

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

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

Columbia Venture, LLC,

v.

Richland County,

Appellant,

Respondent.

**REVISED RECORD ON APPEAL
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EXHIBIT A

Property	Owner	Repurchase/Purchase Rights
I. Levy Section I (1418 acres)		
A. Parcel B-1 (246.57 acres) Parcel B-2 (8.227 acres) Parcel E (320.2 acres)	DAK III, LLC	Manning has right to repurchase for \$2,097,600 by February 17, 1999.
B. Balance	Congaree Farms, LLC	Manning has right to repurchase for \$1,801 per acre net by February 17, 1999; DAK has right to purchase from February 18, 1999 to July 17, 1999; further assigned to Chapel Hill subject to DAK's rights.
II. Levy Section II (1640 acres)		
A. Rutledge Tract (516 acres) Tokumaga Tract (55.5 acres) Truesdale Tract (11.44 acres)	Chapel Hill, LLC	Manning has right to repurchase for \$2,502,400 by February 17, 1999.
B. Whitehouse Tract Martin Tract Baron II Tract	Congaree Farms, LLC	Manning has right to repurchase for \$1,400 per acre net by February 17, 1999; Chapel Hill has right to purchase from February 18, 1999 to July 17, 1999; further assigned to DAK subject to Chapel Hill's rights.
III. Levy Section III (1352 acres)		
A. Guignard Tract (544 acres) Parcel B of Shull and Miller Chappell Tract (279 acres)	Chapel Hill, LLC	Included in Manning's right to repurchase Levy Section II above.
B. Remainder of Shull and Miller Chappell Tract Manning Lux Chappell I Chappell II Baron I Kirkland McCrae-Kirkland Drucilla Chappell	Congaree Farms, LLC	Manning has right to repurchase for \$1,200 per acre net by February 17, 1999; Chapel Hill has right to purchase from February 18, 1999 to July 17, 1999; further assigned to DAK subject to Chapel Hill's rights.
IV. Section IV (30 acres)	Congaree Farms, LLC	Manning has right to repurchase for \$3,000 per acre net by July 17, 1999
V. Section V (10 acres)	Congaree Farms, LLC	Manning has right to repurchase for \$7,000 per acre net by July 17, 1999
VI. Bluff Estates (10 acres)	Congaree Farms, LLC	Manning has right to repurchase for \$3,000 per acre net by July 17, 1999

NOTICE OF INTENTION TO PURCHASE

Notification. Pursuant to Section 4(b) of that certain Purchase and Sale Agreement (the "Agreement") effective as of November 13, 1998 between Burroughs & Chapin Company, Inc. ("Buyer") and Burwell D. Manning, Jr., Eastern Corn & Grain Company, Inc. and Overlook, Inc. (collectively "Seller"), the Buyer hereby notifies Seller that it intends to purchase the Premises (as defined in the Agreement), subject to the conditions set forth herein and in the Agreement.

Title Objections. Pursuant to Section 8(b) of the Agreement, Buyer hereby notifies Seller of the following title objections:

1. All real estate taxes for 1998 and prior years shall be paid in full.
2. The items listed on Exhibit B attached hereto.
3. Any items or matters occurring or placed of record after December 8, 1998, and any items incorrectly indexed or recorded.
4. Title and all items and matters affecting title to the parcel owned by Elizabeth Manning.

Additional Conditions Precedent. The following conditions shall constitute Additional Conditions Precedent (as defined in the Agreement) to Buyer's obligation to purchase the Premises (as defined in the Agreement):

1. Exhibit A to the Agreement shall be revised to correspond to Exhibit A attached hereto; Exhibit A shall be further revised, if necessary, to include all property conveyed to Congaree Farms, LLC, DAK III, LLC and/or Chapel Hill, LLC and all property now or previously owned by Seller, Elizabeth Manning or any entity related thereto in the vicinity of the Premises.
2. Seller at its expense shall provide to Buyer a Survey of the Premises satisfactory to Buyer in its sole discretion.
3. All issues related to FEMA floodway/floodplain, wetlands and the like shall have been resolved to Buyer's satisfaction in its sole discretion. Provision of information to make such determination shall be the responsibility of Buyer and Seller.
4. Buyer in its sole discretion shall be satisfied with the zoning of the Premises and any rezoning desired by Buyer. Seller shall assist in any rezoning of the Premises.
5. As of the effective date of this Notice of Intention to Purchase, there shall have been, and through the Settlement Date (as defined in the Agreement) shall be, no amendments, modifications or alterations to the Congaree Farms Agreement or

the DAK/Chapel Hill Agreement, and both Agreements shall remain unchanged and in full force and effect.

6. Seller and Elizabeth Manning agree to quitclaim to Buyer any land within or adjacent to the Premises requested by Buyer.
7. The parcel owned by Elizabeth Manning shall be included in the Premises to be conveyed to Buyer. Buyer shall have the right to examine title to said parcel, to obtain a survey of said parcel, and to object to any matters revealed by such title examination or survey.
8. All rollback taxes related to the Premises shall be paid in full by Seller at the Settlement Date (as defined in the Agreement).
9. Buyer in its sole discretion shall have determined that no endangered or protected species inhabit the Premises. Provision of information to make such determination shall be the responsibility of Buyer and Seller.
10. Each parcel of the Premises shall have access and appurtenant easements as Buyer in its sole discretion may desire.
11. Buyer shall have obtained financing for the project satisfactory to Buyer in its sole discretion.
12. Provision of information, audits and reports regarding environmental matters shall be the responsibility of Buyer and Seller.
13. An appraisal of the Premises satisfactory to Buyer in its sole discretion, which shall be the responsibility of Buyer and Seller.
14. All conditions precedent to Buyer's obligation to purchase the Premises set forth in the Agreement, including but not limited to those conditions precedent set forth in Section 8 thereof, have been resolved to the reasonable satisfaction of Buyer prior to the Settlement Date.

Settlement Date. The Settlement Date (as defined in the Agreement) shall be no later than February 11, 1999, which is thirty (30) days from the effective date of this Notice of Intention to Purchase.

Default, Remedy. Seller and Buyer expressly reaffirm the provision set forth in Section 16(a) of the Agreement and agree that, if Seller has performed its covenants and agreements under the Agreement and this Notice of Intention to Purchase but Buyer has breached its covenants or agreements and has failed or is unable to consummate the purchase and sale contemplated hereby, then Seller shall give Buyer written notice of such circumstances and Seller shall be entitled to payment of \$5,000 as liquidated damages for such default and as its sole and exclusive remedy for such default. Seller and Buyer have made and agreed to the said

liquidated damages provision due to the difficulty in ascertaining the amount of actual damages for any such breach. Buyer and Seller agree that the amount of \$5,000 represents reasonable compensation to Seller for, and in the event of, any such breach. Buyer and Seller agree that in no event shall Buyer be liable to Seller for any actual, punitive, speculative, consequential or other damages of any kind, or for specific performance of the Agreement, or for any other claim, cost or liability arising in connection with the Agreement.

No Other Changes. Except as provided herein, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Buyer has executed this Notice of Intention to Purchase as of this 7th day of January, 1999 to be effective January 12, 1999.

BURROUGHS & CHAPIN COMPANY, INC.

By: Douglas B. Wendel

Its: President + CEO



BURROUGHS & CHAPIN COMPANY, INC.

February 11, 1999

VIA HAND DELIVERY

Mr. Burwell D. Manning, Jr.
4801 Kilbourne Road
Columbia, South Carolina 29206

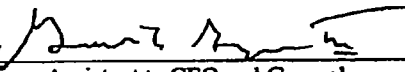
RE: Purchase and Sale Agreement dated effective as of the 13th day of November, 1998 by and between Burroughs & Chapin Company, Inc. ("Buyer") and Burwell D. Manning, Jr., Eastern Corn & Grain Company, Inc. and Overlook, Inc. (collectively, "Seller") (the "Initial Agreement"), as amended by Notice of Intention to Purchase given by Buyer effective January 12, 1999 (the "Notice") (the Initial Agreement and the Notice together referred to as the "Agreement")

Dear Burwell:

This letter constitutes notice that the conditions precedent set forth in section 8 (c) and section 8 (e) of the Initial Agreement and the Additional Conditions Precedent set forth as numbers 3 and 11 in the Notice have not been resolved to the reasonable satisfaction of the Buyer, and that the Agreement is hereby terminated and is null and void and the Buyer shall have no further obligations under the Agreement.

Sincerely,

BURROUGHS & CHAPIN COMPANY, INC.

By 
Assistant to CEO and General
Counsel

CC: Julio E. Mendoza, Jr., Esquire

COLUMBIA: 579437

CORPORATE OFFICE: Founders Centre 2411 Oak Street Suite 402 Myrtle Beach, SC 29577 / P.O. Box 2095 Myrtle Beach, SC 29578-2095 / (803) 448-5123 FAX (803) 448-9838
BRANCH OFFICE: 314 Main Street Conway, SC 29526 / P.O. Box 260 Conway, SC 29526-0260 / (803) 248-4237 FAX (803) 248-6570

Def Trial Ex 158

**INFORMATION PROVIDED TO RICHLAND
COUNTY BY COLUMBIA VENTURE FOR
CONFIDENTIAL REVIEW**

1/5/00\

- **LEVEE DESIGN**
 - The levee will be designed to meet the 500 yr flood elevation plus 3 feet of freeboard.
 - A professional engineer experienced in levee design will do the levee design.
 - FEMA must approve both the design and construction of the levee to be certified. FEMA or its agent will inspect the project during construction. The property can only come out of the flood zone after certification. The County does not have to certify design or construction under FEMA standards.
- **COST ESTIMATE**
 - See attached dated August 17, 2000 by Lockwood-Greene. These numbers may be subject to change.
- **LEVEE MAINTENANCE COSTS**
 - Costs for maintaining the levee will be between \$120,000 and \$200,000 per year. This covers costs of 2 employees, equipment, insurance, etc.
- **LEVEE CONSTRUCTION AND MAINTENANCE FINANCING**
 - It is anticipated that a quasi-governmental body would have control of the levees as set up by the city or the county. This would be similar to a water/sewer or solid waste authority. Or, of course, the city or county could elect to put the levees under a division within the government.
 - The levees would be financed by a combination of developer funding and public funding. The exact method of this is subject to negotiation. However, it is Columbia Venture's intent that any funding will only come from state/federal grant programs, developer funds, or taxes on Columbia Venture property or residents. There would be no impact on existing Richland

County residents except for the fact that when development is complete, new revenues of between \$100 and \$130 million dollars per year would be coming into the general fund. Any costs of services would be covered due to the fact that in Phase I, only a small portion (200 acres) would be residential development.

- Columbia Venture is committed to working with Richland School District One in any financing scenario.

- **LIABILITY**

- Any arrangement will be structured to provide very limited, if any, liability to either Richland County or the City of Columbia pertaining to the levees. There are a number of ways to accomplish this including insurance, FEMA responsibility, and tort limitations.

- **ENVIRONMENTAL**

- An extensive environmental study is being done on the entire site. The results up to now show:
 - No endangered species.
 - Two significant archeological sites, which will be protected.
 - Approximately 360 acres of wetlands have been delineated and certified by the US Corps of Engineers.
 - No hazardous contamination has been found during an extensive testing program, which will be incorporated into a Phase II document, which should be released by March 1, 2001.

**Index to Gregory Pearce's Designated Deposition Exhibits:
Cross-Referenced Locations in the Record on Appeal, if Applicable**

Designated Deposition Exhibit	Description	Duplicate of Exhibit in Record	Location in Record
PLTF Exh. 147	Richland County Council Meeting Minutes (February 2, 1999)	PTE 147	3324
PLTF Exh. 148	Pearce/Wislinski email chain (December 21, 2005)	None	5671
PLTF Exh. 166	Richland County Council Proposed Action and Report (January 22, 1999)	PTE 166	33464
PLTF Exh. 168	Minutes of Richland County Council Development and Services Committee (January 26, 1999)	PTE 020	3126
PLTF Exh. 173	Newspaper article, "\$1 Billion Plan for Congaree Myrtle Beach Developer Envisions 'City Within Reach' in Richland County" (February 21, 1999)	None	5673
PLTF Exh. 179	Newspaper article, "Burroughs & Chapin Won't Abandon Plan Company Hopes to Change Floodway Designation and Beef Up Levees to Build Massive Development" (October 7, 2000)	None	5675
PLTF Exh. 180	Taylor email to Barnhill, Wolfe, and Smith (October 25, 2000)	None	5977
PLTF Exh. 186	Richland County Council Meeting Minutes (March 20, 2001)	PTE 186	3365
PLTF Exh. 187	Newspaper article, "Project Faces New Hurdle" (March 21, 2001)	None	5679

Blan Holman

From: Robert C. Wislinski [wizworks@mindspring.com]
Sent: Thursday, December 22, 2005 9:53 AM
To: Kevin Fisher; Robert Adams; Weston Adams; John Grego; Dell Isham; Dan Tufford; Bob Guild; Blan Holman; Angela Viney
Subject: more info on levee situation from Greg Pearce

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

From: Greg Pearce [mailto:g_pearce@bellsouth.net]
Sent: Wednesday, December 21, 2005 9:36 PM
To: wizworks@mindspring.com
Subject: Re: richland county council and levees

Bob:

When we came out of Executive Session, I honestly believed I was sunk - "sunk" as in I was the only person who would vote to pass the proposed ordinance. My belief was based on what the other committee members said during the exec session portion of the meeting. I also completely failed to take into account a Council rule that permits an item defeated in a committee to be brought to the full council if three (3) members of Council sponsor the item. Before we could vote, Damon Jeter came down to my seat, showed me his proposal for the addendum and said he thought Bernice would buy into that. Since the moratorium ordinance does not become "law" until passed by the full Council, my thinking was getting it before Council was the most important thing to do (again believing this was the only way to get it before full Council): It passed as amended and moves on. Hopefully, the full Council will pass the ordinance as drafted by our lawyers.

Please understand that we still do not have an ordinance on the books related to the Congaree floodway other than the one that is based on maps that have been thrown out by the Federal Judge. Nothing has really changed as a result of action by the D&S Committee. Just because this committee moved an amended ordinance forward does not mean it has become "law". It will either need a 2/3 majority vote of Council to put it into effect on an "emergency" (ie, immediate) basis or three readings and a public hearing to get it through on a regular basis. If it goes this latter route of three readings that would push it well into February which may be too late to make any difference.

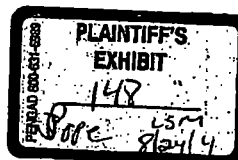
Both our staff and our lawyers believe that a 60 day moratorium was in the best interests of the county to avoid any confusion during this period of "unknowns" and "uncertainty". No one seems to know exactly where we are with respect to flood maps or who is going to do what next. If you think you are confused, you should try listening to the various lawyers going through their scenarios of "what if this" or "what if that". A moratorium makes sense for the county in that it lets the smoke clear, lets various appeals get filed and, most importantly, gives FEMA time to take some definitive action on how they will proceed. Also, keep in mind that the judge never ruled on the "science" (ie, facts, figures, calculations, etc) of FEMA's maps. The judge only ruled that FEMA failed to follow the correct procedure in putting the maps into effect.

I'm not certain whether I have answered your question or not but these are basically the "facts" as I understand them. Now, if you want me to "speculate" on what is going on behind the scenes, I doubt that you have enough time between now and Christmas for me to go through all of the various "theories" that I could propose about that.

Greg

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

1/3/2006



SELC000263

From: Robert C. Wislinski
To: Greg Pearce
Cc: Robert Adams
Sent: Wednesday, December 21, 2005 7:30 PM
Subject: richland county council and levees

Greg: FYI: I ask: why forward this to council with the levee addendum? Do ya'll's lawyers think there's any legal benefit? Why not kill the moratorium in committee? Trying to figure this out. Thanks for your help!!!!

Bob

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

From: Robert C. Wislinski [mailto:wizworks@mindspring.com]
Sent: Wednesday, December 21, 2005 4:39 PM
To: Robert Adams; Angela Viney; Ann Timberlake; Ben Gregg; Blain Holman; Bob Guld; Dan Tufford; Dell Isham; Dick Watkins; John Grego; Kevin Fisher; Nancy Stone-Cullum; Rich Scharf; Virginia Sanders; Weston Adams
Subject: richland county council and levees

I just finished talking to Greg Pearce (Robert Adams is talking to him too) and Damon Jeter. In reaction to the recent court decision throwing out the newest floodmap, Council passed a 80 day moratorium for floodway developemnt out of one of its committees last nite (no press attention) in order to do due diligence and make sure they have a workable flood map . I may be getting this wrong. Its been awhile since I worked with this material.

The problem is that Damon Jeter added a provision on this ordinance in committee that allows the current owners of affected property to begin repairs to any levees under current county law. Damon claims he did this to get it the full measure out of committee and onto council (Bernice S. was going to kill it in committee and had the votes to do so). He had a prepared typed ordinance, but claims he's had no conversations with CV developers and that the amendment was his own idea. Other friends on council think this is problematical.

This matter is going to full council. I'd like some of the lawyers to tell us what's going on. I think the levee gambit is politically (separate from legal) a real problem for this PRwise and the developers. We should talk and quickly. Thanks.

Bob Wislinski
WizWorks, LLC
P.O. Box 6052
Columbia SC 29260
Phone: 803-783-6417
Fax: 803-783-6247
Cell: 803-318-6804

1/3/2006

SELC000264

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11/9/10
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10052071
 \$1 BILLION PLAN FOR CONGAREE-MYRTLE BEACH DEVELOPER ENVISIONS - CITY WITHIN
 REACH IN RICHLAND COUNTY
 STATE - (COLUMBIA) (CS) - Sunday, February 21, 1999
 By: AMANDA MAYB, Staff Writer
 Edition: FINAL Section: FRONT Page: A1
 Word Count: 887

TEXT:
 Myrtle Beach developer Burroughs & Chapin has bought 4,800 acres in Richland County, paying \$11 million and setting the stage for a \$1 billion "city within a city" along the Congaree River.

In one of the largest land transactions in the county, Columbia farmer Burwell Manning sold the farmland to the development giant, the largest landowner in Myrtle Beach.

Burroughs & Chapin Co. Inc., which will be lead developer, will bring in four partners from the Southeast and Texas. The development, around land that houses Heathwood Hall Episcopal School and two sewer plants, is expected to include single-family and multi-family housing, at least two golf courses, an outlet mall, restaurants, hotels, a research and development park, a retirement village, a wildlife expo and an amphitheater.

The project could take 10 years to complete. Specifics on the project and when work will start were not available Saturday. The deal closed late Friday.

Burroughs spokesman Pat Dowling said company officials soon will present a development plan, to be completed in phases, to representatives from the governor's office, the Legislature, USC, Richland County and the city of Columbia.

"The actual phases themselves, I'm not privy to at this point," Dowling said. "I do know they have a plan in mind."

Burroughs & Chapin owns 28,000 acres in Horry County, including two of Myrtle Beach's centerpiece properties - the Myrtle Beach Pavilion amusement park and the Broadway at the Beach shopping, dining and entertainment complex.

The company has income of more than \$85 million a year, according to past revenue reports, and has assets exceeding \$200 million.

Manning, who has farmed the land for 30 years, called the project "the best thing to happen to Columbia and Richland County since the end of the Depression."

"Basically, it will change the whole complexion of that side of town," said real estate broker Bill Sirmon, who has worked on the deal for the past two years.

The project was almost shelved last summer when the Federal Emergency Management Agency reclassified the land from being in a flood plain to a floodway. Land in a floodway cannot be developed, while land in a flood plain can be developed with certain restrictions.

When it redrew the flood maps last year, FEMA did not take into consideration 20-plus miles of levees, some which had been in place since



the 1800s and which Manning had upgraded in the 1960s. The county and the city of Columbia, which has an \$150 million sewer plant on adjacent land, appealed to the federal agency. With some nudging from Sens. Hollings and Thurmond, the agency agreed to reconsider the levees.

Manning and the developers have agreed to spend more than \$6 million to upgrade the levees, which would decrease the likelihood the area would flood. Earlier this month, Richland County Council agreed that when they are brought up to federal standards, the county will assume responsibility for maintaining the levees. The land will remain in a flood plain.

Sirmon, who called the Congaree River and the Columbia river system "the best kept secret around," said the development "won't compete with the Vista but will complement it. It's a win-win for everybody in Columbia."

Mayor Bob Coble agreed, calling the project "marvelous" and "a tremendous boost for Columbia and Richland County."

"This is a natural outgrowth from everything we're doing with the river," he said. "We've got a private investor and a private developer. It's exactly what we hoped and dreamed would happen."

Asked if the city would consider annexing the land, Coble responded, "We'd have to see if they want services. We'd have to look at it if that's the case."

Richland County Council Chairman Paul Livingston said the project would help contain sprawl and increase the county's tax base.

"From an economic standpoint, I'm not sure there's been anything quite as extensive as this would be," he said. "I'm particularly interested because of the impact this would have on the city. It helps with the overall downtown development because of its close proximity to downtown."

The McLeese, president and chief executive officer the Greater Columbia Chamber of Commerce, had not seen details but said, "It helps in maintaining population growth in the central area of the region, which is certainly something that we desire. . . . Burroughs & Chapin have an outstanding reputation as a company that follows through on projects and is environmentally sensitive."

According to Dowling of Burroughs & Chapin, this would be the company's largest project. Broadway at the Beach is a \$250-million development on 350 acres. The company is developing Grand Dunes, a 2,000-acres project that stretches from the Atlantic Ocean to the Intercoastal Waterway. They're also working on a 1.3 million square-foot shopping mall by the Myrtle Beach airport; Dowling said construction should start this summer.

Dowling termed the Columbia project "significant in anybody's eyes."

Especially to Manning, who has raised soybeans and corn, among other crops, on the land for three decades. While admitting to some sadness at the completion of the deal, Manning said, "That's all right. That's life."

The Myrtle Beach Sun News contributed to this report. Amanda Mays covers Richland County. She can be reached at (803) 771-8385 or by e-mail at amays@thestate.com.

CAPTION:
MAP: BW

Congaree River Development. SCOTT FARRAND/THE STATE

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DESCRIPTORS: MYRTLE BEACH; DEVELOPMENT; RICHLAND COUNTY; CS

13/9/11
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The State (Columbia, SC)

OCTOBER 7, 2000 Saturday FINAL EDITION



SECTION: METRO: REGION; Pg. B1

LENGTH: 850 words

HEADLINE: BURROUGHS & CHAPIN WONT ABANDON PLAN COMPANY HOPES TO CHANGE FLOODWAY DESIGNATION AND BEEF UP LEVEES TO BUILD MASSIVE DEVELOPMENT

BYLINE: SHELLEY HILL, Staff Writer

BODY:

Burroughs & Chapin officials are hoping to stick as closely as possible to their original plans for a \$1 billion development south of Columbia, despite a federal flood map that put most of the property in a no-development floodway zone.

The company says it will submit new information to federal officials in an effort to prove the floodway should be smaller. But company officials also hope to persuade Richland County to allow them to bolster existing levees on the property.

"If they (improve) the levees, virtually all of their property will be developable," said Richland County Council chairwoman Kit Smith. "Everything behind the levee is just like living in Spring Valley."

Burroughs & Chapin hopes to build a 700-acre, high-technology park along the Interstate 77 corridor as the centerpiece of its Green Diamond development. It owns 4,600 acres 5 miles south of Columbia.

The first phase of the development, north of I-77, is to be built out over 10 years. It is to include about half of the high-tech village, an 18-hole golf course, a hotel and convention center, retail villages and homes, including student housing.

The second phase, south of I-77, is to include an extension of the technology park, 75 percent of the residential development, a 350-acre nature preserve, a site for a school, and a possible site for the State Farmers Market, should it move.

The property is dotted with ponds to control water. It is 30 percent to 40 percent green space.

The entire project is expected to take 20 to 30 years to complete.

Burroughs & Chapin officials offered members of the Richland County and the Lexington County councils a glimpse of their preliminary plan this week at a meeting with Federal Emergency Management Agency officials in Washington.

"It will knock your socks off. It's beautiful," Richland County Council member Greg Pearce said.

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CV018435

**BURROUGHS & CHAPIN WON'T ABANDON PLAN COMPANY HOPES TO CHANGE FLOODWAY
DESIGNATION AND BEEF UP LEVEES TO BUILD MASSIVE DEVELOPMENT The State (Columbia, SC)
OCTOBER 7, 2000 Saturday FINAL ED**

Smith was more skeptical. She said she is concerned about the extra traffic the development will create and that the development does not have a clear center.

"We need the opportunity to review it to see if it meets the principles of the Town and Country vision," she said. Town and Country is the county's plan to channel its growth over the next 20 years.

Project Manager Jim Wiseman showed the proposed plans to a reporter Friday. He would not allow photographs, because officials are updating the plan.

Burroughs & Chapin plans to unveil its latest development plans and its partners in the project on its property within two weeks, Wiseman said.

The company had been unwilling to discuss its plans for the property before FEMA's decision Sept. 26.

That map, released last week, put about 70 percent of the company's property in a floodway, where no development is allowed. Company officials talked about selling the property.

But at this week's meeting in Washington FEMA officials indicated Burroughs & Chapin might be able to craft a joint solution.

FEMA regulations allow development, including levees, in floodways if it doesn't displace water.

Burroughs & Chapin wants to improve the aging levees on the property so that they are 3 feet higher than flood levels estimated for a 500-year flood. The flood map is based on estimates for a 100-year flood.

Burroughs & Chapin argues that it can improve the levees on the Richland County side of the property without displacing water to the Lexington County side because FEMA drew the flood lines in Lexington County based on the worst-case scenario for that side of the river.

When FEMA engineers mapped the flood lines in Lexington County, they assumed that the levees on the Richland County side would not fail, diverting water to Lexington County. However, for the Richland County side of the river, they assumed the levees would fail, which is why most of Burroughs & Chapin's property is in the floodway.

Therefore, Burroughs & Chapin officials argue, they can improve the levees without extending the floodway on the Lexington County side.

Lexington County planning director Charlie Compton is skeptical. "I feel sure that it can't be done without affecting Lexington," he said.

It is up to Richland County to determine whether Burroughs & Chapin can improve the levees. County ordinances have conflicting provisions on floodway construction.

One sentence says "no levees . that will impede the free flow of water during times of flood will be permitted" in the floodway. The next sentence says FEMA's less stringent standards apply.

Smith said the county is working to learn how levees affect flood plains and how matching FEMA's standards would affect the property.

"We're desperately scrambling around to see if we can find folks to teach us River Management 101," she said.

Several County Council members said they want to visit a river where there are levees.

Smith said just because the county is studying the issue, doesn't mean that a decision has been made.

"Almost the opposite," she said. "It's the most responsible thing for us to do - get as much information as we can and share it with the public."

GRAPHIC: MAP: COLOR;

First Glimpse of Plans. The first phase of the Burroughs & Chapin development would be north of I-77 and take 10 years to complete T.ROLLINS, THE STATE

LOAD-DATE: January 29, 2002

MULLEN TAYLOR

pm: MULLEN TAYLOR
 Jnt: Wednesday, October 25, 2000 12:30 PM
 To: 'Butch Barnhill'; 'George Wolfe'; 'Jack Smith'
 Subject: FYI - B&C Update



CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE

George and I thought it would be helpful if I send everyone a periodic update of the issues/events dealing with B&C. So, here is an update starting from September 26th, otherwise referred to as F-Day, when FEMA announced its appeal resolution.

Following the stunning news from FEMA (appeal resolution), a meeting with FEMA on October 3rd was called by B&C to seek a better understanding of how FEMA arrived at its appeal decision. The County, City, B&C, Lexington County and FEMA were present at this mtg in DC. George, Jack and I listened in via conference call. Cary McSwain, Kit Smith and Greg Pearce were physically present. Besides answering questions about FEMA's decision, FEMA did elaborate on possible options B&C has, as well as Heathwood Hall and City Treatment Plant, for accomplishing their respective goals. The first was levee construction and certification. The second was reconfiguration of the floodway in an attempt to remove floodway from WWTP, Heathwood, or B&C. A follow-up mtg. in Atlanta was scheduled on October 18th.

Soon after F-Day, the County, at the request of Tim Rogers, expressed to B&C its initial thoughts about the project moving forward in light of the FEMA decision. At this juncture, the County is taking a "wait and see" approach during FEMA's 30 day comment period and subsequent time it takes for FEMA to issue its final determination. The expanded floodway on B&C property has increased the County's concern about developing on the property, and has highlighted the need to educate ourselves on the very serious issues before us. B&C seemed anxious to get moving on the project and anxious about the County's position. I know that time is money for them, and they are looking for traction, some sign that there is light at the end of the tunnel. However, their money concerns are not our problem. Our interests are best served by waiting and educating ourselves.

On the 18th, Ralph Pearson (County Engineer), Rocky Archer (County Hydrologist) and I attended the FEMA meeting in Atlanta to continue discussions on the Congaree River Flood Insurance Map. Besides FEMA representatives from Atlanta and Washington D.C., representatives from the City of Columbia, B&C, Heathwood Hall, Lexington County and SCDNR were also present. Burroughs & Chapin disagreed with some of FEMA's assumptions pertaining to the recent appeal resolution, yet also stated that they would work within the parameters set by the current map. B&C plans to pursue levee construction and certification, with a request to FEMA for a revision to the Congaree Flood Insurance Map to remove the floodway/floodplain status from behind the certified levees. To do this, Burroughs & Chapin will need to comply with FEMA criteria for levee certification, prove no adverse impact upon Lexington, prove no rise in base flood elevation, and seek approval of a CLOMAR from either the County or the City.

So, during this wait period, the County is scheduling a series of speakers with expertise on rivers, levees and floodplain management to present to County Council and staff. We also are inviting City Council and staff. Yesterday, we had our first speaker, Dr. Allan James from USC, who presented a "Rivers 101" session. I have mailed George the handout. I have a line in to a Corps of Engineers guy to speak about levees. And I'm trying to get Gerald Galloway here. He wrote the "Floodplain Management into the 21st Century" Report about Mississippi Flood of 1993.

Jim Wiseman has hired an attorney somewhere out of state who has experience on the levee liability issues to advise B&C and to talk with us. I have placed a call in to Wiseman to follow-up with this and ask for the lawyer's name and number.

Wiseman sent me a draft report on levees written by a B&C consultant who is a former Corps Engineer. The report describes levees, what causes them to fail, the proposed B&C levee construction, and examples of other levees across the Country. I have mailed a copy to George.

Thursday the 18th, B&C held a media event to announce its plans and of course, promote the hell out of it. Local media officials were invited. Of County Council, I heard that Tillis, Scott, Mizzell, Meetze and McEachern attended. Coble and Papadea were there from City. I am waiting to get from Wiseman the promo material handed out at the mtg.

A coalition of environmental groups has formed with the purpose of opposing this project. They are holding a press

conference organized by Bob Wislinski on Thursday the 26 at 1:00 in the County Council Chambers. I will scope it out.

On the Council's Development & Services Committee meeting held yesterday, a revised Stormwater ordinance intended bring County into compliance with our NPDES permit was on the agenda. I believe George has a copy of this revised ordinance. Anyway, B&C has been very anxious for the County to change our floodway provision to allow for construction in floodway as long as it creates no rise. Right now I think it does not allow any impediment to free flow of water in floodway. A County decision on the interpretation of this provision needs to be done. This is a crucial issue for B&C - the project sinks without revision of this ordinance. Kit and Greg say the provision does not change unless and until the County decides on whether it wants to agree on levee construction. Meanwhile, the environmental groups are focused on this stormwater ordinance as the way to sink the B&C project (by County not revising the provision). They lobbied D&S Committee members yesterday to defer the Stormwater ordinance for 30 days so they can carefully review it. I'm not sure if they are so paranoid as to think there is something hidden in there that is beneficial to B&C or what. After all this being said, this ordinance is the battleground for the B&C project. B&C wants it changed, the environmentalists do not. The Committee deferred the ordinance for 30 days. Stay tuned!

Because I have had several calls from Wiseman, Tim Rogers and Marth Becker about this infamous floodway provision, I asked Wiseman yesterday to write me a letter offering the B&C interpretation of the provision and if they want our interpretation, to ask for that in the letter. He said he would write a letter.

I have attended small neighborhood meetings with Kit Smith in Arthurtown area and Bernice Scott in Hopkins about the flood map and B&C. Tonight there is a big Arthurtown/Taylor/Little Camden/Washington Park Mtg to talk about flood map. Kit, Ralph and I will be there.

B&C seems to be seriously considering seeking immediate annexation into the City as a more viable option for them. The County does not oppose this strategy. Nevertheless, according to Kit, B&C doesn't have the votes on City Council to annex.

The City is in a bind though. John Dooley, their Utilities Director, told me that they have hired a consultant to design a levee for them and are looking at annexation of their WWTP via a sewer easement that crosses B&C property. They would have to get permission from B&C to do this. Right now, the City cannot construct a levee because they are in County and subject to our restrictive floodway provision in our Stormwater ordinance. But, if they annex their plant into the City, then they can construct a levee because the City ordinance is the same as FEMA's regulations allowing encroachment in a floodway as long as there is no rise in base flood elevation.

Well, that's all I can think of right now. More later. If you have any questions, please email or call me.

Mullen



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The State (Columbia, SC)

MARCH 21, 2001 Wednesday FINAL EDITION

SECTION: METRO: REGION; Pg. B1

LENGTH: 673 words

HEADLINE: PROJECT FACES NEW HURDLE

BYLINE: SHELLEY HILL, Staff Writer

BODY:

A sharply divided Richland County Council said Tuesday that no construction should be allowed in a floodway, a vote that could threaten Burroughs & Chapin's proposed Green Diamond project.

Council voted 6-5 to amend its storm-water ordinance to prohibit any construction in a floodway, including improvements to levees. The vote was the first of three needed to pass the ordinance.

The Congaree Task Force and the Charlotte-based Southern Environmental Law Center, which oppose Green Diamond, wrote the ordinance. It would allow the city of Columbia's wastewater treatment plant and Heathwood Hall Episcopal School to expand. Both buildings are now in the floodway.

Robert Adams, a spokesman for the task force, called the vote "good government in action."

Burroughs & Chapin's local project director, Jim Wiseman, said the company will continue to work to build Green Diamond, its proposed \$1 billion multiuse development south of Columbia.

"It definitely is not going to kill the project," he said. "That was the sole intent of the Congaree Task Force."

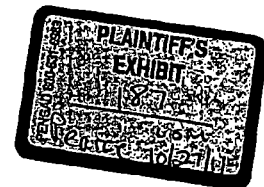
Burroughs & Chapin's supporters, many of whom wore T-shirts that said "WWGD" and "We Want Green Diamond," vowed to use the vote as a rallying point.

"Call your neighbors," council woman Bernice Scott told Lower Richland neighbors at an impromptu meeting in the lobby of the county administration building after the vote.

Burroughs & Chapin needs the county's permission to bolster existing levees on its property to build Green Diamond. A federal flood map released in September puts 70 percent of the company's property in the Congaree River floodway.

The amendment to the county's storm-water ordinance would prevent the county from granting the permission the company needs.

Voting for the ordinance were council chairwoman Kit Smith, vice chairman Greg Pearce and members Joan Brady, Joe McEachern, Susan Brill and Jim Tuten. Paul Livingston, Tony Mizzell, Buddy Meetz, Scott and Thelma Tillis voted against it.



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CV018460

PROJECT FACES NEW HURDLE The State (Columbia, SC) MARCH 21, 2001 Wednesday FINAL EDITION

Some council members tried to avoid characterizing the vote as being connected to Burroughs & Chapin. The vote calls for Smith to write a letter to the Federal Emergency Management Agency saying the action does not mean the council has taken a position on the development.

Scott said that was absurd.

"I would suggest you not write the letter because you are not telling the truth. This motion is definitely against any development in that area," Scott said.

Mizzell said adopting the amendment means "telling the project 'Bye-bye, we don't want you.'"

There was some question whether it was legal for the county to except two entities from the ordinance.

County attorney Larry Smith said he felt comfortable with singling out the wastewater treatment plant because expanding it might be necessary to public health. He said he needed to research whether there is a rational basis for exempting a private school.

