

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

John Hamilton Smith, Special Referee

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Case No. 2010-CP-40-8943R  
Appellate Case No. 2013-001067

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**RECEIVED**

MAY 22 2014

**S.C. Supreme Court**

Columbia Venture, LLC,

v.

Appellant,

Richland County,

Respondent.

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**REVISED RECORD ON APPEAL  
VOLUME 12 OF 13  
PAGES 5185 - 5662**

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# REVISED RECORD ON APPEAL<sup>1</sup>

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JOB NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

DATE \_\_\_\_\_

JOB NAME \_\_\_\_\_

COMPUTED BY \_\_\_\_\_

SUBJECT \_\_\_\_\_

CHECKED BY \_\_\_\_\_

- Carroll Walker is CONTACT @ LGE <sup>Mks S 579-4360</sup>  
on Phil Clarkson if necessary in hot.
- Burl Manning is CONTACT AT SITE - HE LIVES ON  
the property and can open all gates and get  
property Right-of-Ways. [Cwalker@lg.com]  
Phone No 803-776-6190  
Carroll has contacted Burl to tell him John  
would be calling him.
- Commitments:
  - Marks/Lessley will walk dikes for Section 1  
starting Monday. A Reconnaissance Report is  
to be prepared of Findings. A Draft is to  
be sent by April 7-8. The gist of the Report  
is that the Dikes are substantial and have  
sufficient stability to retain/impede the flow of  
Congaree Flood Waters. Minor repair requirements  
should be noted.
  - Drilling is to START Next Week as well. Total  
Borings are estimated at 52, 30-40 deep.
  - Drill holes are to Backfilled with Soil and  
then Plugged with Bentonite before installing  
Plastic Hole Plug.
  - Backhoe will be used to explore Borrow pits.
  - Each Friday, Carroll Walker wants a "10 sentence  
Summary of Project Status" e-mailed to him
  - Expect to ATTEND meetings WITH FEMA and Corps



CV014312



JOB NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

DATE \_\_\_\_\_

JOB NAME \_\_\_\_\_

COMPUTED BY \_\_\_\_\_

SUBJECT \_\_\_\_\_

CHECKED BY \_\_\_\_\_

- We have 6 to 8 weeks to complete the exploration

PERRY HOLCOMB

LOCKWOOD GREENE

PROJECT MANAGER

## Congaree Property Development Scenario

DRAFT  
5-20-98

### Assumptions:

Average 100 year flood level is elevation 141.0 based on previous FEMA maps.

- Elevation of 100 year flood varies across the site on a decreasing gradient from north to south.
- Retail area would be elevated for interstate visibility and to allow ground floors above interstate levels.
- Other areas could be raised construction similar to Heathwood Hall School

The objective of this development scenario would be to provide 700+ acres of the Congaree Site for development as commercial, office recreational and /or residential.

To develop 35 acres for retail, fill the area to elevation 139+/- . Assume the final development would make up the remainder to 100 year flood elevation of approximately 141.0. Fill volume for this 35 acres would be 600,000CY.

To allow some elevation for drainage and development of contours for esthetics and for roadway construction (berms, mounds, etc.) raise the remaining area 2 feet. After removing for ditches and borrow areas, assume 600 acres.

A borrow area of 100 acres would be cut to 16 foot depth. The borrow area could be in multiple locations and would be incorporated into the site storm water management plan.

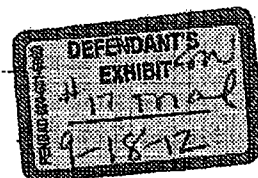
A site wide grading, storm water management and borrow excavation plan would be developed along with a site master development plan.

Main entrance roads (from Bluff Road) would be upgraded and a system of roadways developed for internal movement within the 700 acres.

A levee or dike upgrade plan would be developed. 21,000 feet of dike exists along the east and southern side of the property. The developers should slope, upgrade to constant elevation, clear, grub and re-grass these dikes.

Extend sanitary sewer and potable water from the mains to the middle of the 700 acre development. Additional development would be in the cost of the lots.

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CV013346

Current price quotes (verbal) from local contractors indicate that to excavate, dewater and stockpile material would be \$2.40 - \$5.00 and to retrieve from stockpile and place and compact to be \$1.50 - \$2.00. These costs would give an earthwork cost for the 35 acre scenario of \$2.34 million to \$4.2 million. These numbers give a per acre earthwork development cost of \$67,000 to \$120,000.

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CV013347

2/17/12 \$75/ft

4/17/12 \$135/ft

200/8,000/8000

200/8000/8000

21,000/21,000/21,000

...

### Estimate of Probable Cost 700 Acre Development

|                                                                                                                                                 | Total                   | Per Acre                |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------------------|
| Earthwork                                                                                                                                       |                         |                         |
| 35 Acre Area ( c.y.)                                                                                                                            | <del>\$3,000,000</del>  | \$86,000                |
| Remainder ( c.y.)                                                                                                                               | <del>\$23,000,000</del> | \$32,900                |
|                                                                                                                                                 | <del>2,400,000</del>    |                         |
| Roadways                                                                                                                                        |                         |                         |
| * Entrance                                                                                                                                      | \$400,000               | \$11,500                |
| ** Internal (allowance <u>      </u> ft)                                                                                                        | <del>\$8,000,000</del>  | \$11,500                |
|                                                                                                                                                 | <del>2,000,000</del>    |                         |
| Sewer (allowance 1,000 ft)                                                                                                                      | \$50,000                | \$1,500                 |
| Water (allowance 1,000 ft)                                                                                                                      | \$50,000                | \$1,500                 |
| * Storm Drainage and Stormwater Management System<br>(pumps, flood gates, etc.)                                                                 | <del>\$3,000,000</del>  | \$5,000                 |
|                                                                                                                                                 | <del>1,000,000</del>    |                         |
| * Dike Upgrade                                                                                                                                  | \$2,000,000             | \$3,000                 |
| * Landscaping Allowance<br>(signs, entrance, grassing, trees, etc.)                                                                             | <del>\$1,000,000</del>  | \$1,500                 |
|                                                                                                                                                 | <del>500,000</del>      |                         |
| * Engineering, geotechnical, surveying,<br>environmental engineering and<br>assessments, master planning, civil engineering<br>permitting, etc. | \$1,000,000             | \$1,500                 |
|                                                                                                                                                 | <u>15,400,000</u>       | \$20,000 / Acre. (Avg.) |

- \* These items ~~may~~ will benefit the total development, not just initial. ~~It may be factored into the total~~ ~~Base~~ Financial analysis may consider larger acreage.
- \*\* Not all internal access roads need to be constructed initially. This investment may be spread throughout development life.



CV013346

Currently the property is designated as a floodway. It is not possible to build in a floodway according to Mr. Harry Reed with Richland County. They will not issue building permit for projects with in the floodway.

Efforts are underway to have this new floodway designation reversed to the previous designation of a floodplane. You can obtain a development permit for areas within the floodplane if certain criteria are met.

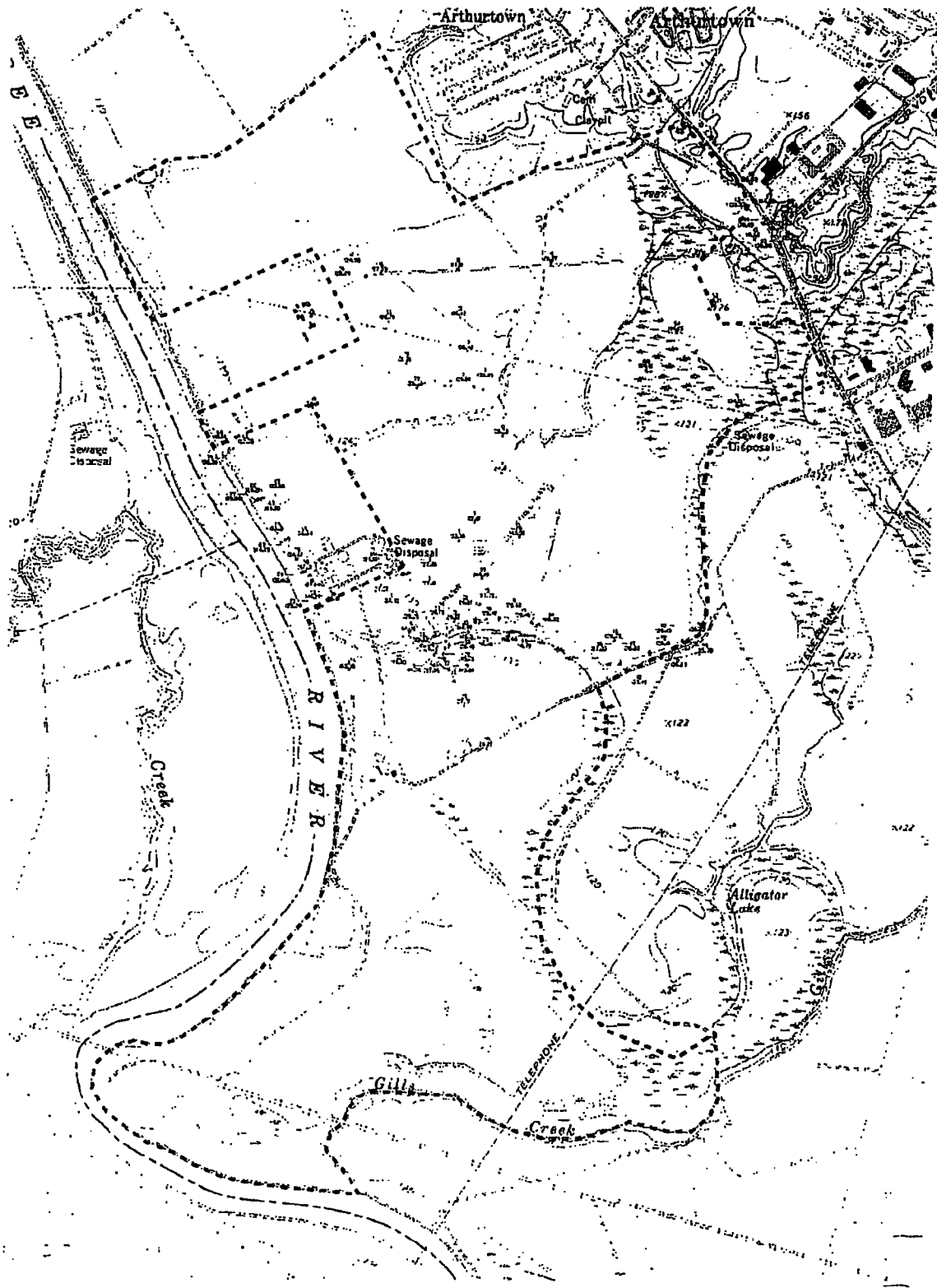
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CV013350

### **Engineering / Environmental Steps for Development**

1. Obtain boundary survey including easements and rights-of-way
2. Perform environmental assessment
3. Obtain topographical survey. Obtain hydrological data for river and flood calculations including HEC II data runs for the area of the river under consideration.
4. Perform geotechnical investigation
5. Delineate wetlands and obtain USACOE approval of delineation
6. Master plan development including wetland mitigation areas and buffers, roadways, stormwater management, borrow areas, and utility services
7. Perform cultural and archaeological investigation
8. Submit wetlands disturbance permit application along with mitigation plan to USACOE
9. Design, permit and construct site grading, drainage, and infrastructure

CV013346



CV013352

### Estimate of Probable Cost 700 Acre Development

|                                                                                                                                               | Total        | Per Acre |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------|
| Earthwork                                                                                                                                     |              |          |
| 35 Acre Area                                                                                                                                  | \$3,000,000  | \$86,000 |
| Remainder                                                                                                                                     | \$23,000,000 | \$32,900 |
| Roadways                                                                                                                                      |              |          |
| Entrance                                                                                                                                      | \$400,000    | \$11,500 |
| Internal                                                                                                                                      | \$8,000,000  | \$11,500 |
| Sewer (allowance 1,000 ft)                                                                                                                    | \$50,000     | \$1,500  |
| Water (allowance 1,000 ft)                                                                                                                    | \$50,000     | \$1,500  |
| Storm Drainage and Stormwater Management System<br>(pumps, flood gates, etc.)                                                                 | \$3,000,000  | \$5,000  |
| Dike Upgrade                                                                                                                                  | \$2,000,000  | \$3,000  |
| Landscaping Allowance<br>(signs, entrance, grassing, trees, etc.)                                                                             | \$1,000,000  | \$1,500  |
| Engineering, geotechnical, surveying,<br>environmental engineering and<br>assessments, master planning, civil engineering<br>permitting, etc. | \$1,000,000  | \$1,500  |

## **Engineering/ Environmental Steps for Development**

1. Obtain boundary survey including easements and rights-of-way
2. Perform environmental assessment
3. Obtain topographical survey. Obtain hydrological data for river and flood calculations including HEC II data runs for the area of the river under consideration.
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**VAN SANT AND ASSOCIATES**  
**REAL ESTATE APPRAISERS AND CONSULTANTS**  
7222 SOUTH LAKE MARION CIRCLE  
COLUMBIA, SOUTH CAROLINA 29223  
TELEPHONE (803) 735-8963 • FACSIMILE (803) 754-1115  
MVANSANT@SC.RR.COM

April 19<sup>th</sup>, 2002

Mr. Frank W. Cureton, Esq.  
Haynsworth Sinkler Boyd, P.A.  
P.O. Box 11889  
Columbia, SC 29211-1889

Re: Green Diamond Property Valuations For Levee Sections 1, 2, 3 and Green  
Diamond Project (Comprehensive Whole)

Dear Frank:

As per our meeting of April 17<sup>th</sup>, 2002 and at your request I am submitting this proposal to perform a Limited Appraisal-Restrictive Use Report for Columbia Venture, L.L.C. The purpose of the appraisal is to estimate the market values of each of the perspective parcel located within each levee section as well as the comprehensive whole valuation for the entirety of the Green Diamond project.

It is our understanding that the commencement date will begin at the issuance of the retainer fee and with agreement of our proposal.

The total fee for completion of the assignment is \$227,000. We anticipate you will need some clarification and further discussion on this submitted fee proposal and will be more than willing to provide that at your convenience.

Due to the scope and time frame involved in such an assignment, 50% of the proposed fee is required at the issuance of the commencement.

We appreciate your comments and encourage your discussion relative to this proposal and completion of this assignment.



Mr. Frank W. Cureton, Esq.  
April 19<sup>th</sup>, 2002  
Page Two

I would like to thank you for the opportunity to discuss your needs and how we can assist with the related issues at hand. We look forward to working with you, and should you have any additional questions, please feel free to contact us.

Sincerely,

---

Martin H. Van Sant, SRA

*Certified General Real Estate Appraisal No. CG -409  
State of South Carolina*

---

Thomas F. Wingard, MAI

*Certified General Real Estate Appraisal No. CG -89  
State of South Carolina*

## GREEN DIAMOND BOND PROCEEDS FOR INFRASTRUCTURE

|         |                     |
|---------|---------------------|
| Year 1  | \$26,500,000        |
| Year 4  | 11,500,000          |
| Year 7  | 9,100,000           |
| Year 10 | 7,500,000           |
| Year 13 | 5,500,000           |
| Year 16 | 20,000,000          |
|         | <u>\$80,100,000</u> |

## Costs for Infrastructure

|          |                                    |                                                                               |
|----------|------------------------------------|-------------------------------------------------------------------------------|
| Year 1-6 | Leaves                             | \$8,000,000                                                                   |
|          | Engineer & Design                  | 1,200,000                                                                     |
|          | Roadway                            | 6,000,000                                                                     |
|          | Bridges                            | 2,000,000 (Includes \$1,200,000 for matching funds - Interstate improvements) |
|          | Intersections                      | 450,000                                                                       |
|          | Signage & Lighting                 | 900,000                                                                       |
|          | Water Lines                        | 1,200,000                                                                     |
|          | Tanks & Pumping                    | 400,000                                                                       |
|          | Sewer                              | 2,000,000                                                                     |
|          | Gas Lines                          | 400,000                                                                       |
|          | Electrical, Duct Bank, Fiber Optic | 3,000,000                                                                     |
|          | Environmental                      | 800,000                                                                       |
|          | Community Improvement Projects     | \$26,350,000                                                                  |
|          | Total Expenditures Years 1-6       | <u>\$32,650,000</u>                                                           |





**RICHLAND COUNTY COUNCIL  
DEVELOPMENT & SERVICES COMMITTEE**

**AGENDA**

Don Brill  
District 9

J.D. "Buddy" Meeks  
District 1

Greg Pearce  
District 6

Bernice G. Scott  
District 10

Thelma Tillis  
District 3

**Richland County Council Chambers  
Administration Building  
2020 Hampton Street  
January 26, 1999  
5:00 pm**



**CALL TO ORDER**

**ELECTION OF CHAIR**

**APPROVAL OF MINUTES - December 17, 1998 Special Called Meeting - (pages 2-3).**

**ADOPTION OF AGENDA**

1. Presentation by Soil and Water Conservation District - (pages 4-6).  
*RD 1 w/ OHFC re: Feasibility on Lake Murray / Safety Issues*
2. Consideration of condemnation for Burdell Drive/Stone Street Drainage Project - (pages 7-9).  
*Deferred to Feb 16*
3. Request for input into any changes to the County's contract for solid waste haulers - (pages 10-12).  
*Community Mts. in Hampton - Nearby Affected Residents*
4. ~~Consideration of accepting maintenance of levee system along the Congaree River - (pages 13-20).~~  
*Moore Reg. Work Section Re: Solid Collection Contracts*
5. Request to reopen a dirt road in Gadsden - (pages 21-25).  
*Deferred to Council*  
*Deferred for more info. [checkmark] on legal issues / Co. Insurance*
6. Approval of transfer of control of Genesis Cable Company to Benchmark, Inc. - (pages 26-30).  
*Forwarded w/ No Recommendation*

**ADJOURN**

staffed by Mullen Taylor

Def Trial Ex 20  
A

## RICHLAND COUNTY COUNCIL PROPOSED ACTION

### Brief Description of Proposal and Requested Action:

The purpose of this report is to request County Council's consideration of authorizing the Council Chairman or his Designee to act on the County's behalf to communicate to FEMA the agreement by Richland County to accept the right-of-way to the levee system and responsibility to review, monitor and maintain the levee system contingent upon proper certification.

Action Recommended by: W. E. KNUDSEN, AICP Department PLANNING JANUARY 20, 1999  
Date

Recommendation of County Administrator: ☐ Approval ☐ Disapproval ☐ Advisory

Comments:

We are expecting to receive additional information on Monday regarding this issue. Therefore, a recommendation will be provided at the Committee Meeting.

J. W. H. [Signature] 1-21-99  
County Administrator Date

Legal: Approved as to form and within the powers and authority granted under the laws of the State of South Carolina to Richland County Council.

[Signature] 1-21-99  
County Attorney Date

☐ Attachment ☐ Public Hearing required ☐ Ordinance required

Financial: ☐ Expenditure: ☐ General Fund ☐ \_\_\_\_\_ Fund ☐ Grant ☐ Budgeted ☐ Budget Amendment ☐  
Transfer ☐ Revenue: ☐ General Fund ☐ \_\_\_\_\_ Fund ☐ Grant ☐ Budgeted ☐ Budget Amendment ☐  
Transfer ☐ Attachment

\$ \_\_\_\_\_  
Total Expenditure Account Revenue Source B. M. [Signature] 1/21/99  
Financial Officer Date

Financial Impact:

Procurement: This action was issued, evaluated and completed in compliance with the Richland County Procurement Code.  
☐ Competitive Sealed Bid ☐ RFP ☐ Statement of Qualifications ☐ Negotiations ☐ Emergency ☐ Sole Source ☐ Exempt

|                                                     |                                                              |
|-----------------------------------------------------|--------------------------------------------------------------|
| Control Number: _____                               |                                                              |
| Procurement Officer _____<br>Date _____             | Control Number: _____<br><input type="checkbox"/> Attachment |
| Other: _____<br><input type="checkbox"/> Attachment | Other: _____<br><input type="checkbox"/> Attachment          |
| Recommended by _____<br>Date _____                  | Recommended by _____<br>Date _____ <u>13</u>                 |

DEF-0000054

## COUNTY COUNCIL REPORT

**SUBJECT:** Requesting FEMA action on Levee System, Congaree River

### A. PURPOSE AND RECOMMENDATION:

The purpose of this report is to request County Council's consideration of authorizing the Council Chairman or his Designee to act on the County's behalf to communicate to FEMA the agreement by Richland County to accept the right-of-way to the levee system and responsibility to review, monitor and maintain the levee system contingent upon proper certification.

### B. BACKGROUND:

The general area of concern is approximately 5700 acres south of the City Limits of the City of Columbia, bounded on the east by Bluff Road, the west by the Congaree River and south of I-77 as constructed. This area contains the existing City of Columbia Sewer Treatment Plant, the East Richland Sewer Treatment Plant, Heathwood Hall School, a grain plant, pasture land and residential and commercial/industrial development fronting on or accessed by Bluff Road. The area is generally protected from flooding by an existing levee system that has been in place since the early sixties.

In 1998, FEMA in conjunction with a flood study done for Lexington County, reclassified this area from a Floodplain to a Floodway status. The main difference is that you can place structures within a Floodplain with certain restrictions, you cannot place any structures within the Floodway. This difference is shown on our attachments as Series "G" and Series "H". The "H" being the new FEMA map showing this area as Floodway. This has and will continue to have a direct impact on the existing structures within these areas including the Sewer Treatment Plants and Heathwood Hall, none of which can expand or enlarge. According to FEMA we must use the "H" series for issuance of building permits and "G" series for insurance purposes.

Immediately after meeting with FEMA officials concerning the finalization of this study, Mr. McSwain acting in his capacity of both County Administrator and Chief Flood Official requested that FEMA place this revised study on hold

### C. DISCUSSION:

One of the affected property owners, Congaree Farms/Manning, has retained a Consulting firm, Lockwood-Greene to assist them in reviewing, reconstruction and ultimate certification and acceptance of the existing levee system. Due to FEMA regulations any reconstruction or creation of a levee system must be done under the auspices of the governmental body having jurisdiction in the area. This necessitates that the County agrees in principal to accepting responsibility of the levee system once completed and acceptable to FEMA. This has been detailed in a letter to Mr. McSwain from Lockwood-Greene dated December 11, 1998. Our comments are as follows;

- 1- *Property owners intend to upgrade the levee system....the approximate cost of this is in excess of six million dollars.*

DEF0000055

- 2- *County agrees to accept responsibility for operation and maintenance.....this is shown as a preliminary cost estimate of approximately \$174,500 annually. (see attachment)*
- 3- *Request the relocation of the proposed Floodway.....this will bring the entire area back to the "G" series map.(the original FEMA map)*
- 4- *Upon certification.....the County must be the one requesting the map revision.*
- 5- *Certification of levee system.....self explanatory.*
- 6- *We request FEMA confirmation.....prior to acceptance of any responsibility the County must have the assurance of FEMA that once all the steps outlined on the levee system are completed, the levee system will be acceptable.*

**D. ALTERNATIVES:**

The alternatives available are;

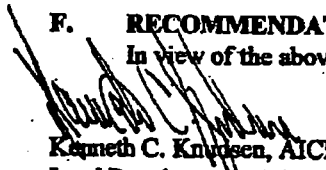
- 1- Do nothing, area will stay as is and any expansion or development within the affected area will be prohibited.
- 2- Authorize the Council Chairman or his Designee to begin first steps of acceptance of responsibility and maintenance contingent upon engineering certification, certification by the Corps of Engineers and approval and acceptance by FEMA.
- 3- Defer action, this would mean the County awaits whatever action FEMA imposes upon Richland County.

**E. FINANCIAL IMPACT:**

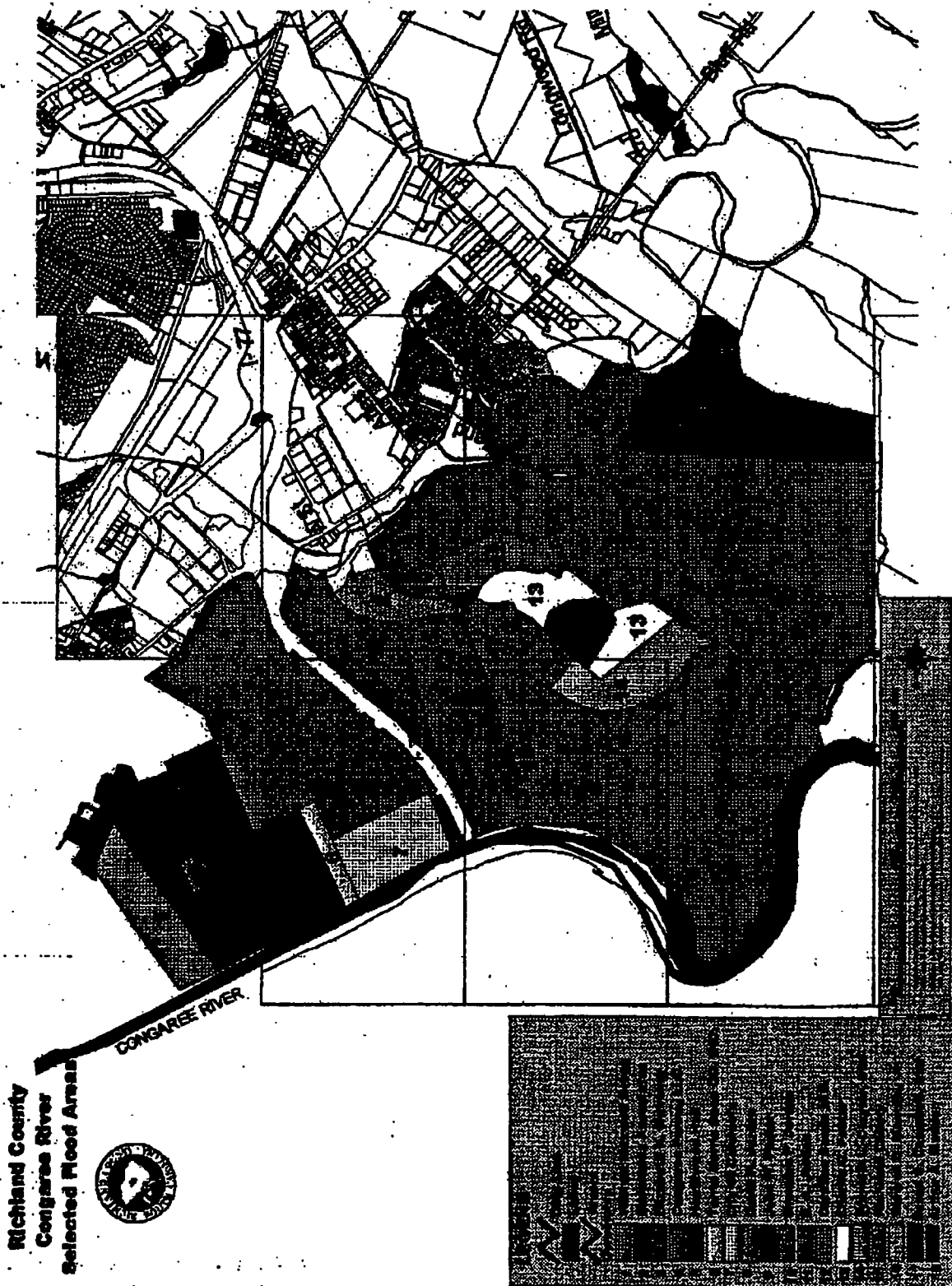
The financial impact on the County is estimated at \$174,500 per year. This estimate according to Lockwood-Greene is on the "high side" and assumes everything must be done yearly. Some items such as repair and replacement of equipment will not occur on a yearly basis. These costs should be offset by the rezoning and development of these properties and the accompanying increase in the County's tax base.

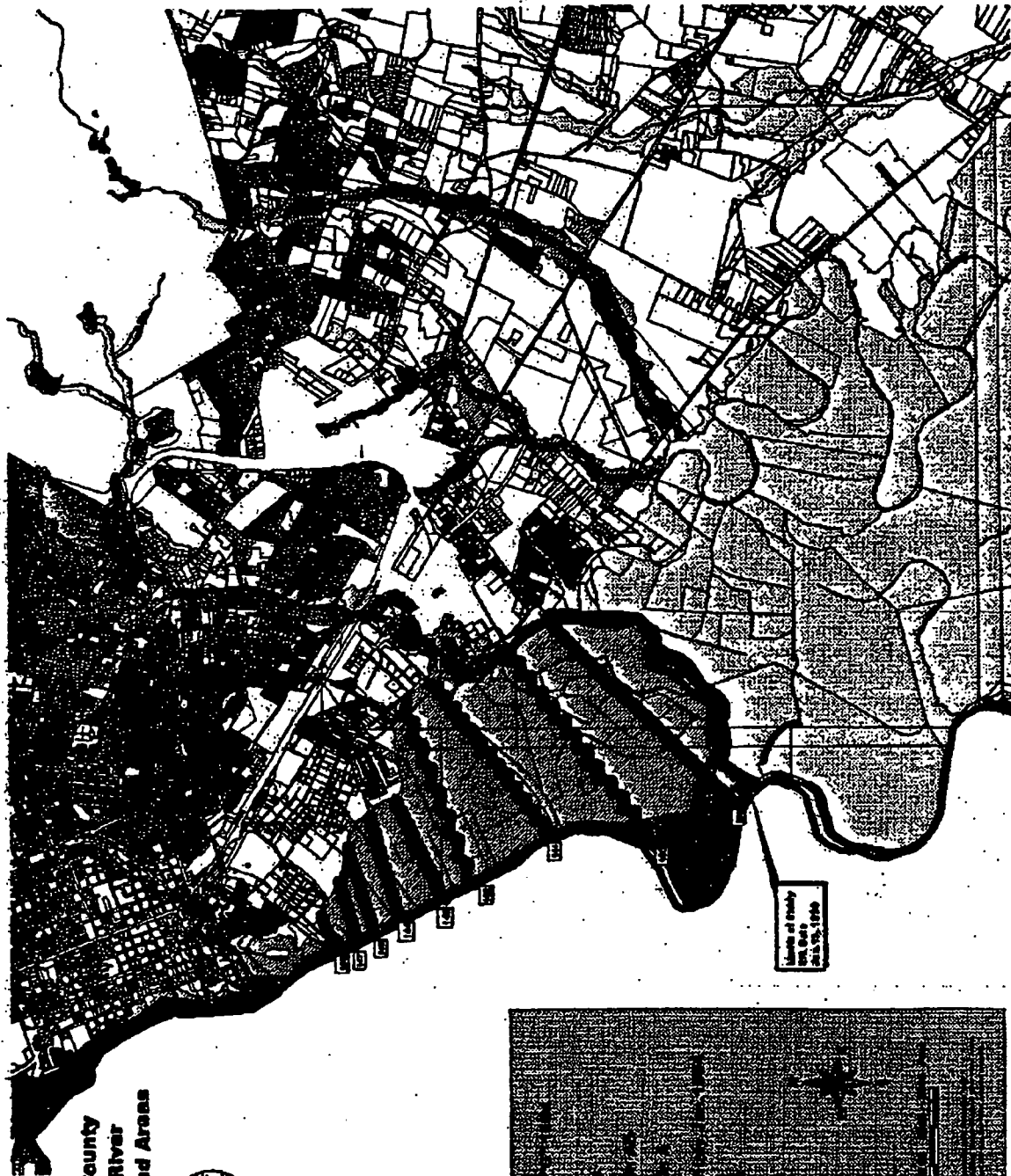
**F. RECOMMENDATION:**

In view of the above, alternative 2 is recommended.

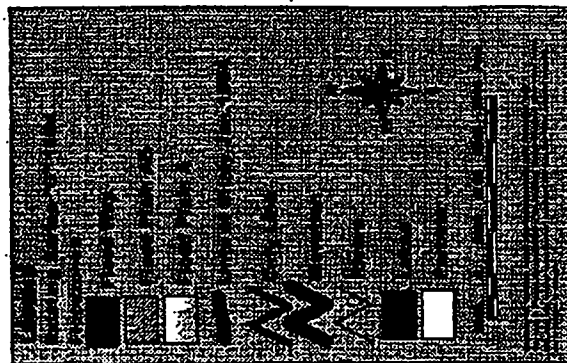
  
Kenneth C. Knudsen, AICP  
Land Development Administrator

DEF-0000056



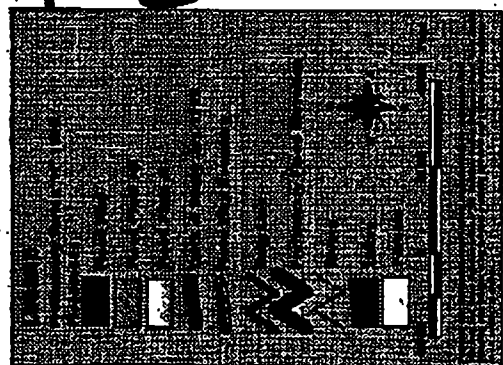


Richland County  
Congaree River  
Selected Flood Areas





Richland County  
Congaree River  
Selected Flood Areas



61



DEF-0000060



| Congaree Properties                                               |             |                 |                 |                             | DRAFT |  |
|-------------------------------------------------------------------|-------------|-----------------|-----------------|-----------------------------|-------|--|
| Levee System Operation and Maintenance Cost Estimate (1999 Costs) |             |                 |                 |                             |       |  |
| Annual Maintenance Activity                                       | Number      | Frequency       | Estimated Cost  | Estimated Total Annual Cost |       |  |
| <b>Ground Maintenance</b>                                         |             |                 |                 |                             |       |  |
| Mowing grass on levee top                                         | 1 ls        | 2 times/year    | \$ 12,500 each  | \$ 25,000                   |       |  |
| Tree (woody growth) removal on levee sides                        | 1 ls        | 1 times/year    | \$ 10,000 each  | \$ 10,000                   |       |  |
| <b>Levee Repair</b>                                               |             |                 |                 |                             |       |  |
| Repair levee erosion                                              | 1 allowance | 1 times/year    | \$ 20,000 each  | \$ 20,000                   |       |  |
| Repair levee settlement                                           | 1 ls        | 0.25 times/year | \$ 20,000 each  | \$ 5,000                    |       |  |
| Seed and Fertilize                                                | 1 ls        | 1 times/year    | \$ 10,000 each  | \$ 10,000                   |       |  |
| <b>Pumping System</b>                                             |             |                 |                 |                             |       |  |
| Pump Testing                                                      | 5 pump sta  | 12 times/year   | \$ 200 each     | \$ 12,000                   |       |  |
| Pump Replacement                                                  | 1 pumps     | 0.5 times/year  | \$ 5,000 each   | \$ 2,500                    |       |  |
| Pump Operation                                                    | 1 ls        | 0.2 times/year  | \$ 100,000 each | \$ 20,000                   |       |  |
| <b>Closure Devices</b>                                            |             |                 |                 |                             |       |  |
| Levee penetration backflow repair                                 | 5 ea        | 1 times/year    | \$ 4,000 each   | \$ 20,000                   |       |  |
| Levee penetration backflow replacement                            | 1 ea        | 1 times/year    | \$ 10,000 each  | \$ 10,000                   |       |  |
| <b>Inspections/Evaluations</b>                                    |             |                 |                 |                             |       |  |
| Levee and penetration inspection                                  | 1 ls        | 1 times/year    | \$ 25,000 each  | \$ 25,000                   |       |  |
| Certification                                                     | 1 ls        | 1 times/year    | \$ 5,000 each   | \$ 5,000                    |       |  |
| Stormwater Quality Monitoring                                     | 1 ls        | 2 times/year    | \$ 5,000 each   | \$ 10,000                   |       |  |
| <b>Estimate Total</b>                                             |             |                 |                 | <b>\$174,500</b>            |       |  |

This is a preliminary cost estimate for the purpose of establishing an order of magnitude estimate.

**LOCKWOOD GREENE**  
Consulting · Design · Construction

006217.90  
P:\351\doc\maintenance estimate.xls

## HARTNETT ARITHMETIC

### VALUE OF SUBJECT PROPERTY BEFORE TAKING

Before 1,225 acres x \$15,000 = \$18,375,000.00  
per acre per Knight

3,175 acres x \$\_\_ per acre = \$ \_\_-\_\_-  
No Knight Appraisal based  
on being developed

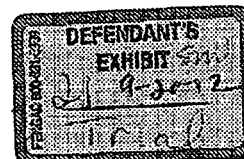
### VALUE OF SUBJECT PROPERTY AFTER TAKING

After 1,225 acres x \$\_\_ per acre = \_\_-\_\_-  
No Wingard Appraisal based  
on being developed

3,175 acres x \$3,200 per acre = \$10,160,000.00  
per Wingard

### Loss in value as a result of the taking

|                                                          |                 |
|----------------------------------------------------------|-----------------|
| Before value of subject property                         | \$              |
| After value of subject property                          | \$10,160,000.00 |
| Value Difference                                         | \$              |
| Less amount spent to bring levees<br>up to FEMA standard | \$12,000,000.00 |
| Loss in value as a result of taking                      | \$              |



## INDEPENDENT COUNTY PERSONNEL ACTION

Name: HARRY D. REED Date: JULY 17, 1996  
 Address: Redacted ☐ Change of Name  
 Social Security No.: Redacted Employee No.: 29073 ☐ Change of Address  
 Department: PLANNING District: PLANNING Department No.: 2300 - 111  
 Position Title: COMMUNITY PLANNER ☐ Full-time  
 Grade / Step: 12 Pay Rate: Redacted ☐ Temporary  
 Glass Code: 8031 Position No.: 19 ☐ Part-time  
☐ Other

☐ New Position ☐ Replacement (NAME) (POSITION NO.)  
 If Reappointment, Department, & Dates Employed: (DEPARTMENT) (DATES)  
 ADJUSTMENTS  
☐ Promotion  
☐ Transfer  
☒ Redacted Action  
☐ Demotion  
☐ Work Change  
☐ Other (Explain)  
 Position Title: COUNTY FLOOD COORDINATOR RECLASSIFICATION FROM COMMUNITY  
 Department: SAME PLANNER TO COUNTY FLOOD COORDINATOR/  
 Class Code: 8048 ACTION IN 1996-1997 BUDGET.  
 Grade / Step: Redacted  
 Pay Rate: Redacted  
 Position No.: Redacted  
 Effective Date: 09-07-96  
 Reason: Redacted  
 LEAVES OF ABSENCE OR SUSPENSION  
 Reason: Redacted  
 OVERTIME REQUEST  
☐ Permission ☐ Payment Dates: Hours:  
 Reason: Redacted  
 Services were: ☐ Satisfactory ☐ Unsatisfactory  
 Would you rehire? ☐ Yes ☐ No If no, explain:  
 Was notice given? ☐ Yes ☐ No Resignation letter attached? ☐ Yes ☐ No  
 Credentials, Keys, & Equipment Surrendered? ☐ Yes ☐ No  
 Appointment for Exit Interview:  
 (No final check issued until Exit Interview is complete)

Remarks: SALARY LISTED ON PERSONNEL ADJUSTMENT IN 1996-1997 BUDGET - Redacted Tm

☐ Incomplete (Please Resubmit)

Tony McDonald 7/18/96  
PERSONNEL DIRECTOR

Tony McDonald for T. Cary McSwain  
CONTROL UNIT

RCPD FORM 110

I REQUEST THE PERSONNEL ACTION INDICATED ABOVE FOR APPOINTMENTS OR ADJUSTMENTS TO SALARY. I CERTIFY UNENCUMBERED FUNDS ARE AVAILABLE IN MY DEPARTMENTAL BUDGET FOR THE CURRENT FISCAL YEAR TO PAY FOR SAME. FURTHER, I HEREBY UNDERSTAND THAT I MAY BE HELD PERSONALLY LIABLE FOR FUNDS EXPENDED IN EXCESS OF THE AMOUNT APPROPRIATED BY COUNTY COUNCIL FOR THE CURRENT FISCAL YEAR.

GW Carter  
SIGNATURE BY DEPARTMENT HEAD

Def Trial Ex 31



THE JOHN R. McADAMS COMPANY, INC.

Jonathan S. Butters, PE  
Executive Vice President  
Chief Operating Officer

April 15, 1999

Mr. Mark Hester, PE  
Lockwood Greene, Inc.  
1500 International Drive  
Spartanburg, SC 29304

Re: **HEC-2 Modeling for Congaree River  
Columbia, SC**

Dear Mr. Hester:

We are pleased to offer this proposal for engineering services relating to HEC-2 modeling of the Congaree River in Columbia, South Carolina.

**PROJECT SUMMARY**

It is our understanding that the current FEMA Flood Insurance Rate Maps (FIRMs) for the Congaree River are overestimating the base flood elevation, as evidenced by an operating USGS gage station, by as much as three feet. We also understand that a preliminary investigation of the HEC-2 model for this stream has been found to be deficient in a number of areas. Given this information, it would seem that the effective HEC-2 model is not properly calibrated for determining base flood elevations along this waterway. We have worked closely with Mr. Martin Becker in the past on similar problems, and feel that continuity will be of great benefit in bringing this investigation to fruition.

**PROPOSED SCOPE OF SERVICES AND FEES**

We propose to investigate the effective HEC-2 model for the Congaree River to discover and correct any deficiencies that may be present in the model. We will work closely with your staff and Mr. Martin Becker to incorporate all applicable changes to the HEC-2 model, with the goal set at matching the stages recorded by operating USGS gage stations for given flowrates.

We propose to be compensated for this work on an ongoing hourly basis, in accordance with the rates listed in our 1999 rate schedule (see attached Exhibit A). Please note that the rate for Amos Clark will be billed at \$90.00 per hour.

CIVIL ENGINEERING • LAND PLANNING • LANDSCAPE ARCHITECTURE • SURVEYING  
PO Box 14005 • Research Triangle Park, NC 27709 • (919) 361-5000 • fax (919) 361-2269  
[www.johnr-mcadams.com](http://www.johnr-mcadams.com)

Def Trial Ex 34



THE JOHN R. McADAMS COMPANY, INC.

Mr. Mark Hester, PE  
April 15, 1999  
Page 2

**SCHEDULE**

We understand that this revision has strict time constraints, set by FEMA. Preliminary discussions with Martin Becker indicate that three to four weeks are available, starting Monday, April 19, 1999. We intend to do what is necessary to meet this schedule.

**CLOSURE**

We appreciate this opportunity to propose our services. We are eager to pursue this investigation further, and to closely work with your staff and Mr. Martin Becker to realize the successful completion of this revision.

Sincerely,

THE JOHN R. McADAMS COMPANY, INC.

Jonathan S. Butters, PE  
Executive Vice-President  
Chief Operating Officer

**ACCEPTANCE**

Mr. Mark Hester

By: \_\_\_\_\_

Date: \_\_\_\_\_



## THE JOHN R. McADAMS COMPANY, INC.

## EXHIBIT A

## 1999 Rate Schedule

1. For contract by hourly charge, the following rates apply:

|                                           |                    |
|-------------------------------------------|--------------------|
| President.....                            | \$135.00/hour      |
| Vice President.....                       | 110.00/hour        |
| Group Director.....                       | 95.00/hour         |
| Project Manager.....                      | 80.00 - 90.00/hour |
| Licensed Professional.....                | 65.00 - 80.00/hour |
| Unlicensed Professional.....              | 60.00 - 75.00/hour |
| Technicians and Administrative Staff..... | 40.00 - 55.00/hour |
| Survey Crew 3-Person.....                 | 95.00/hour         |
| Survey Crew 2-Person.....                 | 80.00/hour         |
| Construction Observer.....                | 45.00 - 55.00/hour |
| CAD System.....                           | 15.00/hour         |

Hourly services are recorded and rounded to the nearest 1/2 hour.

2. The following charges apply on all contracts, for copies of plans and specifications sent out of the Engineer's office (to Owner, City regulatory agencies, bidders, contractor, other consultants, etc.):

|                          |             |                           |              |
|--------------------------|-------------|---------------------------|--------------|
| Oversize Blueprints..... | \$1.00/each | Oversize Mylar Sepia..... | \$15.00/each |
| Blueprints.....          | 0.50/each   | Mylar Sepia.....          | 10.00/each   |
| Specifications.....      | 0.10/page   | Paper Sepia.....          | 5.00/each    |

3. The following rates are charged in addition to the above fees:

|                                                               |                 |
|---------------------------------------------------------------|-----------------|
| Fees Paid for Permits and Applications, Outside Photocopying, |                 |
| Travel, Overnight Delivery, Postage for Mass Mailings.....    | Cost Plus 5%    |
| Subcontractor Invoices.....                                   | Cost Plus 12.5% |

4. Fees are subject to adjustment at the beginning of each calendar year.
5. Projects are billed on a monthly basis and invoices are due upon receipt.

OWNERS INITIALS \_\_\_\_\_ DATE \_\_\_\_\_

ENGINEERS INITIALS JSB DATE 4-15-99

SCANNED

**LOCKWOOD GREENE**  
Consulting • Design • Construction

Lockwood Greene Engineers, Inc.  
1500 International Drive  
P.O. Box 491, Spartanburg, SC 29304  
Main (864) 578-2000 Fax (864) 599-0436

03 June 1999

Mr. A. Todd Davison  
Director, Mitigation Division  
Federal Emergency Management Agency  
Suite 263  
3003 Chamblee-Tucker Road  
Atlanta, Georgia 30341

Dear Mr. Davison:

Subject: Technical Evaluation of Floodplain and Floodway Model

Enclosed is the technical analysis of the March 1999 FEMA floodplain and floodway model that was presented during the meeting in that same month.

Please direct all comments and questions to Mr. Martin Becker at 404-876-3900.

Sincere regards,

LOCKWOOD GREENE



Wilson Tillotson, PE  
Division Manager

Enclosures: Technical Summary of Findings for Floodplain and  
Floodway Model for the Congaree River

cc: Mr. Allen Groover  
Mr. Chris Stone  
Mr. Doug Bellomo  
Mr. George Gregory, III  
Mr. Martin Becker

ON MASTER LIST

MEH:p:\35\presentation2\letter to todd davison.doc  
006217.01 FN:20.09

YOUR GLOBAL BUSINESS PARTNER

Def Trial Ex 37

CV013517

CONTENTS

CV013517



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**Columbia Venture, LLC**  
TECHNICAL SUMMARY OF FINDINGS FOR  
THE HEC-2 COMPUTER MODEL  
3 June 1999

**Table of Contents**

| Item                                                                                                                                                                                                                                                                              | Tab |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Executive Technical Summary                                                                                                                                                                                                                                                       | 1   |
| Hydrology <ul style="list-style-type: none"><li>• Statistical Hydrology Letter by Leo Beard</li></ul>                                                                                                                                                                             | 2   |
| Hydraulics <ul style="list-style-type: none"><li>• Top of Levee Versus Base Flood Elevation</li><li>• Water Surface Comparison</li><li>• Calibration To Gage Station 02169500</li><li>• Floodway Results Summary Without Levee in Place</li><li>• Floodway Illustration</li></ul> | 3   |
| Detail Technical Summary                                                                                                                                                                                                                                                          | 4   |

## Appendix

| Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Tab |
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| Hydrology                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 5   |
| <ul style="list-style-type: none"> <li>• Letter to Kristina Massey of SCE&amp;G dated 24 May 1999</li> <li>• Letter from Kristina Massey of SCE&amp;G dated 26 May 1999</li> <li>• Calculations of Statistical Hydrology by Leo Beard dated 27 May 1999</li> </ul>                                                                                                                                                                                                                     |     |
| Hydraulics - Input Data                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 6   |
| <ul style="list-style-type: none"> <li>• <u>Simulation of the Effect of Proposed Construction of Twelfth Street Extension and of Flood-Plain Reforestation on Flood Elevations, Congaree River Near Columbia, South Carolina, US Geological Survey, Water- Resources Investigation Report 90-4056</u></li> <li>• Rating Curve for Gage 02169500</li> <li>• Mark-up of Manning's "n" value map adopted from 1992 USGS study by R. Erik Schuck-Kolben and Stephen T. Benedict</li> </ul> |     |
| Hydraulics - HEC-2 Models                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 7   |
| <ul style="list-style-type: none"> <li>• Existing Conditions with Levee HEC-2 Model</li> <li>• Existing Conditions without Levee HEC-2 Model</li> </ul>                                                                                                                                                                                                                                                                                                                                |     |
| CD ROM of:                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 8   |
| <ul style="list-style-type: none"> <li>• Work Map</li> <li>• Levee Topographic Survey</li> <li>• Aerial Photography</li> <li>• HEC-2 Runs</li> <li>• Finite-Element Network Used for All Simulations and Areas of Similar Roughness, Congaree River Near Columbia, South Carolina, 1992</li> </ul>                                                                                                                                                                                     |     |

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## Executive Technical Summary

### General

An extensive data collection effort was made to verify input data into the HEC-2 model. Information includes:

- Topographic survey of Manning Levee system.
- Aerial photography to determine Manning "n" values.
- Site visit to confirm Manning "n" values and model input.
- Obtain copies of past flood studies in the area.
- Interview of Saluda Dam (SCE&G) engineering staff to determine if "regulated flows" were available for Water Years 1926 to 1930.

### Hydrology

The Saluda Dam construction started in the fall of 1927, and was completed in 1930. USGS gaging station (02169500 – Congaree River at Columbia, SC) on the Congaree River provides a uniform data set from Water Year 1931 to the present date. In Water Year 1928 and 1930, during construction of the Saluda Dam, two large floods occurred. To include these large floods into the uniform data set requires that the "unregulated" discharges before 1931 from the Saluda Dam be converted into "regulated" discharges. The following table illustrates the conclusions of the analysis:

| Return Frequency (Year) | 10     | 50     | 100    | 500    |
|-------------------------|--------|--------|--------|--------|
| 1999 HSMM Flow Model    | 148000 | 242000 | 291400 | 435000 |
| LG Flow Model           | 137000 | 211000 | 248000 | 346000 |

### Hydraulics

Lockwood Greene and The John R. McAdams Company made a technical evaluation of the HEC-2 model prepared by HSMM for the Congaree River. Areas of concentration included calibration of the HEC-2 model to the existing gage (02169500), Manning's "n" values, and topography within the cross sections. The following items were identified for improvement based on collected field data:

| Item                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Calibration to gage 02169500 - 3.14 feet above gage for 100 year flow                                                                                                              |
| Cross Sections (GR input) <ul style="list-style-type: none"> <li>• Several cross sections appeared incorrect</li> <li>• Levee location and elevation appeared incorrect</li> </ul> |
| Manning's "n" values <ul style="list-style-type: none"> <li>• Inconsistent usage within model</li> <li>• Inconsistent with previous USGS study</li> </ul>                          |

After review of the above information, two distinct existing condition models were evaluated based on the HSMM model:

1. With levees in place per topographic survey.
  - a. Result → 100 year flow calibrates to within +0.03 feet of gage 02169500.
  - b. Result → Reduce Base Flood Elevation (BFE) from HSMM model by an average of 3.8 feet along the levee.
2. Existing conditions model with levee ignored (X3 input turned off).
  - a. Result → No impact to floodway in Lexington County.
  - b. Result → Floodway reduced in Richland County.
  - c. Result → Reduce Base Flood Elevation (BFE) from HSMM model an average of 4.3 feet along the levee.

---

**Summary**

| Item                                           | 1999 HSMM Study  | LG Modified Study                                                              |
|------------------------------------------------|------------------|--------------------------------------------------------------------------------|
| Calibration to gage<br>02169500 (for 100 year) | +3.14 feet       | +0.03 feet                                                                     |
| Cross Sections (GR input)                      | Used as baseline | Modified based on<br>Lexington County<br>topography and by<br>new levee survey |
| Floodway                                       | Used as baseline | No impact on<br>Lexington County<br>with or without<br>levee                   |
| Manning's "n" values                           | Used as baseline | Modified to match<br>1992 USGS study<br>and field<br>investigation             |



## Federal Emergency Management Agency

Washington, D.C. 20472

SEP 1 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. T. Cary McSwain  
Richland County Administrator  
2020 Hampton Street  
Columbia, South Carolina 29202

155-19(F)  
Community No.: 450170  
Community: Richland County,  
South Carolina,  
(Unincorporated Areas)

Dear Mr. McSwain:

On August 19, 1999, a final meeting was held to present the revised preliminary Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) panels 0025, 0091, 0092, 0094, 0160, 0178 and 0190 for Richland County, South Carolina and Incorporated Areas.

The revised FIS and FIRM make it appropriate to revise the elevations of the flood having a 1% chance of occurrence in any given year (base flood) for certain locations in the unincorporated areas of Richland County. Public notification will be given in The State on or about September 7, 1999 and September 14, 1999. A copy of this notification is enclosed. In addition, a notice of Proposed Base Flood Elevation Determinations will be published in the Federal Register.

These proposed base flood elevations, if finalized, will become the basis for floodplain management measures that your community must adopt in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) is intended to assure an equitable balancing of all the interests involved in the setting of flood elevation determinations. The legislation provides for an explicit process of notification and appeals for the community and for private persons prior to this office making the final flood elevation determinations. We have outlined the appeal procedure below for your information at this time. The regulations developed by this agency to implement Section 110 may be found in Part 67 of Title 44 of the Code of Federal Regulations. Copies of the regulations are enclosed.

During the 90-day appeal period following the second publication in the above named newspaper, any owner or lessee of real property in the community who believes his property rights will be adversely affected by the base flood elevation determinations may appeal to you, or

Def Trial Ex 40

to an agency that you publicly designate. It is important to note, however, that the sole basis for such appeals is the possession of knowledge or information indicating that the proposed base flood elevation determinations are scientifically or technically incorrect. This appeal data must be submitted to the Federal Emergency Management Agency (FEMA) during the 90-day appeal period. Only appeals of the proposed base flood elevations supported by data, can be considered before FEMA makes its final determinations at the end of the 90-day period.

Note that the 90-day period is statutory and cannot be extended. Appeals of the proposed base flood elevations shall be based only upon scientific and technical evidence contrary to that of the FEMA study. However, inquiries regarding data other than the proposed base flood elevations (i.e., incorrect street names, typographical errors or omissions, etc.), will be considered by FEMA, and any applicable changes will be made before the revised FIRM becomes effective.

If your community cannot submit technical data before the end of the 90-day appeal period, you may nevertheless submit data at any time. If warranted, FEMA will again revise the FIRM after the effective date. This means that the revised FIRM would be issued with the elevations presently indicated, and flood insurance purchase requirements would be enforced accordingly, until such time as another revision could be made.

Private persons who wish to appeal should present the data that tend to negate or contradict our findings to you in such form as you may specify. We ask that you review and consolidate any appeal data you may receive, and issue a written opinion stating whether the evidence presented is sufficient to justify an official appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal, you must send copies of appeal data from individuals, if any, to this office as they are received. If we do not receive an appeal from your community in its own name within ninety days of the second date of public notification, we shall consolidate and review on their own merits such appeal data from individuals that you may forward to us. We shall make such modifications of the proposed elevation determinations as may be appropriate. If the community decides to appeal in its own name, all individuals' appeal data must be consolidated into one appeal by you, since, in this event we are required to deal only with the local government as representative of all local interests. Our final decision will be in writing to you and copies will be sent to each individual appellant, and to the state coordinating agency.

The appeal resolution process will fully take into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which the proposed determination is based. The appeal will be resolved by consultation with officials of the local government involved, or by an administrative hearing, or by the submission of the conflicting data to an independent scientific body or appropriate Federal Agency for advice. The method for resolution will be determined by FEMA. The reports and other information used in making the final determination will be made available for public inspection. Until any conflict of data is resolved, and until the revised FIRM becomes effective, flood insurance previously available within the community shall continue to be available under the currently effective FIRM, dated January 19, 1994. The decision by the community to appeal, or a copy of its

3

decision not to appeal, should be filed with this office no later than ninety days following the second publication of the notice in a newspaper with local circulation.

You may find it appropriate to call further attention to the proposed base flood elevation determinations and to the appeal procedure by using a press release or other public notice.

At the end of the 90-day appeal period and following the resolution of any appeals, we shall send you a letter of final base flood elevation determination.

If there are further questions regarding flood elevations or the FIRM for the community, please contact the Director, Mitigation Division of the Federal Emergency Management Agency, in Atlanta, Georgia at (220) 770-5400, or Doug Bellomo, P.E. of our Headquarters staff in Washington, D.C., at (202) 646-2903, or by facsimile at (202) 646-4596.

Sincerely,



Matthew B. Miller, P.E., Chief  
Hazards Study Branch  
Mitigation Directorate

Enclosures

cc: FEMA Region IV  
NFIP State Coordinator  
Mr. Harry L. Reed, Richland County Floodplain Coordinator



FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL INSURANCE ADMINISTRATION

Proposed Flood Elevation Determinations for  
Various Communities in Lexington and Richland Counties,  
South Carolina

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY:

Technical information or comments are solicited on the proposed modified base (1% annual chance) flood elevations shown in the preliminary Flood Insurance Studies and Flood Insurance Rate Maps for the communities listed in the table below. The base flood elevations are the basis for the floodplain management measures that each community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES:

The period for comment will be ninety (90) days following the second publication of these proposed rules in a newspaper of local circulation.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the proposed determinations of base flood elevations, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for the new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

Lessees and owners of real property in the following communities, are encouraged to review the preliminary Flood Insurance Studies and Flood Insurance Rate Maps and to

submit comments to the appropriate community representatives as listed below. Proposed base flood elevations along flood sources studied in detail are shown on the flood profiles in the study. The proposed modified base flood elevations are as follows:

| <u>Community Name and Source of Flooding</u> | <u>*Elevation in feet (NGVD)</u> |                 |
|----------------------------------------------|----------------------------------|-----------------|
|                                              | <u>Existing</u>                  | <u>Modified</u> |
| City of Cayce:                               |                                  |                 |
| Congaree Creek                               | *139                             | *135            |
|                                              | *142                             | *141            |
| Six Mile Creek                               | *142                             | *140            |
|                                              | *142                             | *141            |
| Congaree River                               | *139                             | *135            |
|                                              | *156                             | *150            |

Maps available for inspection at the Cayce City Hall, 1800 12<sup>th</sup> Street Extension, Cayce, South Carolina.

Send comments to the Honorable Avery B. Wilkerson, Jr., Mayor of the City of Cayce, P.O. Box 2004, Cayce, South Carolina 29171-2004

|                   |      |      |
|-------------------|------|------|
| City of Columbia: |      |      |
| Gills Creek       | *140 | *138 |
|                   | *140 | *139 |
| Sahda River       | *158 | *152 |
|                   | *171 | *170 |
| Congaree River    | *154 | *149 |
|                   | *158 | *152 |
| Rocky Branch      | *149 | *148 |
|                   | *152 | *151 |

Maps available for inspection at the Columbia City Hall, 1225 Laurel Street, Columbia, South Carolina.

Send comments to the Honorable Robert Coble, Mayor of the City of Columbia, 1737 Main Street, Columbia, South Carolina 29201.

## Unincorporated Areas of Lexington County:

|                |      |      |
|----------------|------|------|
| Congaree Creek | *138 | *135 |
|                | *142 | *141 |
| Six Mile Creek | *142 | *140 |
|                | *142 | *141 |
| Savada River   | *158 | *152 |
|                | *174 | *173 |
| Congaree River | None | *128 |
|                | *158 | *152 |

Maps available for inspection at the Lexington County Planning Department, 212 South Lake Drive, Lexington, South Carolina.

Send comments to Mr. Johnny Jeffcoat, Chairman of the Lexington County Council, 212 South Lake Drive, Lexington, South Carolina 29072.

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## Unincorporated Areas of Richland County:

|                     |      |      |
|---------------------|------|------|
| Gills Creek         | *135 | *133 |
|                     | *140 | *139 |
| Rocky Branch        | *152 | *146 |
|                     | *152 | *151 |
| Tributary G-1       | *140 | *136 |
|                     | *142 | *141 |
| Reeder Point Branch | *129 | *133 |
|                     | *136 | *135 |
| Congaree River      | None | *128 |
|                     | *155 | *149 |
| Spears Creek        | *220 | *221 |
|                     | *312 | *311 |
| Lake Murray         | None | *363 |

Maps available for inspection at the Richland County Planning Department, 2020 Hampton Street, Columbia, South Carolina.

Send comments to Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, Columbia, South Carolina 29202.

---

City of West Columbia:

Congaree River

\*156    \*150  
\*158    \*151

Maps available for inspection at the West Columbia City Hall, 1053 Center Street, West Columbia, South Carolina.

Send comments to the Honorable Wyman Mack Rish, Mayor of the City of West Columbia, 1053 Center Street, West Columbia, South Carolina 29169.

---

\*National Geodetic Vertical Datum

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief  
Hazards Study Branch  
Mitigation Directorate  
500 C Street SW.  
Washington, DC 20472  
(202) 646-3461

South Carolina Department of  
**Natural Resources**



December 10, 1999

Paul A. Sandifer, Ph.D.  
Director  
**Office of Chief Counsel**  
Buford S. Mabry, Jr.  
Paul S. League  
Ester F. Haymond  
James A. Quinn\*  
Charleston Office

Mike Buckley, Chief  
Hazards Identification Risks Assessment  
Federal Emergency Management Agency  
500 C Street, SW.  
Washington, D.C. 20472

RE: Appeal of Preliminary Flood Insurance  
Study-Richland/Lexington Counties, South Carolina

Dear Mr. Buckley:

Please consider this letter and the accompanying technical data a formal appeal of FEMA's determination of hydrologic and hydraulic information upon which it intends to base a new FIRM determination. Included is a narrative of hydrologic findings and supporting 100-year flood computation prepared by DNR staff, and a narrative of hydraulic information based on an engineering study prepared by Law Engineering.

Please advise when SCDNR will have an opportunity to make a presentation to FEMA demonstrating that SCDNR's calculations are more correct estimates of base flood elevations.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Sandifer".

Paul A. Sandifer  
Director

PAS/BSMJR/mwr

cc: Paul Livingston, Chairman, Richland Co. Council  
Johnny W. Jeffcoat, Chairman, Lexington Co. Council  
T. Cary McSwain, Administrator, Richland Co.  
W. Art Brooks, Administrator, Lexington Co.

Post Office Box 167 • Columbia, S.C. 29202 • 803-734-4006 • Fax 803-734-6310  
• Post Office Box 12559 • Charleston, S.C. 29422 • 803-762-5061 • Fax 803-762-5412

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# Federal Emergency Management Agency

Washington, D.C. 20472

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RICHLAND COUNTY  
ADMINISTRATORS OFFICE

Mr. T. Cary McSwain  
Richland County Administrator  
2020 Hampton Street  
P.O. Box 192  
Columbia, South Carolina 29202

Mr. Johnny Jeffcoat  
Lexington County Council Chairman  
212 South Lake Drive  
Lexington, South Carolina 29072

The Honorable Wyman M. Rish  
Mayor of the City of West Columbia  
1053 Center Street  
P.O. Box 4044  
West Columbia, South Carolina 29171-4044

RE: Flood Insurance Rate Maps (FIRMs) for Richland County and incorporated areas  
and Lexington County and incorporated areas

Dear Mr. McSwain, Mr. Jeffcoat, and Mayor Rish:

This letter is to acknowledge receipt of appeals of the Federal Emergency Management Agency's (FEMA's) proposed FIRMs for Richland and Lexington counties and the incorporated areas therein. These appeals were expressed by a Richland County Council resolution dated December 7, 1999; a letter from Mr. Ismail Ozbek, P.E., Lexington County Planning Engineer, dated December 6, 1999; a letter from Mr. Sammy Rikard, Lexington County Engineering Associate, dated December 10, 1999; and a letter from Mayor Rish dated December 7, 1999. We discussed many of these concerns at a public meeting in Columbia, South Carolina, on January 24, 2000.

Because of the volume and complexity of comments received, we have categorized the incoming comments and correspondence into three groups.

The first group includes comments from Dr. John Grego, University of South Carolina; Dr. Paul A. Sandifer, South Carolina Department of Natural Resources; and Ms. Deborah A. Hottel, McNair Law Firm, P.A. These parties have provided us with detailed technical data and will be treated as formal appeals. Appeal procedures are outlined in Part 67 of the National Flood Insurance Program (NFIP) regulations.

The second group includes comments from Dr. Allan James, University of South Carolina; Ms. Martha Bogle, National Park Service; Mr. Thomas McCutcheon, Dr. Martin Solomon, and Mr. Wendle Snapp, P.E. These individuals submitted technical comments, but did not provide an alternative analysis or technical data. Although we will consider their comments in resolving the previously mentioned appeals, without an

alternative analysis or technical data, the submittals in this group cannot formally be considered appeals. However, any technical data submitted within 30 days of this letter will be considered in the resolution of the appeals submitted by Dr. Grego, Dr. Sandifer, and Ms. Hottel. Technical data should be sent through the appropriate local government to us at the following address:

FEMA  
500 C Street SW  
Washington, D.C. 20472  
Attention: Doug Bellomo, P.E.

The third group includes non-technical comments from a number of individuals and organizations from your communities. The authors of these comments will receive a copy of this letter. Although these comments do not formally constitute appeals, we will consider them in resolving the appeals submitted by Dr. Grego, Dr. Sandifer, and Ms. Hottel.

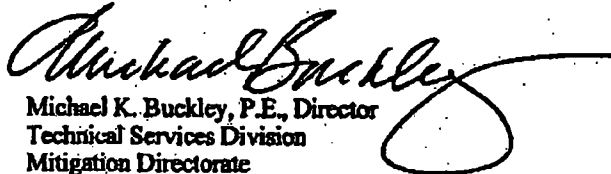
The previously mentioned technical appeals will be resolved through consultation with local government officials in accordance with Part 67 of the NFIP regulations. We will hold a series of meetings in the near future where the appellants who submitted technical data and other interested parties will be asked to support flood discharges and/or elevations they believe to be representative of 1% annual chance flooding conditions along the Congaree River. In the interest of fairness, we will be meeting with the appellants and other interested parties individually, and ask that each refrain from contacting us prior to the meetings. We anticipate conducting these meetings through the course of one or two days and believe it would be in the best interest of your citizens if you or one or two of your representatives were present at those meetings. The names of those who plan to attend should be forwarded to Doug Bellomo of our Headquarters staff at the number below. Prior to the technical meetings, we would like to meet informally with you and your staff to further discuss the appeals process and answer any questions you may have.

Furthermore, Director James Lee Witt has expressed interest in this issue and would like to meet with you here in Washington, D.C. He would like to discuss with you your intentions regarding potential future development along the Congaree River, and to relay his experience and thoughts regarding the importance of sound floodplain management practices. Our Region IV office and our Office of Intergovernmental Affairs in Washington, D.C. will be contacting you in the near future to discuss further details regarding this meeting.



We commend the citizens of your communities for taking an active interest in the NFIP and floodplain management. We will be contacting you in the near future to schedule the aforementioned appeal resolution meetings. If you have any questions, please do not hesitate to contact Todd Davison, Director, Mitigation Division of FEMA in Atlanta, Georgia, at (770) 220-5400, or Doug Bellomo of our Headquarters staff in Washington, D.C., at (202) 646-2903, or by facsimile at (202) 646-4596.

Sincerely,

  
Michael K. Buckley, P.E., Director  
Technical Services Division  
Mitigation Directorate

cc: Ms. Jenny Cunningham, City of West Columbia Administrator  
Mr. Ismail Ozbek, P.E.  
Mr. Harry Reed, Richland County Flood Coordinator  
Paul Sandifer, Ph.D.  
Ms. Martha Bogle  
Ms. Marjorie S. Davenport, U.S. Geological Survey  
John Grego, Ph.D.  
Allan James, Ph.D.  
Ms. Deborah Hotiel, McNair Law Firm  
Mr. Mel Jenkins, The Neighborhood Project  
Mary Kelly, Ph.D., Columbia Area League of Women Voters  
Mr. Thomas McCutcheon, McCutcheon, Blanton, Johnson, Rhodes & Johnson,  
L.L.P.  
Ms. Ruth Thomas, Environmentalists, Inc.  
Ms. Christine Thompson, South Carolina Wildlife Federation  
Ms. Angela Viney, South Carolina Wildlife Federation  
The Honorable Robert D. Coble, Mayor of the City of Columbia  
Ms. Lisa Holland, NFIP State Coordinator  
Mr. Wilson Tillotson, Lockwood Greene  
Distribution List of Private Citizens

# COLUMBIA VENTURES PROJECT UPDATE

## Agenda/Table of Contents March 27, 2000

| INFORMATIONAL ITEMS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | TAB # |
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| <ul style="list-style-type: none"> <li>• <u>Proposed Time Table for Project 2000</u> <ul style="list-style-type: none"> <li>• Master Planning/Pro Forma</li> <li>• FEMA Issues</li> <li>• Public/Regulatory Processing</li> <li>• Pre-sales/Infrastructure</li> <li>• Sales/Closings</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1     |
| <ul style="list-style-type: none"> <li>• <u>Market Study</u> <ul style="list-style-type: none"> <li>▪ Excerpts from study (see attached)</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2     |
| <ul style="list-style-type: none"> <li>• <u>Master Planning Process Update</u> <ul style="list-style-type: none"> <li>• Work-to-date                             <ul style="list-style-type: none"> <li>▪ Visions/program/linkages/previous plans</li> </ul> </li> <li>• Current Plan                             <ul style="list-style-type: none"> <li>▪ Basic assumptions: ownership lines and out-parcels, entry points, interchange, phasing, golf, etc.</li> </ul> </li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                             | 3     |
| <ul style="list-style-type: none"> <li>• <u>Key Issues Update</u> <ul style="list-style-type: none"> <li>• FEMA</li> <li>• Economic Model: Preparation &amp; Delivery                             <ul style="list-style-type: none"> <li>▪ Team efforts</li> <li>▪ "economic benefits" for regulatory process</li> <li>▪ project return analysis</li> </ul> </li> <li>• Regulatory and Governmental Processing                             <ul style="list-style-type: none"> <li>▪ Basic strategy: toward city, toward county                                     <ul style="list-style-type: none"> <li>✓ Importance of FEMA issues</li> <li>✓ Importance of "economic benefit" issues</li> <li>✓ Zoning, annexation, development agreement, public financing</li> </ul> </li> <li>▪ Consultants</li> <li>▪ Players: City, County, State, University, Farmers Market, out-parcel owners</li> </ul> </li> </ul> </li> </ul> | 4     |

|                                                                   | <u>TAB #</u> |
|-------------------------------------------------------------------|--------------|
| • <u>Key Alliances/Land Sales</u>                                 | 5            |
| • <u>Organization Relationship/Administration/Project Support</u> | 6            |
| • <u>Enclosures</u>                                               | 7            |
| ▪ Maps, Master Plan etc.                                          |              |

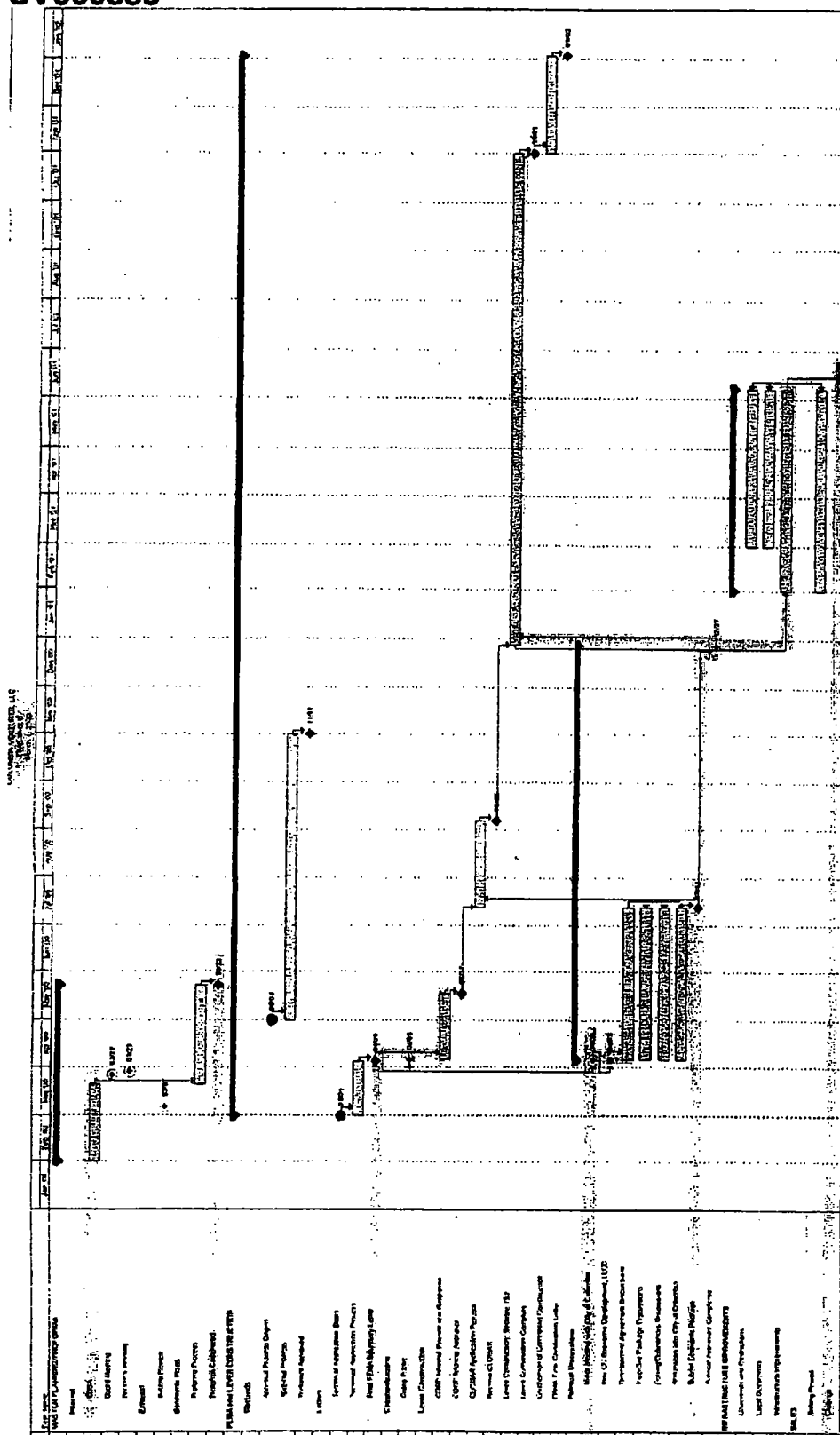
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**ASSUMPTIONS****Key Timeline Issues:**

- **Master Plan/Economic Model:**
  - The "final" Master Plan will drive the economic model. This model also is the "Benefit and Economic Package" which creates the incentive for public financing.
- **FEMA/Levee Construction:**
  - The final letter on the FEMA line will be received the first week in April. That will prompt an informal CORPS review, submitted by Columbia Venture, of the basic design and geo-tech specifications. That informal review is anticipated to take 4-5 weeks.
  - The CLOMAR requires governmental approval and signature. It is initiated in conjunction with the official submittal to the City of the development agreement package in mid-July. The previous CORPS review provides substantial credibility in the CLOMAS proves.
  - Levee construction would begin with approval of the development agreement and financing package. This assumes no private financing of levee prior to development agreement approval.
  - Levee construction is assumed to take 10 months with an additional 2 months before final certification letter issued by FEMA.
- **Political Discussions:**
  - Political discussions, both with City and County, are expected to begin shortly after receipt of the final FEMA boundary letter and a "final" Master Plan. The discussions will contain: economic model and incentive package issues, levee construction, ownership, operation, maintenance and liability issues, annexation and zoning issues, etc. These discussions and working on the form of the formal submittal agreement should take 3 months. The formal approval process is anticipated to take an additional 5 ½ months. So that, by January 1<sup>st</sup>, 2001 the development agreement and funding are in place to begin levee construction.
- **Infrastructure Improvements:**
  - Multi-tract infrastructure improvements are funded from the governmentally approved incentive package. These improvements will be initiated concurrently with the levee improvements. They will occur principally north of I-77 and are not affected by wetland permits in levee section 1.

- Initial bulk land sales are anticipated to be in tract increments and in a raw rather than developed form, so the purchaser will provide streets and utilities inside individual parcels.
- The multi-tract infrastructure is anticipated to take 4-5 months to access initial tracts.
- Sales
  - Bulk land sales could occur in mid-2001. The only exception to this could be a lease/sale for a golf course and club facility. However, housing starts, which assume a base flood elevation in place after levee certification, probably could not begin until final FEMA levee certification letter.



CV000886

2

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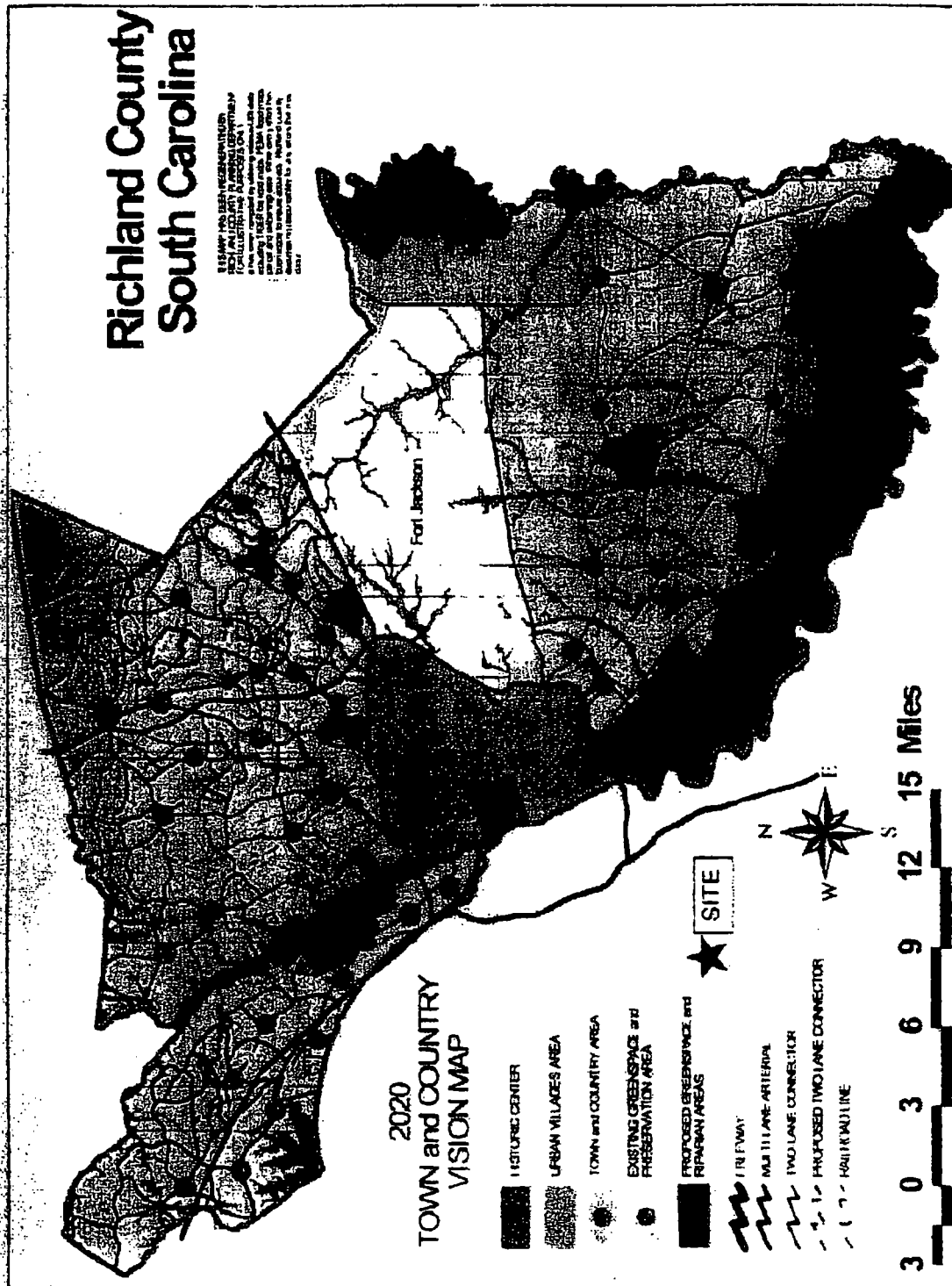


## MARKET STUDY INFORMATION

- Attachments
  - ✓ Location Maps
  - ✓ Key Economic Indicators - Columbia MSA 1990-1998
- Excerpted comments regarding land uses:
  - Single Family Residential: Realtors were generally bullish about the opportunity for residential development on the subject property because of its close-in location. Local developers were less enthused due to inherent location biases. Growing interest in intown housing, as evidenced by rising house prices in Shandon and other older, close-in neighborhoods, is a positive sign. The subject property's main strengths for residential development are its short drive time from downtown and the university, the river frontage, and Heathwood Hill School.
  - Multi-Family Residential: The condominium market has been dead during the 1990s, but resale activity is reportedly picking up and some pent-up demand surely exists. The subject property offers potential for infill multi-family housing given that downtown is the dominant employment center and USC has limited on-campus housing (7,350 beds for 25,250 students). In addition, Interstate 77 provides good regional access, and Fort Jackson is located only three miles away. The added allure of the river and the amenities of a large-scale, planned development further enhance its appeal. Condominiums are also worth exploring because of probable pent-up demand.
  - Senior Housing: An aging population, coupled with the unique draw of Fort Jackson and USC, suggest that senior housing is a viable option. It could certainly be a component of a large-scale planned development and would benefit from the amenities.
  - Office/Industrial: The potential for call centers, data processing facilities, and similar operations is real, however, because of proximity to a potential labor force (e.g., USC students, military wives), the U.S. Postal Service bulk mail facility, and the UPS hub. The potential for light-industrial development is good given the interstate highway access and limited supply of close-in sites in quality business parks. Office development opportunities are limited at the subject location, except possible build-to-suits.

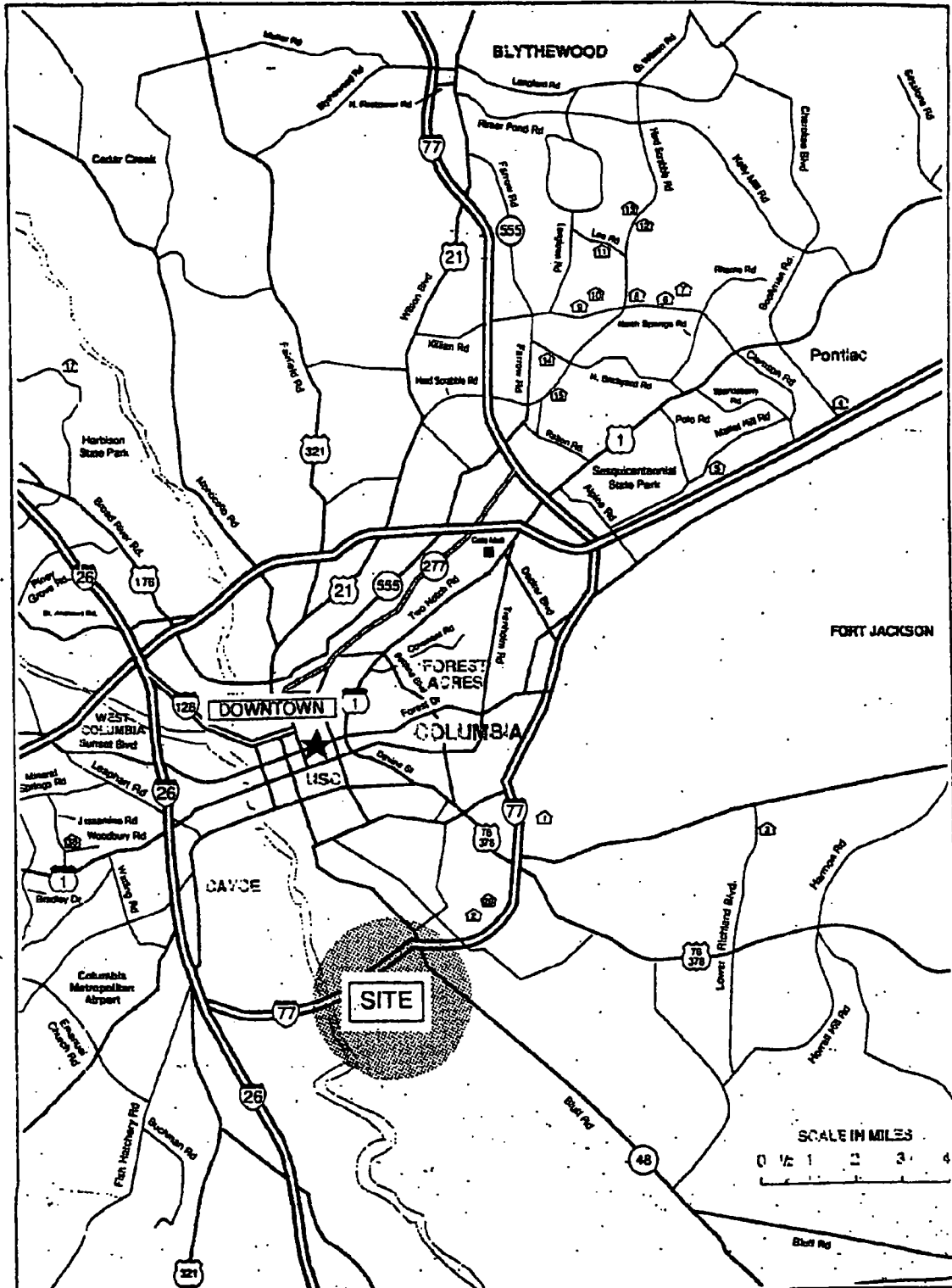
- Retail: A void currently exists for retail services within a three-mile radius of the site. The nearest commercial node is at the interchange of Interstate 77 and Gamers Ferry Road, approximately three miles away. A destination-oriented outlet center could potentially work. Other retail development might be appropriate in future years as residential components of the project take shape.
- Hotel: The best possibility for the subject property might be a small hotel associated with a conference center, similar to a facility recently opened at Clemson University. An affiliation with USC would be critical for its success. Complemented by a golf amenity, this type of facility could compete very effectively. Columbia has a dearth of quality hotels, partly because its room rate structure is so modest. The university does not have lodging facilities except for accommodations for the exclusive use of the National Advocacy Center.
- Entertainment/Golf: Only two golf courses are located in the core area of Columbia encompassed by the interstate highway system. One (Riverside) is a public nine-hole facility, while the other (Forest Acres) is an exclusive private country club. A golf course is a viable possibility for the subject property due to the absence of close-in facilities. A quality course would have a significant captive market of intown residents, USC, and visitors.
- Entertainment/Cinema: A multi-screen cinema with stadium seating is also worth exploring because of the current market void. Of the 10 movie theatre complexes in Columbia, none is located within a five-mile radius of the subject property. There is definitely a market void on the south side and to the west in lower Lexington County. An entertainment complex anchored by a multi-screen theatre with stadium seating would be a nice complement to an outlet/off-price center. Columbia's south side is clearly underserved in terms of movie theatres, and residents of close-in neighborhoods also have limited options.
- Research Park: The subject property is ideally located for a research park because it blends proximity to the university, particularly the College of Engineering and Information Technology, with interstate highway access.
- Business Park: Given the property's interstate highway access, airport proximity, and short distance from downtown, it clearly has potential to attract industrial facilities and some office operations, particularly call centers.
- Outlet/Off-Price Mall: Columbia does not have a true outlet/off-price mall, and yet it enjoys excellent interstate highway access, a central location, and a fairly substantial population base. Relocation of the State Farmers Market would be a nice complement to an outlet/off-price center.

Tab #2



Black & Veatch Company





Haddow &amp; Company

**KEY ECONOMIC INDICATORS  
COLUMBIA MSA  
1990-1998**

|                                                                           | 1990        | 1991        | 1992        | 1993        | 1994        | 1995        | 1996        | 1997        | 1998        |
|---------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Population</b>                                                         |             |             |             |             |             |             |             |             |             |
|                                                                           | 453,932     | 464,840     | 470,835     | 479,133     | 484,238     | 490,700     | 497,971     | 504,364     | 512,310     |
| <b>Annual Population Increase</b><br>(U.S. Census Bureau)                 | 5,332       | 10,708      | 5,995       | 8,498       | 5,103       | 6,464       | 6,971       | 6,993       | 7,952       |
| <b>Non-Agricultural Employment</b>                                        |             |             |             |             |             |             |             |             |             |
|                                                                           | 247,700     | 243,300     | 243,800     | 247,800     | 257,900     | 264,400     | 273,000     | 280,800     | 291,300     |
| <b>Annual Employment Increase</b><br>(South Carolina Dept. of Labor)      | 7,800       | (4,400)     | 800         | 3,900       | 10,100      | 6,500       | 8,600       | 7,800       | 10,500      |
| <b>Unemployment Rate</b><br>(Employment and Earnings)                     | 3.8%        | 4.4%        | 4.6%        | 5.7%        | 4.1%        | 3.3%        | 3.7%        | 2.7%        | 2.0%        |
| <b>Airport</b>                                                            |             |             |             |             |             |             |             |             |             |
| Total Operations                                                          | 112,277     | 112,329     | 103,012     | 103,631     | 109,682     | 105,041     | 112,880     | 108,687     | 110,708     |
| Total Passenger Volume<br>(Columbia Metropolitan Airport)                 | 1,120,434   | 1,017,761   | 1,024,022   | 988,127     | 1,168,941   | 1,139,657   | 1,159,214   | 1,184,788   | 1,170,000   |
| <b>Total Retail Sales (\$000s)</b><br>(Sales and Marketing<br>Management) | \$3,545,143 | \$3,826,176 | \$3,836,020 | \$4,184,287 | \$4,302,931 | \$4,394,457 | \$4,584,788 | \$4,747,160 | \$5,081,301 |
| <b>Per Capita Income</b><br>(U.S. Dept. of Economic Analysis)             | \$17,720    | \$18,045    | \$18,767    | \$19,512    | \$20,332    | \$21,513    | \$22,529    | \$23,435    | N/A         |
| <b>Housing Permits</b>                                                    |             |             |             |             |             |             |             |             |             |
| Single-Family                                                             | 2,058       | 2,148       | 2,828       | 2,885       | 2,930       | 3,548       | 3,620       | 3,383       | 3,829       |
| Multi-Family                                                              | 422         | 738         | 303         | 372         | 768         | 348         | 273         | 1,284       | 785         |
| Total<br>(U.S. Census Bureau)                                             | 2,480       | 2,886       | 3,131       | 3,237       | 3,698       | 3,894       | 3,893       | 4,677       | 4,624       |

Haddow &amp; Company

CV000893



3



CV000893

## MASTER PLANNING PROCESS

- Attachments
  - ✓ Vision Statement/Program Possibilities/Linkage
  - ✓ Initial Master Plan alternatives
  - ✓ Current Master Plan
  - ✓ Current recommended Master Plan
    - Basic Master Plan Assumptions
    - Land Use Allocations

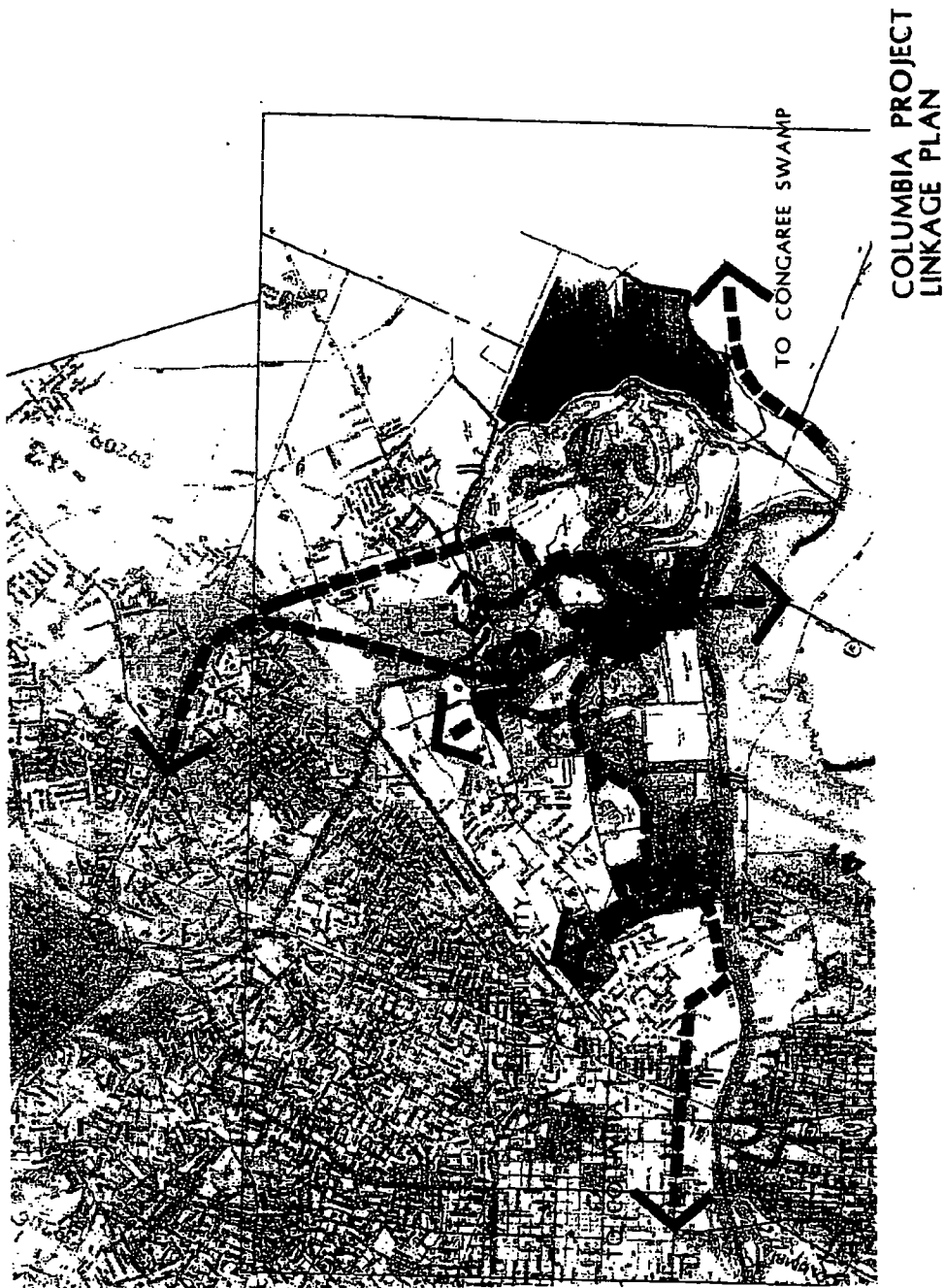
### BASIC MASTER PLAN ASSUMPTIONS:

- Plan is high-end, multi-use, long-term, master planned phased development
- Total Community. Live, work and play
- Plan anticipates:
  - Major High-Tech, Research Park
  - Major residential and golf amenity
  - Major connected roadway system which offers maximum flexibility to market driven tract development
  - Future inter-change off of I-77
  - Future purchases/acquisition of out-parcels
  - Principal initial community entrance off of Bluff Road
  - Multiple entrances i.e. entrance through Gregg Property, railroad property, etc.
  - Eventual re-location of State Farmers Market
  - Involvement of University/University support uses
- Early phasing plan anticipates:
  - Initial land plan elements and land sales in first 1-3 years consisting of:
    - Multiple entrance options: Gregg, Bluff Road, etc.
    - Golf course land as buffer to intrusive uses and as entry and early sales enhancement
    - Residential parcels around school and adjacent to golf
    - Selected business/research park parcels
    - Selected multi-family sites/commercial/retail sites
  - Period from 3-6 years consisting of:
    - Planning/construction of interchange with possible highway commercial sales
    - Continuing single family residential sales
    - Continuing multi-family sales
    - Continuing small tract research park sales
    - First of larger tract research park sales (keyed by interchange and/or critical mass)
    - Retail/lodging sales
  - Period from 7-10 years consisting of:
    - Large tract research parcel sales
    - New golf and residential development in levee section three



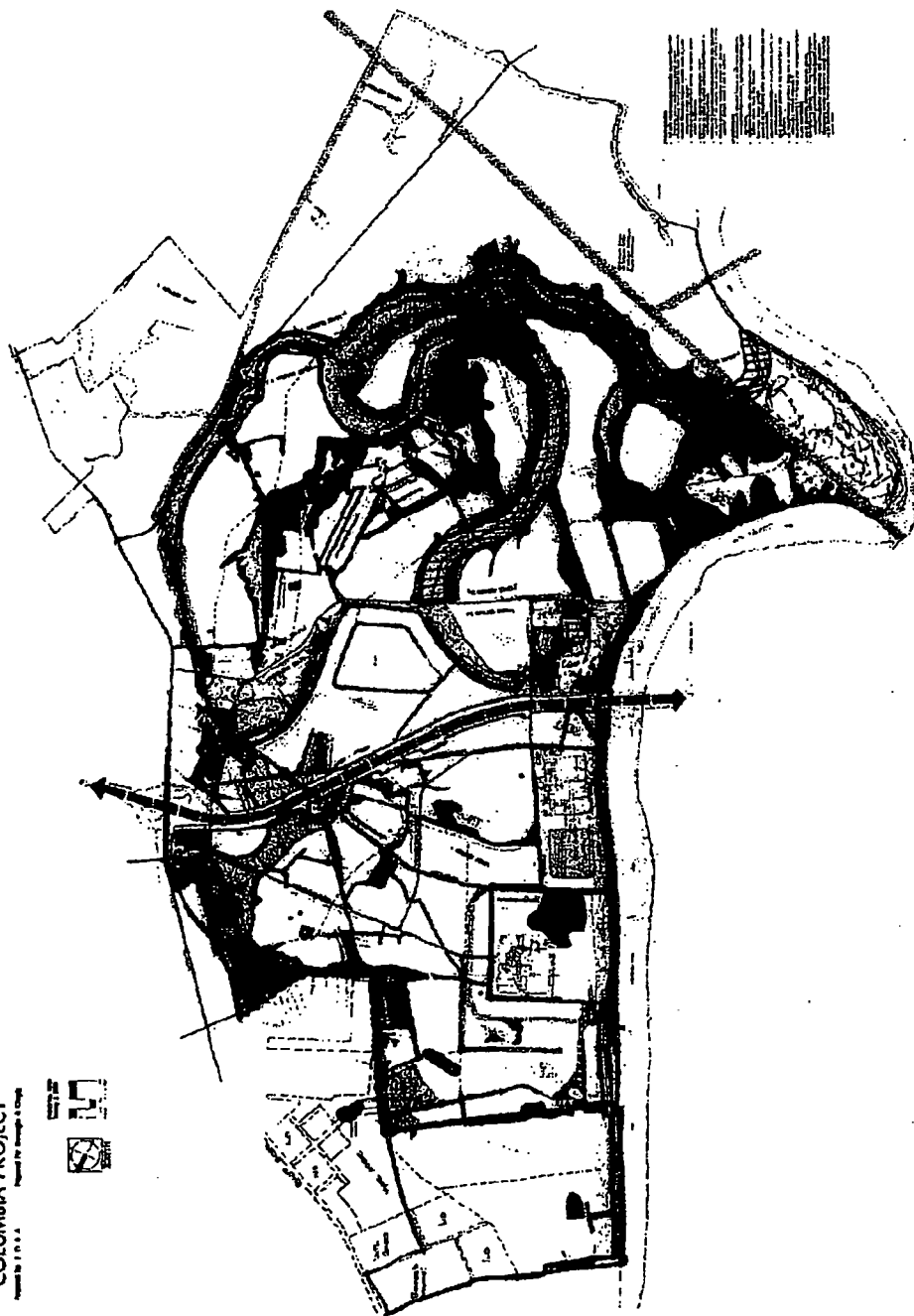
|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               | <ul style="list-style-type: none"> <li>- Research Facility (400-500 acres)</li> <li>- State-of-the-Art-Fiber Optic Hook-Ups</li> <li>- Amenities:               <ul style="list-style-type: none"> <li>Conference Center</li> <li>Hotel</li> <li>Training Center</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                               | <ul style="list-style-type: none"> <li>- College "Town"               <ul style="list-style-type: none"> <li>- Professor Housing</li> <li>- Alumni Village</li> </ul> </li> <li>- Friends of University</li> <li>- Hotel/ Conference Center</li> <li>- 200-300 Rooms</li> <li>- Amphitheater</li> <li>- 18-Hole Golf Course</li> <li>- University Course (200 acres)</li> <li>- "Olympic Sports Village"               <ul style="list-style-type: none"> <li>- Athletic Fields</li> <li>- Training Facilities</li> <li>- Research Medicine Training</li> <li>- Dormitories</li> <li>- Auditorium</li> </ul> </li> <li>- River/City Linkage</li> <li>- Continuing Education</li> <li>- City Park</li> </ul> |
| COMMUNITY DEVELOPMENT (SOUTH) | <ul style="list-style-type: none"> <li>- Class 'A' Office Park (50 acres)               <ul style="list-style-type: none"> <li>- Hotels</li> <li>- Gateway Element</li> <li>- Outlet Mall</li> </ul> </li> <li>- 40-50 acres</li> <li>- 18-Hole Golf Course</li> <li>- Public Course</li> <li>- Commercial/ Retail (200 acres)</li> <li>- Cinema Center (250 acres)</li> <li>- Restaurants</li> </ul>                                                                                                                                                                                                                                                                                                       |
|                               | <ul style="list-style-type: none"> <li>- Single Family Residential</li> <li>- Multi-Family Residential</li> <li>- Moderate Housing</li> <li>- CCRC (Retirement)</li> <li>- 18-Holes Golf Course</li> <li>- Private Course (200 acres)</li> <li>- Greenway Links to River</li> <li>- Neighborhood Retail Village Center</li> <li>- Community Center</li> </ul>                                                                                                                                                                                                                                                                                                                                               |
|                               | <ul style="list-style-type: none"> <li>- Environmental Research Center (University-related)</li> <li>- Outward Bound</li> <li>- Nature Trails</li> <li>- Canoe/Kayak</li> <li>- Picnic</li> <li>- Camping</li> <li>- Fishing</li> <li>- Linkage to Congaree Swamp &amp; Monument (18 miles downriver)</li> <li>- Equestrian</li> <li>- Crew</li> </ul>                                                                                                                                                                                                                                                                                                                                                      |
|                               | <ul style="list-style-type: none"> <li>- Golf Academy (25 acres)               <ul style="list-style-type: none"> <li>- Arts</li> <li>- Entertainment</li> <li>- Museum Tours</li> <li>- Archeological Exhibit Tours</li> <li>- Pedestrian Bridge to SCANIA Property</li> <li>- Historic Architectural Tours</li> <li>- Vista Area Linkage</li> <li>- Visitor Center (Highway-related)</li> <li>- Property Heritage "Green Diamond"</li> <li>- "Heathwood Hall" (Historic Home Site)</li> <li>- Theme Park</li> <li>- University Tourism Research</li> <li>- Helicopter Rides</li> <li>- Marina</li> </ul> </li> </ul>                                                                                      |

## WORLD CLASS RESEARCH PARK COMMUNITY

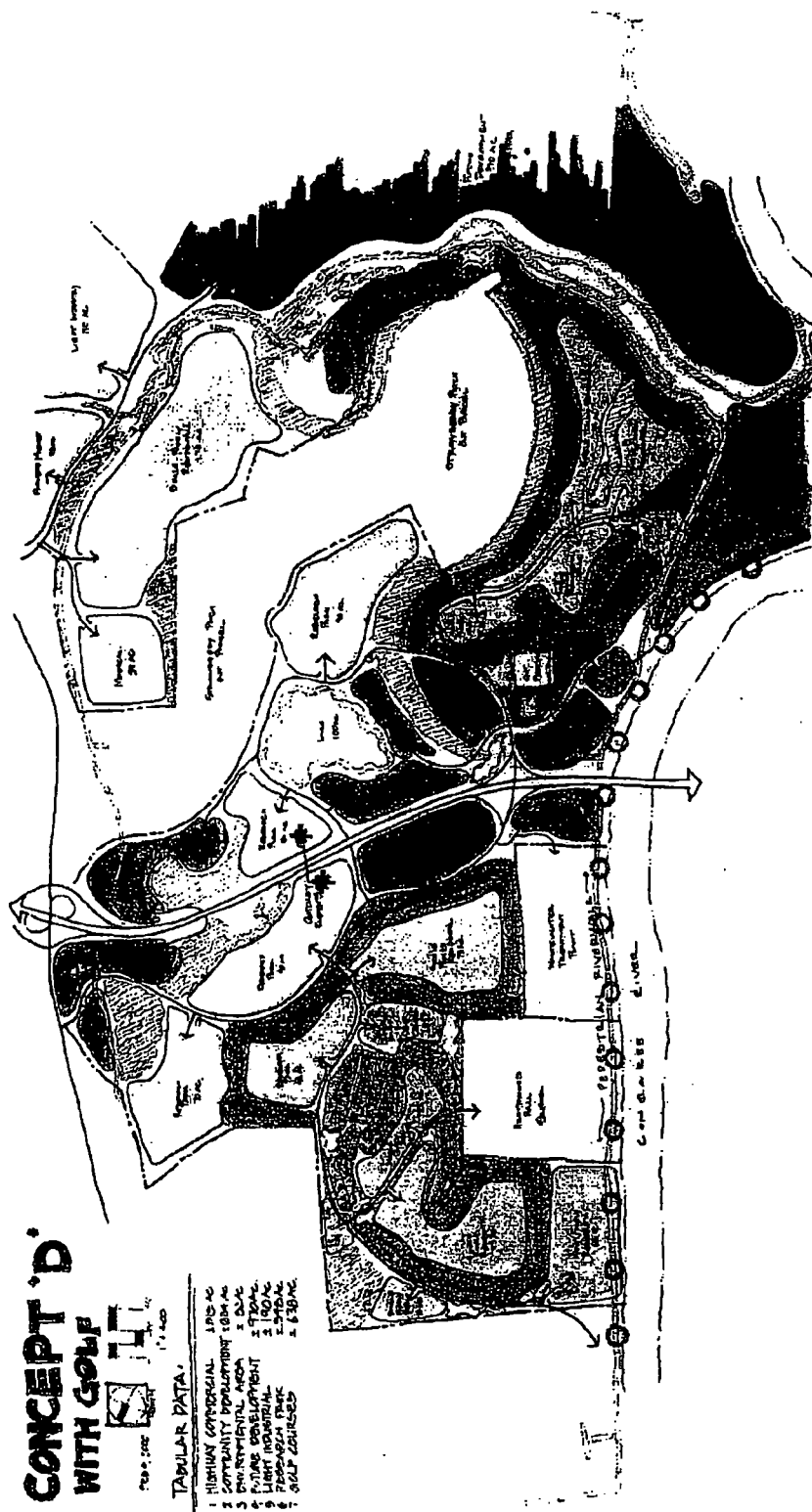


CONCEPT MASTER PLAN  
FOR THE  
COLUMBIA PROJECT

Approved by the U.S. Army Corps of Engineers







CV000900



4



CV000900

- Key Issues Update

4

- FEMA
- Economic Model: Preparation & Delivery
  - Team efforts
  - "economic benefits" for regulatory process
  - project return analysis
- Regulatory and Governmental Processing
  - Basic strategy: toward city: toward county
    - ✓ Importance of FEMA issues
    - ✓ Importance of "economic benefit" issues
    - ✓ Zoning, annexation, development agreement, public financing
  - Consultants
  - Players: City, County, State, University, Farmers Market, out-parcel owners
  - Samco

CV000902



5



CV000902



**KEY ALLIANCES/POTENTIAL LAND SALES**

- **Residential** (Single Family Detached and Multi-family)
  - **Jefferson/Johnson Development Company**: a major Atlanta, South Carolina and Texas developer. Will purchase raw land, provide infrastructure, initiate builder program and make a major marketing commitment. Interested in moving ahead with first residential land purchase. Jefferson/Johnson has developed behind a levee in Texas.
- **Retail, Commercial, Business Park**
  - **Konover Property Trust**: a New York Stock Exchange REIT is interested in retail and commercial.
  - **Pizzuti Development Company** has discussed a joint venture with Konover to do a research and development park. The park would be on both sides of I-77.
- **Golf**
  - **Elite Sports Management Group**: a sports marketing and golf course development group out of Winston Salem, North Carolina is interested in purchasing the golf course property. The company has employed renowned golf course designer, Willard Byrd, to do some early routing plans. Elite would also like to develop a golf academy.

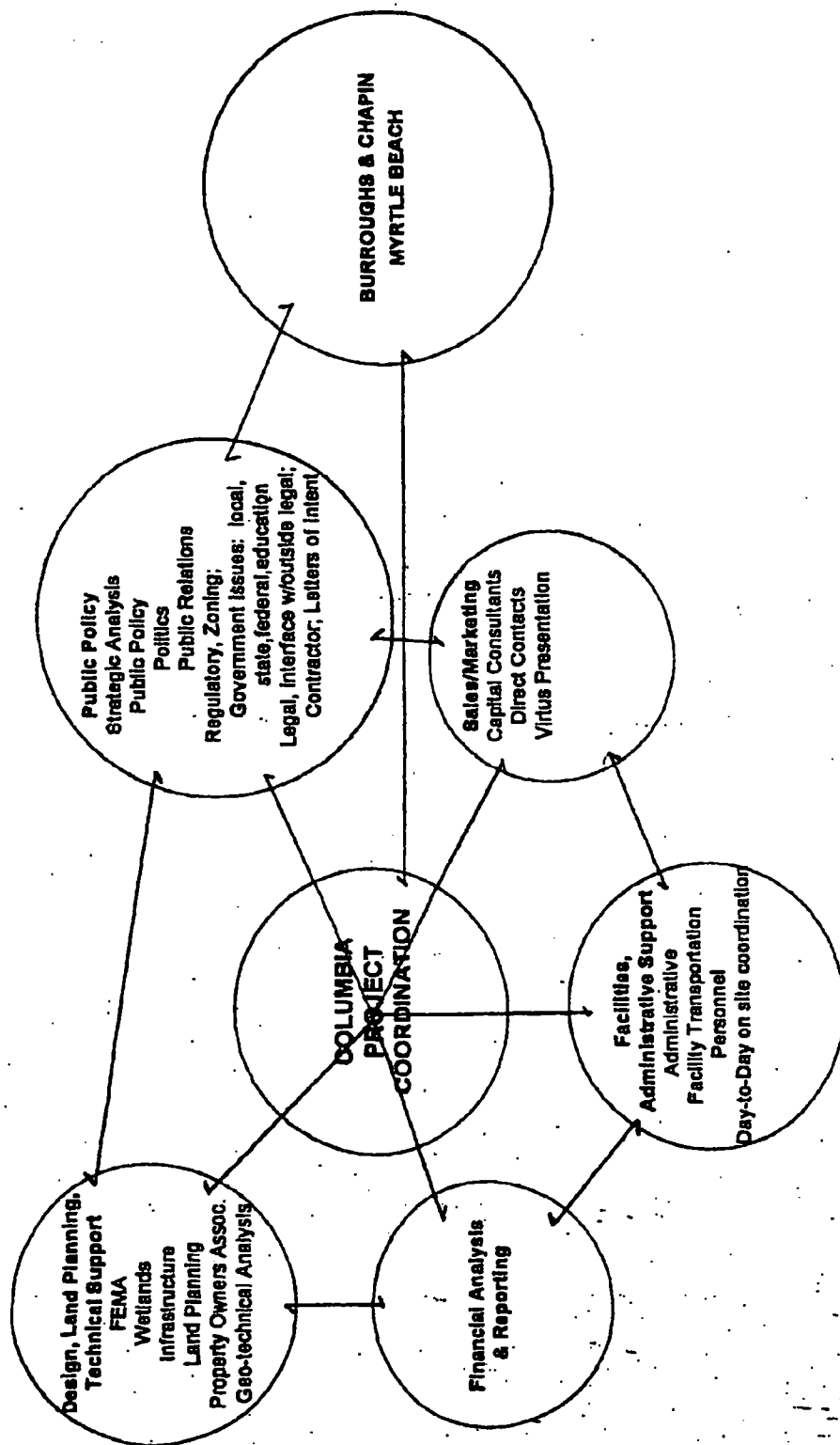
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CV000904



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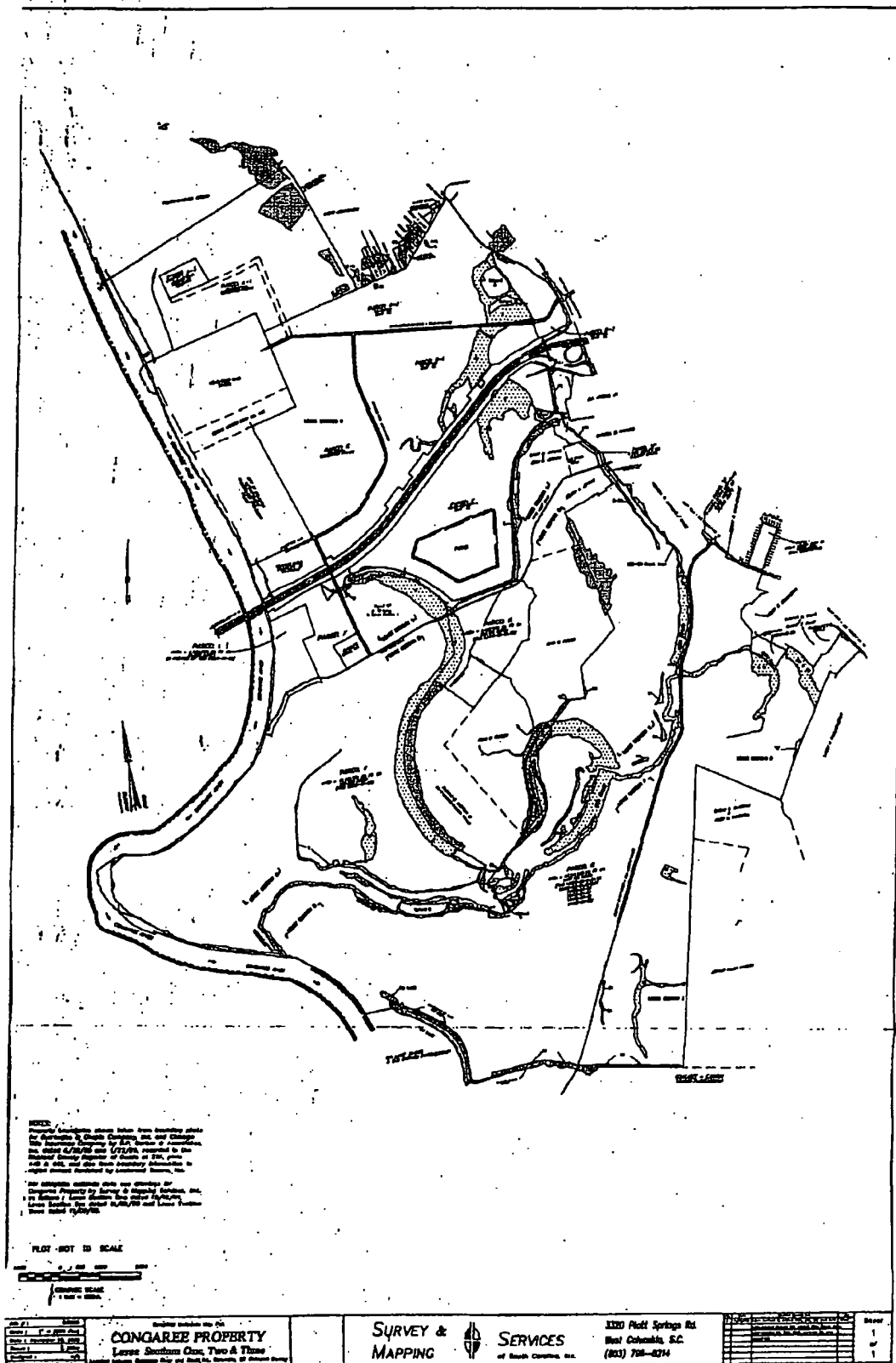


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CV000906

CV000907



CV000907

Burroughs & Chapin Meeting  
May 5, 2000

### Summary Notes:

#### General comments/Burroughs & Chapin Story and History

- The time is right to introduce Burroughs & Chapin to the community, to balance the negative publicity and to begin the initiative to move the project forward.
- One obstacle will be how to go about the introduction of B&C to the community without upsetting FEMA and their process.
- We need to tell our side of the story. For example, we have a good environmental and development record.
- A current issue of concern is Mr. Witt at FEMA. He has said he would meet with us. We need to get the Governor to call him and request the meeting. At this meeting, we need to convince Mr. Witt that technically the project is sound. We need to give him background information on B&C and discuss with him the ramifications of this project.
- We have three tasks before us – 1.introduce ourselves to opinion molders and media by telling our story. 2.define and prepare our strategy for gaining votes and how we are going to handle the situation in Richland County, Lexington County and Cayce. 3.go meet with Mr. Witt.
- Jim Fields pointed out that if we win technically and lose politically, we lose entirely.

#### Science/FEMA

- We need a clear understanding of why the property won't flood.
- We need the one-page graph of flood area as well as the 3D images – Richard Boyd.
- It is important to give sense of the power of the levees and compare them to others around the country.

#### Environmental

- We need to be sensitive to the environmental concerns and the wetlands issue.

#### Economic

- It will be 30 days before we have the land plan. From this the economic impact can be better determined.
- We need to locate the gross, big number of the economic impact.

#### Smart Growth

- We have a statement from Alberto XXX that validates our town and country plan.
- B&C does quality growth and smart growth, but we should be careful because the definition of these is changing and subjective.

- We need list of people to use for due diligence and contacts we can make. Bill Prichard and George Gregory can provide this.
- Fred Carter – can help with economic impact study.

Planning

- Two issues – 1. payment for the levees 2. liability for the levees
- We are 30 days away from the completion of the planning. A final plan will be ready in 60 days.

SEANA  
Development  
Agreement

University

- We have a good relationship with the University and they want to work with us.
- We would like to have someone from the University publicly voice their support.
- A resolution from the Board of Directors would be a good way to show support. We need to make this contact.

Utilities

- All of the utilities are on-site currently so we do not need to build any.
- No major transportation efforts are needed and no major traffic changes will need to occur.

Research – Tech Park

- This has three benefits – 1. stimulate economic environment 2. help develop better paying jobs 3. positive impact on the University and tech schools around the state
- This is an opportunity to link together the best of the research facilities in the state-USC, Clemson, MUSC.
- A brainstorming session will be held on this on ~~May~~ 20. We need to compile a list of who should participate in this meeting.

Other Cities

- We want to compare the levees and this development to other similar cities.
- Smoak with FEMA is an expert on these types of cities. XXX is making contact with him and we will have the list by June 15.

Constituents

- A major area of focus is the African-American community. We have allies in Joe Neal, Bernice Scott, Jim Clyburn.
- Darrell Jackson could provide a valuable partner because of his clout in the community and relationship with Bible Way Church.
- We could donate property to the church.
- Vince Ford will also prove to be a key in this project.
- We need to find an African American consultant to help our relationship in that community. Possibilities include – Joe Grant, Darrell Jackson's firm, Laddy Howard, Loretta Neal. Don Fowler, Jim Fields and C/SA will develop recommendations for a possible alliance with one or more of these possibilities.

- We also need to work closely with Richland School District 1 and keep in close contact with the School Board.
- Constant communication with groups such as the League of Women Voters and the environmental groups is important.
- Other constituent groups include Chambers of Commerce, homebuilders, realtors and neighborhood associations. These are groups for which we must develop a method of communicating our plans and objectives.

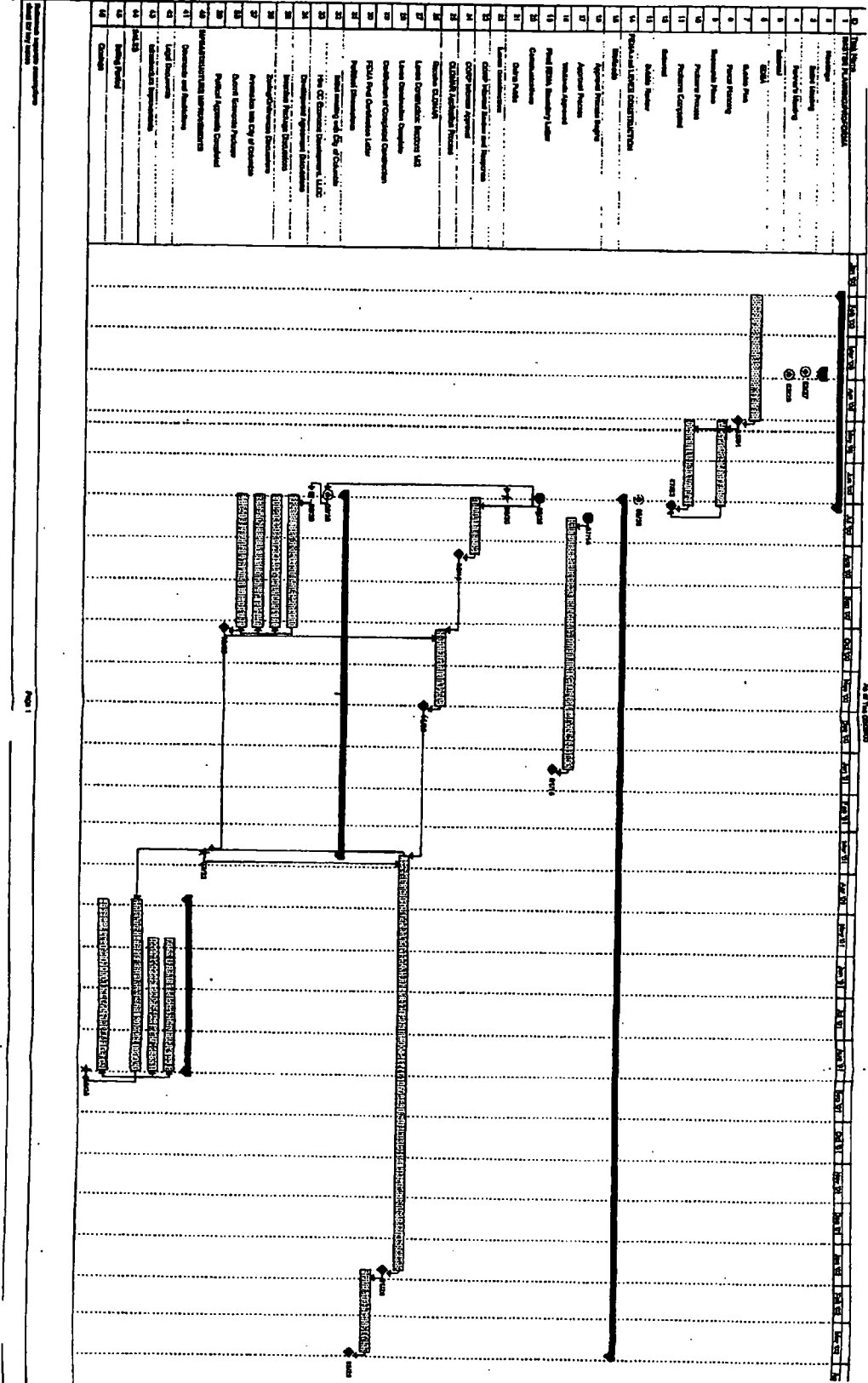
City of Columbia/Richland County Council

- Don Fowler and Jim Fields recently met with Mayor Coble. He is still interested but has several areas of concern.
- Rick Silver and Jim Fields recently met with Kit Smith and Greg Pearce. Kit wants to hire experts to verify that all the technical data is accurate, but she wants B&C to pay for this.
- We need to develop a strategy for going after the individual county council votes.
- We need to develop an overall plan for communicating with the county council and the city. We need to include in this plan that can lobby who and what should be included in a package of information.
- We need to go to the City (Coble and city council) to discuss the annexation issue. Don Fowler will facilitate this meeting.
- We need to get a recap of where we are with votes from County Council
- We need notebook of graphics to help tell the story.

Time Table and Plan of Delivery

- Gretchen will meet with George Gregory at the beach to gather information and go over recent developments.
- Follow-up meeting with key players Monday, May 15 at 2:00 at C/SA.





Def Trial Ex 49

Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 192  
Columbia, SC 29202



Phone (803) 748-4616  
Fax (803) 748-4644  
TDD (803) 748-4999

Office of the County Administrator

June 22, 2000

Mr. James E. Wiseman  
Senior Director/Design and Land Planning  
Columbia Venture, L.L.C.  
4875 Forest Drive  
Columbia, South Carolina 29206

Dear Jim:

As we discussed today on the telephone, enclosed you will find a copy of Richland County's National Pollutant Discharge Elimination System Permit issued by DHEC on March 17, 2000. I anticipate that revisions to the County's stormwater ordinance will be presented to County Council in July. As soon as this ordinance, as well as the County's best management practices are ready for review, I will forward them to you.

Sincerely,

A handwritten signature in black ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

cc: County Engineer

Def Trial Ex 51

**MEMORANDUM**

**TO:** Richland County Council  
**FROM:** Kit Smith, Chairperson *Kit Smith*  
**SUBJECT:** Columbia Ventures Proposed Development/FEMA Map  
**DATE:** Friday, July 28, 2000

There has been some indication that the Richland County flood map will soon be released by FEMA. We anticipate that the map will become 'final' within 30 days after it is published.

In anticipation of the map and because of the complexity of the proposed Columbia Ventures (Berroughs and Chapin) development, Greg and I did not feel like the county could wait until the map becomes final to develop a strategic approach to dealing with this project. Therefore, we have been working with staff to develop a comprehensive list of administrative tasks that will be required and policy decisions that will have to be considered. Our goal is to be able to present a 'work plan' to Council in September that provides for a thorough 'due diligence'.

Because of the complexity of the proposed project, it is important that the individual decisions be considered within the context of their relationship to the entire proposal. We have met with Columbia Ventures to make sure we are covering all of the issues. They have indicated an understanding of our need for a holistic approach and have agreed to deal with as many issues as feasible in a comprehensive development agreement.

It is our goal to make sure that Council has complete information to make informed decisions on all facets of the Columbia Ventures proposed development and that the public has full confidence in our efforts. To that end, the 'work plan' will include such things as recommendations for a high level of expertise to assist us in assessing economic and environmental impacts, design and maintenance of infrastructure, and clear communication with the public and those parties with special interests in the project.

Please call Greg or me if you have any questions as we develop the work plan. During our August recess I'll be spending a lot of time in the mountains. You can reach me there at 854.836.0422.

Aug 1 2000

## Columbia Venture Development Richland County's Preliminary Approach

Columbia Venture has acquired and proposes to develop 4,800 acres in Richland County. The property is located 3.5 miles from downtown Columbia in the unincorporated southeastern area of the County. It has five miles of frontage along the Congaree River and three levy systems totaling 1.5 miles in length. The majority of the property is zoned D-1, with the remainder zoned RU. The extent of development hinges upon a FEMA decision regarding flood insurance maps for the area, which designate floodway and floodplain zones. While no plans have been presented for public review, the Company has indicated that the development could include a regional technology park, golf courses, parks, and mixed-use residential and commercial areas.

The size of the project coupled with the environmentally sensitive nature of the land portend a tremendous impact on the City of Columbia, Richland County, and the entire region for decades to come. The issues involved are myriad and complex as the preliminary list below indicates. Richland County Council is committed to a thorough and conscientious due diligence process as the many factors of this proposal are considered. Our commitment is to a process that is fair to the private business interests and to the public of Richland County. To that end, we must collect all relevant and reliable information and make it available to the public.

The steps involved in this process should be made clear to the public so that they will understand that while one issue may gain approval, it does not imply approval of the project as a whole. For example, approval of an emergency preparedness plan does not imply approval of zoning changes. While these issues may be deliberated in disparate forums and at different times, it is our purpose to outline all relevant information for public consideration before any final decision is made.

### Issues for deliberation

- Environmental impact
- Public communications
- Economic impact
- Rezoning
- Stormwater management
- Levee improvements
- Levee maintenance
- Financing of levee maintenance
- Economic development incentives
- General infrastructure requirements
- Review of Project Plans to include matters such as relationship of development to surrounding area, interior layout and design, Town and Country principles, conservation, transportation system, PUD or Vision Zoning District, flood protection, total build-out, social impact, density and infrastructure.
- Consideration of a Development Agreement which would include all issues outlined in this document as well as annexation, service delivery, environmental justice, clawback provision, County liability and a development schedule.
- Emergency preparedness plan
- Grading/construction permit for levees
- Water and sewer design and DHEC permit

Def Trial Ex 54

# FIRST DRAFT

## KEY ACTIVITIES/FOLLOWUPS JIM WISEMAN/DOWDELL BROWN COLUMBIA VENTURE

### Jim Wiseman:

- Final land plan (JW/DB)
  - ✓ EDSA complete land use/building legend, phasing, summary of Technology Village
  - ✓ SCANA addition to plan
  - ✓ Golf course fine tuning with Bobby Weed
- Initial pro forma on land plan (JW/DB)
  - ✓ Cost update from Lockwood Greene
  - ✓ Ron Hendrix pro forma/fiscal impact
- Fiscal impact pro forma (JW/DB)
  - ✓ Data/followup A.G. Edwards (Edwin Fort)
- Economic analysis pro forma (JW/DB)
  - ✓ Mitey & Associates: contract with and secure analysis/attention specifically as well to school analysis i.e. number of kids generated, need for schools, etc. (separate education section for impact on schools)
- County processing (JW/McNair/DB/BP)
  - ✓ Zoning ordinance and development agreement
  - ✓ Public financing mechanism
  - ✓ Time table
  - ✓ TIF capacity
- City processing
  - ✓ Development agreement involvement, etc.
  - ✓ Lovee agreement and related land issues
  - ✓ Water and sewer
  - ✓ Annexation issues
  - ✓ TIF capacity
- Local community involvement
  - ✓ Formation "Local Advisory Group"

500  
\$ Magnolia

Anderson

2nd step 1.2.00

- Public Relations (JW/DB/DW)
  - ✓ Strategic/tactical plan and time line
  - ✓ Press kit/message/Virtis
  - ✓ Political/public strategy
- Out-parcels contracts, agreements, acquisitions
  - ✓ Gregg and Norfolk Southern
  - ✓ Merck
  - ✓ Kirkland Finley and Shem Jordan
  - ✓ Carolina and Norris Seed
- Heathwood Hall
  - ✓ Re-routing road
  - ✓ Land and levee issues
- FEMA
  - ✓ Follow up Becker, Nyhouse, Lockwood Greene

TOTAL P.02

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10-10-00 16:07 From: DEWBERRY &amp; DAVIS

+7039400849

T-076 P.02/16 F-104



## Federal Emergency Management Agency

Washington, D.C. 20472

October 10, 2000

Ms. Kit Smith  
 Richland County Council Chairperson  
 2020 Hampton Street  
 P.O. Box 192  
 Columbia, South Carolina 29202

Mr. Johnny Jeffcoat  
 Lexington County Council Chairman  
 212 South Lake Drive  
 Lexington, South Carolina 29072

The Honorable Robert D. Coble  
 Mayor of the City of Columbia  
 1737 Main Street  
 Columbia, South Carolina 29201

Dear Ms. Smith, Mr. Jeffcoat, and Mayor Coble:

This letter is in follow-up to a meeting held on October 4, 2000, at the Federal Emergency Management Agency's (FEMA's) headquarters in Washington, D.C. Representatives of FEMA, Lexington County, Richland County, the City of Columbia, and Columbia Venture attended this meeting. A list of attendees with telephone and facsimile numbers is enclosed with this letter. Many important questions were asked in this meeting; this letter serves as a record of these questions and FEMA's formal responses. In addition, this letter provides an opportunity for clarification. The questions and answers are listed below in approximately the order that they occurred in the meeting.

1. *If we proposed construction in the Richland County floodway landward of Manning's dike, which hydraulic model should we use to evaluate impacts on water-surface elevations, i.e., to demonstrate "no-rise"? (Wilson Tillotson)*

Impacts of proposed construction within the Richland County floodway landward of Manning's dike should be evaluated using the HEC-2 hydraulic model used to compute Base Flood Elevations (BFEs) landward of Manning's dike. This model reflects conveyance in the Richland County floodplain and is named CongRC2k.dat in the September 26, 2000, report and CD. Please note that this model shows lower elevations than the model used to compute BFEs riverward of Manning's dike. It should be pointed out that while minimum National Flood Insurance Program (NFIP) requirements allow "no rise" construction in the floodway, Richland County regulations may be more prohibitive of construction in a floodway. Where local restrictions exceed minimum NFIP requirements, the local criteria take precedence.

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18-10-00 15:07

From: DEBBERRY &amp; DAVIS

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T-076 P.03/15 F-104

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2. *The 2-dimensional models consider several dike failures, which would have to occur sequentially. How was the time-dependent nature of this sequential failure considered? (Wilson Tillotson)*

The 2-dimensional model was run in steady-state mode, which is a "snapshot" of the peak of the flood along the Congaree River. Because none of the dikes in the Richland County floodplain meet the requirements in Section 65.10 of the NFIP, they were considered completely removed for analysis purposes. When we evaluated likely breach scenarios, we considered the lower Gill's Creek ring dike completely removed because it is overtopped by downstream flooding from the Congaree River. The time required for multiple failures to occur was considered in that we know the 1976 flood, an approximately 10% annual chance (10-year) flood, maintained a high stage for nearly four days. A 1% annual chance (100-year) flood should maintain a high stage for at least as long, thus providing adequate time for multiple failures to occur. Also, the failures would not necessarily occur sequentially.

3. *Why was a discharge of 364,000 cfs used in some of the RMA-2 2-dimensional models? What other discharges were used? (Wilson Tillotson)*

The hydrologic and hydraulic analyses were developed simultaneously; therefore, a discharge of 364,000 cfs, the same as the 1908 flood, was used in the early development of the hydraulic model to determine ineffective flow areas. Once the 1% annual chance discharge was finalized, the 1% annual chance discharge of 292,000 cfs was used in all other RMA-2 models and was used to determine flow paths and velocities. We have verified that using a discharge of 292,000 cfs generates the same ineffective flow areas.

4. *What percentage of flow behind Manning's dike is reflected in the floodway and BFE computations? (Martin Becker)*

Two-dimensional model results indicate that this is as much as 25% of the total Congaree River discharge. However, as per standard NFIP mapping guidelines, the floodway and BFE computations are based on flow that would occur in Richland County if no dikes were present.

5. *The South Carolina Department of Transportation (SCDOT)/U.S. Geological Survey (USGS) reports on development of the 2-dimensional model indicate that no flow occurs landward of Manning's dike. How and why does FEMA's model differ? (Martin Becker)*

SCDOT and USGS developed their models with a different objective than FEMA. SCDOT and USGS were sizing bridge crossings over the Congaree River floodplain, with the objective of designing Interstate Route 77 to be passable for emergency services and evacuations in a very large flood. Their approach results in very large openings. FEMA's objective is to accurately determine 1% annual chance flood hazards based on existing conditions for flood insurance and floodplain management applications. In addition, limitations in computers at the time of the SCDOT/USGS study in the late 1970s, forced them to divide the floodplain into three models: one for the Richland



10-10-00 15:08 From: DEWBERRY &amp; DAVIS

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County floodplain, one for the Lexington County floodplain, and one for the main channel. SCDOT/USGS ran the entire discharge of 364,000 cfs through each model. FEMA combined these into one model for the entire floodplain and ran the 1% annual chance discharge through the entire floodplain.

6. *Lake Murray Dam has been retrofitted several times since 1940. Were historical flood data adjusted to take this into account? (Martin Becker)*

No. While the dam has been modified since its construction, FEMA has not received a definitive operating plan for Lake Murray Dam, nor any calculations of the downstream discharge during the 1% annual chance flood, based on a definitive operating plan. The peak flows prior to 1929 were adjusted to account for the regulating effect of Lake Murray Dam as it was operated during the period 1930 to 1983.

7. *Did FEMA perform library research into historical flood peaks prior to the USGS systematic record? (Martin Becker)*

No. The only data reviewed by FEMA were provided by appellants. These data indicated that the 1908 flood was the largest since at least 1852. The historical peak flows were not used in the frequency analysis. This conclusion was cross-checked to the longer systematic record for the Savannah River. The pre-1892 newspaper accounts of flooding indicate a period of significant flows and support the importance of considering recorded flows prior to the installation of Lake Murray Dam.

8. *Please clarify the meaning of Figure 2 in the September 26, 2000, report. (John Carrigg)*

The yellow highlighted sections are sections where a failure is likely. This figure is not intended to indicate that all yellow highlighted sections will fail.

9. *Manning's dike has been in place since the turn of the century. Why does FEMA assume that it will fail now? (John Carrigg)*

NFIP regulations Section 65.10 specifies criteria that FEMA must consider when certifying a dike or levee; any dike or levee that cannot be certified must not be considered as providing protection from the 1% annual chance flood in analyses and mapping. Among these criteria is that the top of a dike or levee must be at least 3.0 feet above the BFE; this is called freeboard. Freeboard is important because of uncertainty inherent in hydrologic and hydraulic analyses and because debris can cause increases in water-surface elevations, leading to overtopping not predicted by the BFE. Manning's dike does not meet these criteria.

10. *The Upper Mississippi River study currently being formulated by the U.S. Army Corps of Engineers (USACE) assumes that no levee breaches occur until overtopping occurs, and that the breach will constitute ineffective flow. Why aren't these assumptions used in the Congaree River study? (Martin Becker)*

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From: DENBERRY &amp; DAVIS

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The USACE study was initiated for reasons other than NFIP mapping. FEMA is investigating funding options to build on the Upper Mississippi River study for NFIP mapping purposes. However, when the study is used to produce updated NFIP maps for the impacted communities, dikes and levees will be evaluated for compliance with Section 65.10 of the NFIP regulations. Those that cannot be certified will be mapped as if they were not there. Assessment of ineffective flow potential will be based on hydraulic conditions at the site of specific levees.

11. *To clarify, the intent of assuming dike failure is to provide BFEs for the landward portion of Richland County. (Wilson Tillotson)*

Yes, that is correct. Because the dike does not meet Section 65.10 requirements, the area behind it must be mapped as floodplain so that those at risk will be aware when making building plans and flood insurance purchase decisions.

12. *Would a levee system based on 3 feet of freeboard on top of the 500-year flood elevation be enough to protect developments landward of the levee? (Jim Wiseman)*

If all other aspects of Section 65.10 of the NFIP regulations were met, this system would meet the NFIP minimum requirements to be shown as providing protection on the Flood Insurance Rate Maps (FIRMs). However, this is a matter of risk management. All levee systems have a possibility of failure. The developer and the affected communities must decide the acceptable level of risk.

13. *Procedurally, what do we need to do to improve the dikes? (Jim Wiseman)*

Because it is the responsibility of the impacted jurisdiction to manage all development within its floodplains, Richland County would have to approve any physical modifications to the dike. Additionally, because the dike is in an adopted floodway, any modifications will have to comply with the requirements of Section 60.3(d)(3), or a floodway revision would have to be made to remove the area from the floodway. These changes would also need to be coordinated with any other impacted jurisdictions, such as Lexington County, and the cities of Cayce, Columbia and West Columbia.

Floodway revisions can be made if engineering analysis supports an alternative floodway configuration that meets surcharge and other engineering requirements, and all affected jurisdictions agree to this modification.

14. *How should Richland County use the September 26, 2000, revised preliminary FIRM along with the effective FIRM for floodplain management purposes? (Kit Smith)*

According to the NFIP regulations, a community may use its effective FIRM for floodplain management purposes until FEMA issues a Letter of Final Determination finalizing the preliminary FIRM. After that, the community should use the FIRM defined by the Letter of Final Determination as best available data for floodplain management. As explained at the meeting, there is a 6-month period between the date of the Letter of

10-18-00 18:00

From-DEWBERRY &amp; DAVIS

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Final Determination and the effective date of the new FIRM. After the 6-month period, flood insurance applications of the program will be based on the new FIRM.

15. *If the September 26, 2000, revised preliminary FIRM becomes finalized, how should Richland County deal with variances, such as for expansion to Heathwood Hall School or the City of Columbia wastewater treatment plant? (Kit Smith)*

There are several possibilities. First, upgrades or direct replacements can be made on a 1:1 ratio of building footprint area. Second, building standards could mandate that buildings do not impede flood flow, such as construction elevated on piles to allow flow under the buildings. Third, the floodway configuration could be altered, as discussed in the answer to question number 13. Variances and exceptions are further discussed in Section 60.6 of the NFIP regulations.

16. *Are there any provisions requiring the retrofitting of existing structures in the floodway?*

Buildings construction prior to adoption of the new FIRM would not be subject to new standards unless a structure is substantially improved, or repaired after being substantially damaged. Substantial improvement is defined as any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which exceeds 50% of the market value of the structure before the "start of construction" of the improvement. Substantial damage is defined as damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred. In these cases, full compliance with the elevation requirements must be met.

17. *Does shifting the floodway require making physical changes to the floodplain, or is it simply a matter of computer modeling? (George Wolf)*

No physical changes are required. The floodway may be modified as discussed in the answer to question number 13.

18. *Is the 30-day comment period regulatory? (George Wolf)*

No, this comment period is not regulatory, but is a courtesy period extended to communities to provide an opportunity to review and comment on appeal resolutions.

I am also enclosing a document that was prepared in response to questions raised by Mr. Martin Becker.

While reviewing our files, we discovered that the final version of the calibration HEC-2 model was inadvertently excluded from the compact disc distributed on September 26, 2000, and from FEMA's website. This file will be added to FEMA's website today. This file may be accessed by going to [http://www.fema.gov/miv/isd/ST\\_cong.htm](http://www.fema.gov/miv/isd/ST_cong.htm), and following the links for HEC-2 model downloads.

10-10-00 15:00 From: DEWBERRY &amp; DAVIS

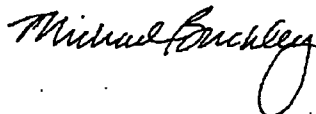
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I wanted to again thank the attendees for their participation in the meeting and to emphasize the importance of remaining involved and engaged in this process. FEMA is committed to working with you in exploring alternative floodway configurations that meet FEMA's minimum standards and that provide a sound basis for the consideration of potential future construction in the flood fringe areas of the Congaree River. A meeting to discuss the floodway configuration has been scheduled for October 18, 2000, at 11:00 am at FEMA's Regional Office in Atlanta, Georgia. Any further questions or clarifications should be submitted in writing. We are committed to finalizing the FIRMs for your communities in an expeditious manner and will respond to your inquiries quickly. You may contact me at (202) 646-2756, or by facsimile at (202) 646-4596.

Sincerely,



Michael K. Buckley, P.E., Director  
Technical Services Division  
Mitigation Directorate

## Enclosures

cc: The Honorable Avery B. Wilkerson, Mayor of the City of Cayce  
The Honorable Wyman M. Rish, Mayor of the City of West Columbia  
All meeting attendees via facsimile

10-10-00 15:00

From: DENBERRY &amp; DAVIS

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CRODER '1

MTPMance HIS1

| NAME                 | Organization                | Phone        | FAX              |
|----------------------|-----------------------------|--------------|------------------|
| Todd Davison         | FEMA R4-Atlanta             | 770-220-5401 | Call Davison 803 |
| Vince Tabacco        | FEMA/HQ                     | 202-646-4500 | 202-646-3600     |
| Das Benom            | FEMA/HQ                     | 202-646-2803 |                  |
| Barbara McGill       | City of Columbia            | 202-842-5430 | 202-842-5051     |
| KIT SMITH            | RICHMOND COUNTY             | 803-254-0542 | 803-4241         |
| Greg Parks           | Richmond County             | 803-782-3288 | 803-647-0912     |
| Lee Hilland          | SEDNE                       | 803-734-9120 | 803-734-9106     |
| Matt Miller          | FEMA/HQ                     | 202-646-3464 | 202-646-4596     |
| MIKE BUCKLEY         | "                           | 202-646-2150 | "                |
| JOHN CARRIGG         | Lexington County            | 803-799-8600 | 803-799-9202     |
| CHARLIE COMPTON      | Lexington County            | 803-359-8121 | 803-359-8100     |
| ART BROOKS           | Lexington County            | 803-359-8100 | 803-359-8101     |
| MARTIN BECKER        | Columbia Ventures           | 404-876-3922 | 404-876-672      |
| Wilson Tulocan       | Lockwood Green              | 804-599-4451 | 599-654          |
| MARTHA BRADDOCK      | FEMA HQ - Intergovernmental | 202-646-4515 | 202-646-4037     |
| JIM WISEMAN          | COLUMBIA VENTURE            | 803-743-0672 | 803-743-0673     |
| DOUG WENDEL          | BURROUGHS + CHAPIN          | 843-448-5123 | 843-448-9141     |
| Mary Margaret Walker | FEMA HQ Public Affairs      | 202-646-4600 | 202-646-4080     |
| Susan Koehngator     | FEMA HQ - Intergovernmental | 202-646-4615 | 202-646-4035     |
| Will Thomas          | Richard Baker, Jr.          | 703-307-6700 | 703-307-6701     |
| Craig Pat            | Denberry & Davis LLC        | 703-844-0382 | 703-844-0692     |
| Zekrallah Momene     | Denberry & Davis LLC        | 703-844-0345 | 703-844-0648     |
| Mary Hudak           | FEMA Region 4, Atlanta      | 770-220-5226 | 770-220-5220     |
| CHRIS MASUAIN        | RICHMOND COUNTY, SC         | 803-798-1601 | 803-798-1601     |

ON conference by phone:

|                |                                   |              |
|----------------|-----------------------------------|--------------|
| Deona Plough   | Columbia - Asst City Mgr          | 803-733-8223 |
| John Dewey     | Columbia - Dir Public Utilities   | 733-8317 FAX |
| David Johnston | Columbia - City Engineer          |              |
| Mullen Taylor  | Richland County - Asst County Mgr | 803-748-4616 |
| George Wolfe   | Richland County - Counselor       | 748-4644 fax |
| Jack Smith     | Richland County - Counselor       |              |

Shelley Hill - Reporter The State paper 803-771-8462

CV

Columbia Venture, LLC

October 26, 2000

VIA E-MAIL, FACSIMILE AND FEDERAL EXPRESS

Michael K. Buckley, P.E., Director  
Technical Services Division  
Mitigation Directorate  
Federal Emergency Management Agency  
500 C Street, SW  
Washington, D.C. 20472

RE: Comments and Objections Regarding the September 2000  
Flood Insurance Study and Flood Insurance Rate Map  
for Richland County, South Carolina

Dear Mr. Buckley:

On behalf of Columbia Venture, LLC, ("Columbia Venture") I am submitting the following comments and objections regarding the new Flood Insurance Study ("FIS") and Flood Insurance Rate Map (the "September 2000 map") for Richland County, South Carolina, issued by FEMA at its public meeting in Columbia, South Carolina, on September 26, 2000. These comments and objections are submitted pursuant to the thirty-day public comment period announced by FEMA on that date.

Although our objections to the September 2000 map are discussed below, the crux of our objections centers on the use of the Richland HEC-2 Base Flood Elevation ("BFE") model to determine the Lexington floodway. This is the most significant concern that Columbia Venture has with the September 2000 map. It is our position that use of the Lexington HEC-2 BFE model for determination of the Lexington BFE and corresponding Lexington floodway produces a more scientifically and technically correct determination of the Lexington floodway than is shown in the September 2000 map and FIS.

Comments and Objections

As you are aware, there are substantial differences between the map issued by FEMA in August 1999 and the map recently issued in September 2000. Those differences substantially and negatively impact Columbia Venture's property. Since its release, we have worked diligently, and will continue to work, to provide FEMA with scientific and technical information

Carolina First Building  
4875 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 743-0672 (803) 743-0673 Fax

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Mr. Michael K. Buckley, P.E.  
October 26, 2000  
Page 2

to support our position. Our objections and comments are discussed in detail in a letter from Lockwood Greene, a copy of which is enclosed. Lockwood Greene is the engineering firm working with Columbia Venture to develop scientific and technical data relating to the remapping of the Congaree River. The objections and comments may be summarized as follows:

- The floodway in Lexington County should be established using the same Lexington HEC-2 BFE model as used to establish the BFE, i.e., levee in place.
- The effect of the Lake Murray Dam on annual peak flows on the Congaree River at Gervais Street that FEMA uses to determine the 100-year flow at Gervais Street should be agreed to by SCANA.
- The probability of a double breach scenario is highly unlikely. A geotechnical study prepared by S&ME, Inc., an engineering firm, indicates the probability of a levee failure is low, based on U.S. Army Corps of Engineers technical procedures.
- Consistent assumptions and input should be used for the RMA-2 (2D) and HEC-2 (1D) models.
- FEMA should evaluate the BFE in Richland County as if the levee is breached but flow behind the levee is ineffective. Evaluating the BFE in this manner will raise the BFE in Richland County to match the BFE in Lexington County.

#### Request for Recognition as an Appellant

Because of its substantial concerns with the September 2000 map, as discussed above, Columbia Venture respectfully requests that it be recognized as an appellant for purposes of that map. As summarized below, Columbia Venture has participated extensively throughout the administrative process and has provided a substantial amount of scientific and technical data and alternative analyses of the floodplain.

Columbia Venture, through its representatives, has been engaged in a very active dialogue with FEMA since early 1999 regarding FEMA's remapping of the Congaree River. After FEMA submitted a proposed map to Richland County in February 1999, Columbia Venture began discussions with FEMA to help identify the scientific and technical errors in FEMA's proposed map. Columbia Venture presented new data for inclusion in the hydrologic and hydraulic computations that FEMA had prepared, as well as critiques of the actual modeling proposed by FEMA. On June 3, 1999, Lockwood Greene submitted extensive technical data on behalf of Columbia Venture to FEMA proposing to revise the preliminary map presented at the March 24, 1999 public meeting. By letter dated June 9, 1999, to Cary McSwain, the Administrator of Richland County, FEMA acknowledged this as an official submittal of

Mr. Michael K. Buckley, P.E.  
October 26, 2000  
Page 3

technical data to FEMA by Lockwood Greene. Throughout the administrative process, Columbia Venture has continued to present information and data to FEMA through extensive written correspondence and through numerous telephone conversations and meetings in an effort to discuss and clarify for FEMA that information and data.

In August 1999, a resolution meeting was held with FEMA at the office of its technical contractor in Fairfax, Virginia, with Columbia Venture. Subsequent to the resolution meeting, FEMA proposed the August 1999 map in a public meeting in Columbia, South Carolina. Because Columbia Venture agreed with the map that FEMA proposed, it did not present any additional information during the formal public comment period. Columbia Venture did, however, actively participate in the public meetings held by FEMA that followed the formal public comment period. Its participation included providing new and more correct data to FEMA for its use in responding to flaws in the information presented to FEMA by other commenters.

Thus far in this proceeding, FEMA has designated three appellants relating to the August 1999 map based on their having submitted detailed technical data. FEMA did not include Columbia Venture in that group although it had also submitted detailed technical data on the March 1999 map, as well as additional data on the August 1999 map. Also, Columbia Venture owns a significant portion of the property that is affected by the proposed maps. Columbia Venture did not file a specific "appeal" of the August 1999 map because Columbia Venture thought the map was correct and it had no objections to the August 1999 map. The September 2000 map, however, substantially changed the map proposed by FEMA in August 1999 and would have a dramatic, negative impact on Columbia Venture. Given its active participation throughout the proceedings and its objections to the September 2000 map, Columbia Venture should be recognized as an appellant.

Columbia Venture is an active appellant and is in the process of developing additional scientific and technical data to support its objections to the September 2000 map. We recognize that the thirty-day comment period was provided as a courtesy period, and we appreciate that courtesy. Thirty days, however, is not a sufficient period of time in which to develop the type of data that will hopefully be useful to FEMA and to appropriately respond to such a dramatically changed map from the one FEMA released in August 1999. Appellants of the August 1999 map, for example, had a substantially longer period of time to develop data supporting their positions. Columbia Venture plans to continue to submit data to FEMA and to continue its dialogue with FEMA.

#### Submission of Data After October 26, 2000

As indicated earlier, Columbia Venture is in the process of developing additional scientific and technical data to support its objections to the September 2000 map. We recognize that the thirty-day comment period was provided as a courtesy period, and we appreciate that courtesy. Thirty days, however, is not a sufficient period of time in which to develop the type of data that will hopefully be useful to FEMA and to appropriately respond to such a dramatically changed map from the one FEMA released in August 1999. Appellants of the August 1999 map, for example, had a substantially longer period of time to develop data supporting their positions. Columbia Venture plans to continue to submit data to FEMA and to continue its dialogue with FEMA.



Mr. Michael K. Buckley, P.E.

October 26, 2000

Page 4

FEMA regarding such data after October 26. It is our understanding based on discussions at the October 18 meeting that FEMA may need up to two months after October 26 to make a final determination. Thus, submission of additional information following the thirty-day courtesy period should not unduly delay FEMA's decision or prejudice any other party. Also, FEMA clearly has the discretion to continue to accept data because the thirty-day comment period was a courtesy period, not a regulatory period. If FEMA determines that a formal request to extend the thirty-day comment period is necessary, please consider this letter as our request for a reasonable extension of that comment period.

**Request for Final Determination Only Upon Presentation of All Relevant Information**

As previously stated, Columbia Venture will continue to work with FEMA and local communities to resolve our objections to the September 2000 map. To facilitate this approach, Columbia Venture requests that FEMA not issue a Notice of Final Determination until FEMA has received and reviewed all of the scientific and technical data pertaining to the September 2000 map and Columbia Venture has had an opportunity to discuss that data with FEMA. Also, Columbia Venture reiterates the request it made during the meeting on October 18, 2000, that FEMA not issue a Notice of Final Determination until FEMA has certified the accuracy of a HEC-2 model showing the impact of a certified levee on Lexington County and Columbia Venture has had an opportunity to discuss that determination with Lexington County. It is our understanding based on discussions during the October 18 meeting that FEMA would be agreeable to this request.

Thank you for this opportunity to present our comments and objections to the September 2000 map with supporting scientific and technical data. Please do not hesitate to contact me or Martin Becker if you have any questions.

Sincerely,



Douglas P. Wendel

DPW/hkb

cc: The Honorable Kit Smith, Chair of Richland County Council  
The Honorable Johnny W. Jeffcoat, Chair of Lexington County Council  
The Honorable Robert D. Coble, Mayor of Columbia  
The Honorable Avery B. Wilkerson, Jr., Mayor of Cayce  
The Honorable Wyman M. Rish, Mayor of West Columbia  
T. Cary McSwain, Richland County Administrator  
James E. Wiseman  
Martin Becker

From: MULLEN TAYLOR  
Sent: Monday, November 06, 2000 11:25 AM  
To: 'J. E. Wiseman'  
Subject: RE: Memorandum - Procedural and Liability Issues ...

Thanks for the Memo. George et al are reviewing it.

Kit apparently met with Heathwood, but I don't know what was said. As for the viability of floodway reconfiguration, FEMA is telling me it is still an option, which is reflected in the minutes of the Oct. 4th mtg. I don't think the option of reconfiguration should be construed as some sign of opposition to your project. If Richland, Lexington and the City chose to pursue examining possible floodway scenarios, the intent would NOT be to see how much more floodway can be pushed onto B&C property, but rather, seeking a way to protect the WWTP which is a valid public interest. If reconfiguration would in fact push more floodway onto B&C property, I sincerely doubt that scenario would be considered by the 3 governments. All of this is a moot point right now, because no one has even sat down to model possible floodway shifts. The reason I'm talking about it is because of your implication that this option is being talked about as a way "to get" B&C. It is not.

So, that's my rumor bustin' response.

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Friday, November 03, 2000 8:22 AM  
To: Mullen Taylor  
Subject: FW: Memorandum - Procedural and Liability Issues ...

Mullen-

Attached is the memo from Peter Heibert on the liability issue. I'm sure George will enjoy the reading.

Rumor du jour is that Kit has informed Heathwood Hall people that she will work diligently to get both the school and the sewer plant out of the floodway while leaving our property in the floodway. She asked this question in Washington and FEMA answered that anything like that would not be allowed because of the rise condition. They stated it better in the minutes. We have been willing to sit down and talk about all the issues. But it is frustrating when it appears we are being strung out and hammered constantly.

Bill Clinton- "Can't we all just get along" - Joke du jour

Jim

# WINSTON & STRAWN

Memorandum

1400 L STREET, N.W., WASHINGTON, DC 20005-3502  
202-371-5700

35 W. WACKER DRIVE  
CHICAGO, IL 60601-9703  
312-558-5600

200 PARK AVENUE  
NEW YORK, NY 10165-4193  
212-294-6700

444 FLOWER STREET  
LOS ANGELES, CA 90071-2911  
213-618-1700

43 RUE DU RHONE  
1204 GENEVA, SWITZERLAND  
41-22-317-75-75

21 AVENUE VICTOR HUGO  
75116 PARIS, FRANCE  
33-1-63-64-82-82

To: James Wiseman  
Columbia Venture, LLC

From: Peter N. Hiebert  
Sean G. Saxon

cc: John L. Napier

Date: November 2, 2000

Re: Procedural and Liability Issues Relating to a Conditional Letter of Map Revision  
Under the National Flood Insurance Program Regulations.

---

We have been asked by Columbia Venture, LLC ("Columbia Venture") to address the procedural requirements under the National Flood Insurance Program ("NFIP") regulations for seeking changes to the flood risk determinations by the Federal Emergency Management Agency ("FEMA") based on a proposed project to upgrade existing levees along the Congaree River in Richland and Lexington Counties in South Carolina to meet FEMA standards. In particular, this memorandum will discuss whether local governmental entities should be involved in Columbia Venture's effort to seek such changes, and whether local governmental entities would incur any potential liability by participating in Columbia Venture's request for changes or by assuming responsibility, under the NFIP regulations, for the operation and maintenance of the improved levee system.

James Wiseman  
November 2, 2000  
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## I. FACTUAL AND PROCEDURAL BACKGROUND

On September 26, 2000, FEMA issued an *Appeal Resolution for Richland and Lexington Counties, South Carolina* (the "Appeal Resolution"), which contains proposed final flood insurance studies ("FISs") and flood insurance rate maps ("FIRMs") for the areas adjacent to the Congaree River. The *Appeal Resolution* is the result of an administrative appeal brought by three parties challenging the revised preliminary FISs and FIRMs which FEMA issued on August 12, 1999.<sup>1</sup> Because Columbia Venture was satisfied with these August preliminary studies and maps, Columbia Venture did not formally participate in the administrative appeal.

The revised map, as delineated in and incorporated in the *Appeal Resolution*, significantly expands the Congaree River floodway. As a result, 70 percent of the property owned by Columbia Venture and slated for development may now be within the expanded floodway. While not required by the NFIP regulations, FEMA has provided a 30-day period during which it will receive public comments on the *Appeal Resolution*. This comment period closed on October 26, 2000. The statute requires FEMA to issue a final determination within a "reasonable time." 42 U.S.C. § 4104(e).

In addition to the possibility of further administrative or judicial review of the revised map set forth in the *Appeal Resolution*, Columbia Venture is considering the alternative of seeking a Conditional Letter of Map Revision ("CLOMR"), as provided in the NFIP regulations, based on upgrading the existing levees along the Richland County side of the

<sup>1</sup> Under 42 U.S.C. § 4101(e) and (f), the Director of FEMA is charged with assessing the need for a revised floodplain area once every 5 years. Until a final determination of the floodplain revision is made by FEMA, the last-issued 1995 map, which includes only a small portion of Columbia Venture's property within the delineated floodway, remains in force. See 42 U.S.C. § 4104(e) (declaring that pending final determination of a floodway revision, "flood insurance previously available within the community shall continue to be available").

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Congaree River. According to Columbia Venture's technical consultants, the improvement of these levees to meet FEMA standards would provide justification for revising the September 26, 2000 map to exclude Columbia Venture's proposed development on the landward side of the levee system from the delineated floodway.

## II. REGULATORY REQUIREMENTS FOR SEEKING A CONDITIONAL LETTER OF MAP REVISION

### A. Parties Eligible to Request Consideration of a CLOMR

Under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. §§ 4001 *et seq.* ("NFIA"), the Director of the Federal Emergency Management Agency has authority to revise floodplain determinations (1) upon the Director's determination that such revision is necessary to satisfy the objectives of the NFIP, or (2) upon request of the local government if such request is justified by the submission of sufficient technical data. The NFIA provides in relevant part:

The Director shall revise and update any floodplain areas and flood-risk zones—

- (1) upon the determination of the Director, according to the assessment under subsection (e) of this section, that revision and updating are necessary for the areas and zones; or
- (2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Director, but

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which may not exceed 50 percent of the cost of carrying out the requested revision or update.

42 U.S.C. § 4101(f). The Code of Federal Regulations, Title 44, Part 65 sets forth the procedures by which a State or local government, or other affected party, may submit a request for a map revision based on a variety of changed circumstances. *See generally* 44 C.F.R. Part 65.<sup>2</sup> As explained in the NFIP regulations, the purpose of Part 65 is "to outline the steps a community needs to take in order to assist [FEMA's] effort in providing up-to-date identification" of special flood, mudslide and flood-related erosion hazards. 44 C.F.R. § 65.1

Under Part 65, a community<sup>3</sup> has a duty to provide FEMA with any information that might affect the applicable base flood elevation in a given flood plain area.<sup>4</sup> In particular, the regulations provide that:

A community's base flood elevation may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community *shall* notify the [NFIP] Administrator of the changes by submitting technical or scientific data . . . . Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

44 C.F.R. § 65.3 (emphasis added).

<sup>2</sup> *See, e.g.*, 44 C.F.R. § 65.5 (revisions based on topographical changes); § 65.6 (revisions based on new technical data); § 65.7 (requests for floodway revisions); § 65.10 (revisions based on qualifying levee systems); § 65.12 (revisions necessitated by proposed encroachments); § 65.13 (revisions for areas subject to alluvial fan flooding).

<sup>3</sup> The NFIA defines "community" as a "State or political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards." 42 U.S.C. § 4003(a)(1). *See also* 44 C.F.R. § 59.1.

<sup>4</sup> The NFIP regulations define the "base flood elevation" or "BFE" as the flood elevation "having a one percent chance of being equaled or exceeded in any given year." 44 C.F.R. § 59.1.

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Concomitantly, the regulations provide communities with an express right to request changes to a flood hazard boundary map ("FHBM") or a flood insurance rate map ("FIRM") based on any physical changes affecting flooding conditions. *See* 42 U.S.C. § 4101(f), *supra*. In particular, Section 65.10 of the NFIP regulations provides that a map change request may be based on the construction of, or improvement to, a levee system which meets minimum FEMA design, operation and maintenance standards. *Id.* *See also* 44 C.F.R. § 65.6 (revision of base flood elevation determinations) and § 65.12 (revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments).

The regulations make plain, however, that final map revisions cannot be made based on the effects of proposed projects or future conditions. 44 C.F.R. § 65.6(a)(3). Rather, the regulations provide that a community, or other affected party, may request FEMA's comments on whether a proposed project, such as the one contemplated here, would justify a map revision. 44 C.F.R. § 65.8. The regulations further provide that FEMA's comments in response to such a request are to be:

issued in the form of a Conditional Letter of Map Revision [CLOMR], in accordance with [the provisions of] 44 C.F.R. Part 72. The data required to support such requests are the same as those required for final revisions under §§ 65.5, 65.6, and 65.7....

44 C.F.R. § 65.8<sup>5</sup>

Under the FEMA regulations, governmental units and private parties are authorized to request a CLOMR. However, a private party may request a map change, including

<sup>5</sup> The NFIP regulations further explain that a CLOMR is "FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the Special Flood Hazard Area (SFHA)." 44 C.F.R. § 72.2.

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a CLOMR, only if such party has first submitted the map change request to the Chief Executive Officer ("CEO")<sup>6</sup> of a community and the CEO has denied the request.<sup>7</sup>

Thus, in order to seek a map revision under the procedures set forth in Part 65, Columbia Venture must first request that the CEO of either the City of Columbia or Richland County submit the request to FEMA on behalf of Columbia Venture. If this request is denied, Columbia Venture may still submit the request on its own behalf, but it must submit written evidence to FEMA that the community's cooperation was sought and denied.

As a practical matter, it will be important for Columbia Venture to secure the political support of the relevant community, because the likelihood of success will be affected if the local community refuses to participate in, or support, the request. This is especially true when, as here, the revision would be based on a proposed upgrade of the levee system, which, under the NFIP regulations described *infra*, requires community participation in the operation and maintenance of such system.

<sup>6</sup> The regulations define the Chief Executive Officer of a community as "the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community." 44 C.F.R. § 59.1.

<sup>7</sup> In relevant part, the regulations provide:

All requests for changes to effective maps, other than those initiated by FEMA, must be made in writing by the Chief Executive Officer of the community (CEO) or an official designated by the CEO. Should the CEO refuse to submit such a request on behalf of another party, FEMA will agree to review it only if written evidence is provided indicating the CEO or designee has been requested to do so.

44 C.F.R. § 65.4.



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**B. Community Jurisdiction Over, or Responsibility for, the Operation and Maintenance of the Proposed Levee System**

Section 65.10 of the NFIP regulations sets forth the minimum design, operation, and maintenance standards that a levee system must meet in order to be recognized by FEMA as providing a sufficient level of flood protection. There are four operative subsections to Section 65.10: subsection (b) (*Design Criteria*<sup>8</sup>); subsection (c) (*Operation Plans and Criteria*); subsection (d) (*Maintenance Plans and Criteria*); and subsection (e) (*Certification Requirements*). For the purposes of analyzing the extent of "community" involvement required to meet the regulatory criteria for a requested map revision, the provisions governing the operation and maintenance of a proposed levee system appear to be the most relevant.

In order to qualify as a basis for a map change, subsection (c) provides that the operation of a levee system, including the operation of a flood warning system, must be under the jurisdiction of a Federal or State agency, or "an agency of a community participating in the NFIP." The regulation states in relevant part:

For a levee system to be recognized, the operational criteria must be as described below. . . . All operations *must be under the jurisdiction of a Federal or State*

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<sup>8</sup> The Design Criteria covers: (1) minimum freeboard levels; (2) closure devices for all openings; (3) embankment protection; (4) embankment and foundation stability; (5) settlement; (6) interior drainage; and (7) provision for additional criteria in particular situations. 44 C.F.R. § 65.10(b).

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*agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.*

(1) Closures. Operation plans for closures must include the following:

- (i) Documentation of the flood warning system, *under the jurisdiction of Federal, State, or community officials*, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.

\* \* \*

(2) Interior drainage systems associated with levee systems . . . will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan:

- (i) Documentation of the flood warning system, *under the jurisdiction of Federal, State, or community officials*, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.

\* \* \*

44 C.F.R. § 65.10(c) (emphasis added).

Similarly, subsection (d) provides that the levee system must be maintained by the operator "in accordance with an officially adopted maintenance plan" and that all maintenance activities must be under the jurisdiction of a Federal or State agency or "an

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agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance." The regulations provide in relevant part:

- (d) Maintenance plans and criteria. For levee systems to be recognized as providing protection from the base flood . . . [a]ll maintenance activities *must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance.*

44 C.F.R. § 65.10(d) (emphasis added).

It is important to note that operation and maintenance standards set forth in 44 C.F.R. § 65.10 do not require that a qualifying levee system actually be owned by a governmental entity, but merely that such a system be subject to the "jurisdiction" or "ultimate responsibility" of a governmental entity. The NFIP regulations thus provide Columbia Venture with flexibility in terms of structuring any arrangement with a governmental entity to operate or maintain the proposed levee system.

**C. Certification of Data and Analysis Submitted to FEMA in Connection with a Request for CLOMR**

Section 65.10(e) of the NFIP regulations sets forth the certification requirements for technical data and analysis which must be presented to FEMA in support of a request for a map change based on a qualifying levee system. Specifically, the Regulations provide:

- (e) Certification requirements. Data submitted to support that a given levee system complies with the structural requirements set forth in [subsection (b) governing Design Criteria] must be certified by a registered professional engineer. . . . Certifications are subject to the definition given at § 65.2 of this subchapter. In lieu

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of these structural requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection against the base flood.

44 C.F.R. § 65.10(e).

Section 65.2 provides, however, that any certification by a registered engineer or by any other party does not constitute a warranty or guarantee of performance, either express or implied. Specifically, the regulation provides:

Certification by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier's knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. . . .

44 C.F.R. § 65.2.

Thus, under the NFIP regulations, the party requesting a map revision (whether a community or private party) would only have to ensure that the technical data and analyses submitted conformed to the relevant professional standard of care. Such certification is expressly not a guarantee of a proposed levee system's performance.

**D. The Procedures for Submitting a CLOMR Request**

As set forth in 44 C.F.R. § 65.8, described *supra*, a community or private party may request FEMA's position on whether a proposed project, such as the improvements to

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the levee system contemplated here, if built as proposed, would justify a map revision. A positive response by FEMA would be issued in the form of a Conditional Letter of Map Revision. *See generally* 44 C.F.R. § 65.8.

Under Section 65.8, the City of Columbia, Richland County or Columbia Venture could request, separately or together, that FEMA issue a CLOMR based on the proposed project to upgrade the existing levees along the Congaree River. If Columbia Venture submitted the request, Columbia Venture would have to demonstrate first that it sought the support of either Richland County or the City of Columbia and that such request for support was denied. 44 C.F.R. § 65.4(b). Moreover, any CLOMR request, regardless of the party submitting it, would have to demonstrate that the proposed levee system upgrade will conform to the minimum design, operation and maintenance requirements set forth in Section 65.10 of the NFIP regulations, together with required certifications in accordance with Section 65.2 and Section 65.10(e) discussed above.

Once a request is submitted, FEMA has 60 days within which to notify the requester and the community as to the adequacy of the request, 44 C.F.R. § 72.4(h)(1), and 90 days within which to provide the requester and the community with the requested CLOMR, other written commentary, or preliminary copies of the revised maps and/or reports for review and comment. 44 C.F.R. § 72.4(h)(2). A request for a CLOMR may be denied on grounds that the requester provided insufficient data or analyses; FEMA may also include specific comments, concerns or conditions regarding the proposed project or project design. 44 C.F.R. § 72.6. The requester is not entitled to any refund of fees paid if the request is denied or if the determination contains any comments, concerns or conditions. *Id.* However, a party may resubmit a request 90

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days after FEMA has denied the original request based on design changes, other alterations in the proposed project, or new information. 44 C.F.R. § 72.7.

If FEMA determines that the request merits the issuance of a CLOMR, Columbia Venture will still be required to seek an actual Letter of Map Revision (LOMR), once the project is completed. Presumably, FEMA would conduct an appropriate review of the levee system to determine that it, in fact, meets all of the requirements for design, operations and maintenance prior to issuing the LOMR. In any event, the LOMR, once it has been issued, will establish final floodplain boundaries and FIRMs.

### III. LIABILITY ISSUES

#### A. Federal Law

Nothing in the National Flood Insurance Act, as amended, expressly provides for a cause of action against a community that has: (1) requested a CLOMR based on an improved levee system, (42 U.S.C. § 4101(f); 44 C.F.R. §§ 65.8, 65.10, 72.2); (2) submitted certified data, materials or analysis in connection with a CLOMR request, (44 C.F.R. §§ 65.2, 65.10(e)); or (3) assumed "jurisdiction" or "ultimate responsibility" of the operation or maintenance of a levee system. (44 C.F.R. § 65.10).

Neither has research revealed any reported decisions discussing the availability of an implied cause of action under the above described provisions. To the extent that plaintiffs have attempted to bring claims under other provisions of the NFIP, however, such attempts have been uniformly unsuccessful. Indeed, the reasoning of these decisions would apply with equal force regardless of the statutory or regulatory section relied upon. Importantly,

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the holdings in these analogous cases do not turn on the specific language of the provision at issue, but rather on the court's view of the legislative purpose of the NFIP as a whole.

For example, in Segall v. Rapkin, 875 F. Supp. 240 (S.D.N.Y. 1995), a group of homeowners brought an action against a private surveying company based on alleged errors in the company's study of a particular flood area. The company's study was used by FEMA in establishing the flood hazard boundary map and base flood elevation for the surrounding area. The homeowners alleged that, due to survey errors by the company, their homes were constructed below the base flood elevation and sought damages from the company for the flooding of their homes. The court dismissed the action based on its finding that there is no private right of action under the National Flood Insurance Act. According to the court, Congress enacted the NFIA "to encourage local governments to limit flood damages by restricting and guiding development of land susceptible to flooding." *Id.* at 241. The court held that it was not necessary to give the plaintiffs a right of action in order to further the Congressional purpose behind the Act.

Similarly, a number of cases have been brought by homeowners against banks and other lenders for failing to inform the homeowners that the houses they were purchasing were located in a flood zone, and for failing to offer the homeowners flood insurance. The courts here have also found no implied private cause of action under the National Flood Insurance Act, notwithstanding that both the duty to inform and the duty to offer flood insurance are expressly provided for in the NFIA. See, e.g., Mid America National Bank v. First Savings and Loan Ass'n of South Holland, 737 F.2d 638 (7th Cir. 1984); Hofbauer v. Northwestern National Bank of Rochester, 700 F.2d 1197 (8th Cir. 1983); Arvai v. First Federal Savings and

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Loan Ass'n, 549 F.Supp. 921 (D.S.C. 1982), *aff'd*, 698 F.2d 683 (4th Cir. 1983). These cases all relied on the Supreme Court's decision in Cort v. Ash, 422 U.S. 66 (1975), which established the following four-part test for determining whether a private cause of action exists for the violation of a federal statute:

First, is the plaintiff "one of the class for whose special benefit the statute was enacted,"— that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

Id. at 78. In the cases cited above, the courts have looked to the legislative purpose and legislative history of the National Flood Insurance Act to find that homeowners did not constitute a "special class" for whose benefit the statute was enacted. Instead, the courts found that the statute had multiple purposes, including the reduction of flood-related losses to the Federal Government, to federally insured and regulated financial institutions, as well as to individual homeowners.

In denying a cause of action in Hofbauer, the court relied on the express intent of Congress in enacting the NFIA to "make insurance against flood damage available, to encourage persons to become aware of the risk of occupying the flood plains, and to reduce the mounting Federal expenditures for disaster relief assistance." Id. (*quoting* H.R. Rep. No. 1585, 90th Cong., 2d Sess., *reprinted in*, 1968 U.S. Code Cong. & Ad. News 2873, 2966-67). The



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court noted that many of the protections in the NFIA were designed to protect the lenders and the Federal government, not just borrower-homeowners. Thus, the would-be plaintiffs could not show the statute was drafted with an "unmistakable focus on the benefited class." *Id.* (quoting Cannon v. University of Chicago, 441 U.S. 677, 689 (1979)). Similarly, the district court in Arvai quoted the Supreme Court of South Carolina, which held in Pippin v. Burkhalter, 279 S.E. 2d (S.C. 1982), that the National Flood Insurance Act was enacted "to protect primarily a class of federally supervised and regulated loans and that no special benefit was intended by Congress for the purchaser." 539 F.Supp. at 923.

In addition to the plaintiff's inability to satisfy the Cort criteria, the Arvai court noted that private causes of action are expressly granted in other sections of the flood insurance laws. In particular, the court took cognizance of 42 U.S.C. § 4053 (policy holders are granted a federal forum in which to enforce their policies) and 42 U.S.C. § 4104 (parties with standing have right of appeal from administrative review of flood hazard area determinations). *Id.* at 924. Quoting one of the canons of statutory construction, the court reasoned that "where a statute expressly provides a particular remedy or remedies, a court must be wary of reading others into it." *Id.* (quoting TransAmerica Mortgage Advisors v. Lewis, 44 U.S. 11, at 19 (1979)).

The case law under the NFIP thus does not support an implied private cause of action for the alleged violation of any of the provisions of the National Flood Insurance Act or regulations, save for those which are expressly provided for. The reasoning of the analogous cases discussed above should apply fully to the three community actions at issue here.

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1. Requesting a CLOMR

In evaluating any potential federal liability, it is important to note that the City of Columbia or Richland County would only be requesting that FEMA consider whether a proposed project to upgrade the levees would justify a map revision. Either community would not actually be making the final determination itself. Instead, it would only request consideration from FEMA, which would have the responsibility for making the ultimate determination. And, presumably, FEMA would issue a CLOMR only if it was satisfied that the proposed project would, in fact, justify a map revision under the applicable federal guidelines. Thus, any possible liability on the part of either the City of Columbia or Richland County for requesting, or supporting the request for, a CLOMR would necessarily have to arise from its decision to exercise its legal rights under the NFIP regulations – a dubious proposition at best.

2. Certification Requirements

The certification requirements in the NFIP regulations do not include penalties or sanctions for submitting false, mistaken, or erroneous information. In fact, the regulations make clear that a certification by a requester does not "constitute a warranty or guarantee of performance, expressed or implied." 44 C.F.R. § 65.2. Indeed, this qualification is reinforced in FEMA's commentary accompanying the final rule adopting changes to the NFIP regulations:

The intent of the requirement is not to extract from the person or agency providing the information a guarantee that flood protection structures will function as intended or that specific areas will not be subject to flooding. The intent, rather, is for FEMA to be assured that the person or agency provides data, analyses or other information in accordance with

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sound practices established by the engineering profession.

51 Fed. Reg. 30290, at 30303.

While research has revealed no cases in which the certification requirement is specifically addressed, FEMA would presumably use the lack of an appropriate certification as a basis for (1) concluding that the request should be denied, or (2) requiring that the community, or other party requesting the map change, provide additional documentation or materials.

### 3. Assuming Maintenance and Operation of the Levee System

Under the regulations governing the mapping of areas protected by a levee system, a Federal or State agency, or an agency of a community participating in the NFIP, must assume "jurisdiction" or "ultimate responsibility" for the operation and maintenance of a qualifying levee system. See 44 C.F.R. §§ 65.10(c) and (d).

While the extent of oversight and day-to-day involvement by the governmental entity required to satisfy the NFIP regulations would be subject to discussion with, and approval by, FEMA, the earlier cases cited support the conclusion that the community's duty, established in the regulations, to operate and maintain a qualifying levee system, without more, does not confer an implied private cause of action under Federal law for the violation of such duty. Indeed, while the official commentary in the FEMA final rule is sparse, the regulatory history of Section 65.10 suggests that map revisions based on qualifying levee systems have multiple purposes. Indeed, the specific provisions of Section 65.10 appear to be based on the Corps of Engineers' Engineering Manuals 1110-2-1913 (Design and Construction of Levees) and

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1110-2-1610 (Hydraulic Design of Flood Control Structures), as well as findings by the National Academy of Science report entitled "A Levee Policy for the National Flood Insurance Program" (recommending that "new levees should be recognized for the purpose of reducing insurance rates where they provide protection against 100-year of larger floods and where they meet specified structural design criteria.") See 51 Fed. Reg. 30290, at 30305.

Based on the test set forth in Cort, it is highly unlikely that Congress intended to create a "special class" for whose singular benefit the levee system provisions were established.

**B. State Law**

Preliminary research suggests three areas for potential governmental liability under South Carolina State law arising from a community's participation in the CLOMR process based on the proposed project to upgrade the levee system: (1) participation in the request for a CLOMR; (2) certification of the materials submitted in connection with the request for a CLOMR; and (3) assumption of jurisdiction and/or ultimate responsibility for the operation and maintenance of the levee system. The following discussion of potential liability under State law is not intended to be exhaustive, but rather it is illustrative of those issues which are most likely to concern a community considering whether to participate in, or support the request for, the CLOMR process. The precise scope of the legal duties -- and thus potential liability -- of the participating parties, including governmental entities, will depend upon the structure of any arrangement ultimately agreed upon by the parties.

Below are the major theories of potential liability under South Carolina law.

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1. Tort

a. The South Carolina Tort Claims Act

At common law, local governmental bodies enjoyed immunity from suit for the tortious conduct of their officials and employees under the theory that "it is better that an individual should sustain an injury than the public suffer an inconvenience." Russell v. Men of Devon, 2 T.R. 667, 100 Eng. Rep. 359 (1788).<sup>9</sup> The doctrine of sovereign immunity was first applied in South Carolina in the 1820 case of Young v. Commissioner of Roads, 2 Nott. and Mc. 537, 11 S.C.L. 215 (1820). See McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) (Chandler, J., concurring) (tracing origins of doctrine in South Carolina common law). Originally, this theory applied only to the State under the doctrine of sovereign immunity, but was later extended to all political subdivisions of the State under the doctrine of governmental immunity.

In South Carolina, this common law doctrine was abrogated with the decision of McCall v. Batson, *supra*, where the State Supreme Court ruled that absolute immunity ran counter to modern notions of governmental responsibility and fairness. In abolishing the doctrine, however, the Court urged that the legitimate interests of the State be addressed by the Legislature. 285 S.C. at 257. The following year, the South Carolina Legislature passed the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to -200 ("SCTCA"), which supplanted the common law doctrine by providing a statutory waiver of immunity to suit, subject to specific exceptions and limitations.

<sup>9</sup> This landmark decision, which created the doctrine of sovereign immunity, is perhaps better known for its holding that "the King can do no wrong."

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Under the provisions of the SCTCA, the State and its political subdivisions are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages" contained in other provisions of the SCTCA. S.C. Code Ann. § 15-78-40. There are, however, a number of exceptions to this general waiver of immunity specifically enumerated in the SCTCA. Prominent among these are exceptions which declare:

The governmental entity is not liable for a loss resulting from:

- (1) legislative judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

\* \* \*

- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule regulation or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee of the performance or failure to perform any act or service which in the discretion or judgment of the governmental entity or employee;

\* \* \*

- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property with

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in a reasonable time after actual or constructive notice  
of the defect or condition;

\* \* \*

- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

\* \* \*

- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected within a reasonable time after actual or constructive notice. . . .

\* \* \*

- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;

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S.C. Code Ann. §§ 15-78-60(1), (2), (4), (5), (10), (12), (13), (15), (20).<sup>10</sup>

The SCTCA, which provides the exclusive remedy in tort against governmental entities in South Carolina, is thus a limited waiver of governmental immunity. See Steinke v. South Carolina Department of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999). The burden of establishing a limitation upon liability, or an exception to the waiver of immunity under the SCTCA, falls upon the governmental entity asserting it as an affirmative defense. 336 S.C. at 393. However, the statute itself provides, and the courts have generally affirmed, that the "provisions [of the SCTCA] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f) (emphasis added). See Balser v. Sanders, 301 S.C. 170, 391 S.E. 2d 229 (S.C. 1990).

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<sup>10</sup> The SCTCA is also explicit on two other salient points. The statute provides:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

S.C. Code Ann. § 15-78-70 (a) and (b). Thus, if any official were to engage in conduct which exceeded the scope of his/her official duties, or which was intentionally wrongful, the SCTCA would not provide immunity. This Memorandum is predicated on the assumption that all parties would be acting in good faith, and that any harm which results from activities discussed herein would be strictly unintentional.



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(i) Requesting a CLOMR

Any decision by the City of Columbia or Richland County to request, or to support the request for, a CLOMR may reasonably be concluded as coming within the protection of S.C. Code Ann. § 15-78-60(4) (exempting from liability the adoption of a resolution by a governmental entity), since this is the most likely method whereby such governmental entity would declare its intention to seek a CLOMR from FEMA. There is little authority interpreting the scope of subsection 4. Yet, a plain reading of the provision indicates that a governmental entity would enjoy almost absolute immunity for these types of actions, even if the resolution authorizing the CLOMR request were later determined to be invalid or based on technically incorrect or insufficient data. *See also* S.C. Code Ann. § 15-78-60(1) and (2) (governmental entity not liable for loss resulting from legislative action or administrative action of a legislative nature).

Moreover, to the extent that seeking a CLOMR is considered a discretionary function, then subsection 5 of the statute would also provide immunity from suit. Under the holding of Strange v. South Carolina Dept of Highways & Pub. Trans., 445 S.E.2d 439 (S.C. 1994), if a governmental entity can show that "when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it," then the governmental entity will prevail under the discretionary immunity provisions of the

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SCTCA.<sup>11</sup> Because any request for a CLOMR would presumably follow a determination by the governmental entity, based on expert reports and opinions, that the proposed project would, in fact, justify a map revision, any exercise of discretion in this respect should be fully protected under this provision of the SCTCA as well.

(ii) Certification Requirement

Nor should the possibility that a participating governmental entity might fail to properly certify the documentation required by FEMA as part of a CLOMR request expose the governmental entity to any liability under State law. The Federal regulations that prescribe the certification requirements -- which requirements themselves do not create a "warranty" or "guarantee of performance" -- cannot reasonably be imputed to create a duty of care under South Carolina law owed by the participating governmental entity to a particular plaintiff. The fact that the documentation might be improperly certified to FEMA, without more, does not create a legally cognizable harm, and thus, a private individual would not have standing to bring an action for the failure to comply with this regulation. Even if the Federal regulation did create a duty of care under South Carolina law, any certification provided by a governmental entity to FEMA in the course of the CLOMR process would in all likelihood be subject to the exemption from liability provided in S.C. Code 15-78-60(12), which provides in relevant part:

licensing powers or functions including, but not limited to,  
the issuance . . . [of a] certificate . . . or similar authority

<sup>11</sup> Strange involved a suit brought against the Highway Department because the plaintiff claimed her car accident was caused by the Department's failure to stripe side lines, build up the shoulder of the road after resurfacing, and warn of a dangerous low shoulder. The Department argued that the actions plaintiff alleged were all discretionary functions protected under the SCTCA. The trial court denied the Department's motion for a directed verdict, and the Supreme Court agreed, holding that there was no evidence the Department weighed competing considerations and exercised professional standards when deciding not to take these precautions. Strange, 445 S.E.2d at 429.

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except when the power or function is exercised in a grossly negligent manner.

Id. The courts have ruled that the threshold of "gross negligence", sufficient to hold a governmental entity liable for loss resulting from its licensing powers or functions, is (1) the failure to exercise "slight care", (2) the intentional, conscious failure to do something one is required to do, or (3) the intentional performance of a prohibited act. See Rakestraw v. South Carolina Department of Highways and Public Transportation, 323 S.C. 227, 473 S.E. 2d 890 (S.C. App. 1999).

(iii) **Assuming Maintenance and Operational Responsibility of the Levee System**

As discussed above, the SCTCA specifically provides that the "governmental entity is not liable for a loss resulting from" an enumerated list of exceptions. S.C. Code Ann. § 15-78-60. None of the current thirty-four exceptions, however, offers a "perfect fit" for a governmental entity "operating" and "maintaining" a levee system.

It should be noted, at the outset, that the assumption of jurisdiction or responsibility for operating and maintaining a levee system designed to meet FEMA standards does not create liability for extraordinary events of force majeure such as a 500 year flood that breaches the high wall of the levee. In short, the governmental entity cannot be held as an insurer of last resort merely by assuming "ultimate responsibility" for operating and maintaining a levee system for the public good. However, the extent of potential liability for negligence in the actual operation and maintenance of the proposed levee system will, in the end, depend on the structure of any arrangement between participating parties, and on the risk-shifting and mitigation strategies ultimately employed.

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For example, if an eventual arrangement between Columbia Venture and a participating governmental entity obligates Columbia Venture (or some other private entity established for the purpose) to operate and maintain the levee, with only periodic governmental inspection, then two exceptions to the SCTCA, working in tandem, should provide complete protection from liability for the governmental entity. Subsection (20) of the list of exceptions states that the governmental entity is not liable for "an act or omission of a person other than an employee including, but not limited to, the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20). Thus, as long as the contracted employees were not public employees, their negligence, or other actionable conduct, could not be attributable to the government. In addition, subsection (13) makes governmental entities immune from tort claims for failing to make adequate inspections of any property. S.C. Code Ann. § 15-78-60(13). From a liability standpoint, this arrangement should offer reasonable protection for a governmental entity. Such an arrangement, of course, would be subject to FEMA approval under the NFIP regulations. The requirement that a governmental agency have jurisdiction and assume ultimate responsibility clearly reflects FEMA's concern that a levee system, which serves as a basis for a flood map revision, be maintained and supervised by a party with appropriate financial and other resources.

**b. The "Special Duty" Doctrine**

In addition to the SCTCA, there is another relevant principle of tort law in South Carolina which could affect liability associated with the operation and maintenance of a levee system by a governmental entity.

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Subject to the enumerated exemptions and limitations, the SCTCA makes government officials liable to the same extent as a private individual. In order to state a claim in tort, however, a plaintiff must still establish the four elements of a negligence action: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 520 S.E.2d 142, 149 (S.C. 1999).

As a general rule, thus South Carolina courts have held that officials have only a duty of care to the public at large. Steinke, at 149. Thus, an official who fails to act, or who acts in a negligent manner, may still have a defense to a suit in tort since the official does not owe a duty of care to the individual plaintiff. However, a specific statute (for example, a statute governing levee maintenance or operation) could, depending on its wording, be interpreted as imposing a "special duty" rather than a "public duty" on certain officials and might be used to establish the first element of a negligence action.<sup>12</sup> South Carolina courts have developed six elements to determine whether the violation of a statute can establish the breach of a "special duty" owed to an injured plaintiff:

1. an essential purpose of the statute is to protect against a particular kind of harm;
2. the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm;

<sup>12</sup> The South Carolina Supreme Court recently expressed some doubt as to whether the "special duty" doctrine has survived the enactment of the SCTCA, but declined to address the question since it had not been presented. See Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 520 S.E.2d 142, 149 n.6 (S.C. 1999).

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3. the class of persons the statute intends to protect is identifiable before the fact;
4. the plaintiff is a person within the protected class;
5. the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty;
6. the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Steinke, at 149.

Thus, any arrangement with a governmental entity which entails the enactment of a specific ordinance or statute whereby responsibility for maintenance and operation of the proposed levee system is assigned to a particular agency according to prescribed standards may, unless expressly excepted or otherwise limited, create a "special duty" to potential flood victims.

## 2. Contract

Any arrangement between Columbia Venture and a participating governmental entity necessarily will encompass the execution of various contracts, which, unless carefully drafted, could expose the governmental entity to potential liabilities for breach.

In Manning v. City of Columbia, 377 S.E.2d 335 (S.C. 1989), an award of \$4.1 million against the City of Columbia for breach of a covenant to maintain levees along the Congaree River was affirmed by the South Carolina Supreme Court. In that case, the plaintiff had transferred a 120-acre parcel of land to the City in 1967, in order for the City to construct a waste water treatment plant on the site. The deed to the City included a covenant

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that the City "maintain at its sole expense, in perpetuity, all existing dikes . . . to the height at the time of this conveyance." Id. at 336. Nine years later, in 1976, the levee broke in two places and the river flooded an adjacent 1806-acre parcel still owned by the plaintiff. The plaintiff presented expert testimony that the City's lack of maintenance caused the breaches in the levee and the jury awarded the plaintiff damages for the loss in value of his flooded property. Because this was a suit for breach of contract, there was no discussion of governmental immunity or the SCTCA.

Still, the case highlights another area of possible concern for any participating governmental entity. If the participating entity enters into contracts or other agreements in which it undertakes to supervise, or to perform maintenance and operation of the levee system, and in which liability is not expressly waived or limited, it could be subject to a breach of contract action if it fails to satisfy these obligations. Not only would the obligee have a claim for breach, future landowners in the development could also attempt to bring suit under the theory that they were intended third-party beneficiaries to any such agreement.

#### IV. CONCLUSION

The National Flood Insurance Program regulations permit Columbia Venture, through the City of Columbia or Richland County, to request a Conditional Letter of Map Revision, under 44 C.F.R. § 65.8, based on its proposed project to upgrade the existing levee system along the Congaree River to meet the FEMA standards set forth in 44 C.F.R. § 65.10. The CLOMR would, if granted, provide conditional approval to the proposed levee system, and would serve as a basis for revision of the September 26, 2000 flood map.

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It is highly unlikely that a governmental entity would incur any liability, under Federal or State law, for exercising its right to seek flood map changes under the NFIP regulations. The potential liability for a governmental entity which undertook to operate and maintain the proposed levee system in accordance with FEMA approved standards, on the other hand, would ultimately depend upon the structure of any agreement between Columbia Venture and that entity. The National Flood Insurance Act, as amended, provides no express private cause of action for an injured plaintiff who claims his/her injuries are the result of a violation of any statutory or regulatory provision of the NFIP at issue here, nor is it likely that any court would find an implied Federal cause of action under the test established by the U.S. Supreme Court in Cort v. Ash. Potential liability under South Carolina law, however, is more problematic.

The South Carolina Tort Claims Act provides the exclusive remedy in tort under South Carolina law. In particular, the SCTCA provides that the State or any of its political subdivisions are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances", subject to enumerated exemptions and limitations set forth in the SCTCA. The enumerated exemptions in all likelihood would cover any action by the City of Columbia or Richland County to exercise its rights under the NFIP regulations to request, or support the request for, a CLOMR based on the proposed project to upgrade the existing levee system along the Congaree River to meet FEMA standards. Similarly, the enumerated exemptions would in all likelihood cover the actions of governmental authorities in securing or providing any required certifications under the NFIP regulations.



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With respect to the assumption of jurisdiction or responsibility by a governmental entity for the operation and maintenance of the proposed levee system, there can be no liability for damages caused by an extraordinary flood event which breached the high wall of the proposed levee system. The extent of potential liability for negligence in the operation or maintenance of the levee system which caused the system to fail in the event of ordinary projected storm levels, however, would depend on the specific arrangements ultimately agreed upon between Columbia Venture and any governmental entity which assumed jurisdiction or responsibility. Such liability, if any, would be susceptible to mitigation through insurance, indemnification and other risk-shifting or risk-management strategies which are commonly employed in such circumstances.

**Floodplain Management Into The 21<sup>st</sup> Century:  
A Perspective on the State of the Nation**

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**Presentation to the  
Richland, South Carolina, County Council**

**November 13, 2000  
Columbia, SC**

**Gerald E. Galloway, Jr., PE, Ph.D**

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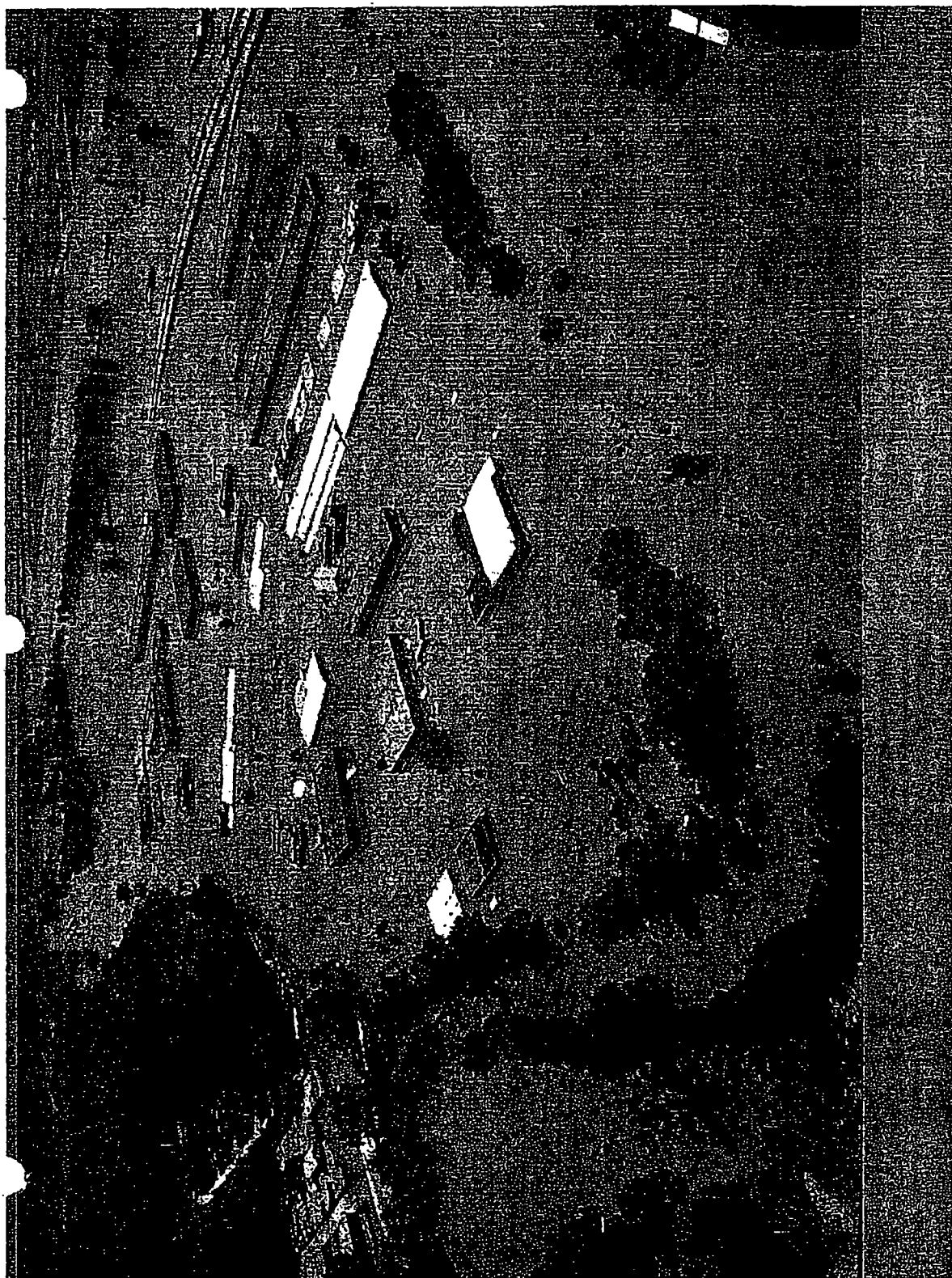
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**THE SPEAKER DOES NOT REPRESENT ANYONE  
OR ANY AGENCY IN WASHINGTON, DC. THE  
OPINIONS EXPRESSED ARE HIS OWN AND DO  
NOT REFLECT, NECESSARILY, THE POSITIONS OF  
EITHER THE ADMINISTRATION OR ANY AGENCY  
WITHIN THE ADMINISTRATION**

DEF-00001890

**Flood Picture**



## **Flood Risks**

---

- **14% of Non-Federal Land in Contiguous 48 States is in 100 Yr. Floodplain**
- **>17,000 Communities Have Floodprone Areas; Expansion into Floodplain Occurring**
- **Flash Floods Occur in All 50 States**
- **Ice Jams Occur in 35 States**
- **1.5 Hurricanes/ 1.8 Tropical Storms Hit US/Yr.**

# **Flood Damages**

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- **>75% Presidential Disasters Flood Related**
- **Average Deaths/Yr. >50**
- **Average Losses and Recovery Costs/Yr: \$3 - 4 Billion**

**Flood Pictures**



## 1993 Mississippi Basin Flood Impacts

---

- **Costs: \$12-16 Billion; Significant Non-Monetary Damages**
- **6.6 Million Acres Flooded**
  - » **>50% Damages to Agriculture**
  - » **100,000 Homes Damaged**
  - » **800 Miles of Railroads Disrupted**
- **>38 Deaths**

# White House Floodplain Management Review Committee

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- Determine Causes of '93 Flood
- Evaluate Floodplain Management Programs
- Recommend Changes in Policies Programs and Procedures
- Recommend Legislative Initiatives

## **US Floodplain Problems**

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- **People and Property are at Risk**
- **Fragile Riverine Ecosystems are at Risk**
- **Division of Responsibilities for Floodplain Management are not Well Defined**

# LESSONS FROM THE FLOOD OF '93 - I

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## ● Flood Was Significant Hydrometeorologic Event

DEF-00001899

Satellite Image

## **Lessons From the Flood of '93 - I**

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### **● Flood Was Significant Hydrometeorologic**

#### **Event**

- » Levees and Locks & Dams Did Not Cause the '93 Flood
- » Loss of Wetlands and Upland Natural Storage Did Not Cause the Flood, BUT For Other Floods They Make a Difference...

### **● Major Floods Will Continue to Occur**

- » Floods Are Natural Events
- » Flood Damages Are Not

## **Lessons From The Flood Of '93 - II**

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- **Human Activity Has Caused Significant  
Habitat Loss in Floodplain**

## Lessons From The Flood Of '93 - III

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- **Participation in Flood Insurance Program Poor**
- **Many Structures Unnecessarily Located in Floodplain**
- **Non-Federal Levees Failed at Higher Rate than Federal Levees**
- **Planning and Management of Floodplain and Basin Activities Diffused**



# **Immutable Floodplain Rules**

(Before and After the Mississippi Flood)

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- **Water Flows Downhill**
- **Water Rises**
- **Water Creates Natural Boundaries (Basins) and Does Not Respect Political Boundaries**
- **Moving Water Off One Location Causes It to Go to Another**

## **Recommendation I**

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- **Share Responsibility and Costs for Floodplain Management Among Federal, State, and Local Governments and Impacted Populace:**

***Make Flood Damage Reduction and Preservation and Enhancement of the Environment Co-Equal Objectives***

## Recommendation II

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- **Avoid Use of Floodplain: Don't Develop  
When You Don't Need To**

***A Structure Not Placed in the Floodplain Will  
Never Flood***

## **Recommendation III**

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- **Minimize Damages to Development that Does Occur and Has Occurred**
  - » *Hold the Water Where It Falls*
  - » *Floodproof*
  - » *Relocate Endangered Structures\**
  - » *Acquire Marginal Lands\**
  - » *Use Levees/Floodwalls, When Justified*

**Pictures of Floodproofing, Dam, Wetland, Relocation**

DEF-00001908

## Recommendation IV

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- **Mitigate Damages that Will Occur**
  - » ***Establish Early Warning Systems***
  - » ***Insure Those at Risk***
  - » ***Educate Present and Potential Floodplain Occupants***
    - ***The Threat***
    - ***The Response***

## Defining the Threat

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- 100-year Flood = 1% Chance of Occurrence in Any One Year (500-year = .2%)
- 100-year flood -- 26% Chance of Occurrence within 30 year period

**BUT**

- 100/500-year Flood May Occur Several Times in Succession (Independent Events)
- Definition of Recurrence Interval is Problematic and Changing



## **Recommendation V**

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- **Deal with the Floodplain as Part of the River Basin System**

**Floodplain Map**  
**Picture of Drainage Structure**

## **Since The Mississippi Flood**

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- **Another Mississippi Flood, '95**
- **Georgia - Florida Floods, '94**
- **Texas -Houston Floods, '94**
- **California Floods, '95, 97, '98**
- **Middle Atlantic Floods, '96**
- **Quebec Floods, '96**
- **Red River of North Floods '97**
- **Southeast Floods, '99**
- **Southwest Floods,. '00**
- **Asian Floods**
- **European Floods**
- **Etc....**

# Since The Mississippi Flood

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- Greater National and International Awareness
- Flood Insurance Reform
- State and Local Attention to Floodplain Management
- Relocations ( >25,000 ) and Land Acquisitions
- Increased Attention to Natural Resources Protection
- EPA Focus on Watersheds - Clean Water Action Plan

# Since The Mississippi Flood

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- California Flood Task Force Report
- Farm Bill w/ Conservation Provisions
- Western Governor's Endorsement
- FEMA Project Impact
- USACE "Challenge 21" - Non-structural Approaches
- Upper Mississippi Comprehensive Plan Authorization

# Ongoing Actions

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- **Enhancing State and Local Role in Floodplain Management**
  - Communicating National Policy -*Sharing*
  - Defining Federal, State, Local & Individual Responsibilities
  - Establishing Incentives For State Performance
  - Supporting Federal, Regional, State Coordination

# Ongoing Actions

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- **Developing/Implementing Long-term Plans for Flood Recovery/Mitigation**
  - Hydrologic Scenarios
  - Emergency Responses
  - Fragile Land Identification
  - Non-Structural Approaches
  - Structural Approaches

## Ongoing and Needed Actions

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- **Funding Science and Technology**

- Gauging Stations
- Data Collection Stations
- Forecasting Coordination
- SAST/GIS Systems
- FEMA Mapping
- Research and Analysis

*(Pay Now or Pay Later)*



# **Ongoing and Needed Actions**

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- **Continuing Flood Insurance Reform**
  - » **Requiring Insurance Behind Levees**
  - » **Surcharging Repetitive Losses**
  - » **Limiting Disaster Assistance - Non-Insured Individuals**

## **Continuing Concerns in Flood Damage Reduction**

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- **Appropriate Level of Protection**
- **Recognition of True Costs of Flooding**
- **Allocation of Flood Fighting and Recovery Costs**
- **Liability for Flood Protection Impacts on Others**
- **Abilities to Construct, Maintain and Upgrade Adequate Flood Protection Works**
- **Uncertainties - Risks**

## Continuing Concerns in Flood Damage Reduction

---

- **Appropriate Level of Protection**
  - » **100-year vs 200-year vs 500-year vs SPF vs ?**
  - » **Netherlands**
    - **1250-year on Rhine**
    - **10,000-year on North Sea**
  - » **IFMRC - SPF**
  - » **Lower Mississippi - >SPF**

# Continuing Concerns in Flood Damage Reduction

---

- Appropriate Level of Protection
- Recognition of True Costs of Floods
  - » Catastrophic Impacts
  - » Human Impacts
  - » Environmental Impacts

Flood Pictures

## **Continuing Concerns in Flood Damage Reduction**

---

- **Appropriate Level of Protection**
- **Recognition of True Costs of Flooding**
- **Allocation of Flood Fighting and Recovery Costs**
  - » **Emergency Preparation**
  - » **Flood Fights**
  - » **Disaster Assistance**
  - » **Recovery and Infrastructure Repair**

## **Continuing Concerns in Flood Damage Reduction**

---

- **Appropriate Level of Protection**
- **Recognition of True Costs of Flooding**
- **Allocation of Flood Fighting and Recovery Costs**
- **Liability for Flood Protection Impacts on Others**
- **Abilities to Construct, Maintain and Upgrade Adequate Flood Protection**

### **Works**

- » **Meeting and Maintaining Federal Standards**
- » **Conducting Post Flood Repairs**
- » **Implementing Required Upgrades**

## **Continuing Concerns in Flood Damage Reduction**

---

- **Appropriate Level of Protection**
- **Recognition of True Costs of Flooding**
- **Allocation of Flood Fighting and Recovery Costs**
- **Liability for Flood Protection Impacts on Others**
- **Abilities to Construct, Maintain and Upgrade Adequate Flood Protection Works**
- **Uncertainties - Risks**

# **Uncertainties - Risks**

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- **Climate Change/Variability**
- **Changes in River Carrying Capacity**
- **Changes Upstream/Downstream**
- **Changes in Protection Stability**
- **Human Intervention**



# Uncertainties - Risks

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- **Climate Change/Variability**

- » Increase in Flood Events
- » Increase in Extreme Events

# **Uncertainties - Risks**

---

- **Climate Change/Variability**
- **Changes in River Carrying Capacity**
  - » **Long-term - Sediment/Morphology**
  - » **Short-term - Obstructions**

# **Uncertainties - Risks**

---

- **Climate Change/Variability**
- **Changes in River Carrying Capacity**
- **Changes Upstream/Downstream**
  - » **Development - Increased Runoff**
  - » **Development - Obstructions**

# **Uncertainties - Risks**

---

- **Climate Change/Variability**
- **Changes in River Carrying Capacity**
- **Changes Upstream/Downstream**
- **Changes in Protection Stability**
  - » **Settlement**
  - » **Failure**

# **Uncertainties - Risks**

---

- **Climate Change/Variability**
- **Changes in River Carrying Capacity**
- **Changes Upstream/Downstream**
- **Changes in Protection Stability**
- **Human Intervention**

## **The Bottom Line**

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- **Floods Will Happen - Number on Rise**
- **In Dealing with Floods, There Are Many Uncertainties**
- **Flood Damage Reduction Requires Use of All Tools Available**
- **Flood Protection Is Costly and Never Ending and Has Unintended Consequences**
- **Nation Is Moving to Damage Avoidance**

Flood Pictures

**From:** MULLEN TAYLOR  
**Sent:** Monday, December 04, 2000 4:43 PM  
**To:** 'Jim Wiseman'  
**Subject:** County's Request for Information

**CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER**

Jim,

As you know, the County's position during this time of waiting for FEMA's letter of final determination is to suspend substantive negotiations with Columbia Venture until a FEMA decision has been made, and in the meantime, educate ourselves about the complicated issues before us in order to make responsible, informed decisions about the Green Diamond project. You have provided us with general information during this time, which has been very helpful to the County. The County has reached a juncture in this educational process where we need more specific information from Columbia Venture. We request the following information, if available, by the end of this year:

**Information Relating to the Green Diamond Site**

- Copy of environmental assessments Phase I and II (and source data supporting assessments).
- Any environmental analysis (and source data supporting analysis) of Columbia Venture performed as part of any due diligence on the property to determine viability of development.
- Any reports dealing with the wetlands located on property (and their supporting data).
- Baseline data and resulting fiscal or economic impact analysis performed by A.G. Edwards and/or Columbia Venture.
- Transportation study performed by Wilbur Smith.

**Information Specific to Levees**

- Cost estimates for levee construction and maintenance, including methodology for arriving at estimates.
- Copy of CLOMAR prepared by Columbia Venture, including the levee design, technical analyses that prove no impact, and internal drainage design; and an indication as to which community Columbia Venture intends to request approval of the CLOMAR. If the entire CLOMAR is not fully completed, please provide components that are completed.
- Columbia Venture's proposed means of financing and carrying out levee construction, maintenance and repair, and specifically, who will pay for what.
- Columbia Venture's proposal/contemplation as to who will ultimately have legal title to the land on which the levees sit.
- Columbia Venture's proposal/contemplation as to who will be primarily and/or secondarily responsible for levee construction, maintenance and repair, and for oversight of same.
- Columbia Venture's proposal/contemplation as to who, if anyone, should be liable for any claims made in connection with harm to people and property resulting from a failure of the levees.
- Copy of levee district documents obtained by Columbia Venture from the Houston, Texas area.



**DEF-00001956**

If Columbia Venture considers any of this requested information confidential, then the County will work with the company to maintain its confidentiality. Please let me know if any of the requested information is not available, and when it will become available. I'd prefer that you go ahead and send any readily available information to me and wait on other information you may need to gather, as opposed to waiting to receive all information at one time.

Thank you for your help. This information will greatly enhance and move forward the County's decision-making process.

Mullen

LAW OFFICES  
**Nelson Mullins Riley & Scarborough, L.L.P.**

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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**CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED**

January 2, 2000

Development and Services Committee  
Richland County Council  
c/o Ms. Mullen Taylor  
2020 Hampton Street  
Columbia, South Carolina 29202

Ladies and Gentlemen:

You have requested an analysis regarding certain proposed provisions of the Richland County (the "County") Code of Ordinances, Chapter 8, Stormwater Management, Erosion and Sediment Control (the "Ordinance"). First, you have requested an interpretation of how to collectively interpret Subsections (g), (h) and (i) of proposed Section 8-27 (Primary Drainage Channel Requirements) of the Ordinance (which are the same as existing Section 8-62, Subsections (7), (8) and (9)). In this connection, you have also asked (a) about the meaning of the words "that will impede the free flow of water" which appear in Subsection (h); and (b) whether, from a legal standpoint, there are any suggestions for changes or clarifications concerning these subsections. Second, you have requested legal input concerning proposed Section 8-25 (Variances) of the Ordinance, and whether a section providing for variances is legally required. I address these matters below.

A. Section 8-27 (g), (h) and (i). Taken together, and for the reasons set forth below, it appears that Subsections (g), (h) and (i) of Section 8-27 collectively provide as follows:

1. All levees protecting residential structures or non-residential structures which are not floodproofed shall be designed, constructed and maintained to provide protection against the 500-year flood plus three feet of freeboard (Subsection (g));

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2. No levees, dikes, fill materials, structures or obstructions that will interfere with or slow the free flow of water during times of flooding will be permitted in the regulatory floodway (Subsection (h)); and

3. All applicable regulations of the National Flood Insurance Program (44 CFR §§ 59-79) ("NFIP") are incorporated by reference into the Ordinance (Subsection (l)), except to the extent that the Ordinance imposes stricter or additional standards than the NFIP.

The analysis supporting this view is straightforward. This analysis is based in part upon two provisions—one located in the Ordinance and one located in the NFIP—which indicate that in the case of more than one provision addressing the same subject matter, the provision imposing the stricter standards shall control.

Section 8-43 (Relationship with Other Laws, Regulations, and Ordinances) of the Ordinance (existing Section 8-70) provides as follows:

Whenever the provisions of this Chapter [the Ordinance] impose more restrictive standards than are required in or under any other law, regulation or ordinance, the requirements herein contained shall prevail. Whenever the provisions of any other law, regulation, or ordinance require more restrictive standards than are required herein, the requirements of such law, regulation, or ordinance shall prevail.

Although the NFIP has been incorporated in the Ordinance and is therefore not technically "any other" regulation, the fact that the NFIP is a separate regulatory scheme from the Ordinance suggests that the better reading of Section 8-43 is that any specific provision of the Ordinance imposing more restrictive standards than a comparable provision of the NFIP should be viewed as controlling over such comparable provision.

The NFIP at 44 CFR § 60.1(d) provides in relevant part as follows:

The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations . . . . [A]ny flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part [60] are encouraged and shall take precedence. (Emphasis added.)

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Thus, there are provisions in both the Ordinance and the NFIP which indicate that any provision of the Ordinance that imposes more restrictive standards than the standards set forth in NFIP Part 60 should be viewed as controlling over such standards.

With this background, I turn first to Subsection (g), which requires all levees protecting residential structures or non-residential structures which are not floodproofed to be designed, constructed and maintained to provide protection against the 500-year flood (plus three feet of freeboard). The most closely comparable provision of the NFIP provides that where a flood map revision is sought based on a levee system, the levee system must provide protection to the area in question against the 100-year flood (plus a variable amount of freeboard). 44 CFR § 65.10.

Because 44 CFR § 65.10 is not located in NFIP Part 60, the rules of construction set forth in 44 CFR § 60.1(d) may not be applicable. However, based upon Ordinance Section 8-43 alone, it would appear that the better reading is that the 500-year flood-protection requirement of Subsection (g) would take precedence over the 100-year flood-protection requirement of the NFIP. On a separate note, it might be argued that Subsection (g) is sufficiently different from the NFIP standard so as to constitute a separate standard in addition to the NFIP standard.

Second, Subsection (h) provides as follows:

No levees, dikes, fill materials, structures or obstructions that will impede the free flow of water during times of flood will be permitted in the regulatory floodway.

The comparable NFIP provision, 44 CFR § 60.3(d) provides in relevant part as follows:

[T]he community shall:

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood [i.e., 100-year flood] discharge;

(4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood

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elevations, provided that the community first applies for a conditional FIRM [Flood Insurance Rate Map] and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the [Federal Insurance] Administrator.

It is instructive at this point, as requested, to address the meaning of the words "that will impede the free flow of water" as set forth in Subsection (h). Applicable law provides that words should be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand an ordinance's or statute's operation. "Impede" has been defined to mean "to interfere with or slow the progress of," Merriam-Webster's Collegiate Dictionary 580 (10th ed. 2000), and "to obstruct; hinder; check; delay." Black's Law Dictionary 753 (6th ed. 1990).

Thus, Subsection (h) would appear to prohibit any structure which would interfere with or slow the free flow of water during times of flooding, while the comparable NFIP provision would appear to allow such a structure if it would not result in any increase in flood levels during a 100-year flood. Because 44 CFR § 60.3(d) is in Part 60 together with 44 CFR § 60.1(d), both the NFIP and Ordinance provide that the more restrictive standard should control over the less restrictive standard. Because Subsection (h) is more restrictive than the comparable NFIP provision, it appears that Subsection (h) would control. And, as with Subsection (g), it might be argued that Subsection (h) is sufficiently different from the NFIP standard so as to constitute a separate standard in addition to the NFIP standard.

Third, as noted above, Subsection (i) of Section 8-27 simply incorporates by reference all applicable regulations of the NFIP. Accordingly, the County standards for floodplain management and use would appear to be the same as those set forth in the NFIP, except to the extent that the Ordinance or any other County ordinance impose stricter standards than does the NFIP, or additional standards.

In connection with the above discussion, please note that the NFIP and the Ordinance would appear to allow existing structures located in areas that are reclassified from a less to a more restrictive classification to be left in existence. For example, existing structures reclassified into a 100-year floodplain can be maintained, repaired and improved based upon the area's prior classification, so long as the structure is not improved or destroyed beyond 50% of its market value. 44 CFR § 63(c). However, if such existing structures are reclassified into the regulatory floodway portion of a 100-year floodplain, the ability to repair and improve a structure is much more restricted, particularly if a repair or improvement might impede the free flow of water during times of flood. Ordinance Section 8-27(h); 44 CFR § 63(d).

You have also asked for any suggestions for changes concerning Section 8-27 (g), (h) and (i). I defer to County Council to determine whether any substantive changes should be made to these

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subsections. However, the generic nature of these subsections would appear to make them a better fit for Ordinance Section 8-30 (Design Criteria for Improvements) than for Section 8-27. In addition, if the interpretation of these subsections set forth above is in accordance with the view of County Council, then it may be useful for County Council to clarify Subsection (i) by revising it to add the following words at the beginning: "Subject to any more restrictive or additional standards set forth in this Chapter." In addition, the Council may wish to consider an amendment to Section 8-43 to include a provision such as the following:

Whenever any provision of this Chapter imposes more restrictive standards than another provision of this Chapter, the provision imposing more restrictive standards shall prevail.

If the view of the County Council is that the NFIP standards rather than the above-referenced Ordinance standards should control, then the County Council should (i) either eliminate the stricter standards of the Ordinance or modify those provisions to conform to the applicable NFIP standards, and also (ii) provide in the Ordinance that when there is a conflict between the provisions of the Ordinance and the provisions of the NFIP, the provisions of the NFIP shall control.

B. Section 8-25 (Variances). You have also requested legal input concerning proposed Section 8-25 (Variances), and whether a section providing for variances is legally required. In this connection, I would make the following points.

To the extent the variance provision would allow or require the County Engineer to approve development in a regulatory floodway that increased flood levels during the base flood, it would appear to be inconsistent with the requirements of the NFIP. 44 CFR § 60.6(a)(1) specifically prohibits variances if any increase in flood levels during the base flood discharge would result. Such a decision by the County Engineer under the proposed variance provisions would also appear to be in conflict with § 60.6(a)(3), which allows a variance only upon:

(i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; (Emphasis added.)

From the above language and other language within § 60.6, it appears that variances which would allow any increase in flood height are not allowed by the NFIP.

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*probation  
w/ community  
variance  
provision*

Section 8-25 of the Ordinance allows for applications for variances and sets forth five criteria for the County Engineer to use in making his/her determination "that practical difficulties or unnecessary hardships exist." While the five criteria are not strictly in conflict with the NFIP, the application of the criteria could result in the granting of variances that are in conflict with the NFIP. In particular there could be an issue with the NFIP "no increase" requirement.

A community that fails to adequately enforce the requisite floodplain management regulations through its decisions for variances may be subject to program probation or suspension. 44 CFR § 60.6(a) provides: "The [Federal Insurance] Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under § 59.24(b) of this subchapter." Under § 59.24(b) a community may be placed on probation and ultimately suspended from participation in the NFIP under § 59.24(c) if the issues for which probation was imposed are not adequately addressed in a timely manner. Upon suspension, members of the community could no longer obtain federal flood insurance.

Council may wish to consider whether a variance should be considered and decided initially by a member of staff, such as the County Engineer, or by a board or committee. While a variance is not precisely in the nature of an appeal, it is a request for relief from the rules due to hardship or other legitimate conditions. In addition, the Ordinance requires the County Engineer to grant a variance if he believes the variance is justified in accordance with Section 8-25. If the Council is attempting to provide the County Engineer with the discretion to grant variances, it should remove or modify this requirement. Please note, however, that such delegation of discretionary authority raises certain legal issues – in particular whether this would constitute a delegation of policymaking decisions typically reserved to a county council.

Based on the above discussion, the County may wish to give further consideration to the proposed variance provision. And to answer your question, there is no requirement under the NFIP that the County have a variance provision in its floodplain management or other ordinances, nor is there such a requirement under state law except for a delegated stormwater program (pursuant to S.C. Code § 48-14-50). The NFIP does address variances in a way that contemplates that a community may include a variance provision in its floodplain management regulations. 44 C.F.R. § 60.6. If the County wished to adopt a variance provision that would be least likely to come into conflict with the NFIP variance provisions, the County could simply adopt a variance provision authorizing the designated person or group to grant variances that are consistent with the provisions of 44 C.F.R. § 60.6.

I hope that this letter is responsive to your request. Please contact me if you need any further work or clarification concerning this matter.

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Sincerely,

George B. Wolfe

GBW:amcleod  
cc: Ms. Kit Smith  
Mr. Cary McSwain  
Larry Smith, Esq.  
12/29/99

**SELC000238**



## Richland County Government

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Office of the County Administrator

### MEMORANDUM

**TO:** Richland County Council  
**FROM:** Mullen Taylor, Assistant to the County Administrator  
**DATE:** January 10, 2001  
**SUBJECT:** Options for revision of the County Stormwater Ordinance

In response to the Development & Services Committee request for a legal opinion on certain sections of the County's Stormwater Ordinance dealing with flood control, Mr. George Wolfe, legal counsel for the County in regard to the Columbia Venture Project, has rendered a confidential legal opinion for your review. As Council discusses this legal opinion, Council may choose to amend section 8-27 (h), which deals with construction in a floodway, to clearly reflect whatever policy that Council considers to be in the best interest of the County. Council's options in concept are as follows:

**1. KEEP SECTION 8-27(h) EXACTLY THE SAME**

Council could choose to make no changes to this section, with the understanding that the section is interpreted to allow virtually no construction in a 100-year floodway. The possible consequences of no action by Council are:

- Continued questioning of the meaning of the section.
- No action by Council could be construed as a present unwillingness by Council to change the ordinance to accommodate development in a floodway. However, Council certainly has the option of revising the stormwater ordinance at a later date.
- The County could see a reduction in FEMA flood insurance premiums if FEMA credits the County with having more restrictive regulations than FEMA. The FEMA Community Rating System has previously not been aware of the County's prohibition against construction in a floodway. Richland County currently receives a 5% discount by FEMA, and has 756 flood insurance policies with an annual premium of \$333,824.00. It is difficult to estimate what savings could be realized for policyholders if the County continues its floodway restriction, but if the County was able to reduce its FEMA rating from 9 to 8, the total annual premium would be reduced by \$16,650.00.

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**2. ADD LANGUAGE TO SECTION 8-27(h) THAT MAINTAINS RESTRICTIONS, BUT REMOVES THE AMBIGUITY OF THE PHRASE "IMPEDE THE FREE FLOW OF WATER"**

Under this option, Council would keep the section the same, but add guidance from an engineering standpoint as to how one goes about determining whether a proposed development would impede the free flow of water. This option would provide a standard that is different from FEMA minimum standards. Another state's floodplain ordinance provides an example of how this could be done:

"No floodplain development shall obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or in conjunction with other development increasing regional flood height; or, increase regional flood height due to floodplain storage area lost, which equals or exceeds 0.01 foot. Applicants shall provide the following data to determine the effects of the proposal:

- 1) A cross-section elevation view of the proposal, perpendicular to the watercourse, indicating whether the proposed development will obstruct flow; or
- 2) An analysis calculating the effects of this proposal on regional flood height.

Permit applications will be denied if the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted."

The possible consequences of this action are:

- Questions over the meaning of "impede the free flow of water" would be resolved.
- This action could be construed as adopting a policy of allowing little to no development in floodplains.
- The County could see a reduction in FEMA flood insurance premiums if FEMA credits the County with having more restrictive regulations than FEMA. The FEMA Community Rating System has previously not been aware of the County's prohibition against construction in a floodway. Richland County currently receives a 5% discount by FEMA, and has 756 flood insurance policies with an annual premium of \$333,824.00. It is difficult to estimate what savings could be realized for policyholders if the County continues its floodway restriction, but if the County was able to reduce its FEMA rating from 9 to 8, the total annual premium would be reduced by \$16,650.00.
- The City wastewater treatment plant issue would not be affected by this action because the County's stormwater ordinance would appear to exempt the City entirely from the County's regulations, and requires it to seek a permit from DHEC instead. In other words, the City is not subject to the County's stormwater regulations, but would have to go to DHEC for approval of a stormwater permit. Be aware, however that the City still can't expand the plant unless it is annexed, receives a variance under the County's zoning code, or the floodway designation is removed from the plant.

**3. ADD LANGUAGE TO SECTION 8-27(h) THAT CLEARLY EXPRESSES AN INTENT TO PROHIBIT ANY CONSTRUCTION IN A FLOODWAY**

Council could change the wording of section 8-27(h) to make it clear that the County does not allow construction in a floodway. This could be accomplished by restating this section in more emphatic terms – "Encroachments, including fill, new construction, levees, dikes, substantial improvements, and other development within the adopted regulatory floodway are strictly prohibited." The possible consequences of this action are:

- There would be no question as to what this section means.
- This action by Council would likely be construed as Council taking the philosophical position that development in floodways is not good public policy.
- The County could see a reduction in FEMA flood insurance premiums if FEMA credits the County with having more restrictive regulations than FEMA. The FEMA Community Rating System has previously not been aware of the County's prohibition against construction in a floodway. Richland County currently receives a 5% discount by FEMA, and has 756 flood insurance policies with an annual premium of \$333,824.00. It is difficult to estimate what savings could be realized for policyholders if the County clarifies its floodway restriction, but if the County was able to reduce its FEMA rating from 9 to 8, the total annual premium would be reduced by \$16,650.00.
- The City wastewater treatment plant issue would not be affected by this action because the County's stormwater ordinance would appear to exempt the City entirely from the County's regulations, and requires it to seek a permit from DHEC instead. In other words, the City is not subject to the County's stormwater regulations, but would have to go to DHEC for approval of a stormwater permit. Be aware, however that the City still can't expand the plant unless it is annexed, receives a variance under the County's zoning code, or the floodway designation is removed from the plant.
- If Council chooses this route, then the County's zoning ordinance, which also includes the same language as 8-27(h), must be revised in the same manner. The City's ability to protect and expand its wastewater treatment plant would still be restricted under the County's zoning code, if the City did not annex their own plant or exercise other options that may be available to them.
- Removes flexibility that the County may have in allowing certain appropriate uses in a floodway such as recreational parks or trails.

**4. REVISE SECTION 8-27(h) TO BE CONSISTENT WITH FEMA MINIMUM STANDARDS**

Council could add language to conform with minimum standards set by FEMA, which would allow construction in a floodway as long as it produces no rise in the base flood elevation. This could be accomplished by exchanging the current language with the following FEMA regulation – "Encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood (100-year flood) discharge." The consequences of this action are:

- This action would likely be viewed as Council having no opposition to the potential for development in floodplains.

- The County flood insurance holders would not see an increase in their premium rates as a result of Council action, but they would also not see any reductions.
- The City wastewater treatment plant issue would not be affected by this action because the County's stormwater ordinance exempts governments entirely from the County's regulations, and requires governments to seek a permit from DHEC instead. In other words, the City is not subject to the County's stormwater regulations, but would have to go to DHEC for approval of a stormwater permit.
- If Council chooses this route, then the County's zoning ordinance, which also includes the same language as 8-27(h), must be revised in the same manner. Revising the zoning code to be consistent with changes made in the stormwater code would remove County legislative roadblocks to the City's protection of their plant.

PERSONAL & CONFIDENTIAL

Nelson Mullins Riley & Scarborough, L.L.P.

**Memorandum**

To: Kit Smith, Chair, Richland County Council

cc: Mr. Cary McSwain  
Larry Smith, Esquire  
Ms. Mullen Taylor

From: George B. Wolfe, Esquire  
C. Mitchell Brown, Esquire

Date: January 10, 2001

Re: Memorandum on Potential for County Liability to Third Parties Based on  
County's Involvement With Levees Relating to Proposed Congaree Vista  
Project

**(NOTE: THIS MEMORANDUM IS PROTECTED BY THE  
ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGE)<sup>1</sup>**

**I. PURPOSE OF MEMORANDUM:** This Memorandum provides an analysis of the potential liability of Richland County (the "County") to third parties if the County participates in a request to change the flood maps by taking responsibility for maintenance of certain levees. Under current Federal Emergency Management Agency ("FEMA") criteria, certain land located in the County and owned by Columbia Venture, LLC ("Columbia Venture") is categorized for FEMA purposes as located in a floodway and/or a 100-year floodplain. The National Flood Insurance Act's ("NFIA") accompanying regulations (the National Flood Insurance Program ("NFIP") regulations) allow for, among other things, a Conditional Letter of Map Revisions ("CLOMR") to be sought. Columbia Venture would like to seek a CLOMR in order to make improvements to the levees located on certain land along the Congaree River in order, among other things, to obtain a flood map revision that would remove the land behind the improved levees from its present floodplain/floodway categorization.

The CLOMR and the NFIP regulations provide, in relevant part:

(d) Maintenance plans and criteria. For levee systems to be recognized as providing protection from the base flood ...[a]ll maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance.

44 C.F.R. § 65.10(d).

Under the NFIP regulations and in accordance with the factual scenario assumed for purposes of this Memorandum, the "community" referenced in the above-quoted regulatory language would be the County. A "community" must, pursuant to NFIP regulations, be ultimately responsible for

<sup>1</sup> This Memorandum is being transmitted to Richland County for its sole benefit and use.

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levee maintenance—such ultimate responsibility may not rest with, for example, a private corporation. The County has requested that we prepare this Memorandum addressing the County's potential liability to third parties based upon the facts and assumptions set forth herein.

II. **SCOPE/ASSUMPTIONS:** For purposes of this Memorandum, the County has instructed us to make the following assumptions: the County would be a community signatory on a CLOMR Application; based upon the approval of such Application, the levees would be improved, although the County would not do the improvement work; based on such improvements, the floodplains/floodway categorization would be removed from the land behind the levees; the levees would not be owned by, nor located upon land owned by, the County; and, finally, that there would subsequently be a levee failure because of a significant flood event that results in harm to people and/or property.

III. **EXECUTIVE SUMMARY:** Richland County has requested that we prepare a Memorandum discussing the County's potential liability to third parties where the County assumes responsibility for maintaining levees constructed or improved in connection with the Green Diamond Development Project (the "Project"). At the outset, there is no way to preclude a lawsuit from being filed and served. However, this Executive Summary and the more comprehensive discussion that follows attempt to predict claims that may be asserted by a potential plaintiff, their probability of success and what the County can do to defend against such claims.

There are federal and state causes of action that a potential plaintiff may assert in the event of a levee failure resulting from a significant flood event. There is a greater likelihood, based on our research, that the theories of recovery will be based on state law.

A. **Federal Law**

Our research confirmed that there does not appear to be a federal private right of action created by the National Flood Insurance Act or the National Flood Insurance Program. However, we were able to find cases where plaintiffs sought recovery from a municipality based on 42 U.S.C. § 1983 of the Civil Rights Act. Section 1983 is a remedial statute that provides a cause of action against local governments so as to protect civil rights guaranteed under the United States Constitution and other federal laws. A plaintiff must prove (1) that the conduct that is the basis of the claim was committed by a person acting "under color of state law;" and (2) that such conduct deprived a person of a federally-protected right. A § 1983 case in this context usually asserts deprivation of a property right held pursuant to the Fifth or Fourteenth Amendments. Local government units are "persons" under § 1983, so the County may be liable where its official policy or customs relating to the levees deprive a claimant of a related federally-protected right.

The County may be able to avoid § 1983 liability through certain immunities. First, members of local legislative bodies are absolutely immune when they act in a legislative capacity. This § 1983 immunity would likely protect the policymaking activities of county representatives done

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in connection with levee maintenance. There is also a qualified "official" immunity that may be asserted by individuals in charge of maintaining or inspecting the levees. This § 1983 immunity may be asserted by officials performing discretionary functions, provided that the conduct does not violate statutory or constitutional rights of which a reasonable person would have been aware.

The County should also be aware that 33 U.S.C. § 702(c) provides the federal government with immunity from suit for flood damages. This immunity may be important if the County decides to contract with a federal entity to assist with levee maintenance. Because of the federal immunity from suit, a claimant would have further incentive to turn to the County for recovery.

## **B. State Law**

### **1. Claims in Tort and Applicable Immunities and Defenses**

Theories of recovery asserted against the County are more likely to be based on state tort claims such as negligence, nuisance or trespass. Determining liability for these claims requires discussion of the South Carolina Tort Claims Act. The Act waives sovereign immunity and makes the state, its political subdivisions and their agents liable for torts to the same extent as an individual, subject to certain reservations of immunity and limitations on damages. Under the Act, the County would be liable for any tort committed in connection with levee maintenance to the same extent as a private individual unless it could prove that its conduct fell within one of the reservations of immunity.

As stated, the County may be able to argue that it has immunity from liability for various tort claims by asserting certain of the reservations of immunity under the South Carolina Tort Claims Act. For example, the County may avoid liability for wrongful issuance of construction permits by asserting the provision of the Act reserving immunity for the granting of licenses or permits. The County may assert immunity from causes of action for nuisance. There is immunity for the exercise of "regulatory inspection powers or functions" carried out to ensure compliance with applicable law. The County may also assert the "discretionary act" immunity where it can establish that, when faced with competing alternatives, it actually weighed competing considerations based on accepted professional standards and made a conscious decision to act or refrain from acting in regard to the levees. Finally, the County may assert immunity based upon an exception in the Act relating to the conduct of third parties. However, this immunity may be limited by the non-delegable duty doctrine, which holds that a party who is under a statutory or administrative duty to provide specified precautions for the safety of others is subject to liability for the actions of an independent contractor employed to discharge this duty. Because the NFIP requires at 44 C.F.R. § 65.10(d) that maintenance activities be under the jurisdiction of a federal or state entity, the County may be unable to avoid potential liability for maintenance activities by contracting with third-parties and independent contractors.

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The public duty rule may provide the County with an additional defense. This defense is not a part of the South Carolina Tort Claims Act but is firmly rooted in South Carolina case law. Where a claimant brings an action against an official for breach of a statutory duty, the public duty rule provides that public officials are not liable to others for negligence in the discharge of their duties because the duty is to the public rather than to any individual plaintiff. Though an official may be liable where a statute or regulation imposes a "special duty" toward an identifiable class, the courts have been reluctant to find such a duty. The County may assert this defense where a claimant bases an action on breach of a regulation or statute pertaining to levee maintenance.

If a tort claim is asserted and the County fails to successfully argue an applicable immunity or defense, the next issue would be to determine the application of the cap on damages in the South Carolina Tort Claims Act. The Act provides a limitation on liability of \$300,000 for a single occurrence and \$600,000 for the total sum recovered out of a single occurrence. Unfortunately, the ambiguity of the Act and the lack of case law interpreting it make it difficult to determine how these limits would apply in the event of a levee failure. For example, some jurisdictions allow multiple claimants to aggregate claims derived from a single act of negligence, even if the recovery exceeds the statutory cap. Others strictly enforce the cap as being the maximum overall recovery, regardless of the number of claimants.

## **2. Third-Party Beneficiaries (Contract Theories)**

The County may be subject to a breach of contract action brought by property owners. Though property owners may not have a direct agreement with the County, South Carolina case law recognizes that where a contract is made for the benefit of a third party, that person may enforce the contract if the contracting parties intended to create a direct benefit for such party. The South Carolina Tort Claims Act expressly excludes contract actions, so the County would not benefit from the Act's limitations and immunities in a third-party beneficiary contract action. However, it appears that the County may be able to limit its potential liability concerning such actions by expressly providing in any relevant contracts that such contracts do not create any benefits for any third party.

## **3. Inverse Condemnation (Constitutional Theories)**

Inverse condemnation is a frequent cause of action in other jurisdictions for damages resulting from a levee failure. This action is based on a constitutional right to just compensation for the taking of property for public use. As such, the limitations and immunities provided by the South Carolina Tort Claims Act would not apply. Numerous cases in other jurisdictions have reached this conclusion. A plaintiff asserting this claim in South Carolina would have to prove (1) an affirmative, positive, aggressive act on the part of the County; (2) a taking; (3) for a public purpose; and (4) that the taking has some degree of permanence. Courts have generally been reluctant to uphold such claims when only *failures* to act are alleged. Whether the County could be liable for inverse condemnation would likely depend upon whether the County engages in



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"affirmative acts" to fulfill the maintenance obligations assumed, although the courts have not made clear exactly what may constitute an "affirmative" act.

#### 4. Exculpatory Contracts

Because of the uncertainty regarding liability exposure, the County may consider using exculpatory (protective) contracts to limit liability. Municipalities in other jurisdictions have attempted to limit exposure by requiring developers or residents of flood prone areas to waive future claims for flood damages. Though these measures have been successful in some jurisdictions, others have held them to be void as against public policy. There is a lack of South Carolina case authority regarding municipalities and exculpatory contracts. This makes it difficult to predict whether exculpatory contracts required by a municipality would be valid. However, there is language in South Carolina case law suggesting that exculpatory contracts are not valid where they involve a public duty or public interest.

#### C. Executive Summary Conclusion

Cases against political subdivisions regarding levee maintenance or, more generally, drainage system maintenance, are not rare. In most of the reported cases that we have reviewed, the political subdivision has ultimately won, although often only after extensive litigation and appeals. In this connection, the County may be able to take certain actions to reduce the possibility of liability and/or to shift/insure risk, such as indemnity agreements, bonds, letters of credit and pre-paid insurance, but it does not appear possible to eliminate exposure for major liability.

IV. **LEGAL ANALYSIS:** Set forth below is a discussion of the primary legal theories, defenses and analyses that may have to be confronted in the event of a levee failure under the factual assumptions set forth above. The analysis below is necessarily technical, because it involves a multitude of potential claims and defenses based on tort, contract and constitutional theories of recovery. There are federal and state causes of action that a potential plaintiff may assert in the event of a levee failure resulting from a significant flood event. There is a greater likelihood, based on our research, that theories of recovery will be based on state law. However, we discuss both bodies of law and applicable immunities or defenses below.

*CV* PERSONAL & CONFIDENTIAL

Columbia Venture, LLC

January 10, 2001

Mullen Taylor  
Assistant to the County Administrator  
Richland County Administrator's Office  
2020 Hampton Street, 4<sup>th</sup> Floor  
Columbia, SC 29202

RE: Proposed Stormwater Drainage Ordinance

Dear Mullen:

This letter is in response to your kind request for comments from Columbia Venture in regard to the proposed Stormwater Drainage Ordinance currently pending before the Developmental and Services Committee of County Council. I have had an opportunity to review the draft of the proposed ordinance which you submitted to me earlier. I would submit the following observations for Council's consideration. As soon as Chairwoman Smith has had an opportunity to appoint the members of the Committee for the upcoming term I would appreciate your providing me with that information so that I can copy members of the Committee as well.

First, I would submit that it would be inappropriate to try to deal with issues regarding flood plain management within the context of a stormwater management ordinance. As you know, Subsections (a), (h) and (i) of the proposed Section 8-27 of the the proposed ordinance deal with this issue.

In our view it would be appropriate to have a separate flood plain management ordinance, which would deal with the issues, referred to above, as well as all other issues regarding the matter of flood plain management. I have enclosed for your consideration a copy of a model ordinance from FEMA.

Second, it appears that the proposed ordinance does not meet minimum standards promulgated by FEMA. The proposed ordinance does not define a procedure to determine whether flood flow would be impeded, nor does it provide a mechanism for

Carolina First Building  
4875 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 743-0672 (803) 743-0673 Fax

Def Trial Ex 72

Mullen Taylor  
January 10, 2001  
Page 2

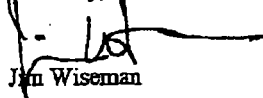
presenting the computations to County regulators. FEMA regulations [44 CFR 60.3 (d) (3)] provide for analysis to be performed in accordance with, "thorough hydrologic and hydraulic analysis in accordance with standard engineering practice...."

The proposed ordinance does incorporate FEMA regulations by reference, which control where they are more restrictive than County standards. It would appear that FEMA regulations would be more restrictive in this instance because of the specificity addressing their determination of affect on the flood flow, while the proposed ordinance is silent on this issue.

Our request and suggestion is that the sections referenced above should be deleted from the proposed ordinance and that these matters should be dealt with separately and concurrently in a comprehensive flood plain management ordinance drafted perhaps along the lines of the attached model.

Thank you very much the opportunity to bring our concerns to your attention. If you have any questions or if I could provide anything further in this regard please do not hesitate to contact me.

Sincerely,



Jim Wiseman

cc: Honorable Kit Smith  
Honorable Bernice Scott  
Honorable Greg Pearce  
Mr. Mike Bierman

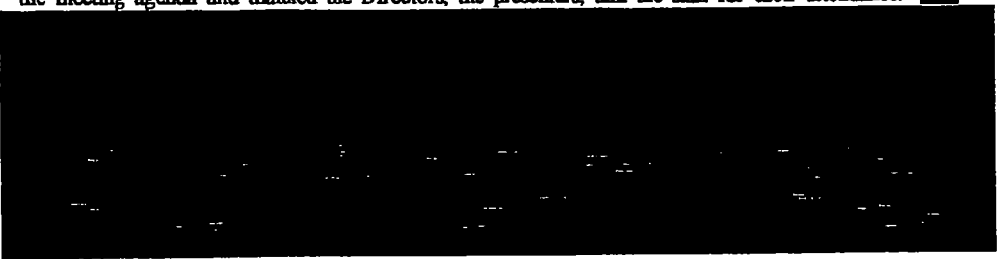
BURROUGHS & CHAPIN COMPANY, INC.  
Board of Directors Strategic Planning Retreat  
Orlando, Florida  
January 19 - 21 2001

A Board Planning Retreat of the Directors of Burroughs & Chapin Company, Inc. was held in the Plaza Concordia Room at the Marriott Grande Vista in Orlando, Florida, beginning on Friday, January 19, 2001, at approximately 7:30 a.m.

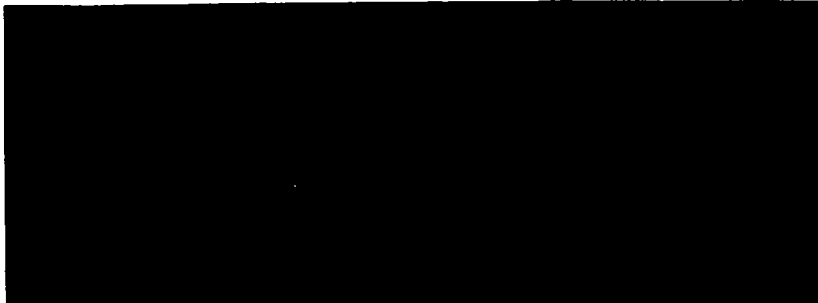
Present were:

J. Egerton Burroughs, Chairman  
Larry L. Biddle  
Henry B. Burroughs, Jr.  
Timothy E. Bryant  
Claire Chapin Epps  
Timothy G. Dargan  
Dr. Hal B. Holmes, Jr.  
David L. Maynard  
Edward G. Menzie  
W. David Rhodes, III  
Dr. Clifford E. Roemer  
Dr. Peter B. Barr, Senior Vice President of Research, Planning, and Human Development  
Dowdell Brown, Senior Vice President Real Estate Development, Sales & Management  
Earl Collins, Senior Director of Operations  
Tony K. Cox, Broker-in-Charge Prudential  
Patrick Dowling, Vice President Public Relations  
George T. Gregory, III, General Counsel  
Tom Jones, Senior Vice President Entertainment  
Franklin J. Long, Vice President Administrative Services & Corporate Secretary  
Elwin Miles, Chief Operating Officer  
William F. Pritchard, Senior Vice President Design & Construction  
Marshall C. Smith, Senior Vice President Raw Land Management & Billboards  
Barry R. Spivey, Chief Financial Officer  
Terry A. Thompson, Senior Vice President New Opportunities & Land Acquisition  
James W. Walker, Vice President Budget Analysis & Control  
Douglas P. Wendel, President & CEO  
Ginger A. Weldon, Senior Executive Assistant

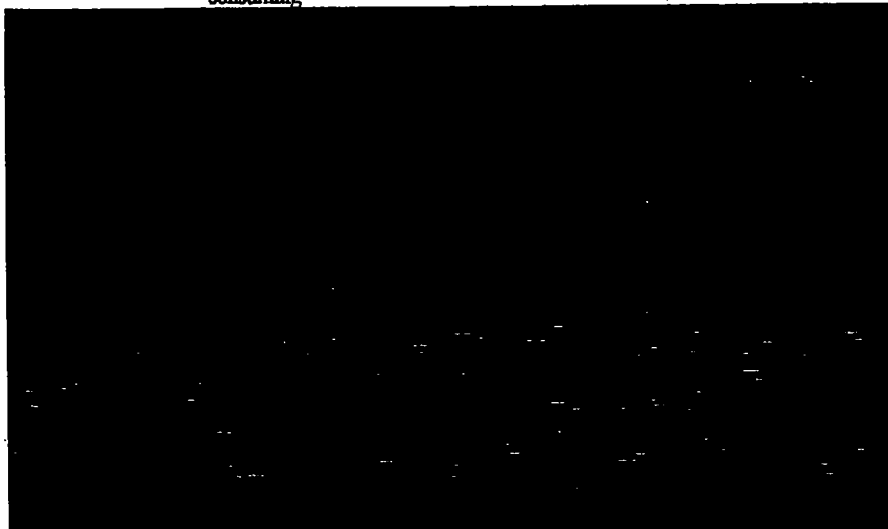
Douglas P. Wendel, presiding, called the meeting to order and welcomed the Board members to the Orlando, Florida Board of Directors Annual Strategic Planning Retreat. Mr. Wendel briefly reviewed the meeting agenda and thanked the Directors, the presenters, and the staff for their attendance. ■■■



4) Updates:



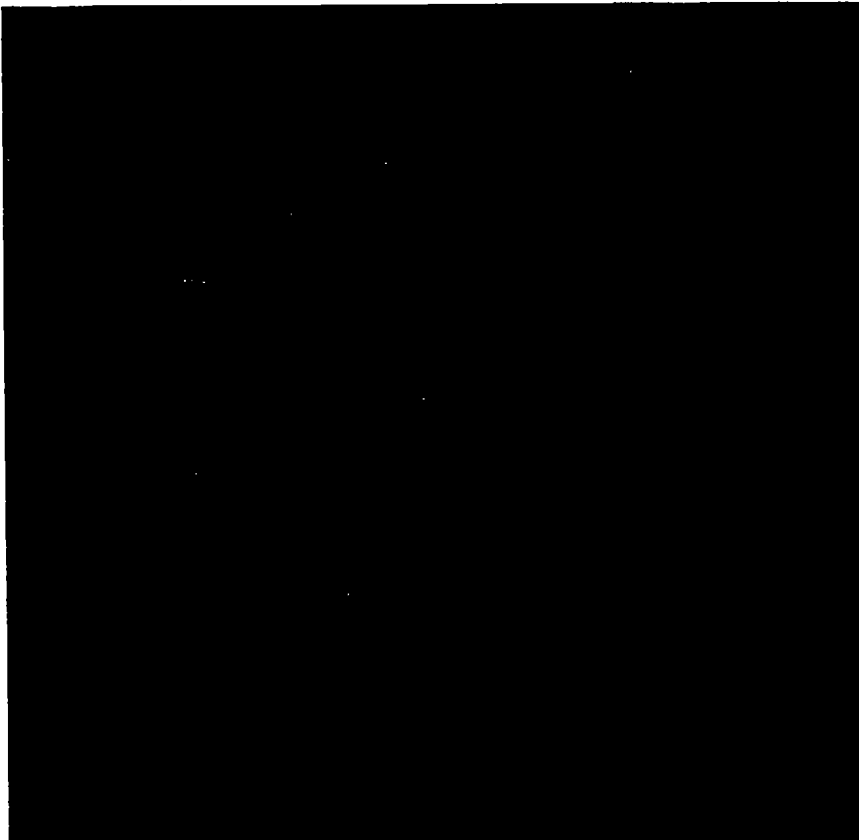
- Columbia Venture
  - No change – no decision from FEMA
  - Partners meeting scheduled for 1/26/01
  - FEMA Decision - critical move
  - FEMA Meeting on 1/29/01 in Atlanta
  - Last resort to challenge map – do not want to do unless forced
  - Comment period ends February 15, 2001
  - Goal is to have FEMA issues completed by July 2001
  - Believe have a majority advantage on County and City Council
  - Annexation – working with City regarding agreement
  - Notes on property (secured by mortgage)
    - \$7.5M – matures April 2, 2001
    - \$3M (line of credit) – matures July 5, 2001
      - Balance approximately \$2.8M
      - Will be fully drawn by end of term
    - Total \$10.5M
  - Exit plans to be presented to the Board at February meeting
  - Lockwood Greene - \$2M investment
  - Top Box indicates ready to sign contract...will bring to conclusion by February meeting
  - Will also be pursuing other investors
  - Board concerned about the amount of staff's time this project is consuming





- B. Columbia Venture
- a. Bring to a decision point ASAP (MCBP/Development Agreement - July goal)
  - b. Stay within credit line and \$100,000 monthly budget
  - c. Resolve Note renewal/pro-rata carry if recourse
  - d. Secure formal agreement
    - i. Reduce debt for Manning interest original holding
      - 1. Escrow funds
      - 2. Contingent on FEMA
  - e. Develop "Exit Plan" options by February meeting
  - f. Prepare for escape/B&C reduction if so desire
    - i. Accomplished (SEAM without negative repercussions)

C.



D.

E.

F.

G.



**Federal Emergency Management Agency**  
Washington, D.C. 20472

FEB 12 2001

The Honorable Avery B. Wilkerson, Jr.  
Mayor of the City of Cayce  
P.O. Box 2004  
Cayce, South Carolina 29171-2004

Dear Mayor Wilkerson:

This is in response to your letter of February 1, 2001, to Matthew B. Miller of my staff. Mr. Miller is Chief of the Federal Emergency Management Agency's (FEMA's) Hazards Study Branch and represented me at the January 29, 2001, meeting in the FEMA Regional Office in Atlanta, Georgia. Your letter was in reference to that meeting and to the resolution passed by the City of Cayce on December 5, 2000, to adopt a floodway based on the hydraulic model used to calculate Base (1% annual chance) Flood Elevations (BFEs) depicted on the September 26, 2000, preliminary Flood Insurance Rate Map (FIRM) for Lexington County and incorporated areas (hereinafter referred to as the Lexington County model). The Lexington County model assumes that flow will not occur landward of the Manning dike in Richland County upstream of Interstate Route 77. Your letter suggested that Mr. Miller's remarks at the conclusion of the January 29 meeting indicated that the resolution adopted by Cayce was consistent with the minimum floodplain management regulations of the National Flood Insurance Program (NFIP) found in Title 44 Code of Federal Regulations, Chapter I, Part 60. This was not Mr. Miller's intent. He simply stated that FEMA had not formally reviewed the resolution.

Although still in draft form, we used the September 26, 2000, preliminary FIRM for Lexington County and incorporated areas to complete our review of the resolution and concluded, in consultation with our Regional Office, that a floodway adopted by the City of Cayce based on the Lexington model could potentially result in increases to flood hazards beyond those acceptable under 44CFR 60.3(d)(2). Further, any increases would impact existing structures including residential homes and the wastewater treatment plant in Lexington County. A floodway based on the December 5, 2000, resolution is not consistent with the minimum floodplain management requirements of the NFIP.

Once all appeals have been addressed and the maps are finalized, our Region IV Office is available to assist the City of Cayce in its endeavor to seek alternative floodways, which meet their needs and satisfy the minimum Federal standards. Please note that the floodway configuration shown on the September 26, 2000, preliminary FIRM does not prevent upgrading of the Manning dike. Rather, it requires an assessment of potential increased flood damages to existing structures be identified and mitigated should such a project be within the floodway. This, and related requirements, are summarized at 44CFR 65.12.

The remainder of this letter will address why the December 5, 2000, resolution, if implemented, could exacerbate flooding, and does not meet minimum floodplain management requirements of the NFIP. It will also discuss the approaches used to develop the proposed BFEs and floodway along the Congaree River in the area of the Manning dike and explains why FEMA cannot revise the floodway as requested in the City of Cayce resolution.

Def Trial Ex 74

The NFIP regulations are found in Title 44 Code of Federal Regulations, through 78. Part 65 of the NFIP regulations provides the Federal regulatory identification and mapping of Special Flood Hazard Areas for the NFIP, determination of BFEs and floodways. These regulations provide the criteria that NFIP flood studies must meet; however, they do not generally provide specific engineering methods for completing flood studies or address all the standards, practices, and procedures to complete flood studies in accordance with the regulatory requirements of Part 65 of the NFIP regulations. The standards, practices, and procedures, which are based on more than 30 years of program experience with standard engineering practice, are documented in the January 1995 Insurance Study Guidelines and Specifications for Study Contractors (FIRMs).

#### How the BFEs Were Determined

Because of the inherent flood risk associated with dikes and levees, FEMA approach when determining BFEs in areas affected by dikes or levees the accreditation criteria for providing protection from the 1% annual chance levee accreditation can be found in Section 65.10 of the NFIP regulations. On the riverward side of the dike, the BFEs are computed as if the dike prevents flow occurring landward of it. For the landward side of the dike, the BFEs are computed as if flow occurs behind it. Because there is more area over which to convey flood water, this latter analysis results in lower computed BFEs for the landward side. This approach, which was used to determine BFEs for the River in the area along the Manning dike, is documented in Chapter 7 of the

In order to determine if flow could occur behind the Manning dike, FEMA used a two-dimensional hydraulic model. This tool proved useful in making this determination, but was very limited in its ability to quantify exactly how much flow would occur during a 1% annual chance flood. Nonetheless, the model suggested flow behind the Manning dike during the base flood. Because there remains a possibility of flow confined to the riverward side of the dike, we felt it appropriate to use the approach when determining BFEs.

#### How the Floodway Was Determined

For rivers and streams that have been studied using detailed engineering (e.g., Congaree River), the 1% annual chance floodplain on the FIRM is typically divided into "floodway" and "flood fringe." The floodway is the channel of the river and adjacent land areas where flow velocities are most hazardous that must be encroached to pass the base (1% annual chance) flood without increasing elevation more than a designated height (this increase is referred to as the "flood fringe"). The flood fringe is the area of the 1% annual chance floodplain outside the floodway. The floodway concept is a floodplain management tool provided to communities to help manage development away from the most hazardous areas of the floodplain (i.e., the areas that would experience future increases in flood levels to no more than the surcharge amount, but the most hazardous areas of the floodplain (i.e., the flood fringe) to be developed without a detailed flood hazard impact assessment.



3

Subparagraph 60.3(d)(2) of the NFIP regulations requires communities to select and adopt a regulatory floodway based on the principle that the area chosen for the floodway must be designed to carry the base flood without increasing the water-surface elevation of that flood more than 1 foot at any point. Further, Subparagraph 60.3(d)(3) of the NFIP regulations requires communities to prohibit encroachments, including fill, new construction, and other development, within the adopted regulatory floodway unless it has been demonstrated that the proposed encroachment would not result in any increase in flood levels during the occurrence of the 1% annual chance flood discharge. Through this approach, communities can permit development in the flood fringe and limit future increases in the 1% annual chance water-surface elevations to that of the floodway surcharge, as long as the floodway is kept free of encroachments and obstructions that would cause increases in flood levels.

To assist a community with fulfilling its obligation under Subparagraph 60.3(d)(2) to select and adopt a regulatory floodway, FEMA typically develops a proposed floodway configuration when conducting the hydraulic analysis associated with an initial flood study or a restudy. This proposed floodway is then presented to the community on its preliminary FIRM.

To determine the floodway configuration in areas affected by dikes and levees that do not meet NFIP accreditation criteria, an analysis is conducted that considers flow occurring both on the riverward and landward sides of the dike. This approach ensures that all areas that will possibly convey flow are kept free of encroachment and that the floodway is determined in the fairest way possible. This approach, which is documented in Chapter 7 of FEMA 37, was used by FEMA to determine the floodway for the Congaree River along the Manning dike. This means that the model used to determine the BFEs for the areas landward of the dike was also used to establish the floodway limits. As mentioned previously, a two-dimensional model of the subject areas along the Congaree River suggests that flow is likely to occur landward of the Manning dike. Thus, the above-described approach for determining the floodway is sound. Please see the enclosed schematic, which explains the floodway configuration of the Congaree River.

#### FEMA's Response to the City of Cayce Resolutions

As described above, the BFEs and floodway depicted on the September 26, 2000, preliminary FIRM are consistent with the requirements for identifying and mapping Special Flood Hazard Areas in Part 65 of the NFIP regulations and the practices and guidelines documented in FEMA 37. The floodway regulations found in Paragraph 60.3(d) of the NFIP regulations are designed to help communities limit development in the most hazardous areas of the floodplain and limit future increases to 1% annual chance water-surface elevations. Rather than focusing on the location of the floodway limits, we feel it is most important for all potentially affected parties to carefully consider the effect on flood elevations, flow paths, and impacted property owners, of any proposal to restrict or eliminate flow landward of the Manning dike.

Two-dimensional modeling of the area indicate that flow will likely occur landward of the dike during the base flood. This flow effectively acts to reduce flood levels. If areas in the floodway, behind the Manning dike are obstructed, flow could be reduced or eliminated, thus removing the existing possibility of lower flood levels. Furthermore, these obstructions coupled with obstructions in the flood fringe on the Lexington County side of the Congaree River could result

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in flood elevations that exceed the BFEs shown for Lexington County. cannot revise the floodway using the Lexington County model, which is landward of the dike, as requested in the resolutions presented by the C

After completing a review of the data and comments submitted between and February 15, 2001, we will issue a notice of final flood elevation d BFEs and the floodway of the Congaree River in late April 2001, in acc Section 67.11 of the NFIP regulations. Your community and all other i will have 6 months from the notice of final determination to adopt the E depicted on the FIRM. If your community, Lexington County, Richlan incorporated communities within those counties affected by the floodw Congaree River wish to subsequently pursue an alternative floodway ec submit a floodway revision request under the provisions of Section 65.7 Such a floodway revision request must:

- be agreed to and requested in writing by all affected community
- be based on a hydraulic model of the Congaree River that repres and as appropriate accounts for flow behind the Manning dike, a
- limit floodway surcharges to no more than 1.0 foot at all cross s

We appreciate the input that has been provided by all interested parties i mapping of the Congaree River flood hazards. This has helped achieve provide communities with the most accurate flood hazard information p further questions, please do not hesitate to contact Matthew B. Miller, P. in Washington, D.C., at (202) 646-3461 or by facsimile at (202) 646-452

Sincerely,



Michael K. Buckley, P.E., I  
Technical Services Division  
Mitigation Directorate

Enclosure

cc: Mr. Bruce E. Rucker, Lexington County Council Chairperson  
Ms. Klt Smith, Richland County Council Chairperson  
The Honorable Robert D. Coble, Mayor of the City of Columbia  
The Honorable Wyman M. Rish, Mayor of the City of West Colu  
Mr. Martin Becker, Consultant to Columbia Venture

5

(cc list continued)

Ms. Martha Bogle, National Park Service  
Ms. Sarah Brown, U.S. Army Corps of Engineers, Charleston District  
Ms. Marjorie S. Davenport, U.S. Geological Survey  
Mr. Frank R. Ellerbe III, Heathwood Hall Episcopal School  
John Grego, Ph.D., University of South Carolina  
Ms. Lisa Holland, NFIP State Coordinator  
Mr. J. Blanding Holman, Southern Environmental Law Center  
Ms. Deborah Houel, McNair Law Firm  
Mr. William Hulbert, P.E., South Carolina Department of Transportation  
Allan James, Ph.D., University of South Carolina  
Mr. Mel Jenkins, The Neighborhood Project  
Mary Kelly, Ph.D., Columbia Area League of Women Voters  
Mr. Thomas McCutcheon, McCutcheon, Blanton, Johnson, Rhodes & Johnson, L.L.P.  
Paul Sandifer, Ph.D., South Carolina Department of Natural Resources  
Mr. Michael Soukup, National Park Service  
Ms. Ruth Thomas, Environmentalists, Inc.  
Ms. Christine Thompson, South Carolina Wildlife Federation  
Mr. Wilson Tillotson, Lockwood Greene  
Mr. Douglas P. Wendel  
Ms. Angela Viney, South Carolina Wildlife Federation  
Mr. Thomas H. Yorke, U.S. Geological Survey  
Distribution List of Private Citizens

RECEIVED  
01 MAR 28 AM 10:2

RICHLAND COUNTY  
ADMINISTRATORS

COLUMBIA

A Capital Place To Be



March 26, 2001

Re: Columbia Metropolitan Wastewater  
Treatment Plant

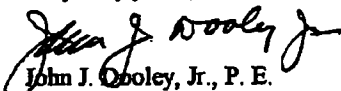
Mr. Cary McSwain  
County Administrator  
Richland County  
2020 Hampton Street  
Columbia, SC 29204

Dear Mr. McSwain:

The City of Columbia is preparing construction plans for improvements to our Wastewater Plant. We will be ready to advertise within the next thirty days. The work includes upgrades to our laboratory, administrative offices, maintenance shop, digesters and dissolved air flotation units. This work is not related to plant expansion (increased capacity). We are requesting assistance from the County and permission to proceed with construction. It is our understanding that modifications are needed to your Zoning Ordinance in order for us to proceed.

We understand that the proposed map revisions and levee improvements may take considerable time to complete. Our work must get underway quickly; therefore, your help is essential. If you have any questions, you may reach me at 733-8234.

Very truly yours,

  
John J. Oboley, Jr., P. E.  
Director of Utilities

JJD:lf F-R-22

CC: Ms. Leona Plough, City Manager  
Mr. James Meggs, City Attorney

---

City of Columbia / Department of Utilities  
300 Laurel Street / PO Box 147 / Columbia, SC / 29217 / (803) 401-8822

Def Trial Ex 76

SOUTHERN ENVIRONMENTAL LAW CENTER

200 WEST FRANKLIN STREET, SUITE 330  
CHAPEL HILL, NC 27516-2520

Telephone 919-987-1450  
Facsimile 919-929-8421  
selcnc@selcnc.org

Charlottesville, VA  
Chapel Hill, NC  
Atlanta, GA

March 28, 2001

VIA FACSIMILE AND U.S. MAIL

Mr. George B. Wolfe  
Counsel to Richland County Council  
Nelson Mullins Riley & Scarborough, L.L.P.  
P.O. Box 11070  
Columbia S.C. 29201

Re: Proposed Regulatory Floodway Provisions Concerning Existing Schools  
and Wastewater Treatment Plants

Dear Mr. Wolfe:

This letter discusses proposed revisions to the Richland County Stormwater Ordinance, specifically provisions governing encroachments in the regulatory floodway and a proposal to relax those standards somewhat for existing schools and wastewater treatment plants. We understand that your office has requested input on the legality of these provisions from counsel to Columbia Venture, L.L.C. and other interested parties. The Southern Environmental Law Center ("SELC") submits these comments in the interest of a full and open discussion of the proposed regulation. By this letter, we request that you copy us on any other analysis or information submitted to you concerning this matter.

The discussion below examines the legality of proposed modifications to Richland County's existing prohibition against encroachments in the regulatory floodway that would lessen current legal restrictions for schools and publicly-owned wastewater treatment plants. As explained more fully below, the proposed measure appears to be a reasonable and legal means to balance two legitimate public goals, namely protecting existing civic infrastructure while maintaining strong regulation of development in areas of known flood hazard.

I. EXISTING AND PROPOSED FLOODWAY RESTRICTIONS

Richland County's existing ordinance forbids any "levees, dikes, fill materials, structures or obstructions that will impeded the free flow of water during times of flood will be permitted in the regulatory floodway."<sup>1</sup> The proposed change would retain that standard, with two exceptions. The proposed language follows:

<sup>1</sup> Richland County Code of Ordinances, ar. III § 8-62(8).

March 28, 2001  
page 2

SEC. 8-26 PRIMARY DRAINAGE CHANNEL REQUIREMENTS

(h) Notwithstanding any other provisions of this ordinance including the and variances, no levees, dikes, fill materials, structures or obstructions flow of water during times of flood will be permitted in the regulatory flood

- (1) such impediment is or would be an integral feature of any property was constructed and operated before January 1, 2001 and classified as a special flood hazard area; or
- (2) such impediment is or would be an integral feature of a pretreatment facility that that was constructed and operated before property subsequently classified as a special flood hazard area

provided, however, that any activities permitted under subsections (1) all otherwise applicable federal, state and local requirements and must comply (d)(3), which prohibits any encroachments, including fill, new improvements and other development within the adopted regulatory flood demonstrated through hydrologic and hydraulic analyses performed in engineering practices that the proposed encroachment would not result levels within the community during the occurrence of the base flood discharge

The proposed language would permit ongoing operation and protection infrastructure that may, depending upon a final decision by the Federal Agency ("FEMA") concerning floodway delineations and adoption impacted municipalities including Richland County, fall within the provision states, however, that any activities permitted under the ordinance comply with FEMA's "no rise" standard.

Columbia Venture, L.L.C., which purchased 4,500 acres of ringed by non-certified agricultural dikes, objects to the proposed regulation unfairly encumbers Columbia Venture's property; is unworkable as practice; and is of questionable legality. This memorandum addresses potential legal objections to the proposed regulation. Three issues protection, special legislation and takings.

II. EQUAL PROTECTION

The Equal Protection Clause provides: "No State shall ... de jurisdiction the equal protection of the laws." U.S. Const. amend. I, art. I, § 3. When a case does not involve a suspect or quasi-suspect the statute or ordinance should be tested under the rational basis standard. Sumter, 332 S.C. 45, 52, 504 S.E.2d 112, 116 (1998). Under this standard is satisfied if: (1) the classification bears a reasonable relation to the purpose to be effected; (2) the members of the class are treated alike under similar conditions; and (3) the classification rests on some reasonable basis. of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996); Town of Hiltor Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990).

March 28, 2001  
page 3

The determination of whether a classification is reasonable is initially one for the legislative body and will be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it. Town of Hilton Head Island v. Fine Liquors, Ltd., *supra*.<sup>2</sup> "The fact that the classification may result in some inequity does not render it unconstitutional." Davis v. County of Greenville, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994). The General Assembly may enact different laws in different geographical areas without violating the Equal Protection Clause, provided there is a rational basis for the distinctions. See Moseley v. Welch, 218 S.C. 242, 250, 62 S.E.2d 313, 317 (1950) (equal protection clause does not require statute to apply equally to all areas of the state). Further, "[t]he classification does not need to completely accomplish the legislative purpose with delicate precision in order to survive a constitutional challenge." Foster v. South Carolina Dep't of Highways and Pub. Transp., 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992).

Under these legal principles, the proposed regulation before Richland County meets all equal protection requirements. In essence, the regulation creates a limited exception to the current legal standard for schools and public wastewater treatment plants constructed and operated before January 1, 2001 on property classified as a special flood hazard area after they began operation on that property. By creating a limited exception to the current legal standard for schools and wastewater treatment plants, the provision would enable the County to protect these pieces of civic infrastructure with appropriate maintenance and upgrades. However, the exceptions are limited so that the County's overall limitations on floodway encroachments would not be undermined. The proposed measure thus embodies a legislative balancing decision: one that slightly reduces floodplain regulation in return for increased protection of valuable existing facilities.

The regulation satisfies all of the factors needed to ensure equal protection. A class of facilities—existing schools and wastewater treatment plants—is identified to allow the County to better protect existing civic infrastructure. Members of the relevant class would be treated alike under similar circumstances and conditions: all schools or wastewater treatment plants constructed in areas found to comprise special flood hazard areas after they began operation would receive equal treatment.

Further, the regulation's classifications bear a rational and direct relation to several legitimate state goals. In assessing this relationship, it is important to note that the proposed regulation contains two related classifications which advance two related goals. The first classification contained in the regulation distinguishes between pre-existing and new facilities located in the regulatory floodway. This distinction furthers the well-recognized goal of protecting existing structures in areas of known flood hazard while at the same time not encouraging new development there. That goal, it should be noted, is an essential component of the National Flood Insurance Program ("NFIP"), in which Richland County participates:

<sup>2</sup> The burden of proving the invalidity of a zoning ordinance is on the party attacking it and it is incumbent on the attacking party to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. See Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997) (strong presumption exists in favor of the validity and application of zoning ordinances).

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page 4

Under the NFIP, the federal goal is providing subsidiz for existing structures in flood-prone areas, whi discouraging future unsafe construction in such areas.

Adolph v. Federal Emergency Management Agency, 854 F.2d 73 42 U.S.C. §§ 4011-12; S.Rep. No. 583, 93d Cong., 1st Sess. at 2 U.S.Code Cong. & Ad.News 3217.)<sup>3</sup> The distinction between ex new development is therefore a rational classification related to flood protection and management. Flood control has long been r goal in South Carolina. Clarke v. South Carolina Public Service (S.C. 1935) ("It is well settled, and this court holds, that navigati control, and the reforestation of watersheds are public purposes i and may engage.").

The second distinction contained in the proposed regulati of certain existing pieces of civic infrastructure -- schools and wa providing a limited exception to existing legal standards for such constructed and operated in areas later determined to lie within a exception language promotes the ongoing protection and operatic maintaining the existing overall restrictions on new encroachment

There can be no dispute that protection of a publicly owne legitimate public purpose. Wastewater treatment plants are critica who rely upon them for safe and economical sewage treatment, at those who live downstream of the community operating the plant. to protect or provide for the ongoing operation of area wastewater public health and safety would immediately result. Moreover, the relocating a large sewage plant would be substantial, and would n to abandon millions of dollars in sunk costs. In light of these eco environmental considerations, providing regulatory flexibility for furthers a clear public aim.

The protection of existing schools, both public and private purpose. A public purpose generally has for its objective the prom safety, morals, general welfare, security, prosperity, and contentm residents, or at least a substantial part thereof. Anderson v. Baehr, 47 (1975). As stated by the Supreme Court of South Carolina, "[i

<sup>3</sup> "Minimizing future flooding hazards through sound flood-plain management i enactment and enforcement of local ordinances. The policy has three basic purt. from danger, who would otherwise develop or occupy the flood-prone land; (2) damage resulting from flood-zone development and consequent obstruction of t the public from individual land-use decisions that later require public remedial disaster relief." Adolph V. Federal Emergency Management Agency, 854 F.2d



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whether or not the promotion of secular education is a public purpose as it is universally accepted as a proper public purpose." Hunt v. McNair, 255 S.C. 71, 78, 177 S.E.2d 362 (1970).

Consonant with the recognized civic value of schools (public and private), various statutes and regulations in South Carolina afford those institutions the very highest levels of protection. E.g., S.C. Code Ann. § 44-53-445 (prohibiting distribution of a controlled substance within a one-half mile radius of "public or private" schools); § 44-29-150 (requiring staff of private and public schools and child care centers to be evaluated for tuberculosis before initial hiring); § 44-29-160 (requiring health certificates for employees in public or private schools and child care facilities); § 16-23-420 (prohibiting carrying or displaying firearms in "private or public school, college, university, technical college, other post-secondary institution"). Indeed, Richland County has enacted an ordinance outlawing the operation of a sexually oriented business within one thousand (1,000) feet of a "public or private elementary or secondary school." Richland County Ord. No. 1609-87, § 12, 8-1-87; Ord. No. 1671-87, § 1, 9-1-87. These laws demonstrate that heightened safety and protection for both private and public schools is a valid public purpose, and a legitimate legislative aim.

In summary, the classifications drawn by the proposed regulation balance, the twin goals of protecting existing vital infrastructure and minimizing flood damage. The regulation maintains current legal standards with limited flexibility for schools and treatment plants. Because the distinctions drawn to meet these legitimate ends are rationally drawn and do not discriminate arbitrarily among similarly situated parties, the proposed ordinance does not violate equal protection.

### III. SPECIAL LEGISLATION

The term special legislation generally describes enactments by the state government that are improperly limited to one county or not all counties of the state. S.C. Const. art. III, § 34(IX) provides that no special law shall be enacted where a general law can be made applicable. The broader purpose of the prohibition against special legislation is to prevent discrimination and to assure that all persons are equally treated, thereby requiring acts of the Legislature to apply equally to all persons within an appropriate class. Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse, 267 S.C. 463, 229 S.E.2d 718 (1976).

Special legislation is permissible where "peculiar conditions" exist that require special treatment. See Horry County v. Horry County Higher Educ. Comm'n, 306 S.C. 416, 412 S.E.2d 421 (1991). In adopting special legislation, the Legislature may adopt classifications "based upon differences which are either defined by the Constitution, or are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation." Sansing v. Cherokee County Tourist Camp Board, 195 S.C. 7, 11, 10 S.E.2d 157 (1940).

Here, the proposed regulation applies equally to all persons within an appropriate class and for that reason does not constitute special legislation. Furthermore, the distinctions that are drawn in the regulation are based on intrinsic factors and rationally relate to legitimate public policy goals. Specifically, the regulation creates a limited exception for schools and treatment

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plants if those facilities were constructed on areas that, on a date as operations on that property, are classified as being within an area of first distinction, between existing structures and entirely new ones, well-recognized flood policy goals of not encouraging new development areas. The second distinction, providing added legal protection for recognizes the premium public value attached to these vital pieces of regulation balances the desire to protect those facilities with the desire for flood protection for the citizens of Richland County, and does not require impermissible special legislation.

#### IV. TAKINGS CLAIM

The proposed regulation would not effectuate a taking of property. Richland County would likely be found liable. Courts have generally challenges against reasonable floodplain management measures. See Responsible Citizens v. City of Asheville, 308 N.C. 255, 302 S.E.2d 133 N.J.Super. 216, 336 A.2d 30 (1975) (ordinance declaring a moratorium on flood-prone lands was held a valid exercise of police power and thus not a taking); Bar Realty Co. v. City of Utica, 57 A.D.2d 51, 394 N.Y.S.2d 913 (1976), 380 N.E.2d 328, 408 N.Y.S.2d 502 (1978) (city zoning ordinance requiring property within "Land Conservation Districts" to protect properties from flood damage was a constitutional exercise of police power); see also Maple Leaf Inv. I, 88 Wash.2d 726, 565 P.2d 1162 (1977).

The stormwater ordinance's floodway regulations do not have a general zoning law and their application would be contingent upon the drawing and adoption of final floodmaps, map revisions, zoning application procedures. However, takings principles developed in this area are instructive. As the U.S. Supreme Court has declared, "the application of a particular property effects a taking if the ordinance does not substantially advance [governmental] interests or denies an owner economically viable use of his property." Agins v. City of Tiburon, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 1181 (1980) (citations omitted). "A zoning classification is not an unconstitutional taking simply because it denies to a landowner the highest and best use of his property." Sumter County Council, 300 S.C. 270, 272, 387 S.E.2d 455, 457 (1979); Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 578, 524 S.E.2d 118 (1979).

In this case, prior floods have already decreased property value of those lands not previously classified as regulatory floodways. E.g., Columbia, 297 S.C. 451, \*455 (1989) (landowner of flooded tract "that since the flood his property carried a negative stigma as flood damage area in negotiations for commercial development.") Further, in the zoning context, a landowner may acquire a vested right to continue a nonconforming use of a zoning, that right is contingent upon a showing that the con-

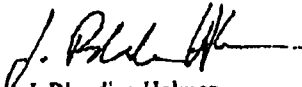
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constitute a detriment to the public health, safety, or welfare. Daniels v. City of Goose Creek,  
314 S.C. 494, 431 S.E.2d 256 (Ct.App.1993).

\* \* \*

Thank you for the opportunity to provide information on the proposed regulation. Please  
contact me if I can provide anything further.

Very truly yours,

  
J. Blanding Holman

cc: William C. Boyd, Esq.  
Weston Adams III, Esq.  
John Beach, Esq.

SELC000142

# **THE SIMPLE TRUTH ABOUT GREEN DIAMOND.**

**April 2001**



Def Trial Ex 79

## EXECUTIVE SUMMARY

***You can always amend a big plan, but you can never expand a little one. I don't believe in little plans. I believe in plans big enough to meet a situation which we can't possibly foresee now.<sup>1</sup>***

Harry S. Truman

The proposed Green Diamond Project is indeed a "big" plan, one in which the collaborative efforts of the private sector, the research institutions of the state, City of Columbia, Richland County, Richland One School District, and the State of South Carolina must be engaged in order to fully recognize the tremendous economic and social potential. It is a bold plan which is capable of *transforming* the economic landscape of the region with the resultant effect of an enhanced overall quality of life for its residents.

The purpose of this executive summary is to provide the simple truth about the Green Diamond Project and includes four basis components:

- To demonstrate the lack of financial and legal risk for the general public and governmental entities including Richland County, City of Columbia, and Richland One School District.
- To demonstrate that the Green Diamond Project is both safe and environmentally sensitive.
- To demonstrate the benefits and opportunities associated with this project.
- To provide an overview of the cost benefit analysis.

### **The Lack of Financial and Legal Risks**

The proposed Green Diamond Project entails virtually no financial and/or legal risk(s) for the public and/or the governmental entities of Richland County, City of Columbia, and the Richland One School District. Although it is not required by law, the developers (Columbia Venture LLC) have stipulated that not one penny of existing taxpayer funds would be used to finance the required public infrastructure that is necessary for this

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<sup>1</sup> The Speaker's Electronic Reference Collection: AAPEX Software 1994.

project. In fact, it will be demonstrated later in the report that all of the governmental entities will prosper significantly from this economic expansion.

First, it should be recognized that the full costs of the necessary public infrastructure (levees, roadways, water & wastewater, and storm water facilities) would be funded via the sale of special source revenue bonds so that there is no exposure or impact upon existing taxpayers. The bonds are issued upon the financial strength of the proposed project and, as such, are subject solely to the realities of the financial markets. In essence, the developers must demonstrate the financial viability of the project in order to achieve the successful sale of the special source revenue bonds. Without the proven financial viability and subsequent sale of the bonds, the provisions of the necessary infrastructure will be unattainable and the development of the research park will not move forward. Consequently, the governmental entities will not incur any costs associated with the project.

But it is also prudent to examine the potential costs to governmental entities if the project moves forward but at a somewhat slower pace. In this regard, there are essentially three elements for consideration: the size and timing of the issuances of the special source revenue bonds, the associated costs of maintaining the levees, and the costs of providing governmental services for the associated commercial and residential developments.

It is important to realize that the issuance of special source revenue bonds will be time adjusted over the life of the project. At this point, it is projected that incremental issuances will occur in years 2002, 2005, 2008, 2011, 2014 and 2017 for a grand total of \$79,757,753. Obviously, the issuance(s) of these bonds will be contingent upon the continuing success of the project and, as noted earlier, subject to the viability of the financial markets. But it should also be abundantly clear that all of the financial risks and exposure associated with the sale of the bonds will be borne by the developers and the purchasers of the financial instruments.

The initial issuance of the bonds is estimated to be for \$26,688,008 and will include the monies associated with the construction/improvements of the levees. Once the levees are constructed, the questions of legal ownership, liability, and the costs of maintenance are important considerations. Under the terms of this proposal, it is recommended that the levees be conveyed to a 501(c)(3) non-profit corporation in order to qualify for tax-exempt bond financing as part of the Multi-County Business Park. The Corporation would be responsible for improving the levees to FEMA's 500-year standard, maintaining the levees, and obtaining insurance. From a liability prospective, separate ownership of the levees by this corporation should: insulate the City from liability stemming from ownership in a variety of ways. These mechanisms include: state law protects the board members of the 501(c)(3) corporation from liability, maintenance of the levee system could be outsourced to a qualified, credit-worthy contractor which provides another layer of protection and liability insurance, and the City's direct

responsibility would be prescribed by ordinance and should be exempt from liability under the Torts Claim Act, and commercial insurance.

~~It is anticipated that the provisions of commercial insurance permitting and maintenance of the levees have been estimated at \$100,000 per year.~~ It should be noted that great care was taken to estimate these potential costs and provide a conservative "cushion.") Recommended funding to cover these costs could be derived in one of three ways: \$6,000,000 in the infrastructure requests to establish a corpus to generate this annual operations funds; \$6,000,000 additional allocation from the fees in lieu to the City of Columbia to establish such a fund; or the designation of this project as a special purpose tax district to allow for the annual collection of fees necessary for the operation and maintenance of the levees.

Finally, one must consider the inherent costs of the provision of governmental services build-out move slower than scheduled. In this regard, the answer is straightforward and simple. The costs associated with this delivery of services are tied directly to the development itself. As reflected in the later section of this report, it has been clearly demonstrated that the incremental revenues associated with the commercial and residential expansions far outweigh the incremental costs of the delivery of the services by Richland County, City of Columbia, and Richland One School District. Consequently, if the project does not mature as rapidly as projected, the associated costs for the delivery of services will not materialize either.

#### The Green Diamond Project is Safe and Environmentally Sensitive

Levees have received much bad press in recent years with many people having the impression that they don't work and just make floods worse. Such is not the case. The vast majority of levees performed as designed during flood events. Levees prevented huge areas from flooding in the Lower Mississippi floods of 1973 and 1974, in the California floods of 1986 and 1997 and the great Midwest flood in 1993. The levees seen on the nightly news being breached or overtopped were almost always farm levees designed for floods much lower than the actual event. These structures were never intended to withstand rare floods.

The Green Diamond Levee Project features a well engineered and designed levee along the Congaree River that will give protected lands a 500-year average return interval level of protection plus freeboard. The levees will give a high level of protection, comparable to nearly any other urban levee project in the United States. It exceeds the design necessary to receive certification approval from the Federal Emergency Management Agency. With good inspection and maintenance practices after the project is placed in operation, it should give many years of service to the protected area. While no flood reduction structure is expected to give absolute protection, the residual risk of flooding for the Green Diamond levee is very small, less than the danger of fire, hail, wind and other natural disasters to structures behind the levee. The level of protection offered by

the Green Diamond Levee Project is similar to that of Kansas City, St. Louis, New Orleans, and other major river cities. Investigation of similar levee projects around the United States, compared to the Green Diamond Levee's design, has found none that have failed to properly protect the area behind the levees. In fact, few urban-type levees have been breached or overtopped by actual floods in recent history. Those that have can generally be characterized as providing a significantly lower level of protection, as having an inadequate seepage design or lack of inspection during a flood emergency, or as subject to unforeseeable changed conditions during a major flood. None of these exceptions should apply to the Green Diamond Levee Project.

The upgraded Green Diamond Levee will have no measurable impact on flooding. The existing levee is nearly as high as the proposed levee over much of its length and has been in place since the 1960's. The new levee would therefore not have any impact on floods similar to any that have occurred in the past 30-40 years. Extensive hydraulic computations have shown that there is no change in the base flood (100-year) elevation for Richland County or to the floodway in force for the county. Even larger floods would be little affected by the Green Diamond Levee Project, as the levee design is primarily for a larger and more stable cross section, than for a much higher levee. A stronger levee may also have a positive influence on the transportation network during major floods. The existing levee is likely to be undermined and breached during major floods, possibly cutting across I-77 and halting vehicular traffic. A modern, certifiable levee would prevent this negative impact and would increase Columbia's opportunities for economic growth.

In close association with the physical safety, the developers of the Green Diamond Project envision a modern environmentally sensitive community for all of its residents and workers, the taxpayers of Richland County, and all of the citizens of the Midlands. Toward this end, a full environmental assessment was conducted. A summary of the findings indicate:

Wetlands were delineated on the project site according to the US Army Corps of Engineers 1987 "Wetlands Identification and Delineation Manual." Wetland boundaries were certified by Mr. Charles Crosby, US Army Corps of Engineers, Charleston District. Development of the Green Diamond Project site has been designed to avoid and minimize wetland impacts unless absolutely necessary. The remaining wetlands will be preserved and incorporated into natural and scenic areas.

- The Threatened and Endangered Species survey indicated that no Federally listed plant or animal species were located on the project site. A single State listed species "of concern," the Mississippi kite, was located on the project site. No State-listed plant species appeared to occur on the project site. Sufficient habitat in the form of large canopy trees, including pine trees, will be available in wooded areas within the project site. The Habitat Assessment concluded that no



specimens of Federal and State listed species were observed and no known occurrences of these species has been documented on the project site.

- The Archeological Survey was conducted for Wetland & Environmental Services, Inc. by Brockington and Associates, NC. The initial results of the cultural resources reconnaissance and the updated results of the archaeological survey, which found ten potentially eligible sites for the National Register of Historic Places (NRHP) will be incorporated into open space and preserved or investigated to determine NRHP eligibility prior to development of the project site. The remaining sites are recommended as not eligible for NRHP.

In addition to the due diligence exemplified above, the Green Diamond Project will offer a unique environment in which residents can live, work, play and study, often without even needing to get in a car. Columbia Venture, LLC will donate approximately 237 acres of land for a variety of purposes as outlined below. This land will provide ready access to recreation centers, public parks and walkways, as well as essential governmental buildings and schools. In keeping with this vision of the project, Green Diamond is committed to the following:

- A donation of approximately 120-130 acres of land to create a 9-mile linear pedestrian park along the levees – This public park, unlike any other in South Carolina, will offer spectacular views of the river as well as public river access. Residents and visitors can therefore enjoy boating, canoeing and kayaking in addition to leisurely strolls along the waterfront.
- A donation of approximately six acres of land for a circular public park within the heart of the community – This civic space is intended for active and passive use of the community with benches, fountains, areas for public events and performances and plenty of green space. This park will serve as the hub of the Green Diamond project.
- A donation of approximately 60 acres of land for a community recreation center, which will provide Midland residents with access to new public recreation facilities with athletic fields, ample public parking and convenient access.
- A donation of 16 acres of land for governmental and emergency facilities – Land located adjacent to the community recreation center will provide sites for building any needed police stations, fire stations and other governmental and emergency facilities.
- A donation of approximately 35 acres of land for a school or school sites – Land for a public school or schools will be reserved within the educational research campus, creating an exceptional learning environment for our students.

In addition, Columbia Venture has proposed setting aside 350 acres for an environmental center. This guarantees that 350 acres of green space in the most sensitive area of the property will be preserved for opportunities for eco-tourism, environmental research, river access and team building and outdoor recreation activities such as hiking, camping, canoeing and kayaking. Columbia Venture, LLC is not required to provide this space; in fact, the project well exceeds the requisite 10% green space. However, with a final belief that South Carolina's natural assets are her greatest assets, Columbia Venture, LLC is pleased to have the chance to save this space for future generations of residents to learn from and enjoy.

### The Benefits and Opportunities

Rarely has such a transformational opportunity occurred in South Carolina. The enormity of the positive impact will be felt for generations on the quality of life, on the public education system, and in the acceleration of economic expansions.

*Today more than ever, U.S. and South Carolina industry is competing with the world – and it is becoming harder for us to maintain our leadership role. South Carolina's record on economic development in recent years has been impressive, but as the U.S. economy continues to become less manufacturing-based and more knowledge-based, our state's strategic approach to economic development must also change.*

*High technology is one area where the United States will enjoy a competitive advantage. But while there have been successes to be sure, South Carolina is behind the curve when it comes to attracting and keeping high technology businesses. Perhaps even more importantly, we are not on the cutting edge when it comes to giving birth to and nurturing homegrown high-tech businesses.*

*How do we reverse the trend? One sure way is through the development of a top-notch research and technology park in the heart of the Midlands.*

*High-technology companies increasingly look to these kinds of parks – most located near major universities – as a site for new ideas and skilled professionals.*

*Green Diamond represents a now-or-never opportunity for our area. Its developers have the wherewithal, the commitment and, most importantly, the vision to create an economic engine to power Columbia's future.*

*It is a vision to create new jobs – not just traditional jobs in the manufacturing and service industries – but jobs with companies on the leading edge of the new economy. Job with the kind of companies that will bring corporate headquarters and community leaders to*

*Columbia; companies where our children can go as far as they want in their careers, yet never have to leave our community to be successful.*

*The fact is that we've all dreamed about such a development. Politicians, educators, columnists and businesspeople have all talked about putting it together. But now, finally, somebody has stepped forward to do it. It's time for those truly concerned about the economic future of Columbia to step forward, too, and get behind Green Diamond before this opportunity is lost.*<sup>2</sup>

In total, Green Diamond will revolutionize our area economy, creating the biggest economic boom to this area in over a century. The research and technology park at the heart of Green Diamond will transport us to the forefront of the new economy, put the state's high-tech research efforts into overdrive, create an environment in which the dreams of the educational research institutions of the state can be achieved, and provide dynamic new opportunities for K-12 education in Richland School District One.

#### **Overview of the Cost Benefit Analysis**

As indicated earlier, the developers (Columbia Venture, LLC) felt that all of the governmental entities must prosper from this economic expansion. To this end, it was deemed essential that the additional revenues going to the general fund, etc., associated with the proposed development should exceed the total costs of providing the governments' services. Consequently, the costs of providing services for each of the governmental entities were calculated and compared to the generated revenues by year for the entire duration of the project. At this point, it is important to note three specific aspects as to the estimation of the respective cost:

1. Estimated costs associated with the development were projected by third party consultants whose selections were confirmed by staff of Richland County, City of Columbia, and Richland One School District. Estimates relating to the county and the city were prepared by Wilbur Smith Associates, and costs estimated for Richland One School District were prepared by McMillan and Associates.
2. Cost estimates were based upon the projected build-out of the project.
3. Cost estimates prepared by Wilbur Smith Associates were increased to three percent growth per year to facilitate comparisons to revenues whereas costs attributable to K-12 education were projected to increase on an annual rate in excess of six percent.

When the projected revenues and costs were reconciled, the financial benefits associated with the development were dramatic. A summary of these results is provided in Table I.

<sup>2</sup>"Green Diamond Represents Opportunity," Tom Persons, *The State*, February 2001.

**Table I**  
**Cost-Benefit Analysis of Green Diamond Project**

|                                       | Richland<br>County | City of Columbia | Richland One<br>School District |
|---------------------------------------|--------------------|------------------|---------------------------------|
| Residential Property Taxes            | \$ 84,016,745      | \$ 97,349,376    | \$204,222,061                   |
| Personal Property & Motor Vehicle     | \$ 20,415,029      | \$ 23,654,694    | \$ 49,623,434                   |
| Business Licenses & Permits           | N/A                | \$371,383,905    | N/A                             |
| Additional Revenue                    | N/A                | \$ 71,755,149    | N/A                             |
| Direct Revenue                        | \$104,431,774      | \$564,143,124    | \$253,845,495                   |
| Cost of Services                      | \$ 71,284,530      | \$427,049,170    | \$152,640,482                   |
| Direct Revenue-Cost of Services       | \$ 33,147,244      | \$137,093,954    | \$101,205,013                   |
| Distribution of fees in lieu of taxes | \$ 91,261,723      | \$ 91,261,723    | \$686,635,819                   |
| NET PUBLIC BENEFIT                    | \$124,408,967      | \$228,355,677    | \$787,840,832                   |

As evidenced above, the direct financial benefits to the community are enormous. Excess public revenue of \$1,171,78,737 can be used to improve services, building additional facilities, reduce existing taxes, etc. At the same time, the developers are not seeking inducements or incentives, but rather are providing a legal reliable means (without risk, exposure, and/or costs to existing taxpayers) to fund the necessary public infrastructure to enable the creation of the research park. The proposed Green Diamond Project will benefit not only the citizens of the Midlands, but the State of South Carolina as well. It will enable and facilitate the state's competitive posture in the high tech arena and will dramatically enhance the overall quality of life of the residences.



## **ESTIMATED ECONOMIC IMPACT**

|                                                           |                         |
|-----------------------------------------------------------|-------------------------|
| <b>Total Direct Investment<br/>(over 30 years)</b>        | <b>\$4.19 billion</b>   |
| <b>Overall Economic Impact</b>                            | <b>\$6.7 billion</b>    |
| <b>Local Property Taxes<br/>(commercial)</b>              | <b>\$1.1 billion</b>    |
| <b>Local Property Taxes<br/>(residential)</b>             | <b>\$385.59 million</b> |
| <b>Annual Property Taxes<br/>In Year 30 (commercial)</b>  | <b>\$92.9 million</b>   |
| <b>Annual Property Taxes<br/>In Year 30 (residential)</b> | <b>\$26.1 million</b>   |
| <b>Annual Sales &amp; Admission<br/>Taxes in Year 30</b>  | <b>\$24.4 million</b>   |



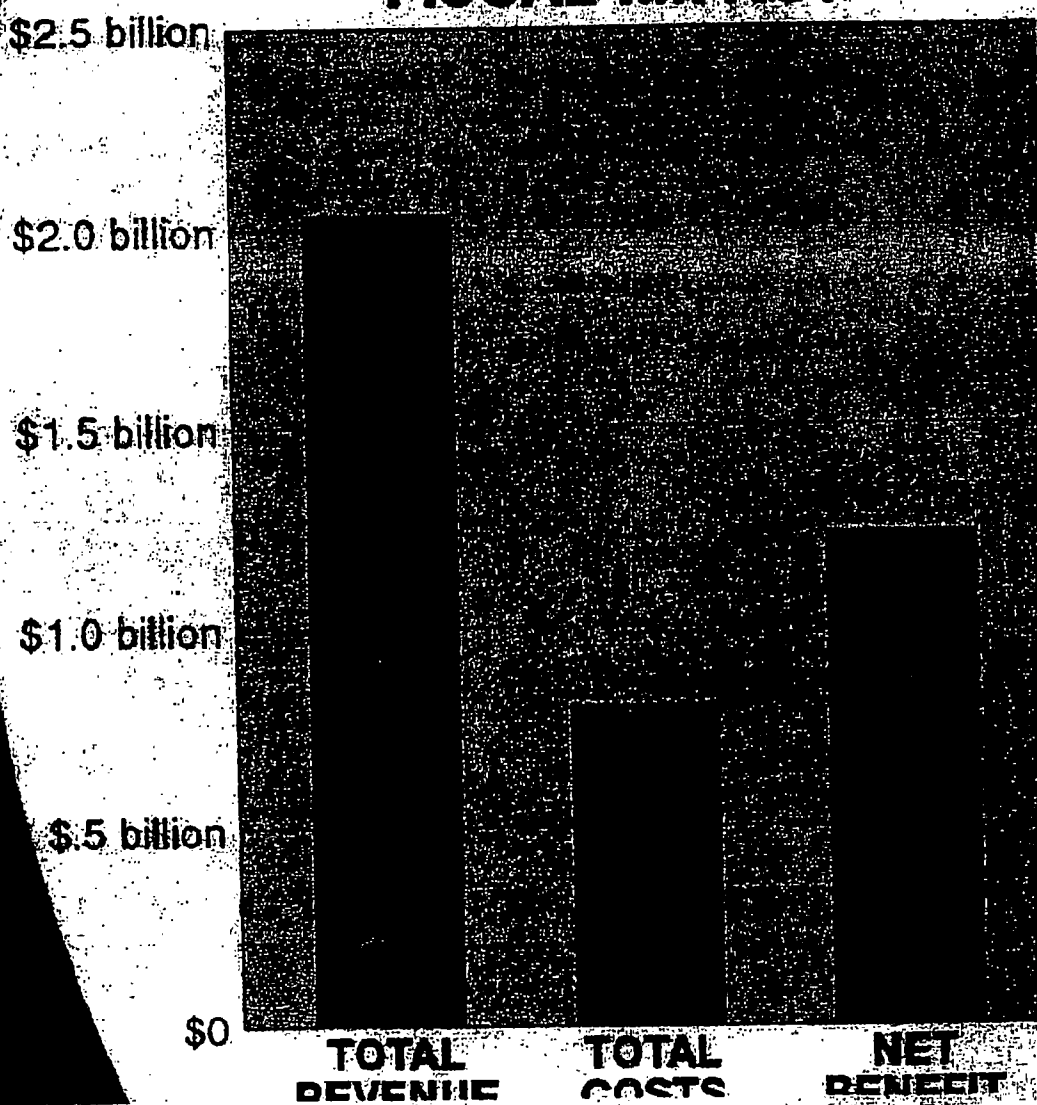
## **MULTI-COUNTY BUSINESS PARK 30-YEAR PUBLIC BENEFIT**

| <b>REVENUE</b>                         |                        |
|----------------------------------------|------------------------|
| Commercial Revenue Stream              | <b>\$1,112,894,836</b> |
| Residential Revenue Stream             | <b>\$385,588,182</b>   |
| Personal Property                      | <b>\$93,693,157</b>    |
| Business License & Permits             | <b>\$371,383,905</b>   |
| Additional Revenue                     | <b>\$71,755,149</b>    |
| <b>TOTAL REVENUE</b>                   | <b>\$2,035,315,229</b> |
| <b>COSTS</b>                           |                        |
| Cost of Services                       | <b>\$651,035,571</b>   |
| Infrastructure                         | <b>\$192,716,731</b>   |
| Other Costs                            | <b>\$11,128,948</b>    |
| Hold Harmless                          | <b>\$9,355,242</b>     |
| <b>TOTAL COSTS</b>                     | <b>\$864,236,492</b>   |
| <b>NET TOTAL EXCESS PUBLIC REVENUE</b> | <b>\$1,171,078,737</b> |



GREEN  
DIAMOND

## GREEN DIAMOND FISCAL IMPACT



**FUNDS REQUESTED FOR INFRASTRUCTURE**

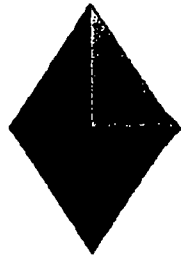
| <b>INFRASTRUCTURE</b>                        | <b>PROJECTED COSTS</b> |
|----------------------------------------------|------------------------|
| Levee Upgrade                                | \$8,102,378            |
| Levee Maintenance & Insurance Financing Fund | \$6,000,000            |
| Roadways                                     | \$17,030,195           |
| Bridges                                      | \$6,461,102            |
| Water System                                 | \$3,764,113            |
| Natural Gas Distribution System              | \$949,114              |
| Waste Water System                           | \$3,511,522            |
| Electrical & Fiber Optic Systems             | \$5,399,414            |
| Wetland & Environmental Mitigation           | \$1,076,755            |
| Engineering Geotech                          | \$2,713,168            |
| Adjacent Community Improvements              | \$10,750,000           |
| Economic Development Account                 | \$14,000,000           |
| <b>TOTAL</b>                                 | <b>\$79,767,799</b>    |





**MULTI-COUNTY  
BUSINESS PARK  
RICHLAND COUNTY  
30-YEAR PUBLIC BENEFIT**

|                                              |                      |
|----------------------------------------------|----------------------|
| <b>Residential Property Taxes</b>            | <b>\$84,016,745</b>  |
| <b>Personal Property &amp; Motor Vehicle</b> | <b>\$20,415,029</b>  |
| <b>Direct Revenue</b>                        | <b>\$104,431,774</b> |
| <b>Cost of Services</b>                      | <b>\$71,284,530</b>  |
| <b>Direct Revenue – Cost of Services</b>     | <b>\$33,147,244</b>  |
| <b>Distribution of Fee in Lieu of Taxes</b>  | <b>\$91,261,723</b>  |
| <b>NET PUBLIC BENEFIT</b>                    | <b>\$124,408,967</b> |



GREEN  
DIAMOND

**MULTI-COUNTY  
BUSINESS PARK  
CITY OF COLUMBIA  
30-YEAR PUBLIC BENEFIT**

|                                              |                      |
|----------------------------------------------|----------------------|
| <b>Residential Property Taxes</b>            | <b>\$97,349,376</b>  |
| <b>Personal Property &amp; Motor Vehicle</b> | <b>\$23,654,694</b>  |
| <b>Business Licenses &amp; Permits</b>       | <b>\$371,383,905</b> |
| <b>Additional Revenue</b>                    | <b>\$71,755,149</b>  |
| <b>Direct Revenue</b>                        | <b>\$564,143,124</b> |
| <b>Cost of Services</b>                      | <b>\$427,049,170</b> |
| <b>Direct Revenue - Cost of Services</b>     | <b>\$137,093,954</b> |
| <b>Distribution of Fee in Lieu of Taxes</b>  | <b>\$91,261,723</b>  |
| <b>NET PUBLIC BENEFIT</b>                    | <b>\$228,355,677</b> |



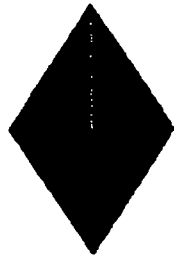
**MULTI-COUNTY  
BUSINESS PARK  
RICHLAND SCHOOL DISTRICT ONE  
30-YEAR PUBLIC BENEFIT**

|                                              |                      |
|----------------------------------------------|----------------------|
| <b>Residential Property Taxes</b>            | <b>\$204,222,061</b> |
| <b>Personal Property &amp; Motor Vehicle</b> | <b>\$49,623,434</b>  |
| <b>Direct Revenue</b>                        | <b>\$253,845,495</b> |
| <b>Cost of Services</b>                      | <b>\$152,640,482</b> |
| <b>Direct Revenue – Cost of Services</b>     | <b>\$101,205,013</b> |
| <b>Distribution of Fee in Lieu of Taxes</b>  | <b>\$686,635,819</b> |
| <b>NET PUBLIC BENEFIT</b>                    | <b>\$787,840,832</b> |



## **PUBLIC BENEFITS**

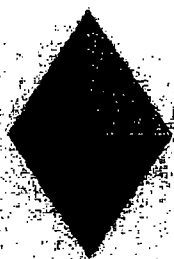
- **Donating a 9-mile linear pedestrian park along the levees (approximately 120 acres of land)**
- **Donating a circular public park within the heart of the community (approximately 6 acres of land)**
- **Donating a community recreation center and athletic fields (approximately 60 acres of land)**
- **Donating governmental and emergency facilities (approximately 16 acres of land)**
- **Donating public school site (approximately 35 acres of land)**
- **Preserving 350 acres for a public environmental area**



GREEN  
DIAMOND

## *Opportunities*

- Total direct investment of over \$4 billion
- \$6.7 billion economic impact
- 20,000 jobs
- \$1.1 billion in net benefits for public revenue.
- A self-financing MCBP representing less than 4% of total revenue
- A guarantee that not one dime of existing taxpayer money will be used or put at risk for this project
- Local government and taxpayers effectively protected against liability risks
- An opportunity for almost \$800 million in public revenue for our children in Richland School District One
- Nearly 600 acres of land within the property for public use



# GREEN DIAMOND

**Basic infrastructure costs  
represent 2.7% of the  
total revenue generated by  
the multi-county business park.**

**TOTAL REVENUE: \$2,035,315,229**

**BASIC INFRASTRUCTURE: \$55,000,000**

**COMMUNITY IMPROVEMENTS: \$10,750,000**

**ECONOMIC DEVELOPMENT ACCOUNT: \$14,000,000**

Government Economic  
Development Account

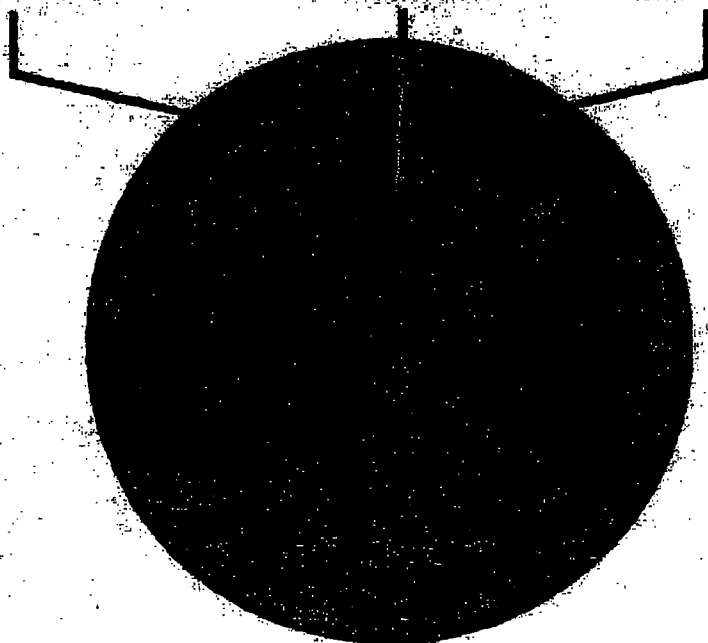
**0.7%**

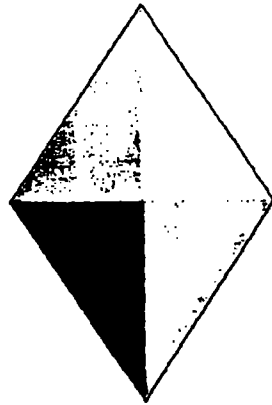
Surrounding Community  
Improvements

**0.5%**

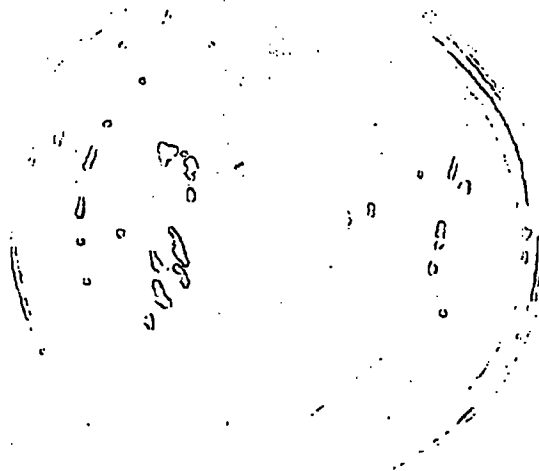
Basic  
Infrastructure

**2.7%**

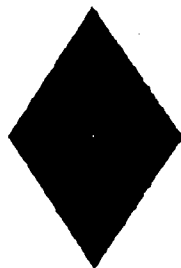




# GREEN DIAMOND



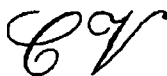
**Not one dime of  
existing taxpayer money  
will be used or put  
at risk in developing  
Green Diamond**



GREEN  
DIAMOND

**NO  
CERTIFIED LEVEE  
BUILT TO THE  
500-YEAR  
FLOOD LEVEL  
HAS EVER FAILED**





Columbia Venture, LLC

April 2, 2001

The Honorable Bernice G. Scott, Chair  
Development and Services Committee  
Richland County Council  
2020 Hampton Street  
Columbia, South Carolina 29201

Re: Green Diamond Meeting

Dear Ms. Scott:

Thank you, first of all, for your leadership in convening the special D&S Committee meeting, and for your encouragement and support for Green Diamond.

As we discussed, I am submitting to you, under cover of this letter, a compilation of requested information regarding our proposed Green Diamond development.

This submittal is intended to be responsive to inquiries referenced in Mullen Taylor's correspondence of December 4, 2000 and January 17, 2001, to the extent that requested information has not previously been provided. Much of the information is preliminary in nature. Some modification may be appropriate, based upon possible subsequent actions by FEMA. Other changes might be indicated, based upon discussions or negotiations with Richland County and/or other local government entities.

Material requested and submitted includes:

- a) Environmental Assessments, Phase I and Phase II. We have submitted executive summaries and a separate set of source data supporting assessments.
- b) Environmental analysis performed as part of any due diligence. This material is included in item (a) above and in item (d) below.
- c) Reports dealing with wetlands located on property. This material is included in item (a) above. (I understand that Mr. Wolfe's office previously obtained this information.)
- d) Soils analysis conducted by S&ME. We have submitted executive summaries and a separate set of source data supporting assessments.

Carolina First Building  
4875 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 743-0672 (803) 743-0673 Fax

Def Trial Ex 81

- e) Transportation study performed by Wilbur Smith & Associates.
- f) Copy of Columbia Venture's proposed levee design. This material is included in item (d) above. (The levee design will be modified based upon data obtained in the Letter of Final Determination (LFD) issued by FEMA).
- g) Cost estimates for levee construction and maintenance.
- h) Copy of Texas statute pertaining to Levee Improvement Districts. (Columbia Venture does not contemplate that the Texas levee district would be a model for Green Diamond).

We are working very hard to finalize a comprehensive development proposal for Green Diamond. Our goal is to have the proposal ready for submittal by mid April. It is our intention that the document be the basis for extensive discussions and to reach agreement on how the project should proceed. Our proposal will incorporate other information requested or referenced by correspondence received from Ms. Taylor, including:

- i. baseline data and resulting fiscal or economic impact analysis;
- ii. Columbia Venture's proposed means of financing and carrying out levee construction, maintenance and repairs; and
- iii. Columbia Venture's proposal/contemplation as to legal title to parcels of Green Diamond property, and specifically the property on which the levees are located, as well as related maintenance, oversight and liability issues.

Ms. Taylor also inquired about a CLOMR application from Columbia Venture. A CLOMR cannot be prepared until FEMA has finished its remapping process. Columbia Venture would prepare and submit the CLOMR application following issuance by FEMA of its Letter of Final Determination. The application will reflect whatever the jurisdictional status of the Green Diamond property may be at that time.

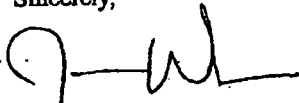
The information presented this evening is a product of extensive due diligence, which was undertaken prior to the purchase of the property, and much additional research, and planning that came later. This data addresses important considerations related to the appropriateness for development of the Green Diamond site. To date, however, our careful assessment of environmental issues, wetlands, soils, threatened and endangered species, archeological sites, and other critical considerations has concluded that the development of Green Diamond can be done safely and economically in an environmentally sensitive manner.

We at Columbia Venture look forward to working with Council in the days ahead. We hope this information we are submitting today is responsive to your requests. We stand ready to respond to such questions and requests for information as may be forthcoming.

We look forward to submitting our development proposal, which will address a number of other issues, as indicated above. Again, I appreciate very much your leadership and all the courtesies you and your colleagues have extended to me throughout this process.

In the meantime, please let me know how I can be helpful to you and other members of Council as you consider issues pertaining to Green Diamond. As we have stated previously, our ambition is to build a world-class development in partnership with Richland County, the City of Columbia, and Richland School District One. We look forward to working with you toward that end.

Sincerely,



James E. Wiseman

CC: Members, Richland County Council and Staff  
Members, Columbia City Council and Staff  
Members, Richland School District One and Staff

# Richland County Council

10/10/01



## RICHLAND COUNTY COUNCIL REGULAR SESSION APRIL 17, 2001 6:00 P.M.

KIT SMITH  
CHAIR  
DISTRICT FIVE

L. GREGORY PEARCE, JR.  
VICE-CHAIRMAN  
DISTRICT SIX

JOAN B. BRADY  
DISTRICT EIGHT

SUSAN BRILL  
DISTRICT NINE

PAUL LIVINGSTON  
DISTRICT FOUR

JOSEPH McEACHERN  
DISTRICT SEVEN

J. D. "BUDDY" MEETZE  
DISTRICT ONE

ANTHONY MIZZELL  
DISTRICT ELEVEN

BERNICE G. SCOTT  
DISTRICT TEN

THELMA M. TILLIS  
DISTRICT THREE

JAMES TUTEN  
DISTRICT TWO

CALL TO ORDER 6:05 KS

INVOCATION JT

ADOPTION OF AGENDA as presented

PRESENTATION OF RESOLUTIONS:

a. Walter B. Todd Midlands Tech. College Commission

CITIZEN'S INPUT

APPROVAL OF MINUTES

Zoning Public Hearing: March 27, 2001 [Pages 2-4] - app as printed

Regular Session: April 3, 2001 [Pages 5-12] - app as printed

REPORT OF COUNTY ATTORNEY FOR EXECUTIVE  
SESSION MATTERS  
REPORT OF COUNTY ADMINISTRATOR  
OPEN/CLOSE PUBLIC HEARING ITEMS

APPROVAL OF CONSENT ITEMS SB/AM app as presented

### 1. THIRD READING ITEMS

- a. Business Directory Signs (deferred from 4/3/01 mtg.)  
[Pages 13 & 14] GP/ amendment app
- b. Storm Water Management Ordinance [PUBLIC  
HEARING] [Pages 15-48] SB/IB 3rd

Post Office Box 192 \* Columbia, South Carolina 29202 \* (803) 748-4616 \* TDD (803) 748-4999

deferred to work session

Def Trial Ex 82

- c. **Conservation Commission Ordinance [PUBLIC HEARING] [Pages 49-54]**
- d. **Littering Penalty Ordinance [CONSENT] ✓  
[PUBLIC HEARING] [Page 55]**
- e. **01-15MA  
Thomas McGee  
From RU to C-2 ✓  
20200-03-34  
4114 Hard Scrabble Road [CONSENT]  
[Page 57]**
- f. **01-44MA  
Roy W. Derrick ✓  
From D-1 to C-3  
06110-03-07  
3517 Broad River Road [CONSENT]  
[Page 58]**
- g. **Stan Mack ✓  
Thomas Burkett  
From D-1 to C-3  
11704-03-08  
Buckner Road [CONSENT]  
[Page 59]**
- h. **01-46MA  
Chip Carter ✓  
Very Small Properties  
From RG-2 to C-3  
25600-03-05  
Percival Road [CONSENT ITEM] [Page 60]**
- i. **Sexually Oriented Businesses [CONSENT ITEM] ✓  
[Page 61]**
- j. **Landscape Ordinance [CONSENT ITEM] ✓  
[Page 62]**

2. SECOND READING ITEMS

- a. Easement for SCE&G Pressure Release Station  
[CONSENT] [Page 63] ✓
- b. Quit Claim Deed for Woodcreek Development and  
the Ridge [CONSENT] [Pages 64-73] ✓
- c. Appearance Commission: Voting Members  
[CONSENT] [Page 74] ✓
- d. Detention Center: Pilot Project for House Arrest  
[CONSENT] [Pages 75-76] ✓
- e. Airport Commission: Lease Agreement for Curtiss  
Wright Hanger [CONSENT] [Page 77] ✓

3. REPORT OF ECONOMIC DEVELOPMENT  
COMMITTEE [Page 78] PL

- a. Consideration of incentives for an unannounced  
company expansion - deferred by Eco. Dev. Comm.
- b. Consideration of incentives for an unannounced  
company - PL/BSS deny
- c. Approval of deeds to water line relocation SCE&G  
right-of-way for Blue Cross/Blue Shield - PL / app
- d. Identification of preliminary issues pertaining to  
Columbia Venture's economic proposal - PL / info only  
Packet distributed
- e. Approval of ordinance confirming Council's policy  
on Multi-County Business Park fee distribution - PL / or  
JM / Scott  
away
- f. zone + eval. ~~viability~~ of property - PL / app

4. REPORT OF RULES AND APPOINTMENTS  
COMMITTEE [Page 79]

a. Appointments to the Building Board or Adjustment  
and Appeal-3

b. Appointments to Central Midlands Regional Transit  
Authority-3

c. Amendment County Council Rules [Pages 80-94] *SB/JS as amended*

5. APPROVAL OF RESOLUTIONS

a. Richard Vershawn Seymour [Page 95] *GEORGIA BULLDOGS*

b. Appointment and Commissioning of Code  
Enforcement Officer Harry L. Reed [Page 96] *APP*

6. CITIZEN'S INPUT *no one*

7. MOTION PERIOD/ANNOUNCEMENTS

8. ADJOURNMENT — *7:50p*

TT/

Resal Marie Frierson - foster parent

BGS/

Announcement - Jim Wiseman 4/5 Spec ~~for~~ <sup>st</sup> top 5

JT/

Suggestion - Dany activity presentation at <sup>council</sup> meeting

SB/

Reminder: JT's policy 4/19/01 age 70y.o.

JM/

APP proclamation for Volunteers

GP/

JD/

Comment: Va. trip recommendation: Brad Tamar, Resal; letter etc. for appreciation of hard work, attitude & professionalism. present at Cmtl mtg, May 14 IEMDC meeting in Va APP

**RICHLAND COUNTY COUNCIL  
ZONING PUBLIC HEARING  
TUESDAY, MARCH 27, 2001  
7:00 P.M.**

**MEMBERS PRESENT:** Kit Smith, Chair; L. Gregory Pearce, Jr., Vice-Chair; Joan Brady; Susan Brill; Paul Livingston; Joseph McEachern; J.D. "Buddy" Meelze; Anthony G. Mizzeil; Bernice G. Scott; Thelma M. Tills; James Tuten

**OTHERS PRESENT:** John Hicks; Jim Prater; T. Cary McSwain; Michelle Cannon-Finch; Milton Pope; Larry Smith; Marshaika Martin

**I CALL TO ORDER**

The meeting was called to order at approximately 7:00 p.m.

Ms. Smith announced for Council to attend a meeting on April 6, 2001 at 12:00 p.m. with the Legislative Delegation at Steamers. She also requested a Billboard Work Session to take place on Monday, April 16<sup>th</sup> at 12:00 p.m.

**II. Map Amendments – Public Comment and First Reading**

**A. 01-15MA, Thomas McGee (applicant/property owner), From RU to C-2, 20200-03-34, 4114 Hard Scrabble Road**

Ms. Smith stated the Planning Commission recommended approval of this item. She stated no one signed up to speak "in favor" or "against" this item.

Ms. Brill moved, seconded by Ms. Scott, to approve this item for First Reading. The vote in favor was unanimous.

**B. 01-28MA, John Wright (applicant), Geneva Estes and MESA Associates (property owners), From RG-2 & C-3 to M-1, 16910-02-06 & 07, Kneese Road**

Mr. John Hicks, Zoning Administrator, stated the applicant has requested to withdraw this item for a year.

**C. 01-40MA, Roy Cook (applicant), John Wages (property owner), From RS-1 to C-1, 14508-02-23, 8824 Wilson Blvd**

Ms. Smith stated the Planning Commission made no recommendation. She stated three persons signed up to speak.

The following person spoke "in favor" of this item: Mr. Roy Cook.

The following persons spoke "against" this item: Mr. David B. Ray and Mr. Ralph M. Hendrix.

Mr. McEachern moved, seconded by Ms. Brill, to deny this item. The vote in favor was unanimous.

**D. 01-42MA, James Wymer (applicant/property owner), From RU to C-1, 15200-04-19, Wilson Blvd**

Ms. Smith stated the Planning Commission recommended denial. She stated one person had signed up to speak.

Mr. James Mixon spoke "against" this item.

Mr. Tuten moved, seconded by Ms. Scott, to uphold the Planning Commission's recommendation for denial. The vote in favor was unanimous.

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Richland County Council  
Zoning Public Hearing  
Tuesday, March 27, 2001  
Page Two

E. 01-43MA, Joseph Kemp Bass (applicant/property owner), From RU to PDD, 02600-01-02, Broad River Road

Mr. John Hicks stated the Planning Commission's recommendation was for denial and not deferral.

Ms. Smith noted there was not a sign-up sheet for this particular item. Mr. Hicks stated the sheet was removed because of the anticipation of deferral.

Mr. Meelze moved, seconded by Ms. Scott, to deny this item. The vote in favor was unanimous.

F. 01-44MA, Roy W. Derrick (applicant/property owner), From D-1 to C-3, 06110-03-07, 3516 Broad River Road

Ms. Smith stated the Planning Commission recommended approval of this item. She stated no one signed up to speak.

Mr. Tuten moved, seconded by Mr. Livingston, to approve this item for First Reading. The vote in favor was unanimous.

G. 01-45MA, Stan Mack (applicant), Thomas Burkett (property owner), From D-1 to C-3, 11704-03-08, 1330 Buckner Road

Ms. Smith stated the Planning Commission recommended approval of this item. She stated no one signed up to speak.

Ms. Tillis moved, seconded by Mr. McEachern, to approve this item for First Reading. The vote in favor was unanimous.

H. 01-46MA, Chip Carter (applicant), Very Small Properties (property owner), From RG-2 to C-3, 25600-03-05, Percival Road

Ms. Smith stated the Planning Commission recommended approval of this item. She stated Mr. Carter signed up to speak "in favor" of this item; however, he waived his right to speak.

Ms. Brill moved, seconded by Mr. Pearce, to approve this item for First Reading. The vote in favor was unanimous.

III. TEXT AMENDMENTS – PUBLIC COMMENT

01-18TA, Outdoor Advertising Signs (Billboards) – Second Reading

Ms. Smith stated the Planning Commission recommended approval. She stated there were three persons signed up to speak to this item.

The following persons signed up to speak "in favor" of this item: Mr. Robin White, Ms. Peggy McClure, Mr. Van Komegey.

Mr. Pearce moved, seconded by Mr. Livingston, to give Second Reading approval to extend the moratorium until July 31, 2001.

Ms. Brill made a substitute motion to extend the moratorium indefinitely until Council adopts an ordinance regulating billboards. The motion died for a lack of a second.

3

Richland County Council  
Zoning Public Hearing  
Tuesday, March 27, 2001  
Page Three

The vote in favor of the main motion was unanimous.

**01-19TA, Sexually Oriented Businesses - First Reading**

Ms. Smith stated the Planning Commission recommended approval. She stated no one signed up to speak to this item.

Mr. McEachern moved, seconded by Ms. Brill, to give first reading approval to increase fines from \$200.00 to \$500.00. The vote in favor was unanimous.

**01-20TA, Landscape Ordinance - First Reading**

Ms. Smith stated the Planning Commission recommended approval of this item. She stated no one signed up to speak at this time.

Mr. McEachern moved, seconded by Ms. Brill, to give First Reading approval to an ordinance that would increase fines from \$200.00 to \$500.00.

Mr. Meetze and Ms. Scott requested for legal staff to ensure that churches are excluded from the landscape ordinance. Ms. Smith recommended staff to bring back information of everyone who would be excluded.

The vote in favor of the motion was unanimous.

**IV. OTHER BUSINESS**

Ms. Smith stated there was no other business to come before Council at this time.

**V. ADJOURNMENT**

Ms. Scott moved, seconded by Mr. McEachern, to adjourn the meeting at approximately 7:30 p.m. The vote in favor was unanimous.

Kil Smith, Chair

L. Gregory Pearce, Jr., Vice-Chair

Joan Brady

Susan Brill

Paul Livingston

Joseph McEachern

J.D. "Buddy" Meetze

Anthony G. Mizzell

Bernice G. Scott

Thelma M. Tills

James Tuten

The minutes were transcribed by Marshelka G. Martin

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**RICHLAND COUNTY COUNCIL  
REGULAR SESSION  
APRIL 3, 2001  
6:00 P.M.**

**MEMBERS PRESENT:** Kit Smith, Chair; L. Gregory Pearce, Jr., Vice-Chair; Joan B. Brady; Susan Brill; Paul Livingston; Joseph McEachern; J.D. "Buddy" Meetz; Anthony G. Mizzell; Bernice G. Scott; Thelma M. Tillis; James Tuten

**OTHERS PRESENT:** T. Cary McSwain, Michelle Cannon-Finch, Darren Gore, Michael Byrd, Darren Gore, Monique Walters, Milton Pope, Tony McDonald, Pam Davis, Chief Harrell, Ralph Pearson, Stephany Snowden, Larry Smith, Amelia Linder, Mullen Taylor, Randy Jorgenson, Jim Prater, Members of the EMS Department, Marshaika Martin

**CALL TO ORDER**

The meeting was called to order at approximately 6:00 p.m.

**INVOCATION**

The Invocation was given by the Honorable Jim Tuten.

**ADOPTION OF AGENDA**

Mr. McSwain stated a Presentation by Martha Bogle of the National Park Service would be presented under the Report of the County Administrator.

Ms. Smith stated the City of Columbia has requested a zoning change to be added to the agenda regarding the water plant. She stated it could be added to the agenda with unanimous consent. Mr. Meetz objected.

Ms. Smith stated the Storm Water Management Ordinance would be moved to the end of the agenda as item-6.

Mr. Mizzell moved, seconded by Mr. Pearce, to adopt the agenda as amended. The vote in favor was unanimous.

**POINT OF PERSONAL PRIVILEGE**

Mr. Pearce recognized Bob Russell, Bruce Rippeteau and C.V. Smith and thanked them for coming out to support the Lease Agreement for the Curtiss Wright Hangar that was on the consent agenda.

**PRESENTATION OF RESOLUTIONS**

Emergency Services Department – Mr. McSwain presented a Resolution commending EMS employees.

Miss Austin Newman, S.C. Volunteer of the Year – Mr. Pearce presented a Resolution to Miss Newman for her outstanding volunteer work.

**CITIZEN'S INPUT**

- Ms. Susanne Jordan spoke in opposition of the Storm Water Management Ordinance.
- Mr. Michael Letts spoke of concerns regarding the Storm Water Management Ordinance.
- Ms. Kay Powell Rushe spoke in opposition of the Storm Water Management Ordinance.

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Richland County Council  
 Regular Session  
 April 3, 2001  
 Page Two

- Ms. Cathy Novinger spoke in opposition of the Storm Water Management Ordinance.
- Ms. Virginia Sanders spoke in opposition of the Storm Water Management Ordinance.
- Mr. Patrick Palmer spoke in opposition of the Storm Water Management Ordinance.
- Mr. Robert Fitzsimons spoke in favor of the Storm Water Management Ordinance.
- Mr. Jim Prater presented two recommendations to Council regarding the Military Forest Funds.
- Ms. Lillie Bates spoke in favor of the Storm Water Management Ordinance and in opposition of the Conservation Commission Ordinances.
- Ms. Kay McClanahan spoke in opposition to the Conservation Commission Ordinance.
- L.S. Alexander spoke in favor of the Storm Water Management Ordinance.
- Mr. Bill McClanahan spoke in opposition of the Conservation Commission Ordinance.
- Mr. Richard Scharf spoke in favor of the Storm Water Management Ordinance.
- Ms. Evelyn Bush spoke in opposition of the Conservation Commission Ordinance.
- Mr. Bland Holman spoke in favor of the Storm Water Ordinance.

**APPROVAL OF MINUTES - Regular Session: March 20, 2001**

Mr. Pearce moved, seconded by Ms. Brady, to approve the minutes. The vote in favor was unanimous.

**REPORT OF COUNTY ATTORNEY FOR EXECUTIVE SESSION MATTERS**

Mr. Larry Smith, County Attorney, stated Council needed to receive a legal briefing on item 2-a (Storm Water Management Ordinance) in Executive Session.

**REPORT OF COUNTY ADMINISTRATOR**

Congaree National Monument

Ms. Martha Bogle, Park Director, announced that the Visitor's Center and Access Road Project won the Park Service's National Partnership Award, and thanked the County for their partnership in the project. She stated an awards ceremony will be held in Washington, DC, and the County is invited to attend.

DHEC Public Hearing

Mr. McSwain announced that a DHEC public hearing concerning Lucant Technologies is scheduled for tonight at 7:00 p.m.

**OPEN/CLOSE PUBLIC HEARING ITEMS**

Mr. Smith stated no one signed up to speak to any public hearings.

**APPROVAL OF CONSENT ITEMS**

Ms. Brill moved, seconded by Ms. Brady, to approve the following Consent items as amended:

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Richland County Council  
Regular Session  
April 3, 2001  
Page Three

- 01-23MA, Wendy Luce, First Commercial Company, from D-1 to C-3, South Side Rabon Road East of Farrow Road – Third Reading given to this rezoning request.
- Schmalbach Lubeca – Third reading approval given to an ordinance consenting to revisions to the lease agreement between Richland County and Schmalbach Lubeca and the lease agreement between Richland County and Wilmington Trust Company to provide for a sale-leaseback arrangement between Schmalbach Lubeca and its affiliates.
- 01-37MA, Dibble Manning, from M-2 to M-1, 475 Killian Road – Third reading given to this rezoning request.
- Billboard Moratorium – Third reading given to an ordinance amendment extending the billboard moratorium to July 31, 2001.
- Littering Penalty Ordinance – Second reading given to this ordinance amendment that corrects an inconsistency between the littering fine found in the Storm Water Management Ordinance and the Garbage, Trash and Refuse Ordinance.
- 01-15MA, Thomas McGee, from RU to C-2, 4114 Hard Scrabble Road – Second reading given to this rezoning request.
- 01-44MA, Roy W. Derrick, from D-1 to C-3, 3515 Broad River Road – Second reading given to this rezoning request.
- 01-45MA, Stan Mack and Thomas Burkett, from D-1 to C-3, Buckner Road – Second reading given to this rezoning request.
- 01-46MA, Chip Carter, from RG-2 to C-3, Percival Road – Second reading given to this rezoning request.
- Change Order: Wiley Easton Construction – Approved a \$97,377.00 increase in this construction contract to relocate sewer lines at the intersection of US 176 and I-26.
- Easement for SCE&G Pressure Release Station – First Reading approval of an ordinance authorizing the County to grant this easement for the installation of a gas regulation station on the Public Works Compound in Ballentine.
- Quitclaim Deeds for Woodcreek Development and the Ridge – First reading approval given to an ordinance authorizing execution of quit-claim deeds for a road right-of-way located on the east side of Spears Creek Road in return for payment of \$3,145.00.
- Appearance Commission: Voting Members – First reading approval of this ordinance amendment that provides two additional voting members to the Appearance Commission.
- Election Commission: Voting Machine Preventative Maintenance – approved the expenditure of up to \$45,000.00 to perform maintenance and upgrades to the County electronic voting machines.
- Finance: Spending Resolution for the Township and Detention Center – approved a Resolution authorizing the expenditure of general fund monies in an amount not to exceed \$13,030.00 to move forward with renovation of the Township and expansion of the Detention Center which will be reimbursed by the proceeds of general obligation bonds or other identified revenue sources.
- Detention Center: Pilot Project for House Arrest – First reading approval given to an ordinance authorizing the Detention Center to offer electronic monitoring, or house arrest, for inmates, with participating defendants bearing all associated costs.
- Sheriff's Department Vehicles – Approved the purchase of six replacement vehicles for \$129,289.00

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Richland County Council  
Regular Session  
April 3, 2001  
Page Four

- Airport Commission: Lease Agreement for Curtiss Wright Hangar - First Reading approval given to an ordinance authorizing a lease agreement with for \$1.00 a year for 20 years in order to raise private funds for renovation of the Hangar.
- Resolution: Dreher High School 3A State Girls Basketball Championship - approved.
- Resolution: Keenan High School 3A State Boys Basketball Championship - approved.

#### 1. THIRD READING ITEMS

b. Ordinance Amendment: Increase in County Code Violation  
Ms. Scott moved, seconded by Ms. Brill, to give Third Reading approval to an ordinance amendment that increases the maximum penalty for code violations from \$200.00 to \$500.00. The vote in favor was unanimous.

c. Business Directory Signs  
Mr. Pearce moved, seconded by Ms. Scott, to defer this item to the next meeting. The vote in favor was unanimous.

#### 2. SECOND READING ITEMS

b. Conservation Commission Ordinance  
Ms. Scott moved, seconded by Mr. Meetze, to defer this item.

The vote was as follows:

|                 |               |
|-----------------|---------------|
| <u>In Favor</u> | <u>Oppose</u> |
| Livingston      | Brady         |
| Mizzell         | Pearce        |
| Meetze          | Smith         |
| Scott           | McEachern     |
| Tillis          | Brill         |
|                 | Tuten         |

The motion failed.

Ms. Brill moved, seconded by Ms. Brady, to give Second Reading approval to an ordinance that moves provisions of the Richland County Code that establishes the Conservation Commission from the Storm Water Management Chapter to Chapter 2, Administration, Article VII, Boards, Commissions and Committees.

The vote was as follows:

|                 |               |
|-----------------|---------------|
| <u>In favor</u> | <u>Oppose</u> |
| Brady           | Mizzell       |
| Livingston      | Meetze        |
| Pearce          | Scott         |
| Smith           |               |
| McEachern       |               |
| Brill           |               |
| Tuten           |               |
| Tillis          |               |

The motion passes.

8

Richland County Council  
Regular Session  
April 3, 2001  
Page Five

**h. Sexually Oriented Businesses**

Mr. Meetze moved, seconded by Mr. Tuten, to give Second Reading approval to this zoning ordinance amendment that deletes the section "injunction" from the Sexually Oriented Businesses Article due to item 1-a making it unnecessary to state fines in this section. The vote in favor was unanimous.

**i. Landscape Ordinance**

Ms. Brill moved, seconded by Ms. Brady, to give Second Reading approval to an ordinance amendment that increases the maximum fine amount for violations to \$500.00. The vote in favor was unanimous.

**4. REPORT OF ADMINISTRATION AND FINANCE COMMITTEE**

**d. Treasurer's Office: Military Forest Funds**

Mr. McSwain stated it was initially recommended that \$41,596.92 be applied to the road that would benefit the public from Gamers Ferry Road to the Sysco. He stated that \$1,000.00 each could be given to School Districts I, II and V.

A discussion took place.

Mr. Livingston moved, seconded by Ms. Scott, to approve the distribution of \$44,596.92 in the following manner: 30% to the County and 70% to the three school districts, to be divided in proportion to student population.

Mr. McSwain was directed to bring back a recommendation for spending the County's portion.

The vote in favor was the motion was unanimous.

**5. APPROVAL OF RESOLUTION**

Ms. Jeanne Stiglbauer and Mr. Walter Todd

Mr. Pearce moved, seconded by Ms. Brill, to approve Resolutions for Ms. Stiglbauer and Mr. Todd. The vote in favor was unanimous.

**6. STORM WATER MANAGEMENT ORDINANCE**

Ms. Scott moved, seconded by Mr. Meetze, to go into Executive Session. The vote in favor was unanimous.

---

Council went into Executive Session at approximately 7:10 p.m. and came out at approximately 8:10 p.m.

---

Mr. Pearce moved, seconded by Mr. McEachern, to come out of Executive Session. The vote in favor was unanimous.

Ms. Brady moved, seconded by Mr. McEachern, to give Second Reading approval to the County Attorney's recommended revisions to Council's amendment made during first reading.

9

- (g) All levees protecting residential structures or non-residential structures which are not floodproofed shall be designed, constructed and maintained to provide protection against the 500-Year flood plus three (3) feet of freeboard. Flood elevations shall be as shown on the latest Flood Insurance Rate Maps or as determined by appropriate hydrologic methods. Any levee constructed or improved under this subsection shall also comply with the other provisions of this Chapter, including, but not limited to, subsection (h) below.
- (h) Notwithstanding any other provision of this Chapter, no levees, dikes, fill materials, structures or obstructions that will impede the free flow of water during times of flood will be permitted in the regulatory floodway, unless:
- (1) such proposed impediment is or would be a part of or used by any public or private school that was constructed and operated before January 1, 2001 on property subsequently classified as a regulatory floodway, or
  - (2) such proposed impediment is or would be a part of or used by a publicly owned wastewater treatment facility that was constructed and operated before January 1, 2001 on property subsequently classified as a regulatory floodway; or
  - (3) such proposed impediment is a minor recreational or playground facility or area, such as, but not limited to, a boat ramp, floating dock, picnic area, soccer goal, or swing set; or
  - (4) such impediment was approved by the County Engineer under this subsection (h), or under any predecessor provision, before January 1, 2001;

provided, however, that any specified activities permitted above must comply with all applicable federal, state, and local requirements, including, but not limited to, 44 C.F.R. 60.3(d)(3), as amended. Nothing in this subsection (h) shall limit provisions in this Chapter or elsewhere authorizing or requiring the maintenance and repair of levees, dikes, dams, and similar structures; provided, however, that this sentence shall not be construed as authorizing or requiring the repair or maintenance of any such structure to the extent that such repair or maintenance would result in a structure that would be higher or wider than it was before the need arose for such repair or maintenance.

- (i) *National Flood Insurance Program*: All applicable regulations of the National Flood Insurance Program are incorporated by reference herein.

#### **Sec. 8-27 Secondary Drainage Channel and Surface Requirements.**

All secondary drainage channels which are within or immediately adjacent to an improvement, development, or subdivision shall be protected and improved by the applicant as follows:

- (a) Drainage easements of satisfactory width to provide working room for construction and maintenance equipment shall be dedicated to the County for all drainage improvements in



DEF-00002438

**HAYNSWORTH SINKLER BOYD, P.A.**

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WRITER'S DIRECT DIAL NUMBER  
(803) 540-7807  
jmcArthur@sinklerboyd.com

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May 15, 2001

**VIA HAND DELIVERY**

Ms. Sheri Ardis  
City Hall, 3<sup>rd</sup> Floor  
1737 Main Street  
Columbia, SC 29201



Re: Annexation Petition for Columbia Venture, LLC and Adjoining Land Owners

Dear Ms. Ardis:

Enclosed are the following Petitions for Annexation:

1. Petition of Columbia Venture, LLC for its property, approximately 4400 acres.
2. Petition of Eastern Corn and Grain Company, Inc. for 51.705 acres bounded by the Congaree River and the southern boundary of Interstate 77.
3. Petition of William Maxwell Gregg with respect to three parcels along the Congaree River north of the Columbia Venture property.
4. Petition of TCF Corporation with respect to 5.88 acres.

Please note that we represent only Columbia Venture, LLC, but the other land owners asked us to forward these petitions on their behalf.

We recognize that zoning for the property will need to be designated at the time of annexation. A draft Planned Development District Ordinance for Green Diamond was included in the package of documents previously provided to the County and the City. I have enclosed a copy of such draft. We recognize that your office will want to review this draft and there will be substantial discussion before the ordinance is finalized. If the ordinance has not been finalized

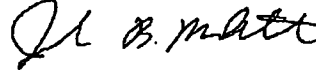
Def Trial Ex 84

Ms. Sheri Ardis  
May 15, 2001  
Page 2

when the annexation is to be completed, I suggest that we put in place a transitional zoning classification based on existing City of Columbia zoning. We are reviewing the Zoning Code to determine the appropriate classification and will be in touch with Jim Meggs to discuss this issue. Mr. Gregg and TCF Corporation may ultimately decide to leave their property out of the PDD.

As we have discussed, we request that you place these matters on the Planning Commission's agenda for its June 4 meeting. Please call me if you have any questions.

Very truly yours,



John B. McArthur

JBW:kdt  
Enclosures

cc: William C. Boyd, Esq.  
James E. Wiseman  
Doug Wendell  
Burwell D. Manning  
William Maxwell Gregg  
John H. Fennell  
George T. Gregory, III, Esq.  
The Honorable Robert D. Coble  
Timothy F. Rogers, Esq.

RECEIVED  
MAY 30, 2001  
xm

**COUNTY/CITY/SCHOOL DISTRICT ONE  
GREEN DIAMOND TASK FORCE**

**Meeting Notes  
Tuesday, May 22, 2001  
2:00 - 4:00 pm**

**City Council/County Council/School Board Members Present:** Kit Smith, Greg Pearce, Bernice Scott, Paul Livingston, Thelma Tillis, Tony Mizzell, Buddy Meetze, Susan Brill, Joan Brady, Bob Coble, Ann Sinclair, Jim Papadea, Vince Ford, Lane Quinn, Damon Jeter, King Jeffcoat.

**Staff Present:** Ron Epps, Cary McSwain, Leona Plough, Mullen Taylor, Milton Pope, Darren Gore, Larry Smith, Mark Simmons, Randy Jorgenson, Chip Land, Brent Jeffcoat, Jeff Knotts, Bob Chestnut.

**Welcome and Introductions**

County Council Chair Kit Smith called the meeting to order and asked everyone to introduce themselves.

**Purpose of Task Force**

The Task Force reviewed and discussed the draft mission statement provided, and adopted the mission statement without any changes.

The Task Force agreed to work by consensus.

The Task Force membership will be made up of designated members of each elected body, but other members of the City Council, School Board and County Council are welcome to attend.

**Presentation of Draft Work Plan**

Ms. Mullen Taylor, Assistant to the County Administrator, presented the staff recommended work plan. Staff from the County, City, Central Carolina Economic Development Alliance, and School District One contributed to the Work Plan. The Task Force accepted the Work Plan with minor revisions to the policy questions (see attached revised policy questions). The request for information by staff to Columbia Venture was accepted and transmitted to Columbia Venture for response (see attached follow-up letter to Columbia Venture). The staff recommendation for an economic impact consultant hired jointly by the City, County and School District was discussed. The Task Force agreed to appoint a member from the City, County, and School District to guide staff in the development of a RFQ, scope of work, and recommended consultant list for an economic impact consultant. This work will be reported back to the Task Force for approval.

The issue of CCEDA's role in the Green Diamond decision-making was raised. Mark Simmons, Managing Director of CCEDA, stated that the Executive Director, Mike Briggs, will be writing a letter to the County outlining what the Alliance can and cannot provide in terms of their input/involvement in the decision-making process.

Def Trial Ex 85

Leona Plough stated that the Columbia Venture petition for annexation will be discussed by the City Planning Commission on June 4<sup>th</sup>. No decision is expected by the Commission on this date. City staff will have a report ready on June 1<sup>st</sup> regarding annexation for City Council's review.

The Task Force agreed that approval of the project would be contingent upon City, County, and School District agreement to do so.

**Meeting Schedule**

The Task Force agreed to the following meeting schedule:

- |                          |                                                                                                                                                                                                                                                                                                                                         |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Monday, June 25</u>   | An all-day educational forum to be held at the Township Auditorium, consisting of: <ul style="list-style-type: none"><li>• Presentation by Columbia Venture on levee/public financing issues</li><li>• Presentation by City staff on levee issues</li><li>• Presentation by County/CCEDA staff on multi-county business parks</li></ul> |
| <u>Thursday, June 28</u> | Educational Forum continued, from 4-7 at a location to be determined, by public groups/citizens                                                                                                                                                                                                                                         |
| <u>Monday July 9</u>     | Task Force deliberations on policy issues: time and place to be determined.                                                                                                                                                                                                                                                             |
| <u>Monday, July 16</u>   | Task Force deliberations on policy issues: time and place to be determined.                                                                                                                                                                                                                                                             |
| <u>Monday, July 23</u>   | Task Force deliberations on policy issues: time and place to be determined.                                                                                                                                                                                                                                                             |

# Richland County Government

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## Office of the County Administrator

May 24, 2001

Mr. Jim Wiseman  
Columbia Venture, L.L.C.  
4875 Forest Drive  
Columbia, South Carolina 29206

Dear Jim:

During the County/City/School District One Green Diamond Task Force meeting held on Tuesday, May 22, 2001, the Task Force transmitted to Columbia Venture a staff-generated list of requested information pertaining to the Green Diamond proposal. As a follow-up to this action, I am enclosing a copy of the list and request that Columbia Venture provide this information to County staff no later than June 24, 2001. In the event that some elements of the information is readily available and others are not, please send what you do have sooner rather than waiting to submit it all later. The County will then disseminate the information received to the City and School District.

Receipt of this requested material will greatly enhance the ability of staff to move forward with its analysis of the Green Diamond proposal. As always, thank you for your professionalism and courtesy in working with the County on this important issue.

With Sincerest Regards,

A handwritten signature in black ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

cc: Green Diamond Task Force  
Cary McSwain  
Milton Pope  
Dwight Drake  
Brent Jeffcoat  
Mark Simmons

**Initial Request for Information Regarding Green Diamond Proposal**

**Please Provide the Following:**

1. Assumptions and calculations made to determine public (federal, state and local) operating and capital costs, including but not limited to:
  - ✓ all new capital costs for public facilities, vehicles, heavy equipment, etc, and related increases in operating costs, with corresponding millage rates over the life of the project phase-in
  - ✓ inflation rate
  - ✓ net present value (discount rate assumed)
  - ✓ estimated number of households resulting from development, and what percentage of households would be new or shifted from other parts of the County
  - ✓ student population increase specific to School District One resulting from development, and what percentage of these students would be new or shifted from other parts of the County
  - ✓ any local or state match for federal transportation funding
  - ✓ transportation costs to improve Bluff Road and other impacted arterials
  - ✓ build-out schedule by land use, with market feasibility analysis
2. Assumptions and calculations made to determine property and other tax revenue, including, but not limited to:
  - ✓ build-out schedule by land use, with market feasibility analysis
  - ✓ investment amounts made by commercial businesses and technology companies
  - ✓ investment amount made by Columbia Venture
  - ✓ depreciation schedule
  - ✓ net present value (discount rate assumed)
  - ✓ breakdown of real and personal property investments
  - ✓ inflation rate
  - ✓ estimated household increase resulting from development, and what percentage of households would be new or shifted from other parts of the County
  - ✓ student population increase specific to School District One resulting from development, and what percentage of these students would be new or shifted from other parts of the County
  - ✓ building permit fees and business license fees
  - ✓ estimated market value of housing units (by type) in Green Diamond
3. Detailed methodology of studies
4. Copies of spreadsheets found within Green Diamond proposal on a disk.
5. Schedule of the times in which Columbia Venture needs bond proceeds for infrastructure, tied to the development schedule, for the entire term of the Multi County Business Park.
6. Details of Bluff Road area improvements proposed for bond funding.
7. Impact of construction activity (soft costs, C&D Landfill).

Fiscal scenario without annexation.
9. More specific detail on the 250 acre Research Park.

10. More information about the anti-terrorism and international security center.

1. Please provide draft articles of incorporation and other necessary documents for the creation of a 501(c) 3 organization to own and manage the levees.

**Questions:**

1. Does the government cost estimates include costs of services within Technology Park?
2. Do the motor vehicle tax revenue estimates take into account the phased reduction in assessment ratio as enacted by the General Assembly?
3. Can Columbia Venture guarantee high technology tenants in the Technology Park?
4. What is Columbia Venture's definition of high technology? Is it an incubator site for in-state growth of knowledge base? Is it recruiting big firms from out-of-state to locate in office park? What kind of technology (semi-conductors, fiber optics, computer software and hardware, biotech, e-commerce, etc)? Is there a "Plan B" if efforts to recruit technology companies are not successful?
5. Is Columbia Venture willing to take part in a regional strategy for developing the new economy in the Midlands?
6. What is the estimated number of new jobs to be created within the Technology Park? How was this number estimated? What are the estimated salary ranges and payroll for these jobs? What is the estimated number of new jobs to be created through commercial development in Green Diamond? What are the estimated salary ranges and payroll for these jobs?
7. What is the cost breakdown for each infrastructure project?
8. Describe Columbia Venture's role in the Technology Park development and recruitment.
9. What is the University's role and capital investment in the Technology Park?
10. Describe the Company's basis for its assumption that the Technology Park and commercial space will fill in a timely way.
11. Has Columbia Venture considered the prospect of creating a tier one internet hub as part of the development?
12. Does Columbia Venture plan to request additional odor control measures from the City of Cayce Wastewater Treatment Plant and the East Richland Wastewater Treatment Plant?
13. Does Columbia Venture plan on asking the City of Columbia to relocate or reconfigure its wastewater treatment plant? Does Columbia Venture oppose any expansion of the plant? Will Columbia Venture commit land for the plant's expansion?
4. What degree of involvement is the County/City expected to assume in the issuance and management of the infrastructure bonds?

## COUNTY/CITY/SCHOOL DISTRICT ONE GREEN DIAMOND TASK FORCE WORK PLAN

### General Framework for Discussion

There are many complex issues relating to the Green Diamond Project. Identification of the most cogent threshold issues for discussion is important in order to establish a clear path toward final decision-making by the County, City and School District. Staff has identified three threshold issues concerning the Green Diamond Project:

1. Approval of Levees (CLOMR)
2. Annexation
3. Multi-County Business Park Incentive

Each of these issues are interconnected in that the Green Diamond proposal depends upon all three being accomplished. For example, without a CLOMR being executed by the local community sponsor, it appears practically if not technically that FEMA would not agree to a levee upgrade. Without a levee upgrade, there is no need for the multi-county business park incentive because the proposed project cannot be done. Annexation also directly impacts the CLOMR execution because it determines which jurisdiction will receive the CLOMR application. Columbia Venture asserts that annexation is essential to the viability of the multi-county business park incentive, and that without the City millage, the park will not generate sufficient revenue to pay for the project infrastructure costs. The City and County will look to the School District for its acceptance and comfort with whatever financing structure is agreed upon. Hence, all involved governments should work by consensus to sort through their respective decisions and arrive at decisions collectively to the extent possible.

### Core Policy Issues

The issues above carry a host of detailed questions and deliberations. However, there are key public policy questions embedded within these three major issues that need to be brought to the fore and discussed before delving into the mechanics of the Project. In doing so, the governing bodies set a focused direction for further inquiry, instead of asking questions or deciding upon aspects of the Project in a disjointed manner. The questions are as follows:

1. From a regulatory standpoint of protecting public health and welfare, do we want to take action that permits development of Columbia Venture's property?
  - Regulatory responsibilities include CLOMR acceptance, rezoning, land development regulations, and building permits.
  - FEMA's decision on Congaree FIRM will not "make or break" the Green Diamond proposal. Columbia Venture's CLOMR request that is submitted to the City or County and then to FEMA is a defining decision for local government.
  - What is the potential public benefit (economic, environmental, social) compared with potential public risk (economic, environmental, social) of Green Diamond? What degree of risk is acceptable?



**2. If so, is it in the County/City/School District One's best interest to actively promote or encourage such development, and to what extent do we support the project?**

*• Do we take action to move beyond the regulatory role and commit additional assistance to the developer? Additional assistance can take many forms, from statements of support, improving property for public recreational parks, streetscaping and improving Bluff Road, partnering with the company to jointly plan a model new urbanist village, special emphasis on recruiting technology companies to the Technology Park, creation of new incentives for technology companies, approval of JEDA bonds, to some form of financial commitment to the development of the Technology Park.*

*• The decision concerning the degree of involvement on the part of government is related to policies established through comprehensive land use plans. Does this development exemplify our planning goals for development and conservation?*

*• This decision is also related to the current community planning efforts towards a regional technology strategy. Is the community prepared to support the necessary foundational and complimentary components needed to have a successful Technology Park? Do we know what those components are? The risk of failure may be higher if these supporting components aren't in place.*

**a. If we agree to actively support the Project, is it in the County/City/School District One's best interest to participate financially in the development of a Technology Park? What level of guarantee will we have in deriving a public benefit from the project?**

*• Normally, incentives are given directly to a company that will directly invest in land, buildings and equipment within the community, and commit to creating a certain number of jobs. With Green Diamond, we are asked to give incentives to a company who proposes to use the incentive to develop land for companies to locate. Does this project warrant a departure from our customary practice in providing incentives?*

*• If we provide a percentage of the fee stream to Columbia Venture, the County's ability to negotiate incentive packages that bring more benefit than cost will be reduced because of the percentage of each potential company's fee stream going to Columbia Venture. How can we mitigate any difficulty in offering an attractive incentive package to technology companies considering a location within the park, while still reaping more benefit than cost in tax revenues?*

*• What are the advantages and disadvantages to local government and to the Company in the commitment of public dollars?*

*• If government chooses to participate financially, what kind of recovery can the County/City expect from the Company in the event that job creation and investment amount is less than committed to by the Company?*

**b. Is this project different from other projects that received a multi-county business park incentive? If it is different, to what extent should the County/City School District One consider the precedent that financial participation in the Park would set for future real estate developments?**

*• At a basic level, Columbia Venture is asking local government to dedicate tax revenue towards paying for infrastructure within its development. The County has not done this for other private developers who are building large scale mixed use developments in the County. What precedent does financial participation in Green Diamond set for the County? If we agree to financial participation in Green Diamond, do we open the door for helping other developers with infrastructure costs?*

**Next Steps**

**Preliminary Process Recommendations:**

1. Establish a County/City/School District Task Force made up of selected members of each elected body as well as staff from each entity to serve as a resource. Set a schedule for regular meetings. Clearly delineate roles and responsibilities of each entity and the group as a whole.
2. Determine the degree of knowledge about the levee issues and economic development issues that County, City and School District Officials currently have, and then work to educate those who need to be brought up to speed. Devise an educational process within a public setting addressing the gaps in knowledge, if needed.
3. Obtain from Columbia Venture the financial/economic information requested by the County that was not contained in Columbia Venture's proposal and any other information from Columbia Venture needed to assess the proposal (see attached list).
4. The City, County and School District hire an economic impact consultant to analyze Columbia Venture's economic study, and if necessary, provide supplemental or additional analysis. Estimated cost for a consultant's preliminary analysis is \$30,000.00.
5. Task Force leads discussion of policy issues and receives public input. The City, County and School District will each have an opportunity to express their views.
6. Based on outcome of policy discussion and direction given by each elected body to their staff, each governmental entity direct designated elected officials and/or staff to negotiate various agreements.

# Richland County Government

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## Office of the County Administrator

June 20, 2001

Mr. John J. Dooley, Jr., P.E.  
Director of Utilities  
City of Columbia  
Post Office Box 147  
Columbia, South Carolina 29217

Dear John:

On May 15, 2001, Richland County Council gave third reading approval to an amendment to the Richland County Zoning Ordinance that includes the City of Columbia Wastewater Treatment Plant as a permitted use in a floodway. This ordinance amendment removes the last County regulatory obstacle to the City's plans to expand the wastewater treatment plant. For the City to move forward with expansion, the only role the County will exercise is an administrative review by the County Flood Coordinator to assure compliance with County floodplain regulations, and receipt of a no-rise certification for encroachments within a floodway. As you recall, the County's stormwater regulations exempt from compliance any agency with the power of imminent domain, but recent revisions to the stormwater ordinance require the City to produce a no-rise certification for expansions if the wastewater treatment plant is located within a floodway. The City then applies for a stormwater permit from DHEC. No further County Council action is needed to allow the City to expand.

The County recognizes that the City's Plant is an essential public facility benefiting both City and County residents. Since the FEMA appeal resolution FIRM for the Congaree River placed the City Wastewater Treatment Plant within a floodway, the County has committed to doing whatever it can to help the City protect the Plant. Council's recent actions reflect this commitment, and we stand ready to provide further assistance if need be.

For your reference, I have enclosed the two ordinance amendments mentioned above. If I can be of further service to you, please give me a call.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

enclosures

cc: Cary McSwain  
Leona Plaugh  
Harry Reed

Def Trial Ex 87

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. 037-01HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES, CHAPTER 26, "ZONING"; ARTICLE VI, "DISTRICT REGULATIONS"; SECTION 26-73, "FW AND FP FLOOD PROTECTIVE AREAS"; SUBPARAGRAPH 26-73.4(3); SO AS TO ADD CERTAIN PUBLIC AND PRIVATE SCHOOLS AND CERTAIN PUBLIC WASTEWATER TREATMENT FACILITIES TO THE PERMITTED USES ALLOWED IN A FLOODWAY.

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

SECTION I. The Richland County Code of Ordinances, Chapter 26, "Zoning"; Article VI, "District Regulations"; Section 26-73, "FW and FP Flood Protective Areas"; Subparagraph 26-73.4(3) is hereby amended as follows:

(3) *Permitted uses:*

The following uses shall be permitted in areas designated FW, but only if such uses are permitted within the basic district to which such a designation is appended, and excluding buildings in connection with such uses:

- a. Agricultural and horticultural uses, and plant nurseries.
- b. Parking and loading areas.
- c. Open-air uses generally accessory to residential uses, such as lawns, gardens, play areas, and parking areas.
- d. Recreational uses, which are primarily open-air uses and which do not offer a substantial impediment to water flow, such as swimming areas, fishing areas, beaches, boat launching ramps, lifeguard stations, parks, playgrounds, playfields, picnic grounds, wildlife or nature preserves, hiking trails, horseback riding trails, golf courses, driving ranges, archery ranges, and tennis courts.
- e. Airport runways and landing strips.
- f. Streets, bridges, overhead utility lines, storm drainage facilities, sewerage lines, waste treatment plant outlets, and water supply intake structures.

The following uses shall be permitted in areas designated FW, but only if such uses are permitted within the basic district to which such a designation is appended:

- a. Any existing or future facility that is or will be a part of or used by any public or private school that was constructed and operated before January 1, 2001 on property subsequently classified as a regulatory floodway, as defined in Chapter 8 of the Richland County Code of Ordinances.
- b. Any existing or future facility that is or will be a part of or used by any publicly owned wastewater treatment facility that was constructed and operated before January 1, 2001 on property subsequently

classified as a regulatory floodway, as defined in Chapter 8 of the Richland County Code of Ordinances.

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

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

SECTION IV. Effective Date. This ordinance shall be enforced from and after May 15, 2001.

RICHLAND COUNTY COUNCIL

BY: Kit Smith  
Kit Smith, Chair  
Richland County Council

ATTEST THIS THE 5<sup>TH</sup> DAY

OF JUNE, 2001.

BOOK: 007 PAGE 456

Michelle R. Cannon-Finch  
Michelle R. Cannon-Finch  
Clerk of Council

Public Hearing: April 24, 2001  
First Reading: April 24, 2001  
Second Reading: May 1, 2001  
Third Reading: May 15, 2001

HAYNSWORTH SINKLER BOYD, P.A.

ATTORNEYS AT LAW

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REPLY TO:  
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MEMORANDUM OF LAW

TO: COLUMBIA VENTURE, LLC

RE: THEORIES OF LIABILITY OF LOCAL GOVERNMENT FOR  
LEVEE FAILURE

DATE: JUNE 22, 2001

INTRODUCTION

The risk to the city from a levee failure at Green Diamond is modest compared to the risks the city assumes each day in the ordinary course of providing municipal services.

The probability of failure for a certified, 500-year levee is remote. It has never happened before. Should it occur, the city is not legally responsible for its consequences based on the doctrinal analysis set forth in this memorandum. Even so, additional measures are open to the city (discussed in the memorandum) to further reduce its exposure to risk.

Finally, the city's period of exposure is not open ended but fixed by statute to 13 years after substantial completion of improvements to the levee system. S.C. Code Ann. §15-3-640 provides that "[n]o actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than thirteen years after substantial completion of such improvement." The words "improvement to real property" have been broadly interpreted by the courts and would include improvements to a levee. Section 15-3-640 is a statute of repose, not a statute of limitations, that cuts off all claims after thirteen years, regardless of when the claim is discovered. It is an absolute bar intended to provide the certainty of repose after the expiration of thirteen years.

Even a modest benefit from Green Diamond would justify the city in accepting the minimal risk involved with the project. Considering, however, the magnitude of the potential

Def Trial Ex 88

benefit to the city and its citizens, the city's choice is clear, at least insofar as the issue of risk management is concerned.

#### FACTUAL BACKGROUND

Columbia Venture, LLC ("Columbia Venture") owns 4400 acres in Richland County (the "County"), which Columbia Venture proposes be annexed into the City of Columbia (the "City"). The Federal Emergency Management Agency ("FEMA") is currently in the final stages of adopting new flood insurance maps for the property. Whether FEMA ultimately designates the property as primarily in the floodway or in the 100-year floodplain, Columbia Venture proposes to improve the existing levee along the Congaree River to meet the U.S. Corps of Engineers' construction criteria for a 500-year levee. These requirements entail that the levee be certified as improved to the 500-year flood level plus three feet of freeboard and designed in accordance with Corps of Engineers standards. The improved levee would allow all of the property to be redesignated as outside the floodway and outside the 100-year floodplain.

In order to have the property redesignated, Columbia Venture and the City (assuming annexation occurs) would apply to FEMA for a conditional letter of map revision (a "CLOMR"). FEMA imposes the following condition before a certified levee can be considered as providing protection from a base flood:

Maintenance plans and criteria. For levee systems to be recognized as providing protection from the base flood . . . [a]ll maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance.

44 C.F.R. § 65.10(d).

Columbia Venture has proposed that the County and City, with the agreement of School District 1, establish a multi-county business park, which will allow a bond issuance to finance improvement of the levee and infrastructure improvements. Columbia Venture also desires to enhance the tax benefits to the City, the County and School District 1 by immediately annexing all of the property into the City. In order to facilitate bond financing, Columbia Venture proposes that the levee be owned by a 501(c)(3) corporation, with some or all of the members of its governing board to be appointed by the City.

The City will not own the levee, which will remain owned by the 501(c)(3) corporation. Under the proposed structure, the City will adopt an ordinance that will require the 501(c)(3) corporation, as owner of the levee, to improve the levee in accordance with the FEMA certified plan and thereafter perpetually to maintain the levee in accordance with an approved maintenance plan. By ordinance, the City will have the authority to issue a building permit for the initial improvement of the levee, to inspect the maintenance of the levee on a periodic basis to verify compliance with the approved maintenance plan, and to order compliance with the plan when necessary. The City's authority in this regard will be much the same as its permitting and inspection powers with respect to other improvements in the City. Given this responsibility, and

in light of the language in the FEMA regulation requiring that the City "assume ultimate responsibility for maintenance", the City desires an assessment of its exposure to liability to landowners should the levee fail.

While the liability issue affects the City and not the County (assuming that the property is annexed), this Memorandum refers to both the City and the County as the "Local Government" and is of equal applicability to the County should the County have jurisdiction over the levee.

We note that Columbia Venture's consultants have informed the City and the County that no 500-year certified levee has ever failed. Building a levee that is extremely unlikely to fail is the first and most important step in protecting persons and property from the risk of flooding. This Memorandum addresses the risk of liability of the Local Government in the event a levee failure should occur even after improving the levee to the 500-year standard.

The law firm of Nelson, Mullins, Riley & Scarborough, L.P., as legal counsel for Richland County, prepared a memorandum dated January 10, 2001, addressed to Kit Smith, Chair of the Richland County Council (the "County Legal Memorandum"). In order that the conclusions drawn in this Memorandum can be compared to the County Legal Memorandum, we will from time to time refer to the conclusions in the County Legal Memorandum.

#### SUMMARY CONCLUSION

The County Legal Memorandum and our research have revealed essentially six theories of liability that might be asserted against the Local Government. The following is a summary describing each theory of liability, our conclusion as to such theory of liability and the County Legal Memorandum's conclusion:

1. **Implied Cause of Action under the National Flood Insurance Act.** The United States Supreme Court has established a stringent test for finding an implied private cause of action under a federal statute where no express private cause of action is provided in the statute. Various courts have already construed portions of the National Flood Insurance Act as not establishing a private cause of action. Based on existing case law, we have concluded that no private cause of action is available under the National Flood Insurance Act. The County Legal Memorandum agrees with this conclusion.

2. **Claim under 42 U.S.C. § 1983.** Section 1983 is in essence a civil rights statute, prohibiting persons under color of state law from depriving persons of federally protected rights. This cause of action has been attempted unsuccessfully in a few cases concerning flooding. We have concluded that such cause of action should not be successful in the case of a levee breach because the plaintiff should not be able to show all the necessary elements of a § 1983 cause of action. In particular, the landowner should not be able to show a federally protected right. The County Legal Memorandum discusses § 1983 actions generally, cites two flooding cases in which a § 1983 claim was not successful and cautions that those cases evidence that some courts are at least willing to consider a § 1983 claim.



3. **Negligence Claim under the Special Duty Exception to the Public Duty Rule.** A plaintiff might allege that the Local Government was negligent in actions relating to the project, notwithstanding that the levee will not be owned by the Local Government. For example, a plaintiff might argue that the Local Government was negligent in the issuance of construction permits or in the inspection or maintenance of the levee. In order to maintain a negligence action, the plaintiff must show that a state statute or local ordinance implicitly allows adjoining landowners to recover damages caused by the Local Government's negligence under the Special Duty Exception to the Public Duty Rule (which rule generally protects governments from liability for such claims). Our conclusion is that no "special duty" should be recognized under the relevant state statutes and that the Local Government can make clear in its ordinances concerning the levee that no private cause of action is created. We also note that if a cause of action did exist, the Tort Claims Act would present substantial defenses against liability. The County Legal Memorandum discusses the same issues, but does not undertake an analysis of relevant state statutes and does not render a definitive conclusion. The County Legal Memorandum, like this Memorandum, recommends that the Local Government's ordinances be properly drafted to refute any argument of a "special duty" private cause of action.

4. **Cause of Nuisance.** We have concluded that the Local Government is exempt from a claim for nuisance. The County Legal Memorandum reaches the same conclusion.

5. **Inverse Condemnation.** A plaintiff might argue that flooding resulting from a levee breach constituted an unconstitutional taking of the plaintiff's land. We have concluded that a landowner should not be able to satisfy all of the elements required to establish a compensable taking under the United States Constitution or the South Carolina Constitution. The County Legal Memorandum contains a similar analysis of the law and recognizes that it would be difficult for a plaintiff to meet the required elements, but reaches no definitive conclusion.

6. **Third Party Beneficiary under Construction Contract.** This cause of action can be avoided by making clear in any contracts executed by the Local Government with respect to the levee project that such contracts are not for the benefit of any third parties. The County Legal Memorandum agrees.

We note that while this Memorandum enumerates six potential theories of liability, the County Legal Memorandum is organized differently. For example, the County Legal Memorandum discusses potential causes of action for negligent issuance of a construction permit and negligent inspection separately from its discussion of the Public Duty Rule. These concepts are discussed in this Memorandum under the category of "Public Duty Rule" as they are essentially negligence actions that must overcome the Public Duty Rule as well as defenses under the Tort Claims Act. Although the organization is somewhat different, the legal issues analyzed in this Memorandum and in the County Legal Memorandum are much the same.

While the ultimate risk of liability may be minimal, the cases do reflect that if the levee fails, the Local Government could be exposed to claims that would require significant expense to defend. The risk of litigation costs should be covered through insurance.

Although this Memorandum primarily discusses liability for flood damage to landowners protected by the levee in the event of a levee breach, we have also addressed in Part C below the issue of liability to landowners on the Lexington County side of the river. We have addressed in Part D additional factors that may limit risk, including liability protection aspects of the proposed 501(c)(3) corporation, which would own the levee, caps on liability under the Tort Claims Act, the applicability of insurance and third party insurance, funding mechanisms for maintenance and insurance, and the possible use of a recorded covenant releasing the Local Government from liability.

## DISCUSSION

### A. LIMITATIONS ON LIABILITY.

#### 1. Limitations on Governmental Liability Generally.

Assessing the possibility of liability of the Local Government for levee failure is a two-step process. First, one must determine whether there is a recognized duty owed by the Local Government directly to the landowner under the law and therefore a basis for asserting liability. Liability can exist only when the courts recognize a cause of action, *i.e.*, a valid theory of liability, under the federal or state constitution, federal or state statutory law or the common law. Unless the courts recognize the validity of an alleged cause of action, no liability exists.

Even if a cause of action is recognized, however, the analysis does not end there; governmental authorities have traditionally enjoyed substantial defenses to liability in carrying out the duties of government. One therefore must also analyze whether such defenses would preclude liability with respect to an alleged cause of action.

Although the existence of a cause of action and the applicability of defenses to the cause of action are separate issues, case law often co-mingles the discussion of these issues. It is therefore helpful, before discussing the possible theories of liability, to understand the nature of the defenses available to the Local Government.

Prior to 1985, local governmental bodies enjoyed immunity from liability for tortious conduct under the common law doctrine of sovereign immunity. In *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (S.C. 1985), the South Carolina Supreme Court abolished the doctrine of sovereign immunity as a matter of common law. In so doing, however, the Court urged that the legitimate interest of government in protection from liability be addressed by the South Carolina General Assembly. *Id.* at 257, 329 S.E.2d at 748. The following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act, S.C. Code Ann. §§15-78-10 *et seq.* (the "Tort Claims Act"), which provides a statutory waiver of sovereign immunity, but subject to certain exemptions and limitations.

The Tort Claims Act provides that the State and its political subdivisions are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages" contained in other provisions of the Tort Claims Act. S. C. Code Ann. §



# Federal Emergency Management Agency

Washington, D.C. 20472

AUG 20 2001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:  
115-A

Mr. T. Cary McSwain  
Richland County Administrator  
2020 Hampton Street  
P.O. Box 192  
Columbia, South Carolina 29202

Community: Richland County,  
South Carolina  
(Unincorporated Areas)  
Community No.: 450170  
Map Panels Affected: 0025, 0091, 0092,  
0094, 0110, 0160, 0178 and 0190

Dear Mr. McSwain:

On September 1, 1999, you were notified of proposed modified flood elevation determinations affecting the Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for the Unincorporated Areas of Richland County, South Carolina. The 90-day appeal period that was initiated on September 14, 1999, when the Federal Emergency Management Agency (FEMA) published a notice of proposed Base (1% annual chance) Flood Elevations (BFEs) for your community in The State, has elapsed.

FEMA did receive several appeals of the preliminary FIRM and FIS for the Congaree River during the 90-day appeal period. The appeals were submitted by Blanchard Investments, Columbia Venture LLC, a private citizen appellant, and the South Carolina Department of Natural Resources. With a letter dated September 26, 2000, the issues raised in these appeals were addressed and considered to be resolved. However, FEMA did allow a period for comments on the revised preliminary FIRM and FIS issued with the appeal resolution. Technical comments received from the appellants are addressed in the enclosure, titled "Final Flood Elevation Determination for the Congaree River in Richland and Lexington Counties, South Carolina," dated August 20, 2001. Proof copies of Richland County FIRM Panels 0091, 0092, 0094, 0160, 0178, and 0190 and Lexington County FIRM panels 0164, 0168, 0277, 0279, 0281, 0283, 0285, 0291, 0292, 0293, and 0294 along with revised portions of the FIS reports reflecting the final flood hazard information are also enclosed with this letter.

The determination (copy enclosed) of the Agency as to the BFEs for your community is considered final. The final BFEs will be published in the Federal Register as soon as possible. The modified BFEs and revised map panels, as referenced above, are effective as of February 20, 2002, and revise the FIRM which was in effect prior to that date. For insurance rating purposes, the community number and new suffix code for the panels being revised are indicated on the maps and must be used for all new policies and renewals. Final printed copies of the FIS and FIRM will be sent to your community prior to the February 20, 2002, effective date.

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Effective with the date of this letter, we encourage your community to use the BFE and floodway data presented on the enclosed proof copies of the FIRM and FIS for regulating floodplain development in accordance with the guidance provided in the enclosed Floodplain Management Bulletin titled Use of Flood Insurance Study (FIS) Data As Available Data.

To assist your community in maintaining the FIRM, we have enclosed a Summary of Map Actions to document previous Letters of Map Change (LOMCs) (i.e., Letters of Map Amendment, Letters of Map Revision) that will be superseded when the revised FIRM panels referenced above become effective. Information on LOMCs is presented in four categories: (1) LOMCs that have been included on the revised FIRM panels; (2) LOMCs that have not been shown on the revised FIRM panels because of scale limitations or because the LOMC that was issued had determined that the lots or structures involved were outside the Special Flood Hazard Area shown on the FIRM; and (3) LOMCs that have not been included on the revised FIRM panels because they are being superseded by new detailed flood hazard data; and (4) LOMCs that will be re-determined. The LOMCs in Category 2 of this form are revalidated through a single letter that reaffirms the validity of a previously issued LOMC. LOMCs issued for multiple lots or structures where the determination for one or more of the lots or structures have changed (Category 4) cannot be revalidated through this administrative process. However, we will review the data which were previously submitted as part of the original LOMR or LOMA request and issue a new determination for the subject properties after the FIRM effective date.

The modifications are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968, P.L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65. Because of the modifications to the FIRM and FIS report for your community made by this map revision, certain additional requirements must be met under Section 1361 of the National Insurance Flood Act of 1968, as amended, within 6 months from the date of this letter. Prior to February 20, 2002, your community is required, as a condition of continued eligibility in the National Flood Insurance Program (NFIP), to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Section 60.3(d) of the NFIP regulations. These standards are the minimum requirements and do not supersede any State or local requirements of a more stringent nature.

It must be emphasized that all of the standards specified in Section 60.3(d) of the NFIP regulations must be enacted in a legally enforceable document. This includes the adoption of the effective FIRM and FIS report to which the regulations apply and the modifications made by this map revision. Some of the standards should already have been enacted by your community. Any additional requirements can be met by taking one of the following actions:

1. Amend existing regulations to incorporate any additional requirements of Section 60.3(d);
2. Adopt all of the standards of Section 60.3(d) into one new, comprehensive set of regulations; or,

3. Show evidence that regulations have previously been adopted that meet or exceed the minimum requirements of Section 60.3(d).

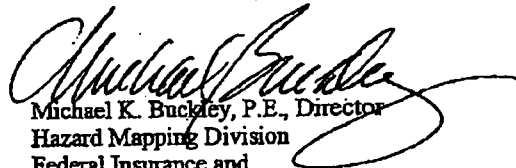
Communities that fail to enact the necessary floodplain management regulations will be suspended from participation in the NFIP and subject to the prohibitions contained in Section 202(a) of the Act as amended.

A Consultation Coordination Officer (CCO) has been designated to assist your community with any difficulties you may be encountering in enacting the floodplain management regulations. The CCO will be the primary liaison between your community and FEMA. Any questions may be directed to your CCO at the following address:

Mr. A. Todd Davison, Director  
Federal Insurance and Mitigation Administration  
Kogers Center - Rutgers Building  
3003 Chamblee Tucker Road,  
Atlanta, Georgia 30341  
(770) 220-5400

We value your participation in the program and look forward to working with your community to ensure that the goals of the NFIP are met. If you have any questions, please do not hesitate to contact your CCO.

Sincerely,

  
Michael K. Buckley, P.E., Director  
Hazard Mapping Division  
Federal Insurance and  
Mitigation Administration

Enclosures:

Technical Report for the Final Flood Elevation Determination for the Congaree River  
in Richland and Lexington Counties, South Carolina  
Proof FIRM Panels and FIS  
Final BFE Determination  
Floodplain Management Bulletin  
Final Summary of Map Actions  
Notice to Users regarding the digital FIRM

4

cc: Ms. Kit Smith, Richland County Council Chairperson, without FIRM and FIS enclosures  
Mr. Randy Jergenson, Planning Management Director, without FIRM and FIS enclosures  
Mr. Douglas P. Wendel, Columbia Venture, LLC  
Paul Sandifer, Ph.D., South Carolina Department of Natural Resources  
John Grego, Ph.D.  
Mr. D. Reece Williams III, Blanchard Investments  
FEMA, Region IV  
NFIP State Coordinator

**GREEN DIAMOND**

**COLUMBIA VENTURE,  
LLC**

Def Trial Ex 99

CV000456

**GREEN DIAMOND**

**COLUMBIA VENTURE,  
LLC**

CV000456



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CV000458

SECTION I

CV000458

## SECTION I

### INTRODUCTION

On August 20, 2001, FEMA presented its final map (LFD – Letter of Final Determination) to the public in Columbia, South Carolina, for the Congaree River just south of Columbia.

The result of that presentation was that the map stayed essentially the same as it has been proposed since September 26, 2000. This leaves approximately 70% of Columbia Venture, LLC property in a regulatory floodway. Our staff and consultants were bitterly disappointed at these results which we strongly feel do not represent the most accurate and technically correct science available. We felt we were strongly positioned both scientifically and politically to achieve a better result. We felt that an improved map would help our ongoing process tremendously from a public perception standpoint. Unfortunately, FEMA officials took the most politically expedient position for themselves and basically reaffirmed what they had already done.

Notwithstanding the result, there are some positives that have come about as a result. Political officials as well as the business community have realized that a good project may be slipping away. There have been some key meetings with Mr. Wendel and Mike Brown of FEMA as well as the Governor and Mayor of Columbia since the decision.

Additionally, staff has been requested to provide you with our options as it may relate to proceeding forward or entering into an exit strategy for the Columbia property. We have assembled a group of professionals that will help present our options from a technical viewpoint, a legal viewpoint, a political viewpoint and a financial perspective.

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CV000460

SECTION II

CV000460

CV000461

**SECTION II**

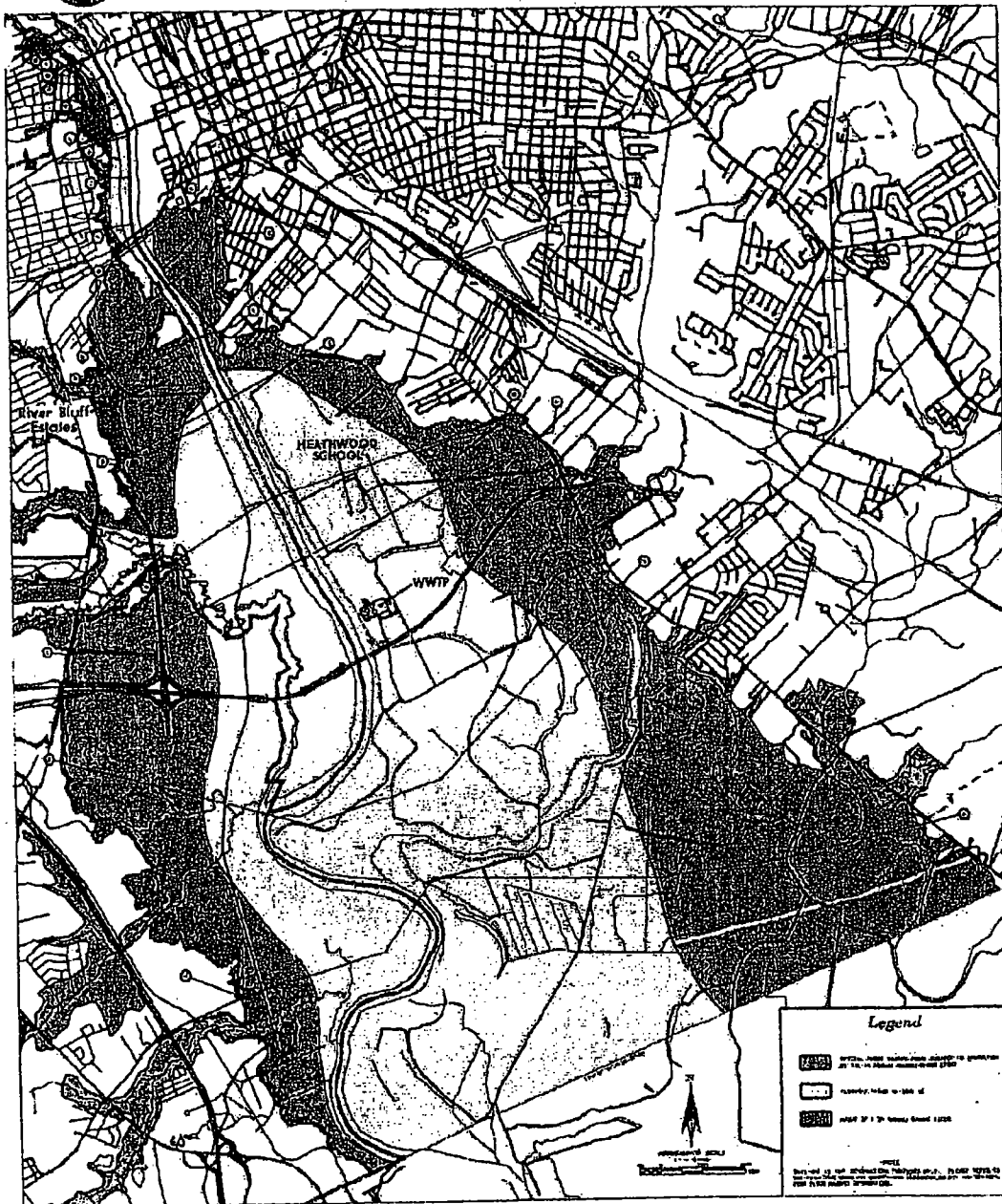
**THE MAP**



CV000461



*August 20, 2001 Final Determination*



CV000463

SECTION III

CV000463

CV000464

SECTION III

WHAT THE MAP MEANS

CV000464



### POSITIVES

This LFD (Letter of Final Determination) allows us for the first time to proceed to the next step in the process, which is the CLOMR (Conditional Letter of Map Revision) phase, which would allow us to upgrade the levees to a 500-year certified state. This has been our plan from the start and is the more critical part of the process than was the mapping stage.

2. It is unlikely now that we would have to face the delay of a court action having been brought by the appellants since the map is essentially what they wanted.
3. FEMA officials are understanding of our dilemma and have stated that action taken to date does not preclude the project from proceeding.
4. Indications are that FEMA technical mapping personnel will be personally directed by Robert Shea, Acting Assistant Administrator for Mitigation and Insurance, and Michael D. Brown, General Counsel, to guarantee "fair and objective" treatment.

**DIFFERENCES WITH THE SEPTEMBER MAP**

1. FEMA staff made changes that increased the BFE's (Base Flood Elevation) on the Lexington County side of the river north of Riverland Park.
2. FEMA totally ignored our 2-D model, which was more scientifically accurate and lessened the importance of this better science.
3. There is now a two-foot calibration difference with this final map where before there was only a one-foot difference. This essentially means that scientifically, the final map is less accurate than was the September map.

Exponent

August 27, 2001

FAX TRANSMITTAL

TO: Mr. George Gregory  
Burroughs and Chapin Company, Inc.  
FAX: 843-916-9142

FROM: Douglas Hamilton  
Exponent, Inc.  
Tel. 770-350-4936  
FAX: 770-350-4937

George,

These are my preliminary thoughts.

## AUGUST 20, 2001 MAP

### Summary

FBMA has used the same approach in the final map as they did for the September 26, 2000 map. That is, they prepared separate HEC-2 models for Lexington and Richland Counties. The Lexington BFE model assumes that the Manning levee is in tact and forms a flow boundary. The Richland BFE model assumes that the Manning levee does not hold back any floodwaters.

For the August 20, 2001 final map determination, the Lexington BFE model shows an increase in 100-year flood stage by 1 to 2 feet upstream of the Manning levee compared to the September 26, 2000 map. The Lexington BFE is about the same as the September map downstream of this point. The Richland County BFE's are basically the same for the final map as for the September 26, 2000 map.

The net result of the August 20, 2001 map is that FEMA now shows a greater rise in the water level upstream of the Manning levee should it be certified. This makes reconfiguration of the levee more difficult. We are investigating exactly what modifications were made to the HEC-2 model to produce these changes.

### Potential Strategies

1. By making this change between September 26, 2000 and the final map, the 100-year flood stage is about 2 feet higher than it should be to achieve a calibrated model. We could argue that the Lexington model needs to be adequately calibrated.
2. We could question whether the changes made to the HEC-2 model, including changes in the Manning's n value were legitimate.

### GLOMR ALTERNATIVES

If we proceed with the GLOMR process, I think that means a reconfiguration of the levee. I am not sure if we can get an acceptable reconfiguration, however that preserves the Richland County BFE's.

A levee reconfiguration plan will benefit Lexington County only if the existing levee is entirely removed and the area graded smooth. The approach should be to offer a reconfiguration alternative but leave the existing levee in place. Under their guidelines, FEMA pretends the existing levee vanishes. However, unless we actually remove the existing levee, Lexington County will not experience a real benefit. This might help in negotiating a compromise with FEMA.

A face-to-face meeting with FEMA and/or Dewberry and Davis technical people would be very beneficial in this instance because we could quickly evaluate the chance of a reconfiguration alternative succeeding.

CV000469

SECTION IV

CV000469

CV000470

SECTION IV

CLOMR ISSUES

TECHNICAL PERSPECTIVE

CV000470

Magruder, Peggy

---

From: Mark Hester [mhester@charter.net]  
Sent: Thursday, August 23, 2001 5:51 PM  
To: George Gregory  
Subject: CV Points  
Basic Points

- A. FEMA did *not* use the 2D (SMS RMA-2) model to calculate the floodway or the floodplain.
- B. FEMA *used* the 1D (HEC-2) model to calculate the floodway and the floodplain. Levee breaches are not considered in the HEC-2 model.
- C. The BFE and Floodway are calculated as follows:
  - 1. Lexington County: Levee intact acting as a certified levee.
  - 2. Richland County (area behind levee): Levee removed from calculation with free flow behind the levee.

#### Conditional Letter of Map Revision Approaches

The following approaches appear logically valid, but must be confirmed by actual calculations.

##### Approach 1

Prepare a HEC-2 calculation with the levee being upgraded in its current location. Compare this with the BFE and floodway in *Lexington County* to demonstrate a no-rise and no change in the floodway. This is in conformance with the *Lexington County/City of Cayce* resolution, but FEMA will likely not approve. This option is CLOM ready without mitigation of surrounding landowners.

##### Approach 2

Prepare a HEC-2 calculation with the levee being relocated a sufficient distance away from the river to not change the BFE in *Riverland Park Subdivision* based on the elevations established for *Richland County* which are approximately 1 foot lower than the *Lexington BFE*. There will likely be a few structures downstream requiring mitigation.

##### Approach 3

Prepare a HEC-2 calculation with the levee on the *Greg Property* not being upgraded. The remaining portion of the levee would be upgraded and possibly provide a revised location. This will avoid BFE changes in *Riverland Park Subdivision* based on the elevations established for *Richland County*. There will likely be a few structures downstream requiring mitigation.

##### Approach 4

Prepare a HEC-2 calculation with the levee being located at the FEMA established Floodway location and compared with the elevations established for *Richland County*. This will only allow 30% of the property to be used for structures. This option is CLOM ready without

08/24/2001

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mitigation of surrounding landowners.

08/24/2001



**CV000472**



CV000521

SECTION VII

POLITICS



CV000521

- A. The following are the highlights of discussions that John Napier of Winston & Strawn and Doug Wendel have had subsequent to the issuance of the LFD regarding the next steps in the process with Mike Brown, FEMA General Counsel.
1. FEMA officials believe there are options at the local level, which would allow the project to proceed and have assured us they will cooperate in this regard.
  2. Mike Brown and Bob Shea, Acting Assistant Administrator for Insurance and Mitigation with FEMA will take command of the process regarding the CLOMR. Mike Brown, Joe Allbaugh, Confidential Assistant and General Counsel, will oversee the day-to-day process and has committed open access to us.
  3. An open dialogue with FEMA scientists and technical people and ours will be allowed to guarantee best science rules in the CLOMR.
  4. Mr. Brown and Mr. Shea have both independently confirmed that the Lexington model will be used to compute a "no rise" and/or negative impact and greatly minimize potential mitigation associated with the upgrade of the levees.
  5. Mr. Brown and Mr. Shea have indicated a 30-60 day preliminary consultation process would provide us with the details on whether a cost affordable upgrade of the levees is possible.

B. The following highlights a conversation held with Governor Hodges regarding this project subsequent to the issuance of the LFD and final map.

1. Governor Hodges wishes to see this project move forward and has pledged his support.

- C. Doug Wendel had a chance to meet with Mayor Coble to discuss a partnership to get the levees upgraded to ensure Wastewater Treatment Plant of the City is protected and may be expanded and for the research park to be salvaged. The Mayor is supportive and has indicated he will provide the leadership necessary to assist us with making this a reality. We need sixty days to refine a plan of action and be sure this can be accomplished.

## WINSTON &amp; STRAWN

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CHICAGO, ILLINOIS 60601-9700

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1204 GENEVA, SWITZERLAND

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75116 PARIS, FRANCE

JOHN L. NAPIER  
(202) 371-5982  
jnapi@winston.com

August 28, 2001

BY FACSIMILE: 202-646-4536  
AND VIA MESSENGER

Michael Brown, Esq.  
General Counsel  
Federal Emergency Management Agency  
500 C Street, S.W.  
Washington, D.C. 20472

Dear Mike:

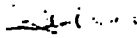
Thank you for returning my telephone call this afternoon regarding the Congaree River-Columbia, SC mapping matter, and discussing the telephone call Mr. Shea made to Mr. Wendel earlier today. We appreciate your interest and your commitment to the evaluation of the CLOMR map in a fair and objective manner.

I also appreciate the confirmation of the use of the Lexington model which Mr. Shea earlier confirmed with Mr. Wendel. In an effort to avoid any misunderstandings, Mr. Wendel has confirmed his conversation of this morning with Mr. Shea, and a copy of that letter dated earlier today is attached. Mr. Wendel has specifically asked Mr. Shea to correct any misunderstandings which are memorialized in the attached letter.

In regard to the other matter which we discussed, I will endeavor to provide to you the empirical data as soon as possible.

Once again, we appreciate your commitment to a public policy of excellence in the direction of the affairs of FEMA. I will call you upon my return from South Carolina and hope you have a good trip back to Washington.

Yours very truly,

  
John L. Napier

Attachment: (Wendel letter to Shea dated August 28, 2001)

cc: Douglas P. Wendel (by facsimile)

CV000526

Winston & Strawn

8/29/01 9:25 PAGE 3/4 RightFAX

AUG-28-2001 17:02

BURROUGHS CHAPIN

843 916 9142 P.02/03



BURROUGHS & CHAPIN COMPANY, INC.  
*Family Values Since 1895*

August 28, 2001

VIA FACSIMILE (202) 646-3231 & U.S. Mail

Mr. Robert F. Shea  
Acting Administrator  
Federal Insurance & Mitigation Administration  
Federal Center Plaza  
500 "C" Street SW  
Washington, DC 20472

Re: Congaree River - Columbia Venture

Dear Mr. Shea:

Thank you for your telephone call of August 28, 2001, regarding the FEMA mapping process as it relates to the proposed Columbia Venture, LLC Green Diamond Research Park. Your ongoing interest is greatly appreciated.

The purpose of this letter is to attempt to document our discussion in an effort to avoid any misunderstanding. With this purpose in mind, please find the following.

1. You explained that the ongoing regulatory process as it relates to potential strengthening of the existing uncertified levee, any related mitigation, and a review and evaluation of a CLOMR map would be a "fair and objective one". You indicated a preliminary consultation process could occur during a 30-60 day period. The purpose of this process would be to define the detailed steps required and process to be followed, the feasibility of alternatives, and a time frame or schedule. You also indicated that the final map amendment would obviously take longer but would not be a prolonged one.

2. You indicated the rules regarding the way the water flows or "is pushed" as a result of levee upgrading realignment and/or relocation, would be determined via use of the Lexington Model. You indicated that the "worse case" scenario (Lexington Model) was a traditional worse case scenario run, that FEMA always conducts. You indicated this would be the model used to evaluate the impact levee work would have on the Lexington side of the river.

CORPORATE OFFICE: Founders Centre 2411 Oak Street Suite 402 Myrtle Beach, SC 29577 / P.O. Box 2095 Myrtle Beach, SC 29576-2095 / (843) 448-5123 FAX (843) 448-9838  
WILMINGTON OFFICE: 314 Main Street Commerce SC 29526 / P.O. Box 200 Conway, SC 29526-0200 / (843) 248-4237 FAX (843) 248-4570

CV000526

AUG-29-2001 17:02

BURROUGHS CHAPIN

843 916 9142 P.03/03

Mr. Robert F. Shea  
August 28, 2001  
Page Two

3. You encouraged us to identify a "local government sponsor", who would request the initial consultation and that this consultation could not only address strengthening, upgrading, realignment and relocation of the existing Manning uncertified Levee but also could be used to address a potential ring levee around the existing City of Columbia Wastewater Treatment Plant.

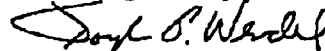
4. You encouraged us to be sure we were taking into consideration the cost associated with potential change in the levee alignment and/or relocation prior to us making a final decision or moving ahead since the cost could be substantial.

5. You indicated upon request by a local government sponsor you would assemble a team and you would personally oversee the initial consultation process and the final map amendment process.

Once again, thank you so much for your telephone call. If you disagree with any of my understandings, as described above, it would be greatly appreciated if you would bring it to my attention immediately.

Sincerely yours,

Burroughs & Chapin Co., Inc.



Douglas P. Wendel  
President & CEO

DPW/pjm

CC: John Napier, Esq.



TOTAL P.03

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SECTION VIII

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CV000529

SECTION VIII

DUAL COURSE OF STRATEGY FOR PROCEEDING

CV000529

DUAL COURSE:COURSE I: UPGRADE OF LEVEE & SCALED BACK PROJECT

The following is a summation of our thoughts and strategy that is recommended based on the discussions and developments over the last week should the Board decide to continue with the project.

1. We have been put in a position of needing to upgrade the levees in order to recoup our investment should we proceed. We have been given initial approval of the use of the Lexington BFE's for our CLOMR and "no rise" calculations which our technical and legal experts agree is the best situation for us to proceed. (We must secure FEMA's support and cooperation via agreed upon consultation period next 30-60 days.)
2. We will scale down the size of the project and take the focus off of Columbia Venture and Burroughs & Chapin. There will be a focus and value directed at three (3) jurisdictions ahead of us.
  - City of Columbia – They will receive acreage for expansion of their wastewater treatment plant and have levees to protect it and minimize their legal liability.
  - University of South Carolina – They will be allowed to pursue the major research status and be a part of the Research Park.
  - Richland County/City of Columbia – They will be provided areas for recreation and preservation.
  - Columbia Venture – The balance of the project will be for development but the emphasis shifts to the public good.
3. The goal will be to develop it in a prudent manner that collectively will be for the public good.
4. We must have the City of Columbia out front with the public benefit mantra. This eliminates the greed factor and reduces focus on Burroughs & Chapin. (This should be tied down during next 30-60 days.)
5. The idea is to separate the need for the upgraded levees from the Columbia Venture development. The City has to protect its treatment plant and Mayor Coble is the key.
6. What we seek is to get our investment back with a modest profit and redeem ourselves from a public relations standpoint. Our ask on the Multi-County Business Park dollar pool will be reduced to upgrade of levee, community assistance and basic research park infrastructure.).

7. We finally need to see how a scaled back project could still benefit the surrounding minority communities.

COURSE II: PARALLEL EXIT STRATEGY

We have been working with Mr. Larry Kohler of Green Stripe, Ltd. Mr. Kohler specializes in the use of conservation easements to create tax benefits for preserving land. Based upon our most recent conversations and analysis of our situation in Columbia, we feel this affords us an opportunity to get our investment out and realize a profit on our ability to create a hunting preserve and sell ownership slots on the portion of land that has been designated as regulatory floodway.

The concept in very simple fashion is that we show a land plan and build-out design for the property in the regulatory floodway. If we have enough build-out, we can get tax deduction value for preserving and putting an easement over the land instead of developing it. The IRS has what amounts almost to an entitlement to encourage land to be conserved. Their incentive is to allow tax deductions for charitable contributions that can run into significant dollars.

Mr. Kohler has provided a written analysis of how this might work for us and will explain it to you. Key points of focus will be:

- Likelihood of success supported by appropriate legal opinion
- Timeframe – key days
- Steps – Documents to be prepared
- Market Conditions – who would buy it
- Where it has been successful before

August 29<sup>th</sup>, 2001

Memorandum

---

To: George Gregory, Tony Cox

From: Kohler

---

Below, find a draft of my interpretation of our Monday meeting. If appropriate, please feel free to use any part for the Thursday/Friday presentations.

General Assumptions:

- Without further appeals, the development potential of the lands located to the riverside of the proposed floodway line would be severely diminished
- As stated in our March 8<sup>th</sup> correspondence (attached) "A negative FEMA Letter of Final Determination would not necessarily render these lands undevelopable." Our current understanding and assumption through subsequent conversations with Burroughs & Chapin is that until such time that all appeals have been exhausted, the subject lands would still retain development potential
- Benchmark appraisal dates have been established through an engagement letter and site inspection by Jerry Adkins, MAI. It is assumed that these dates could be moved-forward to early August and still meet appraisal standards relating to valuation of the subject land "as-developed"
- Potential values associated with a conservation easement(s) on the subject lands were projected from a set of assumptions provided by Dr. Peter Barr (attached) and would need to be confirmed during the implementation phase. These values assumed full development rights as indicated on a plan produced by EDSA titled Preliminary Master Plan for the Columbia Ventures dated July 14<sup>th</sup>, 2000 with their Project No. 99184.

Preliminary Strategy:

- To place designated lands below the proposed revised FEMA line under a conservation easement, that would essentially remove a substantial portion of the value associated with maximum yield development of this property.
- Based on the above Assumptions, a tax deduction could be achieved under IRC § 1.170 that would be valued based on the property's development potential *before* encumbering it with a conservation easement minus the residual value of the property after the encumbrance
- The value of the easement could be treated as a gift of real property under the "30% Charitable Deduction Rule"
- The easement could be a one-time occurrence or staged to meet more strategic economic goals
- Fee simple title to the subject property could still be retained, sold and/or donated with an additional tax benefit
- Within the conservation eased lands, defined agricultural, educational, and recreational rights would be reserved to include, but not be limited to:
  - Recreational Hunting either leased and/or sold
  - Farming either leased and/or sold
  - Forestry Activities either leased and/or sold
  - Limited support development to the above
  - Limited residential/commercial development (if annexed by the city)
- An area adjacent to the current wastewater facility would be outparceled from the easement and be donated to the municipality for expansion/flood control
- The balance of the property (approximately 870<sup>+</sup> acres would be retained for active development that could include a joint venture with municipal/educational entity(s) for developing a "Research Technology Park"

Implementation:

Scope:

- Obtain ruling confirming the tax status of a qualified conservation easement
- Obtain ruling confirming appraisal date as a benchmark for valuation
- Commission a qualified appraisal ((as defined under IRC § 1.170A-13(c)(3))
- Document the conservation purpose(s) ((as defined under IRC § 170 (h))

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CV000535

Determine the qualified organization ((as defined under IRC § 170 (h))  
Develop Investment Strategy

Term:

Sixty (60) Days

Estimated Costs:

\$200,000 (Not including legal and internal administrative expenses)

*Green Stripe, Ltd. its employees or principals, does not act as attorney, financial advisor or accountant. It is understood that Green Stripe and its affiliates are not engaged in rendering legal or tax advice or services. Moreover, Green Stripe, its employees or principals, does not certify or guarantee the amount or deductibility of any donation made pursuant to a conservation easement or other gift of real property. Client fully understands that it is its sole responsibility to obtain these services from competent third party professionals.*

CV000535

Recent Clients

B. Rex Stephens (Rex)  
Landmark Land and Timber, Inc.  
5022 Wrightsville Avenue  
Wilmington, NC 28403  
(910) 392-7202

Julian J. Nexson, Jr (J.)  
Greenwood Development  
Post Office Box 1017  
Greenwood, South Carolina 29648  
(864) 941-4034

Roger Grigg  
Willbrook Links Investment Group, LLC  
Post Office Box 1373  
Myrtle Beach, South Carolina 29577  
(843) 626-7676

Manning Frankstone  
StoneWeather, LLC  
2711 Middleburg Drive, Ste. 201  
Columbia, South Carolina 29204  
(803) 256-6507

Steve Sandler Nathan Benson  
L.M. Sandler & Sons, Inc  
448 Viking Drive, Suite 220  
Virginia Beach, Virginia 23452  
(757) 463-5000

William J. Byrne (Bill) Nancy Zak  
Big Canoe Company, LLC  
10591 Big Canoe  
Big Canoe, Georgia 30143  
(706) 268-4000

Edmond Cash  
Mountain Cove Farms  
288 Addington Drive  
Rome, Georgia 30165  
(706) 232-0881

Hovey E. Aiken, III  
Hog Island, LLC  
3910 Country Club Road  
New Bern, North Carolina  
(252) 633-6222

Tom Taft  
Taft, Taft & Haigler, PA  
2217 Stantonsburg Road  
Greenville, North Carolina 27835  
(252) 752-2000

Jim Lentz  
Birchwood Acres, LP  
4305 Neptune Road  
St. Cloud, Florida 34769  
(407) 891-1616



CV000537

SECTION IX

CV000537

CV000538

SECTION IX

FINANCIAL SITUATION

COLUMBIA VENTURE, LLC

CV000538

Columbia Venture Inc.  
Section IX Financial Situation

- A Current Financial Status
- B Current Options
  - 1 Liquidation
  - 2 CLOMR
  - 3 Conservation Easement
  - 4 Lawsuit with FEMA

**Columbiavestments LLC  
Current Financial Summary**

|                    | % Equity      |               | Investment        |                  | Participation In Loan, Guarantee, and Fee |             |                |
|--------------------|---------------|---------------|-------------------|------------------|-------------------------------------------|-------------|----------------|
|                    | Shares        |               | Cash              | Other            | Shares                                    | % Guarantee | 8/29 Loan Fee  |
| Burroughs & Chapin | 9,000         | 42.0%         | 3,000,000         | 6,000,000        | A                                         | 50.3%       | 1,322,640      |
| NLBF, LLC          | 3,000         | 14.0%         | 3,000,000         | -                | A                                         | 19.4%       | 1,456,311      |
| Regent Columbia    | 3,000         | 14.0%         | 2,000,000         | -                | A                                         | 0.0%        | -              |
| Green Diamond, LLC | 450           | 2.1%          | -                 | 380,000          | B                                         | 2.9%        | 66,087         |
| Carolina First     | 3,000         | 14.0%         | 3,000,000         | -                | C                                         | 18.4%       | 438,547        |
| Lockwood Green     | 3,000         | 14.0%         | -                 | 2,000,000        | C                                         | 0.0%        | -              |
| <b>Total</b>       | <b>21,450</b> | <b>100.0%</b> | <b>11,000,000</b> | <b>8,380,000</b> |                                           |             | <b>224,988</b> |

A Initial Value recognized for ventures structuring and purchase contracts.  
B Additional Land Contributions.  
C Professional Services including out of pocket subcontracts.

**Current Liabilities**

|                      | Date      | Maturity  | Amount            | Current Balance   | Interest Paid | Next Interest Date |
|----------------------|-----------|-----------|-------------------|-------------------|---------------|--------------------|
| Manning Note         | 4/2/2001  | 4/5/2002  | 7,500,000         | 7,500,000         | Quarterly     | 10/2/2001          |
| Credit Line          | 4/2/2001  | 4/5/2002  | 3,000,000         | 3,000,000         | Quarterly     | 10/2/2001          |
| Member Loan          | 8/29/2001 | 8/28/2002 | 2,028,188         | 2,028,188         |               |                    |
| Member Guarantee Fee | 4/2/2001  | 3/30/2002 | 224,988           | 224,988           |               |                    |
|                      |           |           | <b>12,753,187</b> | <b>12,753,187</b> |               |                    |

**Current Assets**

|                                       | As of Sept 30 |
|---------------------------------------|---------------|
| Carolina First Loans                  | 7,500,000     |
| Manning Note                          | 3,000,000     |
| Credit Line                           | 2,028,188     |
| Partner Loans (plus accrued interest) | 224,988       |
| Guarantee Fee                         | 187,288       |
| Other Accounts Payable                | 310,624       |
| Burroughs & Chapin Payable            | 13,261,488    |
| Subtotal of Liabilities               | 11,350,000    |
| Class A and C Shares                  | 24,601,099    |
| Subtotal                              | 8,000,000     |
| Class B Shares                        | 32,601,088    |
| <b>Total</b>                          |               |

**Current Assets**

|                       | Forecast         | Actual         | Variance     |
|-----------------------|------------------|----------------|--------------|
| Balance April to July | 575,000          | 568,772        | 6,228        |
| August to September   | 425,000          | 425,000        | A            |
|                       | <b>1,000,000</b> | <b>993,772</b> | <b>6,228</b> |
|                       |                  | A Estimated    |              |

Current needs estimated to range from \$130,000 to \$200,000 per month.

**Columbia Venture LLC**  
**Current Options Liquidation**

| <b>Value Summary</b>   | <b>Acres</b> | <b>Value Per Acre</b> | <b>Total Value</b> |
|------------------------|--------------|-----------------------|--------------------|
| Non-Floodway Buildable | 870          | 18,500                | 16,095,000         |
| Non-Buildable          | 265          | 1,887                 | 500,000            |
|                        | <u>1,135</u> |                       | <u>16,595,000</u>  |
| Floodway               | 3,130        | 3,067                 | 9,600,000          |
| <b>Total</b>           | <u>4,265</u> |                       | <u>26,195,000</u>  |

| <b>Sale Summary</b>      | <b>Full Value</b> | <b>60 % Value</b> |
|--------------------------|-------------------|-------------------|
| Sales Price              | 26,195,000        | 15,717,000        |
| Cost of Sales            |                   |                   |
| Commissions 6.00%        | 1,571,700         | 943,020           |
| Legal & Recording 1.00%  | 261,950           | 157,170           |
| <b>Net Sale Proceeds</b> | <u>24,361,350</u> | <u>14,616,810</u> |

**Operational Costs Minimized**  
**One to Two Years to complete.**

**COLUMBIA VENTURE**  
**ESTIMATED REMAINING SALEABLE LAND OUTSIDE FEMA FLOODWAY LINE**  
**BEST CASE SCENARIO, ONE TO TWO YEAR SALE PERIOD**

| See Map<br>Parcel ID | Gross<br>Sales | Buildable Acres<br>(BA) | Value per<br>BA                        | Non-BA               | Value<br>Non-<br>BA/Per<br>Acre | Total Value         | Comments                                                                    |
|----------------------|----------------|-------------------------|----------------------------------------|----------------------|---------------------------------|---------------------|-----------------------------------------------------------------------------|
| 1                    | 65             | 30                      | 20,000                                 | 35                   | 0                               | 600,000             | 1) No additional<br>infrastructure (NAI)                                    |
| 2                    | 350            | 250                     | \$40,000                               | 100                  | \$5,000                         | \$10,500,000        | 1) NAI 2) Possibly need<br>RR tract \$600,000 3)<br>Floodplain issues       |
| 3                    | 140            | 100                     | \$30,000                               | 40                   | 0                               | \$3,000,000         | 1) Access issues 2)<br>Adjacent owner issues 3)<br>NAI 4) Floodplain issues |
| 4                    | 230            | 190                     | \$5,000                                | 40                   | 0                               | \$950,000           | 1) Severe access issues                                                     |
| 5                    | 350            | 300                     | \$5,000                                | 50                   | 0                               | \$1,500,000         | 1) NAI 2) Floodplain<br>issues                                              |
| <b>TOTALS</b>        | <b>1135</b>    | <b>870 (76%)</b>        | <b>\$18,500 Avg./<br/>\$16,050,000</b> | <b>265<br/>(24%)</b> | <b>\$500,000</b>                | <b>\$16,550,000</b> |                                                                             |

**ESTIMATED LAND SALES IN FEMA FLOODWAY LINE**

| Uses                              | BUYERS                                     | ACRES        | \$ PER ACRE         | TOTAL              |
|-----------------------------------|--------------------------------------------|--------------|---------------------|--------------------|
| Farms                             | Adjacent Owners/Others                     | 2,500        | \$3,000             | \$7,500,000        |
| Golf Course                       | Golf Course Developer:<br>Public & Private | 250          | \$3,000             | \$750,000          |
| Parks                             | Government                                 | 350          | \$3,000             | \$1,050,000        |
| Wastewater Treatment<br>Expansion | City                                       | 30           | \$10,000            | \$300,000          |
| <b>TOTAL</b>                      |                                            | <b>3,130</b> | <b>\$3,100 Avg.</b> | <b>\$9,600,000</b> |

**TOTAL BOTH ESTIMATES      \$26,150,000**

Columbia Ventures LLC  
Current Options: CLOMR

CLOMR Summary

Continue with existing efforts to develop property.

- Hurdles prior to development
- Annexation
- Development Agreement
- Multi-County Business Park
- Permitting

Cost Estimate

|                             |               |
|-----------------------------|---------------|
| Monthly Spending Level      | 300,000       |
| Total October through April | 2,100,000     |
| Initial Development Costs   | Reimb by MCBP |

Other Information

Agreements & Permitting requires minimum seven (7) months.

Requires Governmental Champion (City of Columbia) and cooperation of FEMA (sixty (60) days required to tie down for review of the Board prior to next steps or additional actions).

# **CONTRIBUTION VALUE** **CONTRIBUTION VALUE** **CONTRIBUTION VALUE**

## **EASEMENT SUMMARY**

Land areas (3,100 +/- acres) contained in the Floodway, which could be developed upon a CLOMR application approval, could be placed under a conservation easement. Such an easement would restrict development within the easement area and to the extent the developable value (determined by appraisal and other valuation means) exceeds the value after the easement, a contribution deduction is created. This contribution deduction can be transferred to a new group of investors by spinning the easement property into a new Limited Liability Company in which the new investors will be allocated a disproportionate share of the contribution. Preliminary estimates could generate millions in contribution value.

## **EASEMENT SUMMARY**

|                                    |            |
|------------------------------------|------------|
| Contribution Value                 | 60,000,000 |
| Pricing Factor (From Green Stripe) | 0.27       |
| Gross Proceeds                     | 16,200,000 |
| Cost to Implement                  | 350,000    |
| Commission                         | 972,000    |
| Net Proceeds                       | 14,878,000 |

## **OVERALL EXISTING VALUE**

|                                        |            |            |
|----------------------------------------|------------|------------|
| Easement Value                         | Full Value | 60 % Value |
| Non-Floodway Property                  | 14,878,000 | 14,878,000 |
| Easement Residual                      | 16,595,000 | 9,957,000  |
| Possible Values with Easement Strategy | 4,895,000  | 4,895,000  |
|                                        | 38,168,000 | 29,530,000 |

## **Other Information**

Cost to implement estimated at \$350,000 to \$500,000 full plan.  
 Estimate two (2) years to implement strategy.  
 Requires sixty (60) days to research and formalize.

Items needed

- Site Plan Revision
- Formal Updated Appraisal
- Legal Opinion
- Tax Strategy Review
- Potential Investor Search



Columbia Ventures LLC  
Current Options ( lawsuit )

Lawsuit Summary

Defend or appeal current map on basis outlined in Legal presentation.

Cost Estimate

\$200,000

Other Information

Two (2) year delay in development process.

Final result if successful is reopening of mapping process.

Not an attractive option.

GENERAL OFFICE: 155 East 21st Street / P.O. Box 4667 / Jacksonville, Florida 32201 / (904) 355-1781  
**FLORIDA ROCK INDUSTRIES INC** Mining, Ready Mix Concrete, and Construction Products

December 19, 2001



Mr. George Gregory  
 Assistant to CEO/General Counsel  
 Burroughs & Chapin  
 Post Office Box 2095  
 Myrtle Beach, Florida 29578

Subject: Columbia Venture, LLC  
 Green Diamond Property  
 Columbia, South Carolina

Dear George:

Jim Wiseman has been very helpful in showing me the property and providing information. Based on our preliminary analysis of the property, we are prepared to make the following offer for the property:

Property: Approximately 360 acres located on the westerly most 360 acres adjoined by the Congaree River to the south, the industrial area to the north and the school to the west. The property would have a minimum of a 100 foot access road to the industrial area to the north.

|                 |                                          |                   |
|-----------------|------------------------------------------|-------------------|
| Purchase Price: | \$8,000 x 320 acres flood plain land     | \$2,560,000       |
|                 | \$20,000 x 40 acres non-flood plain land | <u>\$ 800,000</u> |
|                 | Total                                    | \$3,360,000       |

Deposit: \$170,000 in the form of a letter of credit.

Terms: Florida Rock would have (4) months to drill the property then (18) months to obtain zoning and mine permits. Closing to be 60 days upon receipt of final approval of zoning and mining permits. Seller will cooperate and assist with rezoning.

Closing Costs:

1. Seller to provide survey and title insurance.
2. Each party pays own attorney.
3. Other closing costs to be handled on a customary basis.

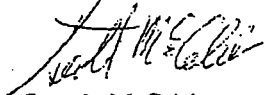
Def Trial Ex 103

CV010634

Mr. George Gregory  
December 19, 2001  
Page Two

George, it is a pleasure working with you and Jim and I look forward to talking with you at your earliest convenience.

Sincerely,



Scott L. McCaleb  
Director  
Corporate Development

SLM/sw

cc: John Baker  
Tom Baker  
James E. Wiseman  
Burwell Manning

CV010634

BandC000641

DEC-27-2001 15:46

COLUMBIA VENTURE, LLC

803 743 0673 P.01/04

4875 Forest Drive, Suite 202  
Columbia, South Carolina 29208  
803-743-0672  
803-743-0673 Fax

**Columbia Venture, LLC**

# Fax

|                                                                                                                                                                                           |                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| <b>To:</b> George Gregory                                                                                                                                                                 | <b>From:</b> James E. Wiseman |
| <b>Fax:</b>                                                                                                                                                                               | <b>Pages:</b>                 |
| <b>Phone:</b>                                                                                                                                                                             | <b>Date:</b> 12/27/01         |
| <b>Re:</b>                                                                                                                                                                                | <b>CC:</b>                    |
| <input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle |                               |
| <b>• Comments:</b>                                                                                                                                                                        |                               |

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution, or copying of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone and return the faxed documents to us at the address above.

Def Trial Ex 104

**CONFIDENTIAL****PLAN OF ACTION****DRAFT**

1. Take the High Road
  - a. Columbia Venture, LLC wants to:
    - i. Help the City of Columbia protect and expand the sewer plant
    - ii. Help Heathwood Hall expand and be protected by levee
    - iii. Work with USC Foundation, City of Columbia, and others to accomplish a high tech research park
    - iv. If asked, will assist the Farmer's Market in acquiring a site
2. Work with the City in a cooperative manner
  - a. Offer dirt and land to build river levee in exchange for development agreement/zoning for remaining 1500 acres in levee section 1
  - b. Give city reasonable deadline
  - c. Columbia Venture and Burroughs & Chapin have made decision to move on and not develop Green Diamond. No hard feelings
3. City of Cayce
  - a. Wiseman to contact Avery Wilkerson for letter of support and offer to annex
  - b. Wiseman to contact McCallum/Jefferson about Cayce option
4. Appraisal
  - a. Wiseman to contact Marty Van Sant for valuations of land in different scenarios i.e. pre and post levee, condemnation, etc.
  - b. Marty Van Sant to render opinion on effect of zoning and Humphries report on conservation easement
5. Potential users if 1500 acres available
  - a. USC Foundation
    - i. Doug Wendel to identify board member other than Mac Whittle
  - b. Commerce/Governor
  - c. Heathwood Hall
  - d. Lumpkin Group

6. Other affected landowners

- a. Wiseman to contact Bill Gregg and Heathwood Hall in regard to negotiations with City of Columbia
- b. Wiseman to investigate levee alternates if Bill Gregg does not participate in deal

7. Sale Price

- a. Start sales price of 1500 acres at \$40,000/acre

8. Financing

- a. As last resort, Burroughs & Chapin to consider financing land/easement sale with 50% down at prime

9. Bulk sale

- a. Agreed to bulk sale of levee section 1 (1500+/- acres) of \$30,000,000

10. Marketing

- a. George Gregory to investigate and present options for marketing conservation easements

11. Columbia Venture

- a. Barry Spivey to send out letter to Columbia Venture members with deadline to respond with interest on easement tax credits

## CITY LEVEE

**DRAFT**

## 1. For ring levee option 3 (expanded).

|                                              |                    |
|----------------------------------------------|--------------------|
| Humphries cost<br>(No land, dirt at \$7/CY.) | \$7,500,000        |
| Land 125 acres at \$30,000                   | <u>\$3,750,000</u> |
| Total                                        | \$11,250,000       |

## 2. For modified river levee

|                                                      |                    |
|------------------------------------------------------|--------------------|
| Humphries cost<br>(No land, dirt at \$7/CY.)         | \$14,600,000       |
| *Columbia Venture dirt at \$3.50<br>(\$ .50 net/CY.) | (\$5,635,000)      |
| Land 115 acres levee                                 | 0                  |
| Land for plant expansion 125 acres                   | <u>\$625,000</u>   |
|                                                      | \$9,590,000        |
| Ask Heathwood to contribute                          | <u>\$1,000,000</u> |
|                                                      | \$8,590,000        |

\*Includes hauling and placement. This would be potential income to Columbia Venture of \$805,000 plus borrow dirt

TOTAL P. 04

BandC000644



BURROUGHS & CHAPIN COMPANY, INC.  
*Family Values Since 1895*

January 30, 2002

Mr. Mac Whittle, President  
Carolina First Corporation  
P. O. Box 1029  
Greenville, SC 29602

Mr. Michael E. McKelvy  
Manager of Operations  
Lockwood Greene  
P. O. Box 491  
Spartanburg, SC 29304

Mr. Burwell Manning  
4801 Kilbourne Road  
Columbia, SC 29206

Dr. Wade Nichols  
NLBF, LLC  
4605 Oleander Drive  
Myrtle Beach, SC 29577

Mr. Bill Diffenderfer  
Vice President of Finance & Development  
Regent Columbia, LLC  
3340 Peachtree Road, NE #1000  
Atlanta, GA 30326

Re: Columbia Venture

Gentlemen:

Please find the attached proposed compromise agreement drafted between us and Mr. Gayle Averyt, a well known business leader in the community who has assumed responsibility of crafting an agreement, that will meet the approval of the Columbia City Council, the environmental groups and Columbia Venture.

Based on our communication with Mr. Averyt, we are reasonably optimistic that his proposal will reflect a compromise acceptable to the majority of all parties.

CORPORATE OFFICE: Founders Centre 2411 Oak Street Suite 402 Myrtle Beach, SC 29577 / P.O. Box 2095 Myrtle Beach, SC 29578-2095 / (843) 448-5123 FAX (843) 448-9838  
BRANCH OFFICE: 314 Main Street Conway, SC 29526 / P.O. Box 260 Conway, SC 29526-0260 / (843) 248-1237 FAX (843) 248-6370

Def Trial Ex 105



Columbia Venture Partners  
January 30, 2002  
Page Two

The proposed compromise is close to that which we have discussed in the past and will allow us to free up for development approximately 1500 acres and provide for a conservation easement over the balance of the property, approximately 2900 acres.

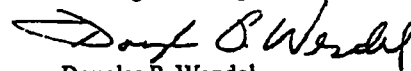
Hopefully the draft proposed compromise will meet with your approval. If for any reason it does not meet with your approval, please advise Mr. Jim Wiseman prior to the close of business on Friday, February 1, 2002. Mr. Wiseman can be reached at (843) 448-5123, Ext. 3227, or on his mobile at (803) 446-8400. Simultaneous with this transmittal, I am asking Burroughs & Chapin's Board for their reaction to this proposal. Assuming it meets with your approval and that of the B&C Board, Mr. Averyt will be advised that he can proceed with briefing the City Council and hopefully consummating an agreement acceptable to all parties.

Substantial progress is being made on all other fronts as it relates to our exist strategy as discussed in our prior meeting.

I look forward to meeting with you in the future and bringing you up to date on all of these complicated efforts and activities.

Sincerely yours,

Burroughs & Chapin Co., Inc.



Douglas P. Wendel  
President & CEO

DPW/pjm

cc: Jim Wiseman  
Barry Spivey  
George Gregory





BURROUGHS & CHAPIN COMPANY, INC.  
Family Values Since 1895

## MEMORANDUM

\*\*\*\*\*

TO: J. Egerton Burroughs, Chairman  
Timothy E. Bryant  
Henry B. Burroughs, Jr.  
Claire Chapin Epps  
Timothy G. Dargan  
Harold Hartshorne, Jr., Director Emeritus  
Hal B. Holmes, Jr.  
Edward G. Menzie  
David L. Maynard  
Dr. Clifford E. Roemer  
W. David Rhodes, III

FROM: *DW* Douglas P. Wendel, President and CEO

RE: Columbia Venture

DATE: January 30, 2002

Please find the attached compromise agreement recently negotiated with Gayle Averyt, a well known business leader in the Columbia community. Mr. Averyt has assumed responsibility for attempting to craft a compromise between the environmental groups, the City of Columbia and Columbia Venture, LLC, to allow for upgrading of the levee and freeing up of 1500+/- acres for development and overlaying a conservation easement on the balance of approximately 2900 acres of property.

This is the compromise measure, which we had previously discussed and referred to as the Coble Plan. It accomplishes our objectives we previously discussed and will assist us in accomplishing a timely exit plan.

Mr. Averyt is planning to present this compromise to the City of Columbia on Wednesday, February 6, 2002, if it meets with your approval. I have also sent a copy of this proposal to the members of Columbia Venture, LLC, for their review.

As a result, it would be greatly appreciated if you would review the proposal and advise Ji Wiseman, in my absence, prior to the close of business on Friday, February 1, 2002, if you have a problem with the compromise as outlined. Mr. Wiseman can be reached at (843) 448-5123, Ext. 3227, or on his mobile (803) 446-8400. If he does not hear from you by the close of

CORPORATE OFFICE: Founders Centre 2411 Oak Street Suite 402 Myrtle Beach, SC 29577 / P.O. Box 2095 Myrtle Beach, SC 29578-2095 / (843) 448-5123 FAX (843) 448-9538  
BRANCH OFFICE: 314 Main Street Conway, SC 29526 / P.O. Box 260 Conway, SC 29526-0260 / (843) 248-4237 FAX (843) 248-6570

business, we will advise Mr. Averyt it is acceptable and he is authorized to proceed with briefing and negotiating this settlement agreement with the City of Columbia.

We are reasonably optimistic based on his prior communication with the City Council that they will find the recommendation acceptable.

Substantial progress is being made on all other fronts as it relates to our exist strategy as discussed in our prior meeting. I look forward to meeting with you in the future and bringing you up to date on all of these complicated efforts and activities.

DPW/pjm

cc: Jim Wiseman  
Barry Spivey  
George Gregory

**DRAFT PROPOSAL**  
**CONFIDENTIAL**  
**B&C BOARD OF DIRECTORS**  
**COLUMBIA EXIT STRATEGY**

**PROPOSAL TO GAYLE AVERYT**

**BACKGROUND**

Gayle Averyt, a successful and active Columbia businessman has taken it upon himself to craft a compromise levee upgrade agreement. The city has agreed to him negotiating such a compromise. Mr. Averyt is a well-known business leader in the community and is past Chairman and majority stockholder in Colonial Life Insurance Company. He was on the Board of Directors at Heathwood Hall School when the school moved from downtown Columbia to its present location. The plan is one that upgrades part of the Congaree River levee along with an intermediate levee that ties into I-77. This compromise would give Columbia Venture (CV) approximately 1500 acres of developable property behind a levee. It basically includes what CV has been calling Phase I of the original project. Having Mr. Averyt on the point is advantageous. He is well respected and has a good relationship with the business community as well as some of the political and environmental leaders. Mr. Averyt has a good chance of successfully crafting an acceptable compromise.

**B&C PERSPECTIVE**

As part of this proposal, a 501c3 corporation (CORP) would be established to upgrade the levee. CV would have a seat on the CORP and would be assigned responsibility for working with engineers and contractors to properly design and construct a levee that would receive FEMA certification. B&C would agree that it would indemnify the CORP to excess costs of building the levee. CV and the CORP would have a right to back out of the deal after the CLOMR has been approved by FEMA if the estimated/contracted costs of upgrading the levee were not well within budget. The City is responsible for all front-end engineering costs in securing the CLOMR. CV is confident, through its own engineers, that the levee can be built for approximately \$9+/- million, pending final design. In other words, when the CLOMR is complete, CV will know within 5% what the costs of the levee will be prior to committing to fund the levee construction. CV will not have to put any additional funds in until it knows the costs and the impacts to land value. This is the fastest way to get the levee done. It gets the City moving by protecting them from their perceived liability and caps their cash contribution at \$8,750,000. The compromise takes the City out of the building process so that the CORP can manage, expedite, and control costs. Also, Heathwood will be putting in the first \$500,000 for levee construction. This 501c3 would also protect CV and B&C from liability relating to the levee construction. (See attached letter-Bill Boyd) If a potential buyer surfaces, CV could sell its interest in the property and let the new owner take over its position in the CORP.



PROPOSAL

- Form a 501c3 Corporation (CORP) to build levee with Gayle Averyt as Chairman with Board participation by CV and Heathwood. CV would be responsible for working with engineers and contractors to guarantee a certifiable levee is constructed.
- City of Columbia contributes \$8,750,000 in cash to CORP.
- City of Columbia receives 125 acres (value of \$10,000 per acre for a total of \$1,250,000) at no additional cost to the city for future plant expansion and buffer that will satisfy the plant's need for the next 50 plus years.
- City of Columbia does engineering and submittal for CLOMR.
- CV turns over all existing engineering documents to City of Columbia and CORP
- CORP evaluates CLOMR and costs for project.
- City annexes Levee Section One (inside compromise levee) as a Planned Development District under a formal development agreement.
- CV, Heathwood, and Bill Gregg (owner of adjacent land inside levee) will deed levee footprint and levee modification land to CORP. (CV portion +/-300 acres valued at \$3,000,000)
- Heathwood contributes \$500,000 in cash to CORP.
- CV and Bill Gregg give borrow material to construct levee to CORP. (CV portion valued at \$6,440,000)
- CORP builds levee with no further contribution or liability to the City of Columbia.
- CORP is dissolved or transferred to the City upon certification of the levee by FEMA and execution of the LOMR. (CV has no liability or ongoing responsibility)
- City is responsible for maintenance of the levee (through the CORP if desired) with possibility of using a special tax district to reimburse funds for maintenance.
- CV secures 1500 acres +/- of developable property via PDD development agreement.
- CV places 2900 +/- of land under a conservation easement restricting vertical development.

**DRAFT OF TRANSMITTAL LETTER TO BE SENT TO MR. AVERYT UPON  
BOARD APPROVAL.**

January 30, 2002

Mr. Gayle Averyt  
P. O. Box 1365  
Columbia, SC 29202

Dear Mr. Averyt:

Per your request and prior conversation, please find the attached outline for a compromise levee upgrade for the Columbia Venture property. While we sincerely believe that the entire 4,400 acres can and should be developed, we also understand that it may be necessary to work together toward a compromise to heal the community and work to protect existing private and public investments. I must make it clear that Columbia Venture is pursuing other options and time is of the essence. Thus, we reserve the right to withdraw this proposal unless substantial progress is made aimed at a March 15, 2002, formal agreement. However, we are willing to work with you to attempt to negotiate a solution that protects Heathwood Hall, the City wastewater treatment plant, and would allow a small portion of the property to be developed as planned.

The outline (attached) summarizes what you suggested last week. The City will have a cash contribution that is capped, no liability from building the levee, and will have expansion land for the next 50 years for the wastewater treatment plant. Also, Columbia Venture would agree to place approximately 2,900 acres that would be outside of the compromise levee into a conservation easement prohibiting vertical development. This easement would allow hunting, farming, and passive recreation. This is not a position we would take under normal circumstances. However, under your guidance and leadership, we are willing to work with you on this compromise. In that regard, we present this proposal only after much thought and consideration. The purpose of the proposal was not to present negotiating points, but to set out a reasonable position that could be agreed to by all the parties.

\* This has  
to be  
corrected.  
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PRo Qao ?

In forming the 501c3 corporation, we would agree and recommend that you serve as chairman. Columbia Venture has a tremendous amount of engineering and planning data that we will make available for you and/or the City. Columbia Venture would work with you throughout the levee reconstruction process.

CV004017

**CV004018**

Mr. Gayle Averyt  
January 30, 2002  
Page Two

The proposal must be acted on as soon as possible. We stand ready to agree to your compromise if it can be consummated by March 15, 2002.

Sincerely yours,

Douglas P. Wendel

DPW/pjm

CC: Barry Spivey

**CV004018**

## HAYNSWORTH SINKLER BOYD, P.A.

ATTORNEYS AT LAW

OTHER OFFICES  
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FLORENCE, SOUTH CAROLINA  
GREENVILLE, SOUTH CAROLINA

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WILLIAM C. BOYD  
DIRECT DIAL NUMBER 803 540 7803  
E-MAIL ADDRESS [bsboyd@hsblawfirm.com](mailto:bsboyd@hsblawfirm.com)

January 30, 2002

VIA FACSIMILE (843) 913-5920

Mr. Jim Wiseman  
Columbia Ventures, LLC  
4875 Forest Drive  
Columbia, SC 29206

Dear Jim:

You have asked us to review the plan for construction, ownership and maintenance of the levee system to be built with the City of Columbia (City), Heathwood Hall Episcopal School (Heathwood), Columbia Ventures (CV) and William M Gregg (Gregg) contributing materials and cost. It is proposed that a 501(c)(3) (non-profit) corporation be formed for the public purpose of constructing, owning and maintaining a levee system which would benefit the City, primarily by protecting its wastewater treatment plant, Heathwood, also a 501(c)(3) corporation and, incidentally, certain lands owned by CV and Gregg. The entity would be formed by the City with the City having the sole responsibility for appointing directors. Heathwood and/or CV or other landowners might be entitled to select one or more directors, but control would rest with the City. Each of the City, Heathwood, CV and Gregg would contribute towards improving Levee Section 1. These contributions would include, among other things, all engineering studies previously performed for CV, building materials (dirt) from CV and Gregg and deed of the land under the "foot print" of the levee. CV would agree to provide additional property to the City for expansion of its sewer plant, etc. It is deemed to be in the public interest to improve the levee system to a 500-year, certified level and the City would so find.

You have asked what liability, if any, CV might have going forward. Assuming a properly structured 501(c)(3) corporation, duly incorporated and qualified as a tax exempt organization, CV or its constituent partners should not incur ongoing liability. The idea is for a separate entity to do the construction, own the levee system and be responsible for the maintenance with ultimate control of the 501(c)(3) corporation to rest with the City. The City would retain the right of inspection, etc. Ultimately a special tax district may be set up which could provide special assessments for maintenance from landowners protected by the levee system, but this has not yet been determined. Obviously if this were the case there would be tax assessments against property owned by

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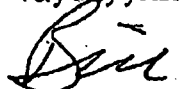


## HAYNSWORTH SINKLER BOYD, P.A.

Mr. Jim Wiseman  
January 30, 2002  
Page 2

CV to the extent it is protected by the levee system improvements. CV may or may not undertake certain advisory duties during construction. We assume that engineering studies and construction will be performed by third party professionals, under contract with the 501(c)(3) entity. This should insulate CV from liability for engineering and/or construction. Also, I understand that CV might agree to a cap on the cost of construction after which it would be financially liable for any excess costs. Obviously this is a financial liability which might be incurred, but that would be limited to the excess over the cap. After the levee is certified by FEMA and accepted by the 501(c)(3), CV would have no continuing role with regard to the levee system and therefore should have no continuing liability.

Very truly yours,



William C. Boyd

WCB:kdt

BURROUGHS & CHAPIN COMPANY, INC.  
Board of Directors Special Meeting  
February 1, 2002

A Special Meeting of the Board of Directors of Burroughs & Chapin Company, Inc. was held at the Founders Center, Myrtle Beach, South Carolina on February 1, 2002, at approximately 9:15 a.m. (with several participants participating via the telephone)

Present were:

J. Egerton Burroughs, Chairman  
Larry L. Biddle (via telephone)  
Henry B. Burroughs, Jr. (via telephone)  
Timothy E. Bryant (via telephone)  
Claire Chapin Epps (via telephone)  
Timothy G. Dargan (via telephone)  
Dr. Hal B. Holmes, Jr. (via telephone)  
W. David Rhodes, III  
Dr. Clifford E. Roemer (via telephone)  
George T. Gregory, III, General Counsel  
Franklin J. Long, Vice President Administrative Services & Corporate Secretary  
Peggy Magruder, Executive Assistant  
Barry R. Spivey, Chief Financial Officer  
Douglas P. Wendel, President & CEO (via telephone)  
Jim Wiseman, Senior Vice President  
Bill Boyd, Attorney (via telephone)

Douglas P. Wendel, presiding, called the meeting to order and gave an introductory comment to bring everyone up-to-date on where Staff is on the Columbia Venture project. He indicated that since the Board of Directors adopted the resolution and gave Staff clear directions, Jim Wiseman, George Gregory and support Staff and Barry Spivey on the financial side have been working very, very hard in preparing the conservation easement and moving towards completing the exit plan by December 2002.

There are a lot of options open as to how to maximize the investments and take the partners' interest into account. One option was to continue to work with the City of Columbia to try to maximize the investment by getting a Conditional Letter Of Map Revision (CLOMR) in place, and accomplishing a levee upgrade of some form, if not the entire levee, then a compromise levee (referred to as Coble plan. Toward this end, the City recently hired Dr. Humphries, who is the exDean for the School of Engineering for the University of South Carolina. He is now in the engineering consulting business and has a lot of credibility. He conducted an updated engineering study for the City to evaluate all of their options to protect the City's wastewater treatment facilities. The options ranged from a ring levee around the wastewater treatment plant, or a ring levee around the wastewater treatment plan and Heathwood Hall, or completion of a broader levee. Dr. Humphries completed his report, and it was a major positive step for us. His report said that the modified levee plan was the best alternative, and it could be done with a no rise, no impact on Lexington County, and as a matter of fact, has a positive impact on Lexington. Also, it could be done in a cost effective way where the City could invest their money in that levee rather than doing the ring levee. Heathwood Hall would be salvaged, and Columbia Venture would have some developable property. When Mr. Humphries presented that report, we were over a major hurdle. The report was made after a meeting with FEMA, which concurred with Dr. Humphries' report. Columbia Venture's position is now much stronger. The City Council, however, is still divided although it appears a consensus is being built.

An approval of some levee upgrade plan similar to that submitted to the Board for consideration will allow Staff to move the exit process ahead and keep all of our options open including conservation easements or a levee upgrade. Lockwood Greene has done a lot of engineering studies on the upgrading of the levee. Because of that information, Staff is comfortable that the levee could be upgraded within the

estimated dollar amount. It was noted that the possible levee upgrade scenario does not alter in any way our desire to place a conservation easement on all or a portion of the property.

It was noted that B&C Staff has been in contact with all of the partners of Columbia Venture, LLC regarding purchasing some of the conservation easement tax credits. Carolina First (Mack Whittle) and Dr. Nichols indicated they are interested in pursuing some and will be working with Barry Spivey and their tax consultant.

Staff also has been in contact with the City, the University of South Carolina, the County and Heathwood Hall regarding purchasing land from Columbia Venture. All expressed some interest with the exception of Heathwood Hall. They are not interested in securing more land, but are interested in working with us by contributing 50+ acres, which is required for the levee upgrade.

With the many options available to Columbia Venture, the Board has agreed to allow us to continue to work with the City on completing the CLOMR, getting it submitted, getting FEMA to approve it, developing detailed design engineering, and knowing the project can be completed within the dollar amounts expected, and creating a 501(c)(3) entity to complete the levee improvements.

Mr. Gayle Averyt, a respected Columbia businessman and a prior Heathwood Hall Board Member, has had conversations with the environmental groups and for the most part, they will support a plan to allow the levee to be upgraded. He is very interested in seeing the plan become a reality, which would protect Heathwood Hall.

There are some other options. If for one reason or another, an impasse was reached with the City of Columbia, Columbia Venture could then go to Cayce and request annexation. There has been some conversation with the City of Cayce. Cayce, via the river, lies adjacent to the property. That would be a last resort due to related controversy. For that reason, Staff has not pursued that option. Cayce would probably work with Staff on a development agreement and Multi-County Business Park, but that would probably take the process well into 2003.

The FEMA lawsuit/appeal is still in the same status. FEMA asked for additional time to reply and as of today, they have not replied. The suggested compromise would have no impact on the suit/appeal.

Mr. Averyt wants approval of the proposed plan before he goes forward, which is the reason for submittal of the proposal to the Board. He plans to sit down with the City on Wednesday, February 6, 2002, and wanted approval by then.

The County is interested in purchasing 150 acres on the southeast side of I77 for possible relation of a Farmers Market and recreation fields. They have a \$12M recreation bond. Staff gave them a letter saying that if they are interested in the property, contingent on Board approval, Columbia Venture would consider selling them 150 acres at \$30,000 an acre. They are fighting to keep the farmers market. Staff believes it has potential. That area is out of the floodway and they could start working on it right away. Again, this is an option and will not go ahead of plans to place the conservation easements.

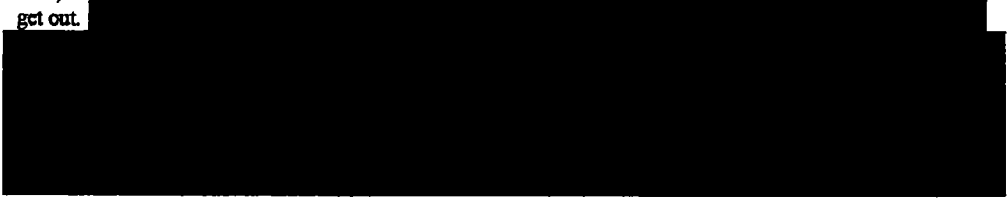
Staff also met with the University of South Carolina and told them if they were interested in picking up and crusading to implement the vision B&C had to create a research park together with private industry, the city or the county, or the State Commerce Department, that Staff would consider, based again on Board approval, if they made a formal request, to sell them all or a portion of the land that would be within the modified Averyt/Coble levee upgrade plan, that the City did not take for the wastewater treatment plant, for \$30,000 an acre. There is a lot of dialogue going on. Staff also met with Larry Wilson, via the request of Mack Whittle. Larry Wilson is a member of the new President selection team and is one of the lead players there. We will keep him in the loop and assure that when they hire a new President that he is up to date and aware of what is going on. He indicated they are fairly close to doing that.

Jim Wiseman indicated we have about two months worth of work to do on the CLOMR prior to submitting it to FEMA. The City would pay all those costs and Dr. Humphries would do the work.

Mr. Wendel indicated there also is dialogue going on with private investors who are seriously interested in the property – Jefferson Development is interested. Staff is also working on setting up a meeting with Bill Timmerman, SCANA President, to determine their interest in pursuing conservation easement credits. George Gregory also is in the process of identifying and meeting with several professional organizations who have a specialty with conservation easements to expand the search for a purchaser.

David Rhodes indicated he would like clarification of the acreage. Mr. Wiseman said the correct acreage is 4400. Mr. Rhodes said if the conservation easement value of Levees 2 and 3 are \$65M, and if you put a factor of 25% on that, you should be able to gain about \$16.250M. If you add the \$16.250M to the \$29.1M value of Levee 1, if this plan works, \$45-46M could be realized from the property.

Mr. Rhodes also said to refresh everyone's memory – the debt is \$14M, all equity (cash & non-cash) is \$20M. So if Columbia Venture realizes \$46M, there will be a nice margin between what it takes to get out.



Dr. Hal Holmes asked if Columbia Venture would be contributing land and fill dirt value or cash? Mr. Wiseman said Columbia Venture's contribution was fill dirt and land. The amount of acreage and cubic yards of fill dirt had been confirmed by Dr. Humphries. Columbia Venture would be putting in more value than the City is. The \$6.4M for the dirt is separate from the \$9.25M in cash it takes. In other words, the \$9.25M is putting the fill material in the right spot. That does not include any purchase of land.

Dr. Holmes asked how certain is Staff that if we go through the CLOMR process, that it will be accepted. Is there some type of contractual obligation, can they change their mind or are they locked in before construction begins? Jim Wiseman said the two month period he was talking about is for Mr. Humphries to fill out the CLOMR application which includes all the engineering necessary to be able to upgrade the levee. Once that is finished, that is a conditional of map revision. Once FEMA agrees to that, and construction is performed in accordance with the plans, there is no option for them at the end of the time to not give the map revision.

Mr. Wendel said in answer to Dr. Holmes question, Columbia Venture will want a contract with the City that is enforceable, that they are going to submit to CLOMR, complete that process, provide the dollars necessary as outlined in the submittal and add a relationship with Heathwood that Heathwood is going to provide \$0.5M.

One item that needs to be addressed is an adjacent property owner – Bill Gregg. The levee also is located on his land. He has verbally said he would work with Columbia Venture on the recent proposed configuration and he will also donate his land under the levee and some fill material. That needs to be a formal agreement as well. Bill Boyd will follow up.



Mr. Wendel said it is very complex. Staff is moving fast because of the guidelines set by the Board. Staff feels it is achievable. Staff has accomplished one thing – a report by Dr. Humphries and confirmed by FEMA saying that the levee can be upgraded and meet FEMA and Corps's requirements with a no rise situation. The worst case scenario is if the levee upgrade plan cannot be completed, we are in a much stronger position for our values as it relates to a conservation easement. At that point in time, it is Staff's intent, upon discussion with the Board, to overlay a conservation easement and it does have

substantial value because there has been a determination that the levee can be upgraded and create value which is deferred by a conservation easement.

Dr. Holmes asked about B&C's ability to nail down the costs going in and responsibility for costs over and above the \$9.250M. Jim Wiseman said there will be contingencies in the agreement and Staff will come back to the Board with evidence of reliable costs prior to signing the agreement. Staff feels fairly comfortable. If you remember from Lockwood Greene, a longer levee around Levees 1 and 2, the cost was about \$10.5M, so this design is 60% of that much larger levee plan. Staff is fairly confident with the \$9.25M figure. If Columbia Venture is not comfortable with the costs, after reviewing the plans, the documents would not be signed at that time. Henry Burroughs asked if the indemnification provision could be omitted from the contract. Bill Boyd said that goes away at the end of construction.

Mr. Wendel said one of the things he was very sensitive to and the only reason to be involved with the CORP (501(c)(3)) and construction effort is to be sure Columbia Venture is in the position of controlling construction so that nobody else gets in there and lets it get out of whack. If Staff is involved, Columbia Venture can get adequate assurance in monitoring and managing it to make it work. Staff won't be controlling it in the sense where they will be the only person, but the understanding will be that Columbia Venture will be involved with the engineers and contractors in managing and monitoring the process. The 501(c)(3) would contract with the engineers and the contractors to do the work and Staff would just be handling oversight, which would insulate Columbia Venture additionally. Jim Wiseman said there are some details to be worked out in that regard prior to signing the agreement.

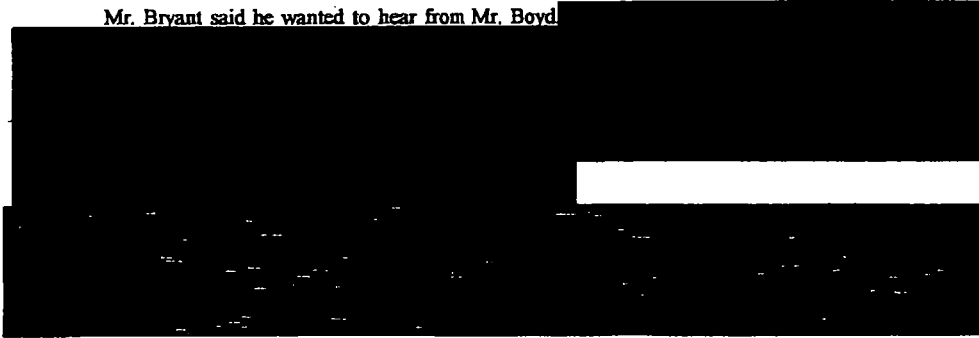
Everyone needs to be sure it can be done for the contracted amount plus contingency in order to go forward. Jim Wiseman said this is the only way to get the agreement with the City. By capping the costs, they were willing to put the \$8.75M cash in. If we went back to some cost sharing agreement, some support would be lost with the City.

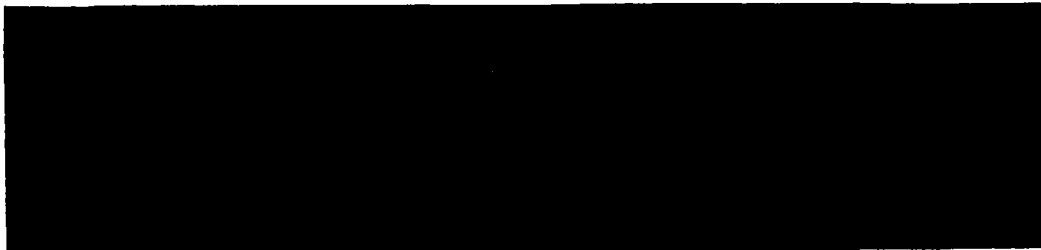


Mr. Rhodes said going back to the fill material, \$6.5M. As part of the original plan, Columbia Venture was going to put some ponds on the property and take some fill dirt out all along. Mr. Wiseman said that plan has not changed and that does not depreciate the value of the land. It is designed in the land plan to enhance it and be part of the stormwater system, etc. Mr. Bryant asked if some of the fill material could be taken out of Levee Section 2 and Jim Wiseman said yes and that has been anticipated. The levee on the southside of I-77 (there is already a big lake there) and on the outside of Levee areas identified are in the Section 2 for the southside of I-77.

Mr. Rhodes said while we are exploring all options including conservation easements on Levee 1, can Staff also be proceeding on the conservation easement, and getting proceeds out of the conservation easement on Levee Sections 2 and 3 before the levee is built? The answer is yes. Mr. Wiseman said there is a lot of interest from the County on the 150 acres so that is the best way to get money in as quickly as possible.

Mr. Bryant said he wanted to hear from Mr. Boyd





Mr. Wendel asked if there were any other questions. If none, he would like to entertain approval for Staff to proceed in accordance with conversations and clarification in pursuing a levee upgrade plan as presented. Hal B. Holmes made the motion, Claire Epps seconded and the motion carried. (It should be noted that David Maynard indicated a vote of "no" through written response prior to this meeting and without the benefit of discussion held at this meeting on February 1, 2002).

There being no further business to come before the Board, the meeting was adjourned.

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J. Egerton Burroughs  
Chairman of the Board

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Franklin J. Long  
Corporate Secretary

I, FRANKLIN J. LONG, CORPORATE SECRETARY FOR BURROUGHS & CHAPIN COMPANY, INC., HEREBY CERTIFY THAT I HAVE REVIEWED THE ABOVE REFERENCED DRAFT MINUTES AND TO THE BEST OF MY KNOWLEDGE, AGREE TO THEIR CORRECTNESS.

---

FRANKLIN J. LONG, CORPORATE SECRETARY

**PROPOSAL FOR CONSTRUCTION OF  
MODIFIED LINEAR LEVEE  
(SECTION I)**

Columbia Venture

- Deed approximately 300 acres, valued at \$3 million, of the levee footprint and levee modification land to a levee development corporation (see below).
- In accordance with its alternate plan for Levee Sections II and III, place over 2,900 acres of land in permanent conservation easement or syndication that prohibits any development that would impede floodwaters.
- Provide \$6.44 million of borrow material (soil) to the City for purposes of upgrading the levee.

Levee Development Corporation

- A 501(c)(3) corporation would be formed with City, Heathwood Hall Episcopal School and Columbia Venture participation for the purposes of building the levee.
- Columbia Venture agrees to work with engineers and contractors to guarantee that a certifiable levee is built.
- Columbia Venture will provide the corporation with all previous engineering studies and expertise for design of the upgraded Columbia levee, as well as participate in further studies as needed.
- Columbia Venture agrees to indemnify the corporation to any excess costs of building the levee. This assumes levee design and construction are comparable to what is currently being proposed.
- Corporation can be dissolved or transferred to the City upon certification of the levee by FEMA and execution of a Letter of Map Revision (LOMR).

Heathwood Hall

- Contributes \$500,000 in cash to the levee development corporation.
- Deed its portion of the levee footprint and modification land to the corporation.

City of Columbia

- City purchases 125 acres of land for \$1.25 million for future plant expansion and a buffer that will meet the city's wastewater treatment needs for at least the next 50 years.
- City contributes a maximum of \$7.50 million to the corporation for levee construction. In exchange, the City receives from Columbia Venture \$3.0 million in land and \$6.44 million in materials for construction of the levee.
- City would provide engineering and submittal of levee design for Conditional Letter of Map Revision (CLOMR).
- City would be responsible for levee maintenance under a method of its choosing, such as through the levee development corporation or a special tax district.
- City agrees to annex land inside the upgraded levee as Planned Development District under a negotiated development agreement with Columbia Venture. AN ALTERNATE APPROACH WOULD BE FOR BURROUGHS & CHAPIN TO AGREE TO GIVE THE CITY THE RIGHT TO SELL THEIR INTEREST IN SECTION 1 OF APPROXIMATELY 1,500 ACRES AT A PRICE OF \$21,000 PER ACRE TO ANY DEVELOPER OR ENTITY THAT WOULD MEET THE CITY'S APPROVAL. THIS COULD BE DONE BY THE CITY SELECTING A SINGLE DESIRED ENTITY OR THROUGH A BIDDING PROCESS WHEREBY MULTIPLE PROPOSALS COULD BE SUBMITTED WITH THE CITY CHOOSING ITS PREFERRED BUYER.



JUL-17-2002 18:33

PRUDENTIAL REAL ESTATE

Big Island Investments, Inc.  
11300 North Central Expy. Suite 408  
Dallas, Texas 75243  
Telephone (214)750-7741  
Fax (214)750-7299

May 14, 2002

Mr. George T. Gregory, III  
Burroughs & Chapin Company, Inc.  
Assistant to CEO/General Counsel  
2411 N. Oak Street  
Myrtle Beach, South Carolina 29577

**RE: LETTER OF INTENT TO PURCHASE:**  
Approximately 4,500 acres in Columbia, South Carolina at the intersection of  
Bluff Road and I-77.

Dear George:

Big Island Investments, Inc. or its assign ("Purchaser"), is pleased to submit this offer to purchase an approximate 4,500 acres of land in Columbia, South Carolina at the intersection of Bluff Road and I-77 (the "Property").

The following are the general terms and conditions upon which Purchaser would be willing to purchase from Seller the Property, including all improvements thereon, and all other rights and interests belonging to Seller located on or used in conjunction with the Property (collectively, the "Property").

1. **The Property:** An approximate 4,500 acres in Columbia, South Carolina at the intersection of Bluff Road and I-77 ("Property").
2. **Purchase Price:** The Purchase Price for the property shall be Twenty-Six Million Two Hundred-Fifty Thousand and No/100 Dollars (\$26,250,000). The Purchase Price, subject to adjustments and prorations, shall be paid in cash on the Closing Date.
3. **Earnest Money and Inspection Period:** Upon final execution of a Contract by Purchaser and Seller, Purchaser shall deposit with Chicago Title Company, Purchaser's refundable earnest money in the amount of Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000) (the "Deposit"). Seller shall have fifteen (15) days from the execution date of the Contract to deliver an acceptable survey and shall immediately deliver a title commitment to Purchaser along with all other due diligence items as requested by Purchaser.

Def Trial Ex 109

Purchaser shall have sixty (60) days following the execution of a contract of sale to make all audits, studies, perform environmental inspections or other investigations desired by Purchaser (the "Inspection Period"). If within the Inspection Period the Purchaser determines in its sole and absolute discretion that it does not desire to purchase the Property, then it may give notice of such fact to the Seller and the Contract shall become null and void and terminate immediately, whereupon the Deposit together with all accrued interest thereon, shall be immediately refunded to Purchaser. If the Contract has not been terminated prior to the expiration of the Inspection Period, then Purchaser shall deposit with Chicago Title Company additional earnest money in the amount of One Hundred and No/100 Dollars (\$100,000) which shall become a part of the Deposit for all purposes and the Deposit shall be non-refundable for all reasons except Seller's default. It is understood that Purchaser's main intent to purchase this property is that the Purchaser will receive approximately \$140,000,000 tax benefit to be used in the year 2002.

4. Closing Date: The closing shall occur on or before thirty (30) days following Purchaser's receipt of verification that the IRS has completely signed off on the \$140,000,000 tax write-off.
5. Withdrawal of Property From Market: From the time this Letter of Intent is executed, until the Contract is executed or until negotiations between the parties with respect to the Contract are terminated, Seller agrees not to market the Property, and agrees not to entertain, solicit, discuss, negotiate or accept offers to purchase the Property, or to sell or agree to sell the Property.

THIS LETTER OF INTENT IS AN OUTLINE OF OUR GENERAL UNDERSTANDING OF THE CONTEMPLATED TRANSACTION AND IS NOT INTENDED TO CREATE BINDING LEGAL OBLIGATIONS ON EITHER PARTY EXCEPT AS TO PARAGRAPH 5. NO BINDING OBLIGATIONS (WITH THE EXCEPTION OF THOSE OBLIGATIONS CREATED IN ACCORDANCE WITH PARAGRAPH 5) BETWEEN PURCHASER AND SELLER ARE TO ARISE EXCEPT UPON FULL EXECUTION OF A FINAL CONTRACT. BOTH PURCHASER AND SELLER WILL WORK DILIGENTLY TO FINALIZE AND EXECUTE A CONTRACT OF SALE WITHIN FIFTEEN DAYS OF EXECUTION OF THIS LETTER OF INTENT.

CV004083

JUL-17-2002 18:34

PRUDENTIAL SEC REALTY

**PURCHASER:**

Big Island Investments, Inc.

By: 

David Roan, President

Date: May 14 2002

**SELLER:**

Burroughs & Chapin Company, Inc.

By: \_\_\_\_\_

George T. Gregory, III

Date: \_\_\_\_\_

TOTAL P. 03

CV004083

Green Stripe, Ltd.

June 11<sup>th</sup>, 2002

Memorandum

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To: George Gregory

From: Kohler 

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Hello George,

Please find attached the assumptions for a "recreational club" on the Green Diamond property. This write up is for discussion and illustrative purposes only. Should you desire to confirm or the refute the assumptions, qualified third party professionals should be retained.

The general assumptions are that the property comprises approximately 4,400<sup>+</sup> acres consisting of agricultural and forested lands and a conservation easement has been placed on the property that encumbers traditional development but allows for passive recreational and agricultural uses

Assuming the above, the general strategy is to establish an equity club of approximately 150 members that would own the 4,400<sup>+</sup> acres encumbered by the easement. Within the acreage the club would establish 150 homesites of approximately 2 acres per site and construct a Master Lodge. Essentially a member would own their respective homesite and a 1/150<sup>th</sup> undivided interest in the balance of the acreage and facilities. Assuming the above and based on previous experience in the area, I believe a reasonable value expectation would be approximately \$167,500 per participant. Based on this, the attached specific Income and Expense Assumptions were developed and incorporated into a cash flow model.

Thanks,

Def Trial Ex 110

Specific Assumptions become:

| <u>Line Item</u>                                   | <u>Description</u>                                                                                                                         |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>INCOME</b>                                      |                                                                                                                                            |
| <b>Absorption:</b>                                 |                                                                                                                                            |
| Membership                                         | 150 units @ 100 units the first 2 years with balance absorbed of the next 3 years with a total absorption period of 5 years                |
| <b>Product Pricing (5% Escalator)</b>              |                                                                                                                                            |
| Membership                                         | \$167,500/Unit with a 5% annual escalator                                                                                                  |
| <b>Total Gross Income:</b>                         | Absorption Multiplied by Pricing                                                                                                           |
| <b>EXPENSES</b>                                    |                                                                                                                                            |
| <b>Direct Development Costs</b>                    | \$5,800 per homesite completed within the first two years                                                                                  |
| <b>Common Master Lodge</b>                         | 15,000 Sq. Feet @ \$200/foot (Vertical and Horizontal and FF&E)                                                                            |
| <b>Sales &amp; Marketing Costs</b>                 | 8 % of Total Gross Income based on recent appraisals                                                                                       |
| <b>Real Estate Taxes</b>                           | Undetermined                                                                                                                               |
| <b>General &amp; Administrative+Legal&amp;Acct</b> | 3 % of Total Gross Income based on recent appraisals and IRS Cases and Rulings                                                             |
| <b>Land Cost</b>                                   | \$1,000/Acre                                                                                                                               |
| <b>Total Expenses</b>                              | Sum of Direct Development & Master Lodge Costs, Sales & Marketing Costs, Real Estate Taxes, General & Administrative + Legal & Acct., Land |
| <b>Net Income</b>                                  | Total Gross Income Minus Total Expenses                                                                                                    |
| <b>Discounted Cash Flow</b>                        | 11.56 % of Total Gross Income based on recent appraisals and IRS Cases and Rulings                                                         |

## Green Diamond Preserve

Run Date: 6/12/02

## Green Diamond Preserve

## Yield Plan ("Before Value")

|                                                    | Year 1           | Year 2           | Year 3           | Year 4           | Year 5           | Summary           |
|----------------------------------------------------|------------------|------------------|------------------|------------------|------------------|-------------------|
| <b>Income</b>                                      |                  |                  |                  |                  |                  |                   |
| Absorption                                         | 50               | 50               | 20               | 20               | 10               | 150               |
| Pricing with 8% Annual Escalator                   | 167,500          | 179,875          | 194,669          | 193,902          | 203,597          | 203,597           |
| <b>Total Gross Income</b>                          | <b>8,375,000</b> | <b>8,793,750</b> | <b>3,692,375</b> | <b>3,876,044</b> | <b>2,035,973</b> | <b>26,774,142</b> |
| <b>Expenses</b>                                    |                  |                  |                  |                  |                  |                   |
| Direct Development Costs (\$5,000/Site)            | 375,000          | 375,000          |                  |                  |                  | 750,000           |
| Common Master Lodge (15,000 Sq. Feet @ \$100/Foot) | 1,000,000        | 2,000,000        |                  |                  |                  | 3,000,000         |
| Sales & Marketing Costs (8%)                       | 670,000          | 703,500          | 295,470          | 310,244          | 162,878          | 2,142,091         |
| Real Estate Taxes                                  | 251,250          | 263,813          | 110,801          | 116,341          | 61,079           | 803,284           |
| General & Administration + Legal & Acct. (3%)      | 6,000,000        |                  |                  |                  |                  | 6,000,000         |
| <b>Total Expenses</b>                              | <b>8,296,250</b> | <b>3,342,313</b> | <b>406,271</b>   | <b>426,585</b>   | <b>223,957</b>   | <b>12,695,376</b> |
| <b>Net Income</b>                                  | <b>78,750</b>    | <b>5,451,438</b> | <b>3,286,104</b> | <b>3,451,459</b> | <b>1,812,016</b> | <b>14,080,766</b> |
| Discounted Cash Flow (11.56%)                      |                  |                  |                  |                  |                  | \$10,093,177      |

For Illustration  
Purposes Only

June 28, 2002

Mr. David Roan  
Big Island Investments  
11300 N. Central Expressway  
Suite 408  
Dallas, TX 75243

Dear David:

This letter is in response to your earlier letter of interest whereby you made an offer for the full fee interest of Columbia Venture, LLC in the amount of approximately Twenty-Six Million Dollars (\$26,000,000).

Since receipt of that letter, we have had several good conversations both with you and with your representatives. We viewed your offer as an extremely good opening offer and it represented a solid base from which we could continue meaningful dialogue.

It is our understanding, based on our subsequent conversations, that you would like to have our thoughts put in writing in the form of a counter to help ensure an ongoing progressive dialogue.

There are four areas, contained in your offering letter, that need to be addressed. These areas are (1) the amount of your offer, (2) contingencies, (3) timing, and (4) the need to involve your professionals and those of Mr. Van Tuyl to guarantee the complex issues surrounding the purchase receives the necessary attention to avoid any misunderstanding which could delay a final closing process.

Increasing the offer

As you have previously stated, the potential deducts are worth up to \$52,000,000 to Mr. Van Tuyl based on \$130,000,000 of available deductions. The industry standard in determining value, as outlined in the summary page that you have been provided clearly indicates this. These type deductions are normally discounted in the 70 to 73% range of value. In the summary page we had heavily discounted the estimated discounts by 75%. At that percentage, our calculations showed the value to be approximately \$32,000,000.

Def Trial Ex 111

Mr. David Roan  
June 28, 2002  
Page 2

Additionally, there is great potential for the underlying fee. As you have been made aware, Ducks Unlimited is desirous of ultimately owning the fee if the price is reasonable. We cannot begin to negotiate or make offers on Ducks Unlimited's behalf but we have been led to believe that they would be willing to spend between \$4-5,000,000 for the fee simple title.

You have also been provided a pro forma illustrating the potential value of a hunt club on the property. That pro forma was prepared by our consultant, Mr. Larry Kohler, who has been involved with a number of similar hunt clubs. It is our understanding that you have had further discussions with Mr. Kohler regarding the hunt club scenario, and you understand the potential value of this concept. We would be glad to facilitate a meeting with you, Ducks Unlimited and Columbia Venture, LLC to further pursue such a concept. Based on the Kohler pro forma, a hunt club would add significant additional value of \$8M to \$16M.

There are other additional potential layers of revenue based upon fee ownership that are deserving of further exploration. One in particular is the WRP (Wetlands Restoration Program) that is administered by the U. S. Department of Agriculture. Preliminary indications are that the WRP could provide up to approximately \$3,000,000 additional dollars to the owner of the fee. As a result, it is deserving of further exploration.

#### Contingencies

As we had discussed, there are several contingencies in your offer that are not acceptable. These include exclusivity in negotiations and an IRS opinion letter. As you are aware, we had been previously discussing the sale/purchase of this property with a number of interested parties and are seriously dialoging with them. One concern that has been expressed through one of your agents is that we are using your offer to help drive other offers. Let us assure you that is simply not the case.

Our professional consultants inform us that the IRS will not provide a front-end opinion based on a deal. As you are aware, however, we have gone to the extreme to help ensure that the purchase package is prepared in a manner which should facilitate proper IRS review. Mr. Smalls, a Boston attorney, who is a nationally recognized expert in the conservation easement arena and the co-author of the legislation that allows it is one of these consultants. Additionally, we have undertaken, at great expense, the most complete and comprehensive appraisal methodologies available to help ensure a proper review.

#### Timing/Professional Involvement

You have indicated a desire to complete a sale/purchase as quickly as possible. We agree and are moving as fast as possible. In fact, we have accelerated the whole process to accommodate this request. Hopefully, we can reach agreement on the value of the fee and the related tax advantages in a timely fashion. In furtherance of that, we need to have our tax professionals dialogue with yours as soon as possible. There are securities issues as well as form and substance issues related to the deal terms that must be addressed.



Mr. David Roan  
June 28, 2002  
Page 3

Be advised we wish to contract with a potential buyer by the end of July 2002. We have scheduled meetings with Columbia Venture, LLC partners, and with our own board on the 18<sup>th</sup> and 22<sup>nd</sup> respectively. Our partners and board members have been told to be prepared to discuss offers in detail and to be in a position to recommend acceptance of an offer by these meetings. We would then anticipate a closing somewhere between the end of August 2002 and September 15, 2002. While this is ambitious, we feel like it is possible. All of our professionals and consultants are moving to allow these dates to come to fruition.

You inquired as to what guidelines would be employed in choosing which contract offer to accept. You were told the following (subject to B&C and Columbia Venture Board of Directors approvals):

1. Net proceeds to Columbia Venture
2. Cleanest "form and substance" of the deal
3. Ability to close and do so in a timely fashion

Conclusion/Summary

We would like to counter back to you at \$35,000,000 for full fee based on what we perceive to be a very reasonable value of the property and related tax advantages. Please be advised this offer is contingent upon approval by the Columbia Venture membership and Burroughs & Chapin Board of Directors. This offer is further contingent upon the final appraisal numbers that support the deduction analysis.

Let's accelerate our dialogue with your professionals to guarantee all the necessary paperwork is completed in a timely manner. We will make our professionals available to yours to help in moving the process forward. We look forward to meeting with you, WRP professionals and Ducks Unlimited.

Mr. David Roan  
June 28, 2002  
Page 4

David, we have enjoyed working with you and look forward to continuing working with you and your professionals in completing this deal in a mutually satisfactory manner as outlined above.

With warmest regards, I remain,

Very truly yours,

George T. Gregory, III  
Assistant to the President &  
CEO/General Counsel

GTG/pjm

cc: Mr. Douglas P. Wendel  
Burroughs & Chapin Company Board of Directors  
Columbia Venture, LLC Members

**DISCLOSURE MEMORANDUM**

**To:** Cecil van Tuijl

**From:** Columbia Venture, LLC

**Date:** October 24, 2002

This Disclosure Memorandum is delivered to you in connection with your proposed purchase of all of the outstanding membership interests of Columbia Venture, LLC ("Columbia Venture"). This proposed purchase will be pursuant to a Membership Interest Purchase Agreement, to be negotiated by and among you, Columbia Venture and all of the members of Columbia Venture. The purpose of this Memorandum is to provide you with information about Columbia Venture and its assets and business prior to your becoming obligated to purchase the outstanding membership interests of Columbia Venture.

In this Memorandum, we have referred to different documents and have summarized some of the provisions of those documents. We have provided these summaries based on the assumption that you will make those representations, warranties and covenants in the draft Membership Interest Purchase Agreement sent to you on October 16, 2002, including, without limitation, those regarding your sophistication and knowledge and your independent investigations about Columbia Venture. In proceeding with a purchase of Columbia Venture's outstanding membership interests, you should rely on your own independent investigation and review of our records and documents and not on anything contained in this Memorandum.

**Information About Columbia Venture, LLC**

Columbia Venture is a member-managed limited liability company organized and existing under the laws of the State of South Carolina. It was organized originally as a manager-managed limited liability company on February 17, 1999, by the filing of Articles of Organization with the South Carolina Secretary of State and its initial members entered into an Operating Agreement as of February 19, 1999. As of August 22, 2002, the members of Columbia Venture agreed to amend and restate the Operating Agreement and, on October 16, 2002, filed Articles of Amendment to the Articles of Organization by which Columbia Venture became member-managed. An Amended and Restated Operating Agreement of Columbia Venture, LLC was executed by the members and dated effective as of October 16, 2002. Copies of all of these documents have been delivered to you (or are available to be delivered to you) as described on Exhibit E and Exhibit F to this Memorandum. The current members and the number of units owned by each of them are listed on Exhibit C to this Memorandum.

The only tangible asset of Columbia Venture with significant value is a tract of undeveloped land located in Richland County, South Carolina consisting of approximately 4,410 acres (the "Green Diamond Tract"). A summary of Columbia Venture's acquisition of, efforts to develop and other activity with respect to the Green Diamond Tract is attached as Exhibit B to this Memorandum. The contractual liabilities of Columbia Venture as of September 30, 2002, are listed on Exhibit D to this Memorandum.

#### **Special Risks**

Your purchase of all of the outstanding membership interests of Columbia Venture is subject to significant risks. Before becoming obligated for this purchase, you should consider the risks and speculative features that are inherent in any real estate investment and the special risks that are associated with Columbia Venture that are described on Exhibit A attached to this Memorandum. You should not purchase our membership interests unless you can afford to take those risks.

#### **Conflicts of Interest**

Columbia Venture has entered into a commission agreement with Waccamaw Land & Timber Co. regarding payment of a brokerage commission in connection with the sale of Columbia Venture's membership interests to you. This commission agreement contemplates that any commission payment would be divided between Waccamaw Land & Timber and Prudential Burroughs & Chapin Realty, Inc. Both Waccamaw Land & Timber and Prudential Burroughs & Chapin Realty, Inc. are acting as your agents in this transaction, and not as agents of Columbia Venture or any of its members. Prudential Burroughs & Chapin Realty, Inc. is a wholly owned subsidiary of Burroughs & Chapin Company, Inc., a member of Columbia Venture. The President of Waccamaw Land & Timber, Keith Hinson, serves on the board of directors of The South Financial Group, Inc., formerly known as Carolina First Corporation. The South Financial Group, Inc. is a member of Columbia Venture.

Brown Bethune, an agent of Prudential Burroughs & Chapin Realty, Inc., and Charles Hinson, an agent of Waccamaw Land & Timber, work closely together on many transactions, including this one.

Lockwood Greene Engineers, Inc., a member of Columbia Venture, provided mapping, engineering and cost estimates for the appraisal report of the Green Diamond Tract prepared by Van Sant Wingard, L.L.C.

#### **Documents Delivered To You**

Exhibit E to this Memorandum is a list of documents related to Columbia Venture that have been delivered to you and when they were delivered. Please review this list

carefully and confirm that you have received and reviewed each of these documents.

**Additional Documents And Information**

Exhibit F to this Memorandum is a list of additional documents related to Columbia Venture that are available for you to inspect upon request. We will also be glad for you to review any of our other records or documents we have related to Columbia Venture.

We will be glad to make any representative of Columbia Venture or any of its members available to meet with you and anyone who is advising you and answer any questions you may have about Columbia Venture.

**LIST OF EXHIBITS**

| <u>Exhibit</u> | <u>Description</u>                          |
|----------------|---------------------------------------------|
| A              | Special Risks                               |
| B              | Summary of the Green Diamond Project        |
| C              | Current Members and Number of Units Owned   |
| D              | Contractual Liabilities of Columbia Venture |
| E              | Documents Delivered to You                  |
| F              | Additional Documents Available Upon Request |

Exhibit A

**Special Risks**

*Your purchase of all of Columbia Venture's outstanding membership interests is subject to significant risks. Before purchasing those interests, you should consider the risks and speculative features which are inherent in and affect any real estate investment. You should also give careful consideration of the special risks described below which are unique to Columbia Venture. You should not purchase our membership interests unless you can afford an investment involving these risks as well as others:*

**You are purchasing Columbia Venture's membership interests in "AS-IS" condition. The property owned by Columbia Venture is not warranted in any way by us. We are not providing you with any representation or warranty with respect to the property owned by Columbia Venture, including, without limitation, any representation or warranty as to the title of the property, its fitness for any particular purpose or its compliance with any applicable laws. As the owner of Columbia Venture, you will have to rely on the warranties of prior owners, as to which we make no representation. You are assuming all of these and any other risks related to Columbia Venture or its property, except as expressly provided in the Purchase Agreement, and you are relying exclusively on your own due diligence before the purchase to identify any such risks.**

**We are not responsible for the success of any tax strategy that you may pursue in connection with Columbia Venture or its property. Columbia Venture has obtained an appraisal report from Van Sant Wingard, L.L.C. that estimates the value of the Green Diamond Tract. This report will be part of the assets of Columbia Venture if you complete your purchase of our membership interests. We are not responsible for the accuracy of this report or for the success of any tax strategy you undertake with respect to Columbia Venture or any of the property of Columbia Venture. You have sole responsibility for consulting with your own tax advisors and other advisors and deciding what course of action you should take with Columbia Venture and its property.**

**Development options for Columbia Venture's property may be limited by governmental restrictions. The Federal Emergency Management Agency ("FEMA") has taken final action that results in large portions of the property owned by Columbia Venture being designated as floodway, which map designation severely restricts possible uses of the property. We have initiated legal action against FEMA to overturn this decision, but that legal action is pending and has not been resolved. We have not made any warranty or representation to you about the probability of success of this legal action and, if the legal action is unsuccessful, the value of the property owned by Columbia Venture will be severely affected. Even if the FEMA litigation is ultimately successful, there are other significant legal barriers to development of the property owned by Columbia Venture. For example, any change in the current use of the Green Diamond Tract would be subject to all applicable zoning, wetlands and other governmental permitting requirements. You are assuming all risks associated with the success of the**

legal action against FEMA and all other governmental restrictions on development or use of the property owned by Columbia Venture and, as the owner of Columbia Venture, will be responsible for the future course of the litigation.

**Public opinion could adversely affect the use and value of the property owned by Columbia Venture.** Our efforts to develop the Green Diamond Tract have been widely publicized in the Columbia community and have been opposed by various individuals and groups. Some of these individuals and groups may oppose virtually any change in use of the Green Diamond Tract from its present use and may exert influence over public officials and bodies whose cooperation may be critical to the success of any plans for the property. Even if the existing governmental restrictions to development of the property could be overcome, other obstacles to development or a change in use could arise because of public opposition to a plan.



Exhibit B

**Summary of the Green Diamond Project**

The Green Diamond Tract is an undeveloped parcel of approximately 4,410 acres located in unincorporated Richland County, South Carolina. The Green Diamond Tract is bisected by Interstate Highway I-77 and is located on the eastern bank of the Congaree River and the western side of Bluff Road. The Green Diamond Tract is zoned RU-Rural District under the Richland County Zoning Ordinance. In addition to the Green Diamond Tract, Columbia Venture owns an approximately 10-acre tract located on the eastern side of Bluff Road ("East Bluff Tract") that Columbia Venture plans to donate to East Bluff Community Association, Inc. as a charitable contribution. Columbia Venture also owns the mark "Green Diamond" as provided in that certain Assignment dated June 5, 2000, from Burwell D. Manning (also known as Burwell D. Manning, Jr.) and Green Diamond, LLC to Columbia Venture.

Columbia Venture was formed for the purpose of developing the Green Diamond Tract into a mixed-use development consisting of a technology office park and other office, light industrial, commercial, residential and recreational uses.

Since the inception of Columbia Venture, there have been six members of Columbia Venture:

1. Burroughs & Chapin Company, Inc. ("B&C") is a real estate development and tourism company headquartered in Myrtle Beach, South Carolina. Columbia Venture issued 3,000 Class A Membership Units to B&C in exchange for an initial capital contribution of \$3,000,000 in cash and 6,000 Class B Membership Units in exchange for the contribution by B & C of contracts to purchase certain real property with an agreed value of \$6,000,000.

2. Columbia Venture issued 4,000 Class B Membership Units to Lockwood Greene Engineers, Inc. ("Lockwood") in exchange for Lockwood's agreement to provide certain engineering services to Columbia Venture. The members agreed that such services had a fair market of \$2,000,000. Lockwood Greene is an engineering and design firm headquartered in Spartanburg, South Carolina. Lockwood Greene is a wholly owned subsidiary of J.A. Jones, Inc.

3. Columbia Venture issued 2,000 Class A Membership Units to Fort Carson Family Housing, LLC ("Fort Carson") in exchange for a capital contribution of \$2,000,000 of cash. Fort Carson was a Georgia limited liability company and the wholly owned subsidiary of Regent Partners, LLC. Regent Partners, LLC is a full-service commercial real estate firm headquartered in Atlanta, Georgia, specializing in office, hotel, multi-family, retail and industrial properties. Regent Partners is the wholly owned subsidiary of J.A. Jones, Inc. On February 18, 1999, Fort Carson changed its name to Regent Columbia, LLC ("Regent Columbia"). In July, 2000, Lockwood transferred 1,000

Class B Membership Units to Regent Columbia (such transfer was deemed to be retroactive to the inception of Columbia Venture).

4. In exchange for a capital contribution of \$3,000,000 of cash, Columbia Venture issued 1,375 Class A Membership Units and 1,625 Class C Membership Units to Carolina First Corporation ("Carolina First"). Carolina First is a South Carolina based commercial bank holding company. Carolina First subsequently changed its name to The South Financial Group, Inc.

5. Columbia Venture issued 8,550 Class A Membership Units to Green Diamond, LLC ("Green Diamond") in exchange for the contribution by Green Diamond (or individuals or entities affiliated with Green Diamond) of a portion of the Green Diamond Tract. Pursuant to the Operating Agreement, the contributed land was assigned a fair market value of \$6,650,000. Green Diamond is a South Carolina limited liability company owned by Burwell D. Manning, Jr. and members of his family.

6. In exchange for a cash capital contribution of \$3,000,000 by NLBF, LLC ("NLBF"), Columbia Venture issued 3,000 Class A Membership Units to NLBF. NLBF is a South Carolina limited liability company owned by Dr. Wade Nichols and members of his family.

As provided in Section 2.4(e) of the Operating Agreement of Columbia Venture, Columbia Venture agreed to issue an additional 450 Class A Membership Units to Green Diamond in accordance with a Purchase Agreement between Columbia Venture and Eastern Corn and Grain Company, Inc. ("Eastern Corn") dated February 19, 1999 (the "Eastern Corn Agreement"). Eastern Corn and Green Diamond are both owned by Burwell D. Manning, Jr. and/or members of his family. The Eastern Corn Agreement provides, in general terms, that if and when Eastern Corn meets certain requirements (concerning the remediation of certain environmental conditions) with respect to approximately 51.705 acres of land contiguous to the Green Diamond Tract (the "Additional Tract"), Eastern Corn would contribute the Additional Tract to Columbia Venture in exchange for the issuance by Columbia Venture of 450 of its Class A Membership Units to Green Diamond. The Additional Tract was deemed to have a fair market value of \$350,000. The Additional Tract had been used historically for farming operations, which operations included fuel tanks and chemical mixing.

The Phase I and Phase II environmental reports obtained with respect to the Green Diamond Tract recommended that further environmental investigations be undertaken with respect to the Additional Tract. Eastern Corn retained Schnabel Engineering Associates, Inc. ("Schnabel") to undertake further investigation and certain remedial actions with respect to the Additional Tract. Schnabel issued a report dated October 16, 2000, and a report dated October 17, 2000, and a letter dated October 25, 2000 (collectively "the Schnabel Reports") concerning remediation of the Additional Tract. Further, the South Carolina Department of Health and Environmental Control has issued a letter dated October 31, 2000 ("DHEC Letter"), concerning remediation of the

**Additional Tract.** Eastern Corn delivered the Schnabel Reports and the DHEC Letter to Columbia Venture. An attorney for B&C wrote a letter to Eastern Corn indicating that such documents were not sufficient to comply with the Eastern Corn Agreement ("Ware Letter"). Eastern Corn indicated in a letter dated October 18, 2002, that Eastern Corn believes that it has complied with the Eastern Corn Agreement ("Manning Letter"). As of the date of this memorandum, Columbia Venture has not issued any additional membership units to Green Diamond. Copies of the Schnabel Reports, the DHEC Letter, the Ware Letter, and the Manning Letter are delivered to you herewith. Inasmuch as the Schnabel Reports are two years old, Columbia Venture has retained WESI, Inc. to update the information in the Schnabel Reports. Columbia Venture will provide that information to you upon receipt.

At inception, Columbia Venture's legal counsel was The McNair Law Firm, P.A.

On February 19, 1999, Columbia Venture acquired the Green Diamond Tract from the following persons:

| <b>Grantor</b>                                                                                                                                                     | <b>Recited Consideration</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| Congaree Farms, L.L.C.                                                                                                                                             | \$3,344,060.00               |
| Chapel Hill, L.L.C.                                                                                                                                                | \$2,502,400.00               |
| DAK III, LLC                                                                                                                                                       | \$2,097,600.00               |
| Burwell D. Manning, Jr.                                                                                                                                            | \$5.00                       |
| Elizabeth K. Manning                                                                                                                                               | \$5.00                       |
| Burwell D. Manning, Jr. and Eastern Corn and Grain Company, Inc.                                                                                                   | \$5.00                       |
| Burwell D. Manning, Jr., Elizabeth K. Manning, Overlook, Inc., Eastern Corn and Grain Company, Inc., Congaree Farms, L.L.C., DAK III, LLC, and Chapel Hill, L.L.C. | \$5.00                       |

Columbia Venture acquired the East Bluff Tract as part of the above-described transaction.

In considering the acquisition of the Green Diamond Tract, Columbia Venture conducted various investigations, including environmental audits, real estate title searches, investigation of zoning for the real property, and investigation of flood hazard designations.

After inception, Columbia Venture borrowed approximately \$7,500,000 from Carolina First for the purpose of redeeming the membership units issued to Green Diamond and borrowed additional amounts from Carolina First on a \$3,000,000 line of credit.

Subsequent to the inception of Columbia Venture, certain members of Columbia Venture have loaned money to Columbia Venture. In connection with most of those loans, the member that has made the loan has obtained the right to convert the loan to an equity

interest in Columbia Venture. To date, no member has exercised such conversion right. Member loans are shown with the other contractual liabilities of Columbia Venture as of September 30, 2002, on Exhibit D hereto.

On April 14, 2000, Columbia Venture redeemed 2,907 of the Class A Membership Units issued to Green Diamond in exchange for a cash payment of \$2,500,502.79 plus interest. On June 5, 2000, Columbia Venture redeemed the remaining 5,643 Class A Membership Units of Green Diamond in exchange for a cash payment of \$4,917,648.06 plus interest. Although Green Diamond currently owns no membership interests in Columbia Venture, Columbia Venture does provide information about Columbia Venture and notice of meetings to Green Diamond because Green Diamond has made loans to Columbia Venture with equity conversion rights and because of the possible issuance of additional interests to Green Diamond as described above.

The Flood Insurance Rate Map ("FIRM") of the Federal Emergency Management Agency ("FEMA") in effect on February 19, 1999, showed most of the Green Diamond Tract as Zone A Special Flood Hazard Area but not as floodway. Prior to the formation of Columbia Venture, in 1998, FEMA had proposed a new FIRM that would have designated most of the Green Diamond Tract as floodway. That proposed FIRM was not adopted.

After the acquisition of the Green Diamond Tract, Columbia Venture proceeded with steps to prepare the Green Diamond Tract for development. Such steps included, without limitation, hiring Edward D. Stone and Associates ("EDSA") to develop a conceptual land use plan for the Green Diamond Tract; preparing a draft Planned Development District ("PDD") ordinance and Development Agreement; retaining Haddow & Company to prepare a market feasibility study; and working with local government officials in an attempt to obtain necessary permits and zoning changes.

After failing to adopt the 1998 proposed FIRM, in August 1999, FEMA issued another proposed FIRM that showed no floodway on the Green Diamond Tract. Certain appeals were filed with respect to the August 1999 proposed FIRM. In September 2000, FEMA issued a revised FIRM showing most of the Green Diamond Tract as floodway.

In February, 2001, because of a potential conflict of interest, The McNair Law Firm, P.A. withdrew from its representation of Columbia Venture. Haynsworth Sinkler Boyd, P.A. began representing Columbia Venture.

In February, 2001, Columbia Venture filed a report with FEMA providing information concerning the September 2000 proposed FIRM.

On August 20, 2001, FEMA issued a final agency determination adopting the September 2000 proposed FIRM as the final flood map, meaning that most of the Green Diamond Tract is located in the floodway. Development of any type in the floodway is severely limited by federal law and by local ordinance.

On October 19, 2001, Columbia Venture filed a Summons and Complaint in the United States District Court for the District of South Carolina (Columbia Division) against FEMA, wherein Columbia Venture appealed the August 20, 2001 final determination of FEMA.

On or about August 14, 2002, FEMA filed its Answer to the Complaint by Columbia Venture and, in such Answer, denied that Columbia Venture was entitled to any relief.

Following the filing of the Complaint in federal district court, in addition to the above-referenced litigation, Columbia Venture explored the possibility of obtaining a conditional letter of map provision ("CLOMR") from FEMA. If granted by FEMA, the CLOMR could have resulted in a new FIRM under which all or part of the Green Diamond Tract would not be shown as a floodway. The submission of a request for a CLOMR requires the approval of the City of Columbia or other local governing body. To date, no approval for a CLOMR has been granted by the City of Columbia or other local governing body.

At a meeting on December 13, 2001, the members of Columbia Venture decided to pursue an exit strategy.

The members of Columbia Venture have pursued a plan to sell all outstanding membership interests in Columbia Venture. The purchaser of such interests could determine to pursue any permitted uses of the Green Diamond Tract subject to applicable law. In the event that the purchaser placed a conservation easement on the Green Diamond Tract, the appraisal firm of Van Sant Wingard, L.L.C. has been retained to prepare an appraisal of the Green Diamond Tract. A copy of that appraisal (the "Green Diamond Tract Appraisal") has been provided to you.

Columbia Venture has received an expression of interest from Ducks Unlimited, Inc. to be the grantee of a conservation easement. Columbia Venture has also received an expression of interest from Ducks Unlimited, Inc. to purchase the Green Diamond Tract after the imposition of a conservation easement on the Green Diamond Tract.

Richland County has recently approached Columbia Venture about purchasing an approximately 150-acre tract within the Green Diamond Tract to serve as the site for a new South Carolina Farmers Market. Columbia Venture granted an option to Richland County to purchase approximately 150 acres from the Green Diamond Tract for a purchase price of \$4,500,000. That purchase has not been closed as of the date of this Memorandum. The Green Diamond Tract Appraisal does not contemplate this possible sale.

Columbia Venture plans to make a charitable contribution to East Bluff Community Association, Inc. of the East Bluff Tract. That donation has not been made as of the date

**BandC000289**

of this memorandum. The East Bluff Tract is not part of the Green Diamond Tract and is not included in the Green Diamond Tract Appraisal.

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**BandC000289**

Exhibit C

**Members of Columbia Venture, LLC**

| <u>Member</u>                    | <u>Number of Units</u> | <u>Class</u> |
|----------------------------------|------------------------|--------------|
| Burroughs & Chapin Company, Inc. | 3,000                  | A            |
|                                  | 6,000                  | B            |
| Lockwood Greene Engineers, Inc.  | 3,000                  | B            |
| Regent Columbia, LLC             | 2,000                  | A            |
|                                  | 1,000                  | B            |
| Green Diamond, LLC               | -0-                    |              |
| The South Financial Group, Inc.  | 1,375                  | A            |
|                                  | 1,625                  | C            |
| NLBF, LLC                        | 3,000                  | A            |

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Exhibit D**Contractual Liabilities of Columbia Venture, LLC as of September 30, 2002**

|                       | Burroughs &<br>Chapin | NLBF, LLC  | Regent<br>Columbia | Green<br>Diamond | Carolina<br>First | Lockwood<br>Greene | Totals       |
|-----------------------|-----------------------|------------|--------------------|------------------|-------------------|--------------------|--------------|
| <b>Prior Advances</b> |                       |            |                    |                  |                   |                    |              |
| 3/30/2001             | 582,524.00            | 194,175.00 |                    | 29,126.00        | 194,175.00        |                    | 1,000,000.00 |
| 9/7/2001              | 722,900.00            |            |                    | 36,100.00        | 241,000.00        |                    | 1,000,000.00 |
| 12/21/2001            | 723,000.00            |            |                    | 36,000.00        | 241,000.00        |                    | 1,000,000.00 |
| 4/3/2002              | 361,500.00            |            |                    | 18,000.00        |                   |                    | 379,500.00   |
| Subtotal              | 2,389,924.00          | 194,175.00 | -                  | 119,226.00       | 676,175.00        | -                  | 3,379,500.00 |
| <b>Guarantee Fee</b>  |                       |            |                    |                  |                   |                    |              |
| 4/2/2001              | 131,068.00            | 43,689.00  | -                  | 6,553.00         | 43,689.00         | -                  | 224,999.00   |
| 4/2/2002              | 183,645.00            | 61,110.00  | -                  | 9,135.00         | 61,110.00         | -                  | 315,000.00   |
| Subtotal              | 314,713.00            | 104,799.00 | -                  | 15,688.00        | 104,799.00        | -                  | 539,999.00   |
| <b>Interest</b>       |                       |            |                    |                  |                   |                    |              |
| To 9/6/01             | 18,046.28             | 6,015.42   |                    | 902.31           | 4,648.22          |                    | 29,612.23    |
| To 12/31/01           | 23,590.44             | 3,476.54   |                    | 1,152.85         | 6,688.76          |                    | 34,908.59    |
| To 3/31/02            | 23,968.94             | 2,344.70   |                    | 1,196.16         | 7,754.48          |                    | 35,264.28    |
| To 4/3/02             | 798.97                | 78.16      |                    | 39.87            | 265.80            |                    | 1,182.80     |
| Subtotal              | 66,404.63             | 11,914.82  | -                  | 3,291.19         | 19,357.26         | -                  | 100,967.90   |
| Loan dated<br>4/3/02  | 2,771,041.63          | 310,888.82 | -                  | 138,205.19       | 800,331.26        | -                  | 4,020,466.90 |
| <b>Interest</b>       |                       |            |                    |                  |                   |                    |              |
| To 4/30/02            | 8,460.88              | 703.41     |                    | 358.84           | 2,455.46          |                    | 11,978.59    |
| To 5/31/02            | 8,649.06              | 703.41     |                    | 431.46           | 2,392.21          |                    | 12,176.14    |
| To 6/30/02            | 9,400.98              | 781.57     |                    | 468.99           | 2,658.01          |                    | 13,309.55    |
| To 7/31/02            | 9,714.35              | 807.62     |                    | 484.63           | 2,746.61          |                    | 13,753.21    |
| To 8/31/02            | 9,714.35              | 807.62     |                    | 484.63           | 2,746.61          |                    | 13,753.21    |
| To 9/30/02            | 9,400.98              | 781.57     |                    | 468.99           | 2,658.01          |                    | 13,309.55    |

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|                    |                     |                   |          |                   |                   |                   |                     |
|--------------------|---------------------|-------------------|----------|-------------------|-------------------|-------------------|---------------------|
| Subtotal           | <u>55,340.60</u>    | <u>4,585.20</u>   | <u>-</u> | <u>2,697.54</u>   | <u>15,656.91</u>  | <u>-</u>          | <u>78,280.25</u>    |
| Total Member Loans | <u>2,826,382.23</u> | <u>315,474.02</u> | <u>-</u> | <u>140,902.73</u> | <u>815,988.17</u> | <u>-</u>          | <u>4,098,747.15</u> |
| Summary            |                     |                   |          |                   |                   |                   |                     |
| Member Loans       | 2,389,924.00        | 194,175.00        | -        | 119,226.00        | 676,175.00        |                   | 3,379,500.00        |
| Guarantee Fee      | 314,713.00          | 104,799.00        | -        | 15,688.00         | 104,799.00        |                   | 539,999.00          |
| Loan Interest      | 121,745.23          | 16,500.02         | -        | 5,988.73          | 35,014.17         | -                 | 179,248.15          |
| Subtotal           | <u>2,826,382.23</u> | <u>315,474.02</u> | <u>-</u> | <u>140,902.73</u> | <u>815,988.17</u> | <u>-</u>          | <u>4,098,747.15</u> |
| Other Payables     | 485,795.98          |                   |          |                   |                   | 491,042.86        | 976,838.84          |
| Receivable         |                     |                   |          |                   |                   | (291,431.00)      | (291,431.00)        |
| Total              | <u>3,312,178.21</u> | <u>315,474.02</u> | <u>-</u> | <u>140,902.73</u> | <u>815,988.17</u> | <u>199,611.86</u> | <u>4,784,154.99</u> |

Other Liabilities

|                                       |                      |
|---------------------------------------|----------------------|
| Note to Carolina First                | 7,500,000.00         |
| Credit Line payable to Carolina First | 2,948,287.76         |
| Other Payables                        | 184,421.37           |
| Land Option Payable                   | 100,000.00           |
| Total Net Liabilities                 | <u>15,516,864.12</u> |

**Exhibit E**

**Documents Delivered to You**

- A. Documents delivered to you under cover letter dated October 17, 2002**
- (1) Boundary survey of property dated June 26, 1998 by B. P. Barber (two pieces)**
  - (2) Aerial photos of Columbia Venture property (no other identification)**
  - (3) Executive summary of Phase I Environmental Site Assessment Reports by WESI**
  - (4) Memorandum of John McArthur dated May 28, 2002, concerning Columbia Venture real estate matters**
  - (5) Portions of Richland County zoning ordinance concerning current zoning classification of Columbia Venture property**
  - (6) Articles of Organization for Columbia Venture, LLC dated February 17, 1999**
  - (7) Annual reports filed with Secretary of State for Columbia Venture, LLC for calendar years 2000, 2001 and 2002**
  - (8) Operating Agreement of Columbia Venture, LLC dated February 17, 1999**
  - (9) Audited financial statements of Columbia Venture, LLC for 2001**
  - (10) Unaudited balance sheet of Columbia Venture, LLC dated April 30, 2002**
  - (11) Promissory Note from Columbia Venture, LLC to Burroughs & Chapin Company, Inc.**
  - (12) Promissory Note from Columbia Venture, LLC to Carolina First Bank**
  - (13) Guaranty of Burroughs & Chapin Company to Carolina First Bank**
  - (14) Limited Restricted Appraisal Report prepared by Van Sant and Associates, Inc. on November 9, 2001**
  - (15) "As is" appraisal of the property dated February 8, 1999**

- (16) Documentation of acquisition of Columbia Venture property prepared by McNair Law Firm, P.A. (2 binders)
- (17) Document binder entitled "The Simple Truth about Green Diamond" (1 volume)
- (18) Summons and Petition filed by Columbia Venture, LLC
- (19) Answer of FEMA
- B. Documents delivered to you under cover letter of Dan Stacy dated October 16, 2002
  - (1) Phase I Environmental Report by WESI, Inc.
  - (2) Phase II Environmental Report by WESI, Inc.
  - (3) Wetland delineation maps covering the Green Diamond Tract
  - (4) Delineation letters from the U.S. Army Corps of Engineers
- C. Documents delivered to you herewith
  - (1) Report of Schnabel Engineering Associates, Inc. dated October 16, 2000
  - (2) Report of Schnabel Engineering Associates, Inc. dated October 17, 2000
  - (3) Letter of Schnabel Engineering Associates, Inc. dated October 25, 2000
  - (4) Letter of South Carolina Department of Health & Environmental Control dated October 31, 2000
  - (5) Letter of Ethan Ware dated October 2, 2002
  - (6) Letter of Eastern Corn and Grain Company, Inc. dated October 18, 2002
- D. Document delivered to you under cover letter dated October 16, 2002
  - (1) Complete Appraisal-Restricted Use Report on 4,410.916 unapproved acres prepared by Van Sant & Wingard
- E. Documents delivered to you under cover letter dated October 23, 2002
  - (1) Baseline Environmental Documentation Report by WESI, Inc.

**BandC000295**

(2) **Draft Conservation Easement and Right of First Refusal**

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**BandC000295**

Exhibit F

**Additional Documents Available Upon Request**

- Memo to Kit Smith from George Wolfe: Potential for County liability to third parties based on County's involvement with levee's relating to proposed Congaree Vista project dated 1/10/01;
- Video 1964 Congaree Flood Footage;
- Title History for real estate within Green Diamond;
- Draft Proposal for Levee dated 1/21/02;
- Proposed Structure for Levee Ownership and Maintenance dated 4/11/01;
- SC Model Flood Damage Prevention Ordinance;
- Columbia Venture Projected Sales by Year dated 10/13/00;
- Federal Flood Regulation;
- Table of Permitted Uses;
- Proposed Structure for Levee Ownership and Maintenance dated 4/16/01;
- Columbia Wastewater Treatment Plant Flood Proofing Study dated 12/19/01;
- Floodway Table;
- Brief History of Section 1 Owned by Burroughs & Chapin (1965 to date);
- SC Code Section re: Dams;
- Petitions for Annexation;
- Storm Water Ordinance;
- City Stormwater Ordinance [ sec 21-1-21-30];
- Green Diamond Design Guidelines;
- Planning, Land development, & Zoning Ordinances;
- Modified Linear Levee; (Proposal For);
- Planned Unit Development (Large Scale) Green Diamond;
- Proposed Development Agreement;
- Proposed Infrastructure Agreement;
- Talking Points Stormwater Ordinance;
- Council Report Encroachments in a Floodway prepared by Mullen Taylor dated 2/9/01;
- Copy of Harbison PUD-LS Manual;
- Green Diamond Design Guidelines;
- Option Agreement between Richland County and Columbia Venture, LLC;
- Applicability of Flood Insurance Data 11/6/00;
- Appeal of preliminary flood insurance study dated 12/10/99;
- Federal Register National Flood Insurance Program 10/26/99;
- Flood Hazard Mitigation A Plan for South Carolina prepared for SCDNR by Flood Hazard Mitigation Advisory Committee.;

- Appeal Resolution for Congaree River in Richland & Lexington Counties 9/26/00;
- Notebook of Correspondence with FEMA between 9/26/00 and 1/2/01;
- Issues Related to Appeal;
- Technical Basis for Determination of no Floodway on the R/C side of the Congaree Levee Submitted to FEMA by Columbia Venture, LLC dated 7/6/01;
- Guidelines & Specifications for Study Contractors: Flood insurance study by FEMA dated January 1995;
- South Carolina Model Flood Damage Prevention Ordinance;
- Estimated Congaree River Annual Maximum regulated flows for 1926-1998 by Leo R. Beard dated 2/1/01;
- Expanded two Dimensional Flow Analysis & Floodway Determination of the Congaree River Floodplain in Richland and Lexington Counties, South Carolina dated 2/12/01;
- Study of the Congaree River floods since 1908;
- Hydraulic Models of the Congaree River in Richland & Lexington Counties by Alan K Zundel and Darren S. Gonzales dated 4/24/01;
- Appendix to Plaintiff's Petition;
- Notice of Appeal;
- Green Diamond Governmental Briefing Book Binder;
- Columbia Venture, LLC Document Binder Technical Information Submittal 2/15/01;
- Document Binder Technical Information on Green Diamond Projects dated 4/2/01;
- Document Binder Green Diamond Soil Studies dated 4/2/01;
- Rebuttal to SCDNR Letter by Doug Hamilton dated 7/2/01;
- Green Diamond's Benefits to Richland School District One;
- Federal Aid Policy Guide Subchapter G;
- Draft Potential Water Surface E Reductions in the Congaree River resulting from Realignment of the Manning Levee dated 3/21/01;
- Estimated Infrastructure Costs for Green Diamond;
- Various Press Clippings;
- Hydraulic Models of the Congaree River in Richland and Lexington Counties;
- Municipal Services Cost Study for Columbia Venture's Green Diamond Project dated 6/25/01;
- Green Diamond Impact on Local and State Revenue for Richland School District One by McMillan and Associates dated 6/25/01;
- Levee Issues by Ken Humphries dated 6/25/01;
- Congaree Flood Plain Appeal Resolution: Citizen Appellant Summary dated 7/6/01;
- Letter re: 1964 Congaree Flood Footage - Manning Levee Breach dated 8/6/01;

- Letter re: Congaree Flood Insurance Rate Mapping;
- CD Exponent dated 4/27/01 Reused Model dated 7/27/01;
- Flood Damage Reduction Handout;
- Green Diamond Educational Forum Handout by Ray Jones and Brent Jeffcoat dated 6/25/01;
- CD Green Diamond dated 6/25/01;
- Aerial Photo Congaree River Hydrodynamic Study dated 2/12/01;
- Green Diamond Project: Levee Ownership & Management;
- Green Diamond Levee Project by Gary Dyhouse dated December 2000;
- Green Diamond Support Documents File;
- Technical Info: Levee Breach at Gills Creek;
- Columbia Project Development Agreement;
- Local Economic Development Incentives in South Carolina presented to Spartanburg County Council dated 12/13/99;
- Restated Articles of Organization dated October 16, 2002;
- Amended and Restated Operating Agreement of Columbia Venture, LLC dated October 16, 2002;
- Haddow & Company Highest and Best Use Analysis;
- Promissory Notes for member loans;
- Letter of Ethan Ware dated 4/3/02;
- Letter of Ethan Ware dated 3/19/02;
- Minutes of meetings of Members of Columbia Venture, LLC;
- Minutes of meetings of Board of Directors of Burroughs and Chapin Company, Inc. (related to Columbia Venture, LLC);
- Final Report for the Burwell Manning Site dated 3/1/99 by Kestral Management Services, LLC;
- Letter of William C. Boyd to Columbia Venture, LLC dated September 13, 2002;
- Report of Ken Humphries to Columbia City Council;
- Phase I Environmental Site Assessment Manning Property by Environmental Permitting Consultants dated January 1999;
- Environmental Siting Study for OK, L.L.C. by Rust Environment \* & Infrastructure dated 6/5/98.

## MEMORANDUM

\*\*\*\*\*

TO: Columbia Venture, LLC Partners  
Bill Diffenderfer (Regent Columbia, LLC)  
Michael McKelvy (Lockwood Greene)  
Mac Whittle and Justin Strickland (Carolina First)  
Burwell Manning (Green Diamond)  
Wade Nichols (NLBF, LLC)  
J. Egerton Burroughs, Chairman of the Board (Burroughs & Chapin)

FROM: Douglas P. Wendel

RE: Columbia Venture – Asset Sale

DATE: December 16, 2002

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Please find the following information which will be helpful in our discussions scheduled for 9:00 a.m. tomorrow.

Currently we have no firm prospects for a closing of the asset sale.

Mr. Van Tuyl's consultants have informed us he desires an IRS private letter ruling on the deal prior to purchasing any of Columbia Venture's assets. Although we can assist in securing this private letter ruling, we have been unable to tie down exactly what his consultants desire to get out of the letter ruling. Upon receipt of such a ruling they are somewhat noncommittal with respect to exactly how much of Columbia Venture assets he wishes to purchase and the related schedule for the takedown. We do not believe a private letter ruling will provide substantive value to the deal that we don't already know via our own attorneys and various conservation groups. The letter rulings available speak to conservation purpose, form of documentation (actual easement), conservation sponsor, or adequate ownership interest in property on behalf of the easement grantor. Because Ducks Unlimited has conserved 66,000 acres in South Carolina alone with this easement structure, the letter ruling will not give us additional comfort but may provide an added level of comfort to a potential purchaser. That being said, we may wish to consider whether or not a letter ruling should be sought. We are contacting Price Waterhouse in Dallas as well as Mr. Van Tuyl's tax attorney to define the scope of the ruling they seek to obtain in order to keep the interest for this deal sharp.



Columbia Venture Partners  
December 16, 2002  
Page Two

Mr. Marriott and Marriott Corporation via Mark Shea still express an interest in the assets but scheduling and amount is still up in the air.

Other potential purchasers are being pursued by staff via

- a. Personal contacts
- b. CPA firms who may have clients in need of deductions
- c. Law firms who may have clients in need of deductions
- d. Conservation groups who may know of individuals or groups who may wish to assist in purchasing the assets to facilitate conservation objectives. Ducks Unlimited wants to meet with us to discuss a joint-marketing approach for this deal
- e. Investment banking firms with clients in need of deductions
- f. Consideration is being given to retaining the services of an attorney who has a specialty tax practice in the area

It is highly unlikely that a purchaser for the entire tract or portions thereof will be identified to facilitate a closing within 2002. This, of course, raises several issues. Those being:

1. What are implications Columbia Venture's 2003 budgets?
2. Is the conservation easement "Exit Plan" strategy still the most valid and promising to maximize profits and wind up Columbia Venture?
3. If the answer to c above is "yes" when can it be expected buyers will be identified and a sale be finalized?
4. Will it be necessary to break up the parcel into smaller portions, to identify purchasers and expedite the sale of all the assets and if this is necessary what are the legal implications regarding dealings in securities?
5. What are other partial steps, which could involve sales of some of the assets to Farmer's Market and/or City of Columbia for wastewater treatment plan use, and implications on value of an asset sale?
6. What is status of lawsuit and does it need to be continued?

Partial answer to these questions in order, are as follow:

1. A proposed 2003 Budget is attached that sets forth all of the estimated expenses for continuing the existence and operation of Columbia Venture, LLC as well as a summary of equity, voting rights, etc. It contemplates legal, accounting, professional consulting, interest, principal, payoffs to lenders and members and miscellaneous other costs. The financial summary attached shows the costs to continue with the notes to Carolina First and the members due on April 3, 2003. Columbia Venture's options:
  - a. new member loans,
  - b. payoff the loans,
  - c. acquire the note and foreclosure against the real estate.
  - d. Refinance the debt

Columbia Venture Partners  
December 16, 2002  
Page Three

All of these options are available to the members pro rata and we would like to discuss those in greater detail.

2. Attached for your review are the exit plan options we reviewed prior to the Board and Columbia Venture's members selecting a sale of assets and a conservation easement as the approach to pursue. Staff still believes this is the best option and we will work on this strategy, while certainly looking at other opportunities, including without limitation, sales to the Farmers' Market and City of Columbia wastewater plan expansion.
3. It is hard to project identification of buyers and projecting closings there under, but we will keep all parties abreast of the progress. We anticipate it may take six or nine months to produce another buyer that will promote the net prices we need. We perceive any closing will likely coincide with the quarterly estimated tax payment schedules.
4. It may be necessary to break this deal into smaller components to effectuate this strategy. There are many more parties that need \$1-10,000,000 in tax savings via deductions as opposed to \$50,000,000 + in deductions. Our legal staff has determined this is possible and we will pursue this option as deals present themselves, take steps to maintain compliance with securities issues and preserve the balance of the easement per our appraiser.
5. Interim or partial deals we are pursuing, as referenced in Answer #3 above, include a sale to the Farmers' Market Committee, a sale to the City of Columbia for wastewater plant protection and Heathwood Hall School for protection and expansion. If these matters come to fruition, we will let you know, keeping in mind the appraisal impact as none of these parcels is valued in a vacuum. Our appraisers, however, indicate that such "parceling" can have a "wash" effect or slightly increase the balance of the appraisal due to higher comparable sales, smaller parcels that yield faster absorption rates, etc., so long as the parcels are large enough to maintain the qualification of public infrastructure for the project.
6. We must pursue the FEMA litigation for two reasons:
  - a. In the event we are successful, the FEMA line is subject to review and realignment which could change the complexion of the site tremendously; and
  - b. Our appraisal's value is dependent on this tract being developable. This lawsuit is a crucial component of the developability analysis. If we withdraw, our appraisal values would be exponentially reduced.
  - c. We are prepared to commence discovery and Haynsworth, Sinkler Boyd (Bill Boyd) is even more confident in our position.

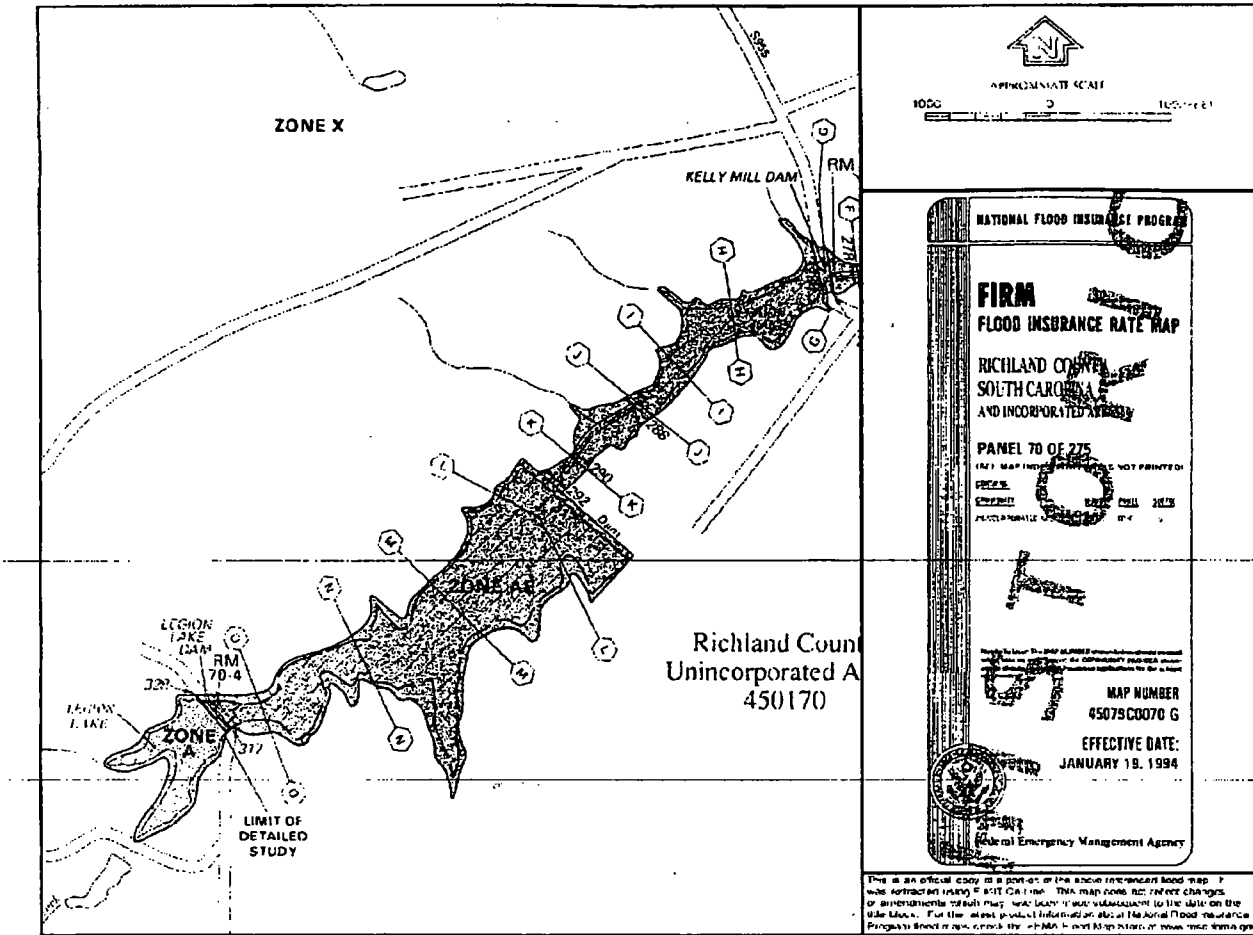
The status of the lawsuit is there was a motion to prevent discovery. Judge Perry will rule against this and discovery will move forward. There was a motion to dismiss which was rejected. Scheduling conference has been held and discovery is forthcoming.

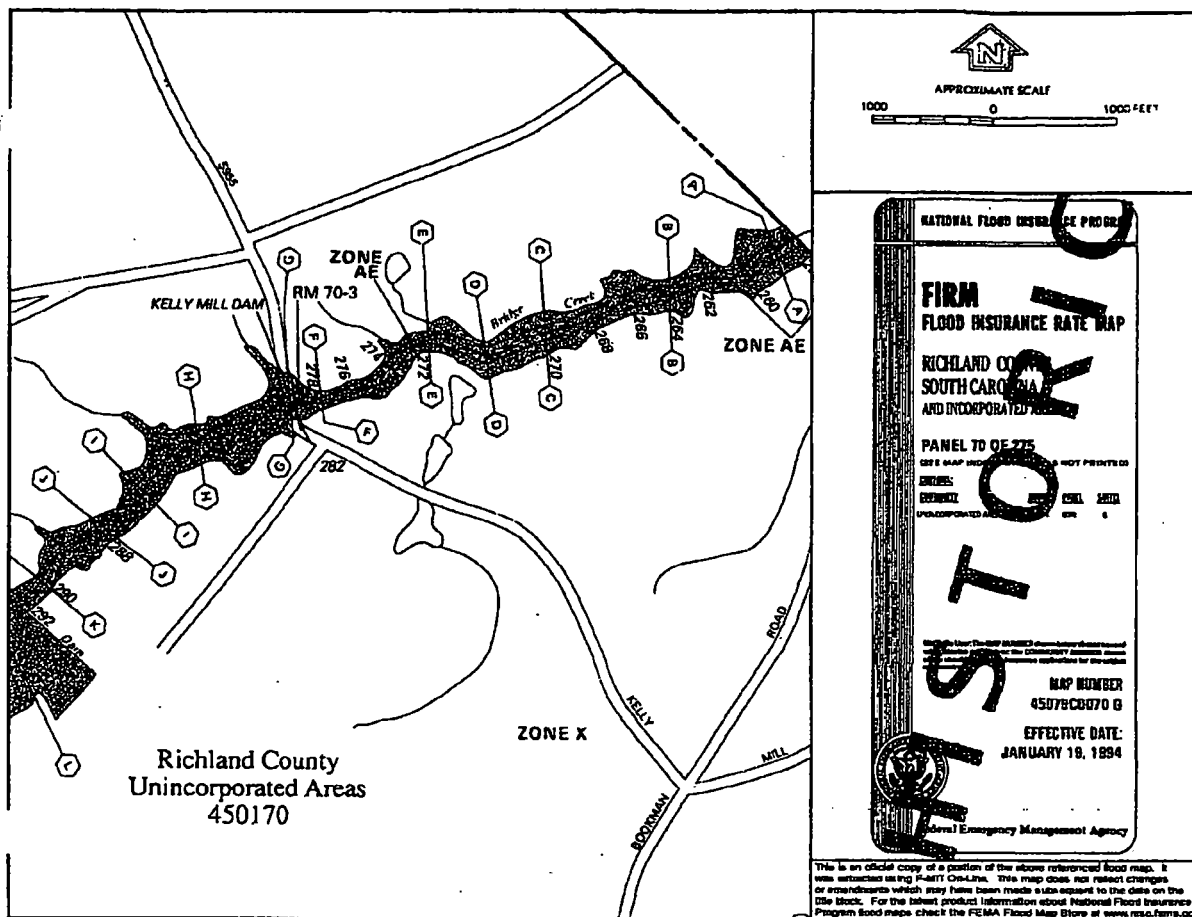
In summary it is our recommendation that the sale of outparcels be pursued while the current exit plan of a total asset sale and related conservation easements are being pursued.

*Property Sold by Columbia Venture, LLC*  
 Response to Richland County's Interrogatory No. 5  
 Supplemental Response of February 2, 2012  
 Amended Per Judge Smith's Ruling of December 20, 2012

| Date     | Seller                | Buyer                               | Acreage Sold | Floodway or Floodplain Status <sup>1</sup>            | Price          |
|----------|-----------------------|-------------------------------------|--------------|-------------------------------------------------------|----------------|
| 2/10/01  | Columbia Venture, LLC | Brown Chapel AME Church             | 2.16         | None                                                  | \$5.00         |
| 4/12/06  | Columbia Venture, LLC | Prospect Hill of Edisto Island, LLC | 719.489      | Approximately 50% floodway; 50% floodplain (estimate) | \$2,035,000.00 |
| 7/25/06  | Columbia Venture, LLC | Finlay/Tucker, LLC                  | 590.169      | 100% floodway                                         | \$1,665,000.00 |
| 9/5/07   | Columbia Venture, LLC | Retreat Partners, LLC               | 12.68        | None                                                  | \$1,077,800.00 |
| 10/29/08 | Columbia Venture, LLC | Retreat of Columbia II, LLC         | 1.28         | None                                                  | \$17,000.00    |
| 3/18/09  | Columbia Venture, LLC | Frank Hampton Farm, LLC             | 510.937      | Approximately 55% floodway; 45% floodplain (estimate) | \$1,532,811.00 |
| 6/18/09  | Columbia Venture, LLC | Lower Richland, LLC                 | 101.662      | 100% floodway                                         | \$355,817.00   |
| 9/15/09  | Columbia Venture, LLC | White House Warehouse II, LLC       | 51.705       | 100% floodway                                         | \$211,370.04   |
| 5/14/10  | Columbia Venture, LLC | Frank Hampton Farm, LLC             | 198.336      | 100% floodway                                         | \$810,797.57   |
| 7/25/11  | Columbia Venture, LLC | Frank Hampton Farm, LLC             | 628.793      | 100% floodway                                         | \$2,327,204.00 |
| 7/25/11  | Columbia Venture, LLC | White House Warehouse II, LLC       | 46.984       | 100% floodway                                         | \$174,445.95   |
| 7/25/11  | Columbia Venture, LLC | Lower Richland, LLC                 | 75.026       | 100% floodway                                         | \$277,596.00   |

<sup>1</sup> Status based on FEMA's Flood Insurance Rate Map dated August 20, 2001, effective February 20, 2002.







Confidential WORK IN PROGRESS last updated 8/2/00

### DECISION MATRIX Columbia Venture Project

| Item                                                                               | Issues to Resolve                        | Who Involved              | Linkages                                                             |
|------------------------------------------------------------------------------------|------------------------------------------|---------------------------|----------------------------------------------------------------------|
| Environmental assessment                                                           | Viability of development                 | CV                        | Need for any separate study                                          |
| Wetlands permitting                                                                | Mitigation                               | CV/Corps                  | Impact dependent upon Plan                                           |
| Agreement of process                                                               | Who is to pay for what                   | County/CV                 | CV's Development Plans                                               |
|                                                                                    | Process with integrity                   |                           |                                                                      |
|                                                                                    | General work plan                        |                           |                                                                      |
|                                                                                    | Public/media interaction                 |                           |                                                                      |
| FEMA decision                                                                      | Base flood elevation                     | FEMA                      |                                                                      |
|                                                                                    | Floodway designation                     |                           |                                                                      |
|                                                                                    | Define process                           | County                    | Agreement of Process & Cost Agreement                                |
| Press announcement                                                                 |                                          |                           | Press announcement                                                   |
| Formation of public communication network                                          | Who, what, when, how                     | County/CV                 | Preliminary plan/economic development incentives                     |
| Economic impact study                                                              | Cost/benefit analysis                    | County/CV/Consultants     | Accomplished prior to submittal of Plan                              |
| Ordinance amendment to plan review                                                 | Timeframe for review of preliminary plan | County                    | Accomplished prior to submittal of levee upgrades                    |
| Stormwater ordinance revisions                                                     | Revisions per NPDES                      | County/Consultants        | Levee Maintenance Agreement                                          |
|                                                                                    | Floodway encroachment                    |                           | Sediment/Erosion Plan approved prior to Permit                       |
|                                                                                    | Review time for Stormwater Plan          |                           | Submitted after ordinance revisions                                  |
| Review of Stormwater Management Plan/ Erosion and Sediment Control Plan and Permit | Levee improvements                       | County/Corps of Engineers | Stormwater Plan approval contingent upon levee maintenance agreement |
|                                                                                    | Land disturbance                         | County/CV                 |                                                                      |
|                                                                                    | Water quality                            | County/CV/Consultants     |                                                                      |
| Negotiation of levee maintenance agreement                                         | Maintenance responsibility               | County/CV                 |                                                                      |
|                                                                                    | Funding of maintenance                   |                           |                                                                      |
|                                                                                    | Maintenance oversight                    |                           |                                                                      |
|                                                                                    | County liability                         |                           |                                                                      |

Richard County Government

Final Draft, WORK IN PROGRESS last updated 8/29/00

| Item                                           | Issues to Resolve<br>Should incentives be given<br>If so, what<br>Type, terms of incentives                                                               | Who Involved          | Linkages                                                                            |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------|
| Negotiation of economic development incentives |                                                                                                                                                           | County/CV/CCEDA       | Economic impact study<br>Levee upgrade & maintenance costs<br>Development Agreement |
| Informal review of Concept Plan (option)       | Expectations of County                                                                                                                                    | County/CV             | Sketch Plan/Preliminary Plat<br>Final Plat                                          |
| Review of sketch plan                          | Relationship to surrounding area<br>Interior layout and design                                                                                            | County/CV/Consultants | Preliminary Plat/Final Plat                                                         |
|                                                | Application of Plan principles                                                                                                                            |                       | Economic development incentives                                                     |
|                                                | Conservation                                                                                                                                              |                       | Rezoning                                                                            |
|                                                | Transportation system                                                                                                                                     |                       |                                                                                     |
|                                                | PUD or Vision Zoning District                                                                                                                             |                       |                                                                                     |
|                                                | Flood protection                                                                                                                                          |                       |                                                                                     |
|                                                | Build-out                                                                                                                                                 |                       |                                                                                     |
|                                                | Social impact                                                                                                                                             |                       |                                                                                     |
|                                                | Stormwater Management Plan                                                                                                                                |                       |                                                                                     |
|                                                | Density                                                                                                                                                   |                       |                                                                                     |
|                                                | Infrastructure                                                                                                                                            |                       |                                                                                     |
|                                                | Experimental development processing fee                                                                                                                   | Planning Commission   |                                                                                     |
| Review of Preliminary Plat                     | Same as sketch plan, plus compliance with minimum design standards                                                                                        | County/CV/Consultants | Sketch Plan/Final Plat                                                              |
| Review of Final Plat                           | Same as Preliminary Plat, but in final form                                                                                                               | County/CV/Consultants | Sketch Plan/Preliminary Plan<br>Development Agreement                               |
| Negotiation of Development Agreement           | Economic development incentives<br>Rezoning<br>Conservation and environmental protection<br>Levee Agreement<br>Development schedule<br>Clawback agreement | County/City/CV        | Inclusion of all other decisions into Development Agreement                         |

of County Government



Item, WORK IN PROGRESS last updated 8/29/00

| Item                                   | Issues to Resolve                                                 | Who Involved     | Linkages                                                                              |
|----------------------------------------|-------------------------------------------------------------------|------------------|---------------------------------------------------------------------------------------|
| Development Agreement continued        | Annexation                                                        |                  |                                                                                       |
|                                        | Infrastructure -- water, sewer, roads, fire, EMS, schools, police | County/CV        |                                                                                       |
|                                        | Service delivery                                                  |                  |                                                                                       |
|                                        | Social equity-environmental justice                               |                  |                                                                                       |
|                                        | Emergency preparedness                                            |                  |                                                                                       |
|                                        | Permitting schedule                                               |                  |                                                                                       |
| Emergency Preparedness Plan            | Flood evacuation, emergency operations                            | County           | Per Development Agreement                                                             |
| Rezoning                               | PUD or Vision District                                            | County/CV        | Per Development Agreement                                                             |
| Grading/construction permit for levees |                                                                   | County/Corps     | Stormwater Management Plan, Levee Improvement Plan agreed upon prior to permit issued |
| Water and sewer permit                 | Design of water and sewer                                         | CV/DHEC          | Preliminary Plat                                                                      |
| Construction inspection                | Compliance with plans                                             | County/Corps/CV  | Contingent upon permit issued                                                         |
| Levee certification/Map revision       | Removal of floodplain status behind levees                        | Corp/FEMA/County |                                                                                       |
|                                        | County liability                                                  |                  |                                                                                       |

County Government

**DECISION MATRIX**  
**Columbia Venture Project**

| Item                                                                                  | Issues to Resolve                        | Who Involved              | Linkages                                                             |
|---------------------------------------------------------------------------------------|------------------------------------------|---------------------------|----------------------------------------------------------------------|
| Environmental assessment                                                              | Contamination/archeological              | CV                        | Need for any separate study                                          |
| Wetlands permitting                                                                   | mitigation                               | CV/Corps/OCRM             | Impact dependent upon Plan                                           |
| Agreement of process                                                                  | Who is to pay for what                   | County/CV                 | CV's Development Plans                                               |
|                                                                                       | Process with integrity                   |                           |                                                                      |
|                                                                                       | General work plan                        |                           |                                                                      |
|                                                                                       | Public/media interaction                 |                           |                                                                      |
| FEMA decision                                                                         | Base flood elevation                     | FEMA                      |                                                                      |
|                                                                                       | Floodway designation                     |                           |                                                                      |
| Press announcement                                                                    | Define process                           | County/B&C                | Agreement of Process & Cost Agreement                                |
| Formation of public communication network                                             | Who, what, when, how                     | County/B&C                | Press announcement                                                   |
| Economic impact study                                                                 | Cost/benefit analysis                    | County/Consultants        | Preliminary plan/economic development incentives                     |
| Ordinance amendment to plan review                                                    | Timeframe for review of preliminary plan | County                    | Accomplished prior to submittal of Plan                              |
| Stormwater ordinance revisions                                                        | Revisions per NPDES                      | County/Consultants        | Accomplished prior to submittal of levee upgrades                    |
|                                                                                       | Floodway encroachment                    |                           |                                                                      |
|                                                                                       | Review time for Stormwater Plan          |                           |                                                                      |
| Review of Stormwater Management Plan/<br>Erosion and Sediment Control Plan and Permit | Levee improvements                       | County/Corps of Engineers | Levee Maintenance Agreement                                          |
|                                                                                       | Land disturbance                         | County/CV                 | Sediment/Erosion Plan approved prior to Permit                       |
|                                                                                       | Water quality                            | County/CV/Consultants     | Submitted after ordinance revisions                                  |
| Negotiation of levee maintenance agreement                                            | Maintenance responsibility               | County/CV                 | Stormwater Plan approval contingent upon levee maintenance agreement |
|                                                                                       | Funding of maintenance                   |                           |                                                                      |
|                                                                                       | Maintenance oversight                    |                           |                                                                      |

Richland County Government

| Item                                           | Issues to Resolve                                                  | Who Involved          | Linkages                                                    |
|------------------------------------------------|--------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| Negotiation of economic development incentives | Should incentives be given                                         | County/CV/CCEDA       | Economic impact study                                       |
|                                                | If so, what                                                        |                       | Levee upgrade & maintenance costs                           |
|                                                | Type, terms of incentives                                          |                       | Development Agreement                                       |
| Informal review of Concept Plan (option)       | Expectations of County                                             | County/CV             | Sketch Plan/Preliminary Plat<br>Final Plat                  |
| Review of sketch plan                          | Relationship to surrounding area                                   | County/CV/Consultants | Preliminary Plat/Final Plat                                 |
|                                                | Interior layout and design                                         |                       | Economic development incentives                             |
|                                                | Application of Plan principles                                     |                       | Rezoning                                                    |
|                                                | Conservation                                                       |                       |                                                             |
|                                                | Transportation system                                              |                       |                                                             |
|                                                | PUD or Vision Zoning District                                      |                       |                                                             |
|                                                | Flood protection                                                   |                       |                                                             |
|                                                | Build-out                                                          |                       |                                                             |
|                                                | Social impact                                                      |                       |                                                             |
|                                                | Stormwater Management Plan                                         |                       |                                                             |
|                                                | Density                                                            |                       |                                                             |
|                                                | Infrastructure                                                     |                       |                                                             |
|                                                | Experimental development processing fee                            | Planning Commission   |                                                             |
| Review of Preliminary Plat                     | Same as sketch plan, plus compliance with minimum design standards | County/CV/Consultants | Sketch Plan/Final Plat                                      |
| Review of Final Plat                           | Same as Preliminary Plat, but in final form                        | County/CV/Consultants | Sketch Plan/Preliminary Plan<br>Development Agreement       |
| Negotiation of Development Agreement           | Economic development incentives                                    | County/CV             | Inclusion of all other decisions into Development Agreement |
|                                                | Rezoning                                                           |                       |                                                             |
|                                                | Conservation and environmental protection                          |                       |                                                             |
|                                                | Levee Agreement                                                    |                       |                                                             |
|                                                | Development schedule                                               |                       |                                                             |
|                                                | Clawback agreement                                                 |                       |                                                             |

Confidential Draft, WORK IN PROGRESS last updated 8/29/00

| Item                                   | Issues to Resolve                                                | Who Involved    | Linkages                                                                              |
|----------------------------------------|------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------|
| Development Agreement continued        | Amortization                                                     |                 |                                                                                       |
|                                        | Infrastructure – water, sewer, roads, fire, EMS, schools, police | County/CV       |                                                                                       |
|                                        | Service delivery                                                 |                 |                                                                                       |
|                                        | Social equity-environmental justice                              |                 |                                                                                       |
|                                        | Emergency preparedness                                           |                 |                                                                                       |
|                                        | Permitting schedule                                              |                 |                                                                                       |
| Emergency Preparedness Plan            | Flood evacuation, emergency operations                           | County          | Per Development Agreement                                                             |
| Rezoning                               | PUD or Vision District                                           | County/CV       | Per Development Agreement                                                             |
| Grading/construction permit for levees |                                                                  | County/Corps    | Stormwater Management Plan, Levee Improvement Plan agreed upon prior to permit issued |
| Water and sewer permit                 | Design of water and sewer                                        | CV/DHBC         | Preliminary Plat                                                                      |
| Construction inspection                | Compliance with plans                                            | County/Corps/CV | Contingent upon permit issued                                                         |
| Levee certification                    | Removal of floodplain status behind levees                       | Corp/FEMA       |                                                                                       |

AGREEMENT

This Agreement is made on this the 23<sup>rd</sup> day of June, 1997, by and between Burwell D. Manning, Jr., Eastern Corn & Grain Company, Inc., and Overlook, Inc. (hereinafter, collectively "Manning") and Congaree Farms, LLC ("Congaree") to state the terms upon which Congaree will make payment to Farm Service Agency, USDA ("FSA") for the release of the mortgages and liens now held by FSA on real estate owned by Manning. At the time of its payment for the FSA release, Congaree will acquire title to such property (except for the property which is the home of Burwell D. Manning, Jr.), subject to provisions by which Manning may reacquire and sell the property. The terms are as follows:

1. Purpose of the Agreement. This Agreement is intended to enable Manning to obtain a release of the FSA mortgages and liens on real estate Manning now owns. Congaree will make the required payment to FSA for the release of the FSA mortgages and liens, and hold title to the property (except for Manning's home) unless and until Manning has made payments or sales of the property in accordance with the provisions stated hereinbelow.
2. Property. The real property and improvements which are the subject of this Agreement (hereinafter, the "Property") comprise approximately 4,460 acres, which are described in Exhibit A to this Agreement.
3. Release of FSA Mortgages. Congaree will pay \$4,359,000 to FSA on or before July 10, 1997, for the release of FSA's mortgages and liens on the Property. This payment is in addition to the two \$100,000 non-refundable deposits previously paid to FSA, and will complete the \$4,559,000 payment required by FSA for the release of its mortgages and liens on the Property (the "FSA Release Payment"). Upon Congaree's completion of the FSA Release Payment, title to the Property shall be transferred to and placed in the name of Congaree.

4. The Home. FSA also has agreed to release the house and lots owned by Burwell D. Manning, Jr. and Elizabeth K. Manning, located at 4801 Kilbourne Road, Columbia, South Carolina, which are Mr. and Mrs. Manning's residence (the "Home"), at the time it receives the FSA Release Payment. Although FSA will release the Home from its mortgages and liens, Congaree agrees that the Home shall not be included in the Property, that Congaree shall not acquire title to the Home, and that the Home may be titled in the name of Elizabeth K. Manning.

5. Manning's Interest in the Property After FSA Release. Following the FSA Release Payment and the transfer of the Property to Congaree, Manning shall have the following rights and interests in the Property:

(a) Manning shall have the right to reacquire or sell all or a part of any tract of the Property for a period of one (1) year from the date of the FSA Release Payment (the "One Year Period"), upon the terms more fully stated in paragraphs 6, 7 and 8 below; provided, however, that if Manning has paid, or caused to be paid by sales of the Property, the amount of \$3,300,000 to Congaree (net of any closing costs) within the One Year Period, Manning shall have an additional year in which to reacquire or sell the remaining Property, upon the same terms applicable during the One Year Period, and with no other extensions.

(b) If Manning fails to pay Congaree \$3,300,000.00 (net of any closing costs) within the One Year Period, Manning's right to reacquire and sell the Property shall be automatically terminated upon the expiration of the One Year Period, and Manning shall have no further interest in the unsold Property. In the event that Manning is granted the one year extension of time for Manning to reacquire or sell the Property (by payment of the \$3,300,000.00 during the One Year Period), if Manning fails to pay by the end of the second year the balance of the \$6,660,800.00 total payment required for Manning to reacquire or sell

all of the Property, Manning's right to reacquire or sell the Property shall be automatically terminated upon the expiration of the second year, and Manning shall have no further interest in the unsold Property.

(c) Manning shall have the exclusive right to market and sell the Property for a period of nine (9) months after the date of the FSA Release Payment. During the final three months of the One Year Period, Congaree may sell such amount of the Property as may be necessary to assure that it will receive net sale proceeds of \$3,300,000 by the end of the One Year Period; provided, however, that Congaree may make such a sale only if Manning has no proposed sale of such property under contract which is reasonably likely to close within the One Year Period. If Manning is granted the second year extension (by payment of \$3,300,000.00 to Congaree during the One Year Period), Manning shall have the exclusive right to market and sell the property for the first eight (8) months of the second year. \*

(d) Manning shall have the right to negotiate with the City of Columbia ("City") regarding lands that it may wish to purchase from the Property, and concerning claims against the City relating to the Property. See Adder \*

(e) Congaree will reserve up to 300 acres, more or less, for Manning to negotiate with the City on land that the City may be interested in purchasing. This reservation is not intended to postpone sales on other properties. Manning may designate portions of the 300 acres at one time. This reservation will be effective as long as Manning's right to reacquire or sell the property remains in effect. \*

6. Required Payment for Reacquisition or Sale by Manning. The total payment required from Manning to reacquire and/or sell all of the Property is \$6,660,800.00. (However, Manning is not required to reacquire or sell all of the Property.) The Property is classified into five (5) sections, consistent with the manner in which the Property has been discussed and

reviewed by Manning and Congaree. Manning may reacquire the Property or sell the Property to other parties upon payment of the following minimum net proceeds per acre to Congaree:

Levy Section I - Approximately 1,418 acres; \$1,800 per acre net.  
This portion of the Property includes the tracts described in Exhibit A as the Overlook, Arthur and Ehrlich tracts.

Levy Section II - Approximately 1,640 acres; \$1,400 per acre net.  
This portion of the Property includes the tracts described in Exhibit A as the Whitehouse, Tokunaga, Martin, Truesdale, and Rutledge tracts.

Levy Section III - Approximately 1,352 acres; \$1,200 per acre net.  
This portion of the Property includes the tracts described in Exhibit A as the Barron, Mae Kirkland, Kirkland Spangler, Lux, Chappell, Drucilla Chappel, Shull & Miller and Guignard tracts.

Section IV - Approximately 30 acres (high ground) (formerly part of Levy Section III); \$3,000 per acre net.

Section V - Approximately 10 acres along Bluff Road and Beltline Extension; (formerly part of Levy Section I); \$7,000 per acre net.

Bluff Estates - Approximately 10 acres along Bluff Road (formerly part of Levy Section III); \$3,000.00 per acre net.

"Net sales" and "net prices" refer to the minimum amount due to Congaree at the closing of the transaction. Costs such as customary closing costs, real estate commissions (if any), outstanding ad valorem taxes on the property sold, roll back taxes on the property sold (if any), documentary stamps, survey costs, and attorneys' fees relating to the proposed sale will be paid by Manning.

If any judgments or liens exist on the Property at the time Congaree acquires title to the Property (except for the FSA mortgages and liens which are to be released hereby), the payment due to Congaree in the One Year period shall be increased by the amount(s) of the judgments and liens, and the total payment amount for all of the Property shall be increased by such amount(s).

7. Sale of Parcels of Property. Manning will buy or sell the Property based on existing tracts in Levy Sections I, II and III as currently platted. If Manning wants to reacquire

*See Addendum*



or sell tracts of the property in Levy Sections I, II or III with configurations different from current plating, those tracts will be considered in parcels of 100 acres or more. Any other division of property in Levy Sections I, II and III must be made upon the approval of Congaree. <sup>Also</sup> Furthermore, any sales of property shall include rights of reasonable access to the Property not sold.

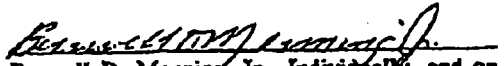
8. Time Required for Closings. Time is of the essence in Manning's making payments to Congaree. Manning must close all proposed sales of the Property prior to expiration of the One Year Period unless (a) Congaree has received net payment of \$3,300,000 prior to such proposed sale, or (b) Congaree consents to the extension of time to allow the sale to close. Furthermore, if Manning is granted the one year extension of the time for Manning to reacquire or sell the Property (by payment of the \$3,300,000 during the One Year Period), all sales must close on or before the end of the second year unless Congaree has received net sale proceeds of \$6,660,800.00, representing payment in full under the terms of this Agreement.

9. Manning's Right to Use of the Unsold Property. During the period under this Agreement in which Manning may reacquire or sell the property, Manning shall have the right to farm, hunt and fish on the unsold portions of the Property, rent free; provided, however, that Manning shall maintain all unsold portions of the Property in a reasonable manner. Manning may keep any income that he derives from the farming, hunting and fishing uses of the Property. Congaree reserves the right for its shareholders and officers to hunt and fish on the Property for recreational and social purposes, and each of Congaree's shareholders and officers may bring three guests with him.

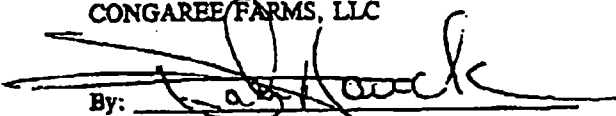
10. Third Party Sales Originating from Congaree. During the time in which Manning has the exclusive right to sell the Property to third parties, if Congaree presents a prospective buyer of a portion of the Property to Manning and a sale of the Property results from

Congaree's presenting the buyer to Manning, Congaree may retain an amount equal to eight percent (8%) of the sale price paid by such buyer. This 8% retention of sale proceeds shall not be deemed payable to Congaree if a real estate commission or broker's fee is due to another person or company on the sale, unless such commission or fee is paid by Congaree from its 8% retention amount. As a means of avoiding potential questions relating to the person or party responsible for producing a buyer of the property, Congaree and Manning will each present to the other a list of prospective buyers with whom they have been in contact, with a brief description of the status of the buyer discussions, by July 31, 1997.

11. Date for Closing on this Agreement. The payment to FSA and the conveyance of title of the property to Congaree shall be closed no later than July 10, 1997, unless an extension to the time for the FSA Release Payment is granted in writing by FSA.

  
Burwell D. Manning, Jr., Individually, and on  
behalf of Eastern Corn and Grain, Inc., and  
Overlook, Inc.

CONGAREE FARMS, LLC

By: 

Don M. Houck

## EXHIBIT A

PROPERTY OF OVERLOOK

All those certain pieces, parcels, or tracts of land, together with any improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 331.1 acres, more or less, shown and delineated as Tracts D and E on a plat of property prepared for OVERLOOK, INC. by W. Frank McAulay, Jr., R.L.S., dated March 19, 1977, and revised June 20, 1977, which tracts are more specifically described as follows:

PARCEL E having the following metes and bounds:

Beginning at a point on the western boundary of the Congaree River at the northwestern boundary of property now of the Foundation for Heathwood Hall; from that point running N. 66° 14' East for a distance of 2,996.6 feet to a point, thence turning N. 23° 46' West for a distance of 3,200 feet, more or less, to a point; thence turning and running S. 57° 37' West for a distance of 3,170 feet, more or less to a point on the western bank of the Congaree River, and thence turning in a southerly direction for a distance of 2,210 feet, more or less, to the point of beginning.

Less: Certain 15 acre tract shown and delineated as A-1 as shown on the aforesaid plat.

PARCEL D having the following metes and bounds:

Beginning at a point on the northeastern side of the property now of the Foundation of Heathwood Hall, approximately 500 feet from the northeastern boundary of Parcel E, from that point running N. 23° 46' West for a distance of 3,200 feet, more or less, to a point, thence turning N. 57° 37' East for a distance of 2,120 feet to a point, and turning and running S. 38° 51' East for a distance of 351.77 feet, more or less, to a point, and thence turning S. 29° 52' East for a distance of 3,201 feet more or less to a point; thence turning and running S. 66° 14' West for a distance of 2,530 feet, more or less, to the point of beginning.

ALSO, a non-exclusive perpetual easement of right-of-way for access, ingress and egress, to Tracts D and E and other property of Overlook, given to Mortgagor by deed of Bluff Industrial Development Corporation, dated September 30, 1977, and recorded in Deed Book D-438 at Page 302, in the R.M.C. Office for Richland County.

ALSO, an agreement for a perpetual non-exclusive easement of right-of-way for ingress and egress given to Overlook, Inc. by Merc Associates, over the property of Merc Associates from Bluff Road to the property of Overlook, said agreement recorded in Deed Book D-438 at Page 321 on September 30, 1977, in the RMC Office for Richland County.

Being the identical property conveyed to Overlook, Inc., by deed of Bluff Industrial Development Corp., dated September 16, 1965, and recorded in the R.M.C. Office for Richland County, South Carolina, in Deed Book D-58 at Page 611.

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/ ARTHUR TRACT

All that certain piece, parcel, or tract of land, together with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 1,343 acres, more or less, as shown and delineated on plat of property surveyed for Ruth P. Forsythe by William Wingfield, Reg. Surv. dated March 31, 1958 and recorded in the Office of the Clerk of Court for said County in Plat Book "S" at Pages 38 and 39, and which tract of land is more specifically described, bounded and shown on such plat as follows: COMMENCING at a stone marker, which stone marker is located at a distance of 146 feet, more or less, in a Northwesterly direction, from a point at the Northeastern intersection of Blair Road, formerly Ott Road, and the Old Bluff Road, and thence running from such stone marker over and across Blair Road, formerly Ott Road, along the Northern side of the Old Bluff Road, S. 37 deg. 44 min. E., 1,083 feet, more or less, to a R.R. iron; thence running S. 41 deg. 18 min. E., along the northern side of the Old Bluff Road for a distance of 300 feet, more or less, to an iron; thence running S. 51 deg. 17 min. E. along the northern side of the Old Bluff Road 200 feet, more or less, to an iron; thence running S. 61 deg. 17 min. E., along the northern side of the Old Bluff Road 300 feet, more or less, to an iron; thence running S. 66 deg. 17 min. E. along the northern side of the Old Bluff Road, 865.2 feet, more or less, to an iron; then running S. 56 deg. 12 min. E., along the northern side of the Old Bluff Road, 567.2 feet, more or less, to a R.R. iron; then running S. 51 deg. 33 min. E. along the northern side of the Old Bluff Road, 413.3 feet, more or less, to an iron; thence running S. 33 deg. 47 min. E., along S.C. Highway #48 (Bluff Road) as shown on the above plat, 100 feet, more or less, to an iron; thence running S. 28 deg. 53 min. E. along S.C. Highway #48 as shown on the above plat, 392.8 feet more or less, to an iron; thence running S. 24 deg. 17 min. E., along S.C. Highway #48, 992.5 feet, more or less, to an iron; and there coming and thence running N. 89 deg. 53 min. W. along lands now or formerly of Truesdale, 53.5 feet, more or less to an oak tree; thence turning and running S. 19 deg. 01 min. W. along lands now or formerly of Truesdale, 228 feet more or less to an iron; thence running S. 06 deg. 28 min. W. along lands now or formerly of Truesdale, 1,056 feet, more or less, to a point in the center line of the creek, as shown on the above plat; thence running in an irregular curved line in a southerly direction, 700 feet, more or less, to a point in such creek; thence turning and running along the bed of a lagoon, in an irregular curved line in a westerly and southerly direction, 2,800 feet, more or less, to an iron where the lagoon and an old ditch intersect; thence, turning and running S. 68 deg. 5 min. W., along lands now or formerly of E & G Cattle Farm - Ehrlich, 3,426.3 feet, more or less, to an iron; thence turning S. 68 deg. 31 min. W. along lands now or formerly of E & G Cattle Farm - Ehrlich, 1,971.5 feet more or less, to a fence post corner; thence running S. 68 deg. 00 min. W., along lands now or formerly of Manning, 1,514.4 feet, more or less, to an iron; thence running in a southwesterly direction along lands now or formerly of Manning 20 feet, more or less to a point on the eastern bank of the Congaree River; thence turning and running in an irregular line in a northwesterly direction along the eastern bank of the Congaree River, for a distance of 6,616.1 feet, more or less to a point on the eastern bank of the Congaree River; thence turning and running in a northeasterly direction along lands of Ruth P. Forsythe, formerly Taylor lands, 20 feet, more or less, to an iron and cottonwood snag; thence running N. 66 deg. 28 min. E., along lands of Ruth P. Forsythe, formerly Taylor, 6,003.5 feet, more or less, to a concrete monument; thence running N. 68 deg. 33 min. E., along lands now or formerly of Tolliver, 721 feet, more

or less, to an iron; thence running N. 64 deg. 47 min. E., along lands now or formerly of Tolliver, 131 feet, more or less, to a granite stone marker; thence turning and running N. 30 deg. 38 min. E. along lands now or formerly of Tolliver, 1,867.7 feet, more or less, to an iron, thence running N. 28 deg. 17 min. E., along lands now or formerly of Tolliver, 218.3 feet more or less, to an iron on the southern side of the Old Bluff Road; thence running N. 22 deg. 52 min. E. over and across the Old Bluff Road, 31.5 feet, more or less, to the point of commencement all as shown by reference to the abovementioned plat.

LESS: 120 acres delineated as Parcel "A" on a plat of property of Burwell D. Manning, Jr. by B. P. Barber & Assoc. dated May 3, 1967, recorded in the Office of the Clerk of Court for said County in Plat Book X at Page 261, heretofore conveyed to the City of Columbia.

LESS: The southern 1,500 feet containing 99.7 acres of a conveyance of 133 acres to the Foundation of Heathwood Hall by deed dated January 16, 1974, and recorded in Deed Book D-305 at Page 989.

LESS: A tract containing 33.3 acres lying between the Heathwood Hall property on the north and the City of Columbia, S.C. Wastewater Treatment Plant on the south, being the parcel conveyed to Overlook, Inc. by deed dated January 15, 1974, and recorded in Deed Book D-305 at Page 682.

RESERVING: To mortgagor, his or its heirs, successors and assigns, an easement 100 feet in width over and upon the roadway from Beltline Blvd. extended to the Heathwood Hall property and intersecting paved roads in existence for access, ingress and egress.

This is a portion of the property containing 1,343 acres, more or less conveyed to Burwell D. Manning, Jr. by deed of Ruth P. Forsythe dated July 13, 1961, and recorded in the Office of the R.M.C. for Richland County, S.C., in Deed Book 304 at Page 96, Burwell D. Manning, Jr. having conveyed a 15% interest to Eastern Corn and Grain Company, Inc. by deed dated November 15, 1971, and recorded December 29, 1971, in Deed Book D-229 at Page 396 in said R.M.C. Office, as to which a corrected deed was filed February 7, 1972, in said R.M.C. Office in Deed Book D-232 at Page 960.

✓ WHITEHOUSE FARMS  
a/k/a Childs Tract. adjoins Arthur  
Tract on a portion of its Southern Boundary

All that piece, parcel, or tract of land, together with the improvements thereon, situate, lying and being about 6 miles from the City of Columbia, in School District No. 5 in the County of Richland, State of South Carolina, containing 1,024 acres, more or less, as more particularly shown and delineated on a plat of the property of the estate of Mrs. M. E. Childs, made by Tomlinson Engineering Co. dated January 16, 1924, said plat being filed for record in the Office of the Clerk of Court for Richland County, and bounded as follows: On the North by land now or formerly of Edward Ehrlich; East by land now or formerly of T. M. Livingston and land now or formerly of C. M. Livingston; South by the Congaree River and Gills Creek; and on the West by the Congaree River.

This being a portion of the same property conveyed to Burwell D. Manning, Jr., by deed of Katherine H. Manning dated December 6, 1961, and recorded December 7, 1961, in the Office of the R.M.C. for Richland County in Deed Book 314 at Page 565, and including the property conveyed to Burwell D. Manning, Jr. by deed of Palmetto State Construction Company dated May 15, 1964, and recorded in the Office of the R.M.C. for Richland County in Deed Book 389 at Page 79 on June 10, 1964.

LESS: That certain piece, parcel or lot of land containing 10 acres located on the northern side of Road S40-51 (Whitehouse Road) and conveyed to Coker's Pedigreed Seed Company by deed dated April 1976, and recorded in Deed Book 380 at Page 583 in the RMC Office for Richland County, South Carolina.

RESERVING to mortgagor, his heirs and assigns an easement 66 feet in width over and upon the road now in existence designated as Road S40-51 (Whitehouse Road) for access, in-tress and egress.

#### ✓ EHRlich TRACT

##### Adjoining Arthur Tract and a portion of Southern Laundry.

All that certain piece, parcel or tract of land situate, lying and being in the County of Richland, State of South Carolina, south of the City of Columbia near the Congaree River, containing 142.9 acres, more or less, being irregular in shape and being bounded on the North side by lands of B. D. Manning; East by lands now or formerly of Truesdale; South by lands of Rice, Tokunaga and Manning, and on the West by lands of Manning.

Being the identical tract heretofore conveyed to Edward Ehrlich and G. C. Romanstine by Alice G. Childs by deed dated October 28, 1890, recorded in Deed Book "V" at Page 21, and being the same tract subsequently conveyed by G. C. Romanstine to Edward Ehrlich by deed recorded in Deed Book "V" at Page 236 in the Office of the Clerk of Court for Richland County, excluding, however, the 3.2 acres non-contiguous tract west of Bluff Road, described in said deed, and conveyed to Burwell D. Manning, Jr. by deed of Ruth Ehrlich Ralston, et al., dated May 2, 1966, and recorded June 30, 1966, in Deed Book D 47 at Page 701 in the RMC Office for Richland County, South Carolina, and by deed of Harry M. Lightsey, Master, dated June 30, 1966, and recorded June 30, 1966, in said RMC Office in Deed Book D-47 at Page 698.

#### ✓ TOKUNAGA TRACT

##### Adjoins Ehrlich Tract on its Southern Boundary

All that certain piece, parcel or lot of land situate, lying and being in the County of Richland, State of South Carolina, beginning at an iron stake in a ditch on Ehrlich's South line, 410 feet Southwest of the intersection of this ditch and another ditch; running thence Southwest 1,665 feet to a stake in the center of a lagoon; thence running along the center of said lagoon in a Southwesterly direction 1,750 feet; thence running S. 54 deg. E., 1,200 feet to a stake; thence

running N. 38-3/4 deg. E., 1,079 feet to an iron stake; thence running N. 58 deg. W. 953 feet to a stake; thence running N. 26-1/4 deg. E., 1,864 feet to the point of beginning. Said tract of land containing 55-1/2 acres, more or less, being shown on a plat of survey prepared by William Wingfield dated May 18, 1964, recorded in the Office of the Clerk of Court for Richland County in Plat Book "X" at Pages 43, 43a, 43b, 43c.

This being the identical property conveyed to Burwell D. Manning, Jr. by deed of Shandon Greenhouses, et al., dated February 17, 1967, and recorded on February 17, 1967, in the Office of the R.M.C. in Deed Book D-65 at Page 636.

#### MARTIN FARM

##### Adjoins Tokunaga Tract on its Eastern Boundary

All that tract of land situate, lying and being in School District No. Five in the County of Richland, State of South Carolina, in a general southeasterly direction from the City of Columbia, S.C., and not far from the Bluff Road, containing 50 acres, more or less, and more particularly described as follows: BEGINNING at an iron stake 184 feet southwest of the heart of a ditch, it being the eastern corner of a tract of land heretofore conveyed by The Federal Land Bank of Columbia to Mitsou Tokunaga, and running thence N. 58 deg. W., 953 feet with said Tokunaga's line to an iron stake; thence N. 26 1/4 deg. E., along said line now or formerly of Tokunaga 1,864 feet to corner in ditch on line now or formerly of Ehrlich; thence in a northeasterly direction with said line now or formerly of Ehrlich 410 feet to intersection of two ditches; thence in a southeasterly direction along ditch 544 feet to intersection of two ditches; thence in a southeasterly direction along ditch 544 feet to intersection of two ditches; thence along old ditch in a southerly direction 1,084 feet to the intersection of two ditches; thence in a southwesterly direction along ditch 1,004 feet to heart of ditch; thence S. 38-3/4 deg. W. 184 feet to the point of beginning, with improvements thereon. Said property being designated as "Martin Farm" on composite plat prepared for Burwell D. Manning, Jr. by William Wingfield, Reg. Surveyor dated May 18, 1964, recorded in the Office of the Clerk of Court for Richland County in Plat Book X at Pages 43, 43A, 43B, 43C.

This being the same property heretofore conveyed to Burwell D. Manning, Jr. by James H. Martin by deed dated May 19, 1962, recorded in the Office of the R.M.C. for Richland County, South Carolina, on May 24, 1962, in Deed Book 327 at Page 153.

#### TRUESDALE TRACTS

##### Adjoins Arthur and Rutledge Tracts

Tract #1: All that certain piece, parcel or tract of land, situate, lying and being about 5 miles south of the City of Columbia, in School District #5 in the County of Richland, State of South Carolina, on Gills Creek, being composed of and embracing Parcel "A", containing 2.57 acres as shown on plat embracing the same surveyed for B. D. Manning, Jr. by B. P. Barber & Assoc., Engrs., dated May 27, 1964, recorded in the Office of the Clerk of Court for Richland

County in Plat Book U at Page 189, and having such courses, distances and boundaries as shown on said plat.

Being a portion of the premises conveyed to Burwell D. Manning, Jr. by deed of L. C. Truesdale, Inc. dated June 15, 1964, and recorded June 15, 1964, in the Office of the R.M.C. for Richland County in Deed Book 389 at Page 329.

Tract #2: All that certain piece, parcel or tract of land, situate, lying and being about 5 miles south of the City of Columbia in School District #5 in the County of Richland and State of South Carolina, near Gills Creek, being composed of and embracing Tract "C", containing 5.65 acres, as shown on plat embracing the same made for B. D. Manning, Jr. by B. P. Barber & Assocs., Engrs., dated May 27, 1964, recorded in said Clerk's Office in Plat Book U at Page 189, and having such courses, distances and boundaries as shown on said Plat.

Being a portion of the premises heretofore conveyed to Burwell D. Manning, Jr. by deed of L. C. Truesdale, Inc. dated June 15, 1964, and recorded June 15, 1964, in the Office of the R.M.C. for Richland County in Deed Book 389 at Page 329.

Tract #3: All that certain piece, parcel or tract of land, situate, lying and being about 5 miles south of the City of Columbia in School District #5 in the County of Richland, State of South Carolina, on Gills Creek, being composed of and embracing Tract "B", containing 3.22 acres, as shown on plat embracing the same and made for Jackson Gills Creek Public Service District by B. P. Barber and Assocs., Engrs., dated March 31, 1964, recorded in said Clerk's Office in Plat Book 23 at Page 534, and having such courses, distances and boundaries as shown on said plat.

Being the same premises conveyed to Burwell D. Manning, Jr., by deed of Jackson-Gills Creek Public Service Commission dated June 11, 1964, and recorded June 15, 1964, in the Office of the R.M.C. for Richland County in Deed Book 389 at Page 331; subject, however, to an easement and right-of-way in perpetuity in Jackson-Gills Creek Public Service Commission over and along a 50-foot strip of land along the southern boundary of said tract adjacent to Whitehouse Road for the installation, construction and maintenance of sanitary sewerage lines or other facilities used in connection with sewerage treatment plant.

#### ✓ RUTLEDGE FARM

##### Adjoins Whitehouse Farm on Southern Tip

All that certain piece, parcel or tract of land situate, lying and being in Lower Township, in the County of Richland, State of South Carolina, about 4-1/2 miles from the City of Columbia, consisting of 516 acres, more or less, as shown on plat prepared for Burwell D. Manning, Jr. by William Wingfield, Reg. Surv. dated August 24, 1966, and recorded in the Office of the Clerk of Court for Richland County in Plat Book "X" at Page 38, being more fully described as follows: Beginning at a point in the center line of Gills Creek 416 feet, more or less, Southwest of Bluff Road, S.C. Highway #48; running thence in a Southerly direction along the center line of Gills Creek, 10,550 feet, more or less; thence turning and running along the center



line of a gut in a Westerly direction, 840 feet, more or less, to a point; thence turning and running N. 35 deg. 30 min. E., 2,400 feet to a point; thence turning and running N. 12 deg. 15 min. W., 1,360 feet to a point; thence turning and running N. 34 deg 30 min. E., 1,720 feet to a point; thence turning and running N. 81 deg. 30 min. E., 505-feet to a point) thence N. 07 deg. 40 min. W., 825 feet to a point; thence N. 42 deg. 00 min. E., 1,285 feet to a point; thence N. 25 deg. 30 min. W., 3,150 feet to a point; thence N. 61 deg. 40 min E., 937.5 feet to a point thence S. 26 deg. 26 min. E., 59.2 feet to a point; thence N. 61 deg. 33 min. E., 253.4 feet to a point; thence N. 27 deg. 29 min. W., 59.3 feet to a point; thence N. 61 deg. 40 min. E., 611 feet, more or less, to a point; thence N. 61 deg. 40 min. E., 611 feet, more or less, to a point of beginning. Said property being bounded on the North by property now or formerly of Truesdale; East by property now or formerly of B. D. Manning Trust, Shirley Wilson and Manning Development Co.; South by B. D. Manning, Jr.

LESS: Lot conveyed out of Northern boundary by Burwell D. Manning, Jr. to L. C. Truesdale, adjoining property owner by deed dated January 1962, and recorded in Deed Book 340 at Page 314 in said RMC Office.

This being the identical property conveyed to Burwell D. Manning, Jr. by deed of C. Heath Manning dated January 13, 1954, and recorded in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book 125 at Page 558 on January 15, 1954.

#### ✓ GUIGNARD FARM

##### Adjoins Whitehouse and Rutledge Farms on Gill Creek

All that certain piece, parcel or tract of land situate, lying and being in Lower Township, Richland County, South Carolina, approximately 7 miles South of the City of Columbia, containing 544 acres, more or less, as shown on a plat prepared for Manning Development Co. by Wingfield, Reg. Surv., dated June 10, 1964, recorded in the Office of the Clerk of Court for Richland County in Plat Book "X" at Page 42, and being more full described as follows: BEGINNING at a point in the center line of Beckham Road approximately 2.5 miles south of South Carolina Highway #48, known as Bluff Road, thence running along the center line of said road S. 16 deg. 50 min. W., 1,119.7 feet to a point; thence turning and running in a Westerly direction along the center line of an old ditch 2,840.0 feet, more or less, to a point at the junction of the ditch and center line of Big Lake; thence turning and running a Northwesterly direction along the center line of Big Lake 2,800 feet, more or less, to a point; thence turning and running S. 81 deg. W., 860 feet, more or less to a point on the Eastern boundary of Congaree River; thence turning and running in a Northwesterly direction along the Eastern boundary of Congaree River, 2,763 feet to the intersection of Gills Creek and the Congaree River; running thence along the center line of Gills Creek, 9,150 feet, more or less, to a point; thence turning and running S. 19 deg. E., 4,188 feet to the point of beginning.

This being a portion of the same property conveyed to Manning Development Company by deed of Sanders Guignard dated July 6, 1959; and recorded in the Office of the R.M.C. for Richland County in Deed Book 254 at Page 18 and by deed of Susan G. Maye dated July 6, 1959, and recorded in Deed Book 254 at Page 20.

This being the identical property conveyed to Burwell D. Manning, Jr. by deed of Manning Development Company dated February 20, 1976, and recorded February 23, 1976, in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book D-374 at Page 305.

#### ✓McRAE KIRKLAND TRACT

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on the Northern side of Bluff Road, South Carolina Highway #48, near the City of Columbia, Richland County, South Carolina, containing 10.0 acres, more or less, being shown and delineated as Tract A on plat of property surveyed for William M. Kirkland and McRae Kirkland, by B. P. Barber & Assocs., Inc., Engineers, dated February 2, 1966, and recorded in the Office of the Clerk of Court for Richland County in Plat Book W at Page 212, reference thereto being craved for more complete description being rectangular in shape and having the following boundaries and measurements, all as shown on said plat, to wit: On the North by Tract B, whereon it measures 400 feet, more or less, East by a portion of Tract C and by Tract D, whereon it measures 1,089 feet, more or less; South by Bluff Road, S.C. Highway #48, whereon it fronts 400 feet, more or less, on the West by Tract B, whereon it measures 1,089 feet, more or less. This property is subject to a life estate in McRae Kirkland, reserved by deed unto Manning Development Company dated June 30, 1966, and recorded in Book D-45 at Page 733 in the RMC Office for Richland County, S.C. and being the same property conveyed by Manning Development Company to Whirlabout, Inc. by deed dated August 19, 1966. and recorded in Book D 54 at Page 438 in said office.

This being a portion of the property conveyed to Burwell D. Manning, Jr. by deed of Whirlabout, Inc., recorded in the Office of the R.M.C. for Richland County, South Carolina, on June 27, 1979, in Deed Book D-506 at Page 50.

#### ✓BARRON TRACTS

Tract #1: All that certain piece, parcel or tract of land with improvements thereon, situate, lying and being on the West side of Bluff Road about 4 miles South of the City of Columbia, Richland County, South Carolina, measuring and containing 40 acres, more or less, according to a plat thereof by Tomlinson Eng. Co. dated April 29, 1935, shown as property of Estate of Annie Naomi McC. Shirley and recorded in the Office of the Clerk of Court for Richland County in Plat Book "H" at Page 54, said property being lands now or formerly of Washington, and lands formerly of the Estate of Shirley, and on the West by Gills Creek, separating this property from lands now or formerly of Childs, and by the Old Bluff Road, less all property heretofore conveyed to the South Carolina Highway Department, and also less a lot containing .005 acres on the Southwestern side of the Bluff Road heretofore conveyed to the S.C. Electric & Gas Company.

Tract #2: All that certain piece, parcel or tract of land situate, lying and being on the Eastern side of a paved state highway known as "Swamp Road" South of its intersection with Bluff Road, South of the City of Columbia, Richland County, South Carolina, being shown and delineated as 29 acres, more or less, on a plat prepared for J. T. McAlister & Co. by McMillan

Eng. Co. dated January 6, 1965, and recorded in the Office of the Clerk of Court for said County in Plat Book "V" at Page 110; said tract being irregular in shape and bounded as follows: On the North by property known as Eastway Park No. 2, whereon it measures 1,540.5 feet, more or less; East by Eastway Park Subdivision tract, whereon it measures 304 feet, more or less; South by run of the lagoon which separates it from property now or formerly of W. L. Caughman; and on the West by paved state highway, all as shown on the abovementioned plat.

This is a portion of the property conveyed to Burwell D. Manning, Jr. by deed of Whirlabout, Inc. and recorded on June 27, 1979, in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book D-506 at Page 50.

### KIRKLAND SPANGLER TRACT

#### Adjoins Barron Tract on its Eastern Boundary

All that certain piece, parcel and tract of land with all improvements thereon, situate, lying and being on the south side of Bluff Road, and on the eastern side of a paved road sometimes known as "Swamp Road" south of the City of Columbia, County of Richland, State of South Carolina, being shown and delineated as 40 acres on a plat of Eastway Park No. 2 prepared in the Office of the Clerk of Court for Richland County in Plat Book "V" at Pages 108-109. Said tract being irregular in shape and having such metes and bounds as shown on said recorded plat except such slight variation in distances and bearings as may occur; said tract being generally bounded on the North by Bluff Road, whereon it measures 1,013 feet; East by property now or formerly of Josh Young (the branch being the line) and by property of Block H, Eastway Park; on the South by other property of W. M. Kirkland and McRae Kirkland, previously conveyed to J. T. McAllister, whereon it measures 1,540.5 feet; West by paved road for a distance of 303 feet, and on the Northwest by property now or formerly of Alyward; whereon it measures in a broken line for a total distance of 1,986 feet, all measurements being more or less.

LESS: All that piece, parcel or lot of land situate, lying and being in the County of Richland, State of South Carolina south of Columbia on Bluff Road (S.C. Highway #48) shown and delineated as Parcel 2, containing 2.75 acres on plat prepared for Manning Development Company by B. P. Barber & Assoc. dated June 10, 1969, recorded in the Office of the Clerk of Court for said County in Plat Book 37 at Page 83, said Parcel being bounded on the East by property of the Grantor designated as Parcel 1, whereon it measures 400 feet; on the South by property of the Grantor, whereon it measures 300 feet; on the West by property of the Grantor, whereon it measures 400 feet; and on the North by Bluff Road, whereon it measures 300 feet, same being a portion of Eastway Park #2 heretofore conveyed to the Grantor by deed of Eastway Park #2 recorded in said Clerk's Office in Deed Book D-35 at Page 565.

LESS: All that certain piece, parcel or lot of land, situate, lying and being in the County of Richland, State of South Carolina, containing 1.29 acres, more or less, and being shown as Parcel 1 on a plat of property surveyed for B. D. Manning, Jr. by B. P. Barber & Associates, Inc., dated June 10, 1969, and recorded in Plat Book 37 at Page 88 in the Office of the Clerk of Court for Richland County, S.C., and being more fully described as follows: Beginning at a point 1,994.4 feet southeast of the intersections of Bluff Road (S.C. Highway #48) and Swamp

Road (S-519), thence S. 67 deg. 14 min. E. 194.1 feet to an iron in the centerline of a branch; then along the centerline of branch 470 feet more or less to an iron in the centerline of branch; thence N. 22 deg. 46 min. E. 400 feet to the point of beginning; being a portion of the property conveyed to Manning Development Company by deed of Eastway Park, Inc. dated January 12, 1966, recorded in Deed Book D-33 at Page 565 on January 21, 1966.

LESS: Easement for operation maintenance and repair of sewer out fall line running along northwestern side of branch which forms the boundary between this parcel and property now or formerly of Josh Young .

The above described Kirkland Spangler Tract was conveyed to Manning Development Company by deed of Eastway Park, Inc. by deed dated January 12, 1966, and recorded in Book D-33 at Page 565 in the RMC Office for Richland County, South Carolina, and conveyed by Manning Development Company to Burwell D. Manning, Jr. by deed dated February 20, 1976, and recorded in Book D-374 at Page 305 in the RMC Office for Richland County, South Carolina.

### ✓ LUX TRACT

#### Adjoins Barron Tract on its Southern Boundary

All that certain piece, parcel or tract of land with improvements thereon situate, lying and being about 6 miles south of the City of Columbia, west of Bluff Road, Richland County, South Carolina, containing 254.8 acres, more or less, shown and delineated on plat prepared for Burwell D. Manning, Jr. by W. Frank McAnlay, Jr. (R.L.S.) dated October 22, 1973, said property being more fully described as follows: Beginning at a point on the western side of the middle of bridge on county road approximately 3/4 of a mile from Bluff Road -S.C. Highway #48 and running thence along the eastern boundary of said county road in a southerly direction 1,520 feet, more or less, to a point; thence running S. 26 deg. 00 min. W. 1,030 feet, more or less, to a point; thence S. 19 deg. 00 min. W. for 2,204 feet, more or less to a point; thence S. 75 deg. E. for 15 feet, more or less, to a point; thence S. 26 deg. E. for 37 feet, more or less, to a point; thence S. 54 deg. E. for 58 feet, more or less, to a point; thence S. 57 deg. 30 min. E. for 100 feet, more or less, to a point; thence S. 52 deg. E. for 98 feet, more or less, to a point; thence S. 38 deg. E. for 47 feet, more or less, to a point; thence S. 17 deg. 30 min. E. for 16 feet, more or less, to a point; thence S. 30 deg. 30 min. E. for 79 feet, more or less, to a point; thence S. 55 deg. E. for 215 feet, more or less, to a point; thence N. 71 deg. E. for 30 feet, more or less, to a point; thence S. 58 deg. E. for 138 feet, more or less, to a point; thence S. 67 deg. E. for 500 feet, more or less, to a point; thence S. 68 deg. 30 min. E. for 165 feet, more or less, to a point; thence S. 78 deg. E. for 130 feet, more or less, to a point; thence N. 2 deg. 00 min. E. for 3,002.6 feet, more or less, to a point; thence S. 68 deg. E. for 663 feet, more or less, to a point; thence S. 68 deg. E. for 1,866 feet, more or less, to a point; thence N. 20 deg. 55 min. E. for 1,488 feet, more or less, to a point; thence N. 56 deg. 45 min. W. for 1,331 feet, more or less, to a point; thence turning and running initially in a northeasterly direction in a curved line shaped in a semi-circle curving to the west along the run of the lagoon to the point of beginning. This tract is comprised of two tracts formerly of H. B. Lux, containing 174.3 acres and 80.5 acres respectively as shown on said plat, being the same property conveyed to Manning Development Company by deed of H. B. Lux dated February

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1, 1966, and recorded in the Office of the R.M.C. for Richland County in Deed Book D-36 at Page 721.

This being a portion of the property conveyed to Burwell D. Manning, Jr. by deed of Manning Development Company dated February 20, 1976, and recorded February 23, 1976, in the Office of the R.M.C. for Richland County in Deed Book D-374 at Page 305.

#### /CHAPPELL TRACT

##### Adjoins Lux Tract on the East Boundary of Lux

All that certain piece, parcel or lot of land together with the improvements thereon, situate, lying and being on the southern side of S.C. Highway #48, known as Bluff Road, in the County of Richland, State of South Carolina, being approximately 6 miles southeast of the City of Columbia, containing 1.07 acres and being more particularly shown and designated as Parcel No. 2 on that certain plat prepared for Jesse Chappell made by W. O. Culum, Reg. L.S., dated October 28, 1957, and recorded in the Office of the Clerk of Court for Richland County, said property fronting and measuring on the said Bluff Road a distance of 140 feet and running back therefrom in substantially parallel lines for a distance of 342 feet, all of which will more fully appear by reference to said plat. The above described property is the identical property heretofore devised to Lewis Chappell under the will of Jesse Chappell, probated and of record in the Office of the Judge of Probate for Richland County, South Carolina.

Also: All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being about 6 miles southeast of the City of Columbia, in the County of Richland, in the State of South Carolina, and being located about 342 feet south of S.C. Highway #48, known as Bluff Road, and being more particularly shown and designated as Parcel No. 3 on a certain plat prepared for Jesse Chappell by W. O. Culum, Reg. L.S., dated October 28, 1957, and recorded in the Office of the Clerk of Court for Richland County in Plat Book X at Page 1501, containing 1.07 acres and having such shape, measurements and boundaries as will more fully appear by reference to said plat. The above described property is the identical property heretofore devised to John Chappell under the will of Jesse Chappell probated and of record in the Office of the Judge of Probate for Richland County, South Carolina.

Also: All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being about 6 miles southeast of the City of Columbia on the southern side of S.C. Highway #48, known as Bluff Road, in the County of Richland, in the State of South Carolina, said tract containing 49 acres, more or less, and being the remainder, after excluding Parcels 1, 2 and 3, as shown on plat prepared by W. O. Culum, Reg. L.S., for Jesse Chappell, dated October 28, 1957, of tract of land containing 53 acres +/- as shown on a certain plat showing property of Jesse Chappell prepared by W. O. Culum and R. B. Gandy, dated January 1953, and recorded in Plat Book 3 at Page 205 in said Clerk's Office. The above described property is the identical property heretofore devised to John Chappell and Lewis Chappell under the will of Jesse Chappell probated and of record in the Office of the Judge of Probate for Richland County, South Carolina.

Also: All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being near S.C. Highway #48, known as Bluff Road, about 6.5 miles southeast of the City of Columbia, in the County of Richland, State of South Carolina, containing 45 acres, more or less, and being bounded on the north by other property of Burwell D. Manning, Jr.; on the east by property of Adcock, Madden & Pitts; on the south by property of John P. Chappell, Lewis G. Chappell and McElree Tuttle, Jr. (being conveyed simultaneously with this conveyance to Burwell D. Manning, Jr.); and on the west by the center line of SC Road 40-519; and being shown as the "Caughman Tract" a portion of Parcel "B" on plat of property surveyed for Burwell D. Manning by William Wingfield, Reg. Surveyor, dated April 30, 1971, and recorded in the Office of the Clerk of Court for Richland County in Plat Book X at Page 1500. The above described is the identical property heretofore conveyed to John P. Chappell and Lewis G. Chappell, the grantors herein, by Corinne Eugenia Caughman, et al., by deed dated November 6, 1946, and recorded in the Office of the Clerk of Court for Richland County in Deed Book 60 at Page 213.

This being the identical property conveyed to W. Grady Jordan by deed of Jasper M. Cureton, Master, dated November 22, 1976, and recorded in Deed Book D-404 at Page 469 and conveyed to Burwell D. Manning, Jr. by deed of W. Grady Jordan dated April 4, 1977, and recorded April 14, 1977, in Deed Book D-419 at Page 53 in the RMC Office for Richland County, S.C.

#### DRUCILLA CHAPPELL TRACT

##### Adjoins Chappell Tract

All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being on the southern side of S.C. Highway #48, known as Bluff Road, in the County of Richland, in the State of South Carolina, being approximately six miles southeast of the City of Columbia, containing 1.04 acres and being more particularly shown and delineated as Parcel No. 1 on that certain plat prepared for Jesse Chappell made by W. O. Cullum, Reg. L.S., dated October 28, 1957, said property fronting and measuring on the said Bluff Road a distance of 140 feet and running back therefrom in substantially parallel lines for a distance of 342 feet, all of which will more fully appear by reference to said plat.

Being the identical tract conveyed to Burwell D. Manning, Jr. by deed of Owens T. Cobb, Master, dated August 13, 1971, and recorded August 20, 1971, in Deed Book D-216 at Page 236 in the RMC Office for Richland County, South Carolina.

#### SHULL AND MILLER CHAPPELL TRACTS

##### Adjoins Lux Tract on its Southern Boundary

All that certain piece, parcel or tract of land together with the improvements thereon, situate, lying and being near S.C. Highway #48, known as Bluff Road, about 6.5 miles southeast of the City of Columbia, in the County of Richland, State of South Carolina, containing 249 acres, more or less, and being shown in outline as the Miller Tract on plat of property surveyed for

Burwell D. Manning by William Wingfield, Registered Surveyor, dated April 30, 1971, and recorded in Plat Book X at Page 1500, in the Office of the Clerk of Court for Richland County, S.C. The above described property is the identical property heretofore conveyed to John P. Chappell, Lewis G. Chappell and McElree Tuttle, Jr., the grantors herein, by Jesse Chappell by deed dated March 15, 1951, and recorded in the Office of the Clerk of Court for Richland County, S.C. in Deed Book "70" at Page 426.

Also: All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being near S.C. Highway #48, known as Bluff Road, about 6.5 miles southeast of the City of Columbia, County of Richland, State of South Carolina, containing 125 acres, more or less, and being shown in outline as the Shull Tract on plat of property surveyed for Burwell D. Manning by William Wingfield, Registered Surveyor, dated April 30, 1971, and recorded in Plat Book X at Page 1500 in the Office of the Clerk of Court for Richland County, S.C. The above described property is the identical property heretofore conveyed to the grantors herein by B. P. Shull and D. J. Shull by deed dated December 15, 1953, and recorded in said Clerk's Office in Deed Book 124 at Page 343.

Also: All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being near S.C. Highway #48, known as Bluff Road, about 6.5 miles southeast of the City of Columbia, in the County of Richland, in the State of South Carolina, containing 10 acres, more or less, and being shown in outline as the Manning Tract on plat of property surveyed for Burwell D. Manning by William Wingfield, Registered Surveyor, dated April 30, 1971 and recorded in Plat Book X at Page 1500 in the Office of the Clerk of Court for Richland County, S.C. The above described property is the identical property heretofore conveyed to the grantors herein by Manning Development Company by deed dated September 25, 1962, and recorded in said Clerk's Office in Deed Book 350 at Page 228. The conveyance of the above described parcel is made subject to the condition relating to the drainage of surface water set forth in the deed above referred to.

This conveyance is made subject to easements for public roads, existing public utility easements, and power line easements, if any.

This is the identical property conveyed to Burwell D. Manning, Jr. by deed of John T. Chappell, et al., dated May 14, 1971, and recorded on May 14, 1971, in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book 206 at Page 721.

AGREEMENT

COPY

This Agreement is made on this the \_\_\_\_ day of July, 1998, by and between BURWELL, D. MANNING, JR., EASTERN CORN & GRAIN COMPANY, INC., and OVERLOOK, INC., (hereinafter, collectively "Manning"), CHAPEL HILL, L.L.C., or its assigns ("Chapel Hill"), and DAK III, L.L.C. ("DAK"), to state the rights that Manning will have in certain real property that Chapel Hill and DAK are purchasing pursuant to Manning's rights under an agreement and Memorandum of Purchase Options by and between Manning and Congaree Farms, L.L.C. ("Congaree Farms"). This Agreement also states rights that Chapel Hill and DAK will have in property not yet acquired, but which Manning has the right to sell or reacquire, under the agreement and the Memorandum of Purchase Options by and between Manning and Congaree Farms.

1. Purpose of the Agreement. This Agreement allows Manning an opportunity to repurchase property that Chapel Hill and DAK are purchasing pursuant to Manning's rights under his agreement with Congaree Farms, and to avoid the loss of Manning's rights and interest in the property. On July 16, 1997, Manning conveyed real property to Congaree Farms pursuant to a financing agreement, under which Manning retained the right to make payment to Congaree Farms for the release and return of the conveyed property pursuant to terms and conditions stated in that certain Agreement dated June 25, 1997, as amended by the Addendum to Agreement executed on July 16, 1997, (hereinafter, as amended by the Addendum, the "Congaree Farms Agreement") by and between Manning and Congaree Farms. The Congaree Farms Agreement provides that Manning may sell and use the property, and may obtain the release and return of all or a portion of the property, upon required payments to Congaree Farms. These payments include release prices for acreage in the parcels of property conveyed to Congaree Farms. The Congaree Farms Agreement requires that Manning pay not less than \$3,300,000 to Congaree Farms on or before July 16, 1998 (the time for this payment has been extended to July 17, 1998 by Congaree Farms' agreement); if such payment were not made, Manning would lose all right and interest in the property. Furthermore, Manning has until July 16, 1999 in which to pay an additional \$3,360,800 to Congaree Farms; if such payment were not made, Manning would lose all rights and interest in the property not repurchased from Congaree Farms. The sale of property to Chapel Hill and DAK provides the required \$3,300,000 payment to Congaree Farms on July 17, 1998. Chapel Hill and DAK have agreed to allow Manning a limited time in which to repurchase the property they have purchased, upon the terms stated hereinbelow. Their purchase also enables Manning to retain Manning's interest in the property not yet repurchased from Congaree Farms; in return, Manning has agreed to assign his rights in the Unreleased Property, subject to the provisions set forth hereinbelow, to Chapel Hill and DAK.

2. Property. The real property and improvements which are the subject of this Agreement (hereinafter, the "Property") comprise approximately 4,500 acres, which are described in Exhibit A to this Agreement. The Property is comprised of numerous parcels, which are divided into three sections: Levy Section I, Levy Section II and Levy Section III. Levy Section I is comprised of the real estate known as the Arthur, Overlook and Ehrlich tracts; Levy Section



II is comprised of the real estate known as the Whitehouse, Rutledge, Tokunaga, Martin, Barron II and Truesdale tracts; and Levy Section III is comprised of the Guignard, Shull and Miller Chappell, Manning, Lux, Chappell I, Chappell II, Barron I, Kirkland, McCrae-Kirkland, and Drucilla Chappell tracts.

3. Purchase of Property. Chapel Hill and DAK are each purchasing a portion of the Property through Manning, pursuant to Manning's rights under the Congaree Farms Agreement. The purchase price paid by Chapel Hill and DAK is the total of (a) the release price for the acreage purchased under the Congaree Farms Agreement, (b) all costs of closing the sale (excluding Manning's attorneys fees), and (c) all other costs incurred by Chapel Hill and DAK in their purchase of the property (hereinafter, in aggregate, the "Purchase Price").

a. Chapel Hill is purchasing 1,406 acres, more or less, of property located in Levy Section II and Levy Section III. This property consists of the following: the "Rutledge Farm Tract", consisting of 516± acres; the "Truesdale Tracts", consisting of 11.44 acres; the "Tokunaga Tracts", consisting of 55.5 acres; the "Guignard Farm Tract", consisting of 544± acres; and the portion comprising Parcel B of the "Shull and Miller Chappell Tracts" (as shown on the plat of these tracts), consisting of 279± acres.

b. DAK is purchasing 811.684 acres of property in Levy Section I. This property consists of Parcel A-2, consisting of 236.585 acres; Parcel B-1, consisting of 246.57 acres; Parcel B-2, consisting of 8.227 acres; and Parcel E, consisting of 320.21 acres. These parcels are described on the plat of the Levy Section I property prepared by B. P. Barber & Associates, Inc., recorded in Richland County, South Carolina on or about July 16, 1998.

c. By Chapel Hill's purchase of the property described in subparagraph 3.a. above, the payment of \$1,803,716 is being made to Congaree Farms for the conveyance of such property. By the DAK's purchase of the property described in subparagraph 3.b. above, the payment of \$1,513,024 is being made to Congaree Farms for the release and conveyance of such property. These properties are hereinafter referred to as the "Released Property". The property still held by Congaree Farms after Congaree Farms' release and conveyance of the Released Property to Chapel Hill and DAK is hereinafter referred to as the "Unreleased Property".

4. Manning's Right to Repurchase the Released Property. Manning may purchase the Released Property upon the following provisions:

a. Manning shall have the right to purchase the Released Property in Levy Sections II and III from Chapel Hill for the purchase price of \$2,502,400; provided, however, that Manning's right to purchase the Released Property from Chapel Hill will expire on February 17, 1999.

b. Manning shall have the right to purchase the Released Property in Levy Section I from DAK for the repurchase price of \$2,097,600; provided, however, that Manning's right to purchase the Released Property from DAK will expire on February 17, 1999.

c. If Manning does not make the required payment to purchase the Released Property from Chapel Hill within the allowed seven month period, Manning's right to purchase the Released Property will no longer exist, but Manning, his heirs and assigns shall have the right to receive a 10% share of Chapel Hill's net profits from the Released Property in Levy Sections II and III through July 31, 2003, after Chapel Hill has recovered its Purchase Price plus all of its costs associated with the acquisition and development of the Released Property in Levy Sections II and III and all costs associated with maintaining and managing the property.

d. If Manning does not make the required payment to purchase the Released Property from DAK within the allowed seven month period, Manning's right to purchase the Released Property will no longer exist, but Manning shall have the right to receive a 25% share of DAK's net profits from the Released Property in Levy Section I through July 31, 2003, after DAK has recovered its Purchase Price plus all of its costs associated with the acquisition and development of the Released Property in Levy Section I and all costs associated with maintaining and managing the property.

5. Assignment of Manning's Interest in Unreleased Property. Manning assigns his interest in the Unreleased Property to Chapel Hill and DAK as follows:

a. Manning hereby assigns to Chapel Hill Manning's right to sell and/or repurchase the Unreleased Property in Levy Sections II and III, as such rights exist under the Congaree Farms Agreement; provided, however, that Chapel Hill may not exercise such assigned rights prior to February 17, 1999; and further provided that Manning shall retain the right to sell and/or repurchase the Unreleased Property in Levy Sections II and III under the Congaree Farms Agreement through February 17, 1999, subject to the provisions set forth hereinafter.

b. Manning hereby assigns to DAK Manning's rights to sell and/or repurchase the Unreleased Property in Levy Section I, as such rights exist under the Congaree Farms Agreement; provided, however, that DAK may not exercise such assigned rights prior to February 17, 1999; and further provided that Manning shall retain the right to sell and/or repurchase the Unreleased Property in Levy Section I under the Congaree Farms Agreement through February 17, 1999, subject to the provisions set forth hereinafter.

c. Manning hereby assigns to Chapel Hill, subject to the assignment to DAK made in subparagraph 5.b. above, Manning's rights to sell and/or repurchase the Unreleased Property in Levy Section I; provided, however, that Chapel Hill may not exercise such rights prior to February 17, 1999, and that Chapel Hill may exercise such rights only if DAK does not exercise such rights in the Levy Section I Unreleased Property pursuant to its assignment in subparagraph 5.b. above; and further provided that Manning shall retain the right to sell and/or repurchase the Levy Section I Unreleased Property through February 17, 1999.

d. Manning hereby assigns to DAK, subject to the assignment to Chapel Hill made in subparagraph 5.a. above, Manning's rights to sell and/or repurchase the Unreleased Property in Levy Sections II and III; provided, however, that DAK may not exercise such rights prior to February 17, 1999, and that DAK may exercise such rights only if Chapel Hill does not exercise such rights in the Levy Sections II and III Unreleased Property pursuant to its assignment in subparagraph 5.a. above; and further provided that Manning shall retain the right to sell and/or repurchase the Levy Sections II and III Unreleased Property through February 17, 1999.

e. During the period through February 17, 1999 in which Manning retains the right to sell or repurchase the Unreleased Property under the Congaree Farms Agreement, Manning may not sell or repurchase such Unreleased Property unless Manning simultaneously purchases the Released Property from Chapel Hill and DAK. \*

f. If Chapel Hill exercises the assigned rights under the Congaree Farms Agreement to sell or repurchase the Unreleased Property as provided hereinabove, Manning, his heirs and assigns shall receive a 10% share of Chapel Hill's net profits from the Unreleased Property through July 31, 2003. It is contemplated that Chapel Hill, or one or more members of Chapel Hill, may create a new entity and add new investors to own the Released Property Chapel Hill purchased and to own Chapel Hill's interest in DAK; the creation of such new entity and the transfer of Chapel Hill's rights in the Released Property and in DAK to such new entity will not constitute a transaction to which Manning will be entitled to a share of the profits.

g. If DAK exercises the assigned rights under the Congaree Farms Agreement to sell or repurchase the Unreleased Property as provided hereinabove, Manning shall receive a 25% share of DAK's net profits from the Unreleased Property through July 31, 2003.

h. Unless and until Manning purchases the Released Property as provided under paragraphs 4.a. and 4.b. hereinabove, Manning shall not reassign or transfer the rights and interest retained by Manning after the above assignments to Chapel Hill and DAK to repurchase the Unreleased Property under the Congaree Farms Agreement.

i. If Manning purchases the Released Property in Levy Sections II and III from Chapel Hill on or before February 17, 1999, Manning's assignment to Chapel Hill of Manning's rights under the Congaree Farms Agreement shall terminate upon such payment to Chapel Hill; provided, however, that if Manning does not exercise Manning's rights to purchase the Unreleased Property under the Congaree Farms Agreement, Manning shall allow Chapel Hill and DAK to exercise such purchase rights under the Congaree Farms Agreement in the same priority (as between Chapel Hill and DAK) as would exist under subparagraphs 5.c. and 5.d. above.

j. If Manning purchases the Released Property in Levy Section I from DAK on or before February 17, 1999, Manning's assignment to DAK of Manning's rights under the Congaree Farms Agreement shall terminate upon such payment to DAK; provided, however, that if Manning does not exercise Manning's rights to repurchase the Unreleased Property under the Congaree Farms Agreement, Manning shall allow Chapel Hill and DAK to exercise such

repurchase rights under the Congaree Farms Agreement in the same priority (as between Chapel Hill and DAK) as would exist under subparagraphs 5.c. and 5.d. above.

6. Manning's Right to Use of the Property. During the period under this Agreement in which Manning may repurchase the Released Property, Manning shall have the right to hunt and fish on the Property for recreational and social purposes, and Manning shall have the right of first refusal to farm the Property at a rental rate to be agreed by Chapel Hill (as to Levy Sections II and III) and DAK (as to Levy Section I); provided, however, that Manning shall maintain all portions of the Property in a reasonable manner.

7. Rollback Taxes. Manning shall be responsible for all rollback taxes assessed on the Property for periods through the calendar year ending December 31, 1998. If Manning purchases the Released Property from Chapel Hill and/or DAK under paragraph 4.a. and/or 4.b. hereinabove, Manning shall be responsible for rollback taxes assessed on the property for periods after December 31, 1998. \*

  
Burwell D. Manning, Jr., Individually  
and on behalf of Eastern Corn & Grain Company, Inc.  
and Overlook, Inc.

CHAPEL HILL, L.L.C.

By:   
Its: 

DAK, III, L.L.C.

By:   
Alec H. Chaplin, Member

CV008190

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MCNAIR LAW FIRM, P.A.

P.08/29

DAK III, L.L.C.

By: MANNING, KIRK & ASSOCIATES, Member

By: *[Signature]*

B. Dear Manning

Is: President

DAK III, L.L.C.

By: CHAPEL HILL, L.L.C., Member

By: *[Signature]*, M.M.  
Kirkman Finley, III

DAK III, L.L.C.

By: *[Signature]*

E. Robertson Kibler, Member

CV008190



**RICHLAND COUNTY  
SOUTH CAROLINA  
PLANNING DEPARTMENT**

P.O. Box 192  
2020 Hampton Street  
Columbia, South Carolina 29202

**DIVISIONS:**

|          |          |
|----------|----------|
| BUILDING | 256-0862 |
| PERMITS  | 256-0862 |
| PLANNING | 256-0862 |
| ZONING   | 748-4969 |

**MEMORANDUM**

TO: T. Cary McSwain, County Administrator

FROM: Terry W. Brown, Interim Planning Director *T.B.*

DATE: October 16, 1998

SUBJECT: Status of Manning Property

Yesterday during our meeting you had some questions regarding FEMA, the flood maps and the Manning property. I have discussed your questions with Ken and have answers for you.

You asked which maps we were using to make flood determinations; that is, whether it was the proposed maps or the earlier approved maps. By letter directive from FEMA, we are required to use the proposed maps for flood determinations and permitting purposes when they are distributed. The maps are not used for insurance purposes until they are approved.

You also asked about the status of FEMA's review of their determinations on the Manning property and whether we should be doing something at this point. According to Ken, the process is now awaiting the evaluation of the levees by the Corps of Engineers. That had been held up by the budgetary battle at the federal level. Deas Manning is supposed to be notified before the Corps comes to do their evaluation. There is not anything that we should be doing right now. Everything is contingent on the Corps' determinations.

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RICHLAND COUNTY  
ADMINISTRATORS OFFICE

*Congree levee  
F.E.M.A.*

*Deas Manning  
Manning & Kiek &  
Associates*

*699-2419-Business*

*787-2376 (home)*

*865-8490 (info)*

Def Trial Ex 142

DEF 0000035

OPERATING AGREEMENT

OF

COLUMBIA VENTURE, LLC

This Operating Agreement (the "Agreement") of Columbia Venture, LLC, a South Carolina limited liability company (the "Company"), dated February 19, 1999, is executed and agreed to, for good and valuable consideration, by the undersigned parties hereto.

ARTICLE 1 - DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

"Act" means the South Carolina Uniform Limited Liability Company Act of 1996 and any successor statute, as amended from time to time.

"Affiliate" of any Person means any other Person who controls, is controlled by, or is under common control with, such Person.

"Agreement" means this Operating Agreement of the Company, as it may be amended from time to time.

"Articles" means the articles of organization filed with the Secretary of State of South Carolina by which the Company was organized as a South Carolina limited liability company under and pursuant to the Act, as such articles of organization may be amended from time to time.

"BCMC" means Burroughs & Chapin Management Company, LLC, a South Carolina limited liability company.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are authorized by law to be closed.

"Capital Account Ratio" has the meaning set forth in Section 11.2(d).

"Capital Contribution" means any contribution to the capital of the Company.

"Change of Control" has the meaning set forth in Section 2.8(a).

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

(a) the Transfer by the Member of all of its Membership Units; or

(b) the Member's expulsion by judicial determination on application by the Company or another Member because the Member:

- (1) engaged in wrongful conduct that adversely and materially affected the Company's business;
- (2) willfully or persistently committed a material breach of the Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
- (3) engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

A Member may not voluntarily withdraw from the Company, and no other event will cause the dissociation of a Member.

Section 2.18 No Purchase of Distributional Interest of Dissociating Member.

The provisions of Section 33-44-701 of the Act shall not apply to the Company, and in no event shall the Company be obligated to purchase the Distributional Interest of a dissociating Member.

Section 2.19 Right to Redeem Membership Units held by Green Diamond.

(a) The Company shall be entitled, at any time (or from time to time) on or after the second Business Day following the first anniversary of the date of this Agreement, to redeem some or all of the Membership Units held by Green Diamond for cash at a redemption price determined pursuant to Section 2.19(b). The Company may exercise such redemption right by giving Green Diamond written notice of such exercise specifying the number of Membership Units to be redeemed.

(b) The redemption price for Membership Units redeemed by the Company pursuant to this Section 2.19 shall equal the greater of

(1) the sum of

(A) the product of the number of Membership Units redeemed multiplied by \$777.78,

plus



- (B) interest at the Option Rate on the clause (1) (A) amount from the date of this Agreement to the date, which must be within 30 days after the date on which notice of the Company's exercise of its redemption right is given, on which the redemption price is delivered to Green Diamond in immediately available funds; or
- (2) the product of the number of Membership Units redeemed multiplied by
  - (A) the sum of
    - (i) \$777.78,  
plus
    - (ii) one-half of the excess, if any, of
      - (a) (1) the total proceeds received by the Company from the issuance of Membership Units, other than Membership Units described in Exhibit 4.1(a) and Membership Units issued pursuant to Section 2.4(e), after the date of this Agreement and before the date on which the redemption price is delivered to Green Diamond in immediately available funds,  
  
divided by
      - (2) the total number of Membership Units issued by the Company, , other than Membership Units described in Exhibit 4.1(a) and Membership Units issued pursuant to Section 2.4(e), after the date of this Agreement and before the date on which the redemption price is delivered to Green Diamond in immediately available funds;
  - (b) \$777.78.

## EXHIBIT 4.1(a)

Initial Capital Contributions; Membership Units

| <u>Member</u>                    | <u>Initial Capital Contribution</u>                                                | <u>Fair Market Value</u> | <u>Number and Class of Membership Units</u>                      |
|----------------------------------|------------------------------------------------------------------------------------|--------------------------|------------------------------------------------------------------|
| Burroughs & Chapin Company, Inc. | Contracts to purchase Manning property                                             | \$6,000,000              | 6,000 Class B Membership Units                                   |
|                                  | \$3,000,000 cash                                                                   | \$3,000,000              | 3,000 Class A Membership Units                                   |
| NLBF, LLC                        | \$3,000,000 cash                                                                   | \$3,000,000              | 3,000 Class A Membership Units                                   |
| Fort Carson Family Housing, LLC  | \$2,000,000 cash                                                                   | \$2,000,000              | 2,000 Class A Membership Units                                   |
| Lockwood Greene Engineers, Inc.  | Services Agreement in the form of Schedule 1 to this Exhibit 4.1(a)                | \$2,000,000              | 4,000 Class B Membership Units                                   |
| Green Diamond, LLC               | Contribution to Company of property described in Schedule 2 to this Exhibit 4.1(a) | \$6,650,000              | 8,550 Class A Membership Units                                   |
| Carolina First Corporation       | \$3,000,000 cash                                                                   | \$3,000,000              | 1,375 Class A Membership Units<br>1,625 Class C Membership Units |

COMAPCDOC\COLUMBIA\3785918

CVMcNair000998

00000010



## Federal Emergency Management Agency

Region IV  
3003 Chamblee-Tucker Rd  
Atlanta, GA 30341

June 23, 1998

CERTIFIED MAIL NO. Z 027 608 006  
RETURN RECEIPT REQUESTED

Mr. Cary T. McSwain  
Richland County Administrator  
2020 Hampton Street  
Post Office Box 192  
Columbia, South Carolina 29202

Dear Mr. McSwain:

This is to confirm the conversation with Mr. Harry Reed, Richland County Flood Coordinator of your department. A meeting to present the revised Flood Insurance Study (FIS) to your community is scheduled for July 8, 1998, at 3:00 P.M., to be held at the Department of Natural Resources Building, Room 225 located at 2221 Devine Street, Columbia, South Carolina. This meeting will be conducted by Ms. Bel Marquez, Senior Engineer and David L. Thomas, Community Planner of our office and will include the incorporated community of the City of Columbia.

The purpose of the meeting is to present and review the preliminary FIS recently revised by Hayes, Seay, Mattern & Mattern, Inc. for the Federal Emergency Management Agency (FEMA). Copies of the preliminary Flood Insurance Rate Maps (FIRMs) and associated FIS text have been sent to you on June 5, 1998. This meeting complies with Section 206 of the Flood Disaster Protection Act of 1973 and Part 66 of the Code of Federal Regulations relating to community coordination procedures.

The revised FIS is considered an update to the currently effective FIS dated July 17, 1995. This revised study, when it becomes effective, may result in regulatory flood elevations being increased and/or decreased depending upon the flooding source. Furthermore, it will be the basis for your community's continued application and enforcement of all local floodplain management regulations required in conjunction with the participating criteria of the National Flood Insurance Program (NFIP). Revisions to your existing floodplain management ordinance may be necessary if Special Flood Hazard Areas (SFHA), floodways, velocity (VE) zones, or base flood elevations (BFE) are being added to the maps for the first time. The County's ordinance must reference the effective date of the new study and associated maps.

Def Trial Ex 146

Therefore, it is important that your floodplain administrator and representatives of the building/permitting department, planning and engineering offices be in attendance at the meeting. You may also wish to consider inviting elected officials to the meeting where we will be presenting and discussing the mapping changes.

This preliminary information will be subject to a 90-day review and appeal period, which will begin approximately one month after the final meeting date. If any appeals are received during that time, FEMA will review and resolve all appeals prior to initiating the subsequent 180-day community compliance period. Therefore, it will take at least nine months, from the beginning of the appeal period to the end of the compliance period, before the maps and study become effective for lending and insurance purposes.

The requirements of your local ordinance and the participating criteria of the NFIP require that the study data be used as "best available data" for floodplain development regulation in the following instances:

1. Setting regulatory standards in SFHA identified along waterways included in this restudy where BFE are now presented, but which were only presented as unnumbered A zones with no elevations on the currently effective FIRMs.
2. Along waterways where no floodways have been previously delineated but where floodways are now shown on the preliminary FIRMs

Even though there is no legal requirement that conditions of the Flood Damage Prevention Ordinance be applied to development and design standards for proposals located outside of a currently effective SFHA, we strongly recommend that you consider the use of the preliminary data for development proposed within any newly identified SFHAs.

The BFEs of the study will not replace those provided for streams addressed in the effective FEMA FIS, and as shown on the FIRMs, until and unless the study is incorporated into your Flood Damage Prevention Ordinance. Nonetheless, the community should utilize the elevations in the study for regulatory purposes if they exceed those identified on the current FIRMs.

DEF-00000011

As part of the overall coordination process, the community is responsible for providing notice to the public beyond the legal notices published by FEMA. You may wish to consider publicizing the meeting via the news media and other means in order that all segments of the community having an interest in flood problems will be notified and have an opportunity to attend. We have provided a model news release for your use.

For your information, FEMA maintains a web page on the World Wide Web. There is a great deal of information available regarding the many Agency programs; its structure, purpose, and operation. We encourage you to visit the FEMA website, which may be accessed at [WWW.FEMA.GOV](http://WWW.FEMA.GOV).

We appreciate your cooperation in this matter, and look forward to meeting with you. If you have questions or need additional information, please contact Ms. Marquez at (770) 220-5436 or by EMAIL at [Bel.Marquez@FEMA.GOV](mailto:Bel.Marquez@FEMA.GOV).

Sincerely,



*for* Clayton E. Saucier, Chief  
Hazard Identification and  
Risk Assessment Branch  
Mitigation Division

Enclosures

DEF-00000012

For additional information:  
Mitigation Division  
(770) 220-5400

The Federal Emergency Management Agency (FEMA) has announced that it has completed a detailed study of flood areas in Richland County and its incorporated communities.

The study was developed as part of the communities' involvement in the National Flood Insurance Program (NFIP).

This announcement is intended to notify all interested persons of the completion of a revised Flood Insurance Study (FIS) and to invite the public so that they may have an opportunity to attend a public meeting to be held on July 8, 1998, at 3:00 p.m. at the Department of Natural Resources Building, Room 225 located at 2221 Devine Street, Columbia, South Carolina.

According to A. Todd Davison, Director of FEMA's Mitigation Division, Atlanta Regional Office, the purpose of a study is to examine and evaluate flood hazard areas which are developed or which are likely to be developed and to determine flood elevations for those areas. The community to carry out floodplain management objectives of the NFIP will use flood elevations. The new elevations will also be used as the basis for determining appropriate flood insurance premium rates for new structures. The new elevations will also apply to current existing structures and contents if the structures are substantially improved or become substantially damaged. Your lender may also require that flood insurance be obtained if your structure's location will be in the special flood hazard areas.

A representative of FEMA will discuss the results of the FIS, and outline specific actions needed to be taken by local government in order to continue eligibility in the NFIP.

All interested residents and property owners who might be affected by the study results are encouraged to attend this important meeting.

DEF-00000013

# Federal Emergency Management Agency Community Status Book Report SOUTH CAROLINA

## Communities Participating in the National Flood Program

| CID     | Community Name                                                                   | County                                              | Init FHBM<br>Identified | Init FIRM<br>Identified | Curr Eff<br>Map Date | Reg-Emer<br>Date | Tribal |
|---------|----------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------|-------------------------|----------------------|------------------|--------|
| 450108# | LORIS, CITY OF                                                                   | HORRY COUNTY                                        | 06/21/74                | 08/01/86                | 08/17/03             | 08/01/86         | No     |
| 450242# | LURAY, TOWN OF                                                                   | HAMPTON COUNTY                                      | 09/15/78                | 09/29/10                | 08/29/10(M)          | 05/22/12         | No     |
| 450219# | LYMAN, TOWN OF                                                                   | SPARTANBURG COUNTY                                  | 05/17/74                | 05/27/77                | 01/08/11             | 05/27/77         | No     |
| 450128# | LYNCHBURG, TOWN OF                                                               | LEE COUNTY                                          | 07/18/75                | 02/01/91                | 11/19/08(M)          | 02/01/91         | No     |
| 450052  | MANNING, CITY OF                                                                 | CLARENDON COUNTY                                    | 06/28/74                | 04/15/86                | 04/15/86(M)          | 04/15/86         | No     |
| 450141# | MARION COUNTY*                                                                   | MARION COUNTY                                       | 01/06/78                | 06/18/90                | 10/18/11             | 06/18/90         | No     |
| 450142# | MARION, CITY OF                                                                  | MARION COUNTY                                       | 06/21/74                | 05/04/87                | 10/18/11             | 05/04/87         | No     |
| 450146# | MARLBORO COUNTY*                                                                 | MARLBORO COUNTY                                     | 02/24/78                | 11/06/91                | 06/16/11             | 08/11/97         | No     |
| 450198# | MAULDIN, CITY OF                                                                 | GREENVILLE COUNTY                                   | 08/16/74                | 09/29/78                | 12/02/04             | 09/29/78         | No     |
| 450226# | MAYESVILLE, TOWN OF                                                              | SUMTER COUNTY                                       | 03/19/76                | 02/18/07                | 02/18/07             | 02/18/07         | No     |
| 450039# | MCCLELLANVILLE, TOWN OF                                                          | CHARLESTON COUNTY                                   | 10/25/74                | 11/02/83                | 11/17/04             | 03/16/81         | No     |
| 450226# | MCCORMICK COUNTY *                                                               | MCCORMICK COUNTY                                    | 03/03/78                | 10/01/89                | 04/04/11             | 10/01/89         | No     |
| 450152# | MCCORMICK, TOWN OF                                                               | MCCORMICK COUNTY                                    | 06/07/74                | 06/25/76                | 04/04/11(M)          | 06/25/76         | No     |
| 450040# | MEGETT, TOWN OF                                                                  | CHARLESTON COUNTY                                   | 10/25/74                | 02/01/84                | 11/17/04             | 05/11/79         | No     |
| 450031# | MONCK'S CORNER, TOWN OF                                                          | BERKELEY COUNTY                                     | 05/24/74                | 01/16/81                | 10/16/03             | 01/16/81         | No     |
| 455417# | MOUNT PLEASANT, TOWN OF                                                          | CHARLESTON COUNTY                                   | 04/02/71                | 04/02/71                | 11/17/04             | 04/02/71         | No     |
| 450143# | MULLINS, CITY OF                                                                 | MARION COUNTY                                       | 06/28/74                | 08/03/86                | 10/18/11             | 08/03/86         | No     |
| 450108# | MYRTLE BEACH, CITY OF                                                            | HORRY COUNTY                                        | 09/20/74                | 07/05/77                | 08/23/99             | 07/05/77         | No     |
| 450006# | NEW ELLENTON, CITY OF                                                            | AIKEN COUNTY                                        | 06/28/74                | 08/30/76                | 06/18/12             | 06/30/76         | No     |
| 450224# | NEWBERRY COUNTY*                                                                 | NEWBERRY COUNTY                                     | 09/29/78                | 12/15/90                | 09/16/11             | 12/15/90         | No     |
| 450153# | NEWBERRY, CITY OF                                                                | NEWBERRY COUNTY                                     | 09/08/74                | 06/04/80                | 09/16/11             | 06/04/80         | No     |
| 450144# | NICHOLS, TOWN OF                                                                 | MARION COUNTY                                       | 06/21/74                | 08/04/87                | 10/18/11             | 09/15/99         | No     |
| 450244# | NINETY SIX, TOWN OF                                                              | GREENWOOD COUNTY                                    | 09/22/78                | 08/04/86                | 05/03/11(M)          | 09/17/86         | No     |
| 450007# | NORTH AUGUSTA, CITY OF                                                           | EDGEFIELD COUNTY/AIKEN COUNTY                       | 08/28/74                | 02/01/80                | 06/18/12             | 02/01/80         | No     |
| 450042# | NORTH CHARLESTON, CITY OF                                                        | DORCHESTER COUNTY/BERKELEY COUNTY/CHARLESTON COUNTY | 04/27/71                | 01/05/84                | 11/17/04             | 10/08/78         | No     |
| 450110# | NORTH MYRTLE BEACH, CITY OF                                                      | HORRY COUNTY                                        | 08/23/74                | 10/14/77                | 08/23/99             | 10/14/77         | No     |
| 450213  | NORWAY, TOWN OF                                                                  | ORANGEBURG COUNTY                                   | 11/08/74                | 05/27/77                | 05/27/77(M)          | 05/27/77         | No     |
| 450157# | OCONEE COUNTY *                                                                  | OCONEE COUNTY                                       | 11/25/77                | 08/01/87                | 09/11/09             | 09/01/87         | No     |
| 450180# | ORANGEBURG COUNTY *                                                              | ORANGEBURG COUNTY                                   | 05/05/78                | 12/16/80                | 12/16/80             | 12/16/80         | No     |
| 450164# | ORANGEBURG, CITY OF                                                              | ORANGEBURG COUNTY                                   | 06/28/74                | 07/16/80                | 07/16/80             | 07/16/80         | No     |
| 450180# | PACOLET, TOWN OF                                                                 | SPARTANBURG COUNTY                                  | 06/28/74                | 11/24/78                | 01/06/11             | 11/24/78         | No     |
| 450081# | PAMPLICO, TOWN OF                                                                | FLORENCE COUNTY                                     | 05/10/74                | 02/01/02                | 12/16/04             | 02/01/02         | No     |
| 450255# | PAWLEYS ISLAND, TOWN OF                                                          | GEORGETOWN COUNTY                                   | 01/03/75                | 03/01/84                | 03/16/89             | 03/01/84         | No     |
| 450135# | PELION, TOWN OF                                                                  | LEXINGTON COUNTY                                    | 08/09/74                | 07/17/95                | 02/09/00             | 07/17/95         | No     |
| 450019# | PENDLETON, TOWN OF                                                               | ANDERSON COUNTY                                     | 08/21/74                | 05/15/80                | 09/29/11             | 05/15/80         | No     |
| 450166# | PICKENS COUNTY *                                                                 | PICKENS COUNTY                                      | 02/14/75                | 07/19/82                | 04/16/08             | 07/19/82         | No     |
| 450169# | PICKENS, CITY OF                                                                 | PICKENS COUNTY                                      | 06/07/74                | 06/25/76                | 04/16/08(M)          | 06/25/76         | No     |
| 450136# | PINE RIDGE, TOWN OF                                                              | LEXINGTON COUNTY                                    | 06/21/74                | 03/18/80                | 02/20/02             | 03/18/80         | No     |
| 450183# | PINEWOOD, TOWN OF                                                                | SUMTER COUNTY                                       | 06/21/74                | 07/17/86                | 02/16/07             | 07/17/86         | No     |
| 450028# | PORT ROYAL, TOWN OF                                                              | BEAUFORT COUNTY                                     | 06/14/74                | 08/29/86                | 09/29/86             | 04/15/77         | No     |
| 450082# | QUINBY, TOWN OF                                                                  | FLORENCE COUNTY                                     | 05/17/74                | 11/24/78                | 12/16/04             | 11/20/78         | No     |
| 450043# | RAVENEL, TOWN OF                                                                 | CHARLESTON COUNTY                                   | 06/14/74                | 04/01/81                | 11/17/04             | 04/01/81         | No     |
| 450218  | REEVESVILLE, TOWN OF                                                             | DORCHESTER COUNTY                                   | 12/27/74                |                         | 12/27/74             | 08/11/06(E)      | No     |
| 450170# | RICHLAND COUNTY*                                                                 | RICHLAND COUNTY                                     | 07/29/77                | 11/04/81                | 09/29/10             | 11/04/81         | No     |
| 450114# | RIDGELAND, TOWN OF                                                               | JASPER COUNTY                                       | 03/03/76                | 08/19/86                | 08/19/86(M)          | 08/19/86         | No     |
| 450186# | ROCK HILL, CITY OF                                                               | YORK COUNTY                                         | 08/02/74                | 02/03/93                | 09/26/08             | 04/01/81         | No     |
| 450249# | ROCKVILLE, TOWN OF                                                               | CHARLESTON COUNTY                                   |                         |                         | 11/17/04             | 03/09/98         | No     |
|         | THE TOWN OF ROCKVILLE HAS ADOPTED THE CHARLESTON COUNTY FIRM DATED 11/4/92 PANEL |                                                     |                         |                         |                      |                  |        |

## Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 192  
Columbia, SC 29202



Phone (803) 748-4600  
Fax (803) 748-4644  
TDD (803) 748-4999

Office of the County Administrator

### MEMORANDUM

**TO:** Richland County Council  
**FROM:** Mullen Taylor, Assistant to the County Administrator *MT*  
**DATE:** February 1, 2001  
**SUBJECT:** County/Columbia Venture correspondence

At the request of Council Member Bernice Scott, attached you will find copies of all correspondence between Richland County Administrator's Office and Columbia Venture for your review. Please note that some of the correspondence is marked confidential.

If you have any questions about the contents of this correspondence, please give me a call at 748-4645.

Def Trial Ex 151



## Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 182  
Columbia, SC 29202



Phone (803) 748-4616  
Fax (803) 748-4644  
TDD (803) 748-4899

### Office of the County Administrator

June 22, 2000

Mr. James E. Wiseman  
Senior Director/Design and Land Planning  
Columbia Venture, L.L.C.  
4875 Forest Drive  
Columbia, South Carolina 29206

Dear Jim:

As we discussed today on the telephone, enclosed you will find a copy of Richland County's National Pollutant Discharge Elimination System Permit issued by DHEC on March 17, 2000. I anticipate that revisions to the County's stormwater ordinance will be presented to County Council in July. As soon as this ordinance, as well as the County's best management practices are ready for review, I will forward them to you.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

cc: County Engineer

## Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 192  
Columbia, SC 29202



Phone (803) 748-4600  
Fax (803) 748-4644  
TDD (803) 748-4999

### Office of the County Administrator

July 5, 2000.

Mr. James E. Wiseman  
Columbia Venture, L.L.C.  
4875 Forest Drive  
Columbia, South Carolina 29206

Dear Jim:

As we discussed last week, enclosed you will find a copy of Richland County's "Interim Ordinance" that provides a means for developers to build under a "2020 Vision Development District" using the goals and principles found in the County's Comprehensive Plan. A copy of the vision portion of the Comprehensive Plan is needed in order for you to fully understand this option. Hence, I have also enclosed the County's vision document. Next time we meet, I will provide you a full copy of the Comprehensive Plan.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

enclosures

**MAILED**  
7/5/00

MULLEN TAYLOR

From: MULLEN TAYLOR  
 Sent: Wednesday, August 23, 2000 9:12 AM  
 To: Tim Rogers  
 Cc: George Wolfe  
 Subject: Request for info

Tim,

I am writing in response to your kind offer made during the Aug 21st meeting with George Wolfe and me to assist the County in obtaining information from Columbia Venture. County receipt of any studies, assessments or data generated by Columbia Venture and/or its consultants will greatly improve our ability to understand the Green Diamond Project. Conversely, the County will certainly share such information it has or will have as we go through the Project's review process. At this juncture, I cannot specify all the information the County will want or need from Columbia Venture simply because we don't have enough information and haven't moved far enough along in this process to gain a complete understanding of all the issues facing us. However, for now, I ask for the following:

- Survey of levees in digital form using state plane coordinates
- Survey of property boundaries in digital form using state plane coordinates
- Copy of environmental assessments Phase I and II (and source data supporting assessments) as they become available
- Any environmental analysis (and source data supporting analysis) of Columbia Venture performed as part of any due diligence on the property to determine viability of development
- Any reports dealing with the wetlands located on property (and their supporting data)

---

Baseline data used for the economic impact study being performed by A.G. Edwards

- Transportation study performed by Wilbur Smith as it becomes available

As previously offered, the County will be happy to provide any tax or property data needed for Columbia Venture's economic impact study. Additionally, the County's elevation data is currently being processed, and any elevation maps of the Green Diamond property will be made available to Columbia Venture once they are ready (As I have discussed with Jim Wiseman, the actual elevation data itself is available for a fee, but County work products generated from the data is free). I will also forward to you in the mail a copy of the County's proposed revisions to our Sediment Control and Stormwater Management ordinance that will be considered by Council in September. Please let me know if Columbia Venture needs any other County information now or in the future.

I look forward to working with you on this project.

Mullen

## Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 192  
Columbia, SC 29202



Phone (803) 748-4600  
Fax (803) 748-4644  
TDD (803) 748-4999

### Office of the County Administrator

August 23, 2000

**COPY**

Mr. Timothy F. Rogers  
Austin, Lewis & Rogers  
Post Office Box 11716  
Columbia, South Carolina 29211

Dear Tim:

As promised in my email correspondence today, enclosed you will find a copy of proposed revisions to the County's Sediment and Erosion Control ordinance and Stormwater Management ordinance. These ordinance revisions reflect changes required in order for the County to comply with our National Pollutant Discharge Elimination System permit issued by DHEC in March of this year. Council will first consider these ordinances during its Development & Services Committee Meeting on September 26<sup>th</sup>, with readings concluding in November.

Please forward these ordinances to the appropriate person within Columbia Venture. The County's review of Columbia Venture's Stormwater Management Plan for the Green Diamond Project will be guided by these ordinances.

Yours truly,

A handwritten signature in dark ink, appearing to read "M. McMullen Taylor".

M. McMullen Taylor  
Assistant to the County Administrator

enclosure

cc: George Wolfe

George Wolfe

From: MULLEN TAYLOR (mullentaylor@richlandonline.com)  
 Sent: Monday, August 28, 2000 11:43 AM  
 To: 'Tim Rogers'  
 Cc: George Wolfe  
 Subject: questions re: CV Timeline

Tim,

Some of the time periods on the Microsoft Project Timeline I faxed you on Friday are purely arbitrary because I don't have enough information to give good estimates on things that CV are undertaking. Please help me nail down some times by answering the following:

- \* When did AG Edwards start on CV Economic Impact study, how far along are they (a percentage would be most helpful), and when is the deadline for finishing the study.
- \* When I can expect to receive environmental information requested from CV.
- \* When CV anticipates submitting a Stormwater Management Plan
- \* When CV anticipates submitting a concept plan and/or sketch plan
- \* Does CV anticipate submitting to the County its rezoning request at the same time it submits sketch plan?
- \* Are there other tasks to include on timeline? If so, let me know when they are with an estimated timeframe.

In talking with George this am, we are envisioning that this timeline and some form of the "Decision Matrix" be referenced in Process Agreement and attached.

Let me know if we need to meet on the timeline etc

Thanks,

Mullen

DEF-00002127

**MULLEN TAYLOR**

---

From: George Wolfe [GBW@nmrs.com]  
Sent: Monday, August 28, 2000 6:34 PM  
To: 'Tim Rogers'  
Cc: 'Mullen Taylor'; 'Jim Wiseman'  
Subject: RE: meeting 8/30/00 a.m.

Sure, will see you then. George.

-----Original Message-----  
From: Tim Rogers [mailto:tr Rogers@alrlaw.com]  
Sent: Monday, August 28, 2000 6:29 PM.  
To: George Wolfe  
Cc: 'Mullen Taylor'; 'Jim Wiseman'  
Subject: meeting 8/30/00 a.m.

Pursuant to our discussion, can we meet Wednesday morning at nine o'clock in my office?

Mullen and Jim have signed off on these arrangements. Please let me know if there is a problem. Otherwise, I'll plan on seeing you then and talking with you tomorrow again on the cost and process agreements and time line document.

Thanks.

---

Timothy E. Rogers  
Austin, Lewis & Rogers, P.A.  
Attorneys and Counselors at Law  
Congaree Building  
508 Hampton Street  
Post Office Box 11716  
Columbia, South Carolina 29211  
(803) 258-4000 Phone  
(803) 252-3879 Fax  
tr Rogers@alrlaw.com  
website: www.alrlaw.com

DEF-00002128

MULLEN TAYLOR  
Wednesday, August 30, 2000 12:38 PM  
'Jim Wiseman'  
'Tim Rogers'  
consultant list

earlier today, attached is my consultant list for economic impact studies.

  
No Impact  
Study...

Mullen

DEF-00002129

MULLEN TAYLOR

From:

MULLEN TAYLOR

Sent:

Thursday, August 31, 2000 3:41 PM

Subject:

'Tim Rogers'

my to do notes from yesterday

- Cary or I will call FEMA to determine whether there is a 30 day comment period following announcement of FEMA decision.
- Wiseman, Randy Jorgenson and I will schedule a tour of property and a look at the concept plan next week.
- I will pursue idea of joint economic impact study and get back with Wiseman asap. We will then jointly arrive at baseline data, assumptions and scope, and decide how to hire.
- I will ask Ralph if the Stormwater Plan must include levee improvement plan and let Wiseman know.
- I will revisit floodway encroachment issue with Kit and Greg.
- I will email my economic impact consultant list to Wiseman - already done.
- I will email Microsoft Project timeline to Wiseman and Rogers.



**MULLEN TAYLOR**

---

From: Tim Rogers [trogers@airlaw.com]  
Sent: Thursday, August 31, 2000 10:20 AM  
To: 'Mullen Taylor'  
Subject: RE: Ralph's word on Stormwater Plan

hey  
as we discussed  
I am working on a summary of yesterday's meeting  
please let me send it to you presently  
for your review  
so we can then formally send it out  
thanks

Timothy F. Rogers  
Austin, Lewis & Rogers, P.A.  
Attorneys and Counselors at Law  
Congaree Building  
508 Hampton Street  
Post Office Box 11716  
Columbia, South Carolina 29211  
(803) 256-4000 Phone  
(803) 252-3679 Fax  
trogers@airlaw.com  
website: www.airlaw.com

---

From: MULLEN TAYLOR  
Sent: Wednesday, August 30, 2000 3:56 PM  
To: 'George Wolfe'; 'Jim Wiseman'; 'Tim Rogers'  
Subject: Ralph's word on Stormwater Plan

---

Guys,

I spoke with Ralph about whether the Stormwater Management Plan submitted by CV must include a levee improvement plan. He said yes, based upon Section 8-66 which sets forth contents of Plan.

Mullen

DEF-00002131

MULLEN TAYLOR

---

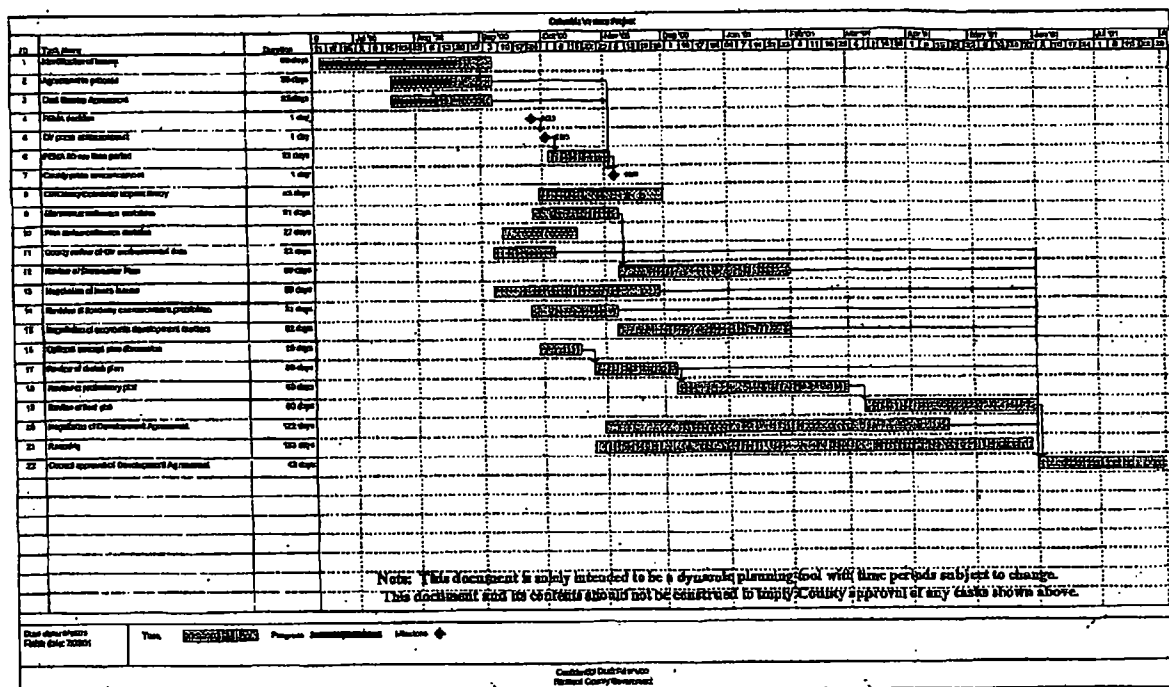
From: MULLEN TAYLOR  
Sent: Friday, September 01, 2000 4:58 PM  
To: 'John Martin'; 'Tonia McConnell'  
Cc: 'Tim Rogers'  
Subject: CV timeline

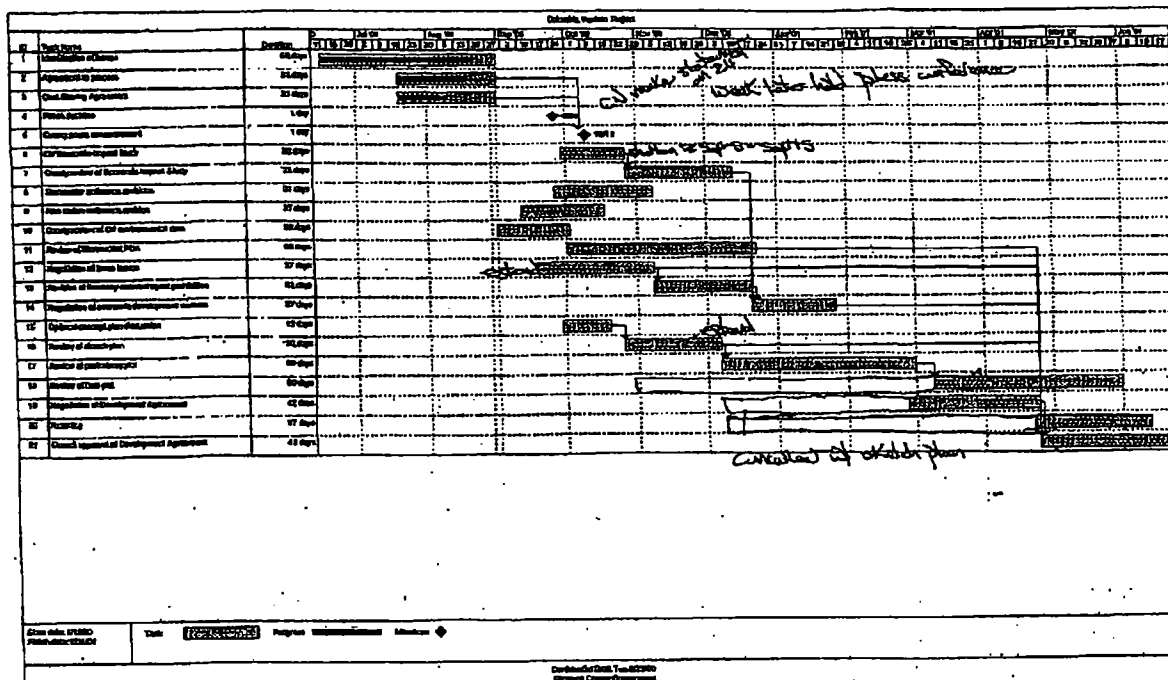


CV timeline.mpp

Let me know if you have any questions.

Mullen





DEF-00002134

**MULLEN TAYLOR**

---

From: J. E. Wiseman [jewiseman@columbiaventure.net]  
Sent: Tuesday, September 05, 2000 8:28 AM  
To: MULLEN TAYLOR  
Subject: RE: FEMA

Thanks. See you later today.

Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mullentaylor@richlandonline.com]  
Sent: Friday, September 01, 2000 12:16 PM  
To: 'Jim Wiseman'; 'Tim Rogers'  
Subject: FEMA

I spoke with FEMA's PIO, Mary Hudak, today to clear up confusion over whether there is a 30 day comment period following map announcement on the 26th. She said there will be a 30 day comment period. She is faxing me the press release and once I get it, will fax it to you.

Mullen

DEF-00002135

MULLEN TAYLOR

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From: MULLEN TAYLOR  
Sent: Tuesday, September 05, 2000 11:10 AM  
To: 'Tim Rogers';  
'George Wolfe';  
Subject: CLOMAR, etc

Hey Tim,

Got your message Friday regarding who to send the draft CLOMAR to. Please send a copy to me and George. George will then send it on to Jack.

We haven't heard anything from you about the Cost Agreement or the Process Agreement. George and I would like to get these two documents resolved soon. Let us know your client's response as soon as you can.

Thanks

Mullen

**MULLEN TAYLOR**

---

From: MULLEN TAYLOR  
Sent: Thursday, September 07, 2000 3:03 PM  
To: 'Jim Wiseman'  
Subject: planners

Jim,

Please ask EDSA to send concept plan to:

Scott Kilfinger  
Hillier Group  
Widener Building  
Mezzanine  
One South Penn Square  
Philadelphia, PA 19107-3502  
email: skilfinger@hillier.com  
phone: (215) 636-9999

Tom Gallagher  
IPS Partnership  
123 Fry Road  
Fleetwood, PA 19522  
email: thomas\_j\_gallagher@hotmail.com  
or TGallagh@imres.com  
phone: (215) 640-0372

Thanks

Allen

---

*CV*

Columbia Venture, LLC

September 7, 2000

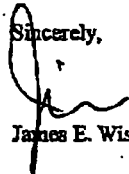
Richland County Administrator's Office  
Attn: Mullen Taylor  
2020 Hampton Street, Suite 4058  
Columbia, South Carolina 29202

Dear Mullen:

As you requested, I am pleased to provide you with the attached disk study relating to topographics, the boundary survey, and wetlands delineation. While Columbia Venture, LLC is sharing this information with Richland County to facilitate the county's consideration of the proposed development and related contracts, Columbia Venture, LLC considers the information to be confidential and proprietary and not subject to disclosure pursuant to the South Carolina Freedom of Information Act. Moreover, the release of the information to the general public might cause harm to the competitive position of Columbia Venture, LLC. If the county believes the attached information should be provided to third parties or the general public, we will be glad to work with you to determine what, if any, of the information should be released.

If you should have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



James E. Wiseman

JEW/sls

Carolina First Building  
4875 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 743-0672 (803) 743-0675 Fax



**MULLEN TAYLOR**

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**From:** MULLEN TAYLOR  
**Sent:** Thursday, September 14, 2000 1:58 PM  
**To:** 'John Martin'; 'Tim Rogers'  
**Subject:** Floodplain Management Association



Floodplain  
Management Association... Guys,

This website is a good source of general info about flooding and floodplain management.

Happy reading.

Mullen

<http://floodplain.org/>

DEF-00002139

**MULLEN TAYLOR**

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From: J. E. Wiseman [jewiseman@columbiaventure.net]  
Sent: Friday, September 15, 2000 3:22 PM  
To: MULLEN TAYLOR  
Subject: RE: Concept Plan

Mullen-

I have confirmed EDSA for Oct 11 at 10:00 and told them to plan on staying thru the day on the 12th. I think they have a 6 PM flight on the 12th.

Jim

MULLEN TAYLOR

---

From: J. E. Wiseman [jewiseman@columblaventure.net]  
Sent: Friday, September 15, 2000 3:37 PM  
To: MULLEN TAYLOR  
Subject: RE: Concept Plan

One of our main planners is on vacation this week and part of next. I will try to push for sooner.

Jim

PS- Have a great weekend.

-----Original Message-----

From: MULLEN TAYLOR [mailto:mullentaylor@richlandonline.com]  
Sent: Friday, September 15, 2000 3:25 PM  
To: 'J. E. Wiseman'  
Subject: RE: Concept Plan

Thanks for checking into that. ReceMng the Plan on the 27th doesn't give a alot of time to work prior to Oct. 11 and 12. Any chance it could be finished before the 27th?

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columblaventure.net]  
Sent: Friday, September 15, 2000 3:21 PM  
To: MULLEN TAYLOR  
Subject: RE: Concept Plan

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Mullen-

EDSA is completing some changes to the plan based on new information that the golf course designer submitted this week. We are reviewing this as well as incorporating some of the comments you and Randy had. I hope EDSA will have this finished by Sept 27 so we can send to your planners.

Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mullentaylor@richlandonline.com]  
Sent: Friday, September 15, 2000 2:42 PM  
To: 'Jim Wiseman'  
Subject: Concept Plan

Jim,

I remembered what else I needed to ask you. My planning consultants, Scott Killinger and Tom Gallagher, have not yet received your concept plan from EDSA. When can they expect to get it? They are chomping at the bit to get working on this project.

Mullen

DEF-00002141

**MULLEN TAYLOR**

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**From:** MULLEN TAYLOR  
**Sent:** Friday, September 15, 2000 5:03 PM  
**To:** 'Jim Wiseman'  
**Subject:** mtg on Mon

Jim,

Just heard from Tim - we are all on for Mon at 2:00 in Tim's Office

Mullen

**MULLEN TAYLOR**

---

**From:** MULLEN TAYLOR  
**Sent:** Tuesday, October 10, 2000 3:56 PM  
**To:** 'Jim Wiseman'; 'Tim Rogers'  
**Subject:** misc stuff

Jim and Tim,

I've arranged the first installment of the County's education of the Issues before us. On Oct. 17th from 3:00 to 5:00 pm in our back conference room we will have Dr. Allen James of USC Geography Dept. speak to Council about the basics of rivers - how they function, what is a floodway, floodplain etc. I will also invite City Council. Hope you can be there.

Also, I've got a question. Dr. Grego is asking the County to look (not get anything on paper) at a comparison of Lockwood Green elevation data and the County's latest LIDAR elevation data. The County received a CD from Lockwood Greene with just elevation data some time ago. The latest CD I received from CV was deemed confidential. This CD also contained Lockwood Greene elevation data along with other stuff. So, the question is - do you consider the Lockwood Greene elevation data to be confidential? I need to know your thoughts as soon as possible.

Mullen

DEF-00002143

**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Wednesday, October 11, 2000 12:11 PM  
To: 'J. E. Wiseman'  
Subject: RE: misc stuff

Thanks Jim. I left a message for Patrick to give you a call today.

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Wednesday, October 11, 2000 11:54 AM  
To: MULLEN TAYLOR  
Subject: RE: misc stuff

Mullen-

Names for Tuesday-

Drew Goings- Asst City Engineer- Augusta- 706-821-1706  
Tom Robertson- Engineer with firm of Craig, Robertson, et al- 706-722-1588  
I also will have a report from Gary Dyhouse, PE who was the Corps' hydrologist in the St Louis office during the 1993 flood. He is very familiar with how levees work, why uncertified ones fail, etc.

The topo information has been given to FEMA so I would not view it as confidential. However, we are sensitive as to how it may be portrayed by Dr. Grege, who is an appellant. Please have Patrick give me a call so we can compare your flyover data with our info prior to releasing any of our info to Dr. Grege. Thanks for your help.

---

Jim

**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Thursday, October 12, 2000 2:50 PM  
To: 'George Wolfe'; 'Jim Wiseman'; 'Tim Rogers'  
Subject: river 101 rescheduled,

Folks,

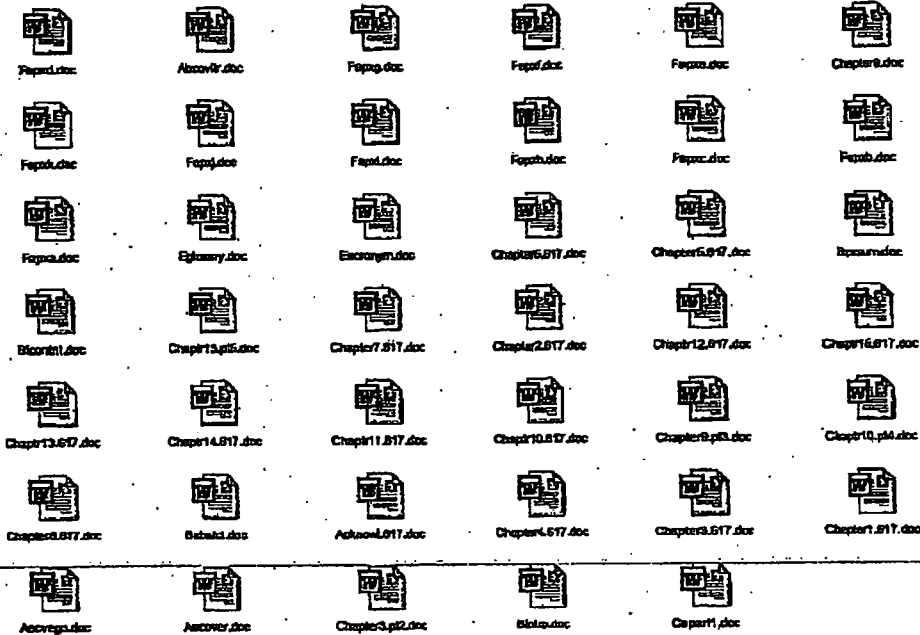
Dr. James' presentation on river dynamics and flood plain management has been rescheduled to Tues the 24th from 3-5 in the Administrator's back conference room.

Sorry for the switch, but its been one of those days where nothing seems to go as planned.

Mullen

**MULLEN TAYLOR**

From: MULLEN TAYLOR  
 Sent: Monday, October 18, 2000 10:07 AM  
 To: 'Jim Wiseman'  
 Subject: FW: FBB-File Libraries



Jim,

Attached is the Galloway Report by chapter. Be prepared to print for awhile!

Mullen

-----Original Message-----

From: KJ LANE  
 Sent: Friday, October 13, 2000 12:07 PM  
 To: MULLEN TAYLOR  
 Subject: RE: FBB-File Libraries

Mullen,

I've converted these files to Word documents. If you have any trouble accessing them, please let me know.

KJ

ps...

Have fun reading this plethora of information..

~7



**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Thursday, October 19, 2000 6:27 PM  
To: 'Jim Wiseman'  
Subject: Dyhouse Report

Hey Jim,

Thanks for the Levee Report by Dyhouse. I think it is a reasonable assessment of levees written by someone who is credible and obviously very knowledgeable of structural flood control. It is helpful in understanding levee design. I particularly appreciated the 10 examples of levees across the Country. I have two questions that I would appreciate if you send to Dyhouse:

Can Dyhouse explain to me the concept of the design life of a levee? Levees are constructed to a certain standard - here it is 500 yr interval. If you follow the assumption that bfe or cfs will change over time; then is there a time when the levee design to withstand a 500 yr flood (at time of construction) no longer meets future conditions? I realize that the 3 feet of freeboard is supposed to provide an additional measure of safety. But besides that, what do levee operators do when the river conditions change to the point that a levee no longer meets the design requirements? Does this happen?

In the design of your proposed Congaree levee, have you considered the earthquake hazard here? I had 2 County Building Inspectors come to me today with concerns about levee construction because of the fault line in the area. They showed me an earthquake hazard map that showed B&C property as having potential for liquefaction; whatever that means. Another map shows Richland County in an earthquake intensity category of 8 out of 12. Does this factor in to levee design?

Thanks Jim

Mullen

DEF-00002147

MULLEN TAYLOR

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From: MULLEN TAYLOR  
Sent: Wednesday, October 25, 2000 10:47 AM  
To: 'Jim Wiseman'  
Subject: Galloway Report

Jim,

Attached is my extractions from Galloway Report that I find interesting and/or relevant in a general sense to CV project.



Galloway.doc

Mullen

**MULLEN TAYLOR**

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From: J. E. Wiseman [jewiseman@columbiaventure.net]  
Sent: Wednesday, November 01, 2000 6:00 PM  
To: MULLEN TAYLOR  
Subject: RE: Questions from Mullen Taylor

I can put my engineer hat on for this one. Liquefaction occurs when soils are exposed to water and vibration at the same time. I could have our soils engineer look at this, but, for the most part, the levees would tend to move with the surrounding soils and would not be severely damaged during an earthquake. Any damage could be repaired unless the river was in flood condition. Please note that "normal" river levels do not come close to the levee.

Thanks, Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mulentaylor@richlandonline.com]  
Sent: Wednesday, November 01, 2000 5:08 PM  
To: 'J. E. Wiseman'; 'gdyhouse@stinet.com'  
Subject: RE: Questions from Mullen Taylor

Thanks for the answers to my questions. One clarification on the earthquake question - my assumption was not that an earthquake and a flood would likely occur at the same time, but rather, was asking simply about levee capacity to withstand an earthquake. My thinking behind this question was about levee repair in the event of an earthquake, and whether an earthquake would damage levees.

---

ice again, thanks. You've been very helpful.

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Wednesday, November 01, 2000 9:48 AM  
To: Mullen Taylor  
Subject: FW: Questions from Mullen Taylor

-----Original Message-----

From: Gary R. Dyhouse [mailto:gdyhouse@stinet.com]  
Sent: Tuesday, October 31, 2000 5:10 PM  
To: jewiseman@columbiaventure.net  
Subject: Questions from Mullen Taylor

I've been out of town much of the last two weeks and haven't been able to check into the questions that Ms. Taylor asked until now. She asked about changed hydraulic conditions and about earthquake design.

The levee hydraulic design is based on an analysis of long term gage records reflecting the presence of upstream flood reduction storage. The longer the record, the better the estimate is for the 500 year event. The Congaree's record of about 70 years of data is far better on most sites. The current estimate reflects good engineering

practices conducted by an internationally renowned hydraulic engineer (Roy Beard) and should provide as good an estimate of the 500 year event as is possible. However, the 500 year design elevation is an estimate, and could be higher or lower than the "true" value of the 500 year flood level. Unfortunately, we will never know what this "true" value is. As the years go by and more hydrologic and hydraulic data is collected, the frequency estimates are updated, which may or may not change the 500 year estimate by a significant amount. If the estimate went down, the levee would provide more protection than advertised. This has happened to Corps levees when additional upstream reservoirs came on line. If the estimate went up, either the levee would require a raise to regain the desired level of protection, or if nothing were done, the levee would simply provide less than 500 year protection. Either of these latter two scenarios are possible and have happened; although not frequently. It might take at least several decades before a definitive study has enough additional H&H data to conclusively show that the stage-frequency relationship has significantly changed, impacting the Congaree levee. Studies now nearing completion on the Mississippi River at St. Louis are showing that the new estimate of the 500 year event is considerably lower than estimates made about 30 years ago.

The short answer to if levees include an earthquake analysis is no. Levee structures like gate closures, pumping plants, etc. would include an earthquake allowance, but the earthen levee normally would not. The combination of high river stage coincident with a major earthquake, potentially causing liquefaction, is so remote that it would not be a realistic design consideration.

**MULLEN TAYLOR**

From: Gary R. Dyhouse [gdyhouse@stinet.com]  
 Sent: Thursday, November 02, 2000 10:35 AM  
 To: MULLEN TAYLOR  
 'J. E. Wiseman'  
 Subject: Re: Questions from Mullen Taylor

Since levees are earthen structures typically 10-20 feet high with base widths of 120-200 feet or more, they are considered stable against most earthquakes. No specific earthquake design is normally included for levees. An exception could be where a major fault line is near a levee; i.e., in the Missouri bootheel which contains the New Madrid fault. In an area like this, consideration could be given for the inclusion of some earthquake design if the levee is particularly high, like over 20 feet.

I would not think that earthquakes in the Columbia area are more severe than they would be in the St. Louis area. The Corps of Engineers does not include any earthquake allowances for levees here. I am not aware of any earthquake damage to levees anywhere in the country.

I hope this information is helpful. Feel free to EMail me if you have any additional questions or concerns, or call at 314-894-8000.

MULLEN TAYLOR wrote:

> Thanks for the answers to my questions. One clarification on the earthquake  
 > question - my assumption was not that an earthquake and a flood would likely  
 > occur at the same time, but rather, was asking simply about levee capacity  
 > to withstand an earthquake. My thinking behind this question was about  
 > levee repair in the event of an earthquake, and whether an earthquake would  
 > damage levees.

nee again, thanks. You've been very helpful.

> Mullen

> —Original Message—

> From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
 > Sent: Wednesday, November 01, 2000 9:48 AM  
 > To: Mullen Taylor  
 > Subject: FW: Questions from Mullen Taylor

> —Original Message—

> From: Gary R. Dyhouse [mailto:gdyhouse@stinet.com]  
 > Sent: Tuesday, October 31, 2000 5:10 PM  
 > To: jewiseman@columbiaventure.net  
 > Subject: Questions from Mullen Taylor

> I've been out of town much of the last two weeks and haven't been  
 > able to check into the questions that Ms. Taylor asked until now. She  
 > asked about changed hydraulic conditions and about earthquake design.

> The levee hydraulic design is based on an analysis of long term gage  
 > records reflecting the presence of upstream flood reduction storage.  
 > The longer the record, the better the estimate is for the 500 year  
 > level. The Congaree's record of about 70 years of data is far better  
 > than most sites. The current estimate reflects good engineering  
 > practices conducted by an internationally renowned hydraulic engineer (Roy  
 > Beard) and should provide as good an estimate of the 500 year event as  
 > possible. However, the 500 year design elevation is an estimate, and  
 > could be higher or lower than the "true" value of the 500 year flood

- > level. Unfortunately, we will never know what this "true" value is. As
- > the years go by and more hydrologic and hydraulic data is collected, the
- > frequency estimates are updated, which may or may not change the 500
- > year estimate by a significant amount. If the estimate went down, the
- > levee would provide more protection than advertised. This has happened
- > to Corps levees when additional upstream reservoirs came on line. If
- > the estimate went up, either the levee would require a raise to regain
- > the desired level of protection, or if nothing were done, the levee
- > would simply provide less than 500 year protection. Either of these
- > latter two scenarios are possible and have happened, although not
- > frequently. It might take at least several decades before a definitive
- > study has enough additional H&H data to conclusively show that the
- > stage-frequency relationship has significantly changed, impacting the
- > Congaree levee. Studies now nearing completion on the Mississippi River
- > at St. Louis are showing that the new estimate of the 500 year event is
- > considerably lower than estimates made about 30 years ago.
- >
- > The short answer to if levees include an earthquake analysis is no.
- > Levee structures like gate closures, pumping plants, etc. would include
- > an earthquake allowance, but the earthen levee normally would not. The
- > combination of high river stage coincident with a major earthquake,
- > potentially causing liquefaction, is so remote that it would not be a
- > realistic design consideration.

MULLEN TAYLOR

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From: MULLEN TAYLOR  
Sent: Monday, November 06, 2000 11:25 AM  
To: 'J. E. Wiseman'  
Subject: RE: Memorandum - Procedural and Liability Issues ...

Thanks for the Memo. George et al are reviewing it.

Kit apparently met with Heathwood, but I don't know what was said. As for the viability of floodway reconfiguration, FEMA is telling me it is still an option, which is reflected in the minutes of the Oct. 4th mtg. I don't think the option of reconfiguration should be construed as some sign of opposition to your project. If Richland, Lexington and the City chose to pursue examining possible floodway scenarios, the intent would NOT be to see how much more floodway can be pushed onto B&C property, but rather, seeking a way to protect the WWTP which is a valid public interest. If reconfiguration would in fact push more floodway onto B&C property, I sincerely doubt that scenario would be considered by the 3 governments. All of this is a moot point right now, because no one has even sat down to model possible floodway shifts. The reason I'm talking about it is because of your implication that this option is being talked about as a way "to get" B&C. It is not.

So, that's my rumor bustin' response.

Mullen

-----Original Message-----  
From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Friday, November 03, 2000 8:22 AM  
To: Mullen Taylor  
Subject: FW: Memorandum - Procedural and Liability Issues ...

---

Mullen-

Attached is the memo from Peter Helbert on the liability issue. I'm sure George will enjoy the reading.

Rumor du jour is that Kit has informed Heathwood Hall people that she will work diligently to get both the school and the sewer plant out of the floodway while leaving our property in the floodway. She asked this question in Washington and FEMA answered that anything like that would not be allowed because of the rise condition. They stated it better in the minutes. We have been willing to sit down and talk about all the issues. But it is frustrating when it appears we are being strung out and hammered constantly.

Bill Clinton- "Can't we all just get along" - Joke du jour

Jim

**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Wednesday, November 15, 2000 2:59 PM  
To: 'J. E. Wiseman'  
Subject: RE: request

Thanks Jim.

-----Original Message-----  
From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Wednesday, November 15, 2000 3:03 PM  
To: MULLEN TAYLOR  
Subject: RE: request

Will get it to you as soon as I get it.

-----Original Message-----  
From: MULLEN TAYLOR [mailto:mullen.taylor@richlandonline.com]  
Sent: Tuesday, November 14, 2000 12:51 PM  
To: 'Jim Wiseman'  
Subject: request

Hey Jim,

Can I get a hard copy of Dyhouse's presentation last night? If its not already on paper, don't worry about it, ie, dont knock yourself out getting 'des printed on paper if its not already in that format. However, if /house has some of his slides generated from Powerpoint, then ask if he could email them to me so I can print out.

Thanks

Mullen



**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Tuesday, November 21, 2000 8:54 AM  
To: 'J. E. Wiseman'  
Subject: RE: Levee Design Manual

Thermodynamic schmanic, girhne the fuviatgeohydroconstructodynomo deluxel

On a serious note, we have decided to move your presentation to the Council Chambers. There is a good amount of interest from the public and media on this, so I'm afraid we will not have enough room in our large conference room. We'll meet at 4:00, go down to the Chambers and check it out, then talk before 5:00.

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Tuesday, November 21, 2000 8:30 AM  
To: MULLEN TAYLOR  
Subject: RE: Levee Design Manual

If this excites you, I've got some great old thermodynamic textbooks that will blow you away.....Just kidding...thanks, and I must commend you on wanting to know the facts.

Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mullentaylor@richlandonline.com]  
Sent: Monday, November 20, 2000 5:11 PM  
To: 'Jim Wiseman'  
Subject: Levee Design Manual

Jim,

This is the link to the Corps' Design and Construction Manual for Levees. I must tell you, this stuff is riveting, so fascinating that I just can't put this manual down. My eyes are glued to the paper, man. I'm sure I will enjoy reading and rereading this literary jewel for years to come!

<http://www.usace.army.mil/inet/usace-docs/eng-manuals/em1110-2-1913/toc.htm>

Mullen

**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
 Sent: Monday, December 04, 2000 4:43 PM  
 To: 'Jim Wiseman'  
 Subject: County's Request for Information

**CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER**

Jim,

As you know, the County's position during this time of waiting for FEMA's letter of final determination is to suspend substantive negotiations with Columbia Venture until a FEMA decision has been made, and in the meantime, educate ourselves about the complicated issues before us in order to make responsible, informed decisions about the Green Diamond project. You have provided us with general information during this time, which has been very helpful to the County. The County has reached a juncture in this educational process where we need more specific information from Columbia Venture. We request the following information, if available, by the end of this year:

**Information Relating to the Green Diamond Site**

- Copy of environmental assessments Phase I and II (and source data supporting assessments).
- Any environmental analysis (and source data supporting analysis) of Columbia Venture performed as part of any due diligence on the property to determine viability of development.
- Any reports dealing with the wetlands located on property (and their supporting data).

Baseline data and resulting fiscal or economic impact analysis performed by A.G. Edwards and/or Columbia Venture.

- Transportation study performed by Wilbur Smith.

**Information Specific to Levees**

- Cost estimates for levee construction and maintenance, including methodology for arriving at estimates.
- Copy of CLOMAR prepared by Columbia Venture, including the levee design, technical analyses that prove no impact, and internal drainage design; and an indication as to which community Columbia Venture intends to request approval of the CLOMAR. If the entire CLOMAR is not fully completed, please provide components that are completed.
- Columbia Venture's proposed means of financing and carrying out levee construction, maintenance and repair, and specifically, who will pay for what.
- Columbia Venture's proposal/contemplation as to who will ultimately have legal title to the land on which the levees sit.
- Columbia Venture's proposal/contemplation as to who will be primarily and/or secondarily responsible for levee construction, maintenance and repair, and for oversight of same.
- Columbia Venture's proposal/contemplation as to who, if anyone, should be liable for any claims made in connection with harm to people and property resulting from a failure of the levees.

Copy of levee district documents obtained by Columbia Venture from the Houston, Texas area.

If Columbia Venture considers any of this requested information confidential, then the County will work with the company to maintain its confidentiality. Please let me know if any of the requested information is not available, and when it will become available. I'd prefer that you go ahead and send any readily available information to me and wait on other information you may need to gather, as opposed to waiting to receive all information at one time.

Thank you for your help. This information will greatly enhance and move forward the County's decision-making process.

Mullen /

**MULLEN TAYLOR**

---

From: Tim Rogers [trgers@ahtaw.com]  
Sent: Thursday, December 07, 2000 1:19 PM  
To: 'Mullen Taylor'  
Tim Rogers

re: proposed stormwater drainage management ordinance

Dear Mullen:

Thanks for talking with me today about the latest draft revisions in the proposed stormwater drainage management ordinance.

I understand that there are several changes which have been incorporated into the "official" draft proposal since you last shared a copy with me. I appreciate your offer to email that version to me. I also understand that there may be more changes to this draft prior to its consideration by the D&S Committee. If and when those become available, I would appreciate your sending those to me as well.

I understand that the plan is now to have this matter deferred at the December Committee meeting, and to take it up at the Committee meeting on January 23. If this procedure changes and it is possible to notify me, please do so.

I also understand that members of the D&S Committee requested an opinion from the County Attorney pertaining to Sections 8-27 (g), (h) and (i) of the existing ordinance, which language is also included in the most recent draft of the new ordinance. Could you please indicate whether this opinion has been completed and rendered, and if so, when I might be able to get access to it?

---

Finally, I appreciate your offer to meet to receive any input which Columbia Ventura might wish to submit in regard to the proposed new ordinance. I will forward this information on to my client.

Thanks very much for all your assistance.

Tim

cc: Hon. Bernice G. Scott  
Larry Smith, Esquire  
George Wolfe, Esquire  
Jim Wiseman  
Jim Fields, Esquire  
Mike Ey, Esquire

Timothy F. Rogers  
Austin, Lewis & Rogers, P.A.  
Attorneys and Counselors at Law  
Congaree Building  
508 Hampton Street  
Post Office Box 11716  
Columbia, South Carolina 29211  
(3) 256-4000 Phone

**MULLEN TAYLOR**

---

From: MULLEN TAYLOR  
Sent: Thursday, December 07, 2000 4:28 PM  
To: 'Tim Rogers';  
'George Wolfe'  
Subject: RE: stormwater ordinance

Tim,

Since we talked earlier today, I emailed you the most recent version of the Stormwater Ordinance. The only difference from last version I sent you awhile ago is the removal of the section establishing the Conservation Commission. No changes that I know of will be made to the ordinance prior to the Committee meeting in January.

The legal opinion is still in process. As I understand it, the opinion will not be available to third parties unless the Committee and/or Council waives the attorney-client privilege of confidentiality. I'm guessing that once the Committee reviews it during their meeting in January, they will decide at that point whether to release it for public record or not.

Let me know if Columbia Venture has any questions about the ordinance or would like to offer any interpretations.

Mullen

cc: Larry Smith (hardcopy)  
Hon. Bernice Scott (hardcopy)

-----Original Message-----

From: Tim Rogers [mailto:tr Rogers@altlaw.com]  
Sent: Thursday, December 07, 2000 1:19 PM  
To: 'Mullen Taylor'  
From: Tim Rogers  
Subject:

re: proposed stormwater drainage management ordinance

Dear Mullen:

Thanks for talking with me today about the latest draft revisions in the proposed stormwater drainage management ordinance.

I understand that there are several changes which have been incorporated into the "official" draft proposal since you last shared a copy with me. I appreciate your offer to email that version to me. I also understand that there may be more changes to this draft prior to its consideration by the D&S Committee. If and when those become available, I would appreciate your sending those to me as well.

I understand that the plan is now to have this matter deferred at the December Committee meeting, and to take it up at the Committee meeting on January 23. If this procedure changes and it is possible to notify me, please do so.

I also understand that members of the D&S Committee requested an opinion from the County Attorney pertaining to Sections 8-27 (g), (h) and (i) of the existing ordinance, which language is also included in the most recent draft of the new ordinance. Could you please indicate whether this opinion has been completed and rendered, and if so, when I might be able to get access to it?

DEF-00002159

Finally, I appreciate your offer to meet to receive any input which Columbia Venture might wish to submit in regard to the proposed new ordinance. I will forward this information on to my client.

Thanks very much for all your assistance.

Tim

cc: Hon. Bernice G. Scott  
Larry Smith, Esquire  
George Wolfe, Esquire  
Jim Wiseman  
Jim Fields, Esquire  
Mike Ey, Esquire

Timothy F. Rogers  
Austin, Lewis & Rogers, P.A.  
Attorneys and Counselors at Law  
Congaree Building  
508 Hampton Street  
Post Office Box 11716  
Columbia, South Carolina 29211  
(803) 252-4000 Phone  
(803) 252-3679 Fax  
tfr Rogers@alr law.com  
website: www.alrlaw.com

DEF-00002160

**MULLEN TAYLOR**

---

**From:** MULLEN TAYLOR  
**Sent:** Thursday, December 07, 2000 12:27 PM  
**To:** "Tim Rogers"  
**Subject:** FW: Stormwater ordinance



Stormwater ordinance  
112100...

~~Original Message~~  
**From:** ASH MILLER  
**Sent:** Thursday, December 07, 2000 12:22 PM  
**To:** MULLEN TAYLOR  
**Subject:** Stormwater ordinance

DEF-00002161

**MULLEN TAYLOR**

---

**From:** MULLEN TAYLOR  
**Sent:** Tuesday, January 02, 2001 4:15 PM  
**To:** 'Jim Wiseman'; 'Tim Rogers'  
**Subject:** Follow-up on request for info

**CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER**

Jim and Tim,

To follow-up on the County's request for information sent to you on December 4th, please let me know when I might receive some or all of the information we have asked for. I'd like to get some general sense of when I will get what.

Happy New Year! Thanks for your help.

Mullen



DEF-00002162.

**MULLEN TAYLOR**

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From: MULLEN TAYLOR  
Sent: Tuesday, January 02, 2001 8:44 PM  
To: 'Tim Rogers'  
Subject: RE: Follow-up on request for info

That's fine. Thanks.

Mullen

-----Original Message-----

From: Tim Rogers [mailto:tfrogers@alriaw.com]  
Sent: Tuesday, January 02, 2001 5:07 PM  
To: 'Mullen Taylor'  
Cc: 'Jim Wiseman'; Tonia McConnell  
Subject: RE: Follow-up on request for info

mullen --

I will definitely have you a submittal NLT friday of this week. will that be ok?

thanks for your help.

tim

---

Timothy F. Rogers  
Attorney, Lewis & Rogers, P.A.  
Attorneys and Counselors at Law  
Congaree Building  
508 Hampton Street  
Post Office Box 11716  
Columbia, South Carolina 29211  
(803) 256-4000 Phone  
(803) 252-3679 Fax  
tfrogers@alriaw.com  
website: www.alriaw.com

---

From: MULLEN TAYLOR  
Sent: Tuesday, January 02, 2001 4:30 PM  
To: 'Jim Wiseman'; 'Tim Rogers'  
Subject: Follow-up on request for info

**CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER**

Jim and Tim,

To follow-up on the County's request for information sent to you on December 4th, please let me know when I might receive some or all of the information we have asked for. I'd like to get some general sense of when I will get what.

Happy New Year! Thanks for your help.

DEF-00002163

Mußen

**MULLEN TAYLOR**

---

From: J. E. Wiseman [jewiseman@columbiaventure.net]  
Sent: Wednesday, January 03, 2001 9:59 AM  
To: MULLEN TAYLOR  
trogers@alriaw.com  
Subject: RE: Follow-up on request for info

Hope you had a good holiday too. I think we should get together and discuss the format for continuing the process. I am hesitant to turn over information if we don't know where we are going. Maybe a new committee of city/county/CV as a negotiating forum? Our focus with the information would be to consummate a development agreement of which there are many components. We should set the threshold issues, get past them, then get into the details. Of course, FEMA still holds the cards. Should we wait for FEMA to do something before proceeding?

Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mullentaylor@richlandonline.com]  
Sent: Tuesday, January 02, 2001 4:15 PM  
To: 'Jim Wiseman'; 'Tim Rogers'  
Subject: Follow-up on request for info

**CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER**

Jim and Tim,

To follow-up on the County's request for information sent to you on December , please let me know when I might receive some or all of the information we have asked for. I'd like to get some general sense of when I will get what.

Happy New Year! Thanks for your help.

Mullen

**MULLEN TAYLOR**

From: MULLEN TAYLOR  
Sent: Wednesday, January 03, 2001 12:35 PM  
To: 'J. E. Wiseman'; 'Tim Rogers'  
Subject: RE: Follow-up on request for info

Hey Jim,

I understand your perspective on the timing and process issues here. You are hesitant to expend time and effort to compile the information the County requested without getting some indication as to whether the County wants to resume substantive negotiations.

But here is my dilemma - Council is asking questions and wanting more specific information. I get the sense that Council needs at least some of the information requested in order to decide what to do. So, you want a signal from the County about our willingness to proceed BEFORE further information is provided, and I want to provide Council with further information so that they can decide what to do. Not only that, but Council wants to talk about the Columbia Venture project during their retreat on Jan. 11, 12 and 13. I'd like to have some degree of more specific info from you before then in the event that they ask specific questions.

That being said, I propose the following:

You give me info regarding levee design, cost estimates for levee construction and maintenance, and proposed means of financing levee construction and maintenance prior to January 11. This information would be treated by the County as confidential, and discussed by Council in executive session during the Retreat. I would probably give them only a summary of the info you provide, and collect the summary after the discussion is over.

After the Retreat, you and I meet to discuss timing and process for other requested info, and I may be able to give you an indication of what are the burning issues and/or concerns of Council, depending on what is said during the Retreat, and have a better idea of where they're at in terms of process.

What do you think?

Mullen

-----Original Message-----

From: J. E. Wiseman [mailto:jewiseman@columbiaventure.net]  
Sent: Wednesday, January 03, 2001 9:59 AM  
To: MULLEN TAYLOR  
Cc: ttrogers@ahtaw.com  
Subject: RE: Follow-up on request for info

Hope you had a good holiday too. I think we should get together and discuss the format for continuing the process. I am hesitant to turn over information if we don't know where we are going. Maybe a new committee of city/county/CV as a negotiating forum? Our focus with the information would be to consummate a development agreement of which there are many components. We should set the threshold issues, get past them, then get into the details. Of course, FEMA still holds the cards. Should we wait for FEMA to do something before proceeding?

Jim

-----Original Message-----

From: MULLEN TAYLOR [mailto:mulentaylor@richlandonline.com]  
Sent: Tuesday, January 02, 2001 4:15 PM  
Subject: 'Jim Wiseman'; 'Tim Rogers'

DEF-00002166

Subject: Follow-up on request for info

CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER

Hi and Tim,

To follow-up on the County's request for information sent to you on December 4th, please let me know when I might receive some or all of the information we have asked for. I'd like to get some general sense of when I will get what.

Happy New Year! Thanks for your help.

Mullen

*CV* PERSONAL & CONFIDENTIAL

Columbia Venture, LLC

January 10, 2001

Mullen Taylor  
Assistant to the County Administrator  
Richland County Administrator's Office  
2020 Hampton Street, 4<sup>th</sup> Floor  
Columbia, SC 29202

RE: Proposed Stormwater Drainage Ordinance

Dear Mullen:

This letter is in response to your kind request for comments from Columbia Venture in regard to the proposed Stormwater Drainage Ordinance currently pending before the Developmental and Services Committee of County Council. I have had an opportunity to review the draft of the proposed ordinance which you submitted to me earlier. I would submit the following observations for Council's consideration. As soon as Chairwoman Smith has had an opportunity to appoint the members of the Committee for the upcoming term I would appreciate your providing me with that information so that I can copy members of the Committee as well.

First, I would submit that it would be inappropriate to try to deal with issues regarding flood plain management within the context of a stormwater management ordinance. As you know, Subsections (a), (h) and (f) of the proposed Section 8-27 of the the proposed ordinance deal with this issue.

In our view it would be appropriate to have a separate flood plain management ordinance, which would deal with the issues, referred to above, as well as all other issues regarding the matter of flood plain management. I have enclosed for your consideration a copy of a model ordinance from FEMA.

Second, it appears that the proposed ordinance does not meet minimum standards promulgated by FEMA. The proposed ordinance does not define a procedure to determine whether flood flow would be impeded, nor does it provide a mechanism for

Carolina First Building  
4876 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 743-0672 (803) 743-0673 Fax

Mullen Taylor  
January 10, 2001  
Page 2

presenting the computations to County regulators. FEMA regulations [44 CFR 60.3 (d) (3)] provide for analysis to be performed in accordance with, "thorough hydrologic and hydraulic analysis in accordance with standard engineering practice...."

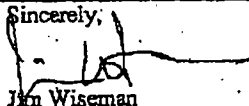
The proposed ordinance does incorporate FEMA regulations by reference, which control where they are more restrictive than County standards. It would appear that FEMA regulations would be more restrictive in this instance because of the specificity addressing their determination of affect on the flood flow, while the proposed ordinance is silent on this issue.

Our request and suggestion is that the sections referenced above should be deleted from the proposed ordinance and that these matters should be dealt with separately and concurrently in a comprehensive flood plain management ordinance drafted perhaps along the lines of the attached model.

Thank you very much the opportunity to bring our concerns to your attention. If you have any questions or if I could provide anything further in this regard please do not hesitate to contact me.

---

Sincerely,

  
Jim Wiseman

cc: Honorable Kit Smith  
Honorable Bernice Scott  
Honorable Greg Pearce  
Mr. Mike Bierman

*CV*

Columbia Venture, LLC

January 10, 2001

Mullen Taylor  
Assistant to the County Administrator  
Richland County Administrator's Office  
2020 Hampton Street, 4<sup>th</sup> Floor  
Columbia, SC 29202

RE: Columbia Venture/Green Diamond development proposal

Dear Mullen:

Thank you for meeting with me to discuss the status of the pending Green Diamond developmental proposal.

As we agreed, I am writing this letter to suggest the creation of a three-way working group consisting of representatives of Richland County, the City of Columbia and Columbia Venture to continue discussions and negotiations regarding details of the proposed Green Diamond project.

This group would continue the dialogue which began in the working group of representatives from Richland County and Columbia Venture, which convened several months ago. I would hope that this new working group would address all issues pertaining to the proposed Green Diamond development in an expeditious and orderly manner based upon an agenda that would be determined by the group and agreeable to each of the parties participating in the group.

By copy of this letter I am also submitting this request to Mayor Coble and City Manager Mike Bierman, and I would hope that we would have an opportunity to convene this group as soon as it would be mutually convenient. I would also request that once economic development and financing issues are ready to be discussed, that Richland County School District One have a representative join the group.

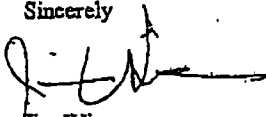
Carolina First Building  
4875 Forest Drive, Suite 202  
Columbia, South Carolina 29206  
(803) 793-0674 (803) 793-0673 Fax



Mullen Taylor  
January 10, 2001  
Page 2

Thank you again very much for your courteous assistance to Columbia Venture throughout this endeavor. I look forward to the opportunity to continue work with you and other representatives of the County and City. If you have any questions or comments concerning this proposal or if I could be helpful in any way in this regard, please do not hesitate to call me. I look forward to hearing back from you at your earliest convenience in response to my request.

Sincerely



Jim Wiseman

cc: Honorable Kit Smith  
Honorable Bernice Scott  
Honorable Bob Coble  
Honorable Greg Pearce  
Mr. Mike Bierman

---

## Richland County Government

County Administration Building  
2020 Hampton Street  
P.O. Box 192  
Columbia, SC 29202



Phone (803) 748-4600  
Fax (803) 748-4644  
TDD (803) 748-4999

### Office of the County Administrator

January 17, 2001

Mr. Jim Wiseman  
Senior Director/Design & Land Planning  
Columbia Venture, L.L.C.  
4875 Forest Drive  
Columbia, South Carolina 29206

#### CONFIDENTIAL ECONOMIC DEVELOPMENT MATTER

Dear Jim:

Thank you for your letter of January 10, 2001 requesting the County's participation in a working group to continue discussion and negotiation regarding the Green Diamond Project.

During Richland County Council's retreat held last week, Council reviewed your request and asked that I respond to your letter based on their direction. Over the past month or so, the County and Columbia Venture have both expressed the desire to include the City in discussions pertaining to Green Diamond. Therefore, the County agrees to participate in a working group with the City and Columbia Venture for the purpose of exploring issues that Council and staff find to be important. This working group would be a good vehicle for joint education and understanding of the issues before us. I appreciate your initiative in forming this much needed group.

While Council sees value in a City/County/Columbia Venture working group to explore issues, Council is not comfortable with initiating negotiations at this time. Council needs more information in order to reach a point where they are comfortable in deciding whether to move forward with the project. To help County Council reach this point, I suggest that the working group include in its agenda the issues that the County sees as critical threshold issues, which are:

#### Levee design/CLOMAR issues

Can Lockwood Green present to the group an overview of the proposed levee design?  
What is FEMA's criteria for approving a CLOMAR? In the opinion of Columbia Venture, can all conditions be met for CLOMAR approval?

January 17, 2001  
Mr. Jim Wiseman  
Page two.

**Options for structure of levee operation and maintenance**

How can we structure an entity to assume responsibility for levee operation and maintenance that reduces County liability? What is the best way to finance such an entity?

**Economic development incentives**

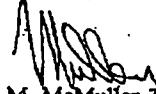
What incentives does Columbia Venture want; and for what purpose? If a multi-county business park is proposed in order to receive a special source revenue credit, what percentage is contemplated for the credit, in return for what investment amount guaranteed by what? What should the Park boundaries include? Does Columbia Venture plan on constructing speculative buildings in the Technology Park? Does Columbia Venture have a guaranteed buyer for any lot in the Park?

**Viability of development on Green Diamond property**

What are the results of the project's soils analysis conducted by S&ME? Is the soil type suitable for development, or is remediation needed? How will the new International Building Code requirements affect the project? Are there any other environmental obstacles to the development of the property (besides flood map issues)?

With greater understanding of these issues, County Council will be in a better position to make decisions regarding the Green Diamond Project. I look forward to working with you on these and other issues.

Sincerely,



M. McMullen Taylor  
Assistant to the County Administrator

cc: Richland County Council  
Cary McSwain, County Administrator  
Mike Bierman, City Manager

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") effective as of the 19<sup>th</sup> day of November, 1998, is by and between BURROUGHS & CHAPIN COMPANY, INC. ("Buyer") and BURWELL D. MANNING, JR., EASTERN CORN & GRAIN COMPANY, INC. and OVERLOOK, INC. (collectively "Seller").

WHEREAS, Seller and Buyer desire to enter into an agreement whereby Buyer is to purchase and Seller is to sell the premises hereinafter described upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of Ten Dollars, of the mutual promises hereinafter set forth and other valuable consideration, Seller and Buyer agree as follows:

1. SALE/PURCHASE.

(a) Seller shall sell and Buyer shall purchase certain real property, together with any improvements thereon, in Richland County, South Carolina, as more fully described on Exhibit "A" attached hereto and incorporated herein by reference, but in no event less than 4460 acres, ("Premises") on the terms and conditions set forth in this Agreement.

(b) The Premises is currently owned of record by the owners (the "Owners") listed on Exhibit A attached hereto, and is currently subject to rights to repurchase or purchase held by the Seller and other parties listed on Exhibit A attached hereto. The Seller's obligation herein to sell the Premises to Buyer shall include the exercise by Seller of its rights to repurchase or purchase the Premises, the payment of all amounts necessary to repurchase or purchase the Premises from the Owners, the instruction by Seller to each Owner to convey the Premises directly to Buyer, and the conveyance of the Premises to Buyer, in accordance with the terms of this Agreement.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Premises shall be \$18,000,000.00.

3. FORM OF CONVEYANCE. On the Settlement Date, if any, the Seller shall (a) exercise its rights to acquire the Premises from the Owners and pay all amounts due to the Owners, and (b), in consideration of the Purchase Price, cause the Owners to convey the Premises to the Buyer or to an entity designated by the Buyer. The Premises shall be conveyed by general warranty deed in proper form for recording with all documentary stamps/deed recording fees and transfer taxes paid and affixed by Seller so as to convey to Buyer fee simple title to such property, free of encumbrances except as provided in Section 8(b) herein.

#### 4. DUE DILIGENCE

(a) Due Diligence Period. Buyer shall have a due diligence period (the "Due Diligence Period") of sixty (60) days from the Effective Date (as hereinafter defined) of this Agreement in which to conduct such due diligence investigations, studies, assessments, reports, tests and the like relating to the Premises and the potential development thereof as Buyer in its sole discretion may desire, including but not limited to title examination, wetlands studies, FEMA inquiries and evaluations, wetlands, delineations and permitting, utilities availability, zoning and governmental requirements, environmental assessments, testing and investigations, soil tests, and other matters as desired by Seller in its sole discretion.

(b) Notice to Purchase. At any time on or prior to the expiration of the Due Diligence Period, Buyer may, at its sole option and discretion, notify Seller in writing (the "Notice") that Buyer desires to purchase the Premises subject to the conditions precedent stated in Section 8 hereof and to the additional conditions precedent to Buyer's obligation to purchase the Premises (the "Additional Conditions Precedent") stated by Buyer in the Notice.

(c) Termination. If the Buyer in its sole option and discretion does not provide the Notice to the Seller on or prior to the expiration of the Due Diligence Period, this Agreement shall automatically terminate and neither Buyer nor Seller shall have any further obligations hereunder.

5. SETTLEMENT DATE. If Buyer provides the Notice to the Seller in accordance with section 4 hereof, and all conditions stated in such Notice and in this Agreement are satisfied or waived by Buyer, the purchase and sale of the Premises shall be closed on or before the date which is thirty (30) days after the date of the Notice (the "Settlement Date").

All closings shall take place at the offices of McNair Law Firm, P.A., Columbia, South Carolina, or at such other place as may be mutually agreed upon between Seller and Buyer.

6. SURVEY. The Buyer shall have the right to have prepared at Seller's expense a survey or surveys of the Premises ("Survey(s)") indicating the true and correct legal description thereof and delineating the boundary lines of the Premises, including delineation of all improvements, rights of way, roads, easements, contiguous public roads, the names of record owners of all contiguous property, wetlands, ponds, flood plains and floodways. The Survey(s) shall be relied upon in the preparation of the legal description(s) of the Premises to be contained in the deed(s) of conveyance, if any.

7. SELLER'S REPRESENTATIONS, WARRANTIES AND AGREEMENTS. In order to induce Buyer to enter into this Agreement and to purchase the Premises, and in addition to representations, warranties and agreements contained elsewhere in this Agreement, Seller hereby makes the following representations, warranties and agreements, each of which is material and is relied upon by Buyer.

(a) Repurchase Rights. Seller is and shall remain the sole and exclusive owner of all rights to purchase the Premises during the term of this Agreement. Seller is and shall remain the sole and exclusive owner of Seller's rights under the Agreement dated June 25, 1997, between Seller and Congaree Farms, LLC, as amended by Addendum to Agreement dated July 16, 1997 (together, the "Congaree Farms Agreement") and the Agreement executed on or about July 17, 1998, between the Seller, Chapel Hill, LLC and DAK III, LLC (the "Chapel Hill/DAK Agreement"), and Seller's rights therein have not been, and shall not be, sold, transferred, assigned, pledged, mortgaged or otherwise encumbered in any manner.

(b) Congaree Farms/DAK Agreements. The Congaree Farms Agreement and the Chapel Hill/DAK Agreement are and shall remain unchanged, valid and enforceable against all parties thereto in accordance with their terms and in full force and effect. No default or event which with the passing of time or the giving of notice or both could result in a default thereunder exists under the Congaree Farms Agreement or the Chapel Hill/DAK Agreement.

(c) Premises; Ownership. The Premises constitutes all of the property which is subject to the Congaree Farms Agreement and the Chapel Hill/DAK Agreement. The Owners of the Premises are correctly identified on Exhibit A attached hereto.

(d) Encumbrances. There are and during the term of this Agreement shall be no mortgages on the Premises, except that certain mortgage granted by DAK III, LLC to NBSC in the original principal amount of \$800,000 which shall be satisfied and released at the Settlement Date. There are and during the term of this Agreement shall be no encumbrances on the Premises which could adversely affect the proposed development of the Premises.

(e) No Other Agreements. No agreement, options, rights of first refusal or other contracts have been granted or entered into which are still outstanding giving any other party a right to purchase any interest in the Seller's rights to purchase the Premises, except as expressly provided herein.

(f) Authority. Seller has full power and authority to enter into this Agreement and to take all actions required herein. This Agreement, when executed and delivered by Seller, shall be a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms. All requisite approvals have been obtained to authorize the conveyance of the Premises to Buyer as provided hereunder.

(g) Pending Litigation. There is no claim, litigation or other proceeding, pending or threatened, before any court, commission or other body or authority relating to Seller or the Premises or any Owner of the Premises.

(h) Hazardous Substances. Seller has not, and has no knowledge or reason to believe that any party has, used, stored or disposed of any materials on the Premises that would be classified by federal, South Carolina or local laws or regulations as hazardous substances. Seller agrees to indemnify and hold Buyer harmless from any and all claims or causes of action or losses or costs associated with the existence or removal of toxic or hazardous substances from the Premises, including reasonable attorneys' fees.

(i) No Violations. To the best of Seller's knowledge, neither the Seller nor any Owner is in violation of, and neither Seller nor any Owner has received notice of the violation of, any zoning or other ordinances, resolutions, statutes or regulations of any government, or governmental agency in respect to use, maintenance or condition of the Premises or any part thereof.

(j) No Condemnation. To the best of Seller's knowledge, there are no condemnation or eminent domain proceedings pending or contemplated against the Premises or any part thereof and neither the Seller nor any Owner has received any notice, oral or written, of any public authority or other entity to take or use the Premises or any part thereof.

(k) Taxes. All real property taxes, special taxes and assessments now due and payable on the Premises have been paid in full.

(l) Leases. The Premises is not subject to any leases or tenancies or rights of any party in possession.

(m) Zoning. The Premises is subject to the Richland County Zoning Ordinance, and is, or at the Settlement Date will be, zoned to permit, without exception or variance, retail business uses, restaurants, residential (single and multifamily), light industrial and office buildings.

(n) Mechanics' Lien. No payments for work, materials or improvements furnished to the Premises shall be due but unpaid, or owing, at the Settlement Date, if any.

(o) Continuing Obligation. Seller will not cause or permit any action to be taken which would cause any of the foregoing representations, warranties or agreements to be untrue as of the Settlement Date, if any.

(p) Cooperation. Throughout the term of this Agreement, Seller shall cooperate with Buyer in all respects with regard to the Premises and furnishing information concerning the Premises to Buyer.

(q) Additional Documents. On or before the Settlement Date, if any, Seller will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by

Buyer to completely vest in and assure to Buyer full rights in or to the Premises being conveyed.

**REPRESENTATION AND WARRANTY OF BUYER.** In order to induce Seller to enter into this Agreement, Buyer hereby makes the following representation and warranty, which is material and is relied upon by Seller:

Buyer has full power and authority to enter into this Agreement and to take all actions required herein. This Agreement, when executed and delivered by Buyer, shall be a valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms.

8. **CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS.** Upon delivery by Buyer to Seller of the Notice, the following, together with the Additional Conditions Precedent specified in the Notice, shall be conditions precedent to the Buyer's obligation to purchase the Premises. Unless otherwise specified herein, if any of the conditions precedent set forth below or if any of the Additional Conditions Precedent specified in the Notice, are not resolved to the reasonable satisfaction of Buyer as of the Settlement Date, this Agreement shall be null and void and neither Buyer nor Seller shall have any further obligation hereunder.

(a) **Seller's Representations.** The representations, warranties, covenants and agreements of Seller set forth herein shall continue to be true and in full force and effect.

(b) **Title.** Buyer may, at Buyer's expense, obtain a commitment for owner's title insurance in the full amount of the Purchase Price, by which binder the title company must agree to insure fee simple title to the Premises, subject only to such exceptions as do not render the title unmarketable or which do not cause the Premises to be unable or impractical to be used for Buyer's intended use. Buyer shall review said commitment and submit to Seller notice in writing of its objections to title on or prior to the expiration of the Due Diligence Period. Seller shall have ten (10) days after receipt of Buyer's written objections to correct, at Seller's election and at Seller's expense, the title defects indicated. If, at the end of such period, Seller has not corrected to Buyer's reasonable satisfaction the objections to title, Buyer may, as its sole remedies, either (1) waive its objections and consummate the within transaction without a reduction in the Purchase Price, or (2) terminate this Agreement in which event neither Seller nor Buyer shall have any further obligation hereunder, or (3) continue this Agreement with resolution of such objections to Buyer's reasonable satisfaction being a condition precedent to Buyer's obligation to purchase the Premises. The Settlement Date shall be automatically extended as necessary to accommodate the foregoing time periods unless such objections to title are not susceptible of being cured within a reasonable time.

(c) **Environmental Audit.** Buyer may, at Buyer's expense, obtain an environmental audit or report or other information reasonably satisfactory to Buyer, which environmental audit or report, if obtained, shall indicate that no materials or substances classified as hazardous wastes or substances under any federal, state or



local statute, regulation, ruling, ordinance or law are or have been located, stored, used or disposed of on the Premises and that the Premises are not otherwise contaminated or affected by any such hazardous substances, and that no underground tanks are located on the Premises.

(d) Additional Conditions. Any Additional Conditions Precedent to Buyer's obligations to purchase the Premises stated by Buyer in its Notice shall have been and remain fulfilled to Buyer's satisfaction.

(e) Approval of Board of Directors. The approval of the Board of Directors of the Buyer.

9. Delivery of Documents. Within fifteen (15) days following the Effective Date of this Agreement, Seller shall furnish to Buyer the following:

- (a) Copies of owners' title insurance policies for the Premises.
- (b) Copy of the most recent Real Estate tax bills and personal property tax bills for the Premises.
- (c) Copy of all wetlands delineations and information.
- (d) Copy of all surveys and plats for the Premises.
- (e) Copy of all FEMA information relating to the Premises.
- (f) Such other information as Buyer may request.

10. ACCESS TO PREMISES. From the Effective Date to the expiration of the Due Diligence Period and, if Notice is given, through the Settlement Date, if any, Seller shall give Buyer and Buyer's representatives reasonable access to the Premises for purposes of conducting surveys, soils and engineering studies and other evaluations and inspections of the Premises; provided, however, Buyer shall restore the Premises to substantially the condition that existed prior to such tests and shall indemnify and hold Seller harmless from any and all claims or causes of action or losses or costs resulting from or arising out of any activities conducted by Buyer, its agents, servants or employees, upon or in connection with the Premises.

11. RISK OF LOSS; CONDEMNATION.

(a) Casualty. As between Buyer and Seller, the risk of loss to the Premises shall be borne by Seller from the date hereof to the Settlement Date, if any. In the event of substantial casualty loss to the Premises occurring prior to the Settlement Date, Buyer shall have the option of (i) closing at the agreed Purchase Price, with Buyer receiving all insurance proceeds paid as the result of any casualty loss, or (ii) terminating this Agreement with neither Buyer nor Seller having any further obligations hereunder.

(b) Condemnation. In the event of condemnation or receipt of notice of condemnation or taking of any portion of the Premises by any governmental authority occurring prior to the Settlement Date, Buyer, at its option, shall have the right to (i) terminate this Agreement with neither Buyer nor Seller having any further obligations hereunder, or (ii) continue in accordance with this Agreement, with a prorata reduction in the Purchase Price.

12. DELIVERY OF SETTLEMENT DATE DOCUMENTS. In addition to other conditions precedent set forth elsewhere in this Agreement, Seller shall deliver to Buyer at the Settlement Date, if any, all of the following documents as to the Premises, the delivery and accuracy of which shall further condition Buyer's obligations to consummate the purchase and sale herein contemplated:

(a) Deed(s). General Warranty Deed(s) reasonably satisfactory in form and substance to Buyer and Seller, conveying good and marketable fee simple title to the Premises, free and clear of all liens, encumbrances, easements and restrictions of every nature and description except as provided in Section 8(b) herein.

(b) Lien Waiver. An Owner's Affidavit or lien waiver satisfactory for the purpose of removing the mechanics lien exception from any title insurance policy to be issued in connection with the purchase.

(c) Other Documents. Such other documents as may be reasonably necessary to effectuate the agreements set forth herein.

13. BUYER'S DELIVERIES PRIOR TO AND AT THE SETTLEMENT DATE. At the Settlement Date, if any, and after Seller has duly complied with the applicable provisions of Section 12, Buyer shall deliver to Seller the cash portion of the Purchase Price by wire transfer or cashier's check adjusted for the pro-rations provided above and reduced as otherwise provided herein.

14. CLOSING COSTS AND PRO-RATED ITEMS. At the Settlement Date, if any, Seller shall pay for the cost of all deed stamps/deed recording fees and transfer taxes and Buyer shall pay for the recording fees of this transaction. Buyer and Seller shall each pay their own legal fees related to the transaction contemplated hereby. Real estate taxes and water, sewer and other utilities shall be pro-rated to the Settlement Date. Seller shall be responsible for any roll-back taxes relating to the Premises and the amount thereof shall be paid at the Settlement Date by Seller.

15. REAL ESTATE COMMISSIONS. Seller and Buyer each agree to indemnify and hold harmless the other from and against any claims of any real estate broker or agent with which such party has engaged or dealt with in connection with this transaction. Buyer and Seller agree that upon the closing of the transaction contemplated by this agreement, Buyer and Seller will each pay the commissions due their respective real estate companies and agents. Without limiting the foregoing, Bill Simon is the broker for Seller and is not a broker for the

Buyer and shall be compensated pursuant to a separate agreement, if any, between Seller and Bill Simon.

16. DEFAULT.

(a) By Buyer. Subsequent to the delivery of the Notice by Buyer, if all conditions and other events precedent to Buyer's obligation to consummate the purchase of the Premises have been satisfied or waived in writing by Buyer, and if Seller has performed its covenants and agreements hereunder, but Buyer has breached its covenants and agreements hereunder and has failed, refused, or is unable to consummate the applicable purchase and sale contemplated herein, then Seller shall give Buyer written notice of such circumstances and Seller shall be entitled to payment of Five Thousand and no/100 Dollars (\$5,000) as liquidated damages and as its sole remedy hereunder.

(b) By Seller. Subsequent to the delivery of the Notice by Buyer, if all conditions or other events precedent to Seller's obligation to consummate the purchase of the Premises have been satisfied or waived by Seller, and if Buyer has performed its covenants and agreements hereunder, but Seller has breached its covenants and agreements hereunder and has failed, refused or is unable to consummate the purchase and sale contemplated herein, then Buyer shall give Seller written notice of such event and Buyer shall be entitled to any and all remedies to which it is entitled at law and in equity.

17. AGREEMENTS AND COVENANTS.

(a) Of Seller. In order to induce Buyer to enter into this Agreement, and to purchase the Premises, Seller does hereby agree and covenant as follows:

(i) Rezoning. Seller shall cooperate in any rezoning which may be necessary for the development of the Premises.

(ii) FEMA. Seller shall cooperate in working to insure that the Premises is not designated by FEMA as a floodway.

(iii) No Amendments. Seller agrees that there shall be no amendments, modifications, releases or other alterations of any type of (1) the Congaree Farms Agreement and (2) the Chapel Hill/DAK Agreement without the prior written consent of the Buyer in each instance.

(b) Of Buyer.

(i) Buyer agrees that Burwell D. Manning, Jr., his heirs and assigns may continue to utilize the Premises for commercial farming and for private recreational hunting and fishing so long as reasonably practical and ~~until such time as the Premises or portion thereof shall begin to be~~ *at Burwell's discretion.*

Columbus 523675

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*Manning is responsible for property taxes on land he is using for commercial purposes. Seller*

CV008098

*[Handwritten signature]*  
developed Burwell D. Manning, Jr., his heirs and assigns shall be solely responsible for any loss, claim or damage arising as a result of such activities on the Premises and shall indemnify and hold Buyer harmless therefrom. Burwell D. Manning, Jr. agrees to execute such instruments as Buyer may reasonably request with regard to the foregoing.

(ii) Buyer agrees that all Farm Service Agency payments shall be the property of the Seller and Buyer shall deliver any such payments it receives to Seller.

(c) Of Manning. In consideration of the agreement in Section 17(b), Burwell D. Manning, Jr. agrees to be available to consult with Buyer and to provide information about the Premises during the term of this Agreement.

18. ASSIGNMENT. This Agreement may be assigned by Buyer to any individual, partnership, limited liability company or corporation without the prior written consent of Seller.

19. COMPLETENESS AND MODIFICATION. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein and it supersedes all prior discussions, undertakings or agreements between the parties. This Agreement shall not be modified except by a written agreement executed by both parties.

20. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

21. SURVIVAL OF WARRANTIES. It is the express intention and agreement of the parties to this Agreement that all covenants, agreements, statements, representations, warranties and indemnities made by the parties in this Agreement (which shall be deemed to include the matters and information disclosed in any document or instrument delivered by Seller pursuant to the provisions of this Agreement or at or in connection with the closing) shall survive the closing of the purchase of the Premises.

22. WAIVER. Failure by Buyer or Seller to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.

23. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of South Carolina.

24. HEADINGS. The paragraph headings as herein used are for convenience or reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations, and warranties herein set forth or limit the provisions or scope of any provision.

25. PRONOUNS. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

26. TIME OF ESSENCE. Both parties hereto specifically agree that time is of the essence to this Agreement.

27. COUNTERPARTS. To facilitate execution, this Agreement may be executed in as many counterparts as may be required.

28. NOTICES. All notices, requests, consents and other communications hereunder, including the Notice of Exercise, shall be in writing and shall be personally delivered or mailed by First Class, Registered or Certified U.S. Mail, return receipt requested, postage prepaid, or sent by a national recognized overnight courier service, as follows:

(a) If to Buyer:

Burroughs & Chapin Company, Inc.  
2411 Oak Street, Suite 402  
Myrtle Beach, South Carolina 29577  
Attn: Mr. George Gregory

With a copy to:

Judith L. McInnis, Esquire  
McNair Law Firm, P.A.  
1301 Gervais Street, 17<sup>th</sup> Floor  
Columbia, South Carolina 29201

(b) If to Seller:

Burwell D. Manning, Jr.  
4801 Kilbourne Road  
Columbia, South Carolina 29206

With a copy to:

Julio E. Mendoza, Jr., Esquire  
Nexsen, Pruet, Jacobs & Pollard  
P.O. Drawer 2426  
Columbia, South Carolina 29202

Any such notice, request, consent or other communication shall be deemed received at such time as it is personally delivered or on the next business day after it is deposited in the U.S. mail or with a nationally recognized overnight courier service, whichever is earlier.

29. INVALID PROVISIONS. In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

30. MEMORANDUM OF CONTRACT. Buyer and Seller, upon the execution of this Agreement, agree to execute a memorandum of Contract to be recorded in Richland County, South Carolina, to evidence and give notice of the existence of this Agreement.

31. CONFIDENTIALITY. Except as expressly provided herein, Seller agrees that this Agreement and any and all information and materials related thereto shall be kept confidential by it and not disclosed or disseminated except to its legal and financial advisors.

32. OTHER NEGOTIATIONS AND/OR AGREEMENTS. Notwithstanding anything to the contrary contained herein, Seller may enter into discussions, negotiations, contracts, options and agreements (collectively, the "Secondary Negotiations") with one or more parties other than the Buyer (each a "Secondary Purchaser") for the purchase of all or a portion of the Premises and/or the Seller's right to purchase the Premises, in accordance with all of the following requirements:

(a) Subordinate. All Secondary Negotiations shall in all respects be subject, subordinate and inferior to this Agreement and all rights granted to Buyer by this Agreement.

(b) Closing After Agreement Expiration. All Secondary Negotiations shall provide for closing(s), if any, to occur subsequent to the stated Settlement Date of this Agreement.

(c) Actions During Term. During the term of this Agreement, neither the Seller nor any Secondary Purchaser, directly or indirectly or through any representative, agent, employee or contractor, shall

(i) Interfere with this Agreement, any right granted to Buyer by this Agreement, or the development of the Premises by Buyer;

(ii) Contact any governmental entity, agency, authority or other entity in any manner other than to request information on the current status of the Premises;

(iii) Disclose or reveal in any manner (A) that it is involved in Secondary Negotiations or (B) any terms or substantive provisions of any Secondary Negotiations or (C) the existence of, or any terms or provisions of, this Agreement; except that such disclosures may be made to the Seller's attorneys, financial advisors and business advisors.

(iv) Record or place in any public record any items disclosing or revealing in any manner the Secondary Negotiations; or

(v) Take any action which would alter or disturb the Premises.

(d) Agreements. Immediately upon reaching any agreement, option or contract in any Secondary Negotiations, Seller shall provide a copy of same to Buyer.

(e) Good Faith. Seller agrees to use, and to cause any Secondary Purchaser to use, good faith and fair dealing in the Secondary Negotiations in order to comply with the provisions of this section, and to avoid interference with this Agreement, any right granted to Buyer by this Agreement and the development of the Premises by Buyer.

(f) At Settlement Date. On the Settlement Date, if any, Seller shall provide Buyer with a list of all Secondary Purchasers and all other parties which have expressed interest in the Premises during the term of this Agreement.

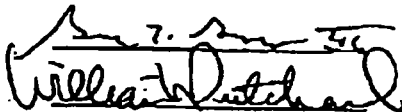
(g) Breach. In the event of each breach, if any, of this section, by Seller or any Secondary Purchaser, Buyer shall, in addition to any other remedies set forth in this Agreement, at Buyer's election, declare this Agreement and any existing Notice null and void and have no further obligations under this Agreement.

33. NEXT BUSINESS DAY. If any time period set forth herein should expire on a day on which national banking associations located in the State of South Carolina are not open for business, then such time period shall automatically be extended to the next succeeding day on which national banking associations in the State of South Carolina are open for business.

34. EFFECTIVE DATE. "Effective Date" means the date on which this Agreement is executed by the last to execute of Buyer or Seller.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESSES:

  
William H. Dutchman

BUYER:

BURROUGHS & CHAPIN COMPANY, INC.

By: 

As: PRESIDENT & CEO

Julia E. Mendez, J.  
Judith M. Muni

SELLER:

By: Burwell D. Manning, Jr.  
Burwell D. Manning, Jr.

EASTERN CORN &amp; GRAIN COMPANY, INC.

Julia E. Mendez, J.  
Judith M. Muni

By: Burwell D. Manning, Jr.

Its: Pres

OVERLOOK, INC.

Julia E. Mendez, J.  
Judith M. Muni

By: Burwell D. Manning, Jr.

Its: Pres