadequately treated sewage.

86. The Commission's decision violates these mandatory requirements of the Ordinance.

87. The Commission's decision violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground V: The Commission's Decision Violates the Ordinance by Failing to Require Comfort Stations.

88. Section 3.13 (4) contains another mandatory requirement: "No site shall be located less than . . . 300 feet from a comfort station."

89. Blue Sky's site plan and the Commission's decision provide for no comfort stations for this RV Park.

90. The Commission's decision violates the plain language of the Ordinance.

91. This requirement discourages visitors from using the grounds of the RV Park—here, the forest, the habitat of the rare plants, and the slope leading down to Goldmine Creek—as an outdoor bathroom. The Commission's decision is likely to lead to some of the many visitors to

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this site relieving themselves where the plants live, in their habitat, in the forest, and uphill of Goldmine Creek. In this respect also, the Commission's decision harms this ecologically sensitive site and does not preserve but instead harms the natural features and landscape.

92. The Commission's decision violates these mandatory provisions of the Ordinance.

93. The Commission's decision violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

WHEREFORE, the Appellant requests that this Court:

a. issue an order reversing and vacating the decision of the Spartanburg County Planning Commission to grant conditional approval of Blue Sky's site plan as set out above; and

b. grant costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

s/ Frank S. Holleman III
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Southern Environmental Law Center
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A*ttorneys for Appellant*

April 4, 2023

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EXHIBIT A

Spartanburg County
Planning and Development
Department

Telephone 864-596-3570
Facsimile 864-596-3018

366 N Church Street, Suite 700
Spartanburg, SC 29303
http://www.spartanburgcounty.org

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March 8, 2023

Blue Sky Associates, LLC
PO Box 5930
Spartanburg SC 29304

RE: T. Tree Farms RV Park – Major Land Site Plan

To Whom It May Concern:

On March 07, 2023, the Spartanburg County Planning Commission gave conditional Site Plan approval to the development referenced above.

This notification will be sent to the applicant, according to the application. If there are others affiliated with this project that should be sent this notification, please forward this on to them as well.

Major Land Site Plan approval will be completed upon receipt of all items required by the Unified Land Management Ordinance (ULMO), and listed below, and approvals by:

1. **Spartanburg County Public Works (Engineering, Stormwater, and Encroachment);**
2. **SCDHEC (Permit to Construct a Production Well);**
3. **Withdrawal of the previous application which received contingent approval in March of 2021.**

If you have any questions, please contact me at 864-596-3463.

Sincerely,

Leigh MacDonald

Leigh MacDonald
Current Planning Manager
Spartanburg County Planning & Development

cc: File

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EXHIBIT B

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terra incognita
125 South Edisto Avenue, Columbia, SC 29205
llgaddy2@gmail.com 803 629-6128

December 17, 2021

To: Mr. Brad Wyche, Founder and Consultant
Upstate Forever
bwyche@upstateforever.org

re: Proposed RV Park; *Hexastylis naniflora*

Brad et al.:

My son, L L Gaddy III, and I were met and hosted by Ms. Madelon Wallace and Ms. Judy Klapholz at the Enclave at Fairview Farm in Spartanburg County yesterday. Our objective there was to determine the presence and abundance of the federally-listed threatened herbaceous plant, dwarf-flowered heartleaf (*Hexastylis naniflora*)(Aristolochiaceae) in the general area and on Gold Mine Creek. *Hexastylis naniflora* is found on sandy, acidic Piedmont soils at springheads, along streams, and sometimes under mountain laurel (*Kalmia latifolia*) considerably upslope from water. It is a two-state endemic found only in South Carolina and North Carolina, and its distribution is centered in the middle Piedmont of the two states.

The proposed RV Park Tract is bounded on the northwest by Landrum Mill Road and on the south and east by a headwaters branch of Gold Mine Creek (which flows into the North Pacolet River). On the west, the RV Park area is adjacent to the Spiegel Farm, and, finally, on the northwest by the Klapholz property and Gold Mine Creek again.

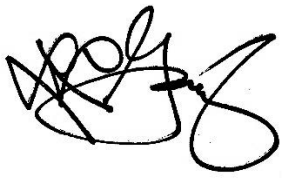
Our inventory began on the eastern side on Goldmine Creek on the Klapholz property. From the small pond on Goldmine Creek (Klapholz property) southward along the creek *Hexastylis naniflora* is common on both sides of the creek (the RV Tract and the Klapholz's property). The population continues southward following the creek and gradually turns southward proceeding toward the Spiegel Tract. As one moves south (upstream), the plants become rarer, found only here and there. Finally, at the springhead that forms the beginning of the south fork of Goldmine Creek, the plant is present, but quite rare.

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We then drove around to Landrum Mill Road and walked to property line between the RV Tract and the Spiegel Property. When we reached a large ravine and springhead that forms the beginning of the north fork of Goldmine Creek (primarily on the RV Park property), we again inventoried the disturbed woods for the presence of *Hexastylis naniflora*. It was present here, though very rare. We predict, however, that it is probably more common downstream as there is abundant habitat along the stream on RV Property.

In summary, *Hexastylis naniflora* was found to be associated with Gold Mine Creek and its springheads on the west, south, and eastern sides of the proposed RV Park Tract. (We have been told that *Hexastylis* is also quite common below the Klapholz pond to the north of the RV Park Tract although we did not inventory that area.) While walking along the eastern side of the creek, plants of the rare herb could be seen growing on the RV Tract. A detailed inventory of the RV Tract would clear up the abundance and location of the plant there. *Based on the habitats present on the RV Tract and our observations on adjacent lands, we predict the federally-listed threatened dwarf-flowered heartleaf is probably scattered over most of the lowlands (and possibly as far as 75 feet upslope) on the proposed RV Tract.*

Sincerely,



L. L. Gaddy, President

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EXHIBIT C



Goldmine Creek Water Quality Assessment

JULY 2021

Mountains-to-Sea Ecological

REPORT RE PRESENCE OF FEDERALLY-PROTECTED DWARF HEARTLEAF AND QUALITY OF GOLDMINE CREEK – 34 PAGES

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION COMMON PLEAS CASE#2021CP4201221

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Goldmine Creek Water Quality Assessment

INTRODUCTION

At the request of The Enclave at Fairview Farm Home Owners Association (HOA) of Campobello SC, MTS Ecological performed a Water Quality Assessment of Goldmine Creek headwaters in June and July 2021 (See Map 1,p.2). The study area includes ~312 acres of the 360-acre Enclave HOA and ~2 miles (10,560 linear feet) of 3.5 miles of upper Goldmine Creek of the North Pacolet River.

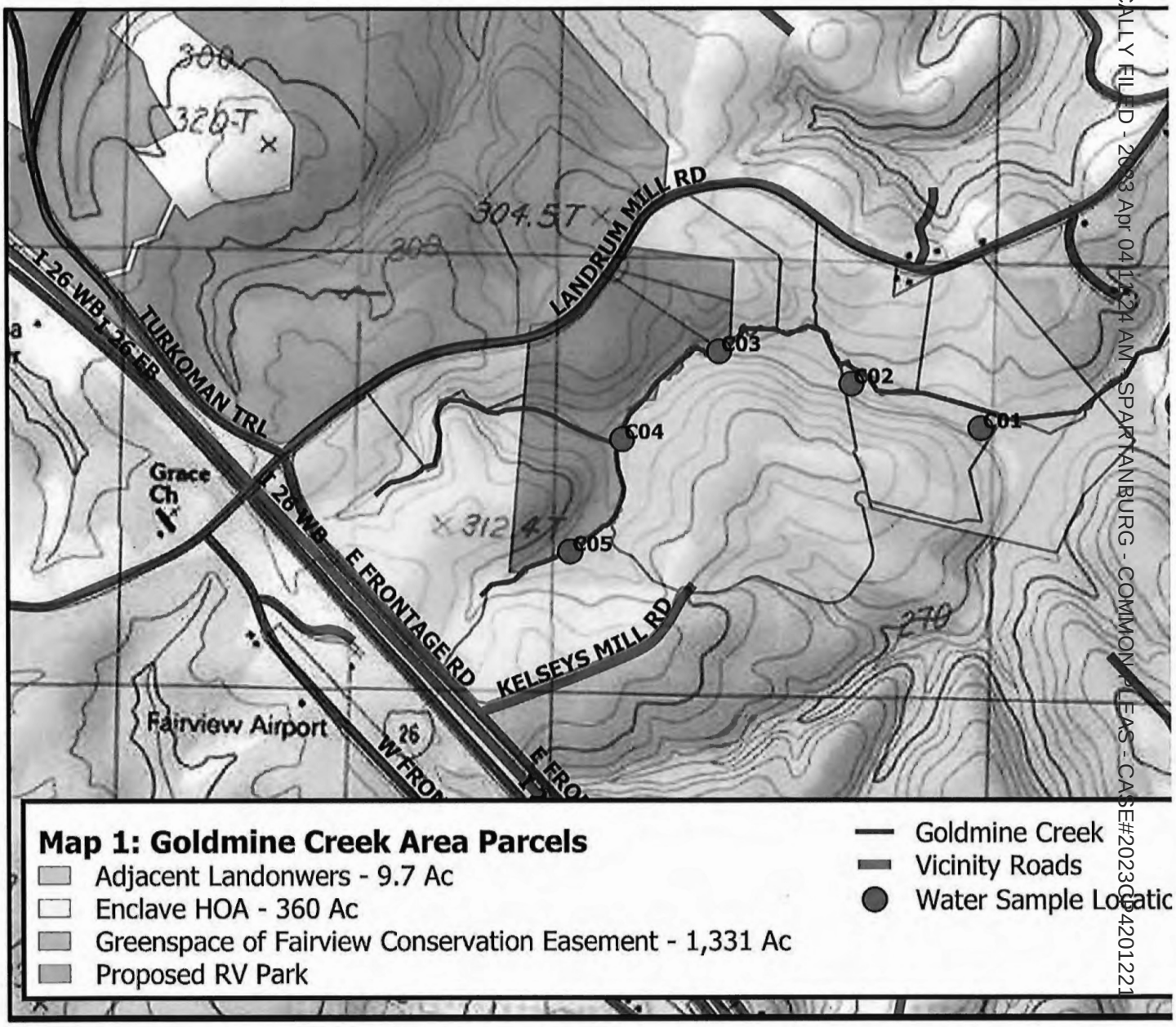
A 52-slip RV Park with 87 parking spaces is proposed bordering Goldmine Creek at its headwaters directly in the center of the HOA ownerships and directly abutting the southern boundary of the 1,331-acre GreenSpace of Fairview Conservation Easement Conservation Area. All streams and bordering wetlands of Goldmine Creek are "Wetlands of the United States" and regulated by the US Corps of Engineers Section 404 Clean Water Act and SC 401 wetland regulations.

Goldmine Creek is a first-order headwater tributary of the North Pacolet River, with headwaters located ¼ to ½ mile east of the SC Welcome Center and Fairview Airport between Landrum Mill Road and Kelseys Mill Roads east of I-26. The primary Goldmine channel drains approximately 2.5 miles east into the North Pacolet. A secondary tributary to Goldmine drains approximately one mile east, bisecting the proposed RV Park, joining the primary channel at the Klapholz property.

Though engineering plans and documentation for the proposed development appear to depict stream boundaries & setbacks, they do not document streams and bordering wetlands, water quality, stream health, embankment structure, or permanent affects the development would produce. The Water Quality Assessment provides this additional information.

The HOA wishes to prevent incompatible, intensive commercial development benefitting temporary RV residents that will permanently deliver trash, pollution, fertilizer, sediment and permanently destroy water quality and stream integrity of Goldmine Creek and the North Pacolet River. The HOA wishes to protect, maintain, and improve stream quality and integrity of Goldmine Ck and maintain existing low-density residential, farm, and compatible rural land uses.

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METHODOLOGY

Water quality assessments were performed on June 28 and July 25, 2021. Prior to field assessments, relevant information and data for the site was reviewed including engineering plans for the proposed RV Park, National Wetland Inventory (NWI) data, South Carolina Dept. of Health and Environmental Control (DHEC) Regulation 61-68, Water Classifications and Standards and Regulation 61-69, Classified Waters, and other relevant data sources. The assessment consisted of:

- Chemical and fecal coliform assessment via water samples – five on 1,000-foot intervals
- Biological assessment of in-stream aquatic communities (biota) at sample collection points
- Physical assessment of stream and embankment structure, riffle and pool complexes, sedimentation, and embankment collapse or undercut locations
- Classification of "natural communities" onsite such as alluvial forest and bordering wetlands
- Incidental documentation of ecological communities, bordering wetlands, and SC-listed rare species as they were located and observed
- Photographic documentation of existing stream conditions on 500-foot intervals including water sample and biological assessment locations and their midpoints

In July 2021, water samples were collected at five locations on approximately 1,000-foot intervals and submitted to the Environmental Quality Institute (Black Mountain, NC) for analysis following the methods of APHA (2012). Dissolved oxygen was measured at each sample collection site using a Extech DO600 Waterproof ExStik II Dissolved Oxygen Meter. Nutrient, water quality, and physical structure sampling and survey are a subset of methodology outlined by Scott, et al. (2009). Pollution and man-made chemical analysis was not performed within the study.

Biological assessment of stream biota was also performed at the three eastern-most collection points along the stream channel where cobble could be located. Sampling was not performed in the highest headwater locations with sand substrates as aquatic insects do not occur in these locations due to the substrate. Each collection point using kicknet, D-net and minnow traps in pools. Physical assessment was performed by walking the stream channel between sample collection and baseline condition documentation points. Ecological community classification and inventory was performed in June 2021 with supplemental observations in July 2021.

Natural communities were classified using the National Vegetation Classification (NVC) classification system developed by NatureServe - the repository for all state Natural Heritage Program natural community and rare species data in the US. NVC serves as the standard natural community classification system for the United States Forest Service (USFS), the US

National Park Service (NPS), Bureau of Land Management (BLM), and most US land management agencies.

Data and mapping for wetlands, streams, water sample, biological assessment, and permanent photo locations was collected in the field using handheld GPS and generated in Quantum GIS (QGIS). Acreage and linear footage calculations were calculated in QGIS.

SUMMARY OF FINDINGS

Overall, Goldmine Creek in the study area is an excellent quality wetland resource with many high-quality features and parameters including water quality, in-stream biotic community, stream structure, exceptionally mature and intact forest and bordering wetlands. It is easily among the best of its kind remaining in the area where the majority of headwater streams have been historically destroyed and ditched for agriculture and damaged in poorly planned development.

- The proposed RV park sits directly within the "Landrum and Campobello" Conservation Focus Areas (CFA) – one of only six CFA's in Spartanburg County identified by Upstate Forever (2010) Special Places Inventory (SPI)

- As a North Pacolet River tributary, Goldmine Creek is high-quality Freshwater (FW) system, as classified by DHEC, and should be recognized, protected, and managed to improve its existing quality condition

- Among 3.5 miles of North Pacolet River headwaters onsite streams are clean, harboring normal nutrient and physical parameters, a healthy aquatic-invertebrate community, cool temperatures, and exceptionally mature globally ranked rare globally "vulnerable" (G3) **Piedmont Headwater Stream Forest** and high-quality, globally "imperiled" (G2) **Piedmont Springhead Seep** wetland communities

- The terrain is moderately to gently sloped with high elevation of 1,015 feet at the western headwaters to low of 810 feet at the North Pacolet River confluence - a 205-foot total elevation change to the Pacolet River

- Two abandoned beaver ponds at the central stream confluence offer high quality naturally occurring early-successional habitat and greatly help filter and trap sediments and nutrients that might otherwise flow to the North Pacolet

- Remarkably, exotic-invasive plant species that degrade habitat are almost completely absent from the stream bottomland except for Japanese stiltgrass, and a few small kudzu and privet shrubs in the eastern region

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I. Water Quality Classification and Standards Application

- The primary & secondary headwaters of Goldmine Creek in this assessment comprises 3.5 miles before confluence with the North Pacolet River
- Goldmine Creek is classified as a Freshwaters (FW), as a tributary of the North Pacolet River which is a formally classified Freshwater system
- Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68 (2014), Water Classifications and Standards

II. Nutrients and Water Quality Parameters

- Water Quality is surprisingly excellent for the western Piedmont where most streams are of very poor or fair quality
- Nutrient and Water Quality parameters all within range of SC Freshwater Standards as described in Regulation 61-69 (2020) for all relevant parameters with only Orthophosphate being low
- Ammonia (NH3) and Nitrates (NO2/NO3) are very low which is excellent and atypical of most drainages in horse-country which are overloaded
- Orthophosphate (PO4) - the bioavailable form of phosphorus - is lower than the recommended 0.15 mg/L (or 0.05 mg/)) to prevent downstream eutrophication or nutrient overload
- Total suspended solids (TSS) are moderate and turbidity (water clarity) values for all sites are between general range of 10 NTU for trout streams and 50 NTU for aquatic life
- Dissolved Oxygen is surprisingly excellent, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive
- Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors
- E.coli measurements are very low ranging from 35 to 61 Cfu/100ml

III. Biological Assessment

- Goldmine Creek scored a total biological index value of 24. Index value over 22 to be an indicator of "Excellent" water quality
- Water temperatures ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) which is excellent for peak-summer

- 103 macroinvertebrate individuals were collected at three sampling locations along Goldmine Creek (C1 to C3) most of which are pollution intolerant. Of those:

  - ➢ five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health
  - ➢ Four macroinvertebrate types found considered somewhat, or less, sensitive: crayfish, craneflies, dragonflies and net-spinning caddisflies
  - ➢ Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey

- As a family, roach stoneflies (detected here) are present only in streams and rivers of good to excellent water quality

IV. Physical Stream Conditions

- The Goldmine Creek headwaters are in very good condition overall and represent the best of their kind in the region

- The upper primary channel rests fully within 28 acres of excellent ("A" quality) mature forest and bordering wetlands including the globally "vulnerable" (G3) Piedmont Headwater Stream Forest in which six globally "critically imperiled" (G2) Piedmont Springhead Seep wetland communities are embedded

- Over 110 natural stream oxbows and over 50 riffle-pool complexes occur throughout

- Embankment structure is good to very good and less than 20 exposed embankment zones were observed, many of which are of historical origin

- Three small ponds occur in the upper and central watershed. These serve to catch and store sediments; however they may also heat up and discharge water at higher temperatures in mid-summer which may deplete in-stream oxygen below the pond

- Non-point stormwater velocity and sedimentation is likely exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelseys Mill Roads and adjacent mowed lawns at the top of the western watershed

- Headwater ravines of the primary channel harbor steep, 15 to 20-foot height embankments which have been eroded due to historical forest canopy removal. Though forested and slowly restoring, they appear to be the primary sediment input

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DISCUSSION

I. WATER QUALITY CLASSIFICATION AND STANDARDS APPLICATION

All South Carolina streams are classified according to their water quality. Goldmine Creek is classified as a "Freshwaters" (FW) in the state of South Carolina.

In Regulation 61-69, Classified Waters, Goldmine Creek is not formally listed, however it carries the Freshwaters classification of the formally classified North Pacolet River that it supplies. FW classified waters are those utilized for secondary recreation or which may serve as drinking supplies if treated.

Freshwaters (FW) are non-saline freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses. Quality Standards for Freshwaters are defined by DHEC Regulation 61-68 (See https://scdhec.gov/sites/default/files/media/document/R.61-68_0.pdf)

As a Freshwater stream, Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68, Water Classifications and Standards.

II. NUTRIENT AND WATER QUALITY PARAMETERS

Water samples were collected in July 2021 to document existing conditions of primary in-stream nutrient and water quality measurements, and to alert the HOA of any potential issues that may arise from HOA or other adjacent ownership inputs. In order to establish trends, sampling would need to occur on a routine basis, however the following parameters and results provide a snapshot of stream water quality.

II.A Nutrient and Water Quality Results

Sampled nutrient and water quality parameters are listed below with water sample data from five sample sites listed in Table 1 below:

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Table 1: Water Sample Nutrient and Chemical Findings, Enclave HOA, 2021

Site #	NH3	NO2/ NO3	PO4	E. Coli	Turb	TSS	D.O.	Cond	Alk	pH
	mg/L	mg/L	mg/L (PO4)	*Cfu/ 100ml*	*NTU*	*mg/ L*	*mg/ L*	*umhos/ cm*	*mg/L*	
1	0.11	0.0	0.07	61	26.0	15.6	9.3	38.8	18.0	6.7
2	0.11	0.0	0.05	47	37.0	21.6	9.2	38.4	18.0	6.7
3	0.13	0.1	0.07	36	17.0	7.2	9.1	44.9	22.0	6.7
4	0.13	0.1	0.07	35	18.0	9.2	9.1	33.0	20.0	6.6
5	0.11	0.3	0.04	51	15.0	7.6	9.1	34.1	16.0	6.6

Ammonia (NH3) measurements are normal, and close to the regional average for the western Piedmont. NH3 is the principal form of toxic ammonia. NH3 is toxic to freshwater organisms at concentrations between 0.53 to 22.8 mg/L. Toxic NH3 is both pH and temperature dependent: toxicity increases as pH and temperature decrease. Plants are more NH3 tolerant than wildlife, and aquatic invertebrates have greater tolerance than fish. In toxic conditions, hatching and growth rates of fish may be affected as well as structural development such as flaws in gills, liver, and kidneys tissues.

Nitrites (NO2) and Nitrates (NO3) - Measure of the Nitrogen present as Nitrite and Nitrate. NO2 and NO3 are very low in Goldmine Creek which is excellent and atypical of most drainages in horse-country which are overloaded. As part of the nitrogen cycle, bacteria first convert Ammonia to Nitrite (NO20 before other bacteria convert Nitrite to Nitrate. Nitrite in elevated levels is toxic to aquatic organisms and usually indicate contamination from fertilizer run-off.

Bacteria convert Ammonia to Nitrite (NO2) and then Nitrite to Nitrate (NO#) as part of the natural nitrogen cycle. Nitrate becomes toxic to most aquatic life at extremely elevated levels (>10 mg/L – far higher levels than found in Goldmine Creek). NO3 is also a necessary nutrient for plant and algae growth, but high nitrate levels in water are an indicator of fertilizer run-off contamination from adjacent lands or from elevated levels of waste water. They are almost always associated with algal blooms, excess plant growth and oxygen depletion (which kills aquatic life).

Orthophosphate (PO4) - the bioavailable form of phosphorus, used by plants and algae for growth - is well below recommended base levels of 0.15 mg/L (or 0.05 mg/L P only) which is excellent and also unexpected in horse country.

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E. Coli – measurements fell far below measurable "safe" CFU's (colony forming units) in all samples. Acceptable levels of E. coli commonly include both a 30 day mean (126 cfu/100mL) and a single-sample number (235 cfu/100mL – 575 cfu/100mL). Thus samples ranging between 36 and 61 cfu/100mL are well below the safe threshold.

Turbidity – Turbidity, a measure of water clarity, is measured in Nephelometric Turbidity Units (NTU's). Low NTUs signify relatively clear water during or after rain events while higher numbers represent less water clarity and higher levels of suspended solids. NTU levels of ten or lower are characteristic of relatively clean, clear water with low sedimentation.

Total suspended solids (TSS) – similar to Turbidity but a slightly more accurate measurement, TSS measures the actual dry-weight of solids larger than 2 microns within a 1-liter sample rather than light penetration through water (turbidity). Thus, sites ranged from a low of 7.2 and 7.6mg/L at site #3 and #5 to a high of 21.6 at site #2. Site #2 probably contained higher TSS because of proximity to mowed meadows and input from this area. The state has no TSS standards however.

Dissolved Oxygen is excellent, ranging from 9.1 to 9.3, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive (though none likely exist in the headwaters).

Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors.

II.B SC Freshwater Standards and Goldmine Creek Nutrients and Water Quality Findings

The following section highlights primary SC Freshwater Standards with findings from Goldmine Creek, per Regulation 61-68 (p.29).

Table 2: Freshwater Standards and Existing Goldmine Creek Conditions, Enclave HOA, July 2021

ITEMS	SC STANDARDS	GOLDMINE CREEK EXISTING CONDITIONS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed	***None detected***
b. Treated wastes, toxic wastes, deleterious substances, colored or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this	***None detected***
c. Toxic pollutants listed in the appendix	As prescribed in Section E of this regulation	***Sampling beyond scope of this assessment***
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with antidegradation rules	***None detected***
e. Dissolved oxygen	Daily average not less than 5.0 mg/l with a low of 4.0 mg/1	***9.3 and 9.2 (sites 1 and 2); 9.1 at sites 3-5; avg of 9.16***
f. E. coli	Not to exceed a geometric mean of 126/100 ml based on at least four samples collected from a given sampling site over a 30-day period, nor shall a single sample maximum exceed 349/100 ml	***61, 47, 36, 35, and 51 from C1-C5, respectively***
g. pH.	Between 6.0 and 8.5.	***pH 6.7 at 3 sites and 6.6 at 2 sites***
h. Temperature	The water temperature of all Freshwaters which are free flowing shall not be increased more than 5 degrees (F) above natural temperature conditions and shall not exceed a maximum of 90 deg (F)	***69.6 deg. – Sites 1-3; 69.8 – Sites 4-5; avg of 69.56 deg.***
i. Turbidity	Not to exceed 50 NTUs provided existing uses are maintained	***Turbidity NTUs = 15, 17, 18, 26 and 37; avg of 22.6***

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III. BIOLOGICAL ASSESSMENT

Summary - Using the Izaak Walton League's formula for calculating biotic values (see attached), which weights sensitive species over pollution-tolerant ones, Goldmine Creek scored a total index value of 24. The IWL (2020) considers any index value over 22 to be an indicator of "Excellent" water quality.



Figure 1: Stream Invertebrate Sampling on Goldmine Creek, July 2021

Biological Assessment includes review of the presence and numbers of stream "macroinvertebrates" or insects, crayfish, salamanders and other life forms (i.e. "biota") at suitable sample points. Three representative sample points – C1, C2, and C3 - having rock substrates where insects and their predators may thrive were sample and results were surprising for western Piedmont streams which are typically badly damaged. Biological monitoring of streams using benthic macroinvertebrates is a well-established technique that assesses the condition of water bodies using aquatic insects as bioindicators, or "canaries in the coal mine." (Voshell, 2002)

Water temperature ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) – easily lower than expected for late July in the western Piedmont where streams can range from mid-70 to lower 80 degrees on summer days. On the sampling date, the water was moderately stained from a thunderstorm the evening before. Visibility was less than a 12-inches in deeper holes early in the day and clearing within a couple of hours.

The stream channel of Goldmine Creek is normal to moderately incised in places, while areas lacking vegetation (naturally or by removal) show signs of bank widening from natural tree-falls, floods, and historical canopy clearing for agriculture and more recent "flashiness" from storm events have caused some of this damage. One of the three sample-sites (C1) was within 75 feet of a horse pasture and adjacent mown grassy areas north of the eastern creek channel, which sheds water far more rapidly forested or mature meadow zones. Two of the sample-sites (C2 and C3) were in deep forest conditions.

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Results – In total, we collected 104 macroinvertebrates at three sampling locations along Goldmine Creek including 26 individuals at Sites #1 and 2 and 52 individuals at Site #3.

Of those, five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health by the Izaak Walton League and most water quality agencies.

Four types we found are considered somewhat, or less, sensitive to pollution: crayfish, craneflies, dragonflies and net-spinning caddisflies. Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey.

In addition to the macroinvertebrate fauna, several vertebrates were found in the course of seining. A single creek chub (*Semotilus atromaculatus*) was picked up in a kick net at Site 2. A minnow trap dropped just above a small pond in the headwaters netted 11 bluehead chubs (*Nocomis leptocephalus*.) Both of these species are tolerant of a wide range of environmental conditions (Tracy, 2020).

Additionally, our survey collected four adults and six larval (gilled) salamanders, all appearing to be Two-Lined Salamanders (*Eurycea cirrigera*). Goldmine Creek harbors a rich stream invertebrate fauna with some very pollution-intolerant genera. As a family, roach stoneflies "will be present only in streams and rivers of good to excellent water quality," according to Steven R. Beaty of NCDEQ's Biological Assessment Branch.

Table 3, Aquatic Invertebrates Collected in Goldmine Creek. Enclave HOA, July 2021.

Invertebrate type	Site 1	Site 2	Site 3	subtotal
Water Temperature	68.6	68.6	68.8	
Tipulidae - cranefly larva	7	5	9	21
Cambarus - crayfish	1	3	8	12
Eurycea – two-lined salamander	3	3	4	10
Ophiogomphus - dragonflies	3	7	2	12
Hydropsyche - caddis larva	4	4	6	14
Maccaffertium sp. - mayflies	0	3	6	9
Stenacron sp. - mayflies	2	0	0	2

Perlesta sp. - stoneflies	3	1	7	11
Tallaperla sp. – roach stoneflies	0	8	0	8
Isoperla sp. – stoneflies	0	1	0	1
Lymnaeid – gilled snails	2	2	6	10
Chimarra – caddisfly larva	0	0	1	1
Annelida - annelid worm	1	0	0	1
Psephenidae - Water penny	0	0	1	1
TOTAL	**26**	**26**	**52**	**104**

IV. PHYSICAL STREAM CONDITIONS

Overview: The Goldmine Creek headwaters are in very good condition overall and they represent the best of their kind in the region in terms of water quality, stream invertebrate biota, and structure. That E.coli is currently found in low number is remarkable – a condition that will not possibly continue with an RV Park at the headwaters.



Figure 2: Typical high-quality Goldmine Creek embankments

Stream Physical Structure - Goldmine Creek contains 2 abandoned beaver ponds, six "imperiled" seep locations, an astonishing 110 natural stream oxbows and 50+ riffle-pool and plunge-pool complexes, and extensive woody debris which indicate complex and high-quality streams.

Embankments - Embankment structure is mostly very good to good with less than 20 exposed embankment exposures observed. Aside from 75-80% sloped ravines at the western headwaters, which are naturally eroding, most embankment exposures along Goldmine Creek are caused by natural treefalls where flooding has scoured

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embankments downstream of the root zone, except in the lower eastern zone where potential historical channel straightening may have artificially caused recent collapsed zones.

Substrate – Streambed substrate consists of approximately 75% sand with approximately 25% small-to-medium-sized gravel from ½ inch to 6 to 10-inch block-shaped diameters.

Erosion - Headwater ravines of the primary southwestern channel contain steep, 15 to 20-foot height embankments at extreme slopes (75-80%) which are highly eroded due to natural, sandy soils and likely exacerbated by historical forest canopy removal (Photo Doc images #10-1 and 10-2). Though forested and slowly restoring, these banks are the primary in-stream sediment input to Goldmine Creek. Other embankment undercut or erosion zones are minor compared to this zone. Several forested, upland ravines deliver sediment to the stream. Given their steep, wooded condition and natural sandy soil types, sediments here are possibly exacerbated by increased velocity above them from lawn or structural areas.

Pollution - Non-point stormwater velocity and sedimentation is exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelsey Mill Roads and adjacent mowed lawns at the top of the western watershed.

V. ECOLOGICAL CONDITIONS

The Enclave HOA and Greenspace of Fairview Conservation Block – an approximate 1,643+ acre zone – consists of numerous documented high-quality features such as mature forest, wetlands, rare plant species, high quality wildlife and extensive streams.

While this study does not assess these resources on the proposed RV park, it does include a summary of information from GreenSpace and HOA lands, which completely surround the proposed park.

Upstate Forever "Conservation Focus Area" (CFA) – in 2010, Upstate Forever, the largest conservation organization in the SC Upstate, published a Special Places Inventory (SPI) designed to "document the remaining historical and natural assets before making decisions that could negatively impact those resources permanently." The SPI analysis is based on data developed over decades by The Nature Conservancy (TNC) – the leading conservation organization in the world.

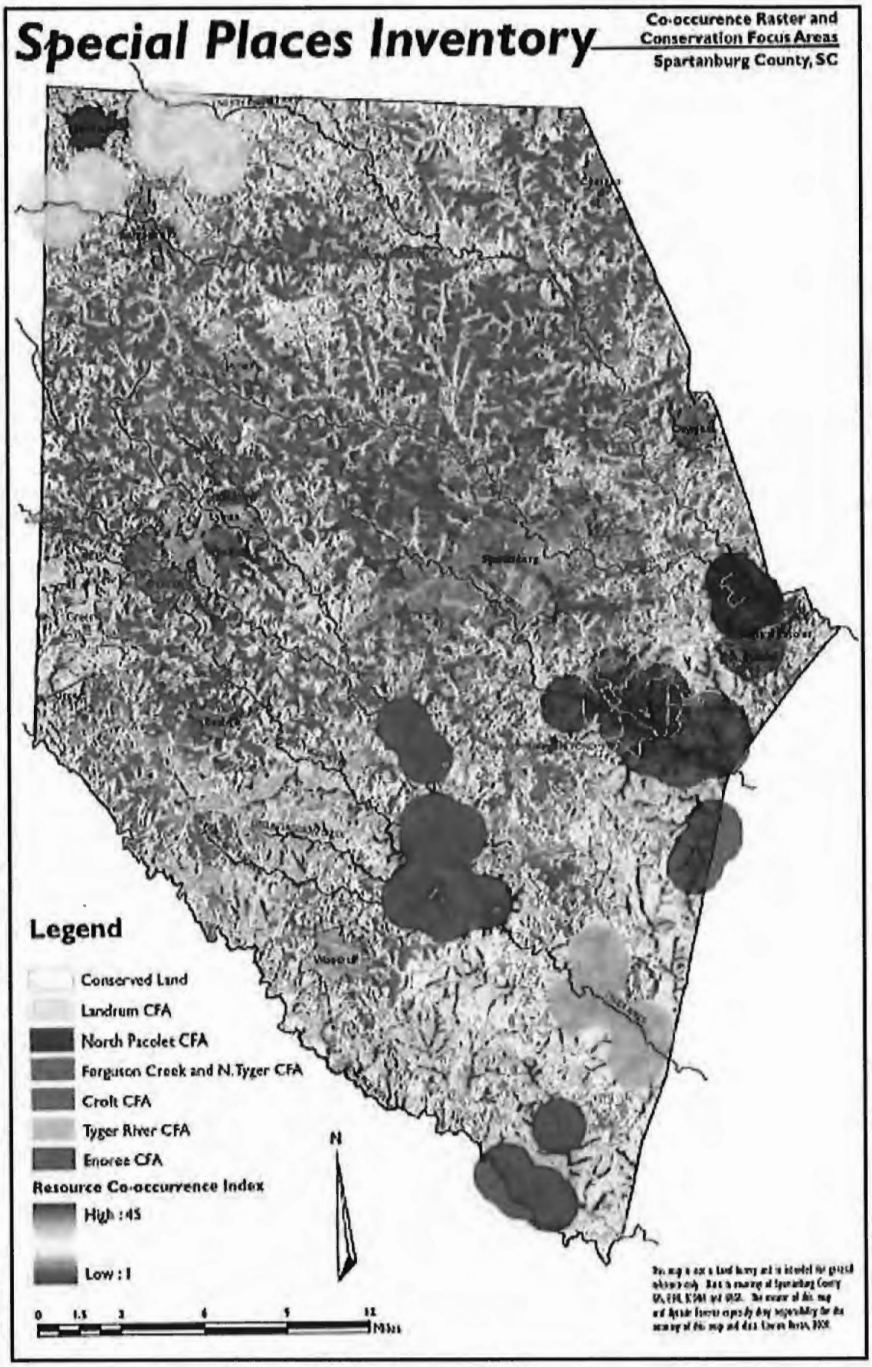
The proposed RV park sits directly within the one of these key areas - the "Landrum and Campobello" Conservation Focus Area (CFA) - one of only six critical Special Areas identified by Upstate Forever in all of Spartanburg County (image above, 2010). These six CFA's include the final remaining, undeveloped natural and cultural heritage areas and key conservation target regions in the County.

Figure 3: Upstate Forever CFA's in Spartanburg County, SC

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CFAs are identified by Upstate Forever *specifically* to help alert city and county planners and citizens of key ecological and historical heritage resources to the resources *that have already been lost* in order to protect these remaining Special Places in the future. Upstate Forever states:

> *"If we do not protect the remaining Special Places, we will lose them permanently. We will lose their ecosystem services, their wildlife, their history – indeed, we will lose the very elements that made Spartanburg County special then and will continue to make our home special in the future"* (2010, p3).



High-Quality and Rare Natural Communities

Ecological inventories performed by Gaddy, et al (2000) and MTS Ecological (2021) reveal significant biological richness in the GreenSpace of Fairview property and Enclave HOA, which have been mostly extirpated from the greater region since colonization and eradicated from cultural memory for the majority of residents. This includes 10 federal and state listed rare plant species, rare Headwater Stream Forest and Piedmont Springhead Seep natural communities, and extensive wetland resources and streams. Only some of these resources are formally protected within the GreenSpace properties as formal Conservation Easement and the Enclave HOA, and similar resources probably exist on the proposed RV park itself.

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All of Goldmine Creek in the HOA is contained within 28 acres of globally "rare" floodplain habitats (aka "natural communities") including a mature, globally "vulnerable" (G3) **Piedmont Headwater Stream Forest**. and six "critically imperiled" **Piedmont Springhead Seep** (G1) wetlands. The proposed RV park directly abuts these critical habitats. These are classified as rare "natural communities" or distinct and permanent plant alliances by NatureServe – the national consortium of all US Natural Heritage Programs and the global and international clearinghouse for all conservation data regarding plant and wildlife species and natural communities.

G2 – "Imperiled" — At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.

G3 – "Vulnerable" At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.

The global (or national) conservation ranking system ("G") ranges on a scale 1 to 5. Ranks of 1-3 the rarest while ranks of 4-5 are "secure", respectively. Ranks of 1-3 are of the highest conservation value for protection and restoration for government agencies and conservation organizations. Though South Carolina Natural Heritage Trust (SCNHT) is currently in process of developing natural community classifications and cross-referencing these with NatureServe classifications, NHT and DHEC do not formally protect rare or high-quality natural habitats or rare species by law except for federally listed species for projects that acquire federal funding.

Habitat Descriptions

Wetland cover types consist of open water (ponds), Piedmont Springhead Seeps, and all streams. Piedmont Headwater Stream Forest is a semi-wetland habitat, consisting of both upland and wetland-dependent plant species ("obligate" [OBL] and "facultative" [FACW]) with Seeps embedded.

<u>Piedmont Springhead Seep (G2)</u>
NatureServe Code: CEGL007041

Six locations of this globally "imperiled" wetland community are dotted along Goldmine Creek, the majority of which are downstream of the proposed RV park and thus subject to severe damage and extirpation from the RV Park, if approved.



Figure 4: globally "imperiled" Springhead Seep community along Goldmine Creek

As a "small patch" community (<1 acres in size) seeps are rare communities that typically occur through the region, the vast majority of them have long lost to ditching, agriculture, historical damage rendering them extirpated and/or unrecognizable. Thus, having high quality, intact seeps with native vegetation and structure dominant are extremely rare, six of them even more so.

Large diameter trees are rooted around seeps and occur as saplings but they never grow large within them due to mucky soils which cause large trees to topple easily. Sphagnum moss (which forms peat) is common. The shrub layer contains a few stems of Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum),* Black Chokecherry *(Aronia arbutifolia),* and Yellowroot (*Xanthorhiza simplicissima).*

The herb layer is dense and lush with herbs, sedges and grasses including Fowl Mannagrass (*Glyceria striata),* and numerous sedges (*Carex debilis, C. crinita, C. lurida, C. atlantica*), Jewelweed (*Impatiens capensis),* Virginia Bugleweed (*Lycopus virginicus),* False Nettle (*Boehmeria cylindrica),* Cardinal Flower (*Lobelia cardinalis),* Royal Fern (*Osmundastrum regalis)* and Cinnamon Fern (*O. cinnamomea),* Jack-in-the-Pulpit (*Arisaema triphyllum),* Chainfern (*Woodwardia areolata),* Virginia Wild-Rice (*Leersia virginica)*, and White Turtlehead (*Chelone* glabra).



Piedmont Headwater Stream Forest (G3)
NatureServe Code: CEGL004900

Approximately 28 acres of this exceptionally mature, high-quality forest dominates the flattest, low elevation bottomlands buffering Goldmine Creek. Here, shallow water table depth combined with elevated "hummocks" provide both wetland and upland habitat for a wide variety of wetland and upland species. Typical trees are Sweet-Gum (*Liquidambar styraciflua*), White Oak (*Quercus alba),* Northern Red Oak (*Quercus rubra),* Green Ash (*Fraxinus pensylvanica),* Red Maple (*Acer rubrum)*, Umbrella Magnolia (*Magnolia tripetela)* and American Beech (*Fagus grandifolia*) above an understory of American Holly (*Ilex opaca),* Ironwood (*Carpinus caroliniana),* Sourwood (*Oxydendrum arboreum)*, and Dogwood (*Cornus florida).*

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The shrub zone is equally as variable, harboring numerous wetland and upland shrubs like Highbush Blueberry (*Vaccinium fuscatum),* Spicebush (*Lindera benzoin),* Yellowroot (*Xanthorhiza simplicissima), Doghobble (Leucothoe axillaris),* Witch-Hazel (*Hamamelis virginiana),* Black Alder (*Alnus serrulata),* Wild Raisin (*Viburnum nudum)*, and Mountain Laurel (*Kalmia latifolia)*. The state "critically imperiled" (S1) Ashy Hydrangea (*H. cinerea)* occurs throughout bluffs south of Goldmine Creek. (See VI. Photographic Documentation for photograph).

Herbs dominating in patches and colonies include sometimes huge colonies of Rivercane (*Arundinaria gigantea),* Christmas Fern (*Polystichum acrostichoides),* Lady Fern (*Athyrium filix-femina ssp. asplenioides),* New York Fern (*Thelypteris noveboracensis),* numerous sedge species (*Carex* spp.), Wood Oats (*Chasmanthium laxum), Leersia virginica,* Cinnamon Fern (*Osmunda cinnamomea)*, and Royal Fern (*O. regalis).* Most notably – this habitat is almost entirely free from exotic-invasive (EI) species invasion that dominates most headwater stream forests regionwide. A few stems of privet, kudzu, and multiflora rose were detected, but in such low levels that removal could likely be performed in one or two field dates.

Several hundred clumps of the federally Threatened (T) and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora)* occur throughout this forest type and adjacent embankments on both sides of Goldmine Creek. South Carolina comprises the smallest, southern-most portion of its US range, as the species occurs only in Spartanburg, Greenville, and Cherokee Counties (See VI. Photographic Documentation for photograph).

Beaver Impoundments

Two locations of this now-abandoned beaver-developed wetland occur onsite in the central-to-upper Goldmine Creek adjacent to the proposed RV Park and Klapholz property. The impoundment zones are a complex, high-quality mixture of standing dead trees (a key missing component of most natural area today) and a mosaic of boggy and upland zones determined by drainage patterns after abandonment. This is easily the highest quality natural "early successional" or full-sun, non-forested habitat onsite.



Figure 6: abandoned Beaver Impoundment, central Goldmine Creek

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Typical herbs are Cattail (*Typha latifolia)*, Needle-rush (*Juncus effusus)*, bulrush (*Scirpus cyperinus)*, American Bur-reed (*Sparganium americanum)*, Jewelweed (*Impatiens capensis)*, Virginia Wild Rice (*Leersia oryzoides)* and numerous Sedges *(Carex crinita, C. stipata, C. crinita, C. scabrata, C. lupulina*), Lizard's Tail (*Saururus cernuus)*, *Carex lupulina*, False Nettle (*Boehmeria cylindrica)*, Three-way Grass (*Dulichium arundinaceum),* Virginia Bugleweed (*Lycopus virginicus,* Beggars-Ticks (*Bidens discoides*, B. *laevis),* Fowl Mannagrass (*Glyceria striata),* Bog St.Johnswort (*Hypericum mutilum)*, sensitive Fern (*Onoclea sensibilis)*, Cardinal Flower (*Lobelia cardinalis)*, Clearweed (*Pilea pumila)* and Cinnamon Fern (*Osmundastrum cinnamomea).*

Open Water/ Ponds

Three ponds (2.6 acres) occur in the HOA adjacent to Goldmine Creek, though these were not the subject of the water quality assessment and were not inventoried for vegetation or wildlife. These fabricated, still-water systems may still affect stream integrity and health in several ways:

1) collect and store freshwater that helps charge groundwater and regulate stream-flows

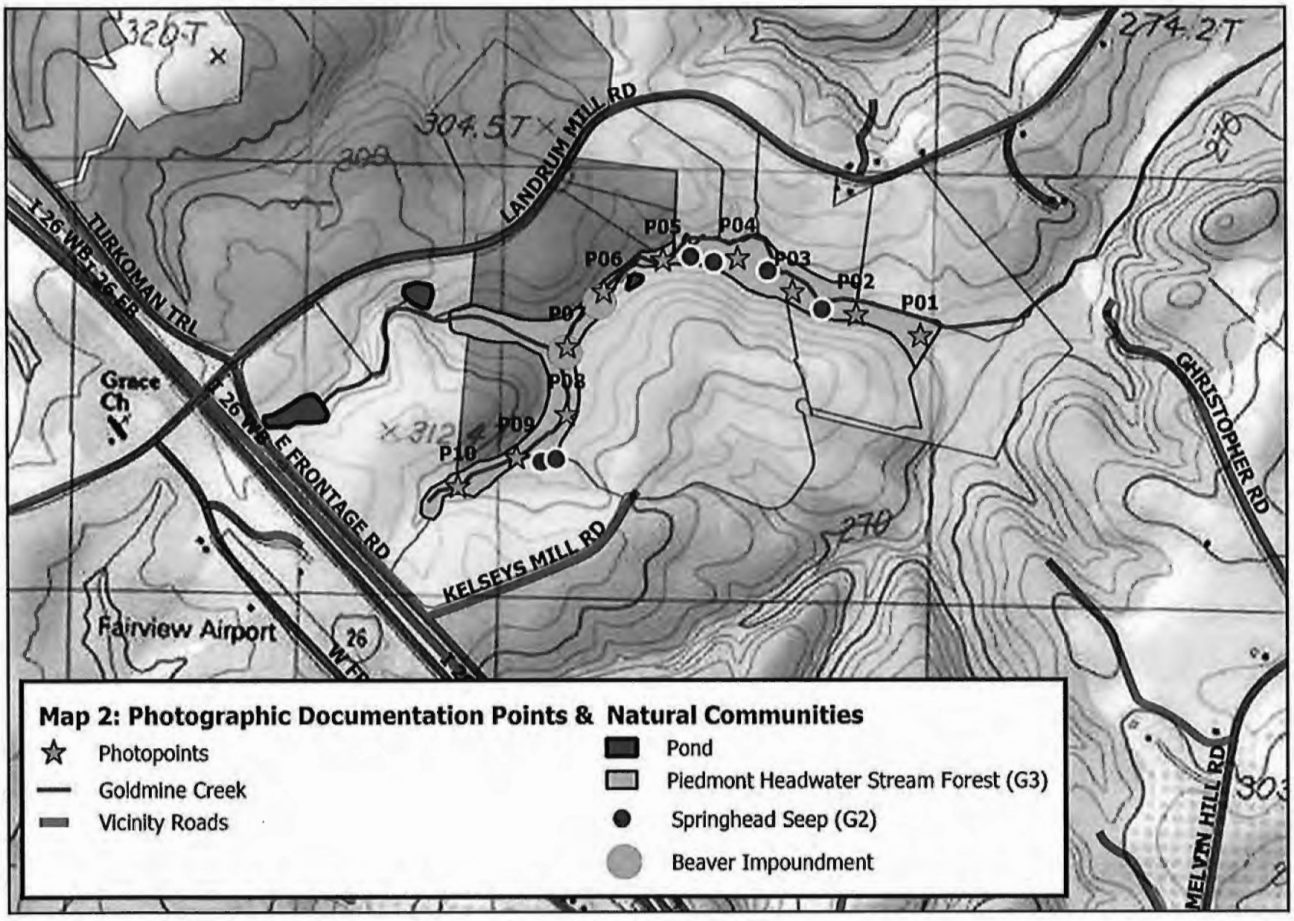
2) collect and store sediments and chemical discharges (especially those from I-26) that may otherwise enter the stream.

3) offer flatwater and non-moving water sources for a variety of wildlife that would otherwise not occur in the immediate vicinity such as waterfowl and other birds, reptiles, amphibians, small mammals such as bats, and high numbers of insects.

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VI. PHOTOGRAPHIC DOCUMENTATION

A "baseline" photographic documentation at 10 locations on approximate 500-foot intervals, plus rare plant photographs, was performed to document Goldmine Creek existing conditions prior to potential RV Park development (Figure 2). While it is hoped that structural ecological integrity of Goldmine Creek will not be impacted if the RV Park is approved, the likelihood of permanent damage from heavy stormwater, chemical, fertilizer, sewage, sediment, and trash outputs as is inevitable – and measurable. Recent flash flooding (July 18, 2021) caused some tree and embankment damage. Photos are taken from down to upstream from 01 to 10 and are shown in order of up and downstream.



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Photo #1: view of the state "critically imperiled" (S1) Ashy Hydrangea (*Hydrangea cinerea)* *with diagnostic "ashy" under-leaf surface*

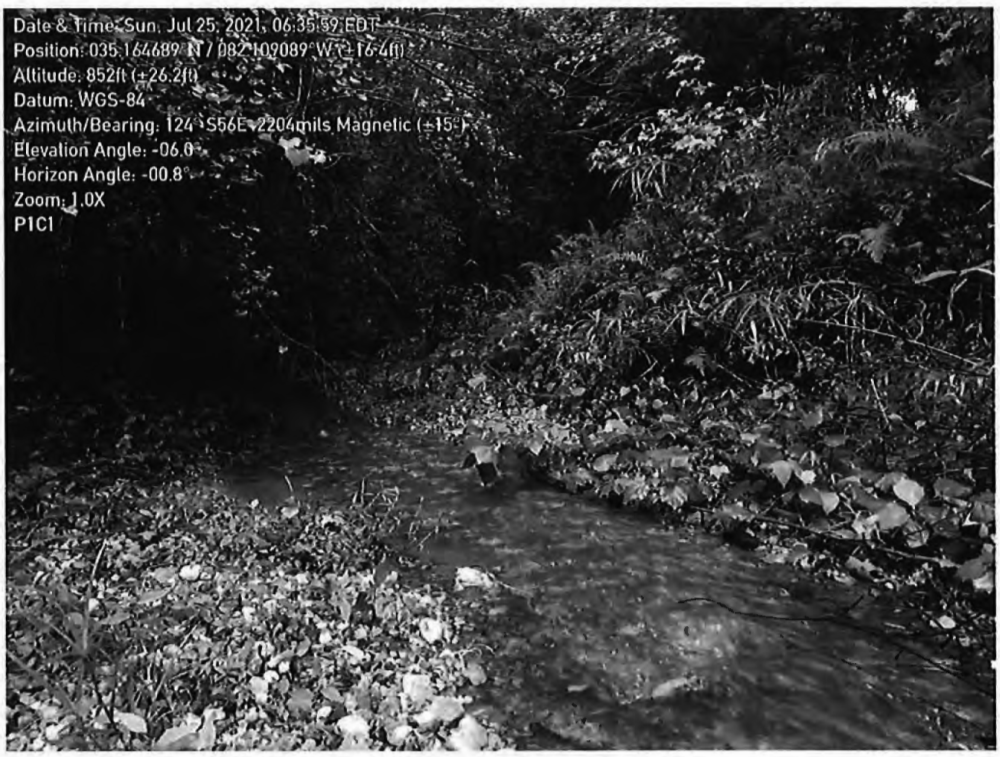


Photo #2: view of the federally Threatened and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora)*

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Photopoint 1, Photo 1: view upstream of typical stream and embankment conditions. Width range 4 to 7 feet



Photopoint 1, Photo 2: view downstream, typical stream and embankment conditions. Width range 4 to 7 feet

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Photopoint 2, Photo 1: view upstream of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow



Photopoint 2, Photo 2: view downstream, of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow

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Photopoint 3, Photo 1: view upstream of typical stream and embankment conditions in dense mountain laurel covered banks. Stream width range 3 to 6 feet



Photopoint 3, Photo 2: view downstream, of typical stream and embankment conditions with newly fallen woody debris



Photopoint 4, Photo 1: view upstream of "ideal" stream, riffle-pool, and embankment conditions in Headwater Stream Forest. Stream width range 4-5 feet



Photopoint 4, Photo 2: view downstream, of typical stream, cobble, and embankment conditions

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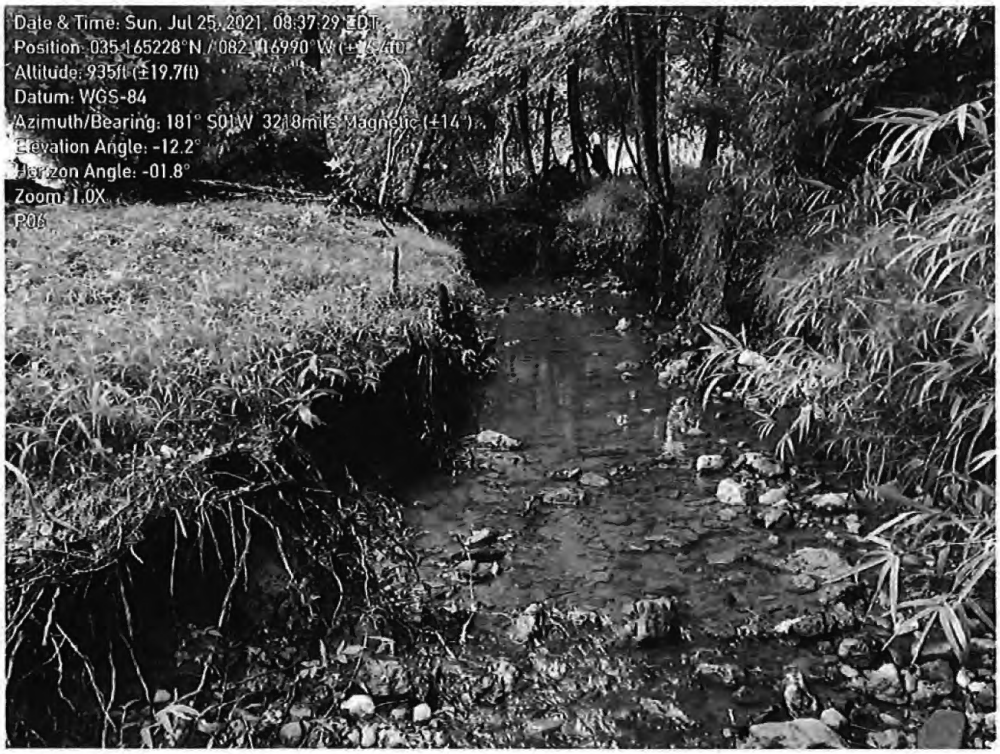
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Photopoint 5, Photo 1: view upstream of in a natural slough / pool zone under dense mountain laurel shrub cover. Stream widths range from 6-8 feet



Photopoint 5, Photo 2: view downstream of in a natural slough / pool zone under dense mountain laurel shrub cover

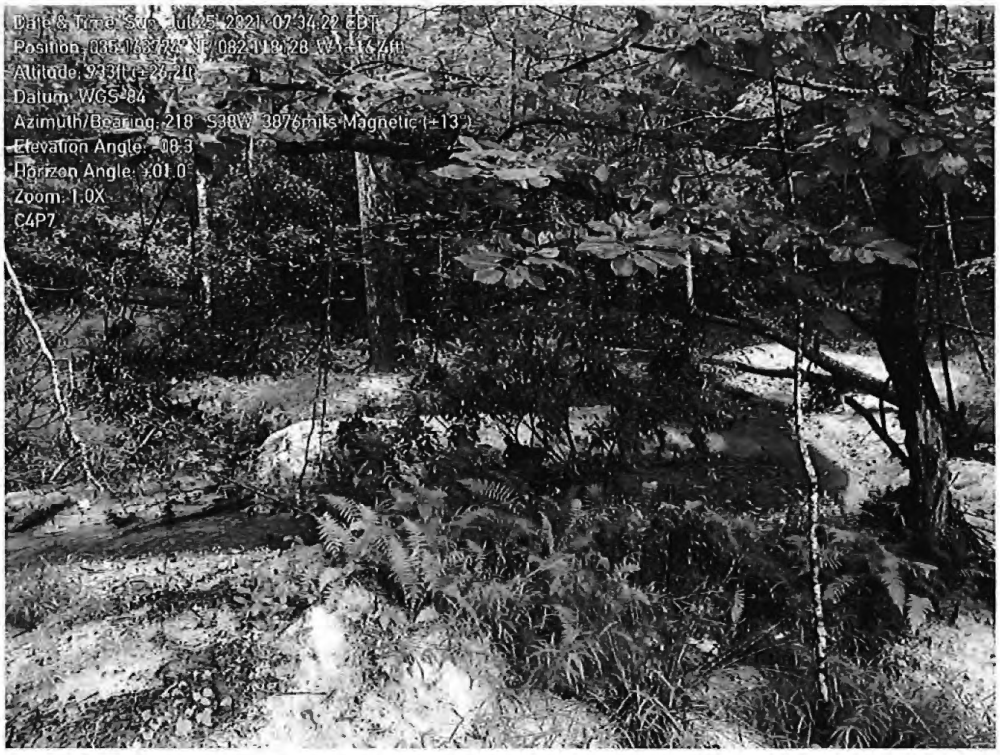


Photopoint 6, Photo 1: view upstream with cobble, rivercane, alluvial bench, and forested conditions. Stream width range 3-4 feet

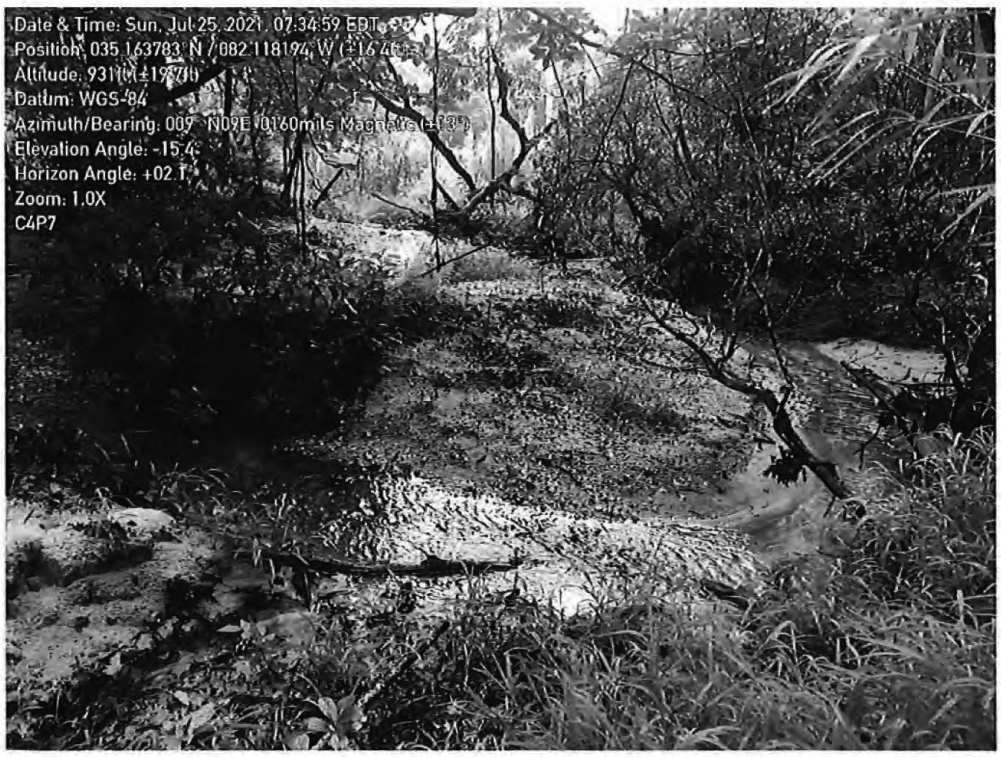


Photopoint 6, Photo 2: view downstream of oxbow deposit with newly fallen woody debris

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Photopoint 7, Photo 1: view upstream of Piedmont Springhead Seep and sandy flood deposits in Headwater Stream Forest. Stream width range 2-3 feet



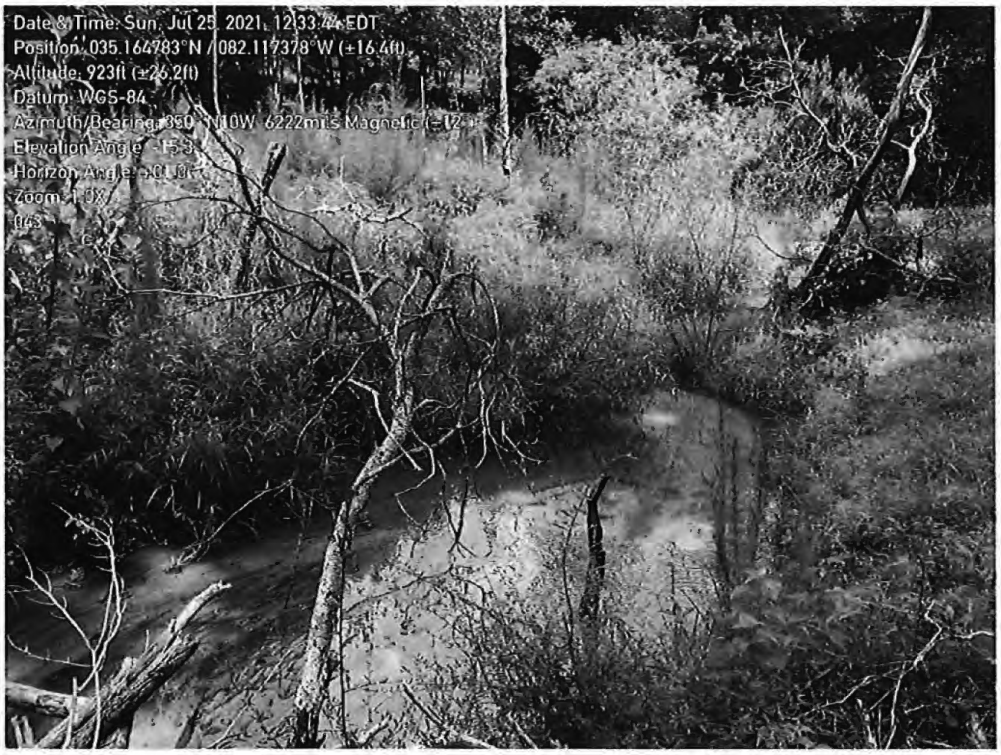
Photopoint 7, Photo 2: view downstream below Piedmont Springhead Seep, oxbow in Headwater Stream Forest and abandoned beaver impoundment

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Photopoint 7, Photo 3: supplemental view - upstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-3 feet



Photopoint 7, Photo 4: supplemental view - downstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-4 feet

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Photopoint 8, Photo 1: view upstream; Goldmine Creek narrowing and smaller with dense in upper headwaters. Stream width range 1.5-2 feet



Photopoint 8, Photo 2: view downstream, upper headwaters of Goldmine Creek and dense rivercane. Stream width range 1.5-2 feet

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Photopoint 9, Photo 1: view upstream of Goldmine Creek with steeper natural embankments. Stream width range 2-3 feet



Photopoint 9, Photo 2: view downstream, upper headwaters of Goldmine Creek and alluvial benches. Stream width range 1.5-2 feet

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Photopoint 10, Photo 1: view upstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 3-6 feet, artificially wide



Photopoint 10, Photo 2: view downstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 1-2 feet, artificially narrow

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EXHIBIT D

SOUTHERN ENVIRONMENTAL LAW CENTER

525 East Bay Street, Suite 200
Charleston, SC 29403

Telephone 843-720-5270
Facsimile 843-414-7039

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October 28, 2021

South Carolina Board of Environmental Control
Attn: Clerk of the Board
2600 Bull Street
Columbia, SC 29201

Re: Request for Final Review and Rescission of Permit to Construct Onsite Wastewater System
Permit File Number: 42-2021040112

Dear Sir/Madam:

On behalf of the South Carolina Native Plant Society, Upstate Forever, and itself, the Southern Environmental Law Center submits this letter in support of the Request for Final Review and Rescission of Permit to Construct Onsite Wastewater System filed by Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc.

This permit authorizes the construction of a septic system for an RV Park overlooking Goldmine Creek in Spartanburg County, South Carolina. This area and the watershed of this creek are the habitat for two of South Carolina's rarest plants, one of which is federally protected. The Creek itself is also a quality water resource that deserves special protection. We do not believe that the review and approval of this permit has considered the impacts on these plants and this watershed from the construction of this septic system on an incline overlooking the creek or has taken into account the possible location of the rare plants in the area of the proposed septic construction and the area downgradient where the waste flow and contaminants in the waste flow will migrate.

An environmental survey has located in the area of the proposed development and immediately downstream significant populations of Dwarf-Flowered Heartleaf, *Hexastylis naniflora*.[1] This plant is designated as a threatened species under the federal Endangered Species Act and has been designated by South Carolina' Department of Natural Resources as a Highest Priority Species.[2] A Department of Natural Resources Heritage Preserve, the Peters Creek Heritage Preserve, was established near the area of this development to protect populations of

[1] http://www.scwf.org/hexastylis.
[2] Chapter II: South Carolina Priority Species (sc.gov) at 2-9; https://www.fws.gov/asheville/htmls/listed_species/Dwarf_flowered_heartleaf.html.

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this rare plant.[3] This plant exists only in limited areas in Spartanburg, Greenville, and Cherokee Counties, and in some Piedmont counties in North Carolina.

As the U.S. Fish and Wildlife Service warns, "Dwarf-flowered heartleaf grows in acidic soils along bluffs and adjacent slopes, in boggy areas next to streams and creek heads, and along the slopes of nearby hillsides and ravines. . . . The greatest threat to dwarf-flowered heartleaf is conversion of habitat to agricultural, residential, commercial, and industrial uses." That is exactly the threat posed by this septic system and the development it supports.

In at least two instances for the Raintree Subdivision in Spartanburg County and the Boulder Creek Subdivision in Greenville County, before permits were issued for developments in the area where this plant is found, species surveys were required, and the developer was required to set aside and leave undisturbed the areas where this plant was found. See attached materials.

This plant is often found in damp forests along streams in this Piedmont region. Disturbance of the hydrology of the site, destruction of the forest cover, and earth movement with the resultant runoff and sedimentation can be expected to have adverse effects on populations of these rare plants.

Although the environmental survey did not have access to this development property itself, *Hexastylis naniflora* was found very near this development site and immediately downstream from it and throughout the watershed of Goldmine Creek. There is at least a significant possibility that there are also rare plants on the development site itself, downgradient of the septic system, and even where the septic construction and other construction on the site may occur.

Yet, to our knowledge, the Department and the developer have not taken this plant or its habitat into consideration in the permitting and development of this septic system or of the development as a whole.

The environmental survey of the site also located in the Goldmine Creek watershed Ashy Hydrangea (*Hydrangea cinerea*), also listed as a Plant of Concern by the Department of Natural Resources.[4] It also is dependent upon specific environmental conditions, including the forest cover.[5] Likewise, we are unaware that this plant, its possible presence on the development site, or its presence in the Goldmine Creek watershed have been taken into account in the planning or permitting for this development or its septic system.

In addition, Goldmine Creek is a first-order headwater tributary of the North Pacolet River. The environmental survey found that the water quality in the stream is excellent for the western Piedmont, that the creek ranked excellent in terms of its biological qualities, and that the creek hosts roach stoneflies (an indicator of good to excellent water quality). This watershed

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[3] South Carolina Department of Natural Resources (sc.gov) – SCDNR Managed Lands, Peters Creek Heritage Preserve.

[4] Chapter II: South Carolina Priority Species (sc.gov) at 2-9.

[5] NameThatPlant.net: Hydrangea cinerea.

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also includes a Piedmont Headwater Stream Forest and Piedmont Springhead Seep wetland communities. In sum, this waterway and its watershed require the most careful protection.

This is not a routine septic system permitting. This system and this development are proposed for an area of environmental sensitivity. The permitting should take place with careful consideration of the rare plant species, the creek's water quality, and this special watershed in mind. These plants are an important part of South Carolina's natural heritage, as concretely demonstrated by the nearby Peters Creek Heritage Preserve, as is this creek and the special characteristics of its watershed.

Nor can DHEC leave these concerns to the Department of Natural Resources. DNR is not a permitting agency. It has reviewed the science and has designated these plants as species of concern in South Carolina. *Hexastylis naniflora* has been designated a national threatened species. The natural resource agencies have done their job by identifying these plants as species of concern. It is now up to DHEC to take these species and their protection into account in reviewing permits and taking action on this particular permit, as DHEC has done before in Spartanburg and Greenville Counties.

We urge DHEC to undertake the requested review of this permit and specifically to require a survey for the rare plants on the site, to determine whether the septic permit is appropriate given its effects on rare species, their habitat, and the waterway, and, if a permit can be granted, to require special conditions to ensure that the proposed septic system and development do not adversely impact plants on the site, downgradient of the proposed septic field, and downstream of the site. This review should also ensure that this is an appropriate site for such a septic system in this sensitive watershed and ensure that, if a septic system is installed, there are in place protections tailored specifically for this site and this watershed to ensure that the operation of the system and the development do not harm the creek's water quality or the special features of this watershed.

Thank you for your consideration.

Sincerely,

Frank S. Holleman III
Senior Attorney

Cc: Russell Rock

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EXHIBIT E

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SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

FINAL AGENCY DECISION

Docket No. 21-RFR-81
T. Tree Farms RV Park (Blue Sky Associates, LLC)

This matter comes before the South Carolina Board of Health and Environmental Control ("Board") for final review pursuant to S.C. Code Ann. § 44-1-60. The Enclave at Fairview Homeowners' Association, Inc., Golden Hills of Fairview Homeowner's Association, Inc., Greenspace of Fairview, LLC, and North Pacolet Association, Inc. ("Requestors") filed a request for final review of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") staff decision to issue Permit to Construct Onsite Wastewater System, File No. 2021040112 ("Permit) to Blue Sky Associates, LLC ("Blue Sky") for the construction of an onsite wastewater system. On December 20, 2021, the Board conducted a Final Review Conference regarding the matter. After hearing presentations from the Department, Requestors, and Blue Sky, the Board overturns the staff decision for the reasons stated herein.

BACKGROUND

On April 23, 2021, the Department received the permit application for the construction of an onsite wastewater system to serve the T. Tree Farms RV Park located at 1970 Landrum Mill Road in Campobello, South Carolina in Spartanburg County ("Site"). The onsite wastewater system was designed to treat and dispose of a limited quantity of domestic wastewater discharged from 52 lots located at the Site.

After conducting its review, the Department determined that the permit application met all aspects of S.C. Code Ann. Regs. 61-56, *Onsite Wastewater Systems* ("R. 61-56") and issued the

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Permit on June 22, 2021. The Requestors filed a request for review of the staff decision on October 14, 2021.

DISCUSSION

Pursuant to S.C. Code 48-1-100(c), DHEC is the state agency with jurisdiction over septic tanks. As authorized by S.C. Code 44-1-140(11), the Department promulgated S.C. Code of Regs. 61-56 ("R 61-56") to ensure onsite wastewater systems are appropriately designed to treat and dispose of domestic wastewater through a combination of natural processes that ultimately result in effluent being transmitted through the soil, renovated, and ultimately discharged to groundwater. The Department's review of onsite wastewater system permit applications is conducted in accordance with the permitting requirements set forth in R.61-56.

Pursuant to R. 61-56, onsite wastewater systems must be sized according to estimated peak sewage flow, as set forth in Appendix R of the regulation. Appendix R sets the peak sewage flow rate standards for campgrounds with no laundry and full water/sewer at 120 gallons per unit per day, but allows for the peak flow rate for non-residential facilities to be increased or reduced when comparable peak water consumption data for similar establishments in similar locations vary from the requirement. When considering such data, at least twelve (12) consecutive months must be presented with the maximum month of consumption and the days of operation per month being utilized to arrive at the peak flow rate.

In its permit application, Blue Sky presented consumption data for a KOA campground in Traveler's Rest, South Carolina ("KOA Campground") and calculations of a peak flow rate of 50.19 gallons per unit per day for the maximum month of consumption over a 12 month period. The Board finds that the KOA Campground is not a similar establishment to the proposed T. Tree Farms RV Park. Therefore, the peak flow rate standard utilized in designing the onsite wastewater

system in the permit application cannot be supported by the peak flow rate data for the KOA Campground.

CONCLUSION

After reviewing the written materials submitted to the Board, including the Administrative Record, and considering all arguments and evidence presented, the Board overturns and rescinds the staff decision in this matter.

Seema Shrivastava-Patel, Vice-Chairwoman
Board of Health and Environmental Control
For the Board

January 13, 2021

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EXHIBIT G

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REQUEST FOR PUBLIC HEARING BEFORE THE PLANNING COMMISSION

RE: Application for Major Land Development
T. Tree Farms RV Park (Blue Sky Associates, LLC)
William A. McDaniel and Kimberli Burnett, Managers of Blue Sky Associates, LLC

TO: MEMBERS OF THE SPARTANBURG COUNTY PLANNING COMMISSION

The undersigned are Spartanburg County residents, taxpayers, and/or interested parties in the matter of T. Tree Farms RV Park (Blue Sky Associates, LLC) and "Concerned Citizens" herein.

The Concerned Citizens request a public hearing before the Commission relating to the February 7, 2023 application by Blue Sky Associates, LLC ("Blue Sky") to develop a "campground or RV park" at 1970 Landrum Mill Road, Campobello.[1]

Concerned Citizens are interested persons who stand to be substantially affected and detrimentally impacted (health, safety, environment, and general welfare) from the proposed RV park. Concerned Citizens are interested in the subject matter of this proposed development and request a public hearing so that they may participate in the application process.

Commission Rules, Art. III, Public Hearings, Sections 2.3 provide that a public hearing before the Commission is a "*forum for people interested in the subject matter to present information to the Commission for their consideration as they deliberate an issue*."

Concerned Citizens offer the following in support of this Request for a Public Hearing:

1. DUE PROCESS: The South Carolina Constitution, Article I, Section 22 provides that "*No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard.*" The Commission has the duty to afford Concerned Citizens due notice and an opportunity to be heard through a public hearing. Concerned Citizens are people who (a) are interested in this development plan; (b) stand to be negatively impacted by Blue Sky's application of February 7, 2023; and (c) stand to have many private rights affected by a Commission decision on the application. Concerned Citizens wish to present information and written material to the Commission Members for their consideration in deliberation before a decision is rendered.

2. MISREPRESENTATION BY DEVELOPER - WELL PERMITS: Concerned Citizens wish to present information to the Commission that Blue Sky/its engineers misrepresented in the current application process that DHEC has issued a permit for a permanent well for water. This is misleading. Pursuant to

[1] Two years ago on March 2, 2021, the Commission gave conditional Site Plan approval to Blue Sky for a 50-space RV park on the same property. Blue Sky failed to meet the six approvals as required by the Commission as conditions precedent before the project would receive final County approval. There has been no final approval by the County on the 2021 application.

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DHEC Regulation 61-58, this is a two-step process. Blue Sky has a permit for the first step, which is a "test well" to analyze water quality. As stated on the test well permit, the permit does not constitute DHEC approval to place the system in operation. A follow-up application to DHEC is required. The production well has not been approved by DHEC. Moreover, DHEC has no jurisdiction over the required source of water in a local land development.

3. ROAD SAFETY - EXPERT REVIEW: Concerned Citizens wish to present to the Commission comprehensive findings prepared by a road safety engineer. His 10-page Road Safety Audit includes a detailed on-site assessment of old farm to market 16-feet wide roadways with steep grades, limited sight, sharp curves, no shoulders, and deep roadside ditches. The road safety expert opined that RV traffic from the RV park over the only routes to/from the park ***"adds danger to already dangerous roads.***" This poses a major danger to health, safety, and general welfare of all persons using these roads for travel and recreational purposes. The developer's Traffic Impact Analysis projects that 75,000 vehicles per year (including huge RVs) will travel to/from the park on our country roads.

4. EXPERT OPINIONS ON FIRE SUPPRESSION and MORE: Concerned Citizens wish to present information/expert opinions to the Commission on the issues of an inadequate fire suppression plan, deficient septic permit, the undersized septic system, stormwater management, and risks to drinking water, residents' wells, health, the environment, and more.

5. WATER ISSUES: Concerned Citizens wish to present information to the Commission about the water supply to the RV park and their wells (residential and agricultural use). Blue Sky seeks to supply its RV park with water from a well system instead of water from a public water district as required by the Commission in 2021. ULMO Section 3.13 states that RV park sites must be served by public water. Concerns also exist regarding interference with nearby residents' wells.

6. HARMONIOUS and COMPATIBLE DEVELOPMENT CRITERIA: Concerned Citizens wish to present information to the Commission that this proposed RV park is not harmonious and compatible development as required by the Planning Act and the ULMO and as further recognized in the Comprehensive Plan. The lands surrounding the RV park consist of nearly 5,000 acres of four structured homeowners' associations with conservation-focused restrictive covenants. The properties are low-density, agri-rural, and non-commercial. Thousands of acres are under formal conservation easements with Upstate Forever and Conserving Carolina. The developer's projection is that 75,000 vehicles per year of commercial traffic will be added to the privately owned roads in this conservation area. The commercial RV park is not in harmony with our extensive and formal conservation easements and covenants. The park destroys the purpose of protecting our sensitive environment.

7. SUPPORT FROM CONSERVATION GROUPS: Concerned Citizens wish to present information to the Commission that several conservation groups support the effort to protect this sensitive environment from the RV park development, including The Southern Environmental Law Center, The South Carolina Environmental Law Project, Upstate Forever, Conserving Carolina, and the SC Native Plant Society. A professional biologist surveyed Gold Mine Creek and identified threatened species of plants on the banks of the creek, which flows along the RV park parcel.

8. SIGNIFICANT NEGATIVE IMPACTS TO THE COMMUNITY: The proposed RV park will cause many negative effects and impacts on Concerned Citizens and the greater community including health,

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drinking water contamination, impact on a totally well-dependent community with hundreds of residents (residential and agricultural use), safety, road safety, the environment of the conservation-focused community, pollution, noise pollution, light pollution, risk of fire, diminution in property value, stormwater management, and traffic. This includes the developer's for-profit traffic over privately owned, narrow roads which are the only routes to/from the park. Many other concerns exist about safety, health, and general welfare of Concerned Citizens.

9. SEPTIC PERMIT: Concerned Citizens wish to present information on Blue Sky's septic permit to the Commission.

a. Concerned Citizens will present the DHEC Board's Final Agency Decision, wherein the DHEC Board rescinded Blue Sky's septic permit for size and capacity deficiencies.

b. On December 20, 2021, the DHEC Board held a lengthy hearing and posed questions to Blue Sky about a safety plan for system failure. Blue Sky has no such plan. A video recording of the hearing is available on the DHEC website.

c. The DHEC Board cited the Pollution Control Act 101 (c) ("real or potential threat to health") and determined that the data submitted by Blue Sky did not support its request for a 50% reduction from the DHEC standard peak flow capacity for its septic system. Blue Sky designed its system to handle 60 gallons per day per unit as opposed to the general DHEC standard 120 gallons per day per unit.

d. The DHEC Board rescinded Blue Sky's septic permit, which is the same permit that Blue Sky submitted with its February 7, 2023 to the County.[2] The septic permit is in litigation.

e. The undersized septic system lacks capacity as determined by the DHEC Board.

f. Two million gallons per year of chemically contaminated, high strength wastewater from RVs are projected to be discharged into the RV park's septic system per DHEC standard calculations of peak flow. DHEC Regulation 61-56, 501 (Peak Sewage Flow Rate Standard).

g. The undersized septic system poses a threat of failure resulting in discharge into water courses, contamination of local wells and drinking water, and threat to the health, safety, and general welfare of Concerned Citizens as well as the drinking water for the City of Spartanburg.

[2] Blue Sky's managers sought administrative review of the DHEC Board decision based upon a 15-day procedural rule (time limits to seek review by the DHEC Board). The substance of the septic permit was not addressed in the review. The administrative review was appealed to the South Carolina Court of Appeals on December 20, 2022. DHEC is a party in the case. The South Carolina Environmental Law Project is representing 4 Homeowners' Associations in the Appeal.

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In summary, Concerned Citizens submit that a public hearing must be held by the Commission in this matter as mandated by the SC Constitution, the State Planning Act, and the County's ULMO. The Planning Act provides that the function of a local planning commission is to promote public health and safety. Section 6-29-30(1). The Act further provides that the public health, safety, and general welfare require the harmonious and orderly development of land within counties of the State. Section 6-29-1120.

Also noteworthy is the *South Carolina Guide to Land Use Planning*, which is published by the South Carolina Association of Counties. The Guide states that a local planning commission "*serves as the citizen advisory group*" to the County. A commission exists to carry out "*a continuing planning program for the benefit of the community it serves.*" The Guide further notes that there is a need for public input and plans require a *"close and continuous collaboration between citizens and local government."* Blue Sky's prior application in 2021 contained critical misrepresentations about private property rights, and close scrutiny of the current application with citizens' input is warranted.

For the foregoing reasons, Concerned Citizens hereby request that the Commission hold a public hearing on Blue Sky's application for Major Land Development dated February 7, 2023.

Due to the great number of interested persons and the many issues presented, Concerned Citizens ask the Commission Members to please consider extending the time limit for presentation as set forth in Commission Procedure Rule 2.7 to no less than 90 minutes. This matter is of great concern and involves critical issues regarding health, safety, and welfare of the general public. Some of these issues are technical in nature and require professional expert analysis and explanation. Concerned Citizens submit that a 30-minute time limitation would handicap their presentation and deny the Commission the opportunity to fully understand the many concerns.

Submitted By Concerned Citizens – See Attached Signature Pages February 28, 2023

To: Planning Commission Members
Douglas C. Brackett, Secretary
Donna Turner Williams
Whit Kennedy, Jr., Chairman
James William Hamilton
James Les Green
Toby Mark McCall, Vice-Chairman
Lewis Allen Newman
Stewart Winslow
Francis Parker Champion

cc: Joan Holliday, Director, Planning & Development Dept.
Leigh McDonald, Planning Manager, Planning & Development Dept.

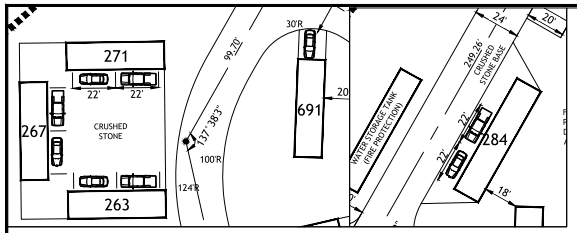
William A. McDaniel, Manager
Kimberli Burnett, Manager
Blue Sky Associates, LLC
446 Oak Grove Road
Spartanburg, SC 29301

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

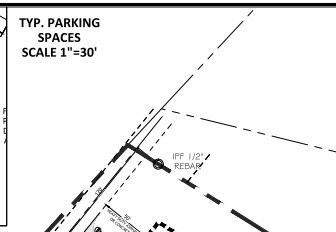
EXHIBIT F

ELECTRONICALLY FILED - 2023 Apr 04 11:24 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201221

00351



TYP. PARKING SPACES
SCALE 1"=30'

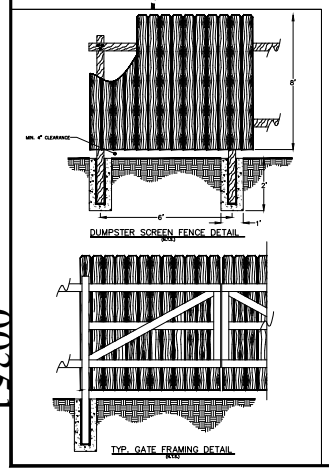


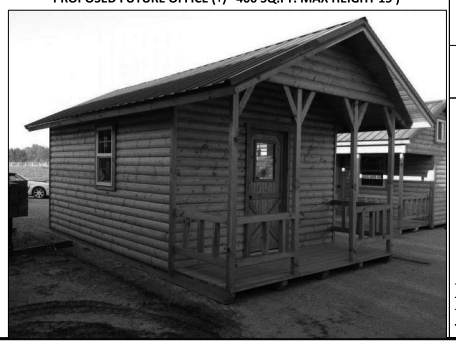
TMS 1-09-00-007.42
LANDRUM MILL RD
GREGORY W HALL
DB 72R PG 554
USE: AGRICULTURAL FARM

TMS 1-09-00-020.18
2140 LANDRUM MILL RD
JACKSON DONALD & MARION
DB 126H PG 469
USE: REGULAR FARM VACANT

TMS 1-09-00-020.08
195 KELSEYS MILL RD
KLAPHOLZ JUDIE R TRUSSEE
DB 106N PG 942
USE: OWNER OCCUPIED FARM IMPROVED

BLUE SKY ASSOCIATES LLC
TMS 1-09-00-020.03
DEED BOOK 129-L-244
PLAT BOOK 176-590
38.68 ACRES





PROPOSED FUTURE OFFICE (+/- 400 SQ.FT. MAX HEIGHT 15')



T. TREE FARMS
PROPOSED RV PARK

DEVELOPER	ENGINEER
BLUE SKY ASSOCIATES, LLC PO BOX 5930 SPARTANBURG, SC 29304 864-809-6484	GRAY ENGINEERING ZACH JOHNSON, P.E. 132 PILGRIM ROAD GREENVILLE, SC 29607

SETBACK CHART
- FRONT: 65'
- SIDE - 50'
- REAR: 50'

SITE INFORMATION
- PRIVATE DRIVE
- NO OPEN SPACE REQUIRED
- NO EXISTING STRUCTURES ON THE PROPERTY

N

0 60' 120'
SCALE: 1" = 60'

PROPERTY AND PROJECT INFORMATION:

RV PARK

TAX MAP#: 1-09-00-020.03

DEED REFERENCE: BOOK:129L / PAGE 244

TOTAL ACREAGE: 38.68 ACRES

COMMUNITY: CAMPOBELLO

ZIP CODE: 29322

NEW ROAD: 0.58 MILES OF NEW DRIVE

CAMPSITES: 49

NOTES:
1) THE PRIVATE DRIVE SHOWN ON THIS PLAT SHALL BE OWNED AND MAINTAINED BY THE PROPERTY OWNER.
2) BUILDINGS TO BE CONSTRUCTED IN THE FUTURE
3) REQUIRED PARKING: 49 LOTS X 1.5 PER CAMPSITE + 1 SPACE/EMPLOYEE = 75 SPACES
4) PARKING PROVIDED: 86 SPACES TOTAL (TYP. PARKING LAYOUT SHOWN)
5) ADA SPACES REQUIRED: 4 ADA SPACES PROVIDED: 4
6) DUMPSTER/TRASH RECEPTACLES WILL MEET ALL REQUIREMENTS OF SECTION 3.13, ULUO (9).
7) ANY LIGHTING ON THE PROPERTY SHALL BE ARRANGED IN A WAY AS TO NOT IMPACT NEIGHBORING PROPERTIES. LIGHTS SHOULD BE SHIELDED.

- DEED BOOK: 129L
- DEED PAGE: 244
- DISTRICT: 2
- COMMUNITY: CAMPOBELLO
- ZIP CODE: 29322

STATE CERTIFICATION:

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 'B' SURVEY AS SPECIFIED THEREIN.

As of June 22, 2021 - The site has received approval from SCDHEC for a septic tank system. It is the responsibility of the Property Owner to contact SCDHEC for approval of a septic tank if/when development takes place. A Certificate of Occupancy shall not be granted to a building/use without a septic system (or public sewer)

PLAN LEGEND

- PROPOSED PAVEMENT
- SETBACKS
- CENTERLINE
- 100-YEAR FLOODPLAIN
- OPEN SPACE/DETENTION AREA
- IRON PIN
- FIRE HYDRANT
- CREEK
- ADJACENT PROPERTY LINE
- PROPERTY LINE
- ROAD RIGHT-OF-WAY

NO	DATE	BY	REVISION
A	3/1/2023	MTW	REVISED PER PLANNING COMMENTS

Gray Engineering
132 PILGRIM ROAD - GREENVILLE, SC 29607
PH: 864.877.3317 - FAX: 864.877.3377
WWW.GRAYENGINEERING.COM
SC C.O.A.# 3317 GA C.O.A.# PEF001941 TN C.O.A.# 01010819
NC C.O.A.# C200909

SITE PLAN

T. TREE FARMS RV PARK
LANDRUM MILL ROAD
SPARTANBURG COUNTY, SC

PROJECT MANAGER:	ZDJ
DRAWN BY:	MSG
PROJECT DATE:	2/3/21
SCALE:	1"=60'
JOB No.:	2021006
PLOT DATE:	3/1/23

SHEET
CV-1

2021006 - 06.dwg

ELECTRONICALLY FILED - 2023 Apr 17 11:44 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201367

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH CIRCUIT
COUNTY OF SPARTANBUIRG	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society, Appellant, vs. The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**SUMMONS**

TO THE RESPONDENT SPARTANBURG COUNTY PLANNING COMMISSION:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, 525 East Bay Street, Suite 200, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

April 17, 2023

ELECTRONICALLY FILED - 2023 Apr 17 11:44 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201367

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH CIRCUIT
COUNTY OF SPARTANBUIRG	)	
	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society,	)	
	)	**SUMMONS**
Appellant,	)	
	)	
vs.	)	
	)	
The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,	)	
	)	
Respondents.	)	
	)	

TO THE RESPONDENT BLUE SKY ASSOCIATES, LLC D/B/A T. TREE FARMS RV PARK:

YOU ARE HEREBY summoned and required to answer the Notice of Appeal in this action, of which a copy is herewith served upon you, and to serve a copy of your response on the subscribers at their offices, 525 East Bay Street, Suite 200, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Appeal.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

April 17, 2023

ELECTRONICALLY FILED - 2023 Apr 17 11:44 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201367

NOTICE OF APPEAL FROM AN ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY CIRCUIT COURT

_____

APPEAL FROM THE SPARTANBURG COUNTY PLANNING COMMISSION

_____

Site Plan – RV Park (1-09-00-020.03)

_____

The South Carolina Native Plant Society,

Appellant,

v.

The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park,

Respondents.

_____

NOTICE OF APPEAL

_____

Appellant hereby submits notice to the Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park of its appeal of the Spartanburg County Planning Commission's decision not to reconsider its conditional approval of the site plan for the T. Tree RV Park in Campobello, South Carolina, (1-09-00-020.03) on April 4, 2023.

s/ Frank S. Holleman III
Frank S. Holleman III, Bar No. 2564
fholleman@selcsc.org
Emily Wyche, Bar No. 105551
ewyche@selcsc.org
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
Telephone: (843) 720-5270
A*ttorneys for Appellant*

Charleston, South Carolina
April 17, 2023

ELECTRONICALLY FILED - 2023 Apr 17 11:44 AM - SPARTANBURG - COMMON PLEAS - CASE#2023CP4201367

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Case No. 2023-CP-42-_____
South Carolina Native Plant Society, Appellant, vs. The Spartanburg County Planning Commission and Blue Sky Associates, LLC d/b/a T. Tree Farms RV Park, Respondents.	)	**APPEAL FROM SPARTANBURG COUNTY PLANNING COMMISSION**

Appellant the South Carolina Native Plant Society ("Native Plant Society") hereby appeals the decision of Respondent the Spartanburg Planning Commission ("Commission") not to reconsider its conditional approval of the site plan for an RV park at 1970 Landrum Mill Road in Campobello, South Carolina, proposed by Respondent Blue Sky Associates d/b/a T. Tree Farms RV Park ("Blue Sky") and respectfully shows the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. Appellant Native Plant Society is a South Carolina non-profit conservation organization with members throughout the State.

2. The Native Plant Society has members who are residents of Spartanburg County and other parts of the Upstate of South Carolina. The Native Plant Society and its members are parties in interest with respect to the Commission's conditional approval of the T. Tree Farms RV Park site plan and are impacted by the decision of the Commission.

3. The South Carolina Local Government Comprehensive Planning Enabling Act provides a right to appeal from planning commission decisions for any "party in interest,"

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including opponents of the proposed site plan. *See* S.C. Code § 6-29-1150; *Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97 (Ct. App. 2019).

4. The Native Plant Society, itself and through its members, is a "party in interest" under S.C. Code § 6-29-1150(D)(1), has a significant interest in the outcome of the decision at issue here, and has standing to bring this action.

5. The Commission rendered its conditional approval of the RV Park site plan on March 7, 2023. Thereafter, the Society asked the Commission to reconsider its decision. A copy of that letter and the exhibits thereto are attached as Exhibit A and incorporated herein. Homeowner associations and local property owners also asked the Commission to reconsider its decision. That letter is attached hereto as Exhibit B.

6. The Commission has clear authority to reconsider its decision. Section 5 of Article II of the Commission's Rules and Procedures adopts Spartanburg County Council's Rules of Procedure. Under Section 12-4 of the Spartanburg County Council's Rules of Procedure, motions to reconsider may be made at the next regular meeting. The Commission's next regular meeting was on April 4 and the Commission did not reconsider its conditional approval at that meeting.

7. The Native Plant Society filed its appeal of the Commission's decision to grant the conditional approval on April 4, 2023.

8. This appeal of the Commission's decision not to reconsider its conditional approval decision is filed within thirty days after actual notice of the decision as provided in S.C. Code § 6-29-1150(D)(1).

9. The Commission was created pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code § 6-29-310, *et seq.*

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10. Blue Sky is a limited liability company incorporated in South Carolina and doing business in Spartanburg County.

11. Blue Sky is the developer that sought approval of the site plan at issue in this appeal.

12. The Circuit Court has subject matter jurisdiction over appeals from local planning commissions. S.C. Code § 6-29-1150(D)(1).

13. Venue is proper in this Court. The property at issue in this appeal is located within Spartanburg County and the appealed decision was rendered in Spartanburg County. In addition, the Native Plant Society is a South Carolina organization that operates in and has members in Spartanburg County and is concerned about and seeks to protect natural resources in Spartanburg County. Blue Sky has its principal place of business in Spartanburg County.

14. This Court has personal jurisdiction over the parties due to their location or activities in Spartanburg County.

FACTS AND PROCEDURAL HISTORY

NATURAL FEATURES OF THE PROPOSED RV PARK SITE

15. The proposed site for the T. Tree Farms RV Park is on Goldmine Creek in Campobello, South Carolina. The proposed site features rare plants and important, ecologically sensitive habitat and natural features.

16. This area of Spartanburg County and the watershed of Goldmine Creek have not been subject to intensive development. Nearby and adjacent properties are protected by conservation easements.

17. The banks of Goldmine Creek and the area around Goldmine Creek include damp, rich forests. This damp, rich forest provides important habitat for rare species.

18. There are numerous populations of one of the nation's and South Carolina's rare

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plants—Dwarf Flowered Heartleaf (*Hexastylis naniflora*)—along the banks of Goldmine Creek and in the forest near Goldmine Creek.

19. Because of its rarity and the threats to its continued existence, this rare plant has been listed as a Threatened Species under the Endangered Species Act since 1989, 16 U.S.C. §§ 1531 *et seq*.

20. The plant's rarity and the threats to its continued existence have also led the South Carolina Department of Natural Resources to designate it as a Highest Priority Species in the South Carolina Wildlife Action Plan.

21. Spartanburg County contains especially important habitat for this rare species. In South Carolina, the Dwarf Flowered Heartleaf exists only in a portion of the Piedmont of Greenville, Spartanburg, and Cherokee Counties. It also exists in some North Carolina Piedmont counties near South Carolina.

22. The Peters Creek Heritage Preserve of the South Carolina Department of Natural Resources is located in Spartanburg County. The preserve was established principally to protect populations of this plant and one area of its habitat. According to the Department of Natural Resources, the preserve is home to the second-largest known population of Dwarf Flowered Heartleaf.

23. These rare plants are dependent upon the ecology of their habitats. Specifically, they depend on rich forests; are affected by the quality and amount of groundwater, which determines the hydrology of the plant's habitat; and are affected by the water quality and overall health of the streams that flow through their habitat.

24. The principal threats to the survival of the Dwarf Flowered Heartleaf are construction of roads, facilities, and infrastructure, associated erosion, and conversion of habitat

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to agricultural, residential, commercial, and industrial uses.

25. There are populations of Dwarf Flowered Heartleaf on the proposed RV Park site, including on the hillside above Goldmine Creek.

26. There are also populations of the rare plants on properties next to the RV Park site, upstream and downstream from the RV Park site, and across the creek from the RV Park site.

27. Ashy Hydrangea (*H. cinerea*) is also present along Goldmine Creek. Ashy Hydrangea is a critically imperiled plant in South Carolina.

28. In addition to the rare plants, the RV site includes important water resources. The site encompasses one side of Goldmine Creek, as well as part of the Goldmine Creek watershed. Goldmine Creek is a first order headwater tributary of the North Pacolet River. At present, the creek is a high-quality freshwater system and is among the best quality Piedmont streams in the area.

29. The areas surrounding the proposed RV Park site similarly contain important habitat. There are Piedmont Springhead Seeps downstream of the proposed RV Park site, which are designated as imperiled habitat at high risk of extinction or elimination under the NatureServe classification. There is also a mature, high-quality forest along the creek. It is a Piedmont Headwater Stream Forest designated as vulnerable habitat at moderate risk of extinction under the NatureServe classification.

30. Attached with Exhibit A are two studies which detail the presence of the rare plants and the special ecologically sensitive areas, natural features, and landscapes of the proposed RV Park, as well as the qualities of Goldmine Creek, and the important forests that exist on the proposed RV Park site and along Goldmine Creek.

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THE PROPOSED RV PARK

31. The developer first submitted an application to the Spartanburg Planning Commission for site plan approval of the proposed RV Park in 2021. That plan contemplated that the RV Park would be served by a septic system and public water.

32. Staff of the S.C. Department of Health and Environmental Control (DHEC) proposed a permit for the RV Park's septic system in June 2021. Local homeowner associations sought review by the DHEC Board of that decision on the grounds that the proposed septic system was inadequate for the RV Park. The DHEC Board granted that request for review.

33. In addition to the homeowner associations, the Native Plant Society appeared at the DHEC Board review hearing and objected to the proposed septic permit. The Native Plant Society's objections were based on the impact the proposed septic system would have on the rare plants and their habitat on the site and in surrounding areas, as well as on the groundwater and creek upon which the plants and forest depend.

34. The DHEC Board determined that Blue Sky's proposed septic system was in fact inadequate because it had only half the capacity required for the RV Park. As a result, the DHEC Board rejected the proposed permit for the septic system.

35. Blue Sky appealed the Board's decision to the Administrative Law Court, which overturned the DHEC Board's decision on timeliness grounds, rather than substantive grounds. Specifically, the Administrative Law Court concluded that the homeowner associations had filed their request for DHEC Board review too late even though the DHEC Board did not determine that the timing of the filing prevented it from reviewing the proposed septic system for the system's impact on public health and the environment. The Administrative Law Court did not address or question the substance of the DHEC Board's decision that Blue Sky's proposed septic system was

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inadequate for the RV Park. The Administrative Law Court's decision is on appeal to the South Carolina Court of Appeals. Again, that litigation deals with the narrow issue of whether the request for review was timely filed, not the substance of the DHEC Board decision. DHEC's conclusion that Blue Sky's proposed septic system is inadequate has not been contradicted.

36. In addition to a septic system, Blue Sky's 2021 application for site approval relied upon public water to service the RV Park. Blue Sky was unable to obtain public water service for the proposed RV Park.

37. Blue Sky submitted a new application for site approval in 2023. The 2023 application continues to rely upon the inadequate septic system, but now proposes to service the RV Park with well water rather than public water.

38. The proposed site consists of 38.68 acres. The proposed site plan includes spaces for 49 campsites, 86 parking spaces, a stormwater detention pond near Goldmine Creek that would discharge into the creek, and a septic field that runs down the hill toward Goldmine Creek. The overall footprint of the proposed RV Park sprawls across almost the entire northeast portion of the property.

39. The application does not contain a survey of natural features on the property, including where rare plants are located; does not set aside areas designed to protect rare plants and ecologically sensitive natural features; does not include any barriers to protect rare plants and ecologically sensitive areas from activities in the RV Park; does not include plans to protect the forest; and in general does not at all discuss the natural features and landscape of the site. The application contains no study or analysis of the impact that the large septic field and the well, which would withdraw substantial high-quality groundwater from the site, will have on the groundwater, forest, plants, and creek.

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40. On March 7, 2023, the Commission considered the application for approval of this site plan.

41. In advance of the Commission meeting, over 400 citizens sent the Commission a request for public hearing and specifically informed the Commission of the sensitive ecological nature of the area and the existence of a threatened species of rare plants in the area.

42. Many community members attended the Commission meeting to express opposition to the application. The Native Plant Society attended through counsel prepared to address the defects in the proposed site plan; however, the Commission rejected the request for public hearing, refused to accept public comment on the application, and deferred deliberation on the application to the end of the meeting, resulting in the departure of a number of community members from the meeting. At the end of the meeting, the Commission allowed only one spokesperson for the homeowner associations to speak and only for five minutes. The spokesperson asked that counsel for the Native Plant Society be allowed to explain the environmental issues to the Commission, but the Commission refused to hear that information.

43. By a 5-2 vote, the Commission granted conditional approval of the application. None of the conditions provide for any consideration or protection of the rare plants, groundwater, the forest, or Goldmine Creek.

44. On March 31, 2023, the Society sent the Commission a letter asking that the Commission reconsider its conditional approval at its next regular meeting on April 4, 2023. The letter set out in detail how the Commission's decision violates the Spartanburg County Unified Land Management Ordinance, and it is attached as Exhibit A. Homeowner associations and local landowners also submitted a request for reconsideration to the Commission, and it is attached as Exhibit B. However, at its April 4, 2023 meeting, the Commission did not reconsider its illegal

decision.

ADVERSE IMPACT ON NATURAL FEATURES AND LANDSCAPE

45. The site plan and the Commission's conditional approval have serious adverse impacts on natural features and landscape.

46. Nothing has been done to determine where the rare plants are located on the site; to protect the forest on the site and the plant's habitat; to analyze the impacts of the septic system and well on the hydrology, groundwater, and Goldmine Creek; or to set aside areas for the plants and the forest and to protect them from the activities on the site.

47. Instead, the RV Park proposed in the site plan occupies almost the entire northeast portion of the property; the stormwater detention pond is built near Goldmine Creek in the forest and will discharge into the creek; the septic field is built on the hillside in the forest with Goldmine Creek downhill and downstream from the septic field; and no barriers exist between the RVs, visitors, and campers and the rare plants, the forest, and the creek. This site plan adversely impacts rare plants and their habitat, and the site plan and associated construction activities will eliminate populations of rare plants and harm water quality on the site and in Goldmine Creek.

48. Likewise, neither the site plan nor the Commission's conditional approval contains or requires an analysis or study of the impacts of the site plan on plants near the site, on Goldmine Creek, or on downstream natural resources and rare plants.

49. By allowing the use of a well rather than public water, the site plan and the Commission's conditional approval will remove clean groundwater from the site, harming the forest, the plants, and their habitat.

50. In addition to human waste, sewage from an RV park contains harsh chemicals, such as formaldehyde, used by RV owners to reduce odor from sewage accumulated in the RVs,

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which they discharge into the RV park sewage system when they visit the RV park. Most states require RV parks to be connected to public sewer systems. The odor-fighting chemicals in RV sewage inhibit the ability of bacteria in septic systems to treat human waste. In addition, septic systems are not designed to treat for harsh chemicals like formaldehyde. There are no provisions in the requirements for sewage treatment to deal with the harsh chemicals that will be discharged into the septic system.

51. The DHEC Board also determined that the septic system proposed for this RV Park has only half the capacity it should have.

52. This septic system does not protect the groundwater and hydrology on which the plants, their habitat, the forest, and the water quality of Goldmine Creek depend.

53. The site plan and the Commission's conditional approval do not provide for comfort stations on the site. Campers and visitors who do not have access or easy access to RV toilets will inevitably resort to using the forest and the plants' habitat as a place to relieve themselves. This activity will further pollute and harm the plants, the forest, and the water quality of Goldmine Creek.

54. In contrast to Blue Sky's site plan and the Commission's conditional approval in this instance, on at least two occasions subdivision developers in Greenville and Spartanburg Counties conducted surveys of development sites for Dwarf Flowered Heartleaf and were required to set aside and protect the plants and their habitats as part of the site plan. In another instance, the Greenville County Planning Commission rejected a subdivision site plan when the developer refused to take steps to protect populations of Dwarf Flowered Heartleaf and their forest habitat. Official records related to those matters are attached with Exhibit A. In this instance, these natural features of the Blue Sky RV Park site have been ignored and will be adversely impacted, harmed,

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and destroyed by the site plan and the Commission's conditional approval.

THE SOUTH CAROLINA NATIVE PLANT SOCIETY

55. The Native Plant Society is a non-profit organization committed to the preservation and protection of native plant communities in South Carolina.

56. The Native Plant Society has members throughout South Carolina, including Spartanburg County and the Upstate. Its Upstate Chapter sometimes holds its regular meeting in Spartanburg County.

57. The Dwarf Flowered Heartleaf is particularly relevant to the mission and work of the Native Plant Society and its members because important parts of the plant's habitat exist in South Carolina, only in three counties in the Upstate, and only in a limited part of the Piedmont of the Carolinas.

58. The Native Plant Society and its members have worked to study and protect the Dwarf Flowered Heartleaf and enjoy observing this rare plant and visiting the plants and their habitat. The Society and its members have been involved in establishing and expanding the Peters Creek Heritage Preserve; in removing invasive exotic plants from Dwarf Flowered Heartleaf populations and their habitat; in educating its members about the plant; in studying, photographing, and writing about this plant; in surveying for the plant; in advocating for the protection of populations of the plants and their habitat; in opposing development that would harm the plant and its habitat; and in supporting the protected status of this plant. The Society appeared at the DHEC Board hearing in opposition to the proposed septic system for the RV Park to protect the Dwarf Flowered Heartleaf and its habitat.

59. Protection of the Dwarf Flowered Heartleaf on and near the RV Park site, of the plant's habitat in that vicinity, and of Goldmine Creek is part of the mission of the Native Plant

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Society and its members.

STANDARD OF REVIEW

60. A planning commission decision "will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the [commission] acts arbitrarily or unreasonably, or where, in general, the [commission] has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standard of review to a Planning Commission decision). Further, a decision of the planning commission will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

GROUNDS FOR APPEAL

Ground I: The Commission's Decision Not to Reconsider the Conditional Approval Is Unlawful Because the Conditional Approval Violates a Fundamental Purpose of the Spartanburg County Unified Land Management Ordinance.

61. All prior paragraphs of this Appeal are incorporated by reference.

62. Spartanburg County has adopted a Unified Land Management Ordinance ("Ordinance") that governs Blue Sky's application for site plan approval and the Commission's decision. In its Preamble, the Ordinance states that one of its principal purposes is to facilitate the creation of "ecologically sensitive areas."

63. The Commission's conditional approval of Blue Sky's site plan does not facilitate the creation or protection of this ecologically sensitive area. Instead, the site plan that the Commission approved will harm and adversely impact a special and rare ecologically sensitive area, rare plants, the special rich forest, and high-quality Goldmine Creek.

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64. The Commission's decision does not make any mention whatsoever of the ecological sensitive aspects of the site and does not make provisions that will protect or facilitate the creation of the special ecologically sensitive qualities of the site.

65. The Commission entirely failed to address, consider, carry out, or observe this fundamental purpose and requirement of the Ordinance.

66. The Commission did not reconsider its conditional approval at its April 4, 2023 meeting despite requests to do so and despite the fact that its conditional approval violates the Ordinance.

67. The Commission's decision not to reconsider its conditional approval violates a fundamental purpose of the Ordinance; violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground II: The Commission's Decision Not to Reconsider Its Conditional Approval Is Unlawful Because the Conditional Approval Does Not Preserve Natural Features and Landscape.

68. All prior paragraphs of this Appeal are incorporated by reference.

69. The Ordinance includes Section 3.13 which details specific requirements applicable to "Camps and Recreational Vehicle Parks." These provisions are mandatory. *See* Ordinance, Section 3.13 ("Camps and recreational vehicles (RV) parks **shall** comply with the following site and design standards.").

70. Section 3.13 (2) sets out a mandatory requirement that provides: "The site **shall** be developed in a manner that **preserves natural features and landscape**" (emphasis added).

71. The site plan and the Commission's decision do not preserve the natural features and landscape.

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72. Instead, the Commission's decision and the site plan do not even consider, address, or discuss natural features and landscape, specifically the rare plants, their habitat, the rich ecologically important forest, and high-quality Goldmine Creek.

73. In fact, the Commission's decision and the site plan adversely impact, eliminate, harm, and destroy natural features and landscape.

74. The Commission did not reconsider its conditional approval at its April 4, 2023 meeting despite requests to do so and despite the fact that its conditional approval violates the Ordinance.

75. The Commission's decision not to reconsider its conditional approval violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground III: The Commission's Decision Not to Reconsider its Conditional Approval Is Unlawful Because Its Conditional Approval Violated the Ordinance by Approving a Site Plan for an RV Park Not Serviced by Public Water.

76. All prior paragraphs are incorporated by reference.

77. Section 3.13 (8) contains a requirement that "[e]ach park site shall be serviced by public water."

78. Blue Sky initially complied with this provision and submitted an application that provided, as mandated by the Ordinance, that the RV Park would be serviced by public water.

79. When that proved to be impossible, the result under the plain language of the Ordinance is that this RV Park cannot be built on this site.

80. However, in 2023 Blue Sky submitted a new application providing that the park will be serviced by a well and not by public water, in violation of the Ordinance.

81. This change will harm this ecologically sensitive area and the natural features and

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landscape, because a well for this large RV Park will remove clean groundwater from the site and the forested creek side and damage the hydrology of the site and the forest. The hydrology of the area is an essential part of the plant's habitat, the forest's ecosystem, and Goldmine Creek's water quantity and quality.

82. The Commission's decision expressly allows a well and violates these mandatory requirements of the Ordinance.

83. The Commission did not reconsider its conditional approval at its April 4, 2023 meeting despite requests to do so and despite the fact that its conditional approval violates the Ordinance.

84. The Commission's decision not to reconsider its conditional approval violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground IV: The Commission's Decision Not to Reconsider Its Conditional Approval Is Unlawful because the RV Park Is Not Serviced by Sewer or Other Systems Approved by DHEC.

85. Section 3.13 (8) of the Ordinance also contains the mandatory requirement that "[e]ach park shall be serviced by . . . sewer or other systems approved by DHEC."

86. There is no sewer service at this site. Under the Ordinance, the RV park must be serviced by another system "approved by DHEC."

87. The DHEC Board is the highest authority and the governing authority of DHEC. Its members are appointed by the Governor and approved by the South Carolina Senate.

88. The DHEC Board decided to review the permit for the septic system proposed by Blue Sky and put forward by DHEC staff. The DHEC Board found that the septic system for this RV Park was grossly inadequate and had only half the capacity necessary for the RV Park.

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Therefore, the septic system for this site is not "approved by DHEC" but instead has been expressly disapproved by DHEC.

89. Blue Sky appealed the DHEC Board's decision to the Administrative Law Court, and that court found only that the request for DHEC Board review had been filed too late. But the Administrative Law Court did not contradict the DHEC Board's determination that the septic system is woefully inadequate.

90. The language of the Ordinance does not turn on legal technicalities or procedural issues. The RV Park must have a septic system "approved by DHEC." The highest authority at DHEC has disapproved this septic system. The Ordinance does not allow a septic system that is put in place by a procedural order of the Administrative Law Court or a septic system approved by anyone other than "DHEC."

91. Under the plain and direct language of the Ordinance, the RV Park cannot be approved to operate with a septic system disapproved by DHEC's highest authority, the DHEC Board.

92. This inadequate septic system will harm the natural features and the landscape of the site by polluting the groundwater, the habitat of the plants, the forest, and Goldmine Creek with inadequately treated sewage.

93. The Commission's decision violates these mandatory requirements of the Ordinance.

94. The Commission did not reconsider its conditional approval at its April 4, 2023 meeting despite requests to do so and despite the fact that its conditional approval violates the Ordinance.

95. The Commission's decision not to reconsider its conditional approval violates the

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Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

Ground V: The Commission's Decision Not to Reconsider Its Conditional Approval Is Unlawful Because Its Conditional Approval Approved an RV Park Site Plan that Does Not Require Comfort Stations.

96. Section 3.13 (4) contains another mandatory requirement: "No site shall be located less than . . . 300 feet from a comfort station."

97. Blue Sky's site plan and the Commission's decision provide for no comfort stations for this RV Park.

98. The Commission's decision violates the plain language of the Ordinance.

99. This requirement discourages visitors from using the grounds of the RV Park—here, the forest, the habitat of the rare plants, and the slope leading down to Goldmine Creek—as an outdoor bathroom. The Commission's decision is likely to lead to some of the many visitors to this site relieving themselves where the plants live, in their habitat, in the forest, and uphill of Goldmine Creek. In this respect also, the Commission's decision harms this ecologically sensitive site and does not preserve but instead harms the natural features and landscape.

100. The Commission's decision violates these mandatory provisions of the Ordinance.

101. The Commission did not reconsider its conditional approval at its April 4, 2023 meeting despite requests to do so and despite the fact that its conditional approval violates the Ordinance.

102. The Commission's decision not to reconsider its conditional approval violates the Ordinance; is unlawful, unreasonable, arbitrary, and capricious; has no reasonable relation to a lawful purpose; and is an abuse of discretion.

WHEREFORE, the Appellant requests that this Court:

a. issue an order reversing and vacating the decision of the Spartanburg County Planning Commission not to reconsider its decision granting conditional approval of Blue Sky's site plan as set out above;

b. direct the Spartanburg County Planning Commission to reconsider its decision to grant conditional approval of Blue Sky's site plan as set out above; and

c. grant costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,

s/ Frank S. Holleman III
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April 17, 2023

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EXHIBIT A

SOUTHERN ENVIRONMENTAL LAW CENTER

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Charleston, SC 29403

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Facsimile 843-414-7039

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March 31, 2023

Members of the Spartanburg County Planning Commission
Ms. Joan Holliday, Planning and Development Director
Spartanburg County Planning Commission
Spartanburg County Administration Building
366 North Church Street
Spartanburg, SC 29303

Re: Reconsideration of Conditional Approval for the Site Plan of T. Tree Farm RV Park of Blue Sky, LLC

Members of the Commission and Ms. Holliday:

On behalf of the South Carolina Native Plant Society and the Southern Environmental Law Center, we are writing to ask that the Commission reconsider its conditional approval of the site plan for this RV park. The conditional approval is in direct violation of Spartanburg County's Unified Land Management Ordinance. The conditional approval also does serious harm to one of Spartanburg County's most important ecologically sensitive areas and its natural features and landscape.

The Commission has clear authority to reconsider this decision. Section 5 of Article II of the Commission's Rules and Procedures adopts Spartanburg County Council's Rules of Procedure. Under Section 12-4 of the Spartanburg County Council's Rules of Procedure, motions to reconsider may be made at the next regular meeting. The Commission will be meeting on April 4 and can vote to reconsider this conditional approval at that meeting.

Ecologically Sensitive Area and Natural Features and Landscape: The proposed site for the T. Tree Farms RV Park is on Goldmine Creek in Campobello, South Carolina. The proposed site features rare plants and important ecologically sensitive habitat and natural features. This area of Spartanburg County and the watershed of Goldmine Creek have not been subject to intensive development. Nearby and adjacent properties are protected by conservation easements.

The banks of Goldmine Creek and the area around Goldmine Creek include damp, rich forests. This damp, rich forest provides important habitat for rare species. There are numerous populations of one of the nation's and South Carolina's rare plants—Dwarf Flowered Heartleaf (*Hexastylis naniflora*)—along the banks of Goldmine Creek and in the forest near Goldmine Creek. Because of the plant's rarity and the threats to its continued existence, the South Carolina Department of Natural Resources has designated it as a Highest Priority Species in the South Carolina Wildlife Action Plan. For the same reasons, since 1989 this rare plant has been listed as a Threatened Species under the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq*.

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Spartanburg County contains especially important habitat for this rare species. In South Carolina, the Dwarf Flowered Heartleaf exists only in parts of the Piedmont of Greenville, Spartanburg, and Cherokee Counties. It also exists in some North Carolina Piedmont counties near South Carolina. This plant exists nowhere else in the world. Spartanburg County is the home of the Peters Creek Heritage Preserve of the South Carolina Department of Natural Resources. The preserve was established principally to protect populations of this plant and one area of its habitat. According to the Department of Natural Resources, the preserve is home to the second-largest known population of Dwarf-Flowered Heartleaf.

These rare plants are dependent upon the ecology of their habitats. Specifically, they depend on rich forests; are affected by the quality and amount of groundwater, which determines the hydrology of the plant's habitat; and are affected by the water quality and overall health of the streams that flow through their habitat. The principal threats to the survival of the Dwarf Flowered Heartleaf are construction of roads, facilities, and infrastructure, associated erosion, and conversion of habitat to agricultural, residential, commercial, and industrial uses.

Attached are two studies by scientists familiar with the plant and its habitat. There are populations of this rare plant up and down Goldmine Creek, and these studies and other observations indicate that there are populations of Dwarf Flowered Heartleaf on the proposed RV Park site, including on the hillside above Goldmine Creek. There are also populations of the rare plants on properties next to the RV Park site, upstream and downstream from the RV Park site, and across the creek from the RV Park site.

Ashy Hydrangea (*H. cinerea*) is also present along Goldmine Creek. Ashy Hydrangea is a critically imperiled plant in South Carolina. The presence of this plant underscores the ecologically sensitive nature of this area.

In addition to the rare plants, the RV site includes important water resources. The site encompasses one side of Goldmine Creek, as well as part of the Goldmine Creek watershed. Goldmine Creek is a first order headwater tributary of the North Pacolet River. At present, the creek is a high-quality freshwater system and is among the best quality Piedmont streams in the area. The areas surrounding the proposed RV Park site similarly contain important habitat. There are Piedmont Springhead Seeps downstream of the proposed RV Park site, which are designated as imperiled habitat at high risk of extinction or elimination under the NatureServe classification. There is also a mature, high-quality forest along the creek. It is a Piedmont Headwater Stream Forest designated as vulnerable habitat at moderate risk of elimination under the NatureServe classification.

In other situations in our areas, developments have been required to protect this rare plant and habitats like this one. The Greenville County Planning Commission rejected the development plan for the Crestfield II subdivision because the developer did not take steps to protect Dwarf Flowered Heartleaf and its forest habitat. In one subdivision in Spartanburg County and another in Greenville County, the developer was required to set aside and protect these rare plants and their habitat. Materials related to those sites are attached.

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Violations of the Ordinance. The County's Unified Land Management Ordinance contains provisions specifically designed to protect the natural features of sites like this RV park site. Yet, the developer provided no information and no protections for the plant and its habitat, did no studies of the natural features of the site and the impacts of components of its proposed site plan on the natural features, and did not bring them to the Commission's attention. The Commission's application does not require that RV park developers conduct studies to identify ecologically sensitive areas and their natural features and landscapes or to include protections for them. And the Commission's conditional approval in this instance includes no conditions to protect the rare plants, their habitat, or the important water resources on which they depend.

1. **Ecologically Sensitive Areas**. In its Preamble, the Ordinance states that one of its principal purposes is to facilitate the creation of "ecologically sensitive areas." Yet the developer and the Commission have not even considered the ecologically sensitive aspects of this site and have included no requirements or conditions to protect the rare plants and their forest habitat.

Specifically, nothing has been done to identify plant populations on the site. No study has been done to determine the impact of water withdrawal from the site's groundwater supplies through a well for all the large RVs that are projected to come to this site. The plant, its forest, and Goldmine Creek depend upon the groundwater.

This project has been allowed to go forward with a septic system that the DHEC Board determined was only half as large as it needed to be, with the result that polluted water will be discharged into the groundwater just uphill from Goldmine Creek and into the hydrology on which the plant and its habitat depend. This septic system will also receive harsh chemicals, like formaldehyde, because RV's use those chemicals to deal with odor in their sewage storage systems. Those chemicals harm the bacteria that make a septic system work, and septic systems do not treat for harsh chemicals.[1] No study has been done to determine the effect of these chemicals on the rare plants, their habitat, the septic system, and Goldmine Creek.

A detention pond and a septic field are being built down the hillside into the plant's habitat and the forest, and this activity will inevitably destroy plants and their habitat. There are no comfort stations on the site, so it is entirely predictable that visitors and campers will wander down into the forest and relieve themselves in the plants' habitat, maybe on the plants themselves, and just uphill from Goldmine Creek.

This site plan and the Commission's conditional approval violate a basic principle of the entire Ordinance.

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[1] University of Arizona Extension Service, *RV Holding Tank Treatments and Deodorizers in Septic Systems*, RV Holding-Tank Treatments & Deodorizers in Septic Systems (arizona.edu); Sondra Larson and Sara Heger, *Analysis of Recreational Vehicle Holding Tank Treatment Products*, University of Minnesota (2020), rv_report_final.pdf - Google Drive

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2. **Natural Features and Landscape**. The Ordinance includes Section 3.13 which details specific requirements applicable to "Camps and Recreational Vehicle Parks." These provisions are mandatory. Ordinance, Section 3.13 ("Camps and recreational vehicles (RV) parks shall comply with the following site and design standards.").

Section 3.13 (2) sets out a mandatory requirement that provides: "The site **shall** be developed in a manner that **preserves natural features and landscape**" (emphasis added).

Yet, the developer and the Commission entirely ignored this mandatory provision expressly applicable to RV parks. There is no mention of this requirement in the application. The site plan does not address this requirement; instead, it will destroy natural features and landscape of the site. The Commission did not mention this provision during its deliberations, and the staff recommendation memo makes no mention of it. The conditions in the conditional approval include nothing about the natural features and landscape.

In short, the Commission is operating in total violation of the Unified Land Management Ordinance, and its conditional approval here is a striking violation of the Ordinance. The Commission should reconsider this approval, step back, reform its process, require the necessary studies for the ecologically sensitive natural features and landscape, and determine whether the many problems with this site plan can be corrected so that the Ordinance will be complied with.

3. **Public Water**. The Commission ignored another mandatory requirement of the Ordinance.

Section 3.13 (8) contains a mandatory requirement that "[e]ach park site shall be serviced by public water."

Blue Sky initially complied with this provision and in 2021 submitted an application that provided, as mandated by the Ordinance, that the RV Park would be serviced by public water. When that proved to be impossible, the result under the plain language of the Ordinance is that this RV Park cannot be built on this site.

However, in 2023 Blue Sky submitted a new application providing that the park will be serviced by a well and not by public water, in violation of the Ordinance.

This change will harm this ecologically sensitive area and the natural features and landscape, because a well for this large RV Park will remove clean groundwater from the site and the forested creekside and damage the hydrology of the site and the forest. The hydrology of the area is an essential part of the plant's habitat, the forest's ecosystem, and Goldmine Creek's water quantity and quality.

As a result, the Commission's action to ignore the requirement for public water also violates the mandatory requirement that the natural features and landscape be preserved and the Commission's mandate to protect ecologically sensitive areas.

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4. **Sewage System Approved by DHEC**. Section 3.13 (8) of the Ordinance contains the mandatory requirement that "[e]ach park shall be serviced by . . . sewer or other systems approved by DHEC." There is no sewer service at this site. Under the Ordinance, the RV park must be serviced by another system "approved by DHEC." The DHEC Board is the highest authority and the governing authority of DHEC. Its members are appointed by the Governor and approved by the South Carolina Senate.

The DHEC Board decided to review the permit for the septic system proposed by Blue Sky and put forward by DHEC staff. The DHEC Board does not always grant requests to review staff decisions and rarely overturns staff decisions. In this instance, the DHEC Board felt compelled to act. The DHEC Board found that the septic system for this RV Park was grossly inadequate and had only half the capacity necessary for the RV Park. Therefore, the septic system for this site is not "approved by DHEC" but instead has been expressly disapproved by DHEC's highest authority.

Blue Sky appealed the DHEC Board's decision to the Administrative Law Court, and that court found only that the request for DHEC Board review had been filed too late. But the Administrative Law Court did not contradict the DHEC Board's determination that the septic system is woefully inadequate. That timing decision of the Administrative Law Court is now being appealed to the South Carolina Court of Appeals.

The language of the Ordinance does not turn on legal technicalities or procedural issues. The RV Park must have a septic system "approved by DHEC." The highest authority at DHEC has disapproved this septic system. The Ordinance does not allow a septic system that is put in place by a procedural order of the Administrative Law Court or a septic system approved by anyone other than "DHEC." The legal technicalities that Blue Sky is litigating do not deal with the substantive defects in the septic system identified by the DHEC Board.

This aspect of the Commission's conditional approval also violates the mandate to protect ecologically sensitive areas and the requirement to preserve natural features and landscape. This septic system and its drain field will be built in the plant's habitat and likely among and very near populations of the plant. It will also be built just uphill from Goldmine Creek. Inadequately treated sewage effluent will be discharged from the septic system into the groundwater system within the plant's habitat and very near the Creek.

Under the plain and direct language of the Ordinance, the RV Park cannot be approved to operate with a septic system disapproved by DHEC's highest authority, the DHEC Board.

5. **No Comfort Stations**. Section 3.13 (4) contains another mandatory requirement: "No site shall be located less than . . . 300 feet from a comfort station."

Blue Sky's site plan and the Commission's decision provide for no comfort stations for this RV Park. Apparently, the Commission chose to "waive" this requirement, but Section 3.13

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does not provide for waiver of this mandate.

The reasons for this requirement are obvious. Many people visit RV parks and campsites. Not all of them have access to RV toilets, and even those who do may find themselves away from their RV when they need to visit a bathroom. The only way to ensure that an RV park of this size remains sanitary is to have available comfort stations.

This aspect of the Commission's decision will also harm this ecologically sensitive area, the rare plants, their habitat, and Goldmine Creek. This requirement discourages visitors from using the grounds of the RV Park—here, the forest, the habitat of the rare plants, and the slope leading down to Goldmine Creek—as an outdoor bathroom. The Commission's decision virtually ensures that some of the many, many visitors to this site will relieve themselves among and on the plants, in their habitat, in the forest, and uphill of Goldmine Creek. This raw human waste will flow through the forest and the plants and into the creek when it rains.

In this respect also, the Commission's decision harms this ecologically sensitive site and does not preserve but instead harms the natural features and landscape.

The March 7 Meeting. In advance of the March 7 hearing, over 400 citizens asked the Commission to hear public comments on the problems with this application, specifically including the natural features of the site, the environmental issues, and the issues regarding the rare plants. Counsel for the South Carolina Native Plant Society attended the March 7 meeting prepared to provide this information. But the Commission refused to receive any information at the meeting and then postponed consideration until the end. At the end of the meeting, the Commission allowed only Mr. Rock to speak, and only for five minutes. During his remarks he asked that counsel for the South Carolina Native Plant Society be allowed to speak concerning the environmental issues, but the Commission summarily rejected that request. Counsel for the South Carolina Native Plant Society raised his hand to ask to be recognized, but the Commission Chair did not recognize him.

The Commission violated these clear mandates and requirements of its own Ordinance and refused to hear and receive information that could have informed it of the mistakes it was making.

We ask that the Commission reconsider its decision, step back, follow the express terms of the Ordinance, and ensure that the specific provisions of the Ordinance that protect this ecologically sensitive area, its natural features and landscape, and the water resources of the site are followed as set out in the Ordinance.

Sincerely,

Frank S. Holleman III
Senior Attorney

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Cc: Carl Muller, Esq.
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John Harris, Esq., County Attorney
Alex Shissias, Esq.

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terra incognita
125 South Edisto Avenue, Columbia, SC 29205
llgaddy2@gmail.com 803 629-6128

December 17, 2021

To: Mr. Brad Wyche, Founder and Consultant
Upstate Forever
bwyche@upstateforever.org

re: Proposed RV Park; *Hexastylis naniflora*

Brad et al.:

My son, L L Gaddy III, and I were met and hosted by Ms. Madelon Wallace and Ms. Judy Klapholz at the Enclave at Fairview Farm in Spartanburg County yesterday. Our objective there was to determine the presence and abundance of the federally-listed threatened herbaceous plant, dwarf-flowered heartleaf (*Hexastylis naniflora*)(Aristolochiaceae) in the general area and on Gold Mine Creek. *Hexastylis naniflora* is found on sandy, acidic Piedmont soils at springheads, along streams, and sometimes under mountain laurel (*Kalmia latifolia*) considerably upslope from water. It is a two-state endemic found only in South Carolina and North Carolina, and its distribution is centered in the middle Piedmont of the two states.

The proposed RV Park Tract is bounded on the northwest by Landrum Mill Road and on the south and east by a headwaters branch of Gold Mine Creek (which flows into the North Pacolet River). On the west, the RV Park area is adjacent to the Spiegel Farm, and, finally, on the northwest by the Klapholz property and Gold Mine Creek again.

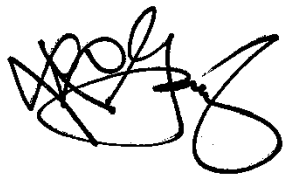
Our inventory began on the eastern side on Goldmine Creek on the Klapholz property. From the small pond on Goldmine Creek (Klapholz property) southward along the creek *Hexastylis naniflora* is common on both sides of the creek (the RV Tract and the Klapholz's property). The population continues southward following the creek and gradually turns southward proceeding toward the Spiegel Tract. As one moves south (upstream), the plants become rarer, found only here and there. Finally, at the springhead that forms the beginning of the south fork of Goldmine Creek, the plant is present, but quite rare.

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We then drove around to Landrum Mill Road and walked to property line between the RV Tract and the Spiegel Property. When we reached a large ravine and springhead that forms the beginning of the north fork of Goldmine Creek (primarily on the RV Park property), we again inventoried the disturbed woods for the presence of *Hexastylis naniflora*. It was present here, though very rare. We predict, however, that it is probably more common downstream as there is abundant habitat along the stream on RV Property.

In summary, *Hexastylis naniflora* was found to be associated with Gold Mine Creek and its springheads on the west, south, and eastern sides of the proposed RV Park Tract. (We have been told that *Hexastylis* is also quite common below the Klapholz pond to the north of the RV Park Tract although we did not inventory that area.) While walking along the eastern side of the creek, plants of the rare herb could be seen growing on the RV Tract. A detailed inventory of the RV Tract would clear up the abundance and location of the plant there. *Based on the habitats present on the RV Tract and our observations on adjacent lands, we predict the federally-listed threatened dwarf-flowered heartleaf is probably scattered over most of the lowlands (and possibly as far as 75 feet upslope) on the proposed RV Tract.*

Sincerely,



L. L. Gaddy, President



Goldmine Creek Water Quality Assessment

JULY 2021

Mountains-to-Sea Ecological

REPORT RE PRESENCE OF FEDERALLY-PROTECTED DWARF HEARTLEAF AND QUALITY OF GOLDMINE CREEK – 34 PAGES

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Goldmine Creek Water Quality Assessment

INTRODUCTION

At the request of The Enclave at Fairview Farm Home Owners Association (HOA) of Campobello SC, MTS Ecological performed a Water Quality Assessment of Goldmine Creek headwaters in June and July 2021 (See Map 1,p.2). The study area includes ~312 acres of the 360-acre Enclave HOA and ~2 miles (10,560 linear feet) of 3.5 miles of upper Goldmine Creek of the North Pacolet River.

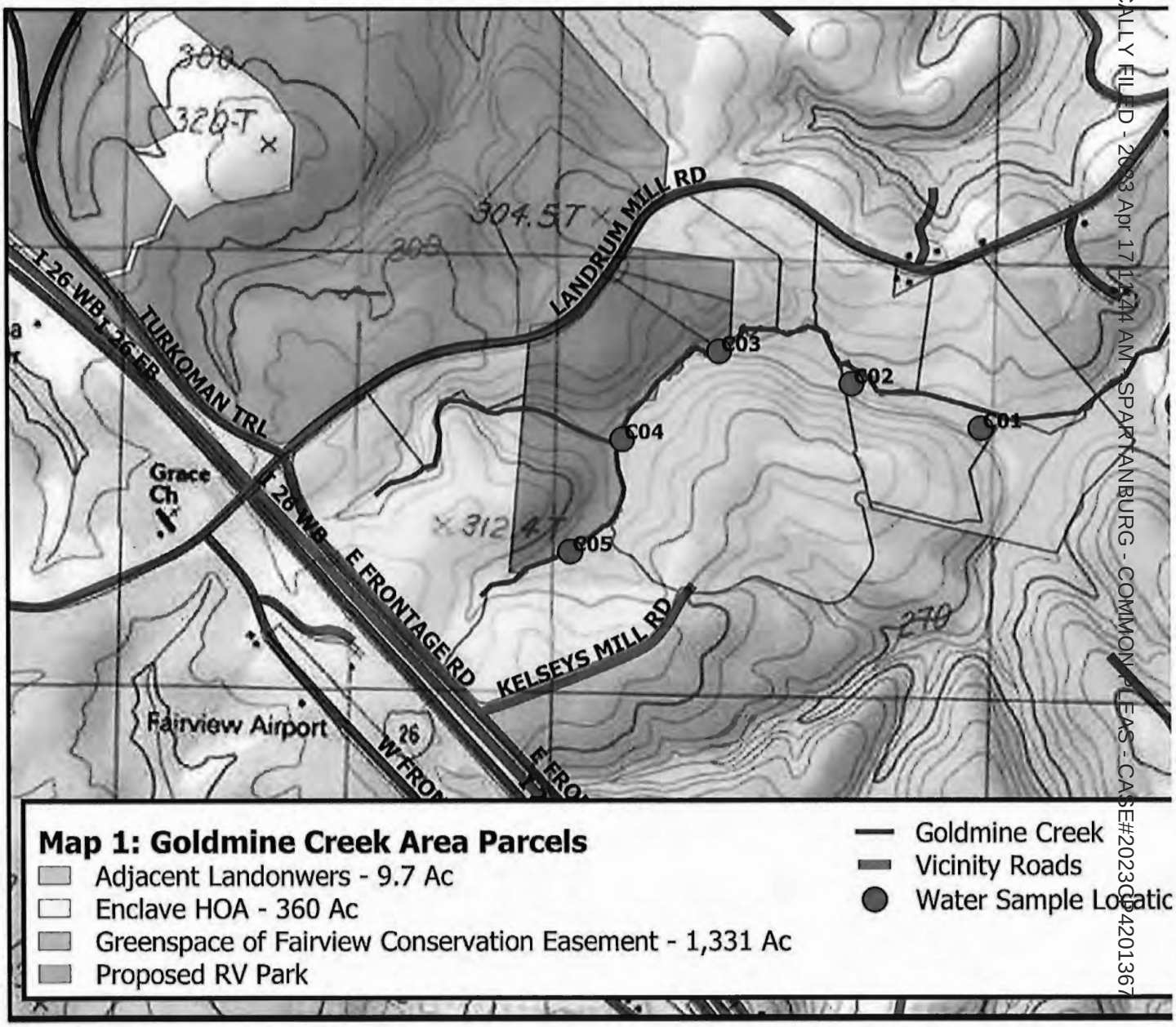
A 52-slip RV Park with 87 parking spaces is proposed bordering Goldmine Creek at its headwaters directly in the center of the HOA ownerships and directly abutting the southern boundary of the 1,331-acre GreenSpace of Fairview Conservation Easement Conservation Area. All streams and bordering wetlands of Goldmine Creek are "Wetlands of the United States" and regulated by the US Corps of Engineers Section 404 Clean Water Act and SC 401 wetland regulations.

Goldmine Creek is a first-order headwater tributary of the North Pacolet River, with headwaters located ¼ to ½ mile east of the SC Welcome Center and Fairview Airport between Landrum Mill Road and Kelseys Mill Roads east of I-26. The primary Goldmine channel drains approximately 2.5 miles east into the North Pacolet. A secondary tributary to Goldmine drains approximately one mile east, bisecting the proposed RV Park, joining the primary channel at the Klapholz property.

Though engineering plans and documentation for the proposed development appear to depict stream boundaries & setbacks, they do not document streams and bordering wetlands, water quality, stream health, embankment structure, or permanent affects the development would produce. The Water Quality Assessment provides this additional information.

The HOA wishes to prevent incompatible, intensive commercial development benefitting temporary RV residents that will permanently deliver trash, pollution, fertilizer, sediment and permanently destroy water quality and stream integrity of Goldmine Creek and the North Pacolet River. The HOA wishes to protect, maintain, and improve stream quality and integrity of Goldmine Ck and maintain existing low-density residential, farm, and compatible rural land uses.

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METHODOLOGY

Water quality assessments were performed on June 28 and July 25, 2021. Prior to field assessments, relevant information and data for the site was reviewed including engineering plans for the proposed RV Park, National Wetland Inventory (NWI) data, South Carolina Dept. of Health and Environmental Control (DHEC) Regulation 61-68, Water Classifications and Standards and Regulation 61-69, Classified Waters, and other relevant data sources. The assessment consisted of:

- Chemical and fecal coliform assessment via water samples – five on 1,000-foot intervals
- Biological assessment of in-stream aquatic communities (biota) at sample collection points
- Physical assessment of stream and embankment structure, riffle and pool complexes, sedimentation, and embankment collapse or undercut locations
- Classification of "natural communities" onsite such as alluvial forest and bordering wetlands
- Incidental documentation of ecological communities, bordering wetlands, and SC-listed rare species as they were located and observed
- Photographic documentation of existing stream conditions on 500-foot intervals including water sample and biological assessment locations and their midpoints

In July 2021, water samples were collected at five locations on approximately 1,000-foot intervals and submitted to the Environmental Quality Institute (Black Mountain, NC) for analysis following the methods of APHA (2012). Dissolved oxygen was measured at each sample collection site using a Extech DO600 Waterproof ExStik II Dissolved Oxygen Meter. Nutrient, water quality, and physical structure sampling and survey are a subset of methodology outlined by Scott, et al. (2009). Pollution and man-made chemical analysis was not performed within the study.

Biological assessment of stream biota was also performed at the three eastern-most collection points along the stream channel where cobble could be located. Sampling was not performed in the highest headwater locations with sand substrates as aquatic insects do not occur in these locations due to the substrate. Each collection point using kicknet, D-net and minnow traps in pools. Physical assessment was performed by walking the stream channel between sample collection and baseline condition documentation points. Ecological community classification and inventory was performed in June 2021 with supplemental observations in July 2021.

Natural communities were classified using the National Vegetation Classification (NVC) classification system developed by NatureServe - the repository for all state Natural Heritage Program natural community and rare species data in the US. NVC serves as the standard natural community classification system for the United States Forest Service (USFS), the US

National Park Service (NPS), Bureau of Land Management (BLM), and most US land management agencies.

Data and mapping for wetlands, streams, water sample, biological assessment, and permanent photo locations was collected in the field using handheld GPS and generated in Quantum GIS (QGIS). Acreage and linear footage calculations were calculated in QGIS.

SUMMARY OF FINDINGS

Overall, Goldmine Creek in the study area is an excellent quality wetland resource with many high-quality features and parameters including water quality, in-stream biotic community, stream structure, exceptionally mature and intact forest and bordering wetlands. It is easily among the best of its kind remaining in the area where the majority of headwater streams have been historically destroyed and ditched for agriculture and damaged in poorly planned development.

- The proposed RV park sits directly within the "Landrum and Campobello" Conservation Focus Areas (CFA) – one of only six CFA's in Spartanburg County identified by Upstate Forever (2010) Special Places Inventory (SPI)

- As a North Pacolet River tributary, Goldmine Creek is high-quality Freshwater (FW) system, as classified by DHEC, and should be recognized, protected, and managed to improve its existing quality condition

- Among 3.5 miles of North Pacolet River headwaters onsite streams are clean, harboring normal nutrient and physical parameters, a healthy aquatic-invertebrate community, cool temperatures, and exceptionally mature globally ranked rare globally "vulnerable" (G3) **Piedmont Headwater Stream Forest** and high-quality, globally "imperiled" (G2) **Piedmont Springhead Seep** wetland communities

- The terrain is moderately to gently sloped with high elevation of 1,015 feet at the western headwaters to low of 810 feet at the North Pacolet River confluence - a 205-foot total elevation change to the Pacolet River

- Two abandoned beaver ponds at the central stream confluence offer high quality naturally occurring early-successional habitat and greatly help filter and trap sediments and nutrients that might otherwise flow to the North Pacolet

- Remarkably, exotic-invasive plant species that degrade habitat are almost completely absent from the stream bottomland except for Japanese stiltgrass, and a few small kudzu and privet shrubs in the eastern region

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I. Water Quality Classification and Standards Application

- The primary & secondary headwaters of Goldmine Creek in this assessment comprises 3.5 miles before confluence with the North Pacolet River
- Goldmine Creek is classified as a Freshwaters (FW), as a tributary of the North Pacolet River which is a formally classified Freshwater system
- Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68 (2014), Water Classifications and Standards

II. Nutrients and Water Quality Parameters

- Water Quality is surprisingly excellent for the western Piedmont where most streams are of very poor or fair quality
- Nutrient and Water Quality parameters all within range of SC Freshwater Standards as described in Regulation 61-69 (2020) for all relevant parameters with only Orthophosphate being low
- Ammonia (NH3) and Nitrates (NO2/NO3) are very low which is excellent and atypical of most drainages in horse-country which are overloaded
- Orthophosphate (PO4) - the bioavailable form of phosphorus - is lower than the recommended 0.15 mg/L (or 0.05 mg/)) to prevent downstream eutrophication or nutrient overload
- Total suspended solids (TSS) are moderate and turbidity (water clarity) values for all sites are between general range of 10 NTU for trout streams and 50 NTU for aquatic life
- Dissolved Oxygen is surprisingly excellent, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive
- Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors
- E.coli measurements are very low ranging from 35 to 61 Cfu/100ml

III. Biological Assessment

- Goldmine Creek scored a total biological index value of 24. Index value over 22 to be an indicator of "Excellent" water quality
- Water temperatures ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) which is excellent for peak-summer

- 103 macroinvertebrate individuals were collected at three sampling locations along Goldmine Creek (C1 to C3) most of which are pollution intolerant. Of those:

  - ➢ five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health
  - ➢ Four macroinvertebrate types found considered somewhat, or less, sensitive: crayfish, craneflies, dragonflies and net-spinning caddisflies
  - ➢ Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey

- As a family, roach stoneflies (detected here) are present only in streams and rivers of good to excellent water quality

IV. Physical Stream Conditions

- The Goldmine Creek headwaters are in very good condition overall and represent the best of their kind in the region

- The upper primary channel rests fully within 28 acres of excellent ("A" quality) mature forest and bordering wetlands including the globally "vulnerable" (G3) Piedmont Headwater Stream Forest in which six globally "critically imperiled" (G2) Piedmont Springhead Seep wetland communities are embedded

- Over 110 natural stream oxbows and over 50 riffle-pool complexes occur throughout

- Embankment structure is good to very good and less than 20 exposed embankment zones were observed, many of which are of historical origin

- Three small ponds occur in the upper and central watershed. These serve to catch and store sediments; however they may also heat up and discharge water at higher temperatures in mid-summer which may deplete in-stream oxygen below the pond

- Non-point stormwater velocity and sedimentation is likely exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelseys Mill Roads and adjacent mowed lawns at the top of the western watershed

- Headwater ravines of the primary channel harbor steep, 15 to 20-foot height embankments which have been eroded due to historical forest canopy removal. Though forested and slowly restoring, they appear to be the primary sediment input

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DISCUSSION

I. WATER QUALITY CLASSIFICATION AND STANDARDS APPLICATION

All South Carolina streams are classified according to their water quality. Goldmine Creek is classified as a "Freshwaters" (FW) in the state of South Carolina.

In Regulation 61-69, Classified Waters, Goldmine Creek is not formally listed, however it carries the Freshwaters classification of the formally classified North Pacolet River that it supplies. FW classified waters are those utilized for secondary recreation or which may serve as drinking supplies if treated.

Freshwaters (FW) are non-saline freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses. Quality Standards for Freshwaters are defined by DHEC Regulation 61-68 (See https://scdhec.gov/sites/default/files/media/document/R.61-68_0.pdf)

As a Freshwater stream, Goldmine Creek is subject to DHEC Freshwater Quality Standards as outlined in Regulation 61-68, Water Classifications and Standards.

II. NUTRIENT AND WATER QUALITY PARAMETERS

Water samples were collected in July 2021 to document existing conditions of primary in-stream nutrient and water quality measurements, and to alert the HOA of any potential issues that may arise from HOA or other adjacent ownership inputs. In order to establish trends, sampling would need to occur on a routine basis, however the following parameters and results provide a snapshot of stream water quality.

II.A Nutrient and Water Quality Results

Sampled nutrient and water quality parameters are listed below with water sample data from five sample sites listed in Table 1 below:

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Table 1: Water Sample Nutrient and Chemical Findings, Enclave HOA, 2021

Site #	NH3	NO2/ NO3	PO4	E. Coli	Turb	TSS	D.O.	Cond	Alk	pH
	mg/L	mg/L	mg/L (PO4)	*Cfu/ 100ml*	*NTU*	*mg/ L*	*mg/ L*	*umhos/ cm*	*mg/L*	
1	0.11	0.0	0.07	61	26.0	15.6	9.3	38.8	18.0	6.7
2	0.11	0.0	0.05	47	37.0	21.6	9.2	38.4	18.0	6.7
3	0.13	0.1	0.07	36	17.0	7.2	9.1	44.9	22.0	6.7
4	0.13	0.1	0.07	35	18.0	9.2	9.1	33.0	20.0	6.6
5	0.11	0.3	0.04	51	15.0	7.6	9.1	34.1	16.0	6.6

Ammonia (NH3) measurements are normal, and close to the regional average for the western Piedmont. NH3 is the principal form of toxic ammonia. NH3 is toxic to freshwater organisms at concentrations between 0.53 to 22.8 mg/L. Toxic NH3 is both pH and temperature dependent: toxicity increases as pH and temperature decrease. Plants are more NH3 tolerant than wildlife, and aquatic invertebrates have greater tolerance than fish. In toxic conditions, hatching and growth rates of fish may be affected as well as structural development such as flaws in gills, liver, and kidneys tissues.

Nitrites (NO2) and Nitrates (NO3) - Measure of the Nitrogen present as Nitrite and Nitrate. NO2 and NO3 are very low in Goldmine Creek which is excellent and atypical of most drainages in horse-country which are overloaded. As part of the nitrogen cycle, bacteria first convert Ammonia to Nitrite (NO20 before other bacteria convert Nitrite to Nitrate. Nitrite in elevated levels is toxic to aquatic organisms and usually indicate contamination from fertilizer run-off.

Bacteria convert Ammonia to Nitrite (NO2) and then Nitrite to Nitrate (NO#) as part of the natural nitrogen cycle. Nitrate becomes toxic to most aquatic life at extremely elevated levels (>10 mg/L – far higher levels than found in Goldmine Creek). NO3 is also a necessary nutrient for plant and algae growth, but high nitrate levels in water are an indicator of fertilizer run-off contamination from adjacent lands or from elevated levels of waste water. They are almost always associated with algal blooms, excess plant growth and oxygen depletion (which kills aquatic life).

Orthophosphate (PO4) - the bioavailable form of phosphorus, used by plants and algae for growth - is well below recommended base levels of 0.15 mg/L (or 0.05 mg/L P only) which is excellent and also unexpected in horse country.

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E. Coli – measurements fell far below measurable "safe" CFU's (colony forming units) in all samples. Acceptable levels of E. coli commonly include both a 30 day mean (126 cfu/100mL) and a single-sample number (235 cfu/100mL – 575 cfu/100mL). Thus samples ranging between 36 and 61 cfu/100mL are well below the safe threshold.

Turbidity – Turbidity, a measure of water clarity, is measured in Nephelometric Turbidity Units (NTU's). Low NTUs signify relatively clear water during or after rain events while higher numbers represent less water clarity and higher levels of suspended solids. NTU levels of ten or lower are characteristic of relatively clean, clear water with low sedimentation.

Total suspended solids (TSS) – similar to Turbidity but a slightly more accurate measurement, TSS measures the actual dry-weight of solids larger than 2 microns within a 1-liter sample rather than light penetration through water (turbidity). Thus, sites ranged from a low of 7.2 and 7.6mg/L at site #3 and #5 to a high of 21.6 at site #2. Site #2 probably contained higher TSS because of proximity to mowed meadows and input from this area. The state has no TSS standards however.

Dissolved Oxygen is excellent, ranging from 9.1 to 9.3, being well above 5mg/L required for fish to survive and above 9 mg/L for larger fish to survive (though none likely exist in the headwaters).

Conductivity, Alkalinity, and pH are easily within range for a natural, forested stream in the western Piedmont with few stressors.

II.B SC Freshwater Standards and Goldmine Creek Nutrients and Water Quality Findings

The following section highlights primary SC Freshwater Standards with findings from Goldmine Creek, per Regulation 61-68 (p.29).

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Table 2: Freshwater Standards and Existing Goldmine Creek Conditions, Enclave HOA, July 2021

ITEMS	SC STANDARDS	GOLDMINE CREEK EXISTING CONDITIONS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed	***None detected***
b. Treated wastes, toxic wastes, deleterious substances, colored or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this	***None detected***
c. Toxic pollutants listed in the appendix	As prescribed in Section E of this regulation	***Sampling beyond scope of this assessment***
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with antidegradation rules	***None detected***
e. Dissolved oxygen	Daily average not less than 5.0 mg/l with a low of 4.0 mg/1	***9.3 and 9.2 (sites 1 and 2); 9.1 at sites 3-5; avg of 9.16***
f. E. coli	Not to exceed a geometric mean of 126/100 ml based on at least four samples collected from a given sampling site over a 30-day period, nor shall a single sample maximum exceed 349/100 ml	***61, 47, 36, 35, and 51 from C1-C5, respectively***
g. pH.	Between 6.0 and 8.5.	***pH 6.7 at 3 sites and 6.6 at 2 sites***
h. Temperature	The water temperature of all Freshwaters which are free flowing shall not be increased more than 5 degrees (F) above natural temperature conditions and shall not exceed a maximum of 90 deg (F)	***69.6 deg. – Sites 1-3; 69.8 – Sites 4-5; avg of 69.56 deg.***
i. Turbidity	Not to exceed 50 NTUs provided existing uses are maintained	***Turbidity NTUs = 15, 17, 18, 26 and 37; avg of 22.6***

III. BIOLOGICAL ASSESSMENT



Figure 1: Stream Invertebrate Sampling on Goldmine Creek, July 2021

Summary - Using the Izaak Walton League's formula for calculating biotic values (see attached), which weights sensitive species over pollution-tolerant ones, Goldmine Creek scored a total index value of 24. The IWL (2020) considers any index value over 22 to be an indicator of "Excellent" water quality.

Biological Assessment includes review of the presence and numbers of stream "macroinvertebrates" or insects, crayfish, salamanders and other life forms (i.e. "biota") at suitable sample points. Three representative sample points – C1, C2, and C3 - having rock substrates where insects and their predators may thrive were sample and results were surprising for western Piedmont streams which are typically badly damaged. Biological monitoring of streams using benthic macroinvertebrates is a well-established technique that assesses the condition of water bodies using aquatic insects as bioindicators, or "canaries in the coal mine." (Voshell, 2002)

Water temperature ranged from 68.6 F. (20.8 degrees C). to 68.8 F. (21 degrees C) – easily lower than expected for late July in the western Piedmont where streams can range from mid-70 to lower 80 degrees on summer days. On the sampling date, the water was moderately stained from a thunderstorm the evening before. Visibility was less than a 12-inches in deeper holes early in the day and clearing within a couple of hours.

The stream channel of Goldmine Creek is normal to moderately incised in places, while areas lacking vegetation (naturally or by removal) show signs of bank widening from natural tree-falls, floods, and historical canopy clearing for agriculture and more recent "flashiness" from storm events have caused some of this damage. One of the three sample-sites (C1) was within 75 feet of a horse pasture and adjacent mown grassy areas north of the eastern creek channel, which sheds water far more rapidly forested or mature meadow zones. Two of the sample-sites (C2 and C3) were in deep forest conditions.

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Results – In total, we collected 104 macroinvertebrates at three sampling locations along Goldmine Creek including 26 individuals at Sites #1 and 2 and 52 individuals at Site #3.

Of those, five types of macroinvertebrates (mayflies, stoneflies, caddisflies, water pennies and gilled snails) are considered sensitive bioindicators of stream health by the Izaak Walton League and most water quality agencies.

Four types we found are considered somewhat, or less, sensitive to pollution: crayfish, craneflies, dragonflies and net-spinning caddisflies. Only one type of macroinvertebrate collected on Goldmine Creek is considered to be pollution-tolerant and only one individual -- a single annelid, or aquatic worm -- was found during our survey.

In addition to the macroinvertebrate fauna, several vertebrates were found in the course of seining. A single creek chub (*Semotilus atromaculatus*) was picked up in a kick net at Site 2. A minnow trap dropped just above a small pond in the headwaters netted 11 bluehead chubs (*Nocomis leptocephalus*.) Both of these species are tolerant of a wide range of environmental conditions (Tracy, 2020).

Additionally, our survey collected four adults and six larval (gilled) salamanders, all appearing to be Two-Lined Salamanders (*Eurycea cirrigera*). Goldmine Creek harbors a rich stream invertebrate fauna with some very pollution-intolerant genera. As a family, roach stoneflies "will be present only in streams and rivers of good to excellent water quality," according to Steven R. Beaty of NCDEQ's Biological Assessment Branch.

Table 3, Aquatic Invertebrates Collected in Goldmine Creek. Enclave HOA, July 2021.

Invertebrate type	Site 1	Site 2	Site 3	subtotal
Water Temperature	68.6	68.6	68.8	
Tipulidae - cranefly larva	7	5	9	21
Cambarus - crayfish	1	3	8	12
Eurycea – two-lined salamander	3	3	4	10
Ophiogomphus - dragonflies	3	7	2	12
Hydropsyche - caddis larva	4	4	6	14
Maccaffertium sp. - mayflies	0	3	6	9
Stenacron sp. - mayflies	2	0	0	2

Perlesta sp. - stoneflies	3	1	7	11
Tallaperla sp. – roach stoneflies	0	8	0	8
Isoperla sp. – stoneflies	0	1	0	1
Lymnaeid – gilled snails	2	2	6	10
Chimarra – caddisfly larva	0	0	1	1
Annelida - annelid worm	1	0	0	1
Psephenidae - Water penny	0	0	1	1
TOTAL	**26**	**26**	**52**	**104**

IV. PHYSICAL STREAM CONDITIONS

Overview: The Goldmine Creek headwaters are in very good condition overall and they represent the best of their kind in the region in terms of water quality, stream invertebrate biota, and structure. That E.coli is currently found in low number is remarkable – a condition that will not possibly continue with an RV Park at the headwaters.



Figure 2: Typical high-quality Goldmine Creek embankments

Stream Physical Structure - Goldmine Creek contains 2 abandoned beaver ponds, six "imperiled" seep locations, an astonishing 110 natural stream oxbows and 50+ riffle-pool and plunge-pool complexes, and extensive woody debris which indicate complex and high-quality streams.

Embankments - Embankment structure is mostly very good to good with less than 20 exposed embankment exposures observed. Aside from 75-80% sloped ravines at the western headwaters, which are naturally eroding, most embankment exposures along Goldmine Creek are caused by natural treefalls where flooding has scoured

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embankments downstream of the root zone, except in the lower eastern zone where potential historical channel straightening may have artificially caused recent collapsed zones.

Substrate – Streambed substrate consists of approximately 75% sand with approximately 25% small-to-medium-sized gravel from ½ inch to 6 to 10-inch block-shaped diameters.

Erosion - Headwater ravines of the primary southwestern channel contain steep, 15 to 20-foot height embankments at extreme slopes (75-80%) which are highly eroded due to natural, sandy soils and likely exacerbated by historical forest canopy removal (Photo Doc images #10-1 and 10-2). Though forested and slowly restoring, these banks are the primary in-stream sediment input to Goldmine Creek. Other embankment undercut or erosion zones are minor compared to this zone. Several forested, upland ravines deliver sediment to the stream. Given their steep, wooded condition and natural sandy soil types, sediments here are possibly exacerbated by increased velocity above them from lawn or structural areas.

Pollution - Non-point stormwater velocity and sedimentation is exacerbated by runoff from I-26, Frontage Rd, Landrum Mill and Kelsey Mill Roads and adjacent mowed lawns at the top of the western watershed.

V. ECOLOGICAL CONDITIONS

The Enclave HOA and Greenspace of Fairview Conservation Block – an approximate 1,643+ acre zone – consists of numerous documented high-quality features such as mature forest, wetlands, rare plant species, high quality wildlife and extensive streams.

While this study does not assess these resources on the proposed RV park, it does include a summary of information from GreenSpace and HOA lands, which completely surround the proposed park.

Upstate Forever "Conservation Focus Area" (CFA) – in 2010, Upstate Forever, the largest conservation organization in the SC Upstate, published a Special Places Inventory (SPI) designed to "document the remaining historical and natural assets before making decisions that could negatively impact those resources permanently." The SPI analysis is based on data developed over decades by The Nature Conservancy (TNC) – the leading conservation organization in the world.

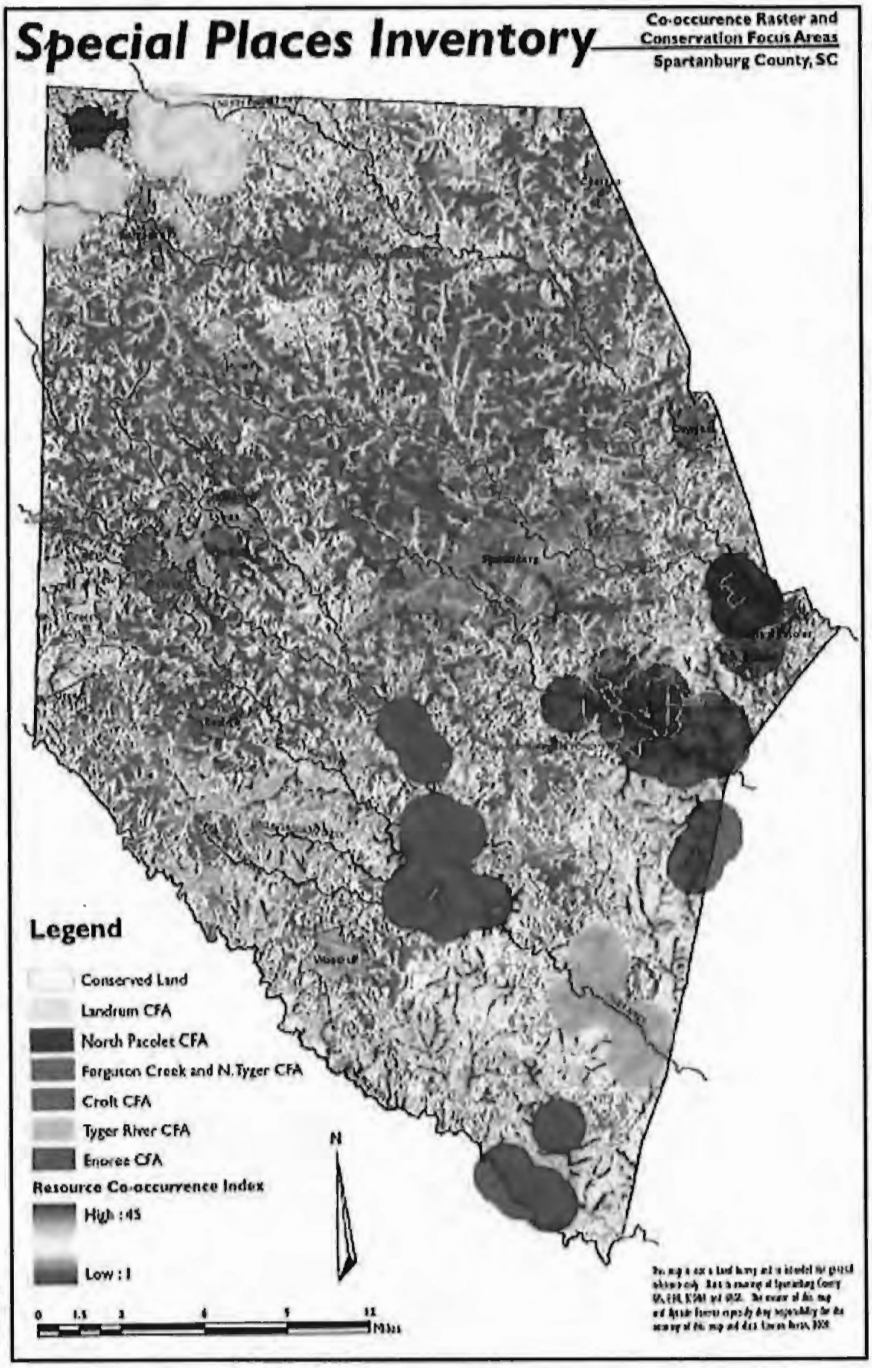
The proposed RV park sits directly within the one of these key areas - the "Landrum and Campobello" Conservation Focus Area (CFA) - one of only six critical Special Areas identified by Upstate Forever in all of Spartanburg County (image above, 2010). These six CFA's include the final remaining, undeveloped natural and cultural heritage areas and key conservation target regions in the County.

Figure 3: Upstate Forever CFA's in Spartanburg County, SC

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CFAs are identified by Upstate Forever *specifically* to help alert city and county planners and citizens of key ecological and historical heritage resources to the resources *that have already been lost* in order to protect these remaining Special Places in the future. Upstate Forever states:

> *"If we do not protect the remaining Special Places, we will lose them permanently. We will lose their ecosystem services, their wildlife, their history – indeed, we will lose the very elements that made Spartanburg County special then and will continue to make our home special in the future"* (2010, p3).



High-Quality and Rare Natural Communities

Ecological inventories performed by Gaddy, et al (2000) and MTS Ecological (2021) reveal significant biological richness in the GreenSpace of Fairview property and Enclave HOA, which have been mostly extirpated from the greater region since colonization and eradicated from cultural memory for the majority of residents. This includes 10 federal and state listed rare plant species, rare Headwater Stream Forest and Piedmont Springhead Seep natural communities, and extensive wetland resources and streams. Only some of these resources are formally protected within the GreenSpace properties as formal Conservation Easement and the Enclave HOA, and similar resources probably exist on the proposed RV park itself.

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All of Goldmine Creek in the HOA is contained within 28 acres of globally "rare" floodplain habitats (aka "natural communities") including a mature, globally "vulnerable" (G3) **Piedmont Headwater Stream Forest**. and six "critically imperiled" **Piedmont Springhead Seep** (G1) wetlands. The proposed RV park directly abuts these critical habitats. These are classified as rare "natural communities" or distinct and permanent plant alliances by NatureServe – the national consortium of all US Natural Heritage Programs and the global and international clearinghouse for all conservation data regarding plant and wildlife species and natural communities.

G2 – "Imperiled" — At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.

G3 – "Vulnerable" At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.

The global (or national) conservation ranking system ("G") ranges on a scale 1 to 5. Ranks of 1-3 the rarest while ranks of 4-5 are "secure", respectively. Ranks of 1-3 are of the highest conservation value for protection and restoration for government agencies and conservation organizations. Though South Carolina Natural Heritage Trust (SCNHT) is currently in process of developing natural community classifications and cross-referencing these with NatureServe classifications, NHT and DHEC do not formally protect rare or high-quality natural habitats or rare species by law except for federally listed species for projects that acquire federal funding.

Habitat Descriptions

Wetland cover types consist of open water (ponds), Piedmont Springhead Seeps, and all streams. Piedmont Headwater Stream Forest is a semi-wetland habitat, consisting of both upland and wetland-dependent plant species ("obligate" [OBL] and "facultative" [FACW]) with Seeps embedded.

<u>Piedmont Springhead Seep (G2)</u>
NatureServe Code: CEGL007041

Six locations of this globally "imperiled" wetland community are dotted along Goldmine Creek, the majority of which are downstream of the proposed RV park and thus subject to severe damage and extirpation from the RV Park, if approved.



Figure 4: globally "imperiled" Springhead Seep community along Goldmine Creek

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As a "small patch" community (<1 acres in size) seeps are rare communities that typically occur through the region, the vast majority of them have long lost to ditching, agriculture, historical damage rendering them extirpated and/or unrecognizable. Thus, having high quality, intact seeps with native vegetation and structure dominant are extremely rare, six of them even more so.

Large diameter trees are rooted around seeps and occur as saplings but they never grow large within them due to mucky soils which cause large trees to topple easily. Sphagnum moss (which forms peat) is common. The shrub layer contains a few stems of Black Alder (*Alnus serrulata*), Wild Raisin (*Viburnum nudum),* Black Chokecherry *(Aronia arbutifolia),* and Yellowroot (*Xanthorhiza simplicissima).*

The herb layer is dense and lush with herbs, sedges and grasses including Fowl Mannagrass (*Glyceria striata),* and numerous sedges (*Carex debilis, C. crinita, C. lurida, C. atlantica*), Jewelweed (*Impatiens capensis),* Virginia Bugleweed (*Lycopus virginicus),* False Nettle (*Boehmeria cylindrica),* Cardinal Flower (*Lobelia cardinalis),* Royal Fern (*Osmundastrum regalis)* and Cinnamon Fern (*O. cinnamomea),* Jack-in-the-Pulpit (*Arisaema triphyllum),* Chainfern (*Woodwardia areolata),* Virginia Wild-Rice (*Leersia virginica)*, and White Turtlehead (*Chelone* glabra).



<u>Piedmont Headwater Stream Forest (G3)</u>
NatureServe Code: CEGL004900

Approximately 28 acres of this exceptionally mature, high-quality forest dominates the flattest, low elevation bottomlands buffering Goldmine Creek. Here, shallow water table depth combined with elevated "hummocks" provide both wetland and upland habitat for a wide variety of wetland and upland species. Typical trees are Sweet-Gum (*Liquidambar styraciflua*), White Oak (*Quercus alba),* Northern Red Oak (*Quercus rubra),* Green Ash (*Fraxinus pensylvanica),* Red Maple (*Acer rubrum),* Umbrella Magnolia (*Magnolia tripetela)* and American Beech (*Fagus grandifolia*) above an understory of American Holly (*Ilex opaca),* Ironwood (*Carpinus caroliniana),* Sourwood (*Oxydendrum arboreum)*, and Dogwood (*Cornus florida).*

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The shrub zone is equally as variable, harboring numerous wetland and upland shrubs like Highbush Blueberry (*Vaccinium fuscatum),* Spicebush (*Lindera benzoin),* Yellowroot (*Xanthorhiza simplicissima), Doghobble (Leucothoe axillaris),* Witch-Hazel (*Hamamelis virginiana),* Black Alder (*Alnus serrulata),* Wild Raisin (*Viburnum nudum),* and Mountain Laurel (*Kalmia latifolia).* The state "critically imperiled" (S1) Ashy Hydrangea (*H. cinerea)* occurs throughout bluffs south of Goldmine Creek. (See VI. Photographic Documentation for photograph).

Herbs dominating in patches and colonies include sometimes huge colonies of Rivercane (*Arundinaria gigantea),* Christmas Fern (*Polystichum acrostichoides),* Lady Fern (*Athyrium filix-femina ssp. asplenioides),* New York Fern (*Thelypteris noveboracensis),* numerous sedge species (*Carex* spp.), Wood Oats (*Chasmanthium laxum), Leersia virginica,* Cinnamon Fern (*Osmunda cinnamomea),* and Royal Fern (*O. regalis).* Most notably – this habitat is almost entirely free from exotic-invasive (EI) species invasion that dominates most headwater stream forests regionwide. A few stems of privet, kudzu, and multiflora rose were detected, but in such low levels that removal could likely be performed in one or two field dates.

Several hundred clumps of the federally Threatened (T) and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora)* occur throughout this forest type and adjacent embankments on both sides of Goldmine Creek. South Carolina comprises the smallest, southern-most portion of its US range, as the species occurs only in Spartanburg, Greenville, and Cherokee Counties (See VI. Photographic Documentation for photograph).

Beaver Impoundments

Two locations of this now-abandoned beaver-developed wetland occur onsite in the central-to-upper Goldmine Creek adjacent to the proposed RV Park and Klapholz property. The impoundment zones are a complex, high-quality mixture of standing dead trees (a key missing component of most natural area today) and a mosaic of boggy and upland zones determined by drainage patterns after abandonment. This is easily the highest quality natural "early successional" or full-sun, non-forested habitat onsite.



Figure 6: abandoned Beaver Impoundment, central Goldmine Creek

Typical herbs are Cattail (*Typha latifolia)*, Needle-rush (*Juncus effusus)*, bulrush (*Scirpus cyperinus)*, American Bur-reed (*Sparganium americanum)*, Jewelweed (*Impatiens capensis)*, Virginia Wild Rice (*Leersia oryzoides)* and numerous Sedges *(Carex crinita, C. stipata, C. crinita, C. scabrata, C. lupulina*), Lizard's Tail (*Saururus cernuus)*, *Carex lupulina*, False Nettle (*Boehmeria cylindrica)*, Three-way Grass (*Dulichium arundinaceum),* Virginia Bugleweed (*Lycopus virginicus,* Beggars-Ticks (*Bidens discoides*, B. *laevis),* Fowl Mannagrass (*Glyceria striata),* Bog St.Johnswort (*Hypericum mutilum)*, sensitive Fern (*Onoclea sensibilis)*, Cardinal Flower (*Lobelia cardinalis)*, Clearweed (*Pilea pumila)* and Cinnamon Fern (*Osmundastrum cinnamomea).*

Open Water/ Ponds

Three ponds (2.6 acres) occur in the HOA adjacent to Goldmine Creek, though these were not the subject of the water quality assessment and were not inventoried for vegetation or wildlife. These fabricated, still-water systems may still affect stream integrity and health in several ways:

1) collect and store freshwater that helps charge groundwater and regulate stream-flows

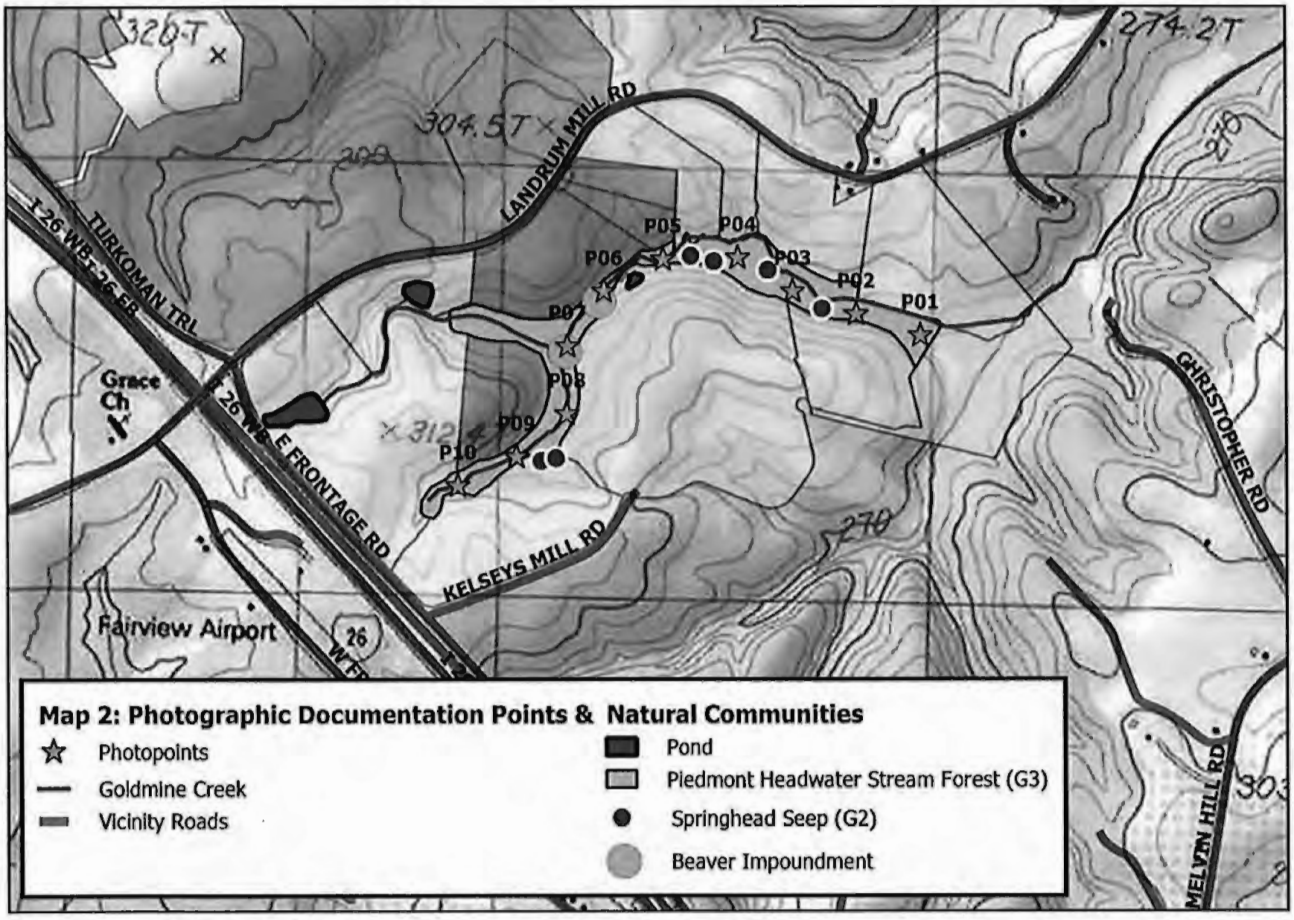
2) collect and store sediments and chemical discharges (especially those from I-26) that may otherwise enter the stream.

3) offer flatwater and non-moving water sources for a variety of wildlife that would otherwise not occur in the immediate vicinity such as waterfowl and other birds, reptiles, amphibians, small mammals such as bats, and high numbers of insects.

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VI. PHOTOGRAPHIC DOCUMENTATION

A "baseline" photographic documentation at 10 locations on approximate 500-foot intervals, plus rare plant photographs, was performed to document Goldmine Creek existing conditions prior to potential RV Park development (Figure 2). While it is hoped that structural ecological integrity of Goldmine Creek will not be impacted if the RV Park is approved, the likelihood of permanent damage from heavy stormwater, chemical, fertilizer, sewage, sediment, and trash outputs as is inevitable – and measurable. Recent flash flooding (July 18, 2021) caused some tree and embankment damage. Photos are taken from down to upstream from 01 to 10 and are shown in order of up and downstream.



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Photo #1: view of the state "critically imperiled" (S1) Ashy Hydrangea (*Hydrangea cinerea)* *with diagnostic "ashy" under-leaf surface*

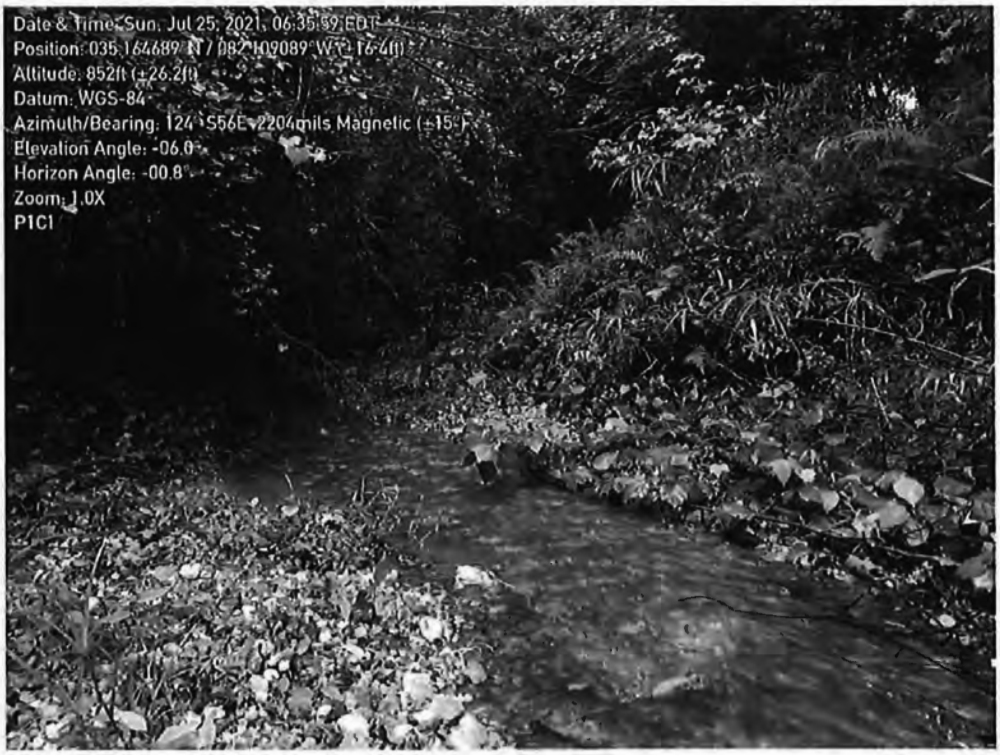


Photo #2: view of the federally Threatened and state "vulnerable" (S3) Dwarf-flowered Heartleaf (*Hexastylis naniflora)*

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Photopoint 1, Photo 1: view upstream of typical stream and embankment conditions. Width range 4 to 7 feet



Photopoint 1, Photo 2: view downstream, typical stream and embankment conditions. Width range 4 to 7 feet

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Photopoint 2, Photo 1: view upstream of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow



Photopoint 2, Photo 2: view downstream, of typical stream and embankment conditions. Width range 3 to 8 feet in stream oxbow

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Photopoint 3, Photo 1: view upstream of typical stream and embankment conditions in dense mountain laurel covered banks. Stream width range 3 to 6 feet



Photopoint 3, Photo 2: view downstream, of typical stream and embankment conditions with newly fallen woody debris

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Photopoint 4, Photo 1: view upstream of "ideal" stream, riffle-pool, and embankment conditions in Headwater Stream Forest. Stream width range 4-5 feet



Photopoint 4, Photo 2: view downstream, of typical stream, cobble, and embankment conditions

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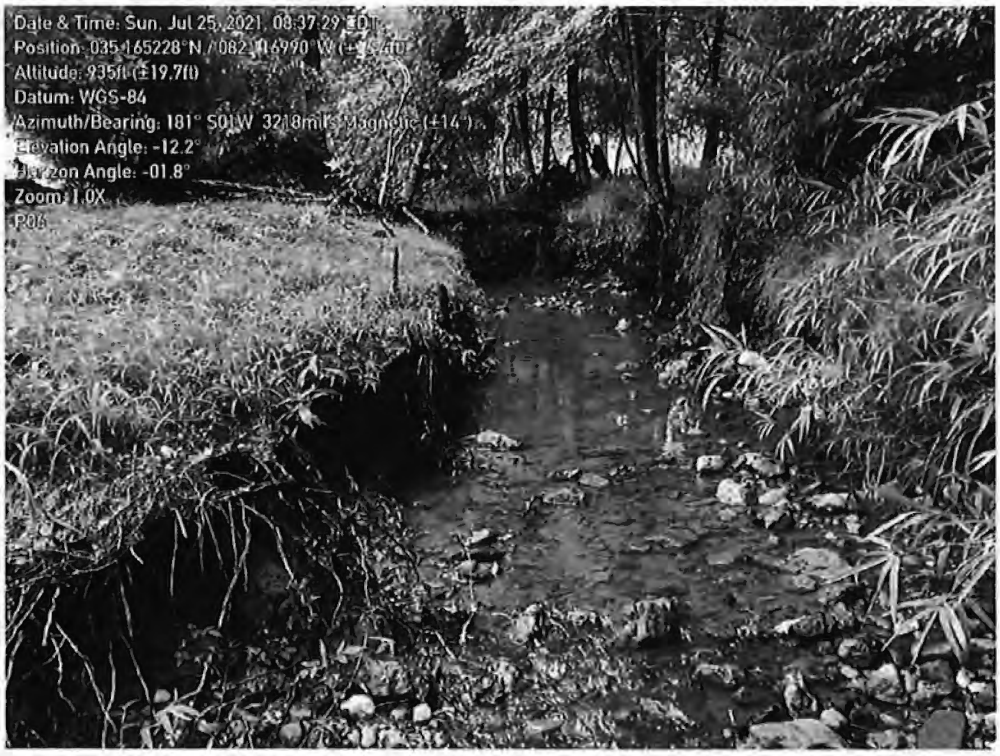


Photopoint 5, Photo 1: view upstream of in a natural slough / pool zone under dense mountain laurel shrub cover. Stream widths range from 6-8 feet



Photopoint 5, Photo 2: view downstream of in a natural slough / pool zone under dense mountain laurel shrub cover

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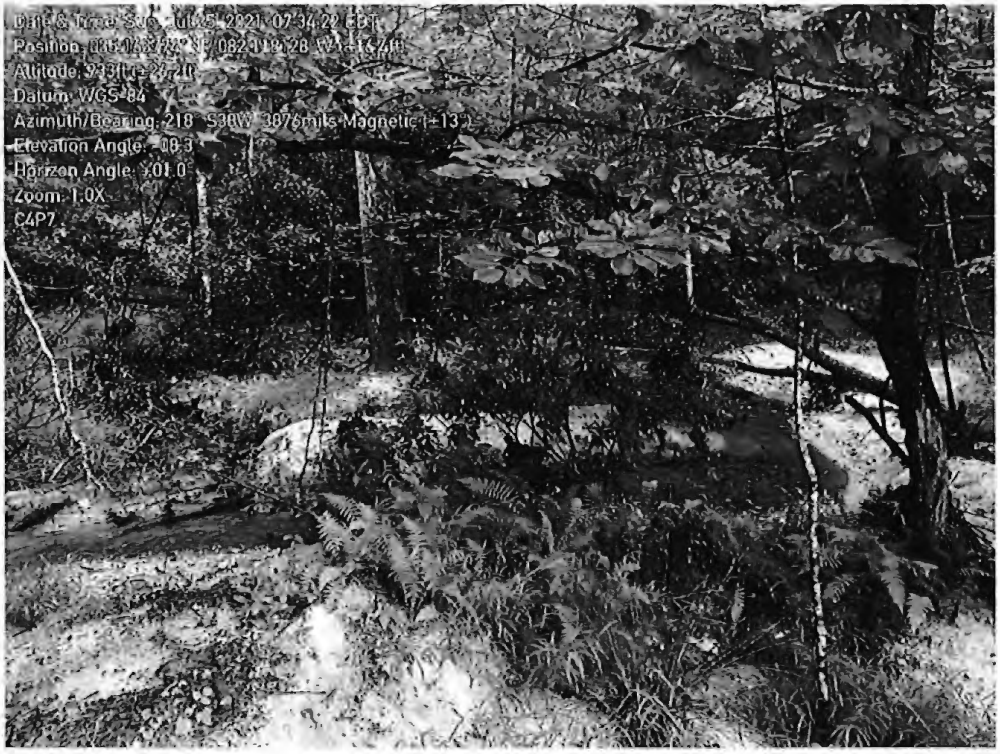


Photopoint 6, Photo 1: view upstream with cobble, rivercane, alluvial bench, and forested conditions. Stream width range 3-4 feet

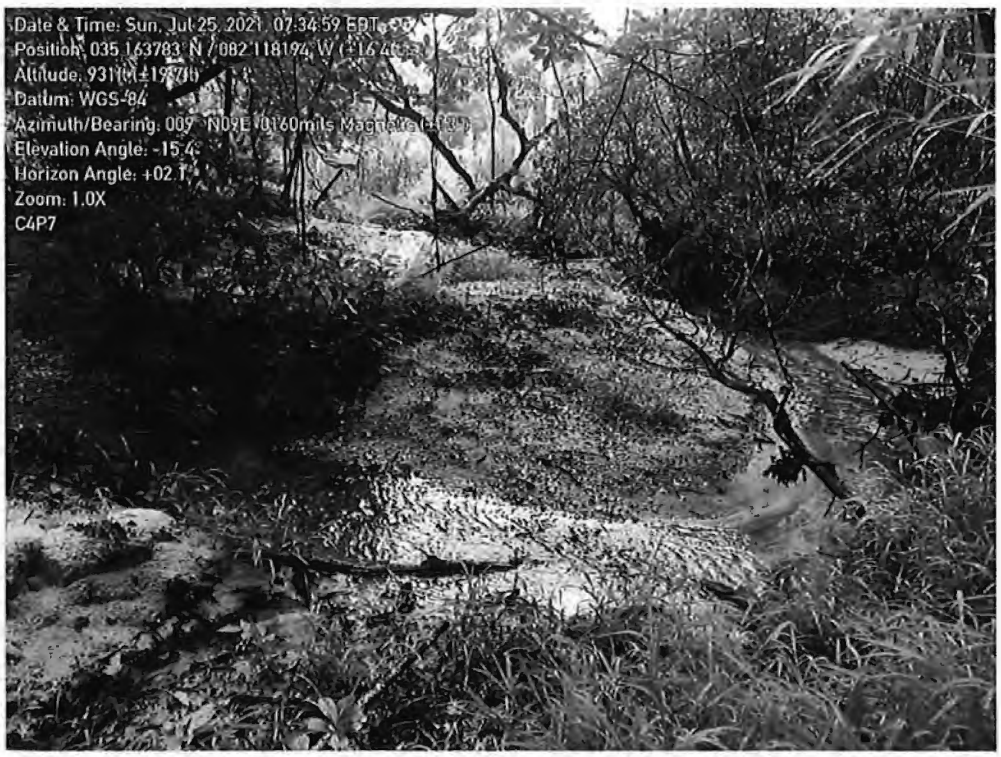


Photopoint 6, Photo 2: view downstream of oxbow deposit with newly fallen woody debris

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Photopoint 7, Photo 1: view upstream of Piedmont Springhead Seep and sandy flood deposits in Headwater Stream Forest. Stream width range 2-3 feet



Photopoint 7, Photo 2: view downstream below Piedmont Springhead Seep, oxbow in Headwater Stream Forest and abandoned beaver impoundment

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Photopoint 7, Photo 3: supplemental view - upstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-3 feet



Photopoint 7, Photo 4: supplemental view - downstream at abandoned Beaver Impoundment with high quality early successional habitat, instream debris; Stream width range 2-4 feet

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Photopoint 8, Photo 1: view upstream; Goldmine Creek narrowing and smaller with dense in upper headwaters. Stream width range 1.5-2 feet



Photopoint 8, Photo 2: view downstream, upper headwaters of Goldmine Creek and dense rivercane. Stream width range 1.5-2 feet

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Photopoint 9, Photo 1: view upstream of Goldmine Creek with steeper natural embankments. Stream width range 2-3 feet



Photopoint 9, Photo 2: view downstream, upper headwaters of Goldmine Creek and alluvial benches. Stream width range 1.5-2 feet

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Photopoint 10, Photo 1: view upstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 3-6 feet, artificially wide



Photopoint 10, Photo 2: view downstream, southwestern headwaters badly eroding (75-80%) embankments. Stream width range 1-2 feet, artificially narrow

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GREENVILLE COUNTY PLANNING COMMISSION
MINUTES
July 22, 2020
4:30 p.m.

MEMBERS PRESENT: S. Bichel, Chair, M. Jones, Vice-Chair, M. Shockley, E. Forest, J. Bailey, J. Rogers, C.Clark, F. Hammond and M. Looper

MEMBERS ABSENT:

STAFF: P. Gucker, T. Stone, H. Hahn, J. Henderson, M. Staton, B. Denny, R. Jeffers-Campbell, T. Coker, H. Gamble, K. J. Wortkoetter and IS staff

CALL TO ORDER
Chairman Bichel called the meeting to order at 4:30 p.m. and Mr. Bailey provided the invocation.

APPROVAL OF THE MINUTES OF THE JUNE 24, 2020 COMMISSION MEETING
MOTION: By Mr. Jones, seconded by Mr. Bailey to approve the minutes of the June 24, 2020 Commission meeting amended to state the reason for recusal. The motion carried unanimously by voice vote.

PRELIMINARY SUBDIVISION APPLICATIONS

PP-2020-073, Crestfield
Rashida Jeffers-Campbell addressed the Commission members with a Preliminary Subdivision Application consisting of 19.27 acres in an unzoned area. The developer is proposing a 26 lot subdivision accessed by Enoree Road. The developer is proposing 0.24 linear miles of public road. feet of public road. Water will be provided by Greenville Water and sewer will be by Metropolitan Sewer (Septic proposed). North Greenville Fire serves this area.

Staff recommends that the Planning Commission hold this application and require that the developer hire an independent and qualified environmental consultant to:

- Survey environmentally sensitive areas and endangered species on the site,
- Identify the impacts of the proposed development
- Provide measures necessary to protect the environment and endangered species.

Additionally, the findings of the environmental study shall be reviewed for adequacy by the U.S. Fish & Wildlife Service agency.

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The following sent emails in opposition to the proposed, which were all provided to each Commissioner. Chairman Bichel read the names of the individuals who submitted comments.

- The Grover family, 430 Enoree Road, Travelers Rest, SC
  Michelle L. Grover
  Alan N. Grover, Jr.
  Micah Grover
  Jordan Grover
  Mark Grover
  Kassia Grover

- Tonya Batson, 300 Batson Road, Travelers Rest, SC
- Elizabeth "Lib" Taylor, 341 Batson Road, Travelers Rest, SC
- Mozell "mama" Batson, 350 Enoree Road, Travelers Rest, SC
- Betty B. Hawkins
- Charles F. Hawkins
- Vicky B. Hawkins
- Terry D. Hawkins
- Randy Hawkins, 490 Hawkins Road, Travelers Rest, SC
- Ron Sepic, 2123 Meadow Rose Drive, Travelers Rest, SC
- Frank Holleman, 310 Pine Forest Drive Ext., Greenville, SC
- Cathy Powell, Travelers Rest, SC
- Tonya C. Hawkins, 869 Hawkins Road, Travelers Rest, SC
- Taylor Somers, 16 Alice Kelley Court
- Steve Shaw 504 Tineke Way, Travelers Rest, SC
- John B. Cook, no address
- Jeff Hawkins, 785 Hawkins Road, Travelers Rest, SC
- Randy Hawkins, 490 Hawkins Road, Travelers Rest, SC
- Ruby Hawkins, 800 Hawkins Road, Travelers Rest, SC
- Delmer Hawkins 800 Hawkins Road, Travelers Rest, SC
- John H. Hawkins, 806 Hawkins Road, Travelers Rest, SC
- Shirley B. Hawkins, 831 Hawkins Road, Travelers Rest, SC
- Marvin Hawkins, 831 Hawkins Road, Travelers Rest, SC
- Kassidy Murphy, 24 Barclay Drive, Travelers Rest, SC
- Leah Narro, Old 151 Altamont Ridge Road, Greenville, SC

The following were in favor of the proposed:

- Don Sorenson, 10 Blue Ridge Way, Travelers Rest, SC

The following remotely appeared in opposition to the proposed:

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- Nina Hallissy, representing REWA
- Michelle Grover, 430 Enoree Road, Travelers Rest, SC
- Frank Holleman, Southern Environmental Law, 310 Pine Forest Dr. Ext., Greenville, SC

The following remotely appeared in favor of the proposed:

- Don Sorenson, 10 Blue Ridge Way, Travelers Rest, SC
- Waverly Wilkes, Gray Engineering, 132 Pilgrim Road, Greenville, SC
- Craig Roy, Developer, SK Builders, PO Box 160, Travelers Rest, SC

Chairman Bichel stated with staff's recommendation to hold, both parties would need to agree to hold. He asked Mr. Roy if he was willing to have the request held and do the study as recommended.

Mr. Roy stated he was not in favor of holding.

Mr. Shockley noted staff's recommendation has changed considerably; he asked how did they get involved with South Carolina Environmental or Wildlife Commission deal.

Ms. Jeffers-Campbell stated initially the letter from the Environmental Group came after the packets were sent out to the Commissioners. She stated when she had done her staff report, she was unaware there were any endangered species on the site that might be adversely impacted by the development. She stated initially, her recommendation was to approve with conditions. Since she was made aware of the Environmental issues, her recommendation has changed to address those issues.

Mr. Shockley asked if the one plant mentioned was on the site and the other specialty plant downstream, how far down was it.

Mr. Holleman stated the federally protected plant was on the site and also downstream from the development site.

Mr. Forest asked staff if the developer would not have to check for these plants before getting his permit to construct.

Ms. Jeffers-Campbell stated her recommendation would be for the study to be done first, as it could potentially affect the design of the development or how it would need to be modified.

Ms. Wortkoetter noted generally they do a wetlands delineation before they come in for a land disturbance permit, but they do not generally do the endangered species survey.

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Mr. Bailey asked the Chairman to ask the applicant again if he would be willing to have the item held.

Chairman Bichel asked the applicant again if he would consider holding.

MOTION: By Mr. Rogers, seconded by Mr. Jones to deny PP-2020-73 based on the Environmental grounds raised and the letter from REWA regarding sewer service. The motion to deny carried unanimously by roll call vote.

REZONING REQUESTS

Mr. Henderson presented the following:

TO:	**County Council** **Planning and Development Committee** **Planning Commission**
FROM:	**Joshua T. Henderson**
RE:	**CZ-2020-45**
APPLICANT:	Greenville County Council
PROPERTY LOCATION:	County-wide
PIN/TMS#(s):	NA
ZONING:	C-1, C-2, and C-3, Commercial Districts
REQUEST:	The proposed text amendment to Section 6:2 (28) of the Greenville County Zoning Ordinance states that single-family residential developments on properties located in C-1, C-2, and C-3 Commercial Zoning Districts may be reviewed under Section 7:2 "Open Space Residential Development."
ACREAGE:	NA
COUNCIL DISTRICT:	All

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REQUEST HISTORY: In May/June 2020, Staff sought to initiate a zoning text amendment to address the ability to review single-family and multifamily residential developments under Section 7:2 "Open Space Residential Development." Staff is concerned the current text, as written, does not allow developers the ability to propose these developments in commercial zoning districts. This text amendment request went before the Planning and Development Committee on June 1, 2020 and then to First Reading with County Council on June 2, 2020.

ANALYSIS:

Currently, under Condition 28 in Section 6:2 of the Greenville County Zoning Ordinance, it states "all single-family development requiring the submittal of a summary or preliminary plat for review shall conform to the density, setbacks, open space requirements, etc., if as set forth in the R-6, Single-Family Residential District." Since single-family residential attached (i.e. townhomes) fits into this category of "all single-family development" it would require "townhomes" to be on individual lots of at least 6,000 sq. ft.

Staff is of the opinion that requiring these developments to adhere to the R-6 Single-Family Residential requirements places an unnecessary burden on attached residential developments with regards to the individual lot sizes. Allowing these developments to also be reviewed and approved under Section 7:2 "Open Space Residential Development" would allow them to reduce the lot size of the individual attached units, while still preserving the required open space.

CONCLUSION: Staff is of the opinion that requiring these developments to adhere to the R-6 Single-Family Residential requirements places an unnecessary burden on attached residential developments with regards to the individual lot sizes. Allowing these developments to also be reviewed and approved under Section 7:2 "Open Space Residential Development" would allow them to reduce the lot size of the individual attached units, while still preserving the required open space.

Based on these reasons, Staff recommends **approval** of the proposed Text Amendment.

MOTION: By Mr. Shockley, seconded by Mr. Jones to approve CZ-2020-45. The motion carried unanimously by voice vote.

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Mr. Henderson presented the following:

TO:	**County Council** **Planning and Development Committee** **Planning Commission**
FROM:	**Joshua T. Henderson**
RE:	**CZ-2020-46**
APPLICANT:	Greenville County Council
PROPERTY LOCATION:	County-wide
PIN/TMS#(s):	NA
ZONING:	R-6 through R-20, R-20A, R-M2 through R-M20, R-MA, C-1, C-2, and C-3 Zoning Districts
REQUEST:	The proposed text amendment to Sections 7:2.4-4 "A" and 7:2.5-4 "A" of the Greenville County Zoning Ordinance will be to revise the first requirement under the Single-Family Attached sections under Option 1 and Option 2 to eliminate the requirements of having a 15% and 20% stipulation on a maximum number of attached units.
ACREAGE:	NA
COUNCIL DISTRICT:	All
REQUEST HISTORY:	In May/June 2020, Staff realized some complexities when reviewing proposed single-family attached residential developments under the current requirements in Section 7:2 Open Space Residential Development. Staff is concerned the current text, as written, does not allow developers the ability to propose 100% single-family attached residential developments in the zoning districts that allow for Open Space developments. This text amendment request went before the Planning and Development Committee on June 1, 2020, and then to First Reading with County Council on June 2, 2020.
ANALYSIS:	According to Section 7:2, developers have the right to propose a development as an Open Space development meeting several different conditions and options. Under Option 1 and Option 2,

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single-family attached residential developments are permitted in Open Space developments, but must adhere to a certain maximum percentage of attached dwelling units. This requirement prohibits developers from proposing 100% single-family attached developments and forces a mixture of residential types (i.e. single-family attached and single-family detached).

If developers do not want to pursue the mixture of residential types of development, then they must refer back to Table 6.1 Uses Permitted, Uses by Special Exception, and Conditional Uses. Under this table, single-family attached is permitted in Zoning Districts R-6 through R-20 and R-20A, so long as they adhere to Condition 10 Dwelling, Single-Family Attached, and Dwelling, Two-Family (Duplex). Under this condition, properties zoned R-20, R-20A, R-15, and R-12 only allow single-family attached under Section 7:2, which then requires them to adhere to the maximum percentage of dwelling units requirement and not be allowed to have 100% attached developments. Furthermore, Condition 10 will only allow these type developments so long as each individual lot for each individual attached unit meets the minimum lot size requirement per that zoning district (i.e. if there is one building with 6 individual units in an R-10 zoning district, then each individual lot will be required to have a minimum lot size of 10,000 sq. ft. and thus requiring over an acre for 6 townhomes).

CONCLUSION:

Staff is of the opinion that placing a maximum percentage on the number of attached dwelling units in a proposed development places an undue burden on development and does not allow for 100% attached developments in some cases. Allowing these types of developments, without the aforementioned percentage requirement, would allow more options for attached residential housing in Greenville County, while still preserving the required open space.

Based on these reasons, Staff recommends **approval** of the proposed Text Amendment.

Ms. Clark asked if this item was applicable to POD and Neighborhood Commercial review districts.

Mr. Henderson stated any Review District, PD, POD, FRD and Neighborhood Commercial are subject to their own Statement of Intent, Concept and Final Development Plans. Whatever they submit to the Planning Commission or County Council for approval, they would be subject to those regulations stated in those documents.

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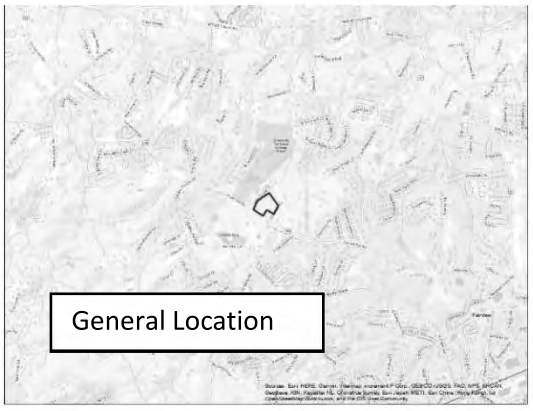
Ms. Clark asked why the initial limitations of 16 and 20 percent imposed to begin with.

Ms. Gucker stated those limitations have been as such for some time. She stated she did not know the reason nor when they were decided. Ms. Gucker stated she would look into it to see if she could provide Ms. Clark with the information.

MOTION: By Mr. Shockley, seconded by Mr. Jones to approve CZ-2020-46. The motion carried unanimously by voice vote.

Ms. Staton presented the following:

TO:	**County Council** **Planning and Development Committee** **Planning Commission**
FROM:	**Meagan Station**
RE:	**CZ-2020-47**
APPLICANT:	**Dean Aldrich of AC&S Engineering and Surveying and Blake Jackson of Jackson Holding and Ventures, LLC for Carmon B. Adams and Stacey A. Mauldin**
PROPERTY LOCATION:	**Locust Hill Road, Whispering Court, and Jonathan Drive**
PIN/TMS#(s):	**T022010100500**
EXISTING ZONING:	**R-S, Residential Suburban**
REQUESTED ZONING	**C-3, Commercial**
PROPOSED LAND USE	**Tree Care and Landscape Business**
ACREAGE:	**12.1**
COUNCIL DISTRICT:	**18 – Barnes**



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ZONING HISTORY: The parcel was originally zoned R-S, Residential Suburban in November 2001 as part of Area 16. There have been no other rezoning requests for this parcel.

EXISTING LAND USE: Vacant land

AREA CHARACTERISTICS:

Direction	Zoning	Land Use
North	R-S	single-family residential and vacant land
East	R-S	single-family residential and vacant land
South	Unzoned	vacant land and church
West	R-S	single-family residential

WATER AVAILABILITY: Greer CPW – no water available

SEWER AVAILABILITY: Septic

PLAN GREENVILLE COUNTY CONFORMANCE: The subject property is part of the Plan Greenville County Comprehensive Plan, where it is designated as *Suburban Neighborhood*.



Plan Greenville County, Future Land Use Map

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SN SUBURBAN NEIGHBORHOOD

Place Type Characteristics

Suburban Neighborhoods are generally shaped by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. Homes include attached garages. Local streets are laid out in a curvilinear pattern with occasional cul-de-sacs. Streets may or may not include sidewalks. New single-family subdivisions should be designed with sidewalks, street trees, neighborhood parks, and community open space connections.

Primary Uses	Commercial, office, retail
Secondary Uses	Small-scale apartment buildings, civic and institutional facilities (e.g., places of worship), neighborhood parks
Gross Density	3 to 5 dwellings per acre
Transportation	Automobile access with sidewalk system and trail connections, interconnected streets
Parking	Private driveway with attached or detached garages, on-street parking
Open Space	Parks, schools, and streetscape; interconnected open space/greenway trail connections

Plan Greenville County, Character Area Type Card

AREA AND COMMUNITY PLANS: The parcel is not included in any adopted community or area plans.

DENSITY WORKSHEET: The following scenario provided the potential capacity of residential units based upon County records for acreage.

	Zoning	Zoning Density	Acres	Total Units
Current	*R-S*	*1.7 units/acre*	*12.1*	*20 units*
Requested	C-3	16 units/acre		193 units

A successful rezoning would add 173 dwelling units

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ROADS AND TRAFFIC: Locust Hill Road: two-lane State-maintained Major Collector. Whispering Court and Jonathan Drive are both private drives. The parcel has approximately 467 feet of frontage along Locust Hill Road, approximately 610 feet of frontage along Whispering Court, and approximately 400 feet of frontage along Jonathan Drive. The parcel is approximately 0.32 miles southeast of the intersection of Old Rutherford Road and Locust Hill Road. The property is not along a bus route and there are no sidewalks in the area.

CULTURAL AND ENVIRONMENTAL: Floodplain is not present on the site. There are no known historic or cultural resources on this site. The site is, however, bisected by overhead power lines. There is one school located within a mile of the site: Greer Middle College Charter High School.

CONCLUSION: The subject property is part of the Plan Greenville County Comprehensive Plan, where it is designated as *Suburban Neighborhood*. Areas with this future land use designation are typically shaped by residential subdivisions of medium-lot homes with relatively uniform housing types and densities. The gross density in areas such as this is 3 to 5 dwelling units per acre.

Despite the future land use designation of *Suburban Neighborhood*, the property fronts Locust Hill Road, which has several businesses fronting it in the surrounding area, and before the next major intersection, there are parcels with commercial zoning. However, while directly across Locust Hill Road is Unzoned, this parcel is surround on three sides by R-S, Residential Suburban zoning, with no other zoning districts in the close immediate area on that side of Locust Hill Road.

Staff is of the opinion that the requested rezoning to C-3, Commercial does not align with the *Suburban Neighborhood* Future Land Use designation, and that the request does not conform with the surrounding zoning.

Based on these reasons, staff recommends **denial** of the requested rezoning to C-3, Commercial.

MOTION: By Mr. Jones, seconded by Mr. Looper to deny CZ-2020-47.

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Mr. Hammond stated this site being 12 acres had only half of the acreage which could be developable, due to the power lines. He also noted the road was extremely busy. He stated he did not think anyone would build a single family home there. There is about 5 developable acres, and he did not think anyone would build a single family home fronting Locust Hill Road. He did not think anyone would want to build within two major transmission line right of ways.

Chairman Bichel stated spot zoning is always problematic, once something is zoned C-3, it is always C-3. It sets precedence for the future. It would be different if they came back with a request for an FRD.

Mr. Hammond noted a petition that was submitted regarding this property. He stated over 60 percent of the signatures were from folks outside of Greenville County, mostly outside of South Carolina. He stated the Commission should be careful if they were going to put weight on the petitions submitted.

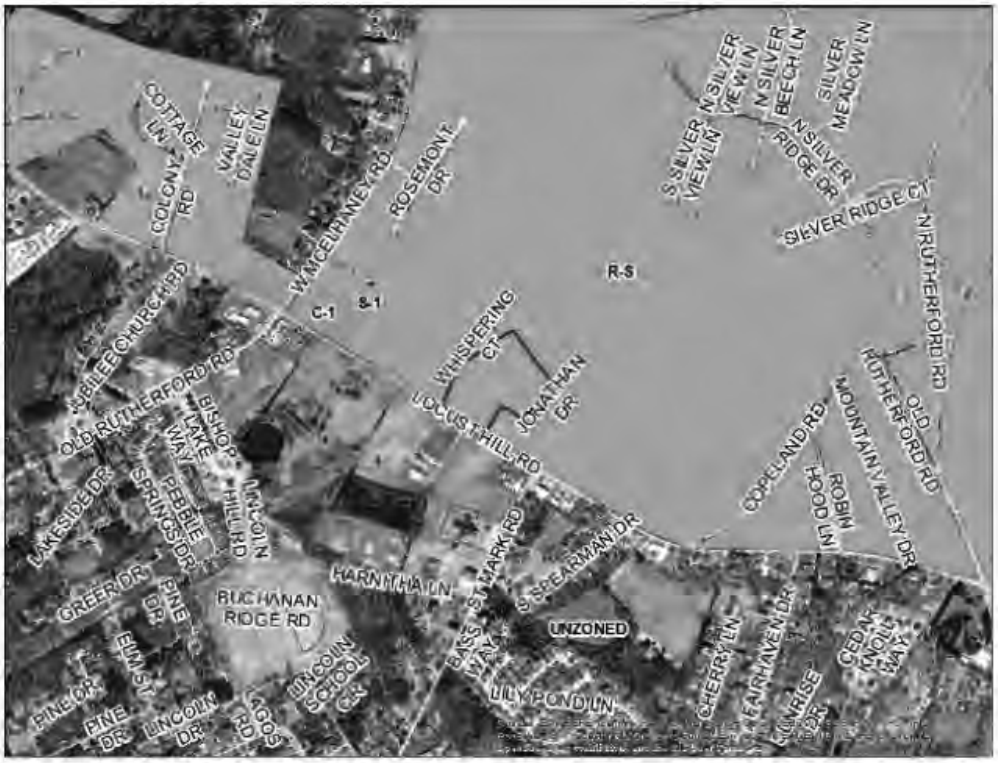
The motion to deny CZ-2020-47 carried by voice vote with two in opposition (Bailey and Hammond).



Aerial Photography, 2019

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Zoning Map

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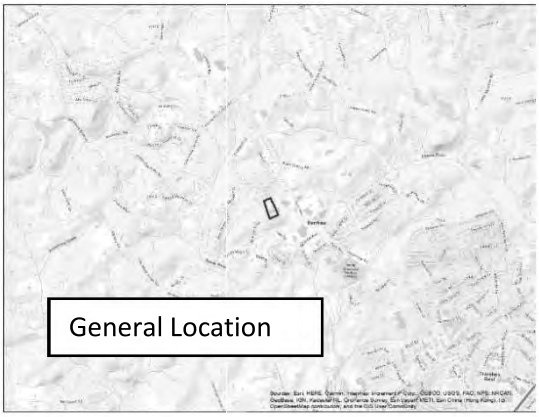
Ms. Staton presented the following:

TO:	**County Council** **Planning and Development Committee** **Planning Commission**
FROM:	**Meagan Station**
RE:	**CZ-2020-48**
APPLICANT:	**Vanessia L. Arnold for Silver Hawk, LLC**
PROPERTY LOCATION:	**18 New Circle Road**
PIN/TMS#(s):	**0506070101102**
EXISTING ZONING:	**C-2, Commercial**
REQUESTED ZONING	**S-1, Services**
PROPOSED LAND USE	**Warehousing and Distribution**

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ACREAGE: **5.4**

COUNCIL DISTRICT: **17 – Dill**



ZONING HISTORY: The parcel was originally zoned RM, Multifamily Residential in June of 1973 as part of Area 4B. The parcel was rezoned to C-2, Commercial in May 1985, as part of case CZ-1985-36.

EXISTING LAND USE: Warehouse – General

AREA CHARACTERISTICS:

Direction	Zoning	Land Use
North	R-M20	two-family residential and single-family residential
East	S-1	service building
South	I-1	vacant land
West	R-M2-	vacant land

WATER AVAILABILITY: Greenville Water

SEWER AVAILABILITY: Septic

PLAN GREENVILLE COUNTY CONFORMANCE: The subject property is part of the Plan Greenville County Comprehensive Plan, where it is designated as *Rural Corridor*.

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Plan Greenville County, Future Land Use Map



RC RURAL CORRIDOR

Place Type Characteristics

Rural Corridors contain a mix of mostly lower-density residential uses with agricultural, service, or industrial uses. Rural Corridors are typically located along arterial highways and may connect to denser suburban or urban areas.

Primary Uses	Greenhouses and nurseries, agriculture, warehouses, highway commercial
Secondary Uses	Single-family residential, parks and open space
Gross Density	1 dwelling per 2+ acres
Transportation	Automobile-oriented, multi-purpose trails, access management highways
Parking	Surface parking
Open Space	Farmland and natural areas, large passive parks

Plan Greenville County, Character Area Type Card

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AREA AND COMMUNITY PLANS: The parcel is not included in any adopted community or area plans.

ROADS AND TRAFFIC: New Circle Road: two-lane County-maintained Residential Local. The parcel has approximately 370 feet of frontage along New Circle Road, and the parcel is approximately 0.8 miles southwest of the intersection of Geer Highway (SC-Hwy 276) and White Horse Road Extension. The property is not along a bus route and there are no sidewalks in the area.

CULTURAL AND ENVIRONMENTAL: Floodplain is not present on the site. There are no known historic or cultural resources on this site; however the rear of the property does contain a significantly wooded area, along with overhead power lines. There are no schools within a mile of the site.

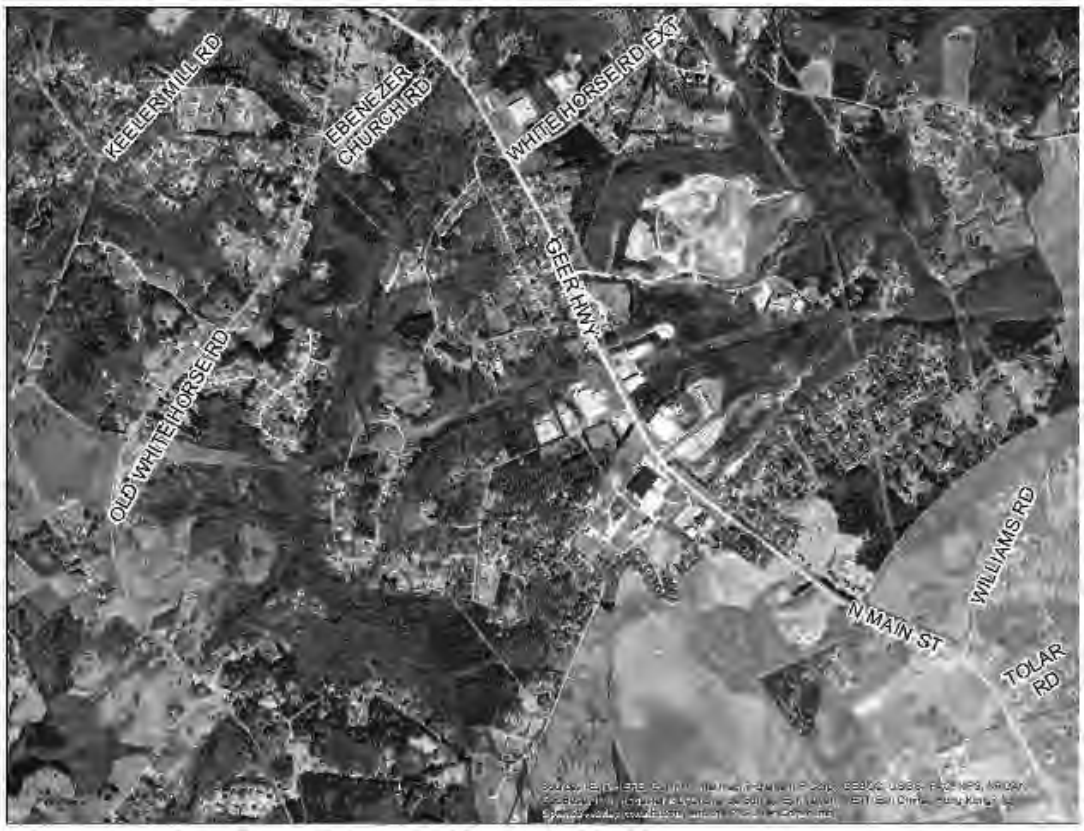
CONCLUSION: The subject property is part of the Plan Greenville County Comprehensive Plan, where it is designated as *Rural Corridor*. Properties with this future land use designation contain a mix of lower-density residential uses with agricultural, service, or industrial uses. *Rural Corridors* are typically located along arterial highways and may connect to denser suburban or urban areas. Primary uses within this future land use designation are greenhouses and nurseries, agriculture, warehouses, and highway commercial. Secondary uses in this area include single-family residential, parks, and open space.

In addition to its future land use designation, the parcel is adjacent to another parcel that is also zoned S-1, Services and across the road from property zoned I-1, Industrial. Additionally, despite New Circle Road being a local road, this parcel has very close proximity to US-276, and does not require passing any residentially zoned properties to reach this thoroughfare.

Based on these reasons, staff recommends **approval** of the requested rezoning to S-1, Services.

MOTION: By Mr. Forest, seconded by Ms. Clark to approve CZ-2020-48. The motion carried unanimously by voice vote.

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Aerial Photography, 2019



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Zoning Map



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Planning Report

Ms. Gucker introduced Mr. Tee Coker the new Planning Director. She noted he had worked a great deal with staff during the Comprehensive Plan. Chairman Bichel welcomed Mr. Coker.

Ms. Gucker updated the Commission members on the items they received in their packets pertaining to the Planning Report. She noted staff and consultants held 13 focus groups with various stakeholders for the Unified Development Ordinance. There were a lot of good discussions. She stated the State Infrastructure Bank approved Greenville County's Grant submission. The grant is for $42 million to extend the Parallel Parkway coming off of Verde Blvd. and going across I-85 and I-385 to terminate near the Merovan Center. Ms. Gucker noted construction activity was up as well as permitting.

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

ADJOURN: Without objection Chairman Bichel adjourned the meeting at 5:44 p.m.

Respectfully submitted

_____

Recording Secretary

Mailed 5/23/06
MO

BOARD:
Elizabeth M. Hagood
Chairman

Edwin H. Cooper, III
Vice Chairman

Steven G. Kisner
Secretary

D H E C
PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

BOARD:
Henry C. Scott

Paul C. Aughtry, III

Glenn A. McCall

Coleman F. Buckhouse, MD

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May 22, 2006

Ms. Laura Belanger
Environmental Permitting Consultants, Inc.
Post Office Box 3744
Greenville, SC 29608

Re: 401 Certification for Authorization Pursuant to Nationwide Permit 39
Permit Number: SAC 39-2006-0176-5 Boulder Creek
Applicant: Midland Builders
County: Greenville County

Dear Mr. Anderson:

The South Carolina Department of Health and Environmental Control (SCDHEC) has reviewed the above referenced project and determined that the impacts to water quality will be minimal and existing and classified uses will be maintained. The proposed work is consistent with the 401 Water Quality Certification issued for Nationwide Permit Number 39 on March 15, 2002, provided the applicant adheres to all the conditions of that certification (copy attached), and the following special conditions:

- As compensatory mitigation for impacts to aquatic resources, the applicant must preserve 0.33 acres of unaltered wetlands or 1474.58 linear feet of intermittent/perennial streams, and 2.91 acres of vegetated, undisturbed upland buffer. A declaration of restrictive covenants or other preservation documentation addressing the applicant's proposed mitigation must be submitted to SCDHEC's Division of Water Quality for review and approval prior to recording. A copy of the stamped recorded plat and the stamped restrictive covenants must be submitted to the Division of Water Quality within 60 days of issuance of the 404 Permit.

- The applicant must abide by the endangered species management plan for populations of the Dwarf-flowered heartleaf, *Hexastylis naniflora*, as described in the United States Fish and Wildlife document Log No. 2006-I-0420, dated April 11, 2006.

Sincerely,

Vivianne Vejdani

Vivianne Vejdani
Project Manager
Water Quality Certification, Standards and Wetlands Programs Section

cc: USACE Charleston District Office

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

May 2, 2006

Regulatory Division

Laura Belanger
Environmental Permitting Consultants, Inc.
Post Office Box 3744
Greenville, South Carolina 29608

Dear Ms. Belanger:

This letter is in response to a Pre-Construction Notification (PCN) dated January 27, 2006, which was received on February 2, 2006. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Boulder Creek. The project involves impacts to not more than 0.044 acre of waters of the United States or 187.84 linear feet of intermittent/perennial streams, including wetlands. The project is located on unnamed tributary to Beaverdam Creek, south of Jordan Road and east of Mt. Lebonon Church Road, near Greer, In Greenville County, South Carolina. The PCN also includes the following supplemental information:

a. Drawing sheets 1-7 of 7 titled "Boulder Creek" and dated January 23, 2006, revised April 26, 2006;

b. A mitigation plan as described in the project narrative and shown on drawing sheet 7 of 7, as referenced above;

c. A delineation of special aquatic sites (SAC 81-2006-0165-5).

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit(s) # 39.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions, Charleston District Regional Conditions, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency

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05/22/2006 10:28 FAX 864 235 9299 ENVIRONMENTAL PERMITTING 002

Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work.

5. That as compensatory mitigation for the impacts to aquatic resources, the permittee agrees to preserve 0.33 acre of waters of the United States or 1474.58 linear feet intermittent/perennial streams, and 2.91 acres of upland buffers. Preservation shall be by means of either deed restrictive covenants or conservation easement. The covenants or easement documents and surveyed plat of the mitigation area must be submitted to the District Engineer or his designee for review and approval prior to execution. Sample language for restrictive covenants and easement documents are enclosed for your consideration.

6. That the permittee must submit evidence of the execution and recording of the preservation easements or covenants and surveyed plat of the mitigation area to both the Corps of Engineers and DHEC prior to commencement of the authorized work.

7. That as extant populations of the endangered Dwarf-flowered heartleaf, *Hexastylis naniflora*, have been identified on the proposed property, the permittee, shall abide by all protective measures as described in United States Fish and Wildlife document, FWS Log No. 2006-I-0420, dated April 11, 2006.

This verification is valid until the Nationwide Permit is modified, reissued, or revoked. All of the existing Nationwide Permits are scheduled to be modified, reissued, or revoked prior to March 18, 2007. It is incumbent upon you to remain informed of changes to the Nationwide Permits. We will issue a public notice when the Nationwide Permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant Nationwide Permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the Nationwide Permit to complete the activity under the present terms and conditions of this Nationwide Permit.

Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC 39-2006-0176-5. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Leslie L. Parker.

ENVIRONMENTAL PERMITTING

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Respectfully,

for Tina B. Hadden
Chief, Regulatory Division

Enclosures:
Permit Drawings
Charleston District Regional Conditions
Nationwide Permit General Conditions
Compliance Certification Form
Model Restrictive Covenants
Customer Service Survey

Copy Furnished:

U.S. Fish and Wildlife Service
Attn: Catherine D. Duncan
176 Croghan Spur Road, Suite 200
Charleston, South Carolina 29407

South Carolina Department of
Health and Environmental Control
Attn: Mr. Quinton Epps
Bureau of Water Pollution Control
2600 Bull Street
Columbia, South Carolina 29201

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ENVIRONMENTAL PERMITTING 004

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Book:DE 2212 Page:1774-1778
June 27, 2006 02:01:02 PM
Rec:$10.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

STATE OF SOUTH CAROLINA)
) DECLARATION OF RESTRICTIVE COVENANTS
COUNTY OF GREENVILLE)

WHEREAS, Declarant is the owner of certain real property ("Property") located in Greenville County, South Carolina, more particularly described in a plat entitled BOULDER CREEK, dated June 5, 2006 and recorded in Plat Book 1010 at page 57 in the Office of the Register of Deeds for Greenville County; and,

WHEREAS, as compensatory mitigation under Federal and State law for Department of the Army Permit No. SAC39-2006-0176-5-Boulder Creek ("Permit") issued by the U. S. Army Corps of Engineers, Charleston District ("Corps" or "Charleston District," to include any successor agency), and certification(s) and/or permit(s) issued by the S. C. Department of Health and Environmental Control ("DHEC," to include any successor agency), and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Declarant has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns, (they are included in the term "Declarant," below), lessees, or other occupiers and users.

1. Prohibitions. Declarant is and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, constructing, releasing wastes, or otherwise doing any work on the Property; introducing exotic species into the Property (except biological controls preapproved in writing by the Corps or DHEC); and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under clean water or water pollution control laws and regulations, as amended. The following are expressly excepted from this paragraph: a) cumulatively very small impacts associated with hunting (excluding planting or burning), fishing, and similar recreational or education activities, consistent with the continuing natural condition of the Property; b) removal or trimming of vegetation hazardous to person or property, or of timber downed or damaged due to natural disaster; c) restoration or mitigation required under law .

2. Amendment. After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and DHEC and the Declarant. The recorded document, as amended, shall be consistent with the Charleston District model conservation restrictions at the time of amendment. Amendment shall be allowed at the discretion of the Corps and DHEC, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Charleston

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District mitigation policy at the time of amendment. There shall be no obligation to allow an amendment.

3. Notice to Government. Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

4. Reserved Rights. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above, and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. Compliance Inspections. The Corps, DHEC, and their authorized agents shall have the right to enter and go upon the lands of Declarant, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. Enforcement. The Declarant grants to the Corps, the U. S. Department of Justice, and/or DHEC, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

7. Property Transfers. Declarant shall include the following notice on all deeds, mortgages, plats or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity of or enforceability of these restrictive covenants.)

NOTICE: THIS PROPERTY SUBJECT TO DECLARATION OF RESTRICTIVE COVENANTS RECORDED IN DEED BOOK 2212 AT PAGE 1745 IN TH E OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY, SOUTH CAROLINA.

8. Marking of Property. The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. Recording of Plat. A plat depicting the boundaries of the Property subject to these restrictive covenants shall be recorded in the deed records office for each county in which the

property is situated prior to the recording of these restrictive covenants. The plat is recorded at Plat Book 1010 at page 57. A copy of the "Buffer Overview" for Boulder Creek is attached hereto as "Exhibit A" and made a part hereof by reference.

10. Separability Provision. Should any separate part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

MIDLAND INCORPORATED

By: _____
JED AHO, President

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared before me the undersigned witness, and made oath that (s)he saw the within named Midland Incorporated, by Jed Aho, its President, sign, seal and as its act and deed, deliver the within named Declaration of Restrictive Covenants; and that (s)he with the other witness named above witnessed the execution thereof.

SWORN to before me this
23rd day of June, 2006

_____ (SEAL)
Notary Public for South Carolina
My commission expired: 5-2-15

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DEED 59D PG621

CONSERVATION EASEMENT

THIS INDENTURE, made this 14th day of February, 1989, by and between Raintree Homeowners Association ("Grantor"), c/o Mr. Donald Morin, 238 Briarcreek Drive, Spartanburg, SC, 29304 and THE NATURE CONSERVANCY ("Conservancy"),a nonprofit corporation organized and existing under the laws of the District of Columbia, with an address of 1815 North Lynn Street, Arlington, Virginia 22209.

RECORDED
1992 AUG 14 AM 9:29
R.M.C.
SPARTANBURG, S.C.

WHEREAS, the Grantor is the owner in fee simple of certain real property (hereinafter referred to as the "Protected Property") which has aesthetic, scientific, educational, and ecological value in its present state as a natural area which has not been subject to development or exploitation, which property is described as follows:

All that certain piece, parcel, or tract of land containing 3.98 acres of land, more or less, located in the County of Spartanburg, State of South Carolina, being more fully described on a survey plat of Raintree Subdivision surveyed by Neil R. Phillips, dated May 14, 1979 and recorded in plat book 83 at page 628 in the RMC Office for Spartanburg County. Said property being included under a land use restriction, protective covenants and building standards recorded in book 46 at pages 263 through 267 in the RMC Office for Spartanburg County.

WHEREAS, the Protected Property is a natural area which contains a population of Hexastylis naniflora (dwarf-flowered heartleaf), a threatened species proposed for listing under the Federal Endangered Species Act of 1973, as amended (Federal Register 53 (77): 13223-13226) in the Federal Register April 21, 1988 and has substantial value as a natural, ecological and scientific resource; and

WHEREAS, The Nature Conservancy is a nonprofit corporation whose purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, Section 27-9-10 et seq. of the South Carolina Code Ann. (1976, as amended) permits the creation of conservation easements for the purposes of, inter alia retaining land or water areas predominantly in their natural, scenic, open or wooded condition or as suitable habitat for fish, plants, or wildlife; and

WHEREAS, Grantor and Conservancy recognize the natural, scenic, aesthetic, and special character of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem" as that phrase is used Public Law 96-541, 26 USC 170(h)(4)(a)(ii), as amended and in regulations promulgated thereunder by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from the Grantor to the Conservancy of affirmative rights for the protection of the Protected Property; and

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WHEREAS, "natural, scientific, educational, aesthetic, scenic and recreational resource," as used herein shall, without limiting the generality of the terms, mean the condition of the Protected Property at the time of this grant, evidenced by:

A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and

D) On-site photographs taken at appropriate locations on the property;

and other documentation possessed (at present or in the future) by the Grantor which the Grantor shall make available to the Conservancy, its successors and assigns, which documentation shall be sufficient to establish the condition of the property at the time of the gift.

NOW, THEREFORE, the Grantor for good and valuable consideration paid by the Conservancy, the receipt of which is hereby acknowledged by the Grantor, and of the covenants, mutual agreements, conditions and promises herein contained, the Grantor does hereby freely give, grant, bargain, sell and convey unto the Conservancy, its successors and assigns, forever, a conservation easement over the Protected Property consisting of the following:

AFFIRMATIVE RIGHTS

1. The right of visual access to and view of the Protected Property in its natural, scenic, open and undisturbed condition.

2. The right of the Conservancy, in a reasonable manner and at reasonable times, to enter the Protected Property for the purposes of inspecting same to determine compliance herewith, to enforce by proceedings at law or in equity the covenants hereinafter set forth including, but not limited to, the right to require the restoration of the Protected Property to its condition at the time of this grant. The Conservancy, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the Covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Conservancy to institute any proceedings against Grantor for any changes to the Protected Property

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due to causes beyond the Grantor's control such as changes caused by fire, floods, storm or unauthorized wrongful acts of third persons.

3. The right of the Conservancy, its employees, agents, or assigns to enter the Protected Property for the purpose of removing or controlling exotic plants.

AND IN FURTHERANCE of the foregoing affirmative rights, the Grantor, on behalf of the Grantor, his heirs, successors and assigns, and with the intent that the same shall run with and bind the Protected Property in perpetuity, does hereby make, with respect to the Protected Property, the following:

COVENANTS

1. (Vegetation) There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation, nor any disturbance or change in the natural habitat in any manner, except for the control of exotic species as recommended by the Conservancy. There shall be no planting or introduction of any species of vegetation.

2. (Uses) There shall be no agricultural, commercial or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.

3. (Animals) No dogs, cats, or other animals, domestic or exotic, shall be allowed on the Protected Property.

4. (Topography) There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land in any manner, excepting rights retained by Grantor.

5. (Buildings) There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, or other advertising material, or other structures, excepting rights retained by Grantor.

6. (Roads) There shall be no building of new roads or any other rights of way nor widening of existing roads.

7. (Waters) There shall be no disruption of tidal pattern by damming, dredging or construction in any free flowing water body, nor construction of any weirs, groins, nor dikes in any marshlands, nor any manipulation or alteration of natural water courses, fresh water lake and pond shores, marshes, or other water bodies nor any activities or uses detrimental to water purity.

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8. (Vehicles) There shall be no operation of dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles, excepting rights retained by Grantor.

9. (Construction) There shall be no construction or placing of temporary or permanent buildings, docks, bridges, piers or other structures, excepting rights retained by Grantor.

10. (Prohibited Use) Any use of the Protected Property and any activity thereon, which, in the opinion of Grantee, is or may become inconsistent with this grant, being the preservation of the Protected Property predominantly in its natural condition and the protection of environmental systems, is prohibited.

In the event that a breach of these restrictions by the Grantor or by a third party comes to the attention of the Conservancy, the Conservancy must notify the Grantor in writing of such a breach. The Grantor shall have 30 days after receipt of such notice to undertake actions including restoration of the Premises that are reasonably calculated to correct swiftly the conditions constituting such a breach. If the Grantor fails to take such corrective action, the Conservancy shall at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections; and the cost of such corrections, including the Conservancy's expenses, court costs and legal fees shall be paid by the Grantor, provided the Grantor is determined to be responsible for the breach.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary, the Grantor reserves for himself, his heirs, successors and assigns the following Reserved Rights, which may be exercised after providing written notice to Conservancy; PROVIDED, however, that the exercise of such rights is not inconsistent with the conservation interests associated with the Protected Property.

RESERVED RIGHTS

1. Maintain and/or reconstruct in the exact same location an elevated wooden boardwalk located on the Protected Property with dimensions of 30' long, 3' wide and 3'6" to 10'4" high. The current wooden boardwalk being located within a 20' easement area and portion of the undeveloped area noted on Exhibit A. No creosote treated materials will be used for reconstruction.

2. Maintain and/or reconstruct in the exact same location two (2) fenced tennis courts and surrounding landscape shrubbery on the Protected Property with dimensions of 120' long, 108'4" wide, and 10' high. The current tennis court area being located on the undeveloped area noted in Exhibit A.

3. Maintain and utilize an existing roadbed on the Protected Property running from Byron Terrace to the tennis courts noted in Exhibit A. Such use will be restricted to maintenance vehicle access only. No

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improvements, widening, paving, graveling, etc. shall be permitted.

4. Mow, cut, and trim vegetation in a field located on the Protected Property identified in Exhibit A. There shall be no spraying or application of any herbicides, pesticides, or fertilizers in this area.

5. Construct a 600 square foot wooden picnic shelter in the field area noted in Exhibit A. The shelter will be constructed near the existing tennis courts and all feasible efforts will be made to minimize detrimental impacts of construction on the Hexastylis naniflora.

GENERAL PROVISIONS

The Grantor agrees that the terms, conditions, restrictions, and purposes of this grant will be inserted by it in any subsequent deed or other legal instrument by which the Grantor divests itself of either fee simple, or its possessory interest in, all or portions of the Protected Property and that the Grantor will notify the Conservancy, its successors or assigns, of any such conveyance. [written notice required by 1.170A-14(g)(5)(ii)]

Any notices required in this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses or such address as may be hereafter specified by notice in writing:

GRANTOR:

Raintree Homeowners Association

c/o Mr. Donald Morin, President

238 Briarcreek Drive

Spartanburg, SC 29301

GRANTEE:

THE NATURE CONSERVANCY

1815 N. Lynn Street

Arlington, VA 22209

With copy to: Regional Attorney
THE NATURE CONSERVANCY
P.O. Box 2267
Chapel Hill, NC 27515

In the event any provision of this grant is determined by the appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

The burdens of this Conservation Easement shall run with the Protected Property and shall be enforceable against the Grantor and all future owners and tenants in perpetuity. The benefits shall be in gross and assignable but only to an eligible donee as defined in IRC Section 1.170A-14(c)(1) as that section may be amended from time to time. Any assignment of benefits by the Grantee (or successor) must require the transferee to carry out the purposes of this Conservation Easement. [required by 1.170A-14(c)(2)]

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If a subsequent, unexpected change in the conditions of the Protected Property or the surrounding property, make impossible or impractical the continued use of the property for conservation purposes, the restrictions shall be extinguished by judicial proceeding and all of the Conservancy's proceeds from a subsequent sale or exchange of the Protected Property shall be used in a manner consistent with the conservation purposes of this grant. [required by 1.170A(c)(2)]

Whenever all or part of the Premises is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this subparagraph, proceeds from any lawful sale of the property unencumbered by the restrictions hereunder) shall be distributed among the Grantor and the Grantee in share in proportion to the fair market value of their interests in the premises on the date of execution of this Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein. [required by IRC 1.170A-14(c)(2)]

The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Conservancy for enforcement of this Conservation Easement.

TO HAVE AND TO HOLD this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of the Conservancy, its successors and assigns, forever.

GRANTOR HEREBY WARRANTS and represents that the Grantor is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement, that the Property is free and clear of any and all encumbrances, and that the Conservancy and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

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DEED 59 D PG 627

IN WITNESS WHEREOF, the Grantor has set his hand and seal the day and year first above written, and the Conservancy has caused these presents to be signed in its name by its Executive Vice President, and its corporate seal to be affixed, attested by its Assistant Secretary the day and year first above written.

Signed, Sealed and Delivered
in our presence:

Witness

Witness

Witness

Witness

RAINTREE HOMEOWNERS ASSOCIATION, Grantor

By: Donald L Morin
Its President

By: Dick H Clay
Its President-Elect

By: Warren W Austin
Its Secretary

By: Jack W. Boozer
Its Treasurer

As to The Nature Conservancy

Signed, Sealed and Delivered
in our presence:

Witness

Witness

THE NATURE CONSERVANCY, Grantee

By:
Its Vice President

ATTEST:

By:
Its Assistant Secretary

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DEED 59 D PG 628

STATE OF NORTH CAROLINA)
)
COUNTY OF Orange)

PERSONALLY appeared before me James L. Desmond who, being duly sworn, says that he saw the within-named THE NATURE CONSERVANCY by its Vice President and its Assistant Secretary, sign the foregoing Deed, and the said THE NATURE CONSERVANCY, by said officers, did seal said Deed, and as its act and deed, deliver the same, and that he with Katherine P. Seaton witnessed the execution thereof.

James L. Desmond
Witness

SWORN TO before me this
27th day of December, 1989.

Carol L. Gentry (L.S.)
Notary Public for ~~South~~ North Carolina
My Commission Expires: 10-23-93

CAROL L. GENTRY NOTARY PUBLIC ORANGE COUNTY, N.C.

CAROL L GENTRY NOTARY PUBLIC ORANGE COUNTY NC

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DEED59D PG629

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

PERSONALLY appeared before me Dr. Douglas A. Rayner who, being duly sworn, says that he saw the within-named RAINTREE HOMEOWNERS ASSOCIATION by its President, its President-Elect, its Secretary and its Treasurer, sign the foregoing Deed, and the said RAINTREE HOMEOWNERS ASSOCIATION, by said officers, did seal said Deed, and as its act and deed, deliver the same, and that he with Dr. Gill Newberry witnessed the execution thereof.

Douglas A. Rayner
Witness

SWORN TO before me this
13th day of August, 1992.

Lucy B. Quinn (L.S.)
Notary Public for South Carolina
My Commission Expires:

NOTARY PUBLIC SOUTH CAROLINA LUCY B. QUINN

My commission expires
July 16, 1997

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EXHIBIT B

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March 28, 2023

Joan Holliday, Director
Spartanburg County Planning & Development
366 N. Church Street
Spartanburg, SC 29303

Re: **Request for Reconsideration of Conditional Approval**
T. Tree Farms, Blue Sky Associates, LLC

Dear Ms. Holliday:

Enclosed is a Request for Reconsideration of the Conditional Approval of the above major land development by the Planning Commission on March 7, 2023. This Request is to the Members of the Planning Commission.

Concerned Citizens are not aware of any cover sheets/forms or filing fees being required by the Planning and Development Department for their Request for Reconsideration. Please advise if such is required.

Sincerely,
CONCERNED CITIZENS

For communications, please contact Larry Jankins, ljankins@aol.com, 954-520-9229.

Enclosure
cc w/enclosure: All Planning Commission Members
Leigh McDonald, Planning Manager
Blue Sky Associates, LLC
Bob Walker, County Council
Jack Mabry, County Council

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REQUEST FOR RECONSIDERATION OF CONDITIONAL APPROVAL GRANTED BY PLANNING COMMISSION ON MARCH 7, 2023

RE: Application for Major Land Development
T. Tree Farms RV Park (Blue Sky Associates, LLC)
William A. McDaniel and Kimberli Burnett, Managers of Blue Sky Associates, LLC

TO: MEMBERS OF THE SPARTANBURG COUNTY PLANNING COMMISSION

Concerned Citizens are Spartanburg County residents, taxpayers, and/or parties in interest in the matter of T. Tree Farms RV Park (Blue Sky Associates, LLC). Many Concerned Citizens own or reside on contiguous property or property in the vicinity of the proposed RV park. Concerned Citizens' health, safety, general welfare, and rights are substantially affected and threatened by the Planning Commission's ("Commission") unlawful granting of Conditional Approval for the above project on March 7, 2023.

Concerned Citizens recognize that the Commission members are volunteers. Concerned Citizens are grateful for their service to the County. However, the meeting of March 7, 2023 was fraught with critical errors, misrepresentations, and omissions. Incorrect and incomplete information was presented to the Commission by the developer and the Planning and Development Department staff ("staff") for its deliberation and decision. This resulted in an unlawful and improper action by the Commission to grant Conditional Approval of the above project.

The Commission is bound to perform its duties as set forth by the State legislature in the SC Local Government Comprehensive Planning Enabling Act, SC Code 6-29-310, et seq. ("State Planning Act"). The Commission must implement land development programs which are designed **to promote public health, safety, and general welfare** of its area of jurisdiction. In the discharge of its responsibilities, the Commission must consider and effectuate these and other criteria set forth in the State Planning Act when reviewing a major land development application. The Commission also has the duty to correct errors in any staff decision or determination made in the administration of major land development applications pursuant to the Spartanburg County Unified Land Management Ordinance ("ULMO"), Section 5.01-2. Staff action to approve a land development plan may be appealed to the Commission by any party in interest pursuant to the Planning Act, Section 6-29-1150(C).

The actions of the Commission in reviewing and deliberating upon this major development application were arbitrary, unreasonable, in clear abuse of its discretion, not supported by competent evidence, and unlawful. The Conditional Approval granted by the Commission on March 7, 2023 is unlawful for many reasons which are more completely described herein and include the following:

- The Commission violated Sections 3.13(8), 3.13(4), 3.13(2), and 3.03-2 of the ULMO.
    - The developer does not have the required septic system "approved" by DHEC; the DHEC Board rescinded the septic permit.
    - The developer does not have the required "public water" to the site.
    - The developer does not have the required "comfort station" (restroom) on site plans.

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  - The developer's plan does not consider the natural features of the site, including federally-protected threatened plant species and waters of Goldmine Creek.

- The Commission violated its own Rules and Procedures at the meeting of March 7, 2023.
  - The Commission refused to recognize several Concerned Citizens who wished to speak.
  - The Commission allowed the developer's attorney to speak without his requesting to speak, without being invited to speak, without being sworn, and without any time limits.

- The Commission disregarded public health and received incorrect and incomplete information on the status of the developer's septic permit. The Commission refused to review:
  - The DHEC Board's Final Agency Decision rescinding the septic permit;
  - Information that the developer's septic system is half the size as required by DHEC regulations (as determined by the DHEC Board);
  - Information that the undersized septic system and harmful odor suppressing chemicals discharged from RV holding tanks into the septic system pose a threat to citizens' drinking water (wells and public water system); and
  - Information about the appeal by the developer of the DHEC Board's decision, which is solely related to procedural rules and not the substance of the septic permit;

- The Commission disregarded public safety and received incorrect and incomplete information on road safety and fire safety. The Commission refused to review:
  - The road safety engineer's comprehensive 10-page report concluding that "danger" is created by RVs on the very narrow (16 feet wide), steep (5.6° to 8.3°grade), curvy, old farm-to-market roads, which are privately owned and the primary GPS routes to/from Exit #1 of I-26 to the proposed RV park;
  - Evidence that these narrow, rural roads are used regularly for recreational purposes, including jogging, cycling, horseback riding, and training by the Landrum High School cross-county teams;
  - Evidence that RVs (8.5 feet to 9 feet wide) cannot physically and safely fit, especially with oncoming RV traffic, on the very narrow roads to/from Exit #1 of I-26 to/from the proposed park;
  - Photograph of a school bus going off the road to pass an oncoming school bus near the entrance to the proposed RV park on Landrum Mill Road, which is 17'4" wide;
  - Photograph of a car going off the road to pass an oncoming pickup truck on Fairwinds Road, which is 16 feet wide;
  - Photographs of the subject roads which have no shoulders and are bordered by 3 to 4 feet deep ditches; and
  - Information about the questionable sufficiency of the developer's fire suppression plan.

- The Commission violated the Freedom of Information Act by locking citizens out of its regularly scheduled meeting on March 7, 2023.

- The Commission reviewed the wrong and incorrect site plans from a prior application.

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- The Commission failed to vote in open forum on a Request for Public Hearing by 449 Concerned Citizens.

- The Commission Vice Chairman made improper introductory remarks which were prejudicial and improper and which preceded review and deliberation by the Commission members.

- The Commission failed to consider the required statutory criteria and violated the State Planning Act, the Comprehensive Plan for Spartanburg County Land Use Goals and Objectives ("Comprehensive Plan"), and the ULMO.
    - The Commission failed to follow and respect the policy and purpose of the State Planning Act, the ULMO, the Comprehensive Plan, and the Mission Statement of the Planning and Development.
    - The Commission ignored public health, public safety, general welfare, and the private property rights of citizens in the roads of ingress and egress to the proposed RV park;
    - The Commission ignored threats to public health and safety including citizens' drinking water (wells and public water system) and fire suppression (densely wooded conservation area).
    - The Commission disregarded the fact that about 2 miles of the roads for primary ingress and egress to the proposed RV park are privately owned and are wholly contained within property under private conservation easement with Upstate Forever.
    - The Commission disregarded the criteria of harmonious and compatible development, including the fact that the RV park parcel is surrounded by 5,000 acres which represent the largest formal conservation area in the Upstate with conservation easements and conservation-focused covenants and restrictions.

- The Commission violated the fundamental principles of due process as set forth in the United States Constitution and the SC Constitution.
    - The Commission denied citizens a meaningful opportunity to be heard.
    - The Commission unlawfully disregarded the Constitutional rights and private property rights of citizens who own the roads that are the primary GPS routes leading directly to the entrance to the proposed RV park.

- The Commission refused to allow Concerned Citizens to correct information, note misrepresentations, and to provide information on health, safety, general welfare, and private property rights.

- The errors, violations, and unlawful actions of the Commission are also derivative of and attributable to actions, errors, and misrepresentations to the Commission by the Spartanburg County Planning and Development Department and the Spartanburg County Administration. These include violations of the State Planning Act, the ULMO, and the SC Freedom of Information Act.

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Concerned Citizens provided packets of material and relevant information to each Commissioner at the March 7, 2023 meeting. Before the meeting started, the packets were placed at each Commissioner's chairs but were wholly and unlawfully disregarded by Commissioners. The packets contained the following items:

- Road Safety Audit: an expert engineer's review of proposed RV traffic on the primary route to/from the park; the road safety engineer concluded that "siting an RV park at 1970 Landrum Mill Road **"adds additional danger to already dangerous roads;"**

- Photographs of roads which are the primary route to the RV park: vehicles going off the very narrow roads to pass other oncoming vehicles, including school buses near the RV park entrance on Landrum Mill Road (17'4" wide); and an RV stuck on Racetrack Road (16' wide) where it could not make the turn toward I-26;

- Developer's Traffic Impact Analysis: an engineer's projection for 75,190 vehicles per year to be added to Landrum Mill Road and other private roads from the RV park;

- ULMO Section 3.13: the requirements for public water, comfort stations, approved DHEC septic system, and preservation of natural features and landscape;

- DHEC Regulation 61-51: the requirement that public swimming pools be supplied from a Public Drinking Water System;

- The County's Blank Online Application for Development: illustrates differentiation between water and well selection; the form states "water **or** well" and reiterates this difference in a drop down box;

- The DHEC Board's Final Agency Decision (3 pages) rescinding the developer's septic permit; and

- The Request for Public Hearing submitted by 449 Concerned Citizens on February 28, 2023.

For all the reasons set forth herein, the Concerned Citizens request reconsideration of the Conditional Approval of the above noted major development on March 7, 2023. Concerned Citizens offer the following in support of their request.

A. THE PLANNING COMMISSION VIOLATED SPECIFIC REQUIREMENTS OF THE ULMO.

Specific requirements of Section 3.13 of the ULMO were violated by the Commission in its Conditional Approval and the staff in its recommendation for the above project. Concerned Citizens have previously informed the Commission and the staff of these provisions and these violations, but here is what we would have summarized for the Commission had we had a chance to explain these violations to it:

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1. **"SEWER OR OTHER SYSTEM APPROVED BY DHEC**:" For an RV park, Section 3.13(8) provides that "each park site shall be serviced by . . . sewer or other systems **approved by DHEC**." This is mandatory.

   a) The septic system contained in the development plan was **rejected by the DHEC Board as having only one-half the capacity that is required for this development.** The DHEC Board is the highest authority and the governing authority at DHEC. It is the highest authority for public health and the environment in S.C. state government, with its members appointed by the Governor and approved by the S.C. Senate.

   b) The septic system for this development has been rejected by DHEC, **not "approved by DHEC."**

   c) The DHEC Board rejected this septic system not for some minor reason but as being severely inadequate and inappropriate for this development.

   d) The Commission accepted without question the statement by the developer's counsel that the Administrative Law Court had ruled against the DHEC Board's decision. But the Administrative Law Court did **NOT** address the determination of the DHEC Board that the septic system was severely inadequate**.** The Administrative Law Court only ruled on legalistic and procedural grounds that the request for the DHEC Board to review the permit was filed too late. The DHEC Board did not agree and addressed the system itself.

   e) As the record stands today, the septic system for this development has been rejected by DHEC, regardless of the issue of timing of a paper filing. **Therefore, this septic system and this development plan violate the County's own ordinance.** Pending litigation over whether a particular piece of paper was filed timely or late does not address the substance of the DHEC Board's determination.

   f) The Commission Vice Chairman mistakenly thought that all that mattered was the legal posture of the subsequent legal wrangling in reviewing the DHEC Board's decision; but those legal fights are based purely on technical procedural issues, and those legal proceedings have not questioned the substantive decision of the DHEC Board that the septic system for this development has only half the capacity that it should have. But the County ordinance is understandably not written just to follow some legalistic technical process. It **requires a system "approved by DHEC."** This system has been **rejected by DHEC's highest authority as severely inadequate**. See the attached Final Agency Decision of the DHEC Board.

To protect public health and safety and to follow the law, the Commission could not approve this development plan, yet it went ahead and did so in haste and without hearing fully from the Concerned Citizens about the many problems with this development plan.

Staff failed to present the complete and accurate status of the septic permit to the Commission. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

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The Commission violated this very clear requirement of the ULMO that the developer have a septic permit "approved" by DHEC. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, not based upon competent evidence, in clear abuse of its discretion, and unlawful.

2. "**COMFORT STATIONS:"** For an RV park, Section 3.13(4) provides that **"no site shall be located…less than 300 feet from a comfort station."** This is mandatory.

   a) A comfort station is a "bathroom" or "restroom." A comfort station is not an RV sewer connection hose as suggested by the developer to the staff.

   b) Concerned Citizens noted that there were no comfort stations on any of the developer's site plans posted by the County on March 3, 2023. Concerned Citizens emailed staff on March 6, 2023. Staff did not reply. (See attached emails.)

   c) The proposed RV park will have sites for 49 RVs and an additional 75 parking spaces for other vehicles. The number of park patrons in part illustrates the public health reason for a comfort station/restroom. Up to 75 carloads of patrons will be in the park without a camper containing a toilet.

   d) At the Commission meeting, staff arbitrarily and unlawfully recommended a waiver of the comfort station/restroom requirement. This is a public health issue and contrary to the public interest, which the Commission and staff chose to unlawfully disregard.

   e) The Commission never questioned this arbitrary and unlawful waiver of the requirement for a comfort station/restroom, and it never inquired as to who authorized this waiver of a specific ULMO requirement.

   f) The elimination of a comfort station is a variance and waiver of ULMO Section 3.13(4). Notice and a public hearing are required by Art. III, Public Hearings, Section 2 of the Commission's Rules and Procedures. The variance and waiver were arbitrarily and unlawfully decided by the staff. The Commission acted arbitrarily and unlawfully in failing to follow the proper procedure for deviations from the specific ULMO requirements.

   g) In 2021, **staff informed the developer that a comfort station must be included "or we will not be able to approve the plan" per ULMO 3.13.(4)**. (See attached 2 emails from Brandy Blake, Planning and Development Department, to the developer's engineer in 2021.)

The staff's recommendation to conditionally approve this project without a comfort station and to summarily disregard this ULMO requirement was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

In fact, the evidence is that the Planning and Development Department previously informed the developer that the County would "not be able to approve the plan" without the inclusion of a comfort station/restroom at the RV park.

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Concerned Citizens were denied the opportunity to speak and address the Commission on this public health issue and the spontaneous and unlawful variance by staff regarding the comfort station/restroom requirement of the ULMO. The decision by the Commission to waive this requirement of the ULMO Section 3.13(4) was completely arbitrary and not supported by substantial evidence. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

3. **"PUBLIC WATER:"** For an RV park, Section 3.13(8) provides **that "Each park site shall be serviced by public water."** This is mandatory.

   a) The County's blank application for a major site plan **differentiates between public water and a well**. (See attached blank application form.) A copy of the blank application was provided by Concerned Citizens to each Commissioner in a packet before the meeting started and was ignored.

   b) The application form requires the applicant *to select between "water **or** well."*

   c) The requirement of public water is a public health issue.

   d) Public water (piped with pressure) is a critical component of an adequate fire suppression system.

   e) The developer stated in its application that its "water source" was "ICW" (Inman Campobello Water District), which is piped water from a public water district system. This is a significant inconsistency. Yet, the Commission approved a "well."

   f) **For purposes of ULMO compliance, a well is not public water**. The common meaning of "public water" is piped water from a public water district system. The blank application form fully supports this meaning of "public water" by differentiating "water" or "well" in the selections to be made on the form.

   g) In fact, the developer's DHEC septic permit is based upon "public water" and not a well. On the agency's form application, DHEC provides a box to check for "public water" **or** "well. The developer **checked "public water"** on its application. The developer also stated that there will be "**2 public restrooms**" on the septic permit application. The developer has now made significant modifications: changing to a well for its water source and eliminating all rest rooms. (See attached application by the developer to DHEC for its septic permit.)

   h) The situation presents a public health and public safety matter in Spartanburg County. Potential negative impact of a commercial well on nearby residential and agricultural wells is also posed. Concerned Citizens have consulted with a hydrogeologist on this issue.

   i) DHEC does not have jurisdiction over what source is required for water for a local land development. That is within the power of local government. ULMO Section 3.13(8) is controlling as to what water source is required for the RV park.

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j) The septic permit issued by DHEC on June 22, 2021 contains a condition:

> **"Any changes to the system must be approved by DHEC. Any unapproved changes will *VOID* this permit."** (See attached septic permit).

k) The developer has **changed its water source from public water to a well and deleted the 2 public restrooms**. Any modification to the developer's permit must be approved by DHEC. Absent DHEC's approval of these modifications, the permit is VOID. The Commissioners asked questions about staff discussions with DHEC but did not inquire whether these changes had been approved by DHEC.

l) The failure of the staff to require proof from the developer of DHEC's approval of these 2 significant changes in the septic permit was in error and unlawful.

Concerned Citizens were denied the opportunity to speak and address the Commission on this public health and safety issue.

The staff's recommendation to disregard this ULMO requirement for "public water" was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

The Commission must enforce the County's requirement that an RV park must be supplied with "public water" as set forth in ULMO 3.13(8). The Commission's action to grant Conditional Approval with a well as the water source and to disregard the explicit requirement of the ULMO for "public water" was arbitrary, unreasonable, is not supported by substantial evidence, poses a public health risk, poses a public safety (fire) risk, and is unlawful.

4. "**NATURAL FEATURES and LANDSCAPE:"** For an RV park, Section 3.13(2) provides that **"The site shall be developed in a manner that preserves natural features and landscape."** This is mandatory.

a) The proposed RV park is located immediately adjacent to the largest parcel under private conservation easement with Upstate Forever. The parcel is surrounded by thousands of acres of land with private conservation easements and conservation-focused covenants and restrictions.

b) Threatened species of plants exist on the site. Hexastylis naniflora (Dwarf Flowered Heartleaf) is a federally-protected threatened species and a high priority species in South Carolina's State Wildlife Action Plan. (See attached reports: Terra Incognita-L.L. Gaddy and Mountains to Sea Ecological, which identifies "several hundred clumps" of the dwarf heartleaf on the embankments on both sides of Goldmine Creek, which flows through the RV park parcel.) The developer has not conducted a survey to locate the plants on the site and has not conducted a study to determine what must be done to preserve these natural features on the site or to prevent adverse impact on plants off the site and downstream. The development plan contains absolutely nothing to preserve these natural features or these parts of the landscape, and there is no mention of these natural features or the landscape in the conditions.

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c) In fact, the current plan includes a detention pond which is to be built very near the stream and land disturbance and construction on the hillside. **It is obvious that this plan will destroy federally-protected and state-listed plants or their habitat or both.**

d) In addition, Goldmine Creek, which runs along the property, is a high-quality Piedmont headwaters stream that provides habitat and clean water for this species as well as the Ashy Hydrangea, another rare species listed in the State Wildlife Action Plan. Again, nothing in the development plan or the conditions provides for protections of this special water resource or for its function as an essential part of the habitat for these rare species downstream.

e) Goldmine Creek is a first-order, freshwater tributary of the North Pacolet River, which feeds into Lake Bowen and the Spartanburg water supply. The creek is one of the last few "pure streams" in the State. Stormwater and runoff issues exist with the proposed RV park. Also, the discharge of odor suppressing chemicals from RV wastewater holding tanks into a septic system above this creek is a major pollution concern.

f) Four conservation organizations have joined in this matter to protect the natural resources and environment from the harm which this RV park poses: Upstate Forever, the South Carolina Environmental Law Project, the Southern Environmental Law Center, and the South Carolina Native Plant Society.

g) Staff and the Commission failed to address this requirement of the ULMO in its review of the application. The staff had been made aware of this parcel being located in a conservation area and next to Goldmine Creek in 2021 and continued to ignore these facts of the rare plant species and of Goldmine Creek.

The staff's failure to address this ULMO requirement in its review of the application was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

Concerned Citizens were denied the opportunity to speak and address the Commission on this requirement of the ULMO. Concerned Citizens were denied the opportunity to provide an ecological report identifying the federally-protected and state listed species of plants as well as the unique environmental conditions of Goldmine Creek. The violation of this requirement of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

5. **RV NOT TO BE USED AS RESIDENCE:** ULMO Section 3.03-2 states that **an RV may not be used as a residence** for more than 90 days within a 12-month period and only while building a residence on site.

a) The developer's application states that "The business will have one employee," i.e., the "work camper" or "camp host" living onsite in an RV to check guests in and out and take payments.

b) The developer stated in the application documents that she will be living on-site in an RV to manage the RV park for the first 6 months. No residence is being constructed.

c) Staff arbitrarily and unreasonably failed to enforce this ULMO provision in reviewing the specifics provided by the developer in its application.

d) This is a violation of the ULMO Section 3.03-2 and constitutes a staff error to overlook this provision.

The staff's failure to address this ULMO requirement in its review of the application was in error. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

Concerned Citizens were denied the opportunity to speak and address the Commission on these requirements of the ULMO. The violation of these requirements of the ULMO by the Commission was arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

B. THE COMMISSION VIOLATED ITS OWN RULES OF PROCEDURE.

1. SC Code 6-29-360 and the Planning Commission Rules and Procedures were violated at the Commission Meeting on March 7, 2023. Section 7 of the Commission's Rules, which must be adopted and followed per the State Planning Act, SC Code 6-29-360, provides:

> "Except for public hearings, no person other than Commission members and appointed staff shall speak at a Commission meeting **unless recognized by the Chairman and invited to speak.** All persons speaking shall state their name for the public record."

State law and the Commission's Rules and Procedures were violated by permitting the developer's attorney to speak without being recognized, invited, or sworn, and no time limit was imposed upon him.

The Commission Rules and Procedures were also violated by imposing a limitation on which person(s) could speak on behalf of the 80-100 Concerned Citizens who were present, when a few planned to request to be invited to speak as provided in the Commission Rules and Procedures.

a) During the staff presentation of this application to the Commission, Vice Chairman McCall stated the developer's "engineer" would be allowed to speak.

b) Vice Chairman McCall then allowed the developer's attorney, Alex Shissias, to speak and address the Commission on multiple issues. The developer's attorney walked from the back of the room to the podium and took the microphone.

c) The developer's attorney was allowed by the Vice Chairman to speak and to present detailed statements and opinions to the Commission related to the DHEC septic permit, on-site well drilling, obtaining a public water line, opposition from residents, action by the State Administrative Law Court regarding the septic permit issued in June 2021, and legal proceedings. The developer's attorney advised the Commission that a septic permit need not be specified as a new condition for approval.

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d) The developer's attorney did **not ask to be recognized, was not invited to speak by the Vice Chairman, was not sworn in, and no time limit was imposed upon him.** This was all in violation of the Commission's Rules and Procedures.

e) The developer's attorney may not have even stated his name or identified himself as the developer's attorney. Concerned Citizens are seeking an audio recording of the meeting to confirm.

f) The RV park developers' attorney was seated at the Commission meeting next to the developers, William A. McDaniel and Kimberli Burnett, managers of Blue Sky Associates, LLC. William A. McDaniel is well known to officials and staff within County government. Mr. McDaniel has been appointed by County Council to sit on a County Board for multiple terms since 2019. Mr. McDaniel was also appointed by County Council in 2020 to serve on an ad hoc committee with several other County Councilmen concerning water issues in Lake Bowen.

g) Several days prior to the meeting, a Concerned Citizen emailed Chairman Kennedy and Vice Chairman McCall and requested that a few Concerned Citizens and he be allowed to speak in accordance with the Commission Rules of Procedure. (See attached email from William P. Mills, Jr.) The Commissioners did not reply.

h) On March 3, 2023, the County posted a new site plan dated March 1, 2023 which increased the site for this RV park by 250%. The March 1 site plan significantly altered prior plans dated February 7 and February 16, 2023. Citizens were not allowed to speak or ask questions about this major increase in size of the park being announced 2 business days before the Commission meeting. The Commission did not inquire about this significant increase.

i) At the meeting, Vice Chairman McCall first announced that he would not allow Concerned Citizens to speak. After the matter was tabled to the end of the meeting, Vice Chairman McCall stated that he would allow Russell Rock, a Concerned Citizen, to speak for 5 minutes, but Mr. Rock would not be allowed to ask any questions. Mr. Rock was not prepared to speak and asked to yield the allotted 5 minutes to other Concerned Citizens who had prepared to speak on specific issues including the septic permit litigation update and road safety. Vice Chairman McCall denied the request stating, "You and only you."

j) Mr. Rock requested that Concerned Citizens be allowed to provide useful information to the Commission so that it could make a "well-reasoned, informed decision" as to the proposed RV park.

k) Vice Chairman McCall asserted that no other Concerned Citizens would be allowed to address the Commission and refused information from Concerned Citizens about the many issues, including private ownership of the roads, misrepresentations, errors by staff, accurate status of the septic permit, road safety report, health, safety, and non-harmonious and incompatible development in the subject agri-residential conservation area.

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l) Mr. Rock did not know all of the Concerned Citizens in attendance and did not know what they may have wished to speak to the Commission about.

m) Mr. Rock swore himself before speaking.

n) Vice Chairman McCall imposed a 5-minute time limit on Mr. Rock.

o) Vice Chairman McCall cut Mr. Rock off at the 5-minute mark.

2. The Commission allowed the developer's attorney to speak and present information and opinions. Yet, the Commission unlawfully constrained Concerned Citizens and ignored their Constitutional rights to be heard on critical safety and health issues as well as private property rights (ownership of roads which are the route to/from the RV park).

These actions violated the Citizens' Constitutional rights, the Planning Commission Rules and Procedures, the State Planning Act, and the ULMO. These actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, and unlawful.

C. INCORRECT AND INCOMPLETE INFORMATION WAS RECEIVED BY THE COMMISSION ON ROAD SAFETY. THE COMMISSION ERRED IN GRANTING CONDITIONAL APPROVAL WITHOUT ADEQUATELY ADDRESSING PUBLIC SAFETY.

1. The Commission improperly conflated 2 separate reports dealing with traffic flow and road safety.

a) In open discussion, the Commissioners confused the developer's Traffic Impact Analysis ("TIA") and the separate Road Safety Audit.

b) These are 2 <u>separate</u> reports. (See attached pages from the TIA and the Road Safety Audit.)

c) The TIA simply addresses projected volume and direction of traffic generated from the RV park.

d) The 10-page Road Safety Audit by J.M. Teague Engineers assessed the hazardous impact ("danger") of RVs on the narrow roads that are the direct GPS routes to and from the proposed RV park. RVs will not physically fit on the 16-foot-wide roads, which are <u>owned</u> by citizens whose properties include the roads.

e) Richie Smith, County Development Coordinator in the Stormwater Department, addressed the TIA, and said there was no problem. He <u>did not address the Road Safety Audit</u>.

f) From the dialogue between Commissioners and Mr. Smith, it was clear that there was confusion about the separate Road Safety Audit.

g) Incorrect, incomplete, and misleading information was presented to the Commission by staff.

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h) Concerned Citizens were not allowed to speak and address this incorrect, incomplete, and misleading information and clarify that the TIA and Road Safety Audit were separate.

i) The Road Safety Audit was provided by Concerned Citizens to each Commissioner in a packet, which Commissioners wholly ignored and disregarded at the meeting.

j) The Road Safety Audit was given to several County staff members, including the County Administrator, 3 County Councilmen, and the County Attorney in August 2021 at a community meeting. The road safety engineer presented his findings in person. This written Road Safety Audit is in the County's possession and has been for 18 months.

k) It was evident at the meeting that the Commissioners were not provided with the Road Safety Audit by staff.

l) In the Road Safety Audit, the qualified road safety engineer concluded that that RV traffic from the proposed RV park over the only routes to/from the park **"adds additional danger to already dangerous roads." These roads are privately owned by the citizens.**

m) This poses a major danger to health, safety, and general welfare of all persons using these privately owned roads for travel and daily recreational purposes, including jogging, cycling, horseback riding, and training by the Landrum High School track team.

n) Concerned Citizens were denied the opportunity to speak and address the Commission on this major public safety issue involving their privately owned roads. Concerned Citizens attempted to present photos (contained in the packet for each Commissioner) of a school bus going off Landrum Mill Road (17 feet wide) onto the shoulder to pass another bus as well as a car and pickup truck not being able to stay on the pavement next to ditches on another narrow, privately owned road (16 feet wide). These roads are the primary GPS routes to and from I-26 to the RV park. RVs cannot physically fit and present a major safety hazard on these roads, especially with no shoulders, deep ditches, steep slopes, blind curves, and hills.

2. Concerned Citizens submit that the Commission must consider the Road Safety Audit in its deliberations on this project pursuant to the US Constitution, SC Constitution, the State Planning Act and the ULMO. Specifically, the State Planning Act's purpose and policy imposes a duty upon the Commission to promote "safety."

3. To ignore these road conditions and expert findings regarding the significant danger and hazards of the proposed RV park traffic is in conscious disregard of the rights of citizens, public safety, and public well-being.

4. The Commission totally and unlawfully disregarded the citizens' private property rights/ownership in the subject roads which will be saddled with major hazards from RVs and park traffic.

The Commission deliberated upon erroneous, incomplete, and misleading information presented to it by the staff. The Commission has the duty to correct staff errors pursuant to ULMO Section 5.01-2.

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The Commission erred in granting Conditional Approval of the plan without fully addressing public safety and private property rights. The actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, not based upon competent evidence, and unlawful.

D. THE COMMISSION TOTALLY DISREGARDED THE FACT THAT CONCERNED CITIZENS OWN THE SUBJECT ROADS. MILES OF THESE ROADS ARE IN LANDS UNDER CONSERVATION EASEMENT WITH UPSTATE FOREVER.

1. The proposed RV park is located on Landrum Mill Road. The commercial traffic to/from the RV park, including large RVs, will travel on Landrum Mill Road.

   a) Citizens **own to the center line of Landrum Mill Road**, except for a few feet at the RV Park entrance.

   b) About one-half mile of Landrum Mill Road at the RV Park entrance is owned to the center by Greenspace, LLC and **under formal conservation easement with Upstate Forever**.

2. **All portions** of the roads which are the GPS routes to/from I-26, Exit #1 to/from the RV park, are **privately owned.**

   a) These roads include Turkoman Trail, Racetrack Road, and Fairwinds Road.

   b) Turkoman Trail and Racetrack Road are about 2 miles long, totally contained within Greenspace, and are **under private conservation easement with Upstate Forever.** These roads are used for recreational purposes and include trails which cross over the roads.

   c) These roads are 16 feet wide and present hills, steep slopes, curves, no shoulders, and deep ditches. These roads are not safe for RV traffic as concluded by a qualified road safety engineer.

   d) The county maintains these roads for habitual, low-volume, rural-residential traffic under a prescriptive easement, as asserted by the county.

   e) The RV park will add 75,000 vehicles per year, including large RVs with vehicles in tow, to these roads per the developer's traffic projections.

3. This enormous volume of commercial traffic consisting of large RVs will unlawfully interfere with the road owners' private property rights and is non-harmonious development. Such traffic would not be habitual, not be low-volume, and not be rural-residential. Such RV park traffic would be high-volume commercial, for-profit traffic which exceeds, abuses, and overburdens any prescriptive easement claimed by the county, particularly through a formal conservation area. Such traffic would not be compatible use of the privately owned, rural-residential roads as set forth in the Comprehensive Plan.

4. This enormous volume of commercial traffic consisting of large RVs would pose an undue and

unreasonable liability and insurance burden on the road owners particularly with the road safety engineer's opinion concerning the danger posed by RV traffic with road conditions.

5. Concerned Citizens were denied the opportunity to present information on their private property rights and road ownership to the Commission. The county is totally aware of private ownership of the roads. This issue was addressed in 2021 in the Road Safety Audit, which was provided to multiple members of county staff in person. The staff failed to present this information to the Commission on March 7, 2023 and misrepresented to the Commission that there was "no problem."

The Commission disregarded the fact that the subject roads are privately owned and refused to allow citizens to present this information on March 7, 2023. These actions by the Commission were arbitrary, unreasonable, in clear abuse of its discretion, not based upon competent evidence, and unlawful. The actions by the Commission to deny due process to Citizens and disregard private property rights is a violation of the United States Constitution and the SC Constitution.

E. THE SC FREEDOM OF INFORMATION ACT WAS VIOLATED: Citizens were locked out from the Commission Meeting.

1. Section 30-4-60 of the SC Freedom of Information Act ("FOIA") was violated by the County Administration, County Staff, the County Attorney, and the Commission at its regularly scheduled meeting on March 7, 2023.

   a) At the meeting, the Commission moved the RV park matter to the end of the agenda. There were 80-100 Concerned Citizens in attendance who were hoping for a meaningful discourse on the key issues.

   b) Upon this change in the agenda order, about half of the Concerned Citizens stepped into the hall outside of chambers.

   c) Many Concerned Citizens were then locked out and refused re-entrance to the meeting by a uniformed guard/officer.

   d) The doors to the County chambers were locked so as to prohibit entering from the hall.

   e) The County Attorney was present at the Commission meeting and acted to oversee the procedures at this meeting. Other County staff members were also present.

   f) When Concerned Citizens knocked on the door, a uniformed guard/officer refused to let them enter and stated that the meeting had to be finished (without them entering).

   g) About half of the Concerned Citizens, many who are senior citizens, left when the RV park item was moved to the end of the agenda by the Commission and re-entry was denied.

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2. The open meeting provision of the SC Freedom of Information Act, Section 30-4-30, provides that every meeting of all public bodies "shall be open to the public" unless closed pursuant to specific provisions of the Act.

   a) This statute was violated, and actions taken by the Commission at the March 7, 2023 meeting may be deemed null and void.

   b) SC Code 6-29-360 and the Planning Commission Rules and Procedures (Art. II, Section 2-Compliance with SC Freedom of Information Act) were also violated.

Concerned Citizens have filed a complaint about this FOIA violation with the SC Attorney General's office.

F. THE PLANNING COMMISSIONERS WERE GIVEN INCORRECT SITE PLANS (from 2021) FOR THEIR DELIBERATIONS ON MARCH 7, 2023. THIS CONSTITUTES ERROR IN THEIR REVIEW AND DECISION.

1. At the meeting on March 7, 2023, the Commissioners were to review a new application submitted by the developer on February 7, 2023 for its proposed RV park. From all indications, the Commissioners reviewed incorrect site plans from a prior application in 2021, which contained errors about ownership of the roads (owned by citizens) and a misrepresentation about a non-existent right of way. This misrepresentation was acknowledged by the County in 2021.

   a) The developer previously applied for development of this RV park on the same parcel in February 2021 with site plans dated February 24, 2021. Those 2021 site plans are substantially different from the March 1, 2023 site plans.

   b) Of utmost importance, **the 2021 site plans contain a material misrepresentation of a non-existent right of way (for a water line). This misrepresentation was acknowledged by the County**.

   c) On July 13, 2021, the Director of Public Works wrote to the County Attorney that the site drawings contained a "misrepresentation of the ROW along Landrum Mill Road," and that needs to be "corrected." (See attached County internal email communication.)

   d) A condition of the Conditional Approval of March 7, 2023 was that that the prior 2021 application be withdrawn. The 2021 application was not on the Commission meeting agenda for March 7, 2023.

   e) After the March 7, 2023 meeting concluded, Concerned Citizens observed and picked up full-size site plans which were left behind by the Commissioners on the table at their chairs. **These site plans are dated February 24, 2021.** Concerned Citizens **did <u>not</u> observe any site plans dated <u>2023</u>** on the table in front of the chairs.

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f) In 2021, the February 24, 2021 site plans were acknowledged by the County to contain a misrepresentation. The plans contain a **material misrepresentation** of private property rights and a non-existent right of way.

g) Concerned Citizens are informed and believe that the County staff presented **these incorrect and misleading site plans from 2021, which contained a critical erro**r, to the Commission on March 7, 2023 for its deliberations. On July 6, 2021, Concerned Citizens alerted the Commission to the critical misrepresentations in these and other site plans, and the County internal communication about the misrepresentations followed a week later on July 13, 2021.

h) The fact that the Commissioners had the February 2021 site plans in front of them raises the question as to whether they were reviewing the proper site plans associated with the 2023 application under deliberation.

i) Concerned Citizens are informed and believe that the Commissioners were given the wrong site plans by County staff and that the Commissioners did not properly deliberate upon the March 1, 2023 site plans for the pending application.

2. If the Commissioners did not have the correct site plans of March 1, 2023 to review and rather deliberated upon the incorrect plans of February 2021 with material misrepresentations, then the Commission erred. The Conditional Approval issued by the Commission on March 7, 2023 would be null and void as a violation of the State Planning Act and the ULMO.

3. Even if the Commissioners reviewed the 2023 plans, they should not have been given the 2021 site plans **which were acknowledged by the County (in an internal communication) to contain misrepresentations about private property rights, a non-existent right of way, and road ownership.** To review and deliberate upon incorrect site plans with misrepresentations was an error by the Commission. This error renders the Conditional Approval null, void, and unlawful.

4. Of equal importance about site plans: The site plans of March 1, 2023 were posted with the Commission's agenda on March 3, 2023. These site plans **increased the overall footprint of the proposed RV park by 250%** (15 acres to 38 acres). In its new 2023 application dated February 7, 2023, the developer submitted 3 or more sets of original and revised site plans. Concerned Citizens are aware of site plans dated February 7, 2023, February 16, 2023, and March 1, 2023. The later revised plan was posted by the County on March 3, 2023 on its website (Agenda Center) and contained the 250% increase in the size of the acreage to be used for the RV park.

   a) The 250% increase in size of the proposed RV park (posted 2 business days prior to the Commission meeting on the internet) was not discussed or considered by the Commission.

   b) No questions were asked by the Commissioners.

Concerned Citizens were not permitted to ask questions about this substantial increase in size of the proposed RV park footprint. The Commission's failure to address this last minute, major change in the site plans was in error and unlawful.

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G. NO VOTE WAS HELD IN OPEN FORUM WITH REGARD TO CONCERNED CITIZENS' REQUEST FOR PUBLIC HEARING.

1. On February 28, 2023, a written Request for Public Hearing was submitted by 449 Concerned Citizens **specifically to the Members of the Planning Commission**. The request was not based exclusively on the ULMO but also the SC Constitution and the State Planning Act.

    a) Prior to the start of the Planning Commission meeting on March 7, 2023, Vice Chairman McCall told Concerned Citizen Russell Rock that the Commission would not hold the requested public hearing.

    b) On March 3, 2023, Councilman Jack Mabry advised a constituent that there would not be a public hearing with the Commission and that "if it does not turn out, you can push it to the Circuit Court of Appeals."

    c) The Commission did not discuss, consider, or vote on the Citizens' Request for Public Hearing in open forum at the meeting on March 7, 2023.

    d) Despite repeated inquiries, Concerned Citizens have not been informed of who reviewed and made decisions on the 449 Citizens' Request for a public hearing pursuant to the SC Constitution, the State Planning Act, and the ULMO.

2. This action by the Commission violates the SC Freedom of Information Act (open meetings per SC Code 30-4-60) and the SC Constitution. This action is unlawful.

H. PREJUDICIAL AND BIASED REMARKS WERE MADY BY THE COMMISSION VICE CHAIRMAN.

1. Introductory remarks by Vice Chairman McCall at the Commission meeting on March 7, 2023 were prejudicial, inherently influential, and improper.

    a) At the beginning of the T Tree Farms RV park application coming up on the meeting agenda, Vice Chairman McCall made a general statement to the Commission, staff, and audience about **"this RV park <u>THAT IS GOING IN</u>."**

    b) This statement was highly prejudicial, biased, displayed a preconceived notion about approval, was not impartial and inherently influential. This remark by the Vice Chairman cast undue influence on the Commissioners <u>before</u> any presentation on the project by staff and <u>before</u> any deliberation by the Commissioners.

2. This improper, prejudicial, and biased remark by the Vice Chairman, who was the presiding officer conducting the meeting, tainted the Commission's deliberations. The Vice Chairman exceeded his function and duty to conduct the meeting. Outside of a formal discussion, the Vice Chairman is not authorized to express his personal opinions in the meeting. His improper, prejudicial, and conclusory remark renders the Conditional Approval and the vote thereon null, void, and unlawful.

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I. THE PLANNING COMMISSION VIOLATED THE STATE PLANNING ACT, THE COMPREHENSIVE LAND USE PLAN, and the ULMO.

1. The County is required by the State Planning Act, Section 6-29-510, to implement its Comprehensive Plan and to establish a planning commission to function for a specific purpose.

   a) In granting Conditional Approval, the Commission violated the State Planning Act by not following the policy, purpose, and requisite elements of the State Planning Act, the Comprehensive Plan, and the ULMO. These elements include a natural resources element, community facilities element (water supply, sewage system/wastewater treatment), and land use element (consideration of existing land use).

   b) The State Planning Act requires the County to adopt and implement its Comprehensive Plan. That plan requires the County to use measurable criteria to limit the impact of adjacent land uses on one another and consider incompatibility resulting from traffic, noise, light, intensity of use, visual impact, and environmental impact. A stated goal of the Comprehensive Plan is to "prohibit intense incompatible nonresidential development from location on roads where the majority of the activities are residential." The Staff Recommendation to the Commission did not contain any of these evaluations, and the Commission failed to review, evaluate, and deliberate on the application with consideration of these criteria. This failure to so act violates the State Planning Act.

   c) The Mission Statement of the Planning and Development Department is "to plan comprehensively for the orderly growth and harmonious development" of Spartanburg County. The Commission disregarded its mission, policy, and purpose to plan for "harmonious" development and refused to allow citizens to provide information about their agri-residential area, which is immediately adjacent to and surrounds the proposed RV park. The land that surrounds the proposed RV park is a 5,000-acre conservation-focused area with thousands of acres under formal, private, conservation easements with 2 land trusts. These lands are subject to deeded, conservation-focused covenants and restrictions. The commercial RV park is NOT harmonious and compatible development in this area. This violates the State Planning Act and the ULMO.

   d) Under State law, the County's ULMO, the county's land development program is implemented by the Commission and must promote public health, safety, and general welfare. The Commission unlawfully failed to consider public health, safety, and general welfare in its review and deliberations on the subject application.

   e) The Commission's Conditional Approval does not promote public health, safety, and general welfare. On the contrary, the Conditional Approval poses a threat to these elements. The septic permit and septic system pose a threat to public health as determined by the State DHEC Board. The septic system poses a threat to the environment and the federally-protected threatened species on and near the RV park parcel. The RVs on the roads owned by Concerned Citizens pose a threat to public safety and add "additional danger to already dangerous roads" as determined by a road safety engineer. This violates the State Planning Act and the ULMO.

f) As a matter of public safety, the Fire Plan for this proposed RV park warrants further review. Concerned Citizens were not given time to speak and address this at the Commission meeting on March 7, 2023. Local engineers reviewed the plan. On its face (with 3,000 gallons of water in an underground storage tank that is not pressurized, dry hydrants, and no public water to the site), the plan appears insufficient for an RV park. Concerned Citizens recently received a copy of the Fire Plan and must be afforded a reasonable opportunity to review the plan for adequacy. The safety and properties of Concerned Citizens are at stake. To prevent Citizens from providing input on the issue of fire suppression for this large commercial RV park development is a violation of their Constitutional rights, the State Planning Act, and the ULMO.

2. The Commission violated specific requirements of the State Planning Act and the ULMO in its Conditional Approval of this major land development. The Commission disregarded information and competent evidence from Concerned Citizens and other sources concerning these requirements.

The Commission's decision was arbitrary, not supported by competent evidence, and is unlawful.

J. CITIZENS' RIGHTS TO DUE PROCESS WERE VIOLATED.

1. The South Carolina Constitution, Article I, Section 22 provides:

> "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard."

2. The United States Constitution imposes constraints on governmental decisions which deprive individuals of liberty or property interests.

3. The fundamental requirements of due process include notice and an opportunity to be heard in a meaningful way.

4. The Commission has the duty to afford Concerned Citizens their Constitutional rights including due notice and an opportunity to be heard in meaningful way.

5. The Vice Chairman summarily and unlawfully denied the request of 449 Concerned Citizens for a Public Hearing and further denied the requests of many Concerned Citizens to be heard at the March 7, 2023 meeting. If time constraints were an issue, the Commission should have rescheduled this major land development application to another date and given Concerned Citizens the opportunity to speak and be heard.

6. The Commission failed to afford Concerned Citizens their fundamental Constitutional rights under the United States Constitution and the South Carolina Constitution. The Conditional Approval granted by the Commission is unlawful.

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7. The Commission violated its own Rules and Procedures. Commission Rules, Art. III, Public Hearings, Sections 2.3 provide that a public hearing before the Commission is a "forum for people interested in the subject matter to present information to the Commission for their consideration as they deliberate an issue." Concerned Citizens were not afforded a public hearing by the Commission.

REQUEST FOR RECONSIDERATION

In summary, the State Planning Act provides that the function and duty of the Commission is to promote public health, safety, and the general welfare of its area of jurisdiction. The Commission is obligated to perform that duty.

The actions of the Commission at the meeting of March 7, 2023 and review of the above application failed to comply with the State Planning Act as well as the United States Constitution, the South Carolina Constitution, the SC Freedom of Information Act, and the ULMO. The actions of the Commission on March 7, 2023 were in error, arbitrary, not supported by substantial, credible evidence, and unlawful. The Commission breached its statutory duty, and the Conditional Approval of March 7, 2023 is unlawful.

This major land development poses a very real threat to citizens' safety, health, general welfare, private property rights, and the environment. Concerned Citizens have been denied their Constitutional rights. Concerned Citizens have also been denied the opportunity to provide correct, relevant, competent evidence to remediate the incorrect, misleading, and erroneous material and lack of proper information upon which the Commission deliberated.

The *South Carolina Guide to Land Use Planning*, which is published by the South Carolina Association of Counties, states that a local planning commission "serves as the citizen advisory group" to the County. A commission exists to carry out "a continuing planning program for the benefit of the community it serves." The Guide further notes that there is a need for public input and plans require a "close and continuous collaboration between citizens and local government."

Public safety is a valid concern and is a matter of public policy in any land development. Safety must be a consideration for the Commission as required by the policy and purpose of the State Planning Act as well as the ULMO. Many of Concerned Citizens own the roads which are the primary routes of ingress and egress to the park. The RV park traffic will flow over the private roads owned by Concerned Citizens and present real safety hazards and "danger" as identified by a qualified road safety engineer after a comprehensive, on-site study. Concerned Citizens will be directly impacted by the safety hazards imposed by the RV park traffic on their private roads, which are too narrow to physically and safely accommodate the RVs. Concerned Citizens will also be impacted by the additional traffic (75,000 vehicles per year) generated by the park. The Commission's Conditional Approval is in total disregard of the safety of Concerned Citizens and their property rights. Thus, the Conditional Approval is unlawful.

Health of citizens is a valid concern and is a matter of public policy in any land development. Public health must be a consideration by the Commission as required by the policy and purpose of the State

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Planning Act as well as the ULMO. The health of Concerned Citizens is irrefutably threatened by a septic system which the SC Board of Health and Environmental Control determined to be undersized and lacking capacity. The Board did not approve the permit but rather rescinded it, citing the State Pollution Control Act Section 101 (C) (real or potential threats to the health of citizens). The Commission is permitting a major land development to go forward with this deficient septic permit. The Commission's Conditional Approval is in conscious disregard of the rights and health of Concerned Citizens. Thus, the Conditional Approval is unlawful.

The environment and natural resources of the State of South Carolina are valid concerns and matters of public policy in any land development. The impact upon the environment, including federally-protected threatened plant species, pollution of citizens' drinking water wells, and pollution of the public drinking water system, must be a consideration by the Commission as required by the policy and purpose of the State Planning Act as well as the Federal Clean Water Act, the State Pollution Control Act, and the ULMO. The environment and citizens' drinking water are clearly threatened by the septic system proposed by the developer. The SC Board of Health and Environmental Control made that determination on December 21, 2021 when it rescinded the septic permit under the State Pollution Control Act. (This may be the first time in the State's history that the Board so acted to rescind a septic permit.) The odor suppressing chemicals used in RV wastewater holding tanks are harmful, contain carcinogens, and will be discharged into the ground above Goldmine Creek through an undersized, deficient septic system.. These harmful chemicals have been banned from use in RVs in other states and have been the subject of an EPA bulletin and numerous research studies. The Commission's Conditional Approval is allowing a major land development to go forward in conscious disregard of the environment, natural resources, and drinking water of this State. Thus, the Conditional Approval is unlawful.

The County Administration, the County Attorney, County Council, and the Commission seem to contend that no public hearing is required by the ULMO and that the citizens do not have a right to be heard in this matter solely based upon the ULMO. Such a contention supports the argument that the entire ULMO, Spartanburg County land development program, and Commission Rules and Procedures are unconstitutional and violate the fundamental principles of due process of the United States Constitution and the South Carolina Constitution.

This RV park project is not a routine land development application but yet was pushed forward by the County in 28 days. The Commission acted hastily and unlawfully disregarded many critical issues.

- An identified, serious threat to citizens' safety on the roads is involved.
- The largest private conservation area in the Upstate is involved.
- Identified, serious threats to citizens' health, drinking water, and the environment are involved.
- Federally-protected and State-listed threatened species of plants are involved.
- Development which is not harmonious and not compatible is involved.

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- Violations of the mandatory provisions of the State Planning Act and ULMO are involved.
- Private property rights of citizens are involved.
- Of great importance, fundamental Constitutional rights of citizens are involved.

For the foregoing reasons and good cause:

We, the People, who are the affected and Concerned Citizens, request (1) that the Commission acknowledge the numerous errors and violations in its review of the subject application; (2) that the Commission immediately stay its Conditional Approval of March 7, 2023 until such time as the Commission can fully review and reconsider the issues raised herein in light of the irreparable harm being threatened to citizens' health, safety, private property rights, and the environment; and following such reconsideration (3) that the Commission declare its Conditional Approval of March 7, 2023 null and void. The Commission's Conditional Approval is unlawful, and too much is at stake to risk this project going forward at this time.

A reply to the above is requested <u>from the Planning Commission Members</u> to the person noted on the cover letter herewith.

Submitted By Concerned Citizens March 28, 2023

To: <u>Planning Commission Members</u>
Douglas C. Brackett, Secretary
Donna Turner Williams
Whit Kennedy, Jr., Chairman
James William Hamilton
James Les Green
Toby Mark McCall, Vice-Chairman
Lewis Allen Newman
Stewart Winslow
Francis Parker Champion

cc: Joan Holliday, Director, Planning & Development Dept.
Leigh McDonald, Planning Manager, Planning & Development Dept.
William A. McDaniel, Manager, Blue Sky Associates, LLC
Kimberli Burnett, Manager, Blue Sky Associates, LLC