Burroughs & Chapin had lobbied the council to adopt the FEMA's minimum standards. Those standards allow for limited construction in a floodway and might have allowed the levee improvements planned by the company.

"These standards are the clearest, best-known, generally accepted standards," said William Boyd, of Haynesworth Sinkler Boyd. The firm, one of South Carolina's oldest and largest, has recently been retained by Burroughs & Chapin.

County engineer Ralph Pearson said the county has historically used FEMA's minimum standard when permitting construction in a floodway. He said he would feel more comfortable with that standard.

A motion to adopt the FEMA standard failed 8-3, with Meetz, Mizzell and Scott voting for it.

STORM-WATER ORDINANCE

Richland County Council gave tentative approval Tuesday to an amendment to the storm-water ordinance

* The ordinance, if it passes two more votes by the council, would prohibit development, including improvement of levees, in floodways.

* The amendment makes exceptions for Heathwood Hall Episcopal School and the city of Columbia's wastewater treatment plant.

NOTES: Info Box: 'Storm-Water Ordinance,' at end of article.

LOAD-DATE: November 1, 2001

**Index to J. Milton Pope's Designated Deposition Exhibits:
Cross-Referenced Locations in the Record on Appeal, if Applicable**

Designated Deposition Exhibit	Description	Duplicate of Exhibit in Record	Location in Record
PLTF Exh. 122	Newspaper article, "FEMA Clears Way for River Project" (August 20, 1999)	None	5682
PLTF Exh. 123	Richland County Council Meeting Minutes (September 7, 1999)	PTE 123	3285
PLTF Exh. 146	Chambers memorandum to McSwain and L. Smith (February 2, 1999)	PTE 146	3323
PLTF Exh. 147	Richland County Council Meeting Minutes (February 2, 1999)	PTE 147	3324

13/9/40

DIALOG(R) File 720: (Columbia) The State
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FEMA CLEARS WAY FOR RIVER PROJECT

STATE (COLUMBIA) (CS) Friday, August 20, 1999

By: JEFF WILKINSON, Staff Writer

Edition: FINAL Section: FRONT Page: A1

Word Count: 1,425

MEMO:

"Levee improvements" info box at end of story.

TEXT:

A Myrtle Beach company can bolster levees along the Congaree River and build others to protect its proposed 4,600-acre, \$1 billion development below Columbia, as far as the federal government is concerned.

As expected, the Federal Emergency Management Agency on Thursday set "floodway" lines at the inland base of the existing system of levees along the river's east bank.

The decision was a huge victory for developer Burroughs & Chapin, despite some uneasiness among others downstream.

The floodway zone had previously run to Bluff Road, which would have blocked construction of the huge business, residential and ecotourism complex planned by Burroughs & Chapin.

A floodway zone contains the deepest and swiftest water during a flood. Nearly all construction is banned in those zones.

Local governments have 90 days to appeal the new lines.

The homemade levees have been built in stages since the Civil War to protect low-lying farmland. FEMA does not recognize them as flood control devices.

Burroughs & Chapin would like to improve the dikes to remove the less restrictive, but still problematic, "flood plain" designation from the rest of their property.

A flood plain is an area that holds standing water during a flood. Construction is permitted in those areas, but only if special requirements are met.

Federal law would allow most, if not all, of the levees to be improved. FEMA would have to approve the levees before the flood plain restrictions could be lifted.

But Richland County must also approve any construction in a flood zone.

The ordinance bans all construction in the floodway, but it also gives a nod to federal laws that would allow the improvements if they don't cause a rise in the 100-year flood levels.

"In my opinion, you can (improve the levees)," Richland County public works director Ralph Pearson said.

"I think we can demonstrate no rise. But I'm going to let the attorneys make that call."

County attorney Larry Smith was not available for comment late Thursday.

Meanwhile, Burroughs & Chapin's engineers are gearing up to do the work.

"Our intent is to develop and enhance the levees that are there," said



Wilson Tillotson, division manager of the Lockwood Greene engineering firm, the company's consultants. "We're setting up our planning to see what the next step is."

FEMA's announcement had little effect on flood lines on the Lexington County side of the river, which paves the way for development along the new 12th Street Extension and a new exit on Interstate 77.

There are about 1,000 acres of developable property, owned by the SCANA Corp., on that side of the river. Lexington officials had feared the new lines would shift the floodway to the west bank, taking that land out of development.

The new lines also keep Cayce's Riverland Park subdivision out of the floodway.

"People in both Lexington and Richland counties can be particularly satisfied with the decision because it is based on the most extensive and detailed scientific study of the river ever conducted," Burroughs & Chapin spokesman Pat Dowling said in a prepared statement.

FEMA used information provided by Burroughs & Chapin engineers to redraw the lines.

FEMA's Todd Davison said the agency doesn't have the money to do comprehensive studies and often depends on data provided by private consultants.

"We have a limited map budget," he said. "We try to maximize the data and minimize the cost."

The floodway line has been changed three times since 1997.

For years, FEMA recognized the levees as flood-control devices and placed the largest part of the floodway on the Lexington County side of the river, while the line on the Richland County side hugged the riverbank, inside the dikes. Then Lexington officials lobbied for a review to open up the land around the 12th Street Extension for development.

That resulted in FEMA officials dismissing the levees as inadequate, and the floodway was shifted wholesale to the Richland side last year.

This spring, after Richland officials and U.S. Sen. Fritz Hollings complained, the agency moved the line closer to the river, but still through the heart of the development.

This most recent revision places the line at the "top" of the levee, clearing the way for Burroughs & Chapin's development.

Why the new lines? The broad swings of the Congaree floodway are not lost on environmentalists and others who worry about the huge development and the effect of improved levees on downstream property.

"I think it's marvelous how we can solve flooding problems in South Carolina by simply redrawing lines on a map," said Dell Isham, executive director of the S.C. chapter of the Sierra Club. "It sounds like complicity to me."

FEMA's Davison said the agency used a U.S. Corps of Engineers' study from the 1970s as its basis for last year's decision to move the line to the Richland County side.

The Lockwood Greene study submitted to the agency this year pointed out four discrepancies with the earlier Corps study:

- * The levees are farther away from the bank of the river in some areas, making for a wider, central channel for flood waters to flow.
- * The levees are more substantial than first thought.
- * The soil making up the dikes is more suitable for holding back water.

* Less water would course down the Congaree during a 100-year flood, according to new calculations. Apparently, engineers initially gave too much weight to two large floods that occurred before the Lake Murray Dam was completed in 1930.

As a result, FEMA engineers lowered the 100-year flood level by 2.5 feet to 3.5 feet. The lower flood water requires a narrower channel.

Also, even though the current dikes would break in some places, FEMA officials said they would not be swept away in a flood as first believed.

Water would flow through the breaches to form a lake behind the levees, but they would still divert the flowing floodwaters.

Davison said the Corps study was not necessarily in error, but simple "out of date."

"A lot could have happened since that study was done," he said, such as the levees being bolstered or moved.

Despite FEMA's assurances that this study is complete, another federal agency may take a third look.

The National Park Service may also weigh in, because the Congaree Swamp National Monument is located about 10 miles downstream from the proposed Burroughs & Chapin development.

"We're going to have to have more information," park superintendent Martha Bogle said. "I'm all for environmentally sensitive economic development. But nobody has told me what this development will consist of."

Bobbi Simpson, the swamp's natural resource manager, said she has requested that park service hydrologists and other experts examine the Lockwood Greene study.

"We're going to do our best to understand the situation as best we can," she said.

"It looks like we'll get funding for a modeling specialist."
Levee improvements

Thursday's decision removed B & C's property from the Congaree River's "floodway." Improving the area's earthen dikes could also remove all "floodplain" building restrictions.

But a lot of work has to be done before the homemade levees can be brought up to federal standards.

According to Lockwood Greene engineers, the work includes:

- * Clearing all trees and brush from the existing levees. The river side of the dikes are almost completely covered.

- * Roots, discharge pipes and other things that could weaken the levees must be removed and holes filled.

- * The dikes must be brought up to the correct height and width.

- * The right soil must be used to ensure the dikes don't wash away.

- * An operation and maintenance plan would have to be developed.

- * The levees must be certified by an engineer, then accepted by the Federal Emergency Management Agency.

- * The dikes must pass regular inspections by county engineers.

Jeff Wilkinson covers the city of Columbia. He can be reached by phone

**Index to Herman Wilson Tillotson, Jr.'s Designated Deposition Exhibits:
Cross-Referenced Locations in the Record on Appeal, if Applicable**

Deposition Exhibit	Description	Duplicate of Exhibit in Record	Location in Record
PLTF Exh. 4	Chronology of Green Diamond Project (July 18, 2001)	PTE 004	3060
PLTF Exh. 15	Richland County Council Proposed Action and Report (January 22, 1999)	PTE 166	3346
PLTF Exh. 17	Holland letter Buckley with attachments (January 22, 1999)	PTE 017	3121
PLTF Exh. 19	Miller letter to Holland (January 26, 1999)	PTE 018	3125
PLTF Exh. 21	Richland County Regular Session Minutes (excerpt) (February 2, 1999)	in PTE 147	3326
PLTF Exh. 118	Hester letter to Gregory with draft permit application attached (May 4, 1999)	PTE 118	3259
PLTF Exh. 207	Tillotson letter to McSwain (December 11, 1998)	PTE 207	3499
PLTF Exh. 208	Tillotson letter to Gregory (February 17, 1999)	PTE 208	3501

**Index to Douglas P. Wendel's Designated Deposition Exhibits:
Cross-Referenced Locations in the Record on Appeal, if Applicable**

Designated Deposition Exhibit	Description	Duplicate of Exhibit in Record	Location in Record
Defendant Exhibit 42	Newspaper article, "Levee Work Expected to Be OK'd" (May 28, 1999)	None	5687
Defendant Exhibit 45	Tillotson letter to Gregory (May 27, 1999)	Defendant's Trial Exhibit 2	5084
Defendant Exhibit 136	Handwritten Columbia Venture meeting notes (March 29, 1999)	None	5689
Defendant Exhibit 238	Newspaper article, "Reducing Flood Area Won't Hurt Either Side of River, Developer Says" (May 21, 1999)	None	5697

reduced. Company officials are confident some flood restrictions can be scaled back with levee improvements.

If the restrictions make the project area too expensive to develop as planned, Wendel said, the firm has an "exit strategy" that would bring it a return on its investment.

"Worst case scenario, we get our money back," Wendel said. He declined to say what that strategy is, but acknowledged that the land could also be used for mining or farming.

Wendel said some wetlands on the property could be used as a "mitigation bank," or an area that is guaranteed protection in exchange for developing wetlands elsewhere.

"Obviously, there's an opportunity for these wetland areas to be put in some sort of bank now," Wendel said.

CAPTION:
PHOTO COLOR

Wendell

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DESCRIPTORS: ENVIRONMENT DEVELOPMENT TOURISM PARK

13/9/36

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10149059

LEVEE WORK EXPECTED TO BE OK'D.

STATE (COLUMBIA) (CS) Friday May 28 1999

By: LISA M. COLLINS, Staff Writer

Edition: FINAL Section: FRONT Page: A1

Word Count: 693

TEXT:

Despite objections from a federal agency, Richland County is expected to allow upgrades to controversial levees along the Congaree River.

Burroughs and Chapin, the prolific Grand Strand development company that owns 4,600 acres along the Congaree southeast of Columbia, asked the county May 7 for a permit for work on levees on the property.

The decision is being based on flood maps from 1996. The work would be prohibited under more recent maps that are in dispute.

The permit would allow maintenance work, including removing trees and leveling uneven areas, on about 20 percent of the four-mile dike system.

But the permit also would allow the company to add to the height and width of the levee - parts of which date to the Civil War - in areas that have eroded or sagged.

Although documents submitted to the county appear to show that as much as 8 feet could be added to the top of and 12 feet to the sides of some sections of the levees, the overall size won't be increased, said Mark Hester, engineer for Lockwood Greene, a firm hired by Burroughs and Chapin.

The work is only routine maintenance and will simply make the levees uniform, Hester said.

The maintenance work is minor and necessary to ensure the levees protect against a flood, said Doug Wendel, chief executive of the family-owned development company.

<http://www.dialogclassic.com/DialogClassic/dialog>

06/09/2000



Nevertheless, the expansions would be restricted under county and federal laws, depending on which federal flood map the county decides to use, said County Engineer Ralph Pearson. There have been three such maps available in the past three years.

That's the reason the county initially denied the permit, Pearson said. The Federal Emergency Management Agency wrote the county last week asking that the latest Congaree flood maps, released in March, be honored until FEMA engineers make final decisions about where the river would flood.

The March 1999 map designated most of Burroughs and Chapin's land - including the levees - as within the "floodway," and therefore severely susceptible to flooding. Any construction or development in a floodway is banned under county and federal law, unless studies are done to show the new construction wouldn't affect the flow of water if the river flooded.

FEMA determines where the river is likely to flood and then draws flood lines to create "no development" zones on a map. The levees are critical to determining flood-prone areas, because they can be used to protect land and therefore allow development.

Despite FEMA's request that the county honor the 1999 maps, older maps will be used, said Cary McSwain, Richland County administrator. The county will use 1996 FEMA flood maps because they were approved and finalized, he said.

FEMA's 1996 maps show a large area in Lexington County in the floodway. But on the Richland County side, the floodway stopped on the river side of the levees. The levees were included in the flood plain, where development is less severely restricted.

"The latest map hasn't been (fully) approved and hasn't been determined to be accurate," McSwain said. "We won't issue permits to build in that area, and I think that was FEMA's primary concern."

"It's fair and reasonable to allow this company to do maintenance on their property," he added.

Furthermore, FEMA has admitted that the 1999 maps are flawed, he said. That's why the agency has agreed to review an intensive scientific study on the levees and the river by Burroughs and Chapin, he said. A final decision on the maps is expected by mid-July, according to FEMA officials.

FEMA decided to review Burroughs and Chapin's study after a special meeting earlier this month in FEMA's Atlanta office. The meeting, held at the request of Burroughs and Chapin, was attended by the developer's engineers. FEMA officials from Washington, D.C., participated via teleconference.

The controversy began in early 1998 when FEMA released new maps that placed 6,000 acres on the Richland County side of the river into a floodway. The same map freed most of the Lexington County side of the river from the "no development" zone.

Outcry over the 1998 maps caused FEMA to agree to revisit the flood map.

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DESCRIPTORS: RICHLAND COUNTY FLOOD DEVELOPMENT

13/9/38
DIALOG(R) File 720: (Columbia) The State
(c) 2000 The State. All rts. reserv.

10209062
FEMA SAYS FLOOD MAPS FOR CONGARKE LIKELY TO RECEIVE REVISIONS, FEMA SAYS
STATE (COLUMBIA) (CS) - Wednesday, July 28, 1999

<http://www.dialogclassic.com/DialogClassic/dialog>

06/09/2000

COLD VENT. MEETING 3-29-99

(1)

John F. Waco - Waco. 2 (quintly Ketter)

3-29-99 Lockwood Green Visitation

FEMA: Did Maps As Of: Levy Did Not Exist

② Do Exist For LEXINGTON

(100% FLOOD) → S. Shovel (Levy Strongly) (Co)

Should Not Impact Lexington & Cogen

③ For Floodway Assumed

Leaves Do Not Exist (Because Guidelines Require Them To Do So)

<Meeting Was
Supposed To Be
Private - But
Wasn't - So We
Made No Public
Comment>

STUDY CONSULTANT: ^{SP} NATEEY / NATEE + NATTEE
A E NATTEE

<Levy Embankment Considered? No

<Didn't Consider School & WSW
Plant? No>

Request L & G To Take
NEXT STEP PROVIDE TOPIC INFO TO FEMA

1995 MAPS TO FLOODWAY AT TOP OF LEVY

SO WORK OFF BACKSIDE S. NO IMPACT
ON LEXINGTON

(3)

Why Did FEMA Change St-Meys - What
New Data Available?

(SCANA - 12th St Extension - Coyer - Subdivisions)

Good opportunity for INVESTIGATION !!!

FEMA → SNA Precedence for Allowing An
Abstraction w/ Road / Subdivision
(Doing What Don't Want us To Do!)

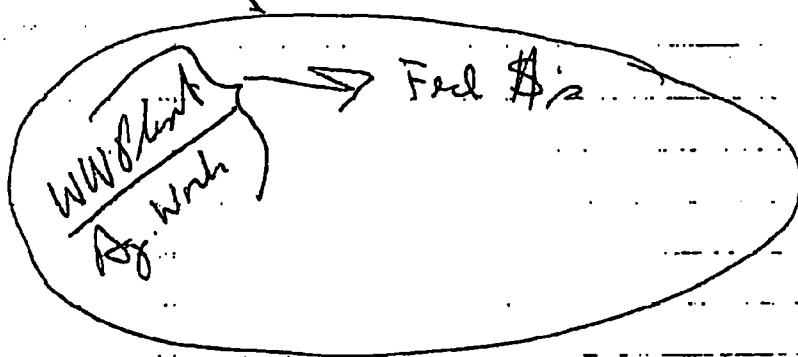
FEMA GUIDELINES → "Existing Flooding Configuration
Should Be Retained
Wherever Possible"

Wetlands
Issue!

THINGS TO DO!!

- ① Wetland Certification
if Log Data
Available
- ② INTERVIEW TO FIGHT
WILLING TO IGNORE
MAJOR FLOOD DAMAGE
+ ISSUE A PERMIT
- ③ FEMA → pursue correction

- * LEXINGTON Co + ST. DOT
Created Problem → By Building In Floodway
Approach Item → Go w/ don't have Bonding + Will leave
you alone - ~~Don't~~ must
come after you!
- FLOOD PROTECTION
- * RESTORATION ZONE → Co. Must Agree to
upgrade levee system
w/in 10 yrs.



" CAREY McSWAIN, Co. MGR.

3-29-99

Legal Section
 Re: Laws
 EXISTING RESTRICTIONS
 ARE THERE →
 NO IMPACT → BEFORE
 REDRAW MAP
 APPLY FOR UPGRADE
 (MOVE BACK TO 1995 LINE)
 SUBMITTED IT INFORMALLY

MASTER PLANNING

RAYMOND GOMEZ (RGA) PRES.

GERY REEVES, PRES.

BILL RENOR, EDNA
CONSULT.
Assoc. Pres.

Parent Communities
 mixing w/ office bldg
 etc.

Seize & Charles Nix to
 be thought of as an planning
 process. helps to satisfied
 time / feeling / character of
 the Bay

But they Antioch Community
 that make high want to
 live there!
 planning (concern about various special)
 opportunities to service - Town Club

Not familiar
 w/ ~~the~~
 nature of area

(6)

Challenges

- Blacks
- Business Dev. Areas
- Highway Directs Comm
- Power Lines
- University
- St. Govt.
- Drainage / how Lands
- Permitting
- W W Blast
- Schools in Middle
- Damage of Area
- Outpools

Amenities - Health

learning

recreation

w/ with Interconnecting

open space

shopping (entertainment)

technology (wired wireless)

security

signage

landscaping

image

unique architecture

need to control
selective
bring water to water

River # &

levels (Sight)

Need A Diversity of Use -
w/ A Significant Variety
of Proctor

neotraditional → is a niche market

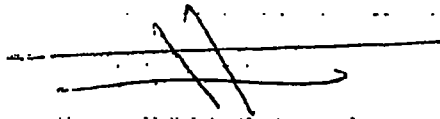
Permitting Open Subdiv
Lynn (Boswell Co.)
But Could Go Living Even
Not To Exceed HERE

(7)

LUCKWOOD/GREENES EXPERIENCE (Perry Holcomb, P.E.) (WILL TAKE CHARGE LEADER)

- MOSTLY INDUSTRIAL AREA / NOT COMMERCIAL OR RESID.
- Need Some Supplemental Assistance

MORE OF TO
SUPPORT ROLE
TO ENGINEERING



- REX $\rightarrow$ A Road Body. (Related Const. of Stormwater...)
(Related to L.G.)

- Jones & Metric

- L.G. also has Product - Const. Arm.

- Stuart Johnson $\rightarrow$ Civil Works.
Mechanics - Cols.

CV010849

NEED
FALLBACK
POSITION

3-29-99

457-6000

8

Carey McSwain:

Who Ambushed Us?

CEO (you, Carey) Submit Info. To FEMA w/ Rec.
(Early NEXT WEEK)
(+ WWTP + SCHOOL)

Will Have An Impact on LEXINGTON Co.?

CURRENT
EFFECTIVE

July 1995 MAPS - Need To Be ~~Retained~~ Retained

DNR's Position?

→ Took Into Consideration Flood Way - At Foot of ~~Bellevue~~ Belvedere

Why LEXINGTON Co. So Aggressive: Computer Planning Director
Raised Issue To Lexington Co.
More Aggressive

*Need
Good FEMA
LAWYER

Carey willing to Transmit Updated Data (New)
FEMA Did Not Take Into Consideration!
(Send Him A Letter)

(State Flood M. Integration Director)

Lisa (DNR) Supports Submittal All ~~Large~~ Large
Info.

CV010849



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State, The (Columbia, SC)

May 21, 1999
 Section: FRONT
 Edition: FINAL
 Page: A1

REDUCING FLOOD AREA WON'T HURT EITHER SIDE OF RIVER, DEVELOPER SAYS

LISA M. COLLINS, Staff Writer

About 4,600 acres along the Congaree River could be completely removed from a federal flood-prone area without harming development across the river, said a spokesman for a large Myrtle Beach developer.

A multimillion dollar engineering study by Burroughs and Chapin will show that the total area in danger of a flood can be safely reduced, said Pat Dowling, spokesman for the prolific Grand Strand developer that wants to build the "city within a city" on the site southeast of Columbia.

The Federal Emergency Management Agency, which designates areas vulnerable to flooding for insurance and safety purposes, said it will review the developer's study. A decision to change existing flood maps or to leave them unchanged because of the new information is expected by mid-July.

FEMA agreed to review Burroughs and Chapin's engineering study before the land was purchased in February, Dowling said.

FEMA's most recent Congaree flood lines, put out in March, would have removed most of Burroughs and Chapin's land



from development.

Burroughs and Chapin has announced a billion-dollar, 20-year development plan that would see homes, shops, golf courses, recreational areas and other amenities on the 4,600-acre site southeast of Columbia along the Congaree.

Both sides of the river would benefit from a flood-area reduction, because development would be freed up for everyone, Dowling predicted.

Any changes to the maps would be based on technical data only, said Todd Davison, division director for FEMA's Atlanta regional office.

A debate has ensued for the past year about FEMA's flood map lines around the Congaree, which separates Lexington County from **Burroughs and Chapin's** low-lying farmland, pastures and wetlands in Richland County.

Some Lexington County property owners are worried that if the flood-prone area was reduced on **Burroughs and Chapin's** property, it would be increased on the Lexington side of the river. They also worry about what would happen if the site's levees were improved.

Burroughs and Chapin recently asked Richland County for a permit to upgrade several sections of the levees along the Congaree. The construction project would entail unclogging pipes designed to keep surrounding farmland from flooding and leveling uneven sections of the dike, Dowling said.

The request for improvements doesn't foreshadow imminent development, Dowling said. FEMA's final maps must come out before any development can occur.

Nor is the permit request an attempt by the developer to bring the levee system into compliance with county and federal standards, he said. The changes would only be "minor" ones, he said.

Both the county and FEMA set guidelines for levees that must be met before development can occur in flood-prone areas.

Upgrades that would significantly improve the levees to allow development would be illegal, because FEMA recently ordered that the levees be left alone until flood map decisions are made.

Concern about **Burroughs and Chapin's** intentions prompted the county to initially turn down the permit request.

However, the permit might be granted after all, said Ralph Pearson, Richland County engineer.

Before Richland County can approve the requested upgrades, it will talk to FEMA. Also, the U.S. Army Corps of Engineers may need to weigh in on the decision, Pearson said.

If FEMA finally decides that the area can't be developed because of flood safety, money to upgrade and maintain the levees would be a waste, Pearson said.

"I don't know why they'd want to improve the levees if they aren't planning on building houses there, but it's not my money," Pearson said.

The permit, if granted, will only allow the "minor" upgrades requested. More upgrades, tests and standards will have to be met before development could occur, he said.

County standards for dikes that protect development are more stringent than federal standards, Pearson said. The county would require that before any homes are built behind the levee, it would have to be as high as the 500-year flood mark plus 3 feet.

Federal standards only require levees to be as high as the 100-year-flood mark, he said.

A 100-year-flood mark is the highest line the river water has reached in the past 100 years, regardless of how many times the water got that high during that time. The 500-year-flood mark is more restrictive, because it is the highest point the river water has reached in the past 500 years, regardless of how many times it reached that point.

DEF-0002964

Lisa Collins covers Richland County government. She can be reached at (803) 771-8409 or by e-mail at lmcollins@thestate.com.

Illustration:MAP; BW

Levee repairs. The Burroughs and Chapin Co. has asked Richland county for a permit to improve the Congaree River levee system at deteriorated sections, as shown. Sections to improve. GRAPHIC BY T. ROLLINS/THE STATE

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**Index to James E. Wiseman, III's Designated Deposition Exhibits:
Cross-Referenced Locations in the Record on Appeal, if Applicable**

Designated Deposition Exhibit	Description	Duplicate of Exhibit in Record	Location in Record
Defendant Exhibit 160	Project Status Report from Lockwood Greene (April 12, 2000)	PTE 323	4175
Defendant Exhibit 162	Draft Timetable for Richland County Approvals (June 15, 2000)	None	5701
Defendant Exhibit 171	Handwritten Columbia Venture Political Roundtable Notes (August 9, 2000)	None	5703
Defendant Exhibit 172	Wolfe letter to Rogers with draft agreement attached (August 17, 2000)	None	5711
Defendant Exhibit 180	Burroughs & Chapin Board of Directors Meeting Minutes (September 26, 2000)	None	5718
Defendant Exhibit 181	Wendel memorandum to Columbia Venture members (September 28, 2000)	None	5725
Defendant Exhibit 182	Public Statement – Congaree Task Force for Economic and Environmental Responsibility (October 26, 2000)	None	5727
Defendant Exhibit 197	McSwain letter to Wiseman (February 16, 2001)	Defendant's Trial Exhibit 149	5732
Defendant Exhibit 198	Wiseman letter to McSwain (February 19, 2001)	None	5733
Defendant Exhibit 199	K. Smith letter to Wiseman (February 20, 2001)	None	5734

DRAFT

**Contract Negotiation Document
Privileged and Confidential**

*not of Mike Eye, Nelson
Mullins, Larry Smith
Mullen Taylor
6/15/20*

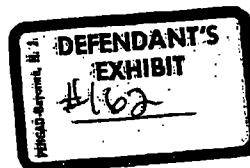
**Columbia Project
Development Agreement**

Procedural Requirements

1. Approved by ordinance
 - Three readings, not less than seven days between second and third reading
2. Two public hearings must be held
 - May be held by planning commission
3. Public notice must be provided
 - Notice of intent to consider a development agreement must be published in a newspaper of general circulation
 - Notice must specify place where a copy of the proposed development agreement can be obtained

Possible Content of Development Agreement

1. Identification of Parties
 - Developer
 - Local government
2. Legal description of property and names of property owners
3. Duration of agreement
 - Duration based on acreage of highland
 - For development agreements containing more than 2000 acres, the duration may be for such term as the parties elect
4. Development uses permitted on the property, including population densities and building intensities and height
 - Function of zoning classifications
 - May be need for new zoning classifications
5. Description of public facilities that will service the development
 - Must identify who will provide facility, the date new public facilities will be constructed, and schedule of availability
 - Funding mechanism for public facilities



DRAFT

6. Description of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property
7. Description of all local development permits approved or needed to be approved
8. Finding that the development permitted or proposed is consistent with the county's comprehensive plan and land development regulations
9. Description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens
10. Description of provisions for the preservation and restoration of historic structures
11. Development schedule (commencement, completion of development; performance standards)
12. Identification of land development regulations and laws applicable to the development
 - Lock-in provision
13. Application of subsequently adopted land development regulations and laws
14. Periodic review process
15. Amendment and cancellation provisions
16. Recording requirement for developer
17. Effect of transfers, assignment on successors in interest
18. Compliance with building, housing, electrical, plumbing, and gas codes

8/9/00 Col. Venture / Political Roundtable: ⁽¹⁾

1. Gregg, Heathwood, & City of Col. + Tenell Norris -

— Property for levee improvements -

— Agreements to upgrade levees -

— High Priority items -

• Need agreements for applications on CLOMR

• Design criteria etc. -

— Don Fowler says go directly to Coble with a formal letter.

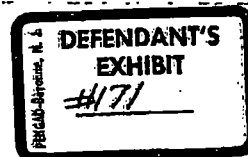
— Wilson has information on City's levee

— Permission to do construction on City's property & rights to improve levee. Also need in letter request for maintenance easement. (Construction/maintenance Easement with permission to certify the levees).

2. Wetlands issues need to be integrated within the CLOMR process. Dr. Booth & Wilson & Martin need to get together.

— Need to get permission to start on levee § 1 with the bulk of wetlands impact on levee § 2.

3. Ken Humphries doing design work for City on their High-levee plan. Opportunity to save the City considerable \$. \$8-9 million.



CV011206

(2)

4. Jim Fields to Landle Freddie Vang -

DOH - once Appeal Resolution Document comes out.

5. Land Plan - 1. Valuation - Profuma / September

2. Infrastructure Needs / Wilson + L/G

3. \$800 M Commercial - \$1 Billion residential -

6. DPW - MCBP only on Commercial -

- Diamond Interchange (COG)

- MCBP for lanes also -

7. Interchange - William Smith Study -

- Transportation Committee meeting Monday

- DOT to run models -

- Michael Letts has group to get the ball rolling.

- Washington - lia item w/ Taced Tea - (a possibility).

- Mike Eg - How does the Company respond Monday? Press coverage @ Mike's Committee - Integrity of existing communities - Traffic-planning needed already in the area.

- Daniel Jackson - other area requests will be coming on line. Irving Bels area & Joe Neal.

- Mike Letts - Interstate Mavy - 2 separate pats.

- Don Fowler - get DOT on Board - Mock Truck. (Don to talk to Hender).

③

- Darnell Jackson - Not Richland City,
designated Monday Morning, 90-10 split
with the 10 from state - not local Richland
Designated Funds.

- Mike Eg - Need a plan out there before
we get into the details

- Don Fowler - will have to happen anyway -
Collateral justifications are OK - Need to
get process started.

* - DPW & GIG to sit down with Megan
Martin.

(4)

C. 8. County Discussions — Mike E. —

- Dev. Agreement / Financing
 - Zoning & other uses
 - CLOMR - loan upgrades
 - Approve an infrastructure financing package -
- Takes this far on process - Kit leading this - public involvement - No agreement yet on process.
- Infrastructure & Financing Package -
 - levees, roads, water sewer etc.
 - primary source will be MCBP
 - Kit & Gregg - no MCBP (They think developer should pay for improvements). They want levee districts.
- Need #'s to be completed
Need plans finalized
How much MCBP revenue will be needed?
- Houston - Levee Development Tip -
 - good development in Houston -
 - levee districts used. Tax base will increase.
- DPW - Need to get Board of Education off of negative perceptions.

(5)

Darnell Jackson - Charter School issue hurts.

- Does not want to part of stories.
- Get to know you meeting is recommended. New Superintendent NOT an ally of business.

John Fields - Need to get real aggressive

- Why FEMA is right
- Town & County
- Tax Base
- Economic Impact

~~Darnell~~ DPH - Consulting #15 for improvements needed in neighborhoods that surround our property.

~~GTC to Do!~~ Statistical package needed for school meeting. Darnell needs to be updated on the Hwy City. MCBP situation for purpose of meeting w/ Richard Dist. 1.

~~Briefing Paper needed -~~

- End of next week -

(6)

D. (3) P R -

Rick Silver - Transition to Colo. Uddine & not just B & C

- Formal Arrangement -
- Stick w/ Gen Diamond for name change
- Reposition to Kirt Gentry - ex.
 Buying power to roll over people - Need
 outreach. Rick wants an outreach
 program.

- Kit - perception of rolling over people -
- overwhelm them w/ the story
- Shared Communications - Rick wants
 to call Kit & say Bob's speech.

- What to say when FEMA letter comes out.

- Big coming out introduction party -
- Inclusive on invitations -
- Outreach w/ Communities - Simultaneous w/
 negotiations.

- Advisory Board - 10-12 people -

- May have to "buy" our message -

- Handout - over simplified response -
- Martin disagrees with statement
- Martin to draft his own suggestions
 for the group to look at.

(2)

- Dondle would like to see Rick produce a roll-out of events & time frames for PR. Press-packet creation, presentation, etc.

* - 3-D project w/Virtus is key D-Day for Rick.

- DLW - to Rick -

1. Ally neighborhoods
2. Ally School Board
3. Group assignments & schedules for our political strategies.

E. Assignments -

- City involved in Dev. Agreement or not - County does not want to be left w/ just Laneese
- Define annexation / water + sewer + lanes -
- Tim Fields - to call meeting of lobbyists & get strategy. Lobbyists need the credible information. All plans & financials
- Two-pronged attack. - City & Cty. both need to be pushed. (Laneese).

(8)

— Need grass roots efforts & help. — who, what,
when & where for the lobbyists.

LAW OFFICES
NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP

GEORGE B. WOLFE
(803) 733-8421
INTERNET ADDRESS: GBW@NMRS.COM

KEENAN BUILDING, THIRD FLOOR
1330 LADY STREET
POST OFFICE BOX 11070 (29211)
COLUMBIA, SOUTH CAROLINA 29201
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MUNICH, GERMANY

August 17, 2000

Via Facsimile

Timothy F. Rogers, Esquire
Austin, Lewis & Rogers
P.O. Box 11716
Columbia, SC 29211

Dear Tim:

On behalf of Richland County and at the request of Jim Wiseman of Columbia Venture, I am enclosing the following: (1) draft "Agreement Relating to Costs" between Richland County and Columbia Venture in connection with Columbia Venture's proposed Richland County Project; and (2) "Estimated County Costs Associated With Columbia Venture Project".

Please feel free to contact me if you have any questions or comments concerning the enclosed draft documents.

I look forward to working with you.

Sincerely,



George B. Wolfe

GBW:am
Encl.
1806789.01 ~

cc: Ms. Kit Smith (w/encl.)
Ms. Mullen Taylor (w/encl.)



**CONFIDENTIAL ECONOMIC
DEVELOPMENT DOCUMENT****Draft
8/16/00****AGREEMENT RELATING TO COSTS**

This Agreement is made as of this _____ day of _____, 2000, between Columbia Venture, LLC (the "Company") and Richland County, South Carolina (the "County").

RECITALS

WHEREAS, the Company desires to invest or cause to be invested up to \$1 billion in a mixed-use residential and commercial development on approximately 4,800 acres in Richland County (the "Project");

WHEREAS, the size and nature of the Project are unprecedented in Richland County and present the County with a number of planning, economic, environmental, transportation, utility, legal and other issues that the County must address;

WHEREAS, the Company and the County both recognize and agree that it is necessary or appropriate for the County, in order to ensure fair treatment to the Company, to other interested parties located in the County, and to the citizens of the County, to obtain appropriate assistance from qualified consultants, experts and legal counsel (collectively, the "Advisors") in order to properly address certain Project-related issues;

WHEREAS, the Company and the County have agreed that, notwithstanding the potential benefits to the County and its citizens that may result from the Project, the issues and challenges raised by the Project are sufficiently significant that the Company should help offset some of the County's costs relating to such Advisors, and that the Company should pay all of the County costs resulting from any litigation against the County in connection with the Project.

NOW, THEREFORE, the parties hereto agree as set forth below:

1. Covered Costs.

(a) Obligation to Pay Non-Litigation Costs. Subject to subsection (b), the Company shall pay the non-litigation costs incurred by the County in connection with the Project that are described on Exhibit A to this Agreement (the "Non-Litigation Costs"), which Exhibit is hereby incorporated herein by reference.

(b) Maximum Non-Litigation Costs Obligation. The Company shall not be required to pay Non-Litigation Costs in excess of \$500,000. If and when the Non-Litigation Costs exceed \$500,000, the Company agrees to negotiate in good faith with the County to determine the extent, if any, to which the Company should pay for such additional Non-Litigation Costs.

(c) Obligation to Pay Litigation Costs. The Company shall pay any legal or other damages or costs, including but not limited to the costs of legal counsel, that may be incurred by the County, its officers, agents and employees that result from any of them being named a defendant in any litigation filed by a third party (i.e., a party other than the Company, an affiliate of the Company, or someone acting on behalf of the Company or an affiliate of the Company) in connection with the Project.

(d) Timing of Payment. The Company agrees to reimburse the County for the Non-Litigation Costs and the Litigation Costs (collectively, the "Costs") within 30 days after receiving from the County a copy of the relevant invoice together with a written statement by the County that the invoice has been paid. Alternatively, at the election of the County, the Company shall, within 30 days after receiving from the County a copy of the relevant invoice, deliver to the County payment for such Costs.

(e) Legal Costs. Notwithstanding anything to the contrary in this Section 1, the Company shall not make any direct payment of Costs based upon legal services directly to legal counsel providing such services, but shall only provide reimbursement or payment of such Costs to the County. In addition, the Company shall not be entitled to receive or review any description of services provided on or in connection with any invoice for legal services provided by legal counsel to the County, but shall only be entitled to receive a copy of the invoice stating the legal fees and costs due and the time period to which such fees and costs relate.

2. Other Obligations to Pay. Nothing in this Agreement shall limit any rights the County, its officers, agents or employees may have under the law, under any future agreement or otherwise, to seek and to recover any kind of damages or costs from the Company in connection with the Project or otherwise.

3. County Discretion. The Company recognizes and agrees that the Company's agreement to pay the Costs does not give it any right under this Agreement or otherwise to control or influence in any manner the County's selection and use of Advisors nor the County's use of the resulting work product. The County represents to the Company that the County has proceeded and will proceed in good faith in selecting the Advisors for work with respect to which the Costs are incurred.

4. Notices. All notices and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following persons and addresses, unless one party subsequently notifies the other party of any change of address in accordance with this Section:

If to the County: Richland County, South Carolina
PO Box 192 (zip: 29202)
2020 Hampton Street (zip: 29204)
Columbia, South Carolina
Attn: _____
Facsimile: (803) _____

If to the Company: Columbia Venture, LLC.
[insert address, contact person/position, and facsimile
number.]

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice. This Section shall not be deemed to prohibit any other manner of delivering a notice or other document; provided, however, the burden of proving actual delivery by any other manner shall be upon the party delivering such notice or document.

5. Miscellaneous. The laws of the State of South Carolina shall govern the construction of this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. This Agreement may be executed in counterparts.

IN WITNESS HEREOF, Columbia Venture, L.L.C. and Richland County, South Carolina, have duly executed this Agreement, all as of the date first above written.

COLUMBIA VENTURE, LLC

Witnesses:

By: _____

Its: _____

RICHLAND COUNTY, SOUTH CAROLINA

By: _____

Its: _____

EXHIBIT A - NON-LITIGATION COSTS

Set forth below are costs which, when incurred by or on behalf of Richland County in connection with the Project, as defined in the _____, 2000 Agreement Relating to Costs (the "Agreement"), constitute Non-Litigation Costs covered by that Agreement:

1. Planning. Costs of planning consultant(s) to review Project Sketch Plan and/or Preliminary Plan and for advice and input into the Project's consistency with principles found in the County's Imagine Richland 2020 Comprehensive Plan and/or best planning practices.
2. Transportation. Costs of engineering consultant(s) to review Project Plans and transportation studies and for advice and input into the Project's consistency with principles found in the County's Imagine Richland 2020 Comprehensive Plan, as well as a review of Project's traffic impact analysis.
3. Stormwater Management. Costs of consultant(s) to review the Project Stormwater Management Plan for compliance with Richland County's NPDES regulations and best management practices.
4. Environmental. Costs of consultant(s) to advise and assist the County with respect to environmental impact of the Project -including but not limited to issues relating to structural and nonstructural flood control, water quality, air quality, wildlife and wetlands.
5. Economic Impact. Costs of economic consultant(s) to review any Project-related economic impact analysis provided by or on behalf of the Company and, if necessary or appropriate, to conduct additional economic impact analysis.
6. Preliminary Economic Review of Project Plan. Cost of consultant(s) to do such work as is necessary or appropriate during Preliminary Plan review to give feedback to Developer and County of the Plan's financial consequences as it relates to proposed Plan and any suggested changes to Plan. Feedback could include, without limitation, marketability and return on investment as well as public cost of the development.
7. Public Communications. Costs of consultant(s) to develop and help implement a County communications strategy for informing and involving the public and special interest groups about the Project and the issues surrounding the Project.
8. Legal. Costs of legal counsel to provide representation and counsel to the County in connection with Project-related legal issues, excluding Litigation Costs (as defined in the Agreement).

8/16/00
W01645.02 -

Confidential Document

**ESTIMATED COUNTY COSTS ASSOCIATED WITH
COLUMBIA VENTURE PROJECT**

Type of Consulting Work	Estimated Cost
Planning Review	\$15,000.00
Transportation Review and Analysis	\$20,000.00
Review of Stormwater Management Plan	\$25,000.00
Environmental Impact Analyses	\$150,000.00
Economic Impact Study	\$60,000.00
Preliminary Economic Review of Plan	\$5,000.00
Public Communications	\$25,000.00
Legal Counsel (Non-Litigation Costs)	\$400,000.00
Estimated Total Cost	\$700,000.00

- Doc# 806719.01 -

Richland County Government/Draft 8/15/00

LAW OFFICES

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

GEORGE B. WOLFE
(803) 733-9421
INTERNET ADDRESS: GBW@NMRS.COM

KEENAN BUILDING, THIRD FLOOR
1330 LADY STREET
POST OFFICE BOX 11070 (29211)
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 799-2000
LOCAL FACSIMILE (803) 343-6598
www.nmrs.com

OTHER OFFICES
ATLANTA, GEORGIA
CHARLESTON, SOUTH CAROLINA
CHARLOTTE, NORTH CAROLINA
GREENVILLE, SOUTH CAROLINA
MYRTLE BEACH, SOUTH CAROLINA

MURKIN, GEORGIA

Facsimile Cover Sheet

DATE: 8/17/00 PAGES: 7 including cover sheet
FROM: George Wolfe DID No. (803) 733-9421
RETURN TO: Anna McLeod - Columbia FILE No. 04730/9010
(For Internal Use Only)
TO: TIM ROGERS FAX No. 252-3679
COMPANY: AUSTIN, LEWIS & ROGERS
TO: KIT SMITH FAX No. 254-4241
COMPANY: _____
TO: MULLEN TAYLOR FAX No. 748-4644
COMPANY: _____

COMMENTS: _____

CONFIDENTIALITY NOTICE: The information contained in this facsimile message may be attorney privileged and confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DID NOT RECEIVE ALL PAGES, PLEASE CALL ANNA MCLEOD AT (803) 799-2000 (EXT. 9316) AS SOON AS POSSIBLE.

BURROUGHS & CHAPIN COMPANY, INC.
Board of Directors Meeting
September 26, 2000

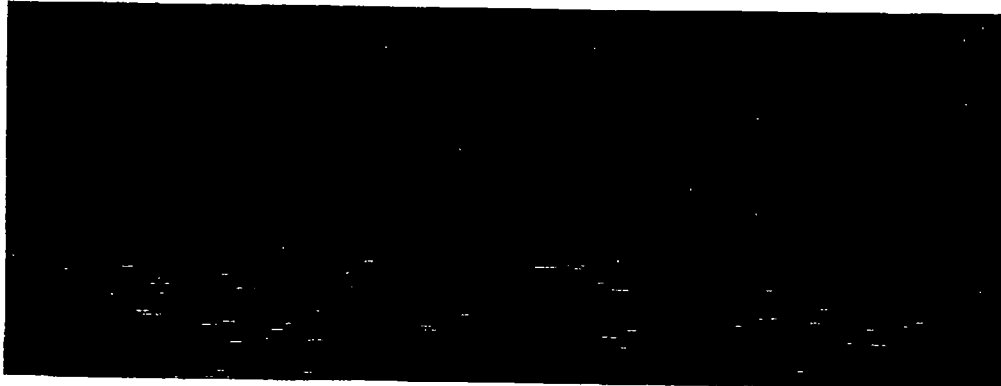
A meeting of the Directors of Burroughs & Chapin Company, Inc. was held in the boardroom at the corporate office on Tuesday, September 26, 2000, at approximately 9:50 a.m.

Present were:

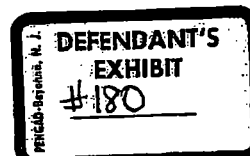
J. Egerton Burroughs, Chairman
Larry L. Biddle
Timothy E. Bryant
Claire Chapin Epps
Timothy G. Dargan
Harold Hartshorne
Hal B. Holmes, Jr.
David L. Maynard
W. David Rhodes, III
Clifford E. Roemer
Randall P. Bossé, Senior VP Commercial Development Leasing & Property Management
Earl Collins, Senior Director of Operations
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
Douglas P. Wendel, President & CEO
Ginger A. Weldon, Senior Executive Assistant

Douglas P. Wendel, presiding, called the meeting to order and stated all Board Members were present representing a quorum.

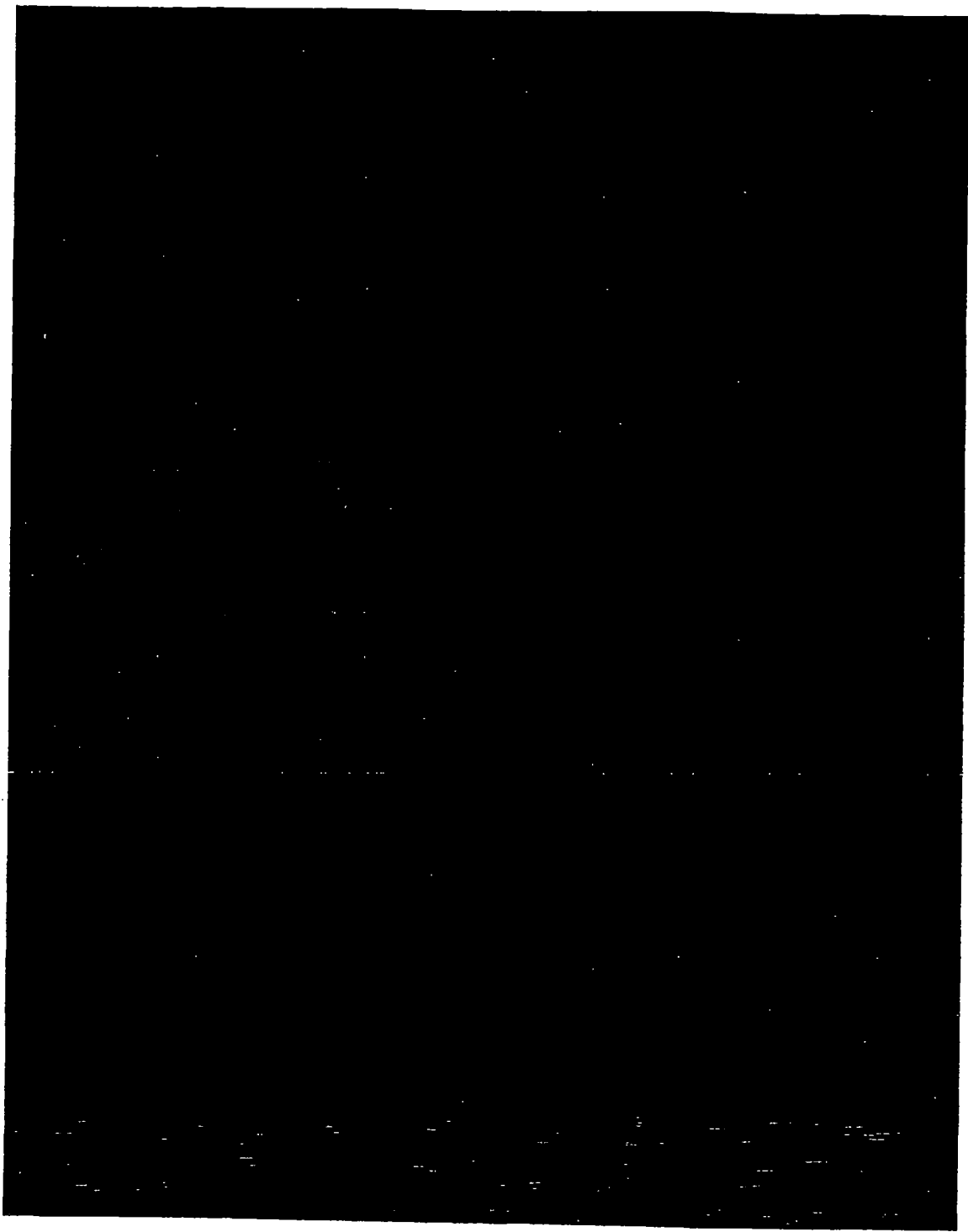
Following a brief review, Timothy E. Bryant made a motion, seconded by W. David Rhodes, III, duly passed, to approve the Board of Director's minutes of August 21 and 22, 2000, subject to the dividend resolution being changed to read as follows: "After a brief discussion, Dr. Clifford E. Roemer made a motion that the date for payment of the shareholder dividend be September 1, 2000, and payable to shareholders of record as of August 22, 2000. The motion was seconded by Dr. Hal B. Holmes, Jr., and unanimously carried.



CONFIDENTIAL



BandC020742



CONFIDENTIAL

BandC020743



Consent Management Reports were presented and the only items the Board wished to discuss were as follows:

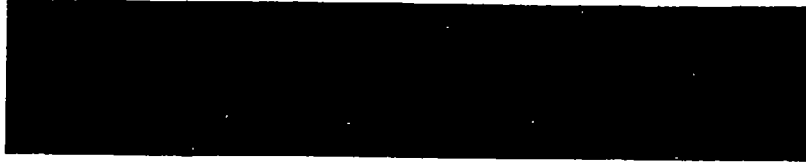
A.



CONFIDENTIAL

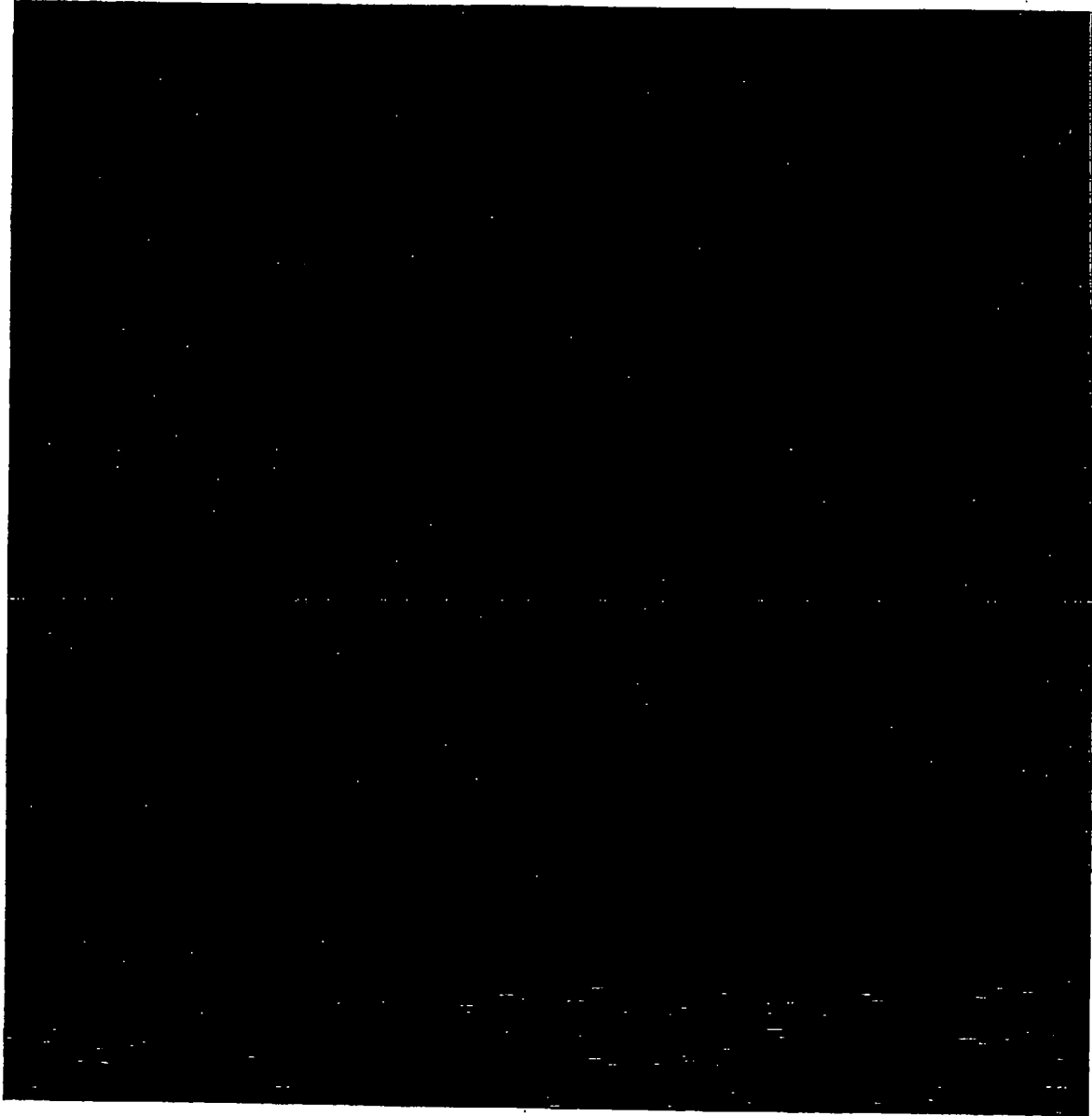
BandC020744

B.



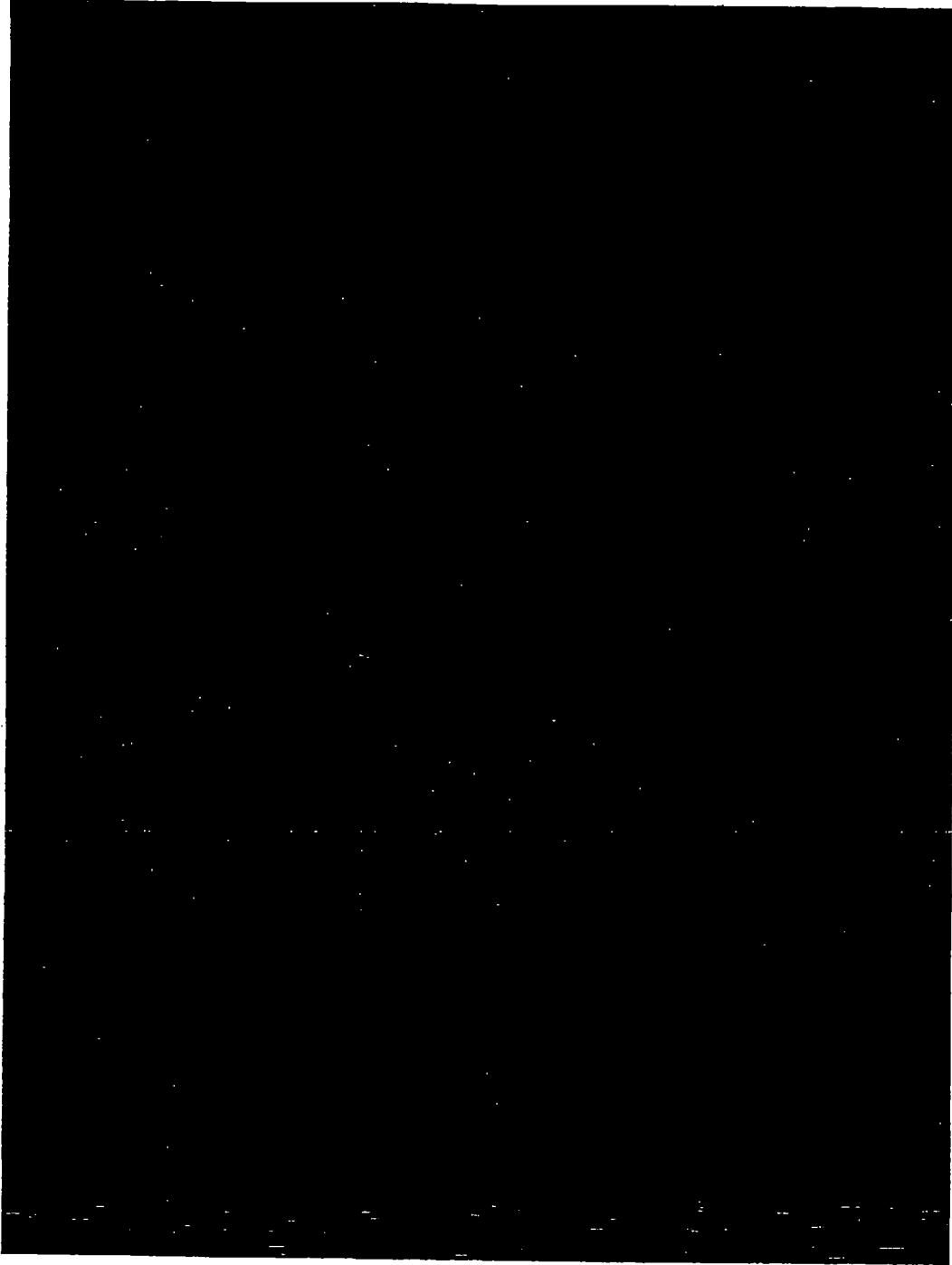
C. Columbia Venture, LLC

- FEMA maps to be released by 12:30 p.m. today.
- Top Box, Inc.'s attorney have approved the contracts and has confirmed the money is available. It should be signed this week.



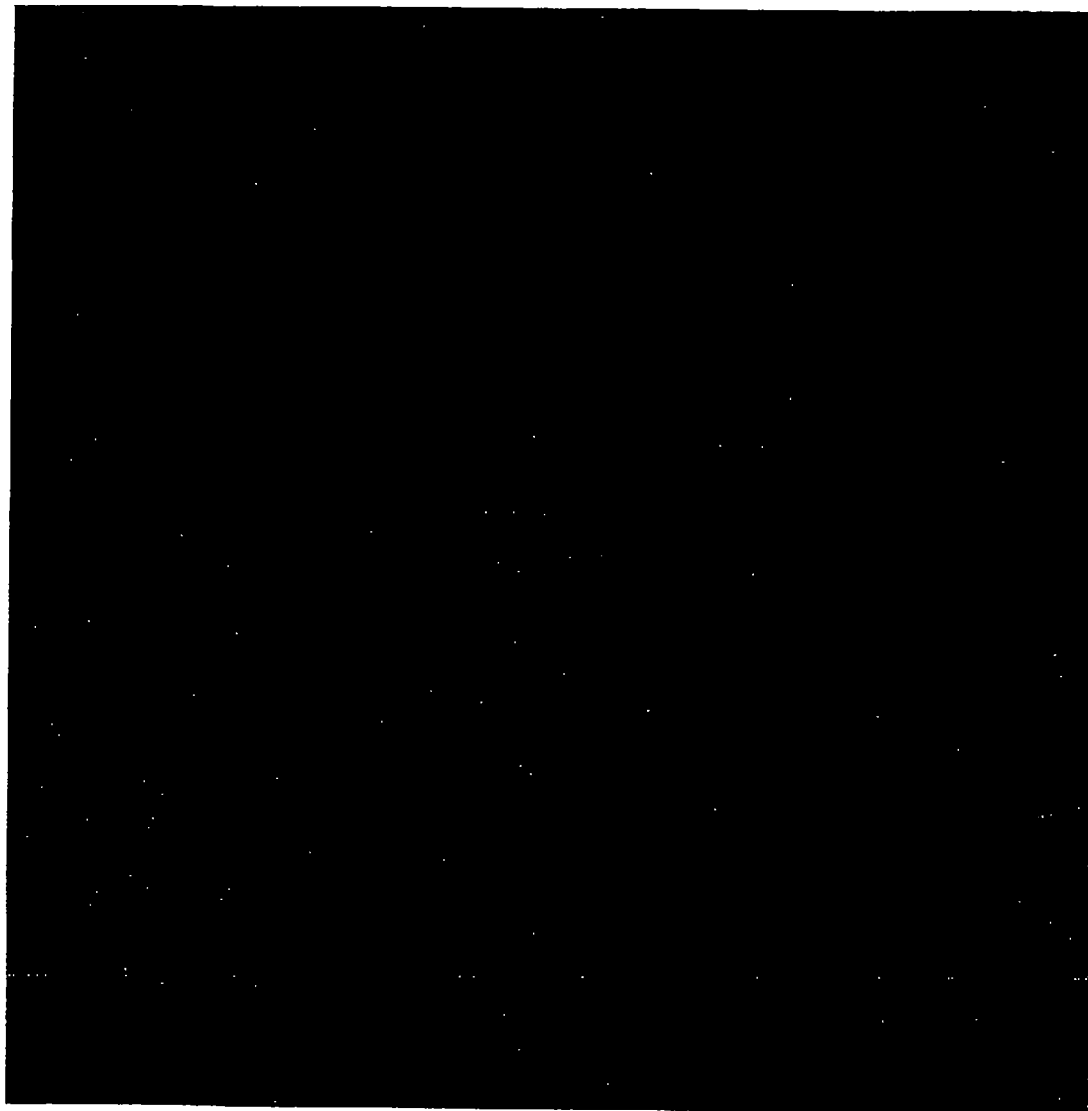
CONFIDENTIAL

BandC020745



CONFIDENTIAL

BandC020746



After a brief recess, Mr. Wendel reported to the Board the results of FEMA's determination on the floodway maps for the Columbia Venture LLC. He noted the proposed maps provides less than half of the land available for vertical development. He indicated that we had 30 days to appeal and that he would schedule a meeting with FEMA immediately. He stated that the company would re-evaluate the options afforded to us under the new map. After discussion, it was decided once a firm handle was secured on how the maps were determined and what options were available to the Company to secure positive adjustments, if cooperation of government officials could be secured to proceed. If cooperation is not there, then look at all exit strategies. He told the Board he would keep them apprised of the developments involving this project.



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There being no further business to come before the Board, the meeting was adjourned at approximately 2:05 p.m.

J. Egerton Burroughs
Chairman of the Board

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

CONFIDENTIAL

BandC020748



BURROUGHS & CHAPIN COMPANY, INC.
Family Values Since 1895

CONFIDENTIAL M E M O R A N D U M

TO: Columbia Venture, LLC Partners: David B. Allman (Regent Columbia, LLC); Lane Fowler (Luckwood Greene); Mac Whittle (Carolina First); Burwell Manning (Green Diamond); Wade Nichols (NLBP, LLC); J. Egerton Burroughs, Chairman of the Board (Burroughs & Chapin); and Jim Wiseman and Dowdell Brown (Columbia Venture, LLC)

FROM: *DHW* Douglas P. Wendel, Managing Partner

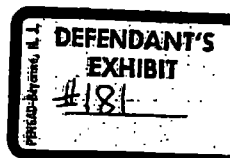
DATE: September 28, 2000

RE: FEMA

As earlier advised, on September 26, the Federal Emergency Management Agency (FEMA) released the next level of floodway/floodplain maps as they pertain to the location in Columbia, SC along the Congaree River that includes the Green Diamond project. The current map places more than half of the Green Diamond project acreage in the floodway, essentially eliminating many opportunities for vertical construction on that land. We are in the process of attempting to determine the exact number of acres impacted. In any case, the impact on our ability to develop the land for vertical development under the current proposal is significant. We have 30 days in which to appeal FEMA's decision.

The process that we are now engaged in to evaluate all the options includes the following steps:

- Analysis by our consultants of the documentation behind FEMA's most recent decision in order to determine what scientific data was included and/or excluded from their assessment process.
- A determination as to whether or not additional new, unimpeachable scientific data exists with which to counter some of FEMA's conclusions. This same determination must identify professionals who can legitimately stand behind such data.
- An immediate meeting with FEMA officials in Washington to determine whether or not FEMA is in fact willing to adjust the map as currently written should new, valid data be submitted during the appeal period.
- An evaluation of all options concerning the future of the property, including the following:
 - Potential projects that might utilize all of the land under the guidelines of the current FEMA map.
 - Potential smaller projects that might be accomplished on the uplands that remains under the current FEMA map.
 - Potential for the sale of the entire tract of land.
 - Potential for parceling up and selling the land.



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) 248-4237 FAX (843) 248-6570

BandC000049

- An evaluation of current political and other support in the Columbia, Richland County, Lexington County area.
- An evaluation of all legal options open to Columbia Venture, LLC relative to the FEMA mapping process.

All of the above activities are now ongoing parallel to one another. Once information has been gathered on all fronts, we will analyze it and confer with you as to the best approaches to adopt given the current maps.

Public Statement - Weston Adams, Chairman
Congaree Task Force for Economic and Environmental Responsibility

October 26, 2000

We are here today to announce the formation of a citizens group concerned about our future and the threat posed to the community by the proposed Burroughs & Chapin Green Diamond project.

The Congaree Task Force for Economic and Environmental Responsibility may have a very long name, but we stand here today to ask some pretty simple questions.

Comprised of representatives of concerned area business people, neighborhood leaders, elected officials, leaders from the African-American Community and environmental organizations, the Congaree Task Force has many concerns and questions about this megadevelopment being planned for the Congaree River.

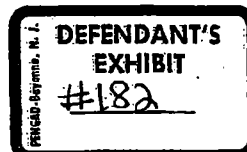
Some of these questions have been asked publicly before. Others have not.

Much of the public debate to date rightly has been focused on some of the environmental questions, including whether this project's location is a danger to lives and property. But it isn't just a matter of public safety. It is also a matter of public costs.

We have several areas of concern:

- Who pays for lost lives and lost property should the levees break and fail? Are the taxpayers of Richland County liable for this? And to what extent?\$50 million dollars, \$100 million dollars, \$250 million dollars? \$1 billion dollars? A billion dollar development could mean a billion dollars in liability. In addition, does the University of South Carolina incur liability if it participates in this development and the levees break?
- If the levees required to hold back the flood waters of the Congaree are to be improved, who pays to build up and maintain these levees for the next 10, 20, 30, or even 50 years? Are we, as a community, committing ourselves over such a time period or 100 years or even longer to hold back floods that we know inevitably will come? And why should we take on this burden at that locale when there are so many other financial needs in our community and so many other more appropriate places in the Midlands where one could build?
- Who pays for all these public projects consistently listed on project maps released by Burroughs & Chapin? On numerous PR releases from the developer, one can see the State Farmers Market relocated onto the project, new campus space for the

-1-



FEWA FIM
FILE

University of South Carolina, a new multi-million dollar highway interchange, parks and schools. Who finances these amenities so that Burroughs & Chapin can benefit?

What about the multi-county business park tax scheme we hear will be proposed to underwrite Burroughs & Chapin's basic development costs? Burroughs & Chapin has a history of using multi-county business parks to finance roads, sewer, water and other basic amenities for their projects. What public-private tax construct will be proposed for this development and what are its terms? Specifically,

1. Does Burroughs & Chapin plan to use a multi-county business park tax scheme by which Richland County taxpayers would underwrite the infrastructure costs of the Green Diamond?
2. If so, how much money will they want Richland County taxpayers to contribute to their development under that tax scheme?

Finally, what about our community's ability to handle the growth this project entails....roads, traffic, congestion. The need for new schools. Who will pay to locate new and essential governmental services in the Green Diamond?

Our concern here is widespread. And we warn local citizens to hold onto their wallets as the answers become apparent. If Horry County can be used as an example, Burroughs & Chapin recently pushed through a multi-county business park tax deal that directs \$238,000,000 in public funds to their project in Horry County over the next 35 years. Here in Richland County this means that Burroughs & Chapin may try to use local tax dollars to finance the cost of their development on the Congaree River. Will the company expect local taxpayers to underwrite their "vision"? If so, how do they expect this public funding to come about and how much public funding do they expect to ask for?

We would welcome some answers to these questions.

We also would like answers to the environmental issues raised by this proposed development.

One such question is whether it is wise to build in a floodway because of the danger to those living in the surrounding area?

A second question which has not been widely debated, is whether a developer should be allowed to build a billion dollar development adjacent to the Congaree Swamp National Monument? The Congaree Swamp contains the last stand of virgin hardwood forest east of the Mississippi River. The development would undoubtedly change the flow of the river and its swamps, and alter this pristine swamp. Is that a good public policy choice to make?

A last question raised by Burroughs & Chapin is whether Richland County wants to become the next Myrtle Beach. The naturalist author Franklin Burroughs writes lyrically of his childhood spent on the Waccamaw River in his book The River Home, and also comments sadly on the changes brought to that river and Horry County by inappropriate development. Ironically, Franklin Burroughs is descended from the Burroughs family of Burroughs & Chapin. Reading his book in light of this proposed development raises the final and inevitable question: Do we allow Burroughs & Chapin to do to the Congaree River, our river home, what they have done to Horry County and to the Waccamaw River, their own river home?

Our focus in the weeks ahead will be to explore some of these questions in greater detail. We hope to encourage a thorough and exhaustive public debate on all the details of the Green Diamond proposal so that this community can decide whether this development is appropriate.

ROSTER

Congaree Task Force for Economic & Environmental Responsibility

Robert Adams	businessman, Republican party consultant
Weston Adams, III	attorney
LaBruce Alexander	former Director, SC Nature Conservancy
Rhett Anders	realtor, President, Eau Claire Community Council
John Beach	attorney
Bishop Robert L.	
Bishop	Grace Christian Ministries
Bill Bunch	nurseryman, lower Richland businessman
Bobby Coleman	Farmers Market businessman
Susan Corbett	Executive Committee, Columbia Chapter of Sierra Club
Robert Counts	community leader
William 'Rusty'	
DePass	businessman, former Chair of Richland Republican Party
Glenn Didyoung	Executive Committee, Columbia Chapter of Sierra Club
Theodore DuBose	attorney
Scott Elliot	attorney, former Chair of Richland Republican Party
Harriet Faucette	former reporter, daughter of Harry Hampton (Congaree Swamp)
Mary Rutledge	
Faucette	psychologist, granddaughter of Harry Hampton (Congaree Swamp)
Bob Fitzsimmons	attorney
Rev. Clarence Ford	minister
Robin Gorman	former Chair, Greater Columbia Chamber of Commerce
Benzina Hopkins	President, Arsenal Hill Neighborhood Association
Henry Hopkins	Exec. Director, Eau Claire Community Council
Jerry Howard	Coop official, former Lexington County councilman
Dell Isham	Director, SC Chapter of Sierra Club
Mel Jenkins	businessman, Rosewood Community Council
John LaFitte	former SC Tax Commissioner and former SC legislator
Richard LaBarre	veterans & neighborhood leader
Rep. Joel Lourie	businessman, house member - district 78 (Forest Acres + Richland NE)
Jeanette McBride	teacher & community leader
Robbie McClam	former director, Columbia Development Corp.
George McElveen	attorney
Frank McLeod	forester
John McLeod	attorney
Yaney McLeod	environmental consultant
Jenks Michael	businessman, insurance industry
Rep. Joe Neal	minister, house member - district 70 (lower Richland)
Larry Needle	attorney
James P. Newman	attorney
F. Mark Peters	Richland Soil & Water Conservation Commissioner
Ken Powell	Former Chair, SC Republican Party

Betsy Rader	Chair, Richland County Democratic Party
Ron Saffo	architect, Saffo Probst Architects
Dr. Mark Salley	medical doctor
George Shissias	retired, former Richland County Republican party official
Rep. James Smith	attorney, house member - district 72 (Shandon, downtown Columbia & St. Andrews)
Audrey Snead	retired, S.C. Democratic Party Officer
John Stucker	professor, University Terrace Neighborhood President
Anne Rainey	community leader
Mary & Edmund Taylor	SC & local conservation leaders
Dan Tufford	attorney
Angelia Viney	Director, SC Wildlife Federation
George R.P. Walker, Jr.	Realtor
Richard Watkins	Congaree River landowner, environmental activist
Patten Watson	businessman, CPA
Johnie Mae Wheeler	President, Colonial West Neighborhood Association
Bob Wislinski	Democratic Party consultant & fundraiser

Richland County Government

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



Phone (803) 748-4600
Fax (803) 748-4644
TDD (803) 748-4999

February 16, 2001

Office of the County Administrator

Mr. Jim Wiseman
Senior Director/Design and Land Planning
Columbia Venture, LLC
4875 Forest Drive
Columbia, South Carolina 29206

Dear Mr. Wiseman:

Thank you for providing me with a copy of your letter, dated February 12th, to Richland County Council Members. Although your letter was addressed to Council, I believe it warrants a reply from this Office in response to your comments about staff actions and the process staff has undertaken with Columbia Venture.

It goes without saying that this Office must respond to Council requests for information, even if the information requested is deemed confidential. Council Members must have information they consider necessary to pursue proper deliberation. In the event that Council receives confidential information, this Office alerts them that it is confidential in an effort to maintain confidentiality, as was done in the case of the letters between the County and Columbia Venture.

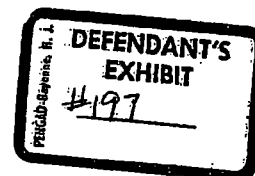
As for proper procedure in providing confidential information pertaining to Columbia Venture, I do not believe any verbal agreement between the County and the Company included any understanding that the staff should seek permission from Columbia Venture to distribute copies of correspondence to appropriate individuals within the County organization, especially to the County elected leadership. This Office did not provide copies of the correspondence to any outside third party. Subsequent to Council's receipt of the information, Ms. Taylor informed you as a courtesy that Council received copies of the correspondence, and informed you that she received word from a citizen indicating that some of the letters were given to the press. In doing so, Ms. Taylor acted fairly and responsibly in a difficult and awkward situation. I regret that you have misperceived this action, and misjudged its motivation, as something other than it actually was.

This Office looks forward to working with you on Columbia Venture's development proposal.

Sincerely,

Handwritten signature of T. Cary McSwain in cursive.
T. Cary McSwain
County Administrator

cc: Richland County Council
Ms. Mullen Taylor, Assistant to the County Administrator
Mr. Larry Smith, County Attorney



CV

Columbia Venture, LLC

RECEIVED

FEB 22 AM 10:06

RICHLAND COUNTY
ADMINISTRATORS OFFICE

February 19, 2001

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

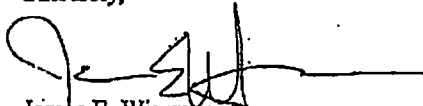
Dear Mr. McSwain:

Thanks for your letter of February 16, 2001. In writing the Richland County Council members on February 12, 2001, I hope I did not give the impression that Ms. Taylor had done anything improper. I know that Ms. Taylor has to respond to council members' requests for information. Ms. Taylor has gone beyond the call of duty to keep me informed on this project. We have maintained an active communication channel that has been straight forward and very productive.

The point of my earlier letter was to express a concern that any information given to council may be subject to release whether it is marked "confidential" or not. The Columbia Venture project has become so high profile that there is jeopardy in any information we present, primarily because our detractors have misconstrued and mischaracterized such information in the past.

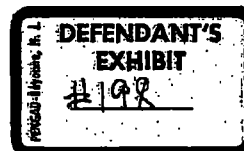
All we hope for is a fair process for the council to evaluate our project.

Sincerely,


James E. Wiseman

JW/ss

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



Kit Smith
Richland County Council
District Five



February 20, 2001

BOARDS AND COMMITTEES

**Rules and Appointments
Committee, Chair**

**Administration and Finance
Committee**

**Central Midlands Council
of Governments**

City of Columbia

Columbia Museum of Art

Legislative Delegation

**Lexington Richland Alcohol
and Drug Abuse Council
(LRADAC)**

Midlands Technical College

Recreation Commission

School District One

Mr. Jim Wiseman
Columbia Venture, LLC
4875 Forest Drive, Suite 202
Columbia, SC 29206

Dear Jim:

Thank you for your letter of February 12th offering to place a formal proposal from Columbia Venture before the County for consideration. The last two years have been difficult for everyone involved in this proposed development because of the unusual circumstances. The long wait for a FEMA decision, the lack of specific information from Columbia Venture, and a slow learning process regarding the major issues for the County. This delay has contributed to undue speculation that has unfortunately led to skepticism and assignment of motives from all parties. This has been unfortunate.

I agree that the Green Diamond proposal should be judged on its merits. To do this, I ask that all concerned refrain from suggesting that parties to the decision are engaging in nefarious actions and focus on the facts and issues as they are presented. To that end, I propose the following:

1. The County and Columbia Venture revisit the draft process agreement (which includes confidentiality provisions) and cost agreements, and finalize both for Council action;
2. Columbia Venture submits its proposal, in full, to the County;
3. Richland County Attorney and Counsel will work with Columbia Venture to make a determination regarding which parts of the proposal are subject to exemption under SC Freedom on Information Act and which are not;
4. The County and Columbia Venture work through the issues outlined by the agreement in the manner prescribed by the agreement.

120 Edisto Avenue * Columbia, South Carolina 29205 * (803) 254-0542 * (803) 254-4241 Fax

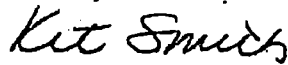


Page 2, Mr. Jim Wiseman

The County, as far as I know, also remains willing to form the City/County/Columbia Venture work group as agreed to in a letter sent to you in January. Please contact Mullen Taylor if you would like to proceed along these lines or if you want to discuss another alternative.

I remain available to discuss with you personally other issues raised in your letter as I have attempted to do by telephone.

Sincerely,

A handwritten signature in cursive script that reads "Kit Smith".

Kit Smith

Cc: Members, Richland County Council

Columbia Venture, LLC v. Richland County
Richland County Case No. 2010-CP-40-8943R

PARTIES' JOINT SUBMISSION OF CASE DOCUMENTS
TO JUDGE SMITH FOR REVIEW*
*All Orders in Bold

Tab	Date	Party	Description
1	08/19/2004	Columbia Venture	Summons and Complaint
2	10/14/2004	Court	Consent Order Granting Extension of Time
3	01/10/2005	Court	Consent Order Granting Extension of Time
4	03/01/2005	Richland County	Notice of Motion and Motion to Dismiss Pursuant to SCRPC Rule 12(b)(1)
5	03/01/2005	Richland County	Notice of Motion and Motion to Dismiss Pursuant to SCRPC Rule 12(b)(6)
6	03/01/2005	Richland County	Notice of Motion and Motion to Strike
7	03/01/2005	Richland County	Notice of Motion and Motion to Stay
8	05/02/2005	Court	Consent Order Granting Stay
9	08/04/2008	Richland County	Notice of Substitution of Counsel for Defendant
10	09/25/2009	Columbia Venture	Grier letter to Judge Barber regarding case status
11	10/05/2009	Columbia Venture	Amended Summons and Complaint
12	10/09/2009	Richland County	Notice of Motion/Motion to Dismiss Pursuant to SCRPC 12(b)(6)
13	10/09/2009	Richland County	Notice of Motion/Motion to Dismiss Pursuant to SCRPC 12(b)(7)
14	10/09/2009	Richland County	Notice of Motion/Motion to Strike
15	10/21/2009	Columbia Venture	Memo in Opposition to Defendant's Motions to Strike/Dismiss
16	10/22/2009	Richland County	Memorandum in Support of its Motion to Dismiss Pursuant to SCRPC Rule 12(b)(6)

Tab	Date	Party	Description
17	10/22/2009	Richland County	Memorandum in Support of its Motion to Dismiss Pursuant to SCRCP Rule 12(b)(7)
18	10/22/2009	Richland County	Memorandum in Support of its Motion to Strike
19	11/01/2009	Richland County	Proposed Order Granting Motions
20	11/02/2009	Columbia Venture	Proposed Orders Denying Motions
21	12/02/2009	Court	Order Denying Defendant's Motion to Strike 12(f)
22	12/02/2009	Court	Order Denying Defendant's Motion to Dismiss 12(b)(7)
23	12/02/2009	Court	Order Denying Defendant's Motion to Dismiss 12(b)(6)
24	12/08/2009	Richland County	Answer to Amended and Supplemental Complaint
25	01/05/2010	Court	Consent Order to Strike From the Docket Pursuant to Rule 40(j) and Consent Scheduling Order
26	12/17/2010	Columbia Venture	Notice of Motion and Motion to Restore Under Rule 40(j)
27	12/23/2010	Court	Consent Order to Restore to the Docket Pursuant to Rule 40(j) and Agreements of the Parties
28	02/16/2011	Court	Protective Order (concerning the confidentiality of Burroughs and Chapin meeting minutes)
29	03/14/2011	Richland County	Defendant's Motion and Notice of Motion to Compel
30	05/23/2011	Kathryn Smith	Notice of Motion and Motion for Protective Order
31	06/15/2011	Columbia Venture	Memorandum in Opposition to Defendant's Motion to Compel
32	06/28/2011	Court	Judgment: Motion to Compel Request to Admit 1 and 2 and Second Request to Admit 1 Denied
33	08/09/2011	Mediator	Proof of ADR
34	09/01/2011	Court	Consent Order (Kathryn Smith protection)
35	09/20/2011	Richland County	Motion for Summary Judgment on Plaintiff's Due Process Claims

Tab	Date	Party	Description
36	09/20/2011	Richland County	Motion to Determine Mode of Trial
37	10/31/2011	Richland County	Notice of Motion and Motion for Protective Order (re Gregory Pearce deposition)
38	12/28/2011	Court	Order Granting Continuance and Scheduling Status Conference
39	02/02/2012	Court	Consent Scheduling Order
40	02/13/2012	Richland County	Notice of Motion and Motion for Protective Order re 30(b)(6) witness
41	03/07/2012	Richland County	Notice of Motion and Motion to amend and make more definite and certain Plaintiff's Complaint
42	03/12/2012	Richland County	Notice of Motion and Motion for Summary Judgment on Claim of Physical Taking
43	03/14/2012	Richland County	Notice of Motion and Motion for Summary Judgment on Claim of Regulatory Taking
44	03/14/2012	Richland County	Motion for Summary Judgment on All Claims
45	03/14/2012	Columbia Venture	Motion to Exclude Expert Testimony
46	03/15/2012	Columbia Venture	Notice of Motion and Motion for Partial Summary Judgment

**Cross-Reference Index to
Appendix to Plaintiff's Omnibus Memorandum in Opposition to Defendant's Various
Motions for Summary Judgment
(Submitted July 13, 2012)**

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1	1981 US Department of Geological Survey	1-66	None	5745
2	Chronology of Green Diamond Project (July 18, 2001)	67-83	PTE 004	3060
3	Flood Insurance Study for Richland County (July 17, 1995)	84-100	PTE 003	3034
4	FEMA 37 - FIS Guidelines and Specifications for Study Contractors	101-104	None	5811
5	B. Manning letter to Richland County Council (May 26, 1998)	105-106	PTE 236	3624
6	D. Manning fax to McSwain (May 29, 1998)	107-110	PTE 008	3077
7	McSwain letter to Buckley (July 14, 1998)	111-112	PTE 012	3115
8	Newspaper article, "Floodway: Federal Agency Designates 5,300 Acres in Richland Co. as Flood-prone, Worrying Developers Along the Congaree River" (July 22, 1998)	113-116	PTE 551	4962
9	Buckley letter to McSwain (July 28, 1998)	117-118	PTE 013	3117
10	Reinstatement of and Amendment to Purchase and Sale Agreement and Purchase and Sale Agreement and various attachments (various)	119-132	in PTE 275	3866
11	Tillotson letter to McSwain with annotations (December 11, 1998)	133-134	PTE 014	3119
12	Richland County Council Proposed Action and Report (January 22, 1999)	135-142	PTE 166	3346
13	Tillotson letter to Holland (January 20, 1999)	143-144	in PTE 017	3122
14	Buckley letter to McSwain (January 21, 1999)	145	None	5815
15	Holland letter Buckley with attachments (January 22, 1999)	146-149	in PTE 017	3121
16	Minutes of Richland County Council	150-153	PTE 020	3126

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	Development and Services Committee (January 26, 1999)			
17	Miller letter to Holland (January 26, 1999)	154	PTE 018	3125
18	Richland County Council Meeting Minutes (February 2, 1999)	155-156	in PTE 147	3326
19	County Administrator Report of Council Actions (February 2, 1999)	157-160	None	5816
20	Richland County Council Meeting Minutes (February 2, 1999)	161-171	PTE 147	3324
21	Livingston letter to Buckley (February 17, 1999)	172-173	PTE 022	3130
22	Lockwood Greene Telephonic Report (February 18, 1999)	174	None	5820
23	Tillotson letter to Gregory (February 17, 1999)	175-188	PTE 208	3501
24	McSwain letter to Gregory (February 19, 1999)	189	PTE 024	3132
25	Assignment of Purchase and Sale Agreement to Columbia Venture, LLC (February 19, 1999)	190-192	None	5821
26	General Warranty Deed from Burwell D. Manning, Jr. to Columbia Venture, LLC (February 19, 1999)	193-198	None	5824
27	General Warranty Deed from Elizabeth K. Manning to Columbia Venture, LLC (February 19, 1999)	199-204	None	5830
28	General Warranty Deed from Burwell D. Manning, Jr. and Eastern Corn and Grain Company, Inc. to Columbia Venture, LLC (February 19, 1999)	205-209	None	5836
29	Reinstatement of and Amendment to Purchase and Sale Agreement and Purchase and Sale Agreement and various attachments (various)	210-212	in PTE 275	3834
30	Newspaper article, \$1 Billion Plan for Congaree Myrtle Beach Developer Envisions 'City Within Reach' in Richland County (February 21, 1999)	213-214	Pearce Dep. Ex. 173	5673
31	McSwain letter to Buckley (February 26, 1999)	215	PTE 026	3133

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32	Armstrong letter to Thurmond (March 19, 1999)	216	None	5841
33	McSwain letter to Marquez with attachment (April 7, 1999)	217-219	PTE 027	3134
34	Greene letter to Hester (May 13, 1999)	220-221	PTE 119	3267
35	Davison letter to McSwain with FEMA Floodplain Management Bulletin 1-98 attached (May 19, 1999)	222-230	PTE 031	3137
36	Newspaper article, Levee Work Expected to Be OK'd (May 28, 1999)	231-232	Wendel Dep. Ex. 42	5687
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38	Knudsen memorandum to Pearce with attachments (November 30, 1999)	237-238	in PTE 125	3294
39	Columbia Venture Financial Statements for the Period from February 17, 1999 (Date of Inception) to December 31, 1999 and Independent Auditors' Report (December 31, 1999)	239-247	PTE 203	3455
40	PowerPoint on Flood Hazards Along the Congaree River (January 24, 2000)	248-267	None	5842
41	Congaree River Restudy – Chronology of Events (February 8, 2000)	268-269	None	5862
42	General Summary of Hydraulic Analysis of the Congaree River in Lexington and Richland Counties, South Carolina, as Presented in August 12, 1999, Revised Preliminary Flood Insurance Studies (FISs) (March 10, 2000)	270-274	None	5864
43	Newspaper article, "Development is 'Risky' Says FEMA Head The Director of the Federal Emergency	275-277	None	5869

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	Management Agency Criticizes Burroughs & Chapin's Plan to Develop in a Flood Plain"(April 25, 2000)			
44	Richland County Revised Preliminary Flood Insurance Study (August 12, 1999)	278-281	in PTE 305	4106
45	Appeal Resolution for Congaree River in Richland and Lexington Counties, South Carolina (September 26, 2000)	282-316	PTE 204	3464
46	Buckley letter to K. Smith, Jeffcoat, and Coble (October 10, 2000)	317-323	PTE 523	4898
47	Buckley letter to Wendel (November 22, 2000)	324-325	PTE 345	4220
48	Holman letter to Richland County Council with draft ordinance attached (March 16, 2001)	326-328	PTE 183	3358
49	Richland County Council Minutes and Council Report re Encroachments in a Floodway (March 20, 2001 and February 9, 2001)	329-336	PTE 051	3173
50	Richland County Council Meeting Minutes (March 20, 2001)	337-343	PTE 186	3365
51	Ellerbe letter to K. Smith (March 20, 2001)	344-345	PTE 184	3361
52	Lucas letter to L. Smith with draft ordinance attached (March 29, 2001)	346-350	PTE 362	4241
53	Richland County Ordinance No. 022-01HR (April 17, 2001)	351-378	PTE 374	4249
54	Richland County Flood Insurance Study (August 20, 2001)	379-382	in PTE 382	4295
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56	Van Sant and Wingard Appraisal (excerpts) (November 6, 2002)	386-389	in PTE 394	4316
57	SELC Board of Trustees Meeting Minutes (November 7, 2003)	390-393	None	5875
58	Management Agreement (December 30, 2003)	394-401	None	5879

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60	Holman email to K. Smith (January 22, 2004)	403	None	5888
61	Linder email to Adams and Holman (February 23, 2004)	404	None	5889
62	Linder email to Holman (February 24, 2004)	405	None	5890
63	Adams email to Linder (February 23, 2004)	406	None	5891
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66	Holman letter to McSwain (March 4, 2004)	419-422	None	5893
67	Excerpts from minutes of Richland County Planning Commission's Meeting (March 5, 2004)	423-441	None	5897
68	K. Smith email to Holman (March 11, 2004)	442	None	5916
69	K. Smith email to Holman (March 22, 2004)	443	None	5917
70	K. Smith email to Holman (April 5, 2004)	444	None	5918
71	Boyd letter to Willoughby (June 10, 2005)	445-447	PTE 430	4818
72	Willoughby letter to Boyd (August 26, 2005)	448-449	PTE 157	3343
73	Plaintiff's Motion to Vacate (August 22, 2005)	450-451	None	5919
74	Order of Vacatur (November 18, 2005)	452-463	PTE 061	3190
75	Judgment in a Civil Case (November 18, 2005)	464	PTE 062	3202
76	Hearing Transcript (November 14, 2007)	465-469	None	5921
77	K. Smith Notes (undated)	470-471	PTE 350	4237
78	Newspaper article, "Building Our City - Green Diamond Project Revived" (November 30, 2007)	472-474	PTE 474	4825

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79	Stipulation of Compromise Settlement (September 4, 2009)	475-477	PTE 525	5926
80	Order of Dismissal with Prejudice (September 8, 2009)	478	None	5929
81	Report of Carroll Barker with attachments (April 13, 2010)	479-482	None	5930
82	Curriculum Vitae of A. Carroll Barker, Sr.	483-488	PTE 534	4927
83	List of Documents Provided to Carroll Barker (undated)	489-501	None	5934
84	Affidavit of Elizabeth Summers with exhibits (July 10, 2012)	502-517	None	5947
85	Excerpts from Brenda Carter deposition (March 2, 2011)	518-527	None	5963
86	Excerpts from Michael Criss deposition (May 11, 2011)	528-530	None	5973
87	Excerpts from George Gregory deposition (October 12, 2011)	531-533	None	5976
88	Excerpts from Robert Hughes deposition (June 22, 2011)	534-537	None	5979
89	Excerpts from T. Cary McSwain deposition (April 16, 2010)	538-541	None	5983
90	Excerpts from Gregory Pearce deposition (October 27, 2011)	542-550	None	5987
91	Excerpts from Ralph Pearson deposition (May 3, 2011)	551-562 602-603	None	5996 6045
92	Excerpts from Milton Pope deposition (August 24, 2001)	563-574	None	6008
93	Excerpts from Harry Reed deposition (September 8, 2011)	575-576	None	6020
94	Excerpts from Kit Smith deposition (May 17 & 18, 2011)	577-599	None	6022
95	Draft Amended Ordinance (March 21, 2001)	600-601	PTE 360	4239
96	K. Smith email to Holman (January 14, 2008)	604-605	None	6047

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

A FINITE-ELEMENT MODEL STUDY OF THE IMPACT OF THE PROPOSED
I-326 CROSSING ON FLOOD STAGES OF THE CONGAREE RIVER NEAR
COLUMBIA, SOUTH CAROLINA

By Jonathan K. Lee and Curtis S. Bennett, III

U.S. GEOLOGICAL SURVEY
OPEN-FILE REPORT 81-1194

JK 2

Prepared in cooperation with the South Carolina
Department of Highways and Public Transportation



NSTL station, Mississippi

1981

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UNITED STATES DEPARTMENT OF THE INTERIOR

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II

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CONVERSION FACTORS

Factors for converting inch-pound units to metric (SI) units are shown to four significant figures.

<u>Multiply inch-pound unit</u>	<u>By</u>	<u>To obtain metric unit</u>
foot (ft)	1.048×10^{-1}	meter (m)
square foot (ft ²)	9.290×10^{-2}	square meter (m ²)
foot to the one-half power per second (ft ^{1/2} /s)	5.511×10^{-1}	meter to the one-half power per second (m ^{1/2} /s)
foot per second (ft/s)	1.048×10^{-1}	meter per second (m/s)
foot per square second (ft/s ²)	1.048×10^{-1}	meter per square second (m/s ²)
cubic foot per second (ft ³ /s)	2.832×10^{-2}	cubic meter per second (m ³ /s)
mile (mi)	1.609	kilometer (km)
square mile (mi ²)	2.590	square kilometer (km ²)
acre	4.047×10^{-3}	square kilometer (km ²)
slug per cubic foot (slug/ft ³)	5.155×10^{-1}	gram per cubic centimeter (g/cm ³)
pound second per square foot (lb-s/ft ²)	4.787×10^2	poise

National Geodetic Vertical Datum of 1929 (NGVD of 1929):

A geodetic datum derived from a general adjustment of the first-order level nets of both the United States and Canada, formerly called "Mean Sea Level."

A FINITE-ELEMENT MODEL STUDY OF THE IMPACT OF THE
PROPOSED I-326 CROSSING ON FLOOD STAGES OF THE
CONGAREE RIVER NEAR COLUMBIA, SOUTH CAROLINA

By Jonathan K. Lee and Curtis S. Bennett, III

ABSTRACT

A two-dimensional finite-element surface-water model developed by Norton and King was used to study the hydraulic impact of the proposed Interstate Route 326 crossing of the Congaree River near Columbia, S.C. A major accomplishment of this application was the assessment of the finite-element model as a potential operational tool for analyzing complex highway crossings and other modifications of river flood plains.

The rapid expansion of the flood plain of the Congaree River upstream from the proposed highway crossing, an extensive dike system, and highly variable roughness combine to cause significant lateral velocities and variations in stage during floods. Thus, use of a two-dimensional model was warranted.

Infrared aerial photography was used to define regions of homogeneous roughness in the flood plain. Finite-element networks approximating flood-plain topography were designed using elements of three roughness types. High-water marks established during an 8-year flood that occurred in October 1976 were used to calibrate the model.

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The maximum flood of record, an approximately 100-year flood that occurred in August 1908, was modeled in three cases: dikes on the right bank, dikes on the left bank, and dikes on both banks. In each of the three cases, simulations were performed both without and with the proposed highway embankments in place. Detailed information was obtained about backwater effects upstream from the proposed highway embankments, changes in flow distribution resulting from the embankments, and local velocities in the bridge openings.

On the basis of results from the model study, the South Carolina Department of Highways and Public Transportation changed the design of several bridge openings. A simulation incorporating the new design for the case with dikes on the left bank indicated that both velocities in the bridge openings and backwater were reduced.

A major problem in applying the model was the difficulty in predicting the network detail necessary to avoid local errors caused by roughness discontinuities and large depth gradients.

INTRODUCTION

A two-dimensional finite-element surface-water model developed by Norton and King (Norton and others, 1973; Norton and King, 1973; King and Norton, 1978) was used to study the hydraulic impact of the proposed Interstate Route 326 crossing of the flood plain of the Congaree River near Columbia, S.C. The rapid expansion of the flood plain of the river upstream from the proposed highway crossing, an extensive dike system, and highly variable roughness combine to cause significant lateral velocities and variations in stage during floods. Two sewage disposal

plants, a subdivision, and a school lie in the flood plain upstream from the proposed highway crossing. Thus, use of a two-dimensional model was warranted in order to obtain a more precise evaluation of stage and flow distribution at and near the proposed highway crossing than can be obtained by one-dimensional backwater and conveyance techniques. On the other hand, for analyzing stage and flow distribution, the use of a three-dimensional model was judged unnecessary because significant vertical velocities occur only in a very small part of the study area.

A major accomplishment of this application was the assessment of the Norton-King finite-element model as a potential operational tool for the steady-state analysis of complex highway crossings and other modifications of river flood plains. Of particular interest was the capability of the finite-element model to simulate flows on a flood plain with large roughness variations and large changes in depth with distance.

The assistance of the following individuals and organizations in making available data for this study is gratefully acknowledged: W. M. Hulbert, South Carolina Department of Highways and Public Transportation; Central Midlands Regional Planning Council (South Carolina); U.S. Army Corps of Engineers; and Wilbur Smith and Associates, Columbia, S.C. Computer work was done on an IBM 3033^{1/} at Johns Hopkins University's Applied Physics Laboratory.

Throughout this report, the words "right" and "left" refer to positions that would be reported by an observer facing downstream. Elevations refer to the National Geodetic Vertical Datum (NGVD) of 1929. A list of

^{1/} The use of brand names in this report is for identification purposes only and does not imply endorsement by the U.S. Geological Survey.

factors for converting inch-pound units to metric units is provided at the front of the report. All data supporting the conclusions of this report are available in the files of the Gulf Coast Hydroscience Center of the U.S. Geological Survey at WSTL Station, Miss., or the South Carolina District office of the Geological Survey at Columbia, S.C.

MODEL DESCRIPTION

The formulation and development of the model have been reported elsewhere (Norton and others, 1973; Norton and King, 1973; Tsenq, 1975; and King and Norton, 1978); therefore, only the equations solved and a brief outline of the technique used to solve them are presented here.

Flow Equations

Under the usual assumptions (for example, hydrostatic pressure and equating to one the momentum correction factors), two-dimensional surface-water flow in the horizontal plane is described by two equations for conservation of momentum and one for conservation of mass:

$$\begin{aligned} \frac{\partial u}{\partial t} + u \frac{\partial u}{\partial x} + v \frac{\partial u}{\partial y} + g \frac{\partial h}{\partial x} + g \frac{\partial z_o}{\partial x} - \frac{c_{xx}}{\rho} \frac{\partial^2 u}{\partial x^2} - \frac{c_{xy}}{\rho} \frac{\partial^2 u}{\partial y^2} \\ - 2uv \sin \phi + \frac{gu}{C^2 h} (u^2 + v^2)^{1/2} - \frac{\zeta}{h} v^2 \cos \phi = 0, \end{aligned} \quad (1)$$

$$\begin{aligned} \frac{\partial v}{\partial t} + u \frac{\partial v}{\partial x} + v \frac{\partial v}{\partial y} + g \frac{\partial h}{\partial y} + g \frac{\partial z_o}{\partial y} - \frac{c_{yx}}{\rho} \frac{\partial^2 v}{\partial x^2} - \frac{c_{yy}}{\rho} \frac{\partial^2 v}{\partial y^2} \\ + 2uv \sin \phi + \frac{gv}{C^2 h} (u^2 + v^2)^{1/2} - \frac{\zeta}{h} v^2 \sin \phi = 0, \end{aligned} \quad (2)$$

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and

$$\frac{\partial h}{\partial t} + \frac{\partial}{\partial x} (uh) + \frac{\partial}{\partial y} (vh) = 0, \quad (3)$$

where

x, y = Cartesian coordinates in the positive east
and north directions, respectively (feet),

t = time (seconds),

u, v = ensemble- and depth-averaged velocity components
in the x and y directions, respectively (feet
per second),

h = ensemble-averaged depth (feet),

z_0 = bed elevation (feet),

ρ = density of water (assumed constant) (slugs
per cubic foot),

ω = rate of the Earth's angular rotation (per second),

ϕ = latitude (degrees),

g = gravitational acceleration (feet per square
second),

C = Chezy (resistance) coefficient (feet to the
one-half power per second),

$c_{xx}, c_{xy}, c_{yx}, c_{yy}$ = eddy viscosities (pound second per square foot),

C = water-surface resistance coefficient
(non-dimensional),

V_a = local wind velocity (feet per second), and

ψ = angle between the wind direction and the x
axis (degrees).

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In the Norton-King development, equations 1 through 3 are rewritten in terms of the flow variables, $r = uh$, $s = vh$, and depth, h (King and Norton, 1978). Boundary conditions consist of the specification of flow components or water-surface elevations at open boundaries and zero flow components or zero normal flow at all other boundaries, called lateral boundaries. For a time-dependent problem, initial conditions must also be specified. Equations 1 through 3, together with properly specified boundary and initial conditions, comprise a well-posed initial-boundary-value problem.

Numerical Solution of the Flow Equations

Quadratic basis functions are used to approximate flow components on triangular, six-node, isoparametric elements, and linear basis functions are used to approximate depth (mixed interpolation). Galerkin's method of weighted residuals, a Newton-Raphson iteration scheme, and numerical integration using seven-point Gaussian quadrature (Zienkiewicz, 1971) are used to solve for the nodal values of the flow components and depth. The time derivatives are handled by an implicit finite-difference scheme; in the present application, however, only the steady-state forms of the equations are solved.

Model topography is described by assigning a ground-surface elevation to each element vertex and letting the ground surface vary linearly within an element.

Flow components are specified at inflow boundary nodes, and water-surface elevations are specified at outflow boundary nodes. In this study, zero normal flow is specified at all lateral boundaries. Isoparametric elements permit the use of smooth, curved lateral boundaries. The improvement in accuracy obtained by using such boundaries, together

with the specification of zero normal flow (tangential flow) at the boundaries, has been documented by King and Norton (1978), Gee and MacArthur (1978), and Walters and Cheng (1978, 1980) for the mixed-interpolation formulation of the surface-water flow equations.

The model has the capability of integrating the flow across a line following element sides and beginning and ending at element vertices. Thus, conservation of mass, which is not automatically satisfied, can be checked (King and Norton, 1978).

DESCRIPTION OF THE STUDY AREA

General Site Description

The Congaree River originates at the confluence of the Broad and Saluda Rivers at Columbia, flows southeastward for 51.5 mi, and joins the Wateree River near the head of Lake Marion to form the Santee River. (Both the Broad and Saluda River basins are located in the Piedmont Region of South Carolina, with headwaters in southwestern North Carolina.) The drainage area of the Congaree River at Columbia, 1.7 mi above the study area, is 7,850 mi². Of this drainage area, 5,240 mi² are in the Broad River basin and 2,520 mi² are in the Saluda River basin.

The reach of the Congaree River studied in this report lies between river miles 166.9 and 173.1 (Fig. 1). (Zero river mile is defined as the mouth of the Santee River.) The reach is between 42.2 and 48.4 mi upstream from where the Congaree River joins the Santee River. The flood plain expands from a width of approximately 700 ft at the upper end of the study area to a width of approximately 4 mi at the proposed Interstate Route 326 crossing less than 3 mi downstream (Fig. 2). The streambed generally consists of alluvial

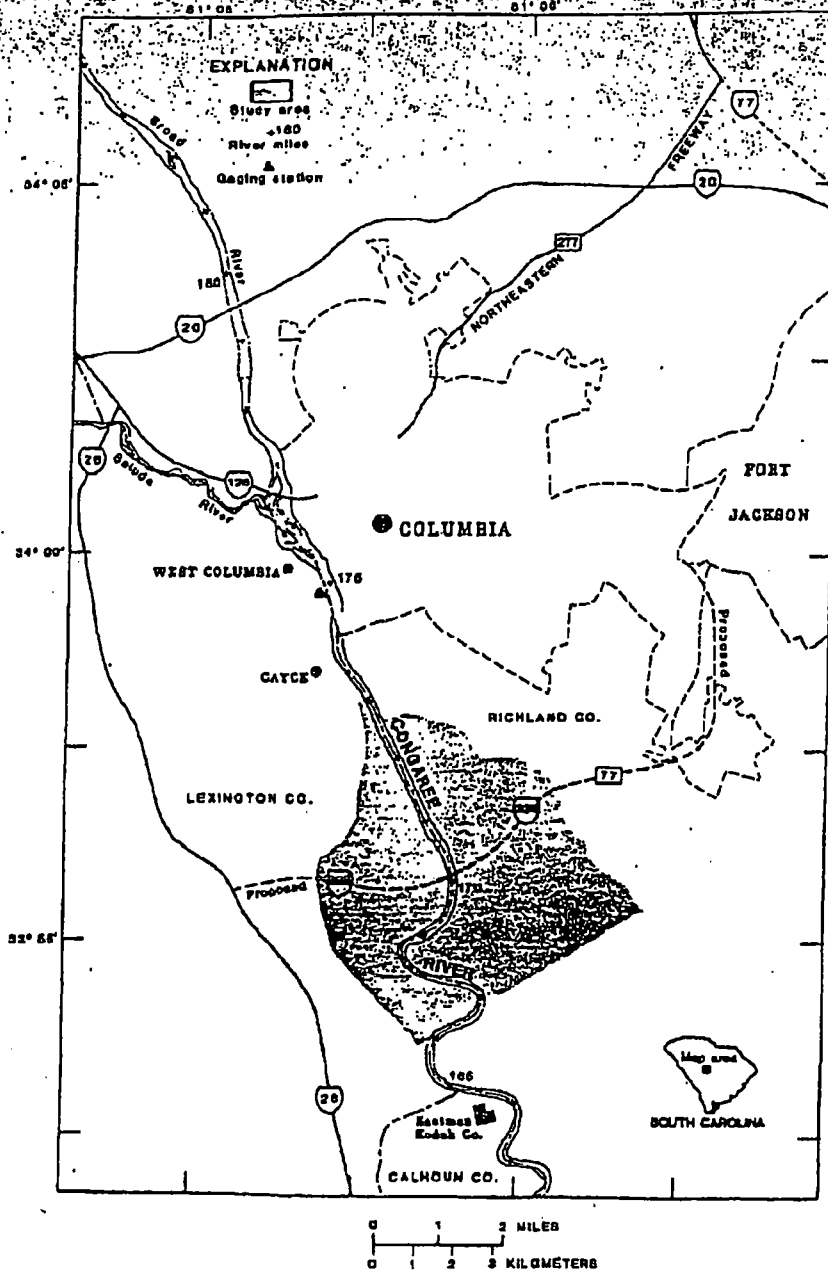


Figure 1.—Congaree River near Columbia, S.C.

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sands blanketed with finer soils. About half the flood plain is covered with a combination of dense timber and underbrush. Most of the rest of the flood plain is occupied by cultivated fields, interspersed among the wooded areas.

Although there is limited residential or commercial development on the flood plain, the left side is partially protected by an earth-fill dike (Manning dike). Existing encroachments include a small subdivision (River Bluff Estates) on the right flood plain at the upper end of the study area, a private school (Heathwood Hall Episcopal School) on the left approximately 1.1 mi above the proposed highway crossing, the City of Cayce sewage disposal plant on the right approximately 1.1 mi above the proposed highway crossing, and the City of Columbia sewage disposal plant on the left approximately 0.3 mi above the proposed highway crossing. Earth-fill dike systems are in place to protect the City of Cayce and the City of Columbia disposal plants. A dike (Otarre dike) has been proposed for the right flood plain. The location of the originally proposed Otarre dike and other key features of the flood plain are shown in figure 2.

Interstate Route 326 Roadway System

Interstate Route 326 (I-326) will be a part of the Southeastern Beltway system, which extends around the south and east sides of Columbia. It will connect I-26 on the southwest side of Columbia with I-77 and I-20 on the northeast side (fig. 1). It will also serve the city as an additional crossing over the Congaree River.

The I-326 crossing of the Congaree River flood plain will be a controlled-access, six-lane, divided highway. The crossing is roughly at a right angle to the longitudinal axis of the flood plain, with the

highway running east and west and the river flowing from north to south. An intersection with the Twelfth Street Extension on the west of Lexington County flood plain is in the planning stages of development (fig. 2).

Twelfth Street will run parallel to the river. Its effect on flood flow was not considered in this study but was analyzed in the South Carolina Department of Highways and Public Transportation's studies. On the eastern edge of the flood plain, I-326 will intersect South Carolina Route 48, Bluff Road.

There will be seven dual bridges in the flood plain. The number and name of each bridge are given in table 1. During the study, three of the seven bridges were redesigned by the South Carolina Department of Highways and Public Transportation. The beginning and ending stations and length of each bridge, for both the original and revised designs, are also given in table 1. The original bridges are shown in figure 2, and the revised bridges in figure 3. All of these bridges are designed to serve as flood-relief bridges during major floods on the Congaree River. In addition to the bridges, there will be a culvert on the east side of the flood plain within the Route 48 interchange. Its primary purpose is to handle local drainage. Some floodwater will flow through the overpass over Route 48, but this flow will be relatively insignificant and was not considered in this study.

HYDROLOGY OF THE STUDY AREA

Flood Data

Streamflow data have been collected at the Geological Survey gaging station, Congaree River at Columbia, from October 1939 to the current year (1980). Gage-height records were collected at a site 1,000 ft above the present gaging station from October 1891 to December 1933. The maximum flow that has occurred since at least October 1891

Table 1.--Bridges proposed for the Interstate Route 324 crossing of the flood plain of the Congaree River.

Bridge number	Bridge description	Original design			Revised design		
		Beginning station	Ending station	Length (ft)	Beginning station	Ending station	Length (ft)
1	Twin overflow bridges 1	448 + 00	455 + 80	780	Bridges not revised		
2	Twin overpasses over Old State Road (Road 5-86)	502 + 60	511 + 00	840	495 + 10	510 + 10	1,500
3	Twin bridges over Congaree Creek	516 + 25	530 + 65	1,440	Bridges not revised		
4	Twin bridges over Congaree River	549 + 35	562 + 75	1,320	Bridges not revised		
5	Twin bridges over Metro Lane	578 + 25	579 + 75	150	Bridges not revised		
6	Twin overflow bridges 2	604 + 00	610 + 60	660	601 + 00	614 + 20	1,320
7	Twin overflow bridges 3	634 + 75	641 + 35	660	635 + 65	640 + 45	480
Culvert	Three 8-foot-by-8-foot reinforced-concrete box culverts	656 + 25	-	24	Culverts not revised		

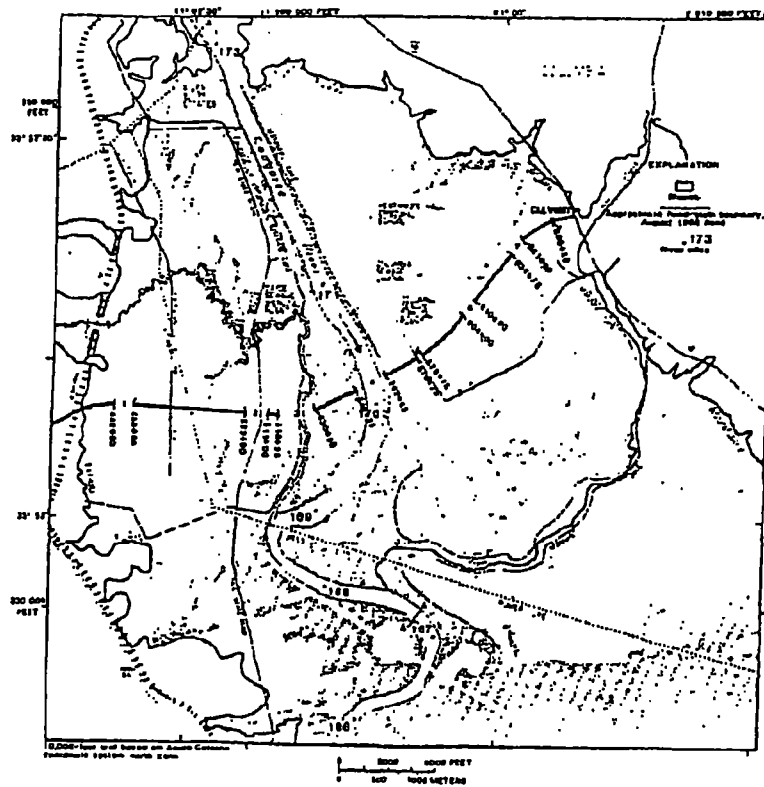


Figure 2.—Congaree River flood plain near Columbia, S.C.,
 showing proposed bridges (original design).
 Cross-section A-A' is shown in figure 5.

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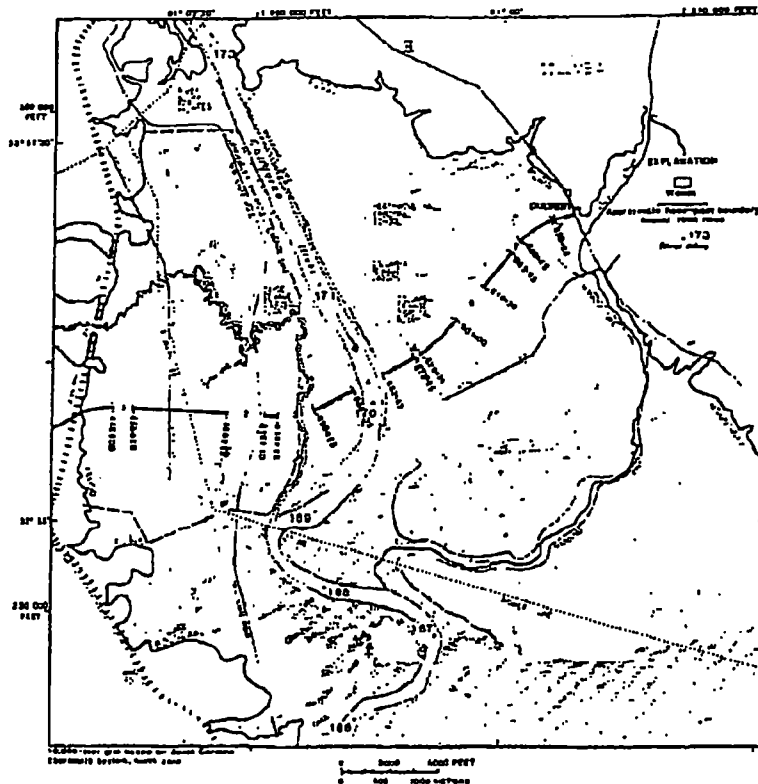


Figure 3.--Congaree River flood plain near Columbia, S.C.,
showing proposed bridges (revised design).

was caused by a tropical storm in August 1908. The storm caused major flooding throughout the basin. The peak flow of the Congaree River at Columbia was 364,000 ft³/s. The water-surface elevation for this flood was 152.8 ft NGVD.

A high-water mark of 136.5 ft NGVD for the 1908 flood was established at the Route 48 crossing of Gills Creek. Other high-water marks have been established at the same location: 133.6 ft in 1916, 135.5 ft in 1928, 135.3 ft in 1929, and 130.2 ft in 1936.

The flood of October 1976, the maximum stage and discharge since April 1936, was used to calibrate the two-dimensional finite-element model. A peak elevation of 142.8 ft NGVD, corresponding to a discharge of 155,000 ft³/s, was recorded at the Columbia Congaree River gage on October 11, 1976. A large portion of the flood plain in the study area was inundated after the dike along the left side of the main channel was breached in the vicinity of the Columbia sewage disposal plant. High-water marks were established by personnel of the South Carolina Department of Highways and Public Transportation at River Bluff Estates, along Old State Road at Congaree Creek, above and below the proposed highway route on the right flood plain, and near the left bank of the main channel at the proposed highway route. High-water marks were also established by Corps of Engineers personnel at River Bluff Estates and later by Geological Survey personnel near River Bluff Estates, near the Cayce sewage disposal plant, and at the downstream end of the study reach. A peak of 127.0 ft NGVD, which was used to define the lower end of the flood profile, was observed on the staff gage at the Eastman Kodak Company plant at river mile 164.5.

Congaree Creek, with a drainage area of 136 mi², empties into the Congaree River from the west between miles 168 and 169. Cills Creek, with an even smaller drainage area, empties into the Congaree River from the east between miles 167 and 168. The record (since 1959) flow of Congaree Creek was 1,840 ft³/s. Because of their insignificance compared to the flow of the river, the flows of these creeks were disregarded in this study.

Flood Frequency

Numerous dams on the Broad and Saluda Rivers have significantly influenced flood magnitude on the Congaree River. The largest of these structures, Saluda Dam, located 12 mi above the mouth of the Saluda River, may have the most pronounced effect on flood flows. Saluda Dam, completed in 1930 by the South Carolina Electric and Gas Company, forms Lake Murray, which has a surface area of about 51,000 acres at maximum power pool. Since this reservoir is operated for hydropower generation only, inflow during major floods creates temporary storage above maximum operating pool levels. During major floods, safety considerations for the earth-fill dam necessitate releases through spillway gates in addition to discharges through power turbines to lower the reservoir to required maximum pool levels as soon as possible. Hence, any flood control that occurs as a result of the operation is coincidental.

Because of the complexity of adjusting the flood frequency for flow regulation by upstream dams, the maximum flood of record (the August 1908 flood) was used for hydraulic design purposes by the South Carolina Department of Highways and Public Transportation and for input to the two-dimensional model. A Log Pearson Type III frequency analysis for the total period of record, with no adjustment for regulation, shows

that the exceedance interval for a flood of this magnitude is approximately 100 years, as illustrated by figure 4. The exceedance interval for the October 1976 flood, used to calibrate the two-dimensional model, is 8 years.

APPLICATION OF THE FINITE-ELEMENT MODEL TO THE PROPOSED
INTERSTATE ROUTE 326 CROSSING OF THE CONGAREE RIVER

Outline of the Modeling

High-water marks established during the October 1976 flood (155,000 ft^3/s) were used to calibrate the finite-element model. The values of the Chézy coefficients determined during calibration were used to run the model for the August 1908 flood (364,000 ft^3/s) for three flood-plain configurations: (1) the existing Manning dike along the left bank of the main channel in place, (2) the Manning dike removed and the originally proposed Otarre dike along the right bank of the main channel in place, and (3) both dikes in place. Each flood-plain configuration was run both without and with the proposed highway embankments in place. Flood-plain configuration (1) was run for both the original and revised designs of bridge 2. The run with the original design did not include spur dikes; the run with the revised design included spur dikes as specified by the South Carolina Department of Highways and Public Transportation. By mistake, bridge 1 was located too far to the right in the original-design run. This mistake was corrected in the revised-design run.

Data Collection

One-dimensional step-backwater profiles for floods of various magnitudes were obtained from the South Carolina Department of Highways and Public Transportation and the Corps of Engineers for use in

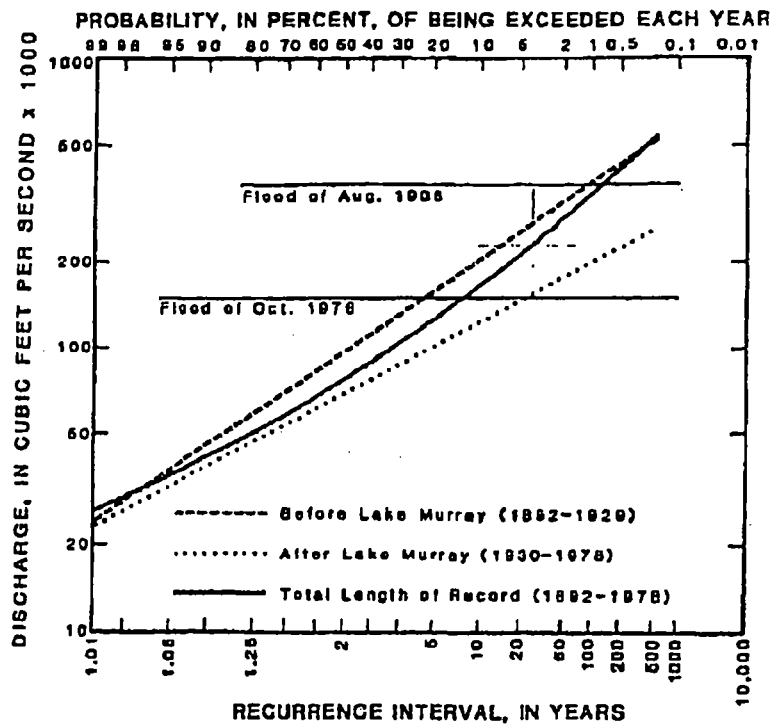


Figure 4.--Frequency curves for the Congaree River at Columbia, S.C.

approximating inundation boundaries and estimating downstream water surface elevations. High-water marks established for the October 1976 flood were assembled. Information was collected from maps and field surveys on study-area topography, channel cross sections, the location and top elevation of existing and proposed dikes, and proposed highway embankments and spur dikes. Infrared aerial photographs of the study area were made to determine vegetation type and density.

Network Layout

Networks for all model runs were designed to be identical where they overlapped to ensure that results from different runs would be comparable. On the basis of the infrared aerial photography and ground inspection, it was decided to use three roughness types, corresponding to the main channel, wooded ground, and cleared ground. Each element was designed to be of nearly homogeneous roughness and was assigned one of these three types.

Main channel features were ignored in earlier two-dimensional finite-element studies (Franques and Yennitell, 1974; Tseng, 1975; U.S. Army Corps of Engineers, 1976; King and Norton, 1978). In this study, topographic variations of the main channel of the Congaree were modeled because it was anticipated that a large proportion of the flow would remain in the main channel. Four criteria were used in designing the finite-element network for the main channel. First, because numerical experiments showed that a cross-channel change in depth of more than about 250 percent across an element was likely to cause model divergence, the anticipated ratio of the maximum to minimum depth on any one element was kept less than about 2.5. This constraint complicated modeling of

the drop from the flood plain to the channel bottom. In many places, this drop involved an increase in depth from about 5 ft to 30 ft or more. Second, the area and shape of the channel cross section were approximated as accurately as possible. Third, excessively long, narrow elements were avoided. Fourth, as few elements as possible were used in order to minimize computer core requirements and computational time.

Several approximations of the main channel, both triangular and trapezoidal in shape, were investigated numerically. On the basis of these experiments and the criteria given above, a symmetrical, trapezoidal shape was selected to describe the channel, as shown in figure 5.

Ground-surface gradients smaller than those between the flood plain and the main channel, where coupled with roughness discontinuities, were found to cause serious local inconsistencies in the solution. In many cases, it was possible to reduce these errors by moving nodes, adjusting ground-surface elevations, and shifting element sides to lie parallel to streamlines. In problem areas where such adjustments failed to eliminate the errors, more detail was added to the network. Because these changes had to be made on a trial-and-error basis, the process of network adjustment and refinement was tedious, time-consuming, and expensive.

The use of isoparametric elements permitted flexibility in network design. Curved-sided elements were used, not only in defining smooth tangential-flow boundaries, but also in approximating the bends of the main channel (fig. 6) and the embankments and spur dikes of the highway crossing (fig. 15).

Boundary Conditions and Model Coefficients

A starting value for each flow component at each inflow node was estimated and then adjusted after the first iteration until the total

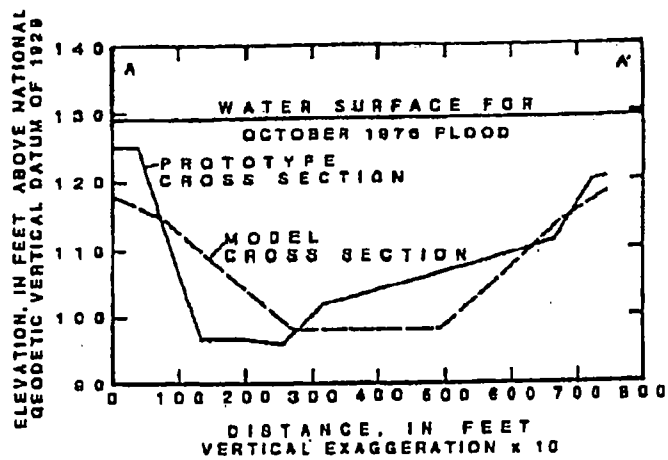


Figure 5.—Prototype and model cross sections of the main channel at section A-A' (fig. 2).

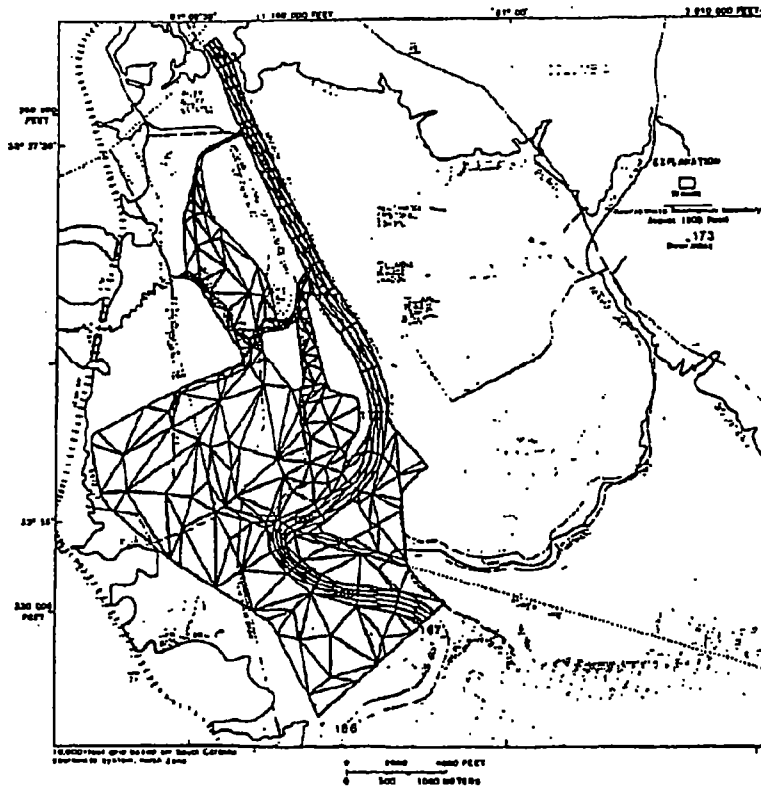


Figure 6.--Finite-element network, Manning dike in place,
October 1976 flood.

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computed inflow was correct. Because the inflow in all cases was specified only across the width of the main channel (fig. 6), model results more than two rows of elements downstream from the upstream boundary were not influenced by the inflow distribution. A tributary was defined in several networks (fig. 6), but zero inflow was specified at the tributary boundary nodes in the results reported here.

Water-surface elevations at the downstream outflow boundary were estimated from the one-dimensional step-backwater profiles. In each run, the downstream water surface was assumed to be horizontal.

As stated above, the solution is obtained by an iterative procedure. Initially the model assumes zero velocity and a constant water-surface elevation equal to the downstream water-surface elevation (downstream boundary condition) at each node. Because of the slope of the flood plain, this procedure would result in negative depths in the upstream part of the model if the correct downstream water-surface elevation were used. The initial downstream water-surface elevation was set as high as necessary to avoid this difficulty. It was then decreased 1 or 2 ft per iteration until the specified value was reached. Additional iterations were run until the change in the solution between two successive iterations was less than 1 percent.

The values of the Chezy coefficients determined during the calibration run were used in the seven model runs for the August 1908 flood. For these subsequent runs, the height of the water surface and thus the location of the lateral boundaries of the model could only be estimated on the basis of the step-backwater profiles. In several instances, the water surface computed by the model was lower than initially estimated and resulted in such small depths near

the edges of the flood plain and in other shallow areas that the model diverged. Model ground-surface elevations in these trouble spots were then temporarily lowered to permit convergence. On the basis of the resulting improved estimate of the water-surface elevation, the lateral boundaries of the model were moved into deeper water and network detail was adjusted, after which ground-surface elevations were restored to their correct values and the model was run again.

Nonzero eddy viscosities are necessary for convergence of the Norton-King model. It is difficult to determine what realistic values of these coefficients are and whether values large enough to ensure convergence are not unrealistically large. In general, increasing the values of the eddy viscosities increases the water-surface slope. Model divergence occurred for values of the eddy viscosities as large as 50 lb-s/ft². Hence, to avoid convergence problems and because of a lack of information about their correct values, values of 100 lb-s/ft² were arbitrarily used throughout the study. It was determined by numerical experiment that, once the values of the eddy viscosities were set high enough to ensure model convergence, the solution was considerably less sensitive to changes in their values than to changes in the values of the Chezy coefficients or to changes in network detail.

RESULTS OF THE SIMULATIONS

Interpretation of the Results

Several factors combine to introduce error into the velocities and water-surface elevations reported here: (1) the assumptions that are made in deriving equations 1 through 3 may not be completely valid throughout the study area; (2) model discretization involves approximations

to prototype topography, roughness, velocities, and depths; (3) because of model constraints and the limitations of the calibration data, the values of the model coefficients used may distort the results; and (4) boundary conditions, especially the downstream water-surface elevations, are not known precisely. Common sense and care in model application have reduced the error from these sources to a minimum, and much more information is obtained than can be obtained from one-dimensional models, but error does remain in the computed velocities and water-surface elevations. It should also be kept in mind that the velocities reported in this study are vertically averaged velocities. Thus, a high velocity along a spur dike may indicate a potential for scour, but it is not a point velocity at or near the bed.

October 1976 Flood with the Manning Dike in Place

The high-water marks from the October 1976 flood were used to calibrate the model. Although the Manning dike along the left bank of the main channel was breached in several places during the 1976 flood, it was assumed that the outflows were insignificant and could be ignored for modeling purposes. Thus, the Manning dike was treated as a tangential-flow boundary (fig. 6). An upstream inflow of 155,000 ft³/s and a downstream water-surface elevation of 129.2 ft NGVD were used as boundary conditions. Zero inflow was specified for the tributary (Congaree Creek) on the right side of the flood plain. Zero normal flow was specified at all other boundary nodes.

After model convergence was obtained for nominal values of the Chezy coefficients, the values were adjusted by trial and error until the computed water-surface elevations matched the observed high-water marks (pl. 1) as closely as possible. The location reference numbers, observed

high-water-mark elevations, and computed water-surface elevations at the seven locations where data were available are given in table 1. Fits within 0.5 ft were obtained at locations 1, 2, 3, 4, and 7. No combination of values of the three Chezy coefficients accounted for the large drop in the water surface between locations 3 and 4 and locations 5 and 6. The large difference between the observed and computed water-surface elevations at locations 5 and 6 suggests that the assumption of steady flow is not valid for the 1976 flood. The duration of the peak discharge was probably too short for the water on the right flood plain to rise to the level it would have attained under steady-flow conditions. The values of the Chezy coefficients determined in this calibration process were 63.0 $\text{ft}^{1/2}/\text{s}$ for the main channel, 20.3 $\text{ft}^{1/2}/\text{s}$ for the wooded areas, and 89.7 $\text{ft}^{1/2}/\text{s}$ for the cleared areas. These values were used in all subsequent model runs.

The computed water-surface profiles in the main channel for this and the subsequent runs are plotted in figure 7. Plate 1 is a plot of the velocity field and water-surface elevations for this run. Water-surface contour lines were obtained from plots generated by the computer program Surface Approximations and Contour Mapping (SACM) developed by Applications Consultants, Inc., and modified by the Geological Survey (U.S. Geological Survey, written commun., 1975). Examination of plate 1 reveals that the flow directions in several small areas are not completely realistic. As stated above, these problems are probably caused by variable topography and roughness and could be resolved by further refining the network shown in figure 6.

Table 2.--Elevations of the observed high-water marks and the computed water surface for the October 1976 flood

Location reference number ¹	Elevation of observed high-water marks above NGVD (ft)	Elevation of computed water surface above NGVD (ft)
1	138.0 - 139.6	139.0
2	135.4	135.9
3	133.2 - 133.4	133.2
4	134.0 - 134.2	134.6
5	130.5 - 130.6	133.1
6	130.2 - 130.8	133.1
7	129.7	130.1

¹Location reference numbers are shown on plate 1.

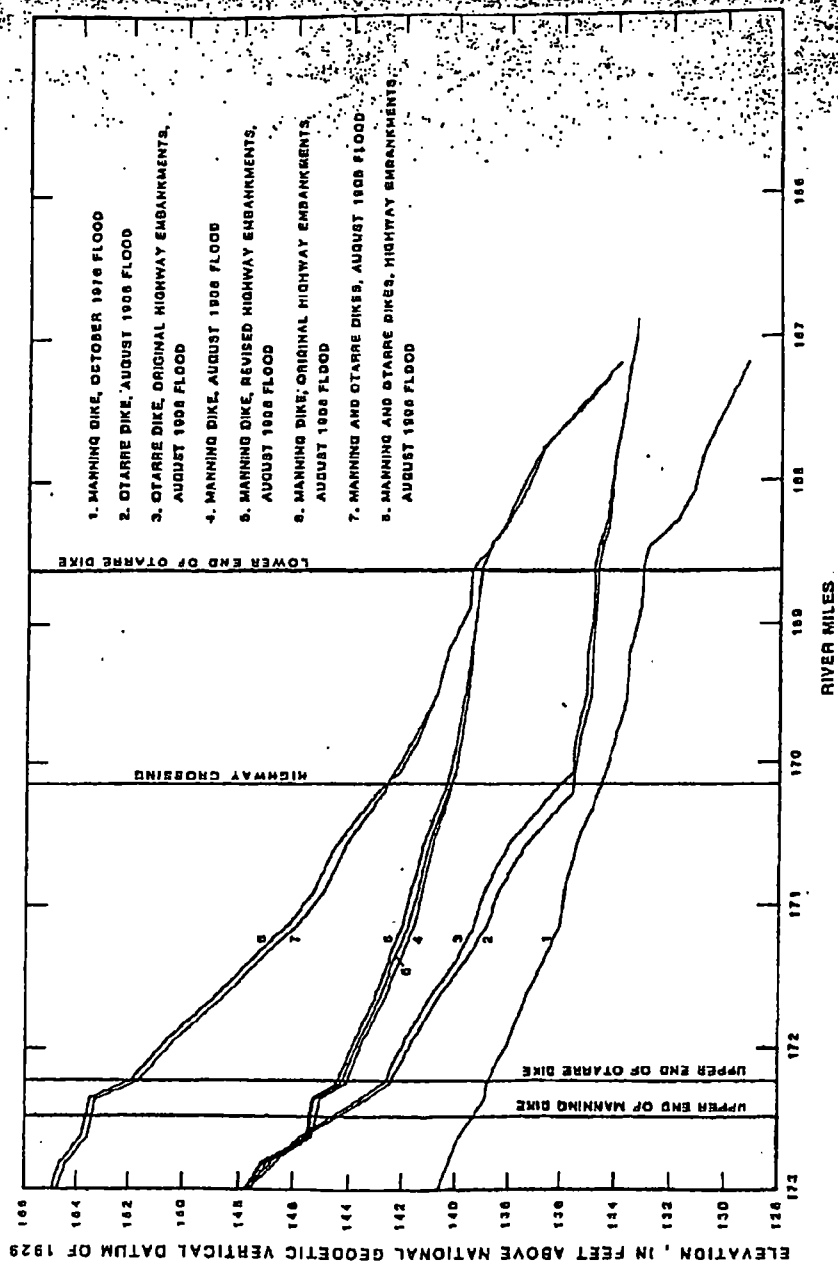


Figure 7.--Water-surface profiles for the main channel.

August 1908 Flood with the Manning Dike in Place

The August 1908 flood was modeled under the assumption that no flow occurred through the Manning dike. This assumption, made throughout the study for both the Manning and Otterre dikes, was based on the South Carolina Department of Highways and Public Transportation's need to quantify the potential effect of the proposed I-326 embankments for dikes raised and strengthened to withstand the 1908 flood. In this case, the assumption forces the maximum possible amount of the flow onto the right flood plain. Because of the increased depth of flow, model boundaries at the right edge of the flood plain (figs. 8, 9, 10) were different from those used for the 1976 flood.

The model was first run without highway embankments (fig. 8). Next, it was run with embankments corresponding to the original bridge design (including the error in the location of bridge 1) but without the proposed spur dikes (fig. 9). To reduce the backwater on the right flood plain and lower high velocities at the right edge of bridge 2, the South Carolina Department of Highways and Public Transportation shifted the twin overpasses over Old State Road toward the right and increased their length from 840 ft to 1,500 ft. Then the model was run again with embankments corresponding to the revised design (fig. 10). This time the proposed spur dikes were included, and bridge 1 was located properly. An upstream inflow of 364,000 ft³/s and a downstream water-surface elevation of 133.85 ft NGVD were used as boundary conditions in all three runs.

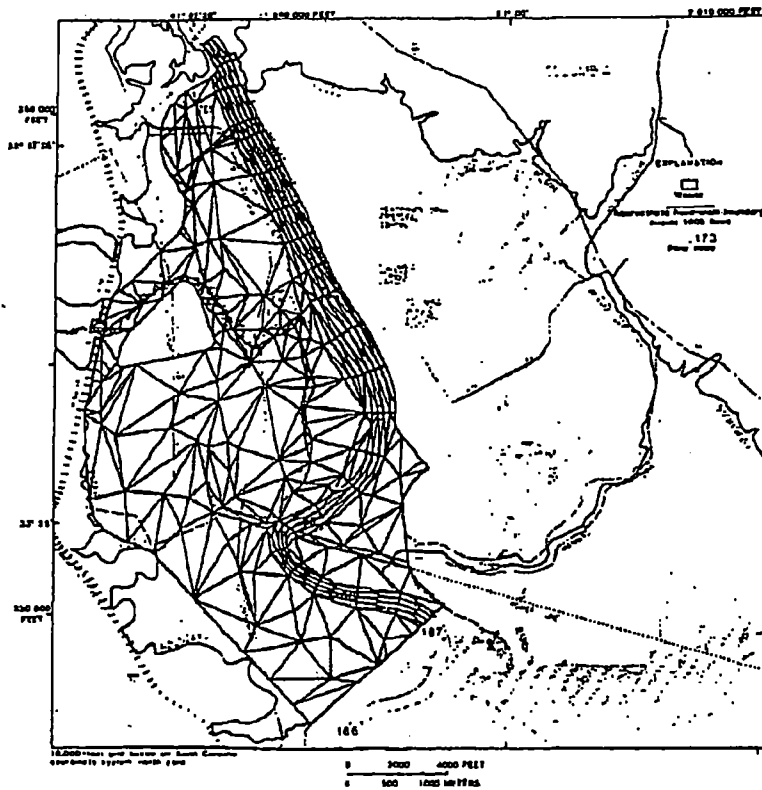


Figure 8.--Finite-element network, Manning dike in place,
August 1908 flood.

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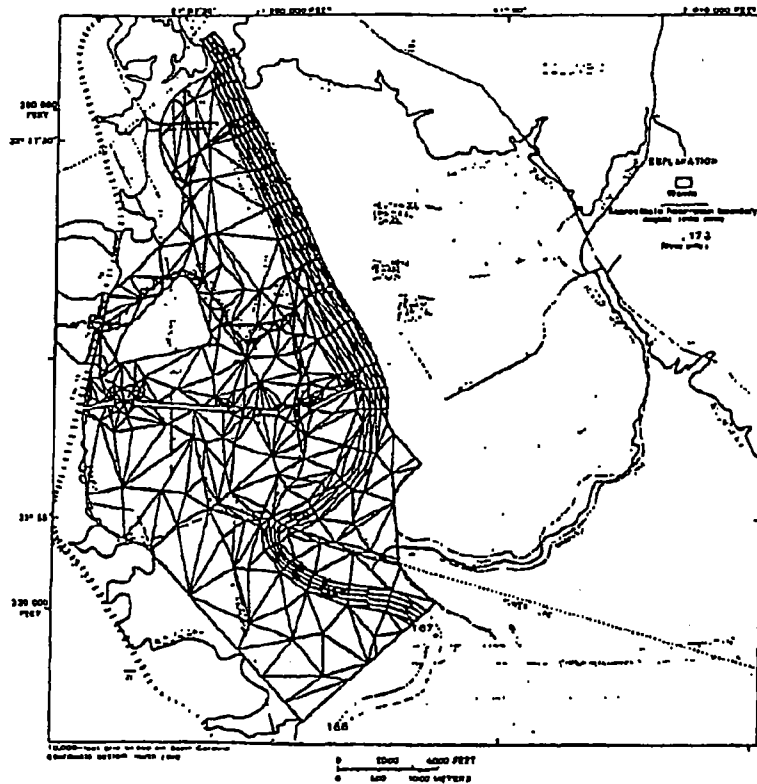


Figure 10.--Finite-element network, Manning dike and revised highway embankments in place, August 1908 flood.

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Plate 2 is a plot of the velocity field and water-surface elevations for the run without highway embankments. Plate 1 is a plot of the velocity field and water-surface elevations for the run with the original highway embankments. The continuity-check program option was used to compute the discharge through each of the four bridge openings. Ground- and water-surface elevations across each bridge opening were computed by interpolation from model input data and results. These elevations were then used to compute the cross-sectional area, the average velocity, and the average water-surface elevation at each opening. Together with the maximum velocities at each opening and at the edges of each opening, these are given in table 3.

Plate 4 is a plot of the velocity field and water-surface elevations for the run with the revised highway embankments. The continuity-check option was again used to compute the discharge through each of the four bridge openings. In this case, for each of the openings, the discharge was computed at several cross sections from just upstream of the spur dikes to just downstream of the opening. The computed percentages of the total discharge flowing through bridge 1 are 7.9, 7.7, and 8.4; through bridge 2, 23.8, 25.8, 26.7, and 26.5; through bridge 3, 18.4, 21.1, 18.2, and 20.1; and through bridge 4, 43.2, 43.3, 43.3, and 47.5. The sum of the lowest values is 92.9 percent; the sum of the highest is 103.7 percent. In addition, a continuity check across the entire model gives 99.8 percent one row of elements upstream from the highway crossing and 93.1 percent one row of elements downstream from the crossing. The continuity equation is not satisfied at every node in the Norton-King model, and

Table 1.--Hydraulic properties of the original bridges across the flood plain of the Congaree River with the Manning
dike in place for the August 1908 flood

Bridge number	Bridge description	Discharge ¹ (ft ³ /s)	Discharge ¹ (percent of total discharge)	Cross- sectional area (ft ²)	Average velocity (ft/s)	Maximum velocity (ft/s)	Maximum velocity at right edge (ft/s)	Maximum velocity at left edge (ft/s)	Average water- surface elevation above MGVD (ft)
1	Twin overflow bridges 1	23,240	6.4	6,840	3.4	5.7	2.0	5.7	139.9
2	Twin overpasses over Old State Road (Road S-66)	65,550	18.0	10,400	6.3	9.7	9.7	5.8	139.3
3	Twin bridges over Congaree Creek	72,970	20.0	24,360	3.0	7.5	5.0	2.6	139.9
4	Twin bridges over Congaree River	179,800	49.4	32,750	5.5	7.4	3.0	1.9	140.2

¹The sum of the discharges does not equal the total discharge because the continuity equation is not satisfied at every node.

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continuity checks give some indication of the accuracy of the solution (King and Norton, 1978; Gee and MacArthur, 1978; Walters and Cheng, 1978, 1980). Reasonable results at and near the highway crossing were obtained, in spite of the use of a fairly coarse network, by the careful process of network adjustment and refinement discussed above. The discharge obtained from the continuity check following the line closest to the centerline of the roadway at each opening and the other hydraulic properties of each opening are given in table 4.

Water-surface profiles in the main channel for all three runs are shown in figure 7. Figures 11 and 12 are plots of backwater for the original and revised crossing designs. The computer program SACH generated these plots by differencing water-surface elevations obtained from the runs with and without the highway embankments in place. Maximum values of the backwater in the main channel and on the flood plain, together with values of the water-surface elevation and backwater at various man-made encroachments on the flood plain, are given in table 5 for both the original and revised designs.

August 1988 Flood with the Otstarre Dike in Place

In the next two runs, it was assumed that the Manning dike was removed and the originally proposed Otstarre dike on the right bank of the river was in place (figs. 13, 14). To determine the backwater of the constriction, runs were made both without and with the highway embankments in place. Only the embankments corresponding to the original crossing design were studied. The upstream inflow was again $364,000 \text{ ft}^3/\text{s}$. Because these two finite-element networks extended slightly farther downstream than did the preceding networks, a downstream water-surface elevation of 131.25 ft NGVD was used. As in all other runs, this downstream boundary

Table 4.--Hydraulic properties of the revised bridges across the flood plain of the Congaree River with the Manning
dike in place for the August 1908 flood

Bridge number	Bridge description	Discharge ¹ (ft ³ /s)	Discharge ¹ (percent of total discharge)	Cross- sectional area (ft ²)	Average velocity (ft/s)	Maximum velocity at right edge (ft/s)	Maximum velocity at left edge (ft/s)	Average water- surface elevation above MGVD (ft)
1	Twin overflow bridges 1	27,970	7.7	6,710	4.2	5.6	5.3	139.6
2	Twin overpasses over Old State Road (Road S-66)	93,850	25.9	17,920	5.2	7.4	6.4	139.6
3	Twin bridges over Congaree Creek	76,920	21.1	24,110	3.2	5.9	1.7	139.7
4	Twin bridges over Congaree River	172,900	47.5	32,390	5.3	7.2	1.9	140.1

¹The sum of the discharges does not equal the total discharge because the continuity equation is not satisfied at every node.

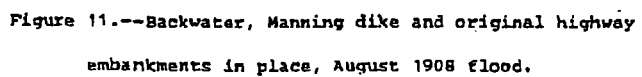


Table 5.--Water-surface elevations (without and with highway embankments) and backwater at various locations with the Manning dike in place for the August 1908 flood

Location reference number ¹	Location	Water-surface elevation above NGVD without highway embankments (ft)	Water-surface elevation above NGVD with original highway embankments (ft)	Backwater with original highway embankments (ft)	Water-surface elevation above NGVD with revised highway embankments (ft)	Backwater with revised highway embankments (ft)
1	Location of maximum backwater in main channel	141.5	141.9	0.4	141.7	0.2
2	Location of maximum backwater on flood plain	139.8	140.8	1.0	140.3	0.5
3	Main channel at twin bridges over Congaree River ²	140.0	140.2	0.2	140.1	0.1
4	Cayce sewage disposal plant	141.7	142.2	0.5	141.9	0.2
5	Seaboard Coast Line bridge over Congaree Creek	141.7	142.2	0.5	141.9	0.2
6	River bluff Estates, south side	144.4	144.7	0.3	144.5	0.1
7	River bluff Estates, east side	145.8	146.0	0.2	145.9	0.1

¹Location reference numbers are shown on plates 3 and 4 and figures 11 and 12.

²The water-surface elevation in the main channel at the twin bridges is an average across the main channel in the case with no highway embankments and an average across the bridge opening in the cases with highway embankments.

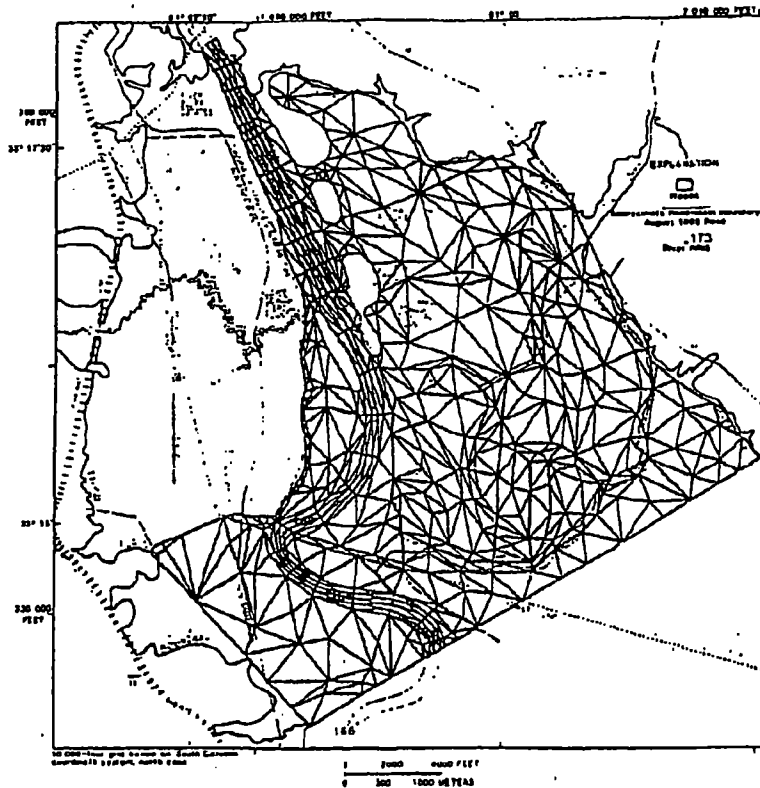


Figure 13.—Finite-element network, Otarre dike in place,
August 1908 flood.

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condition was estimated from one-dimensional water-surface profiles calculated by the step-backwater method under the assumption that the Manning dike was in place. Because of the greater width of the flood plain at the downstream end of these models, the correct downstream water-surface elevation would be slightly lower than that used here.

The capability to model different length scales in a single network is one of the advantages of the finite-element method. In this run, for example, open-channel flow through a 24-foot-wide opening corresponding to three 8-foot-by-8-foot reinforced-concrete box culverts at the left edge of the flood plain (fig. 15) was successfully modeled. (Although the culverts were completely submerged, the flow through them was computed as open-channel flow because the finite-element model does not have the capability to model pressure flow through submerged culverts.)

The network with the highway embankments in place was the largest in this study, with 1,000 elements, 2,195 nodes, and 4,611 equations, and required approximately seven megabytes of core on the IBM 3033.

Plate 5 is a plot of the velocity field and water-surface elevations for the run without the highway embankments. Plate 6 is a similar plot for the run with the highway embankments in place. The hydraulic properties of each bridge opening were calculated as for the runs discussed above and are given in table 6.

The main-channel water-surface profiles are shown in figure 7. Figure 16 is a plot of the backwater. Maximum values of the backwater in the main channel and on the flood plain, as well as values of the water-surface elevation and backwater at various man-made encroachments on the flood plain, are given in table 7.

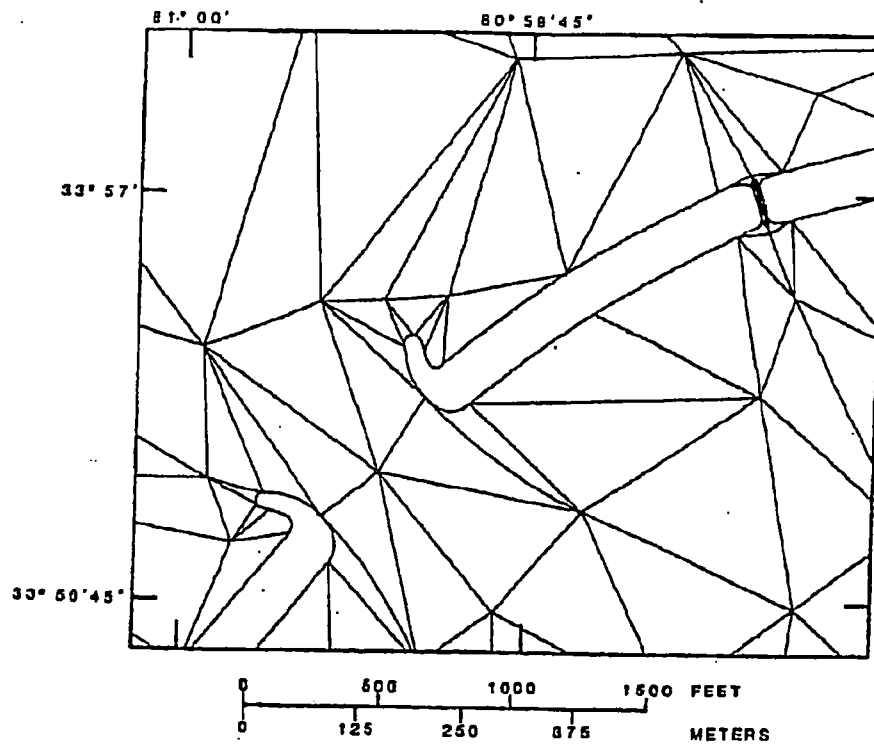


Figure 15.--Section of the finite-element network illustrating the definition of highway embankments, spur dikes, and a culvert using quadratic isoparametric elements, Otarre dike and original highway embankments in place, August 1988 flood. The location of this section is shown in figure 14.

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Table 6.--Hydraulic properties of the original bridges across the flood plain of the Congaree River with the

Obatte dike in place and the Manning dike removed for the August 1988 flood

Bridge number	Bridge description	Discharge ¹ (ft ³ /s)	Discharge ¹ (percent of total discharge)	Cross-sectional area (ft ²)	Average velocity (ft/s)	Maximum velocity (ft/s)	Maximum velocity at right edge (ft/s)	Maximum velocity at left edge (ft/s)	Average water-surface elevation above MGVN (ft)
3	Twin bridges over Congaree Creek	11,980	3.3	10,310	1.2	1.4	1.0	1.1	135.1
4	Twin bridges over Congaree River	237,600	65.3	27,580	8.5	10.9	3.9	3.6	135.5
5	Twin bridges over Metro Lane	3,780	1.0	360	10.5	10.9	9.9	10.8	133.8
6	Twin overflow bridges 2	81,990	22.5	6,660	12.3	13.9	12.7	12.1	134.2
7	Twin overflow bridges 3	29,420	8.1	9,030	3.3	4.0	4.0	3.7	135.9
Culvert	Three 8-foot-by-8-foot reinforced-concrete box culverts ²	1,190	0.3	210	5.6	5.6	5.5	5.5	175.9

¹The sum of the discharges does not equal the total discharge because the continuity equation is not satisfied at every node.

²Although the culverts were completely submerged, the flow through them was computed as open-channel flow because the finite-element model does not have the capability to model pressure flow through submerged culverts.

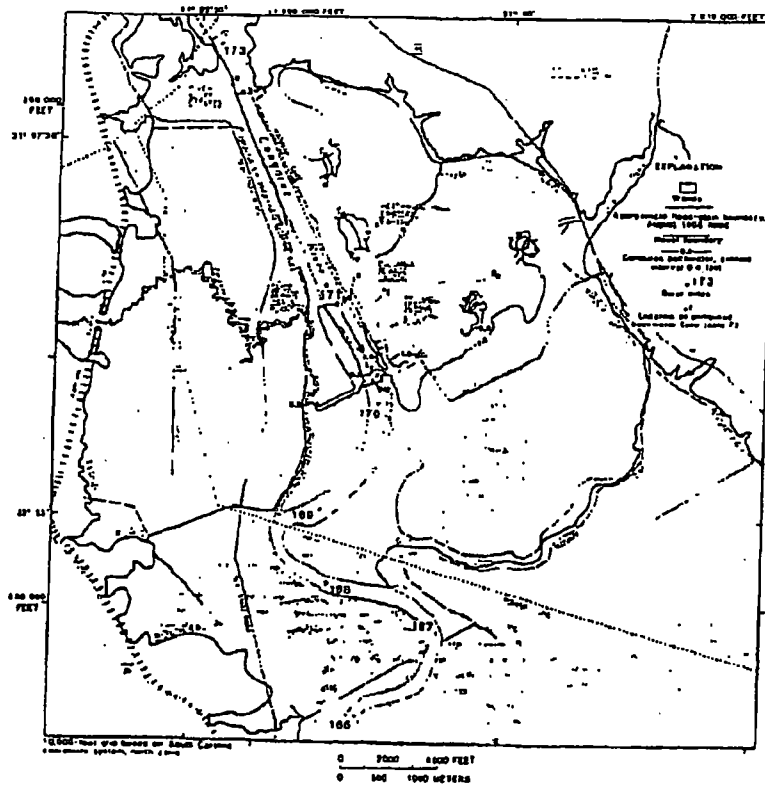


Figure 16.--Backwater, Otarre dike and original highway embankments in place, August 1908 flood.

Table 7.--Water-surface elevations (without and with highway embankments)
and backwater at various locations with the Otterre dike in place and
the Manning dike removed for the August 1908 flood

Location reference number ¹	Location	Water-surface elevation above NGVD without highway embankments (ft)	Water-surface elevation above NGVD with highway embankments (ft)	Backwater (ft)
1	Location of maximum backwater in main channel	135.6	136.3	0.7
2	Location of maximum backwater on flood plain	135.1	137.2	2.1
3	Main channel at twin bridges over Congaree River ²	135.5	135.6	0.1
4	Columbia sewage disposal plant, building	135.1	137.1	2.0
5	Columbia sewage disposal plant, lagoon, southeast corner	135.2	137.1	1.9
6	Columbia sewage disposal plant, lagoon, northwest corner	138.3	138.9	0.6
7	Heathwood Hall Episcopal School	136.0	137.4	1.4
8	River Bluff Estates, east side	145.5	145.6	0.2

¹Location reference numbers are shown on plate 6 and figure 16.

²The water-surface elevation in the main channel at the twin bridges is an
average across the main channel in the case with no highway embankments
and an average across the bridge opening in the case with highway embankments.

The main-channel water-surface profiles are shown in figure 7. In the main channel above the bridge, the maximum increase in the water surface caused by the highway embankments is 0.7 ft. However, water-surface elevations across the entire left flood plain are increased by approximately 2.0 ft by the highway embankments. This lateral variation in the backwater of the constriction could not be detected by a one-dimensional model.

A high-water elevation of 136.5 ft NGVD was established during the 1908 flood at the location shown on plate 5. The computed water-surface elevation without the highway embankments in place is 135.0 ft. Lowering the downstream water-surface elevation and removing the Otarre dike in the model would increase the difference of 1.5 ft even more. However, comparison of the computed and observed values is difficult because it is not known how much of the flood plain was wooded in 1908. It is likely that much more was wooded in 1908 than today. Thus, the values of the Chezy coefficients would be lower for 1908 conditions, and water-surface elevations would be higher.

In response to the backwater of about 2.0 ft on the left flood plain and the high velocities at both edges of bridges 5 and 6, the South Carolina Department of Highways and Public Transportation revised the designs of bridges 6 and 7 (table 1, fig. 3). The model was not run for the revised bridges with the Otarre dike in place and the Manning dike removed.

August 1908 Flood with the Manning and the Otarre Dikes in Place

In the final set of runs, the dikes on both sides of the channel were in place (figs. 17, 18). Runs were made without and with the highway

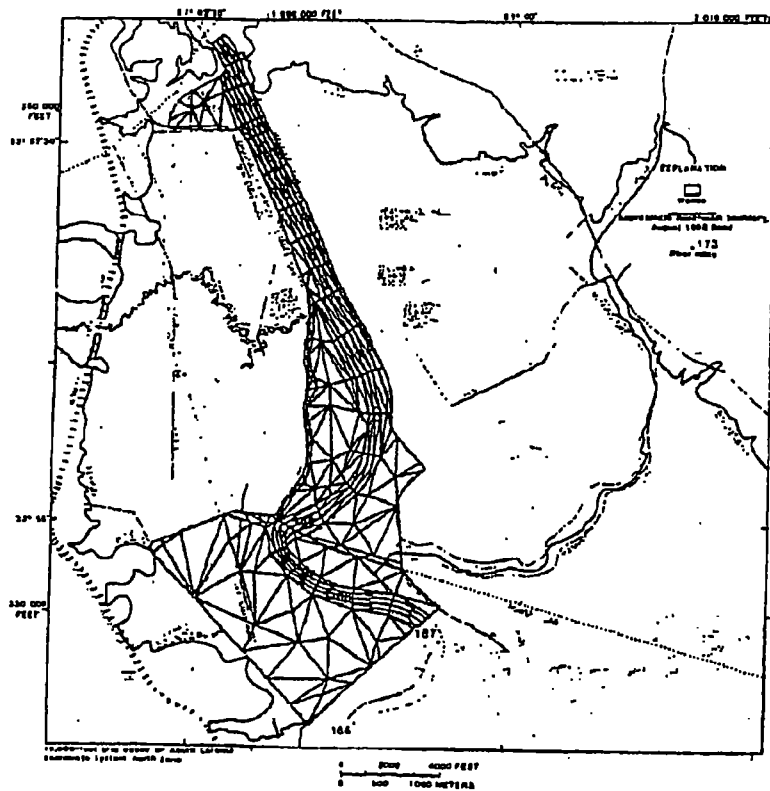


Figure 17.--Finite-element network, Manning and Otterre
dikes in place, August 1909 flood.

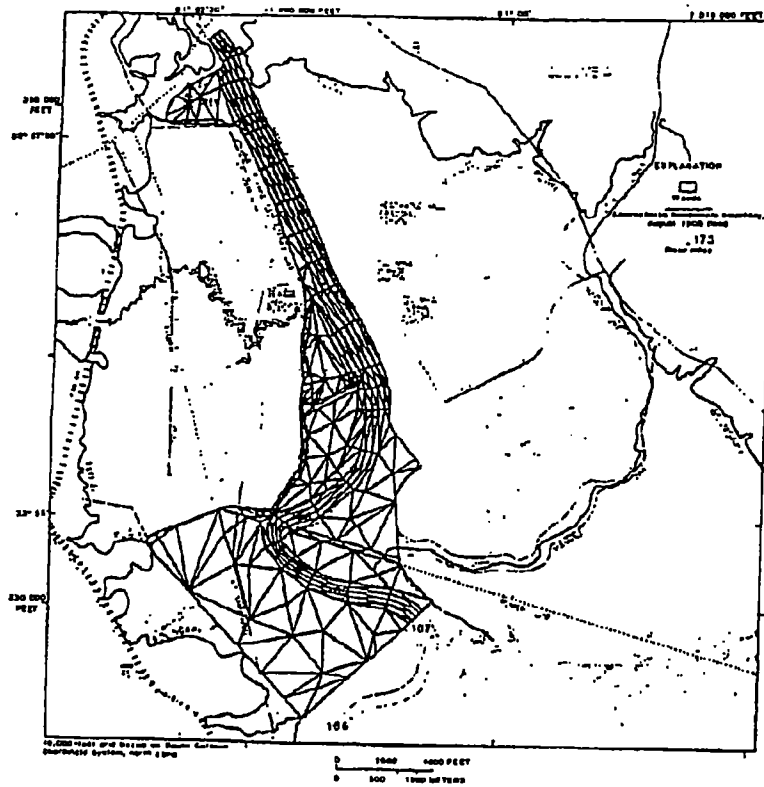


Figure 18.--Finite-element network, Manning and Otterre dikes
and highway embankments in place, August 1906 flood.

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embankments in place. Neither of the bridges involved for this dike configuration was modified by the South Carolina Department of Highways and Public Transportation. The upstream inflow was $364,000 \text{ ft}^3/\text{s}$, and the downstream water-surface elevation was 133.85 ft NGVD.

Plates 7 and 8 are plots of the velocity fields and water-surface elevations for the runs without and with the highway embankments in place, respectively. The hydraulic properties of each bridge opening were calculated as before and are given in table 8.

The water-surface profiles in the main channel are shown in figure 7. Figure 19 is a plot of the backwater. The maximum values of the backwater in the main channel and on the flood plain, as well as values of the water-surface elevation and backwater at various man-made encroachments, are given in table 9.

Relative Effects of the Dikes and Highway Embankments

As throughout this report, the Otarra dike discussed below is the originally proposed Otarra dike. The water-surface elevations are those computed with the highway embankments in place for the revised design of bridge 2 and the original designs of bridges 6 and 7.

As shown in figure 7, the Manning dike alone causes a greater increase in the water-surface elevation at and near the proposed main-channel crossing of Interstate Route 326 than does the Otarra dike alone. At the main-channel crossing of I-326, the water-surface elevation with the Otarra dike in place is 135.6 ft NGVD; with the Manning dike in place, 140.1 ft NGVD; and with both dikes in place, 142.2 ft NGVD. Thus, the water-surface elevation at the crossing is 4.5 ft higher with the Manning dike alone in place than with the Otarra dike alone in place, and the presence of both dikes causes the water-surface elevation there to

Table A.—Hydraulic properties of the bridges across the flood plain of the Congaree River with both the Manning and Otter dikes in place for the August 1908 flood

Bridge number	Bridge description	Discharge ¹ (ft ³ /s)	Discharge ¹ (percent of total discharge)	Cross-sectional area (ft ²)	Average velocity (ft/s)	Maximum velocity (ft/s)	Maximum velocity at right edge (ft/s)	Maximum velocity at left edge (ft/s)	Average water-surface elevation above MVD (ft)
3	Twin bridges over Congaree Creek	53,800	14.8	14,190	3.8	4.6	2.8	4.5	141.4
4	Twin bridges over Congaree River	318,100	87.4	35,900	8.9	12.3	6.9	3.3	142.2

¹The sum of the discharge does not equal the total discharge because the continuity equation is not satisfied at every node.

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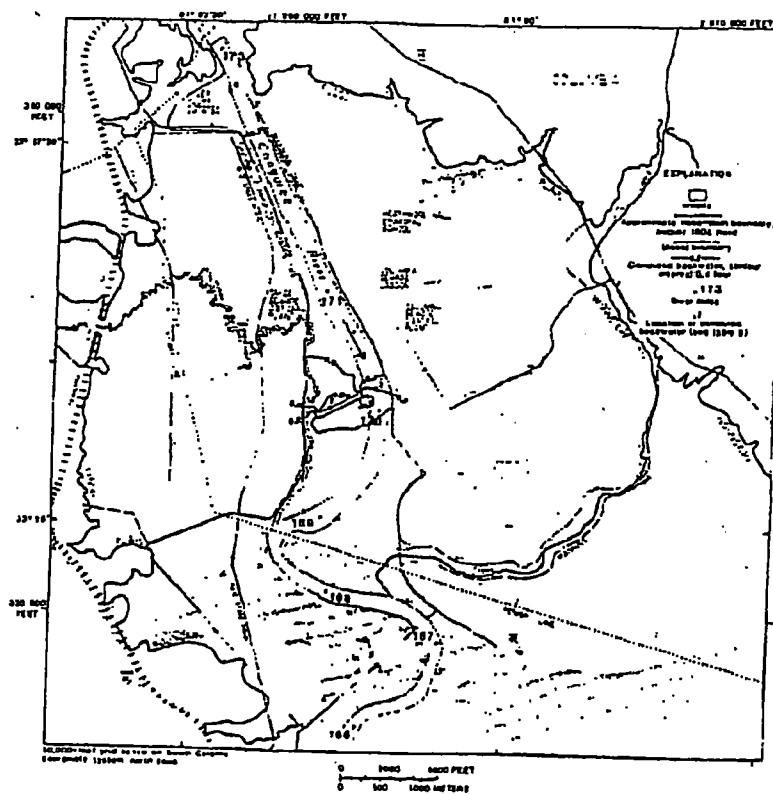


Figure 19.--Backwater, Manning and Otarre dikes and highway embankments in place, August 1908 flood.

Table 9.—Water-surface elevations (without and with highway embankments)
and backwater at various locations with the Manning and Otarre dikes
in place for the August 1908 flood

Location reference number ¹	Location	Water-surface elevation above NGVD without highway embankments (ft)	Water-surface elevation above NGVD with highway embankments (ft)	Backwater (ft)
1	Location of maximum backwater in main channel	144.1	144.5	0.4
2	Location of maximum backwater on flood plain	141.5	142.7	1.2
3	Main channel at twin bridges over Congaree River ²	142.4	142.2	-0.2
4	River Bluff Estates, south side	154.0	154.2	0.2
5	River Bluff Estates, east side	154.1	154.3	0.2

¹Location reference numbers are shown on plate 8 and figure 19.

²The water-surface elevation in the main channel at the twin bridges is an average across the main channel in the case with no highway embankments and an average across the bridge opening in the case with highway embankments.

increase an additional 2.1 ft above the water-surface elevation computed with the Manning dike alone in place. The situation at the east side of River Bluff Estates is different. There the presence of either the Manning dike alone or the Otarra dike alone makes little difference in the water-surface elevation: 145.6 ft NGVD for the Otarra dike and 145.9 ft NGVD for the Manning dike. However, the presence of both dikes causes the water-surface elevation to increase to 154.3 ft NGVD, 8.4 ft higher than the water-surface elevation caused by the presence of the Manning dike alone. At the south side of River Bluff Estates, the presence of both dikes causes the water-surface elevation to increase 9.7 ft above the water-surface elevation caused by the presence of the Manning dike alone.

The models indicate that the effect of the highway embankments is everywhere less than 1.2 ft except on the left flood plain for the case with the Otarra dike alone in place. In that case, with embankments corresponding to the original designs of bridges 6 and 7, the computed backwater on the left flood plain is as much as 2.1 ft. On the basis of these results, bridges 6 and 7 were revised, but the model was not run for these revisions.

SUMMARY AND CONCLUSIONS

The use of a two-dimensional finite-element model to study the hydraulic effect of a highway crossing yields a more detailed evaluation of flow distribution and water-surface elevations than can be obtained by one-dimensional step-backwater and conveyance techniques.

The capability to describe topography, model boundaries, highway embankments, and spur dikes using quadratic isoparametric elements is an important advantage of the Norton-King finite-element model. One of the

most troublesome problems in model application is the difficulty in determining the amount of network detail necessary to avoid local errors caused by large ground-surface gradients, large roughness variations, or both. In general, the model gives reasonable results if a time-consuming and expensive trial-and-error process of network refinement is possible. The need to use arbitrary values of the eddy viscosities must also be considered a disadvantage of the model.

The results of this study suggest that correct and effective application of this model requires considerable experience in its use. For modeling flow on flood plains of highly variable roughness, the testing or development, or both, of other finite-element approaches and comparison with the Horton-King model are suggested, with particular emphasis on the capability of the models to respond accurately to large topographic gradients and highly variable roughness.

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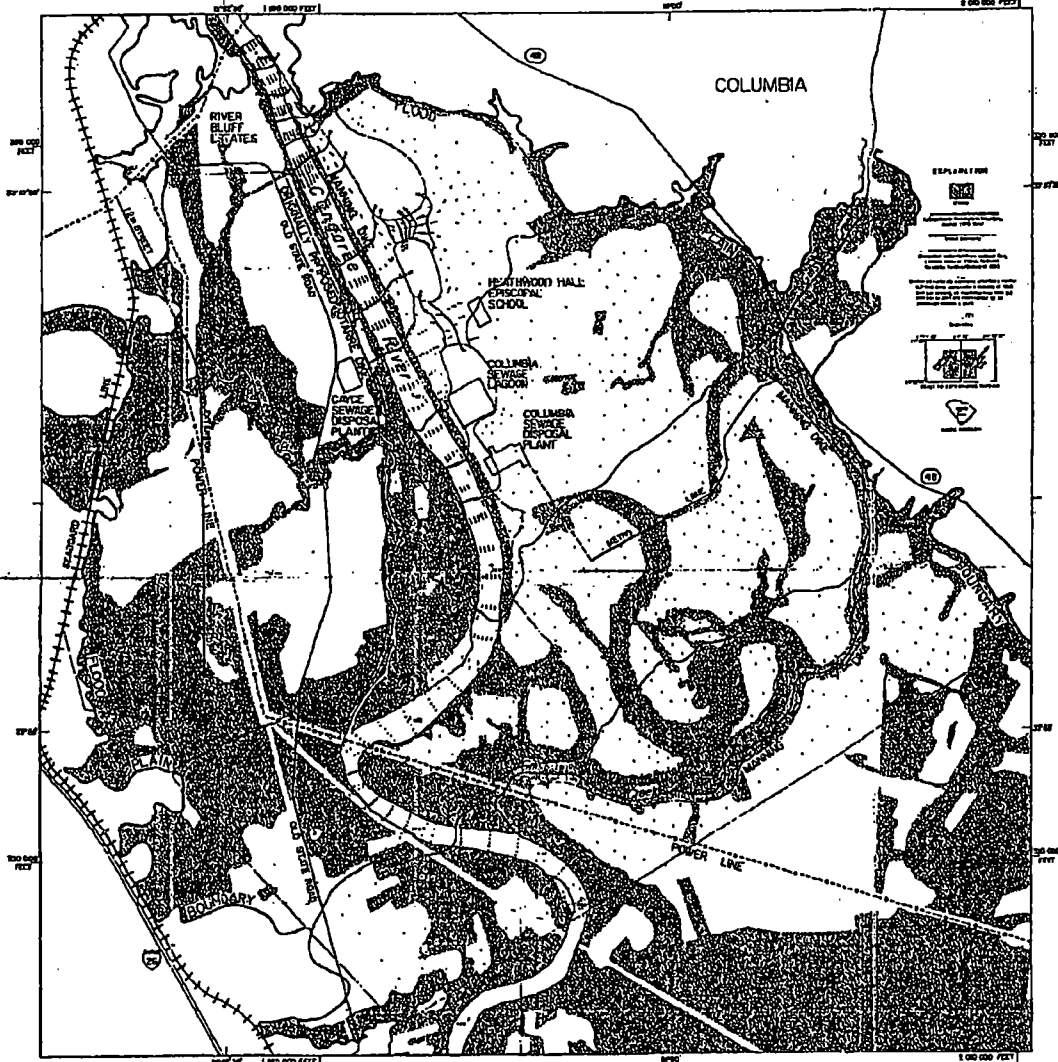
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DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY

PREPARED IN COOPERATION WITH THE SOUTH CAROLINA
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION



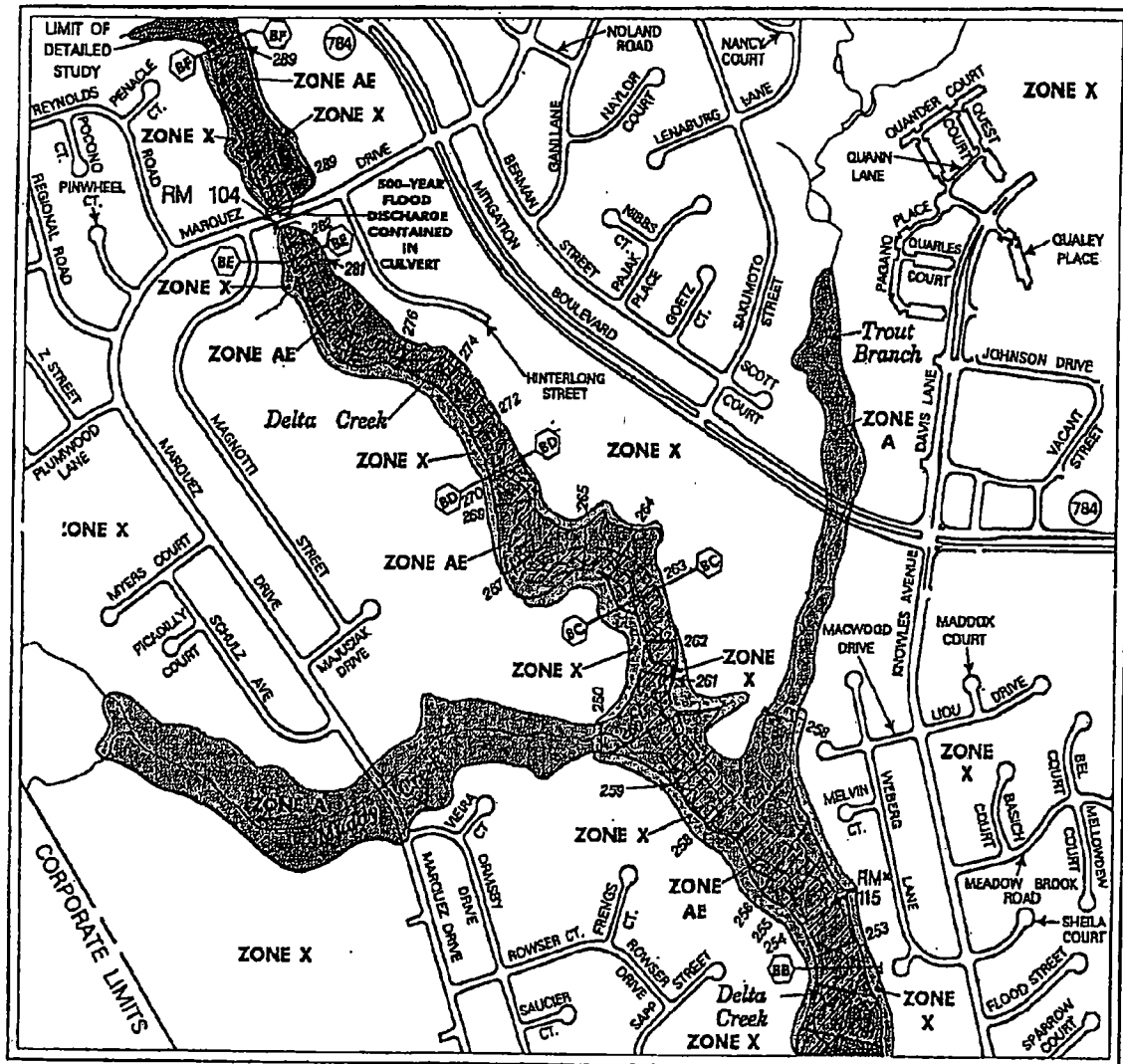
August 1908 flood, Otter Creek dike in place
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4 and 1000
OPEN-FILE REPORT 81-104
PLATE 6



COMPUTED VELOCITY FIELD AND WATER-SURFACE ELEVATIONS, CONGAREE RIVER NEAR
COLUMBIA, SOUTH CAROLINA, OTTARRE DIKE IN PLACE, AUGUST 1908 FLOOD

By
J. K. Lee and
C. S. Sumner, Jr.
1908

Guidelines and Specifications for Study Contractors



FEDERAL EMERGENCY MANAGEMENT AGENCY

January 1995



EXHIBIT 25

charge, with fully-documented permission from the owner that FEMA may release the source code and user's manuals to impacted parties.

The Regional PO should be contacted for a list of currently accepted models.

2. Floodway Determination

A floodway is defined as the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water-surface elevation by more than a designated height. Floodways are developed by the SC as unobstructed waterways to convey floodwaters. The floodway, developed by the SC, is coordinated with the community, Regional PO, and, if applicable, with the State Coordinating Agency. The community is responsible for maintaining the conveyance of flooding sources to mitigate flood hazards.

Normally, the floodway will include the stream channel and that portion of the adjacent land areas required to pass the 100-year flood discharge without cumulatively increasing the water-surface elevation at any point more than 1.0 foot above that of the pre-floodway condition. If the state in which the study is being performed has established more stringent regulations for the maximum rise in water-surface elevations, through legally enforceable statutes, then these regulations shall apply. In the case of interstate streams, where opposite sides of the floodplain are under the jurisdiction of different states, the 1.0-foot maximum allowable rise criterion will be used unless the states have previously agreed on a lesser rise criterion. The SC must obtain the written approval of the Regional PO, through the Contracting Officer, before computing or mapping a second floodway based on a criterion established by the community.

When flow is in the supercritical regime, or where velocity conditions are such that normal encroachment analyses are not possible or are inappropriate, the allowable rise shall be applied to the energy grade line instead of the water-surface elevation.

The surcharge values should be between zero and the maximum allowable value. Negative surcharge values may be caused by excessive encroachment, errors in the bridge modeling, or insufficient encroachment at the downstream section. If attempts to eliminate negative surcharges are unsuccessful, the SC shall contact the Regional PO for guidance. Normally, the floodway shall be determined using equal reduction of conveyance on opposite sides of the stream. If equal reduction of conveyance is not technically appropriate, or where unusual flow patterns are encountered (e.g., interbasin flow, divided flow, etc.), the SC shall coordinate with the Regional PO in selecting the most appropriate engineering methods. Where the stream forms the border between contiguous

communities, and the floodway designation affects both of them, equal reduction of conveyance must be used.

The computation of a floodway on a tributary stream should be based on the 100-year flood discharge and elevation of that stream only and normally should not include consideration of any backwater flooding from the main stream. Therefore, the floodway elevations in the lower reach of a tributary subject to backwater flooding may be lower than those used to plot the flood profiles.

The SC must consider the maximum allowable surcharge (e.g., 1.0 foot) established at the upstream-most cross section in the downstream community when conducting the floodway analysis for upstream communities. This is necessary to avoid excessive increases that would occur if the floodway in the downstream community was not considered. In addition, the starting water-surface elevation for a floodway analysis at the first cross section should be 1.0 foot above the natural 100-year flood elevation unless a lesser rise criterion is imposed by the State.

If storage areas behind structures are accounted for in the discharge computations by routing the 100-year flood hydrograph, and no encroachment is to be allowed, the floodway encroachment stations should be equal to the 100-year floodplain boundary of the storage area. In this case, the same discharge should be used for the unencroached and encroached profiles in the step-backwater analysis to determine the surcharge values. However, if the storage area is to be encroached, then the discharges for the encroached profile downstream of the structure must be determined by routing the 100-year flood hydrograph through the reduced storage area. In this case, the discharge for the encroached profile can be greater than the discharge for the unencroached profile in the step-backwater analysis.

Floodways are not normally delineated in coastal high-hazard areas (Zones VI-30, VE, and V). The computation of floodways on rivers in coastal floodplains should be based on the 100-year flood discharge and elevations of the rivers only and should terminate at the boundary of the VI-30, VE, or V zone or where the mean high tide exceeds the 100-year flood elevation from a riverine-only flood, whichever occurs further upstream.

The SC shall begin to coordinate all floodway determinations with State and community officials and the Regional Office as early as possible. Where the floodplain is entirely contained within one community, the location of the floodway should be coordinated with the State Coordinating Agency, the community, and the CCO through the Regional PO. This coordination shall not be a reason for delay of the FIS. If the SC is unable to arrive at a final floodway determination prior to the final community coordination meeting, the floodway shall be determined as described above.

Flooding source. However, floodway revisions are justifiable and necessary if restudy data indicate an increase in surcharge above the maximum limit, or if, as a result of improved data, the width or configuration of the floodway necessitates a change from that shown on the effective map. When revisions are made to the floodway that will change the effective map, the SC shall notify the Regional PO immediately so that the Regional PO can coordinate with the community as soon as possible in the restudy process.

D. General Modeling Methodologies and Guidance

INTRODUCTION

In the preparation of an FIS, the SC may encounter unique hydraulic situations that require specialized modeling techniques to accurately determine the flood hazard potential. This section provides guidance in handling these situations:

1. Two-Dimensional Water-Surface Computer Models

Two-dimensional (2-D) computer models may be used to determine the water-surface elevations in two directions in the horizontal plane, where one-dimensional computer models may have difficulty analyzing these situations.

2-D computer models may be used for shallow flooding areas, split flow situations, and at complex bridge sites. Although it is not recommended because of the complexities involved and the costs that would be incurred, 2-D models can be used in areas subject to alluvial fan flooding.

These models will only be requested where 1-D models, current accepted techniques, and engineering judgment will not provide satisfactory information for floodplain management and flood insurance purposes. All 2-D models must meet the criteria as specified in 44 CFR 65.6 (a)(6).

Floodways must be developed through an interactive trial-and-error procedure and must be based on equal conveyance reduction.

2. One-Dimensional Unsteady Flow Models

One-dimensional unsteady flow models may be used for floodplains with substantial overbank storage areas, streams where there may be a reversal of flow, and complex pipes, channels, ponds, and reservoir systems.

Any one-dimensional unsteady flow model used must be accepted by FEMA and meet the criteria specified in 44 CFR 65.6(a)(6). The use of any one-dimensional unsteady flow model must first be coordinated with, and approved by, the Regional PO.

Richland County Government

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Office of the County Administrator

COUNTY ADMINISTRATOR'S REPORT OF COUNCIL ACTIONS REGULAR SESSION February 2, 1999 6:00 P.M.

CALL TO ORDER - Council Chair Paul Livingston

INVOCATION - Council Member Jim Tuten

PRESENTATION: City of Columbia; Empowerment Zone

CITIZEN INPUT

APPROVAL OF MINUTES

- January 19, 1999; Regular Session - Approved as submitted.
- January 26, 1999; Zoning Public Hearing - Approved as submitted.

ADOPTION OF AGENDA - Adopted with no additions but with typographical corrections.

REPORT OF COUNTY ATTORNEY FOR EXECUTIVE SESSION MATTERS

1. THIRD READING

- a. Approval of Conveyance of Water Lines Serving American Koyo to the City of Columbia - Third reading approval of an ordinance authorizing the execution of a deed transferring the water lines serving American Koyo to the City of Columbia. Action: ADMINISTRATION, LEGAL & PUBLIC WORKS

2. SECOND READING

- a. Zoning Map Amendment 99-004MA, Jimmy Sellers, From RG-2 to C-3, TMS 19604-05-10, 1701 Percival Road - Removed from the agenda since it was determined that the requested zoning classification already exists for the property in question. Info: PLANNING

DEF-00000068

- b. Zoning Map Amendment 99-005MA, John Wright, From RG-1 to C-3, TMS 17010-05-02(P), Chatsworth Road - Second reading approval. Info: PLANNING
- c. Zoning Map Amendment 99-006MA, Carolyn McLeod, From D-1 to RS-2, TMS 22707-03-03, 209 Beaver Dam Road - Second reading approval. Info: PLANNING

REPORT OF PLANNING AND DEVELOPMENT COMMITTEE

- a. Presentation by Soil and Water Conservation District - Received as information.
- b. Request for Input Into Any Changes to the County's Contract for Solid Waste Haulers - The Council agreed to hold a work session during the month of March or April to discuss this issue. Info: SOLID WASTE
- c. Consideration of Accepting Maintenance of Levee System Along the Longcore River - The Council voted to accept responsibility for local inspection and enforcement of the levee system, and, if required by FEMA, to accept operation and maintenance responsibility for the system contingent upon the following:
 - 1) the property owners upgrade the levee system to meet FEMA standards;
 - 2) the property owners prepare all required documentation, including operation and maintenance plans;
 - 3) certification that the levee system, as upgraded, meets FEMA standards;
 - 4) the parties, including Richland County, the City of Columbia and the developers, resolve the issues of the performance and funding of the operation and maintenance responsibility;
 - 5) the County's acceptance responsibility terminates if the developers of the area do not invest at least \$30,000,000 within ten years of the date of the adoption this motion.
- d. Approval of Transfer of Control of Genesis Cable to Benchmark, Inc. - Approved the transfer of control of Genesis Cable to Benchmark, Inc. The Council asked that the staff determine whether the County's cable franchise agreements allow cable companies to use their lines to provide other services, such as phone service. Action: ADMINISTRATION & LEGAL

4. REPORT OF ADMINISTRATION AND FINANCE COMMITTEE

- a. Consideration of Waiving Building Permit Fee for Harvest Hope Food Bank - The Council voted to waive the building permit fee of \$3,050 for the new Shop Road location of the Harvest Hope Food Bank. Action: PLANNING
- b. Approval of Budget Amendment for Additional Funds for the Unsafe Housing Program - First reading approval of a budget amendment adding \$95,000 to the Planning Department's budget to provide for continued operation of the Unsafe Housing Program. Info: PLANNING & FINANCE
- c. Approval of Budget Amendment for Additional Funds for Probate Court - First reading approval of a budget amendment adding \$20,790 to the Probate Court budget for the purpose of reimbursing outgoing Judge Coleman Catoe for unused sick and annual leave as required by County Ordinance. Info: PROBATE COURT & FINANCE

- d. Approval of Budget Amendment for \$100,000 for Railroad Improvements for Schmalbach-Lubeca - First reading approval of a budget amendment allocating \$100,000 from the General Fund Balance for Economic Development for railroad improvements for Schmalbach-Lubeca, based on a previous commitment from the County Council. Info: FINANCE & GRANTS COORDINATOR
- e. Approval for Purchase of Detention Center Officers' Uniforms - Approved the purchase of Detention Center officers' uniforms from Wright-Johnston, Inc., in an amount not to exceed \$66,869. Action: DETENTION CENTER & PROCUREMENT
- f. Approval of Award of Contract for Replacement of Roof for the Richland County Public Works Administration Building - Approved award of contract to Stanick Sheet Metal and Roofing Company, in the amount of \$65,914, for the replacement of the roof on the Public Works Administration Building. Action: CONSTRUCTION/FACILITIES MAINTENANCE & PROCUREMENT
- g. Approval of By-Laws for Convention Center - Approved the By-Laws as presented. The Council also approved, contingent upon review and approval by the Legal Department, an expenditure from funds generated by the Tourism Development Fee for marketing software for the Convention and Visitors Bureau. Action: ADMINISTRATION & LEGAL
- h. Approval of Comprehensive Annual Financial Report for FY 98-99 - The Council received the Comprehensive Annual Financial Report as information. Info: FINANCE
- i. 10 Minute Presentation of Richland County Home Ownership Program - Received as information.

5. REPORT OF ADMINISTRATION AND FINANCE COMMITTEE (Deferred at the January 5, 1999, Council Meeting)

a. Report by the County Administrator Regarding the Proposal for Office Space for Central Court and the Eastover Magistrate

- 1) Central Court and Columbia Magistrate - The Council approved renovating space on the first floor of the Central Court Building on Huger Street for the Columbia Magistrate's Office at an estimated cost of \$81,020. Action: ADMINISTRATION & COLUMBIA MAGISTRATE
- 2) Eastover Magistrate - The Council asked that Mr. Ben Boozer of the Dowlown Development Association give the Council a fifteen minute assessment of the available options during the Council work session of February 11, 1999. Action: ADMINISTRATION

6. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE
(From January 20, 1999, Committee Meeting)

- a. Approval of MOLI, Inducement Resolution and Millage Rate Agreement for SCT Utilities - Approved a Memorandum of Understanding, Inducement Resolution and Millage Rate Agreement which offer incentives to SCT Utilities in return for a \$47 million expansion by the company and creation of 700 additional jobs. Action:

ADMINISTRATION, LEGAL & FINANCE

- b. Follow-Up Discussion of Incentives for Unannounced Company - Received as information.
- c. Discussion of Impact of FEMA Flood Maps on Development in the Congaree Area - Received as information.

7. REPORT OF ECONOMIC DEVELOPMENT COMMITTEE

(From January 26, 1999, Committee Meeting)

- a. Approval of a Resolution Consenting to the Assignment of Ownership and Control of Holopack to H. I. Corporation - The Council approved the Resolution consenting to the assignment of ownership, with the provision that H. I. Corporation abide by the County's economic development reporting requirements. Action: ADMINISTRATION, LEGAL & FINANCE

8. REPORT OF COUNTY ADMINISTRATOR

- a. Council Work Sessions - The Administrator advised the Council that three issues needed to be added to the Council's list of work session issues: (1) the role that Benchmark, Inc., will play in overseeing the City and County Planning Departments on a temporary basis; (2) the proposed co-location of the City and County Planning Departments; and (3) follow-up on the Council's goals established at the Council Retreat. The Council agreed to discuss these issues at a work session to be held on Thursday, February 11, 1999, at 4:00 p.m.
- b. Council Schedule - The Council agreed to cancel the March 2, 1999, Regular Session Council Meeting since the National Association of Counties Annual Conference in Washington, D. C., does not end until March 2 and several of the Council members will be attending the conference. The Council scheduled a Special Called Meeting for February 23, 1999, following the A&F and D&S Committee meetings, to address those items that would normally have been addressed at the March 2nd Council Meeting.
- c. Legislative Alert - The Administrator advised the Council that the House Environmental Affairs Committee will meet on Wednesday, February 3, 1999, to discuss proposed legislation governing solid waste collection by local governments.

9. CITIZEN INPUT

10. MOTION PERIOD

- a. Tony Mizzell - Move to have the State's Adjutant General make a presentation to the Council as to the economic impact of the National Guard.

ADJOURN

LGCH1 - 864-599-8400 2/22/99 3:18: PAGE 00124 RightFax

LOCKWOOD GREENE
Consulting · Design · ConstructionLockwood Greene Engineers, Inc.
1531 International Drive
P.O. Box 491, Springburg, SC 29304
Main (864) 578-2000 Fax (864) 599-6400**INTEROFFICE CALL REPORT**Outgoing

TYPE OF CALL

COMPANY

ADDRESS

006217.90

PROJECT NUMBER

Congaree Property

PROJECT NAME

18-Feb-1999

DATE

5:00PM

TIME

Harry Reed, Richland County and Cary
McSwain, Richland County

CONTACT

803-748-4611

PHONE

Columbia Property

REGARDING

CONVERSATION CONTENT

1. Cary McSwain returned my call to answer my request to clarify restrictions to building within Zone X as defined by FEMA. Richland County's interpretation is: "if a SC registered land surveyor certifies that the building is within an area protected by levee system certified to withstand 100-year flood, a building permit would be issued with no restrictions."
2. The document referenced by Ralph Pearson, County Engineer, was an excerpt from the subdivision ordinance regarding construction of drainage channels and does not apply to the levee system and property along the Congaree River.
3. Requested a letter confirming the above. Mr. McSwain said he would review this with the County Attorney on February 20 and provide a written provision.

Post-It® Fax Note 7571		Date 2/19/99	# of pages 1
To Harry Reed	From Wilson Tillotson		
Co./Dept.	Co.		
Phone #	Phone # 599-9881		
Fax # 803-929-6051	Fax # 864-999-6400		

Post-It® Fax Note 7571		Date 2/19/99	# of pages 1
To Cary McSwain	From Wilson Tillotson		
Co./Dept.	Co.		
Phone #	Phone #		
Fax # 803-748-4611	Fax #		

Full Project Distribution

Internal Only

File Only

PREPARED BY: Wilson Tillotson

F:\ep0002\0062175\19\hwt002.doc
006217.90 FY2011

Page 1 of 1

DEF-00000081

ASSIGNMENT

THIS ASSIGNMENT ("Assignment") is made this 1st day of February, 1999 by Burroughs & Chapin Company, Inc. ("Assignor") to Columbia Venture, LLC, a South Carolina limited liability company ("Assignee").

WHEREAS Assignor made and entered into certain Purchase and Sale Agreement dated as of November 13, 1998 by and between Assignor and Burwell D. Manning, Jr., Eastern Corn & Grain Company, Inc. and Overlook, Inc. (the "Original Agreement"); and

WHEREAS, pursuant to Section 4(d) of the Original Agreement, Buyer executed and delivered a Notice of Intention to Purchase to Seller dated January 9, 1999 to be effective January 12, 1999 (the "Notice"); and

WHEREAS, Buyer notified Seller by letter on February 11, 1999 that the Buyer was terminating the Agreement because certain conditions precedent set forth in the Agreement had not been resolved to the reasonable satisfaction of Buyer (the "Termination"); and

WHEREAS, Buyer and Seller reinstated and amended the Agreement pursuant to that certain Reinstatement of and Amendment to Purchase and Sale Agreement dated on or about the date hereof (the "Reinstatement") (the Original Agreement, Notice and Reinstatement are collectively referred to herein as the "Agreement"); and

WHEREAS, Assignor desires and Assignee has requested that Assignor assign its rights and responsibilities under the Agreement to Assignee.

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) paid to the Assignor and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Assignor does hereby assign, set over, sell and transfer all of its right, title and interest in and to the Agreement to the Assignee, and the Assignee does hereby accept such assignment and assumes all rights and responsibilities of the Assignor under the Agreement.

IN WITNESS WHEREOF, the Assignor and Assignee have executed this Assignment as of the date first above written.

ASSIGNOR:

Burroughs & Chapin Company, Inc.

By: *Donald S. Ward*

Its: PRESIDENT + CEO

Columbia: 539007

CVMcNair000297

ASSIGNEE:

Columbia Venture, LLC

By: Burroughs & Chapin Management Company, LLC, its manage

By: Burroughs & Chapin Company, Inc.

Its: ~~Managing~~ Member

By: Daugherty O. Woodliff

Its: President and CEO

Columbia: 539007

CVMcNair000298

The undersigned hereby consent to and acknowledge the foregoing Assignment.

Burwell D. Manning, Jr.
Burwell D. Manning, Jr.

Eastern Corn & Grain Company, Inc.

By: Burwell D. Manning, Jr.

Its: Per

Overlook, Inc.

By: Burwell D. Manning, Jr.

Its: Per

Columbia: 539007

CVMcNair000299

Instrument: 1888016267

Book/Page: R281: 1865

Date/Time: 2/22/1998 10:53:15 AM

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TITLE TO REAL ESTATE
GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that BURWELL D. MANNING, JR. (hereinafter the "Grantor"), in consideration of the sum of Five Dollars and 00/100 (\$5.00) to him well and truly paid by COLUMBIA VENTURE, LLC, (hereinafter the "Grantee"), in the State aforesaid, at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, subject to the Permitted Exceptions hereinafter set forth and referred to, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said:

COLUMBIA VENTURE, LLC

All those certain pieces, parcels or lots of land with improvements thereon, if any, situate, lying and being near the City of Columbia, County of Richland, State of South Carolina, and described in *Exhibit A* attached hereto and incorporated herein by reference (the "Premises").

DERIVATION: Deed of Manning Development Company, dated February (no day included), 1976 and recorded February 23, 1976 in the Office of the RMC for Richland County in Deed Book D-374 at page 305.

GRANTEE'S MAILING ADDRESS: For the purposes of this deed the Grantee's mailing address is:

c/o Burroughs & Chapin Company, Inc.
2411 Oak Street, Suite 402
Myrtle Beach, South Carolina 29577
Attn: Mr. George Gregory Douglas P. Woods

TOGETHER WITH ALL AND SINGULAR, the rights, members, hereditaments and appurtenances to the said Premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the "Permitted Exceptions"):

(1) all agreements, conditions, covenants, easements, reservations, restrictions, and rights of way indicated by instruments, including plats, of record pertaining to the Premises;

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Instrument: 1999015257

Book/Page: R261 : 1866

Date/Time: 2/22/1999 10:33:15 AM

(II) all applicable zoning and other land use regulations or restrictions of any political subdivision or governmental agency having jurisdiction over the Premises; and,

(III) riparian rights incident to the Premises.

SUBJECT TO THE PERMITTED EXCEPTIONS, TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, unto the said Grantee, its successors and assigns forever;

AND SUBJECT TO THE PERMITTED EXCEPTIONS, the said Grantor does hereby bind himself, his heirs, assigns, and personal representatives to warrant and forever defend all and singular the said Premises unto the said Grantee, its successors and assigns, against the Grantor and against the Grantor's heirs, assigns, and personal representatives, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS, the Hand and Seal of the Grantor this 19 day of February, 1999.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

James E. Manning, Jr.
WITNESS

Burwell D. Manning, Jr. [SEAL]
BURWELL D. MANNING, JR.

James E. Manning, Jr.
WITNESS

2

NPCCCL2331676.1-DE (PFA) 020074-0

Richard County ROD

Richard County Auditor Paul Bradley 2007

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CV010145

Instrument: 1999015257

Book/Page: R281 : 1887

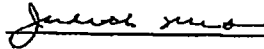
Date/Time: 2/22/1999 10:53:15 AM

STATE OF SOUTH CAROLINA

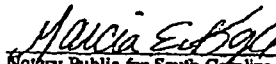
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness, who, after being duly sworn, deposes and says that s/he saw the within named BURWELL D. MANNING, JR., sign, seal and, as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above witnessed the execution thereof.



SWORN to before me this
19th day of February, 1999.


[L.S.]
Notary Public for South Carolina
My Commission Expires: 2-22-03

3

NPCOL2331878.1-DE (APX) 020074-0

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CV010146

Instrument: 1889015257

Book/Page: R281:1858

Date/Time: 2/22/1999 10:53:15 AM

EXHIBIT A

All that certain piece, parcel or tract of land, with the improvements thereon, situate, lying and being on the southwestern side of Bluff Road, approximately 6 miles South of the City of Columbia, County of Richland, State of South Carolina, shown and delineated on a plat of EASTWAY PARK by McMillan Engineering Company, dated April 9, 1963, revised March 29, 1965, and recorded in Plat Book "V" at Pages 164 and 165 in the Office of the Clerk of Court for Richland County; said tract being the unsubdivided portion of the land as shown on said plat upon which the lagoon for the subdivision sewer system is located, containing approximately twenty-seven and thirty-two one-hundredths (27.32) acres, more or less; said tract having the following boundaries and measurements, to-wit: On the North by Lot 9, Block H; Lots 1, 2, 3, 4, 5, 6, 8, Block G; Lots 1, 4, 5, 6, 7, 8, 9, 12, 13, and 22, Block B; Lot 5, Block B, whereon it measures two thousand ninety and nine-tenths (2,090.9) feet, more or less; on the East by property now or formerly of Jesse Chappel, whereon it measures one thousand one hundred three and nine-tenths (1,103.9) feet, more or less; on the South by property now or formerly of C. B. Jordan, the boundary being along a lagoon as shown on said plat, whereon it measures one thousand three hundred eighty-five (1,385) feet, more or less; and on the West by property known as the "Old Shirley Place" whereon it measures four hundred ninety-seven (497) feet, more or less; be all measurements a little more or less.

LESS AND EXCEPTING THEREFROM:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being on the southwestern side of Bluff Road, approximately 6 miles south of the City of Columbia, County of Richland, State of South Carolina, containing 13.85 acres as shown as Wastewater Treatment Plant on plat prepared for East-Bluff Sewage Company, Inc., by W. Frank McAulay, Jr., R.L.S., dated July 29, 1980 and recorded in the RMC Office for Richland County in Plat Book Z at Page 6910, together with all sewer mains, laterals and lines serving Eastway Park subdivision as shown on a plat prepared by McMillan Eng. Co. Dated April 9, 1963, recorded in Plat Book W, Page 142 and 143 in the Office of the Clerk of Court for Richland County, all of which was conveyed to Richland County by Deed of Burwell D. Manning, Jr., dated October 4, 1984 and recorded October 9, 1984 in the Office of the RMC for Richland County in Deed Book D-713 at page 596.

ASSESSOR'S TAX PARCEL NO.: 13415-01-10

NPCL 2231078.1-00 (APA) 020074-0

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CV010147

Instrument: 1999015257

Book/Page: F281 : 1889

Date/Time: 2/22/1999 10:53:16 AM

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located in Richland County, South Carolina, bearing Richland County Tax Map Parcel 13415-01-10 and was transferred by Burwell D. Manning, Jr. to Columbia Venture, LLC on February 19, 1999.
3. The deed is exempt from the deed recording fee because (See Information section of affidavit): Consideration is less than \$100.00 - See Exception #1 (S.C. Code Section 12-24-40(1)).
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

By: Burwell D. Manning, Jr.
Its: _____

SWORN to before me this 19th
day of February, 1999

MARCIA E. KORY
Notary Public for South Carolina
My Commission Expires: 7-22-03

Columbia: 840624

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CV010148

Instrument: 1899015257

Book/Page: R281 : 1870

Date/Time: 2/22/1998 10:53:15 AM

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interests and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining the consideration paid in money's worth. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provision of the law.

Excepted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space as a cemetery owned by a cemetery company licensed under Chapter 53 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, uncles/aunts, grandchildren, and the spouses and final descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quickclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or to be paid under the corrective or quickclaim deed.

Columbia: 540824

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CV010149

Instrument: 1898015258

Book/Page: R281: 1871

Date/Time: 2/22/1998 10:53:48 AM

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

**TITLE TO REAL ESTATE
GENERAL WARRANTY DEED**

TEST:
A TRUE COPY
Richard W. Ralston
R. M. G.

KNOW ALL MEN BY THESE PRESENTS that ELIZABETH K. MANNING (hereinafter the "Grantor"), in consideration of the sum of Five Dollars and 00/100 (\$5.00) and no other monetary consideration to her well and truly paid by COLUMBIA VENTURE, LLC, (hereinafter the "Grantee"), in the State aforesaid, at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, subject to the Permitted Exceptions hereinafter set forth and referred to, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said:

COLUMBIA VENTURE, LLC

All those certain pieces, parcels or lots of land with improvements thereon, if any, situate, lying and being near the City of Columbia, County of Richland, State of South Carolina, and described in *Exhibit A* attached hereto and incorporated herein by reference (the "Premises").

DERIVATION: Deed of Eastern Contractors, Inc., dated April 24, 1981 and recorded July 12, 1981 in the Office of the RMC for Richland County in Deed Book D-581 at page 905.

GRANTEE'S MAILING ADDRESS: For the purposes of this deed the Grantee's mailing address is:

c/o Burroughs & Chapin Company, Inc.
2411 Oak Street, Suite 402
Myrtle Beach, South Carolina 29577
Attn: Mr. George Gregory Douglas P. Wandel

TOGETHER WITH ALL AND SINGULAR, the rights, members, hereditaments and appurtenances to the said Premises belonging or in anywise incident or appertaining.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the "Permitted Exceptions"):

(i) all agreements, conditions, covenants, easements, reservations, restrictions, and rights of way indicated by Instruments, including plats, of record pertaining to the Premises;

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Richland County ROD

Richland County Auditor Paid February 2007

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CV010150

Instrument: 1999015258

Book/Page: R281:1872

Date/Time: 2/22/1999 10:53:15 AM

(ii) all applicable zoning and other land use regulations or restrictions of any political subdivision or governmental agency having jurisdiction over the Premises; and,

(iii) riparian rights incident to the Premises.

SUBJECT TO THE PERMITTED EXCEPTIONS, TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, unto the said Grantee, its successors and assigns forever;

AND SUBJECT TO THE PERMITTED EXCEPTIONS, the said Grantor does hereby bind herself, her heirs, assigns, and personal representatives to warrant and forever defend all and singular the said Premises unto the said Grantee, its successors and assigns, against the Grantor and against the Grantor's heirs, assigns, and personal representatives, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS, the Hand and Seal of the Grantor this 19th day of February, 1999.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

Judith M. Manning
WITNESS

Elizabeth K. Manning [SEAL]
ELIZABETH K. MANNING

Julio E. Mandays, Jr.
WITNESS

Instrument: 1999015258

Book/Page: R201 : 1873

Date/Time: 2/22/99 10:53:15 AM

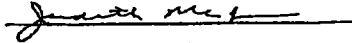
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness, who, after being duly sworn, deposes and says that s/he saw the within named ELIZABETH K. MANNING, sign, seal and, as her act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above witnessed the execution thereof.



SWORN to before me this
22nd day of February, 1999.



[L.S.]

Notary Public for South Carolina

My Commission Expires: 2-22-03

Richland County ROD

Richland County Auditor Paul Brumby 2007

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NPCOL1331477.1-05 (AFA) 020274-0

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-201-

5832

Instrument: 1999015258

Book/Page: R281: 1874

Date/Time: 2/22/1999 10:53:15 AM

EXHIBIT A

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in Richland County, South Carolina, near Columbia, South Carolina, containing FIFTEEN (15) ACRES and being more fully shown and delineated on a map of same prepared for J. C. JUDY, JR., by W. Frank McAulay, Jr., R.L.S. dated April 22, 1973, and recorded in the Office of the R.M.C. for Richland County in PLAT BOOK "X", PAGE 2664; said property having the following courses, mites, measurements and boundaries as shown on the aforesaid map, to-wit: To find the point of beginning, begin at a concrete monument situate at the northeasternmost corner of the 120-Acre tract, owned by the City of Columbia, South Carolina, and designated on the aforesaid map as CITY OF COLUMBIA, SOUTH CAROLINA; thence from said concrete monument N 23° 46' W for 3,695 feet to a point located on the southern boundary of the subject 15-Acre tract; thence from said point N 66° 14' E for 430 feet to a point at the easternmost corner of the subject 15-Acre tract, which is the point of beginning; thence from said point of beginning, whereon the same corners with other property of Overlook, Inc. and along the property of Overlook, Inc., S 66° 14' W for 1,040 feet to a point; thence turning and running along said property N 26° 38' W for 630 feet to a point; thence turning and continuing along said property N 63° 22' E for 1,000 feet to a point; thence turning and continuing along said property S 29° 38' E for 670 feet to a point, this being the point of beginning. All measurements a little more or less.

ASSESSOR'S TAX MAP NO. 11100-01-07

NPCOL2331677.1-D2 (APA) 000074.0

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CV010153

Instrument: 1999015258

Book/Page: R281: 1875

Date/Time: 2/22/1999 10:53:15 AM

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located in Richland County, South Carolina, bearing Richland County Tax Map Parcel 11100-01-07 and was transferred by Elizabeth K. Manning to Columbia Venture, LLC on February 19, 1999.
3. The deed is exempt from the deed recording fee because (See Information section of affidavit): Consideration is less than \$100.00 - See Exception #1 (S.C. Code Section 12-24-40(1)).
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Spouse of Seller; member of Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

By: *Elizabeth K. Manning*
Its: _____SWORN to before me this 19th
day of February, 1999*MELBA E. HAYLE*
Notary Public for South Carolina
My Commission Expires: 2-22-03

Columbia: 540824

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CV010154

Instrument: 1899015256

Book/Page: R281 : 1876

Date/Time: 2/22/1998 10:53:15 AM

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and existing on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Excepted from the law are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-4-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space as a cemetery owned by a cemetery company licensed under Chapter 33 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and blood descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quickclaim deed used to confirm title already vested in the grantor, provided that no consideration of any kind is paid or is to be paid under the corrective or quickclaim deed.

Columbia: 540034

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Instrument: 1009016259

Book/Page: R281 : 1877

Date Time: 2/22/1998 10:53:15 AM

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

**TITLE TO REAL ESTATE
GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS that BURWELL D. MANNING, JR. and EASTERN CORN AND GRAIN COMPANY, INC. (hereinafter the "Grantors"), in consideration of the sum of Five Dollars and 00/100 (\$5.00) to them well and truly paid by COLUMBIA VENTURE, LLC, (hereinafter the "Grantee"), in the State aforesaid, at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, subject to the Permitted Exceptions hereinafter set forth and referred to, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

COLUMBIA VENTURE, LLC

All that certain piece, parcel or tract of land with improvements thereon, if any, situate, lying and being near the City of Columbia, County of Richland, State of South Carolina, and delineated on a plat of Parcel No. 2, containing 11.85 acres, more or less, prepared for Heathwood Hall Episcopal School, by Cox and Dinkins, Inc., dated April 18, 1996, last revised June 3, 1998 in the Office of the Register of Deeds for Richland County in Record Book 96 at page 614 (the "Tract(s)").

DERIVATION: Deed of Heathwood Hall Episcopal School, dated June 22, 1998 and recorded February 10, 1999 in the Office of the Register of Deeds for Richland County in Record Book 278 at page 2384.

ASSESSOR'S TAX PARCEL NO.: a portion of 11000-01-01

GRANTER'S MAILING ADDRESS: For the purposes of this deed the
Grantee's mailing address is:

c/o Burroughs & Chapin Company, Inc.
2411 Oak Street, Suite 402
Myrtle Beach, South Carolina 29577
Attn: Mr. George Gregory Douglas P. Wondol

TOGETHER WITH ALL AND SINGULAR, the rights, members, hereditaments and appurtenances to the said Premises belonging or in anywise incident or appertaining.

NPGOL1332121, 1-DB (NFA) 020074-0

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Instrument: 1899015259

Book/Page: R261: 1878

Date/Time: 2/22/1999 10:53:15 AM

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the "Permitted Exceptions"):

- (i) all agreements, conditions, covenants, easements, reservations, restrictions, and rights of way indicated by instruments, including plats, of record pertaining to the Premises;
- (ii) all applicable zoning and other land use regulations or restrictions of any political subdivision or governmental agency having jurisdiction over the Premises; and,
- (iii) riparian rights incident to the Premises.

SUBJECT TO THE PERMITTED EXCEPTIONS, TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, unto the said Grantee, its successors and assigns forever;

AND SUBJECT TO THE PERMITTED EXCEPTIONS, the said Grantors do hereby bind themselves, their heirs, personal representatives, successors and assigns to warrant and forever defend all and singular the said Premises unto the said Grantee, its successors and assigns, against the Grantors and against the Grantors' heirs, personal representatives, successors and assigns, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS, Grantors have caused these presents to be executed and their respective seals to be hereunto affixed, execution on behalf of the corporate Grantor being by its heretofore duly authorized officer, this 19 day of February, 1999.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
WITNESS AS TO BOTH

[Signature]
WITNESS AS TO BOTH

GRANTOR:

Burwell D. Manning, Jr. [SEAL]
BURWELL D. MANNING, JR.

EASTERN CORN AND GRAIN COMPANY, INC.
(CORPORATE SEAL)

By: Burwell D. Manning, Jr. [SEAL]
Its: President

2

NPOOL2332121.1-05 (APA) 020074-0

Richard County Auditor Paul Brinkley 2007

Richard County Auditor Paul Brinkley 2007

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Instrument: 199901529

Book/Page R201: 1879

Date/Time: 2/22/1999 10:53:16 AM

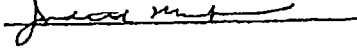
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness, who, after being duly sworn, deposes and says that s/he saw the within named BURWELL D. MANNING, JR., sign, seal and, as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above witnessed the execution thereof.



SWORN to before me this
~~19th~~ day of February, 1999.

 [L.S.]
 Notary Public for South Carolina
 My Commission Expires: 2-22-03

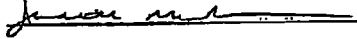
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

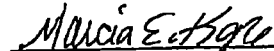
)
)
)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness, who, after being duly sworn, deposes and says that s/he saw the within named BURWELL D. MANNING, JR., President of EASTERN CORN AND GRAIN COMPANY, INC., sign, seal and, as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above witnessed the execution thereof.



SWORN to before me this
~~19th~~ day of February, 1999.

 [L.S.]
 Notary Public for South Carolina
 My Commission Expires: 2-22-03

3

NP0012332131.1-02 (AFA) 020274-0

Richland County ROD

Richland County Auditor Paul Brinkley 2007

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5838

Instrument: 1998015269

Book/Page: R281 : 1880

Date/Time: 2/22/1999 10:53:15 AM

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located in Richland County, South Carolina, bearing Richland County Tax Map Parcel 11008-01-01 and was transferred by Burwell D. Manning, Jr. and Eastern Command Grain Company, Inc. to Columbia Venture, LLC on February 19, 1999.
3. The deed is exempt from the deed recording fee because (See Information section of affidavit): Consideration is less than \$100.00 - See Exception #1 (S.C. Code Section 12-24-40(1)).
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

By: Burwell D. Manning Jr.
As:

SWORN to before me this 19th
day of February, 1999

MARCIA F. KYLE
Notary Public for South Carolina
My Commission Expires: 2-22-03

Columbia: 540824

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CV010159

Instrument: 1999015259

BookPage: R281 : 1881

DateTime: 2/22/1999 10:53:15 AM

INFORMATION

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Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space as a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

Columbia: 540824

Richard County ROD

Richard County Auditor Paul Bradley 2017

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CV010160



Federal Emergency Management Agency

Washington, D.C. 20472

MAR 19 1999

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The Honorable Strom Thurmond
United States Senate
Washington, D.C. 20510-4001

Dear Senator Thurmond:

This is in response to your February 26, 1999, letter to the Federal Emergency Management Agency (FEMA) on behalf of Mr. T. Cary McSwain, Richland County Administrator. With your letter, you included a letter that Mr. McSwain wrote to FEMA on February 26, 1999, in which he requests that FEMA not release any maps regarding the floodway and floodplains of the Congaree River until the county has had an opportunity to fully review the backup data used to revise the flood hazard maps. You asked us to review the situation and provide Mr. McSwain any assistance that we can. We are happy to comply.

Thank you for transmitting Mr. McSwain's concerns to us. We received the original of Mr. McSwain's February 26 letter on which your office was copied. Be assured that we are coordinating directly with the county regarding Mr. McSwain's letter and the revision of flood hazards along the Congaree River, and we have been in frequent contact with county officials. We are working closely with them to resolve any problems with the floodway and floodplain delineation of the Congaree River.

Thank you again for your interest in the National Flood Insurance Program (NFIP) maps. We will continue to work with the county to ensure that the most accurate data available are presented and that the goals of the NFIP are met. This will allow county officials to continue to administer an effective floodplain management program. If we can be of further assistance, please have a member of your staff contact our Office of Congressional and Legislative Affairs at (202) 646-4500.

Sincerely,

Michael J. Armstrong
Associate Director for Mitigation

cc: FEMA Region IV Office

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

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RECEIVED

DEF-00000256



Flood Hazards Along the Congaree River

January 24, 2000

COSD001-00107

EXHIBIT 21



Introduction

-
- Purpose of FEMA and the NFIP
 - FEMA is mandated to map *existing* conditions in order to charge fair rates for flood insurance and to promote sound floodplain management
 - FEMA has no authority over zoning, land use planning, or permitting

COSD001-00108

EXHIBIT 21



Overview

- Hydrologic analysis
 - Methods used in Effective FISs
 - Methods used in August 1999 Preliminary FIS
- Determination of floodplain and floodway
 - HEC-2 Hydraulic Model
 - Levee Review
- Appeal procedures

COSD001-00109

EXHIBIT 21



Hydrologic Analysis

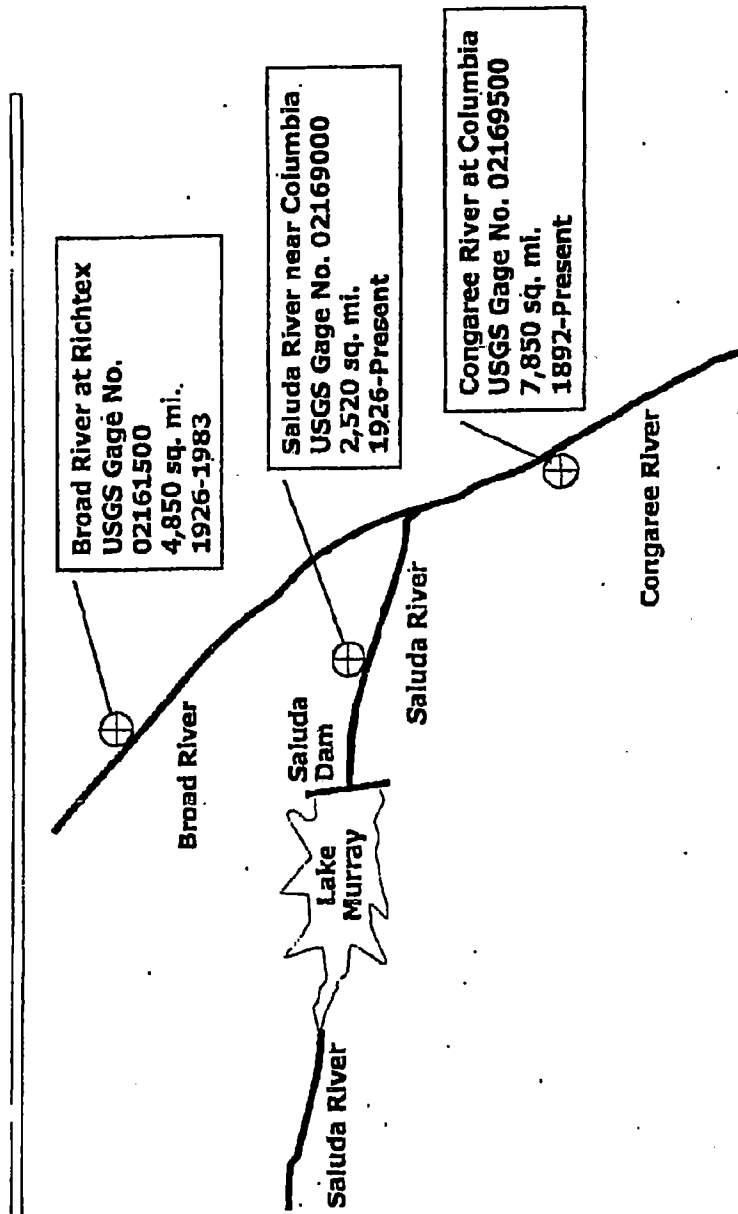
- Location of USGS gages
- Methods used in Effective FISs
- Methods used in August 1999 Preliminary FIS
- Results

COSD001-00110

EXHIBIT 21



USGS Gage Locations



Drawing not to scale, for
illustrative purposes only

COSD001-00111

EXHIBIT 21



Methods used in Effective FISS

- Study performed by USACE, Charleston District, in late 1970's
- Performed statistical analysis of Congaree River gage 1892-1978.
- Did not adjust flows to account for Lake Murray

COSD001-00112

EXHIBIT 21



Methods used in August 1999 Preliminary FIS

- Use Congaree River gage data from 1926-1996
- Adjust Congaree River gage data from 1926-1930 based on Broad River gage data, because Saluda Dam was under construction
- Use Bulletin 17B-recommended skew

COSD001-00113

EXHIBIT 21



Hydrologic Results

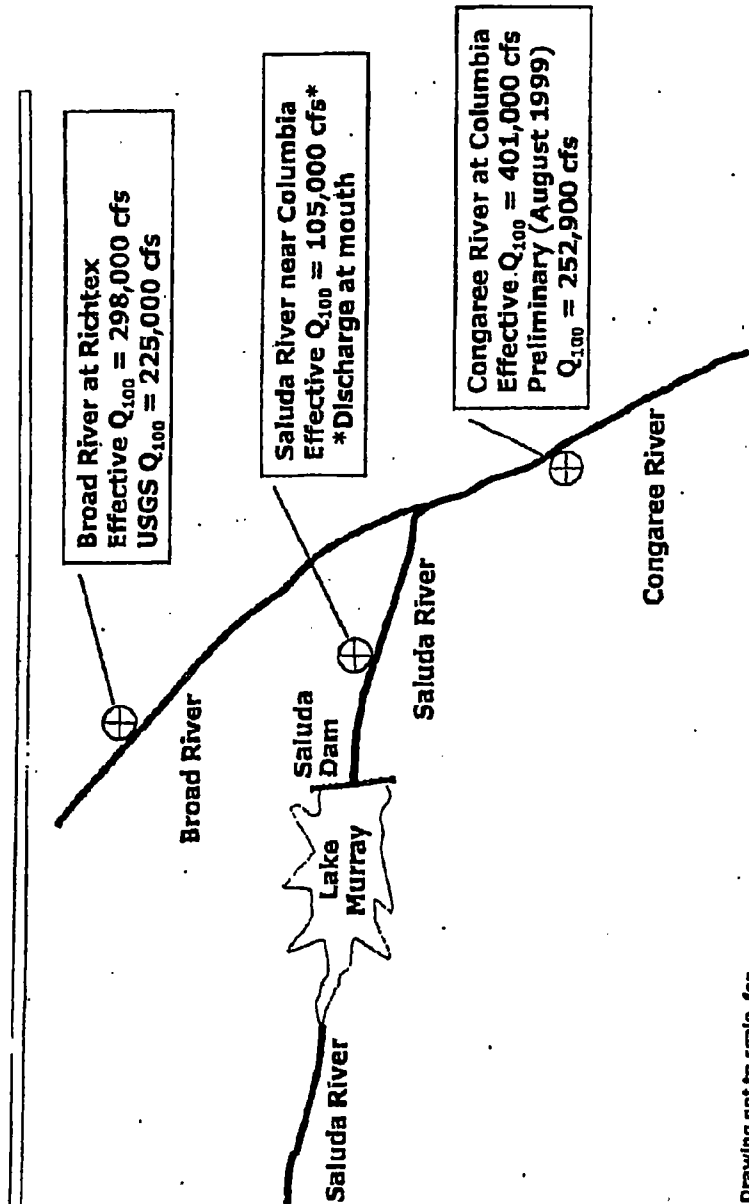
Flooding Source and Location	Drainage Area (sq. mi.)	100-Year Peak Discharge (cfs)
<u>Effective FIS</u>		
Congaree River at USGS gage	7,850	401,000
<u>August 1999 Preliminary FIS</u>		
Congaree River at USGS gage	7,850	252,900

COSD001-00114

EXHIBIT 21



Hydrologic Results



Drawing not to scale, for illustrative purposes only

COSD001-00115

EXHIBIT 21



HEC-2 Hydraulic Model

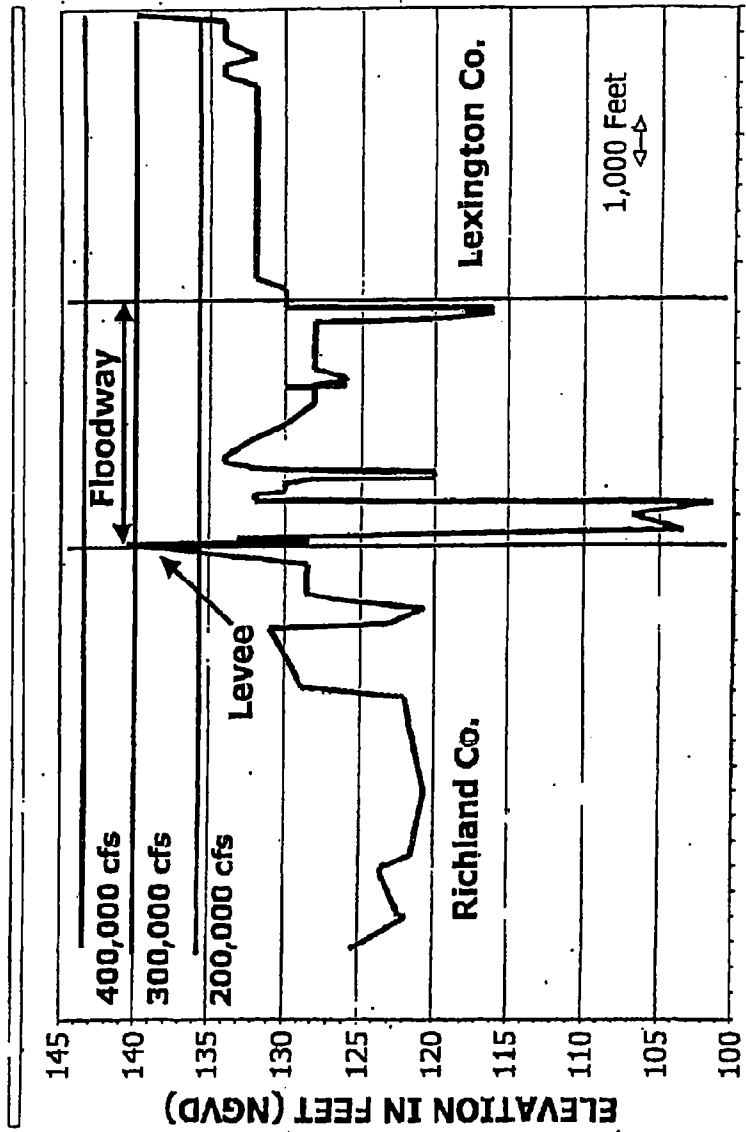
- Discharges determined by hydrologic analysis
- Cross sections determined from topographic maps and field surveys
- Calibrated to historical floods
- Sensitivity of hydraulic model to changes in discharge

COSD001-00116

EXHIBIT 21



Cross Section C

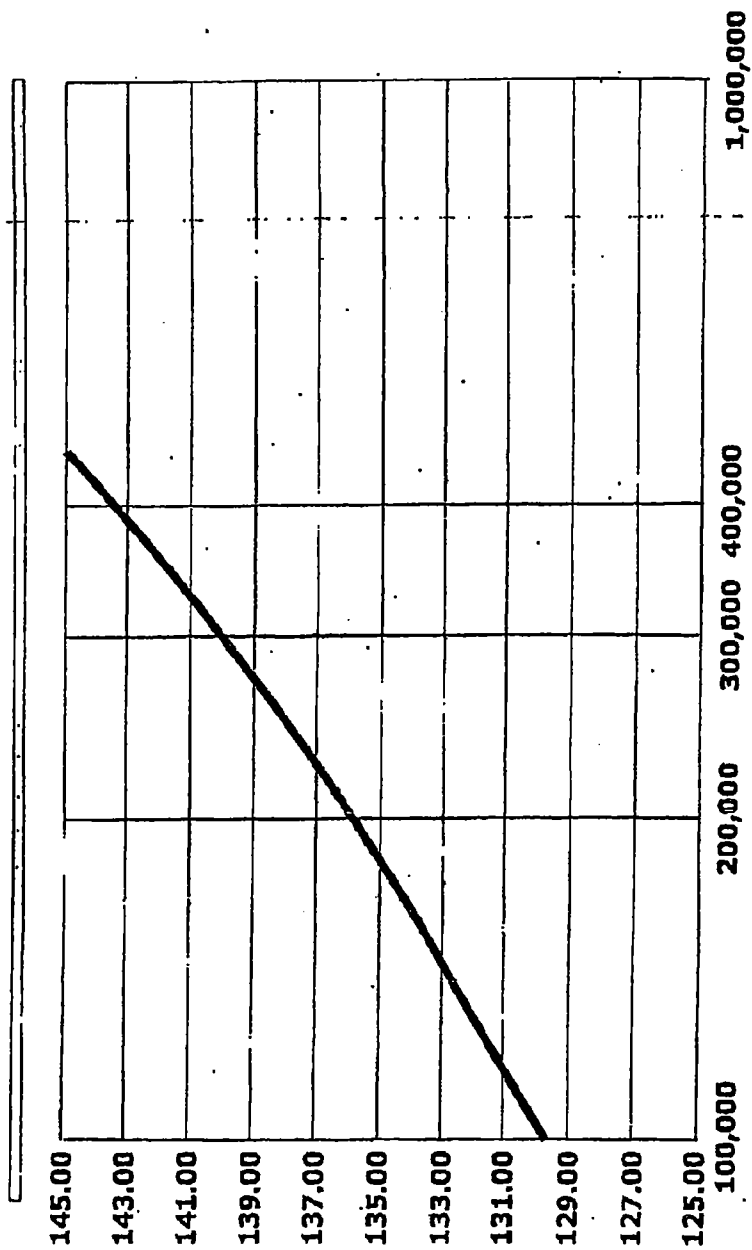


COSD001-00117

EXHIBIT 21



Stage-Discharge at Cross Section C



COSD001-00118

EXHIBIT 21



Levee Overview

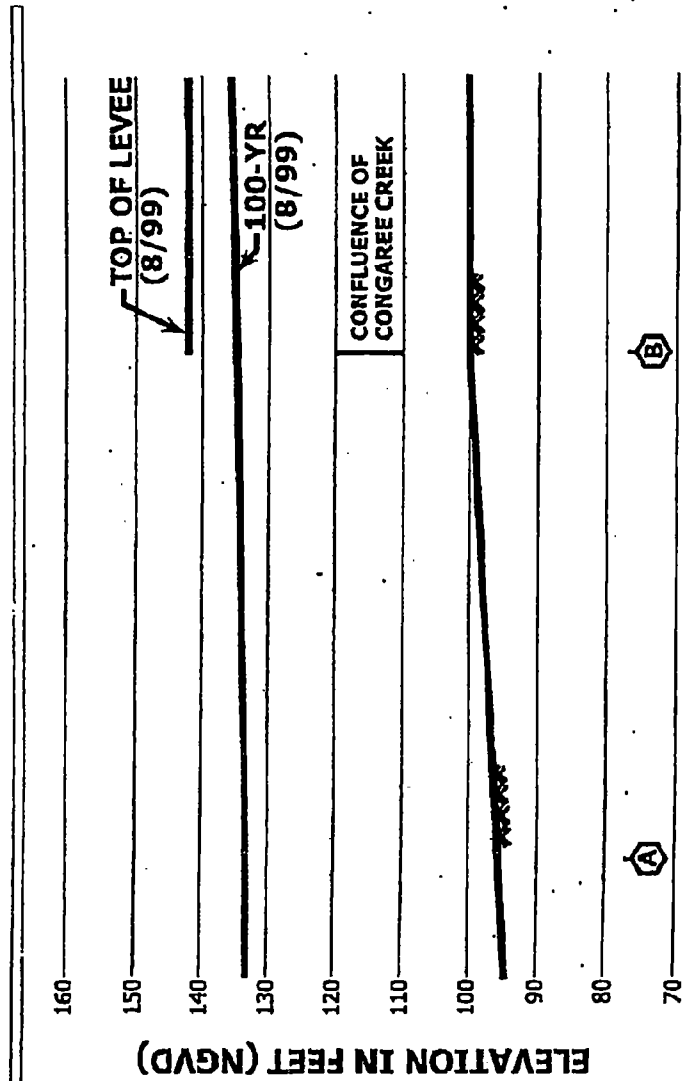
- Levee and Flood Profiles
- Levee composition and stability

COSD001-00119

EXHIBIT 21



Levee and Flood Profiles (1 of 3)

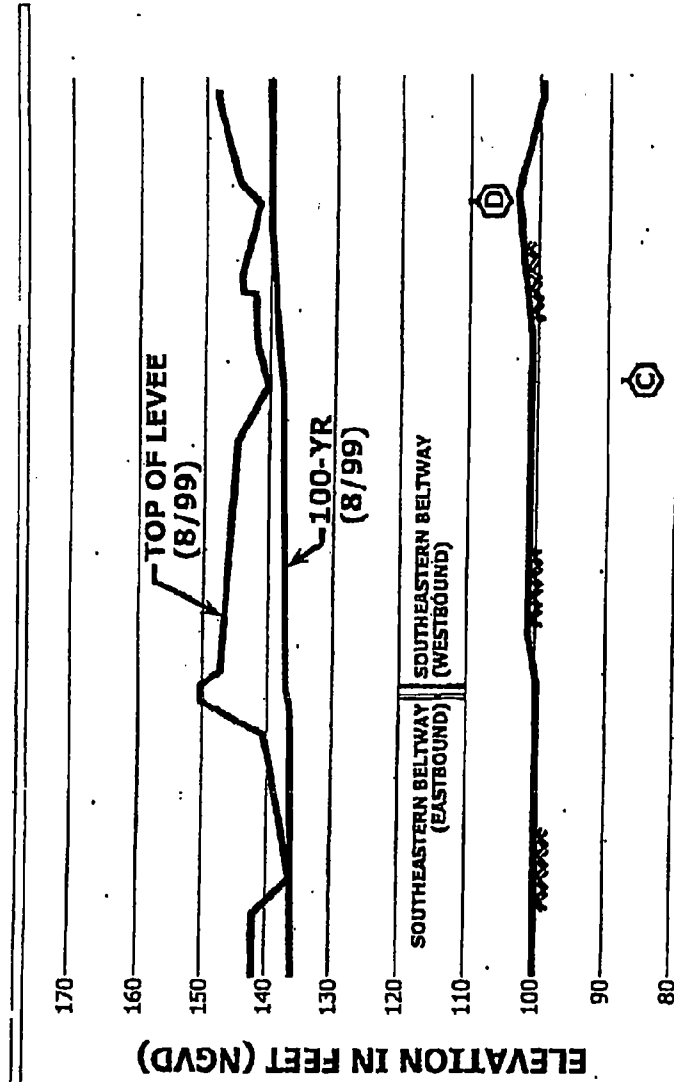


COSD001-00120

EXHIBIT 21



Levee and Flood Profiles (2 of 3)

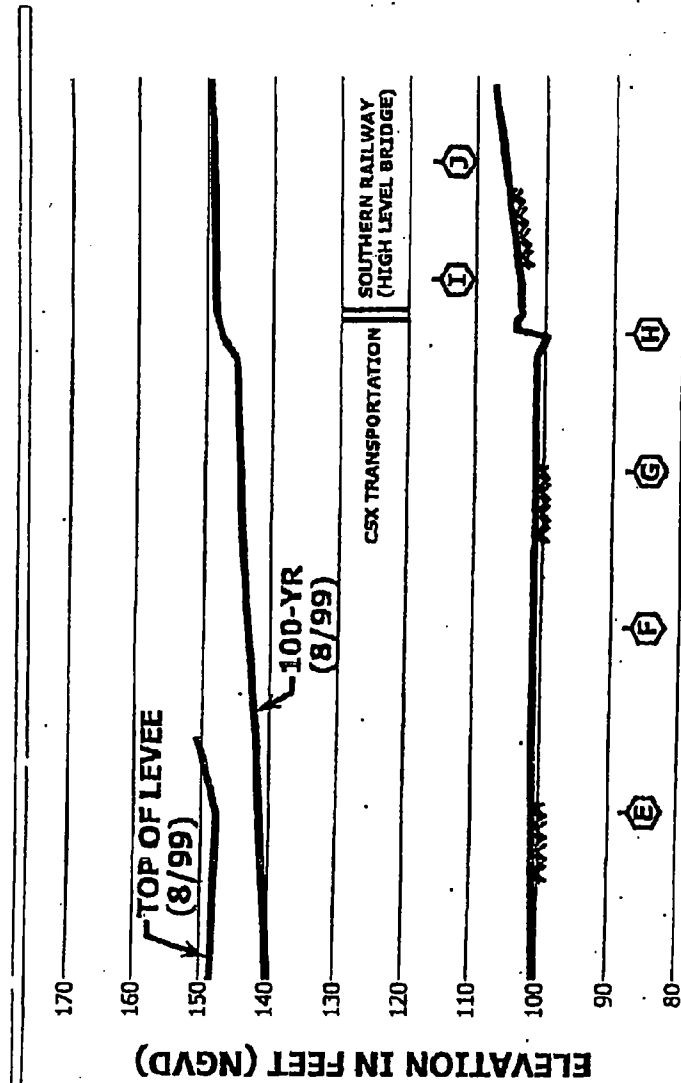


COSD001-00121

EXHIBIT 21



Levee and Flood Profiles (3 of 3)

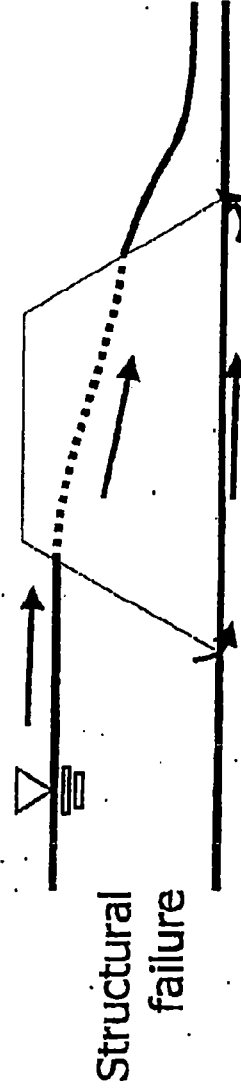
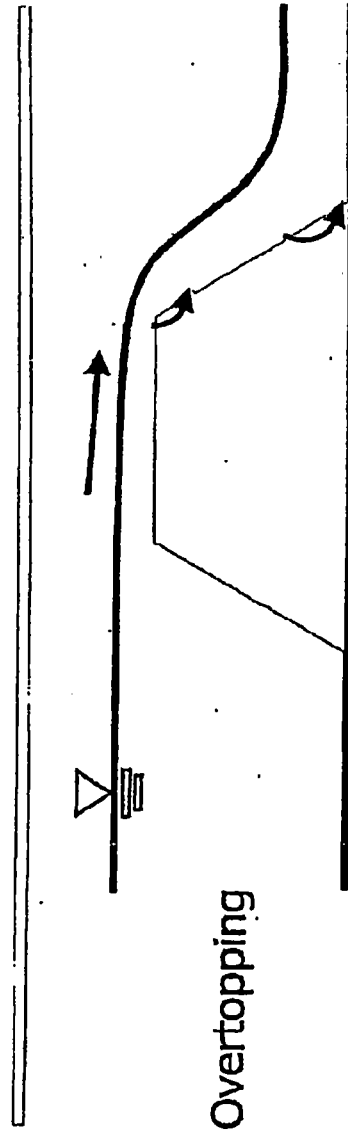


COSD001-00122

EXHIBIT 21



Two Failure Modes



COSD001-00123

EXHIBIT 21



Levee Composition and Stability

- Levee breached in 1976 (Law Engineering, 1976)
- Recent geotechnical investigation (S&ME, 1999)
 - Field sampling
 - Laboratory testing
 - Stability analysis
 - Seepage analysis
- Conclusions
 - Levee is composed of sandy-silt material, but there are variations within the structure
 - We do expect isolated areas of failure, but not long failures such that we would create a hydraulic flow path

COSD001-00124

EXHIBIT 21



Floodway

For the August 1999 revised preliminary FIS, the floodway was set at the landward toe of the levee.

- This levee does not prevent flooding, but does block conveyance of flow
- This floodway designation meets surcharge requirements
- This floodway designation increases the NFIP requirements on improving the levees

COSD001-00125

EXHIBIT 21

Congaree River Restudy – Chronology of Events
(Updated February 8, 2000)

- 9/26/97 The preliminary FIS (Flood Insurance Study) and FIRM (Flood Insurance Rate Map) are sent to Lexington County to reflect restudy of the Congaree River.
- Discharge at USGS stream gage is 313,500 cfs, floodway width at cross sections C and D are 8,600 feet to 4,400 feet respectively, BFEs from upstream of I-77 to cross section D range from 140 to 142 feet NGVD.*
- 1/21/98 Meeting among FEMA HQ, FEMA Region IV, and the technical evaluation contractor Dewberry & Davis (D&D). A revised preliminary is initiated for Lexington County to include the 1994 Department of Transportation (DOT) interchange project. Simultaneously, a FIRM revision is initiated for Richland County.
- 2/12/98 Revised preliminary FIS and FIRM issued for Lexington County to include DOT interchange project.
- Discharge at USGS stream gage is 313,500 cfs, floodway width at cross sections C and D are 13,400 and 13,500 feet respectively BFEs from upstream of I-77 to cross section D range from 140 to 142 feet NGVD.*
- 3/26/98 Community coordination meeting held for Lexington County FIS and FIRM. Workmaps for Richland County revision are shown at this meeting.
- 6/5/98 Preliminary FIS and FIRM issued for Richland County to show restudy of Congaree River.
- Discharge at USGS stream gage is 313,500 cfs, floodway width at cross sections C and D are 13,400 and 13,500 feet respectively, BFEs from upstream of I-77 to cross section D range from 140 to 142 feet NGVD.*
- 6/17/98 Appeal period starts for Lexington County.
- 7/8/98 Community coordination meeting held for Richland County FIS and FIRM.
- 7/28/98 In response to Richland County concerns, both studies are put on hold pending more in depth review of available data by FEMA.
- 9/15/98 Appeal period ends for Lexington County, no appeals are received for the Congaree River.

- 10/98-1/99 FEMA performs in-house H&H analyses with assistance from D&D and HSMM.
- 2/25/99 Revised preliminary FIS and FIRM are issued for both counties, based on new analyses.
- Discharge at USGS stream gage is 284,900 cfs, floodway width at cross sections C and D are 6,700 and 6,300 feet respectively, BFEs from upstream of I-77 to cross section D range from 139 to 142 feet NGVD.*
- 2/26/99 Letter from Richland County Administrator asks FEMA to delay action on FIRMs until they can coordinate data gathering efforts with Lockwood Greene.
- 6/4/99 Data received from Lockwood Greene, including revised analysis of stream gage data, detailed survey of site topography and levees, and revised HEC-2 hydraulic model based on different assumptions about the levee. A geotechnical investigation of the levee followed this submittal.
- 8/5-6/99 Meeting held among representatives of FEMA, Dewberry & Davis, and Lockwood Greene to discuss technical issues regarding hydrology and HEC-2 hydraulic model submitted by Lockwood Greene.
- 8/12/99 Revised preliminary FIS and FIRM are issued for both counties, based on data submitted by Lockwood Greene.
- Discharge at USGS stream gage is 252,900 cfs, floodway width at cross sections C and D are 5,050 and 5,360 feet respectively, BFEs from upstream of I-77 to cross section D range from 138 to 140 feet NGVD.*
- 12/13/99 Appeal period for both counties ends, numerous correspondence received.
- 1/24/00 Public meeting is held to exchange information with appellants.

FEMA:MT-HZ-ID:Miller:2/8/2000

General Summary of Hydraulic Analysis of the Congaree River in Lexington and Richland Counties, South Carolina, as Presented in August 12, 1999, Revised Preliminary Flood Insurance Studies (FISs)

Introduction

Approximately 9.3 miles of the Congaree River in Lexington and Richland Counties, South Carolina have been studied for the August 12, 1999 Revised Preliminary FISs. In this area, the Congaree River flows generally to the south and forms the boundary between Richland and Lexington Counties. The U.S. Army Corps of Engineers (USACE) step backwater program, HEC-2, was used to prepare the hydraulic analysis of the Congaree River floodplain as well as to compute the floodway shown on the August 12, 1999, Revised Preliminary Flood Insurance Rate Map (FIRM). This document summarizes the calibration of the HEC-2 hydraulic models for the Congaree River, and the important features of the August 1999 floodway model.

Hydraulic Model Calibration

The Congaree River floodplain expands from a width of approximately 1000 feet at its origin to approximately 4 miles at the downstream limit of detailed study. In order to accurately model the wide floodplain at the downstream limit of detailed study, the HEC-2 models were calibrated to historical floods, using data from three sources listed below.

1. High Water Marks

High water marks for seven locations along the lower study reach for a 1976 flood, published in the USGS open file report 81-1194, were used to calibrate the HEC-2 model along a stretch from River Bluff Estates to the upstream limit of detailed study for the Congaree River.

2. USGS Simulations

The USGS has published three reports documenting a steady state, two-dimensional, depth-averaged, finite-element model study of the lower reach of the Congaree River. These studies were conducted to evaluate the effects of highway embankments for I-77 and the 12th Street extension on the 1% annual chance (100-year) and 0.2% annual chance (500-year) flood elevations for the Congaree River. These models were calibrated to the 1976 flood event, so these results were also compared to the HEC-2 model results.

3. Rating Curve at USGS Gage

Annual flow and peak discharge data collected by the USGS at the Columbia gage (number 02169500) for floods in 1908, 1912, 1916, 1928, 1929, 1936, 1964, 1976 and 1990 were used to validate model results for floods ranging from 135,000 cfs to 364,000 cfs.

The largest recorded flood events occurred prior to 1930, before considerable development in the floodplain. The development in the floodplain includes:

Page 1 of 5, 03/10/00

COSD002-00408

EXHIBIT 26

- Phased construction and improvement of agricultural dikes on the right channel bank of the Congaree River and situated across the floodplain along Gills Creek in Richland County;
- Development of the River Bluff Estates subdivision in Lexington County;
- Construction of the I-77 road embankment situated across the floodplain; and
- Quarry operations located immediately upstream of the River Bluff Estates subdivision in Lexington County.

Therefore, during the calibration effort, it was necessary to create hydraulic models which approximate conditions at the time of these floods. The calibration models used different cross section data (GR points) from cross sections 254,500 to 265,200, than the models used to create the August 12, 1999, revised preliminary FISs. These cross sections were taken from the effective FIS HEC-2 model prepared by the USACE in 1979. In addition, the HEC-2 cross sections in the calibration model in the vicinity of the I-77 road embankment reflected topography prior to the construction of I-77. Cross section data in the vicinity of the agricultural dikes reflects existing conditions, because reliable historical data were not available, and they have little effect on conveyance calculations if effective flow is assumed landward of the dikes.

Two HEC-2 hydraulic models were created for calibration purposes. One is used to simulate flows lower than 200,000 cfs, and assumes that no conveyance existed landward of the levee in Richland County. The other is used to simulate flows greater than 200,000 cfs, and assumes a 2,000-foot wide conveyance path landward of the levee in Richland County. These assumptions are based on the observation that the agricultural dikes, although geotechnically unstable, are nearly overtopped at some cross sections in a flood of about 200,000 cfs. The USGS used similar assumptions for their 1981 two-dimensional flow simulations of the 1976 (155,000 cfs) and 1908 (364,000 cfs) floods.

These models were calibrated to the historical floods listed above, and then the developments listed above were added into the models used to predict the 10% (10-year), 2% (50-year), 1%, and 0.2% floods and floodway. The results of these calibration efforts are shown in the tables and chart below.

Table 1: Calibration of HEC-2 model to 1976 flood (Q=155,000 cfs)

Location	HEC-2 Cross Section	Observed Elevation (ft NGVD)	USGS Model (ft NGVD)	Calibration Model (ft NGVD)
River Bluff Estates	254500	138.0-139.6	139.0	137.3
Cayce WWTP	246700	135.4	135.9	135.9
Old State Road bridge at Congaree Creek	245800	133.2-133.4	133.2	134.1
Left Channel bank where I-77 now crosses	242440	134.0-134.2	134.6	134.1
Old State Road	241500	130.5-130.6	133.1	133.8
Old State Road	239370	130.2-130.8	133.1	133.6
Power Line	215700	129.7	130.1	129.9
USGS gage 02169500	266750	142.72	-	142.8
Downstream study limit	212950	129.2	-	129.91

Table 2: Calibration of HEC-2 model to Columbia gage

Year	Discharge (cfs)	Gage Elevation (ft NGVD)	Calibration Model (ft NGVD)
1908	364,000	152.82	152.91
1912	256,000	148.32	148.15
1916	272,000	149.12	149.00
1928	311,000	150.72	150.94
1929	303,000	150.42	150.56
1936	231,000	147.22	146.72
1964	142,000	141.62	141.41
1976	155,000	142.72	142.61
1990	135,000	140.92	140.73

Figure 1: Calibration of HEC-2 model to Columbia gage

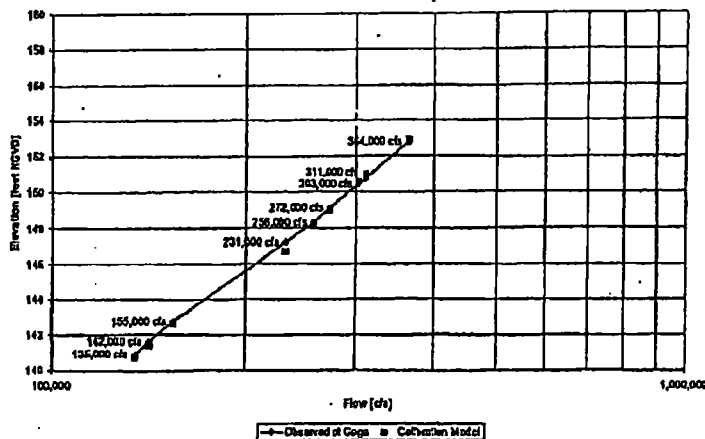


Table 1: Comparison of Gage Rating Curve, Calibration HEC-2 Model and Revised Preliminary HEC-2 Model (Cross section 266750)

Recurrence Interval	Discharge (cfs)	Gage Rating Curve Elevation (ft NGVD)	Calibration Model Elevation (ft NGVD)
10-year	137,900	141.21	141.02
50-year	214,700	146.42	145.70
100-year	252,900	148.24	147.94
300-year	336,600	152.54	152.96

Floodway Determination

The HEC-2 model of the floodplain uses ineffective areas to reflect the effects of the aforementioned developments in the floodplain. The ineffective flow areas in the Lexington side were determined based on a 20-degree flow expansion line, following standard guidance from the USAQB's Hydrologic Engineering Center. In addition, the floodplain behind the agricultural dike in Richland County is modeled as an ineffective flow area because the high grounds of the I-77 embankment and the agricultural dikes on either side of Gills Creek intercept the floodplain almost at right angles to the general flow direction and offer resistance to effective flow. The available topographic data indicated that this area does not contribute to conveyance of flow in the general flow direction.

In the HEC-2 model, the ineffective flow areas are modeled using a high Manning's roughness coefficients ($n=10$). Using a high Manning's roughness coefficient to model the ineffective areas is customary in FISs, because this method generally produces the same results as using X3 cards or truncating cross sections, does not result in the loss of topographic data, is time efficient, and

allows the same hydraulic model to be used to assess the flood storage available in the floodplain for hydrologic calculations. In addition, this modeling technique does not interfere with floodway determinations, as X3 cards do. Use of high Manning's roughness coefficients ultimately increases the computed flood elevations for both the natural and encroached runs.

Several floodway configurations, including those based on equal conveyance reduction (HEC-2 Method 4), were examined before establishing the August 1999 floodway. However, the floodway stations used in the August 1999 floodway model were not determined using only the equal conveyance reduction method. Because of the ineffective flow area in Richland County, equal conveyance reduction was determined not to be entirely appropriate for the Congaree River downstream of River Bluff Estates. The floodway stations in Richland County were placed on the crest of the agricultural dike along the Congaree River after using equal conveyance reduction and assuming restricted conveyance landward of the dike in the HEC-2 model. For regulatory purposes, the floodway is mapped at the landward toe of the dike. The floodway stations in Lexington County were initially placed to match those used in the February 1999 preliminary FIS. The February 1999 floodway stations in Lexington County were based on equal conveyance, with adjustments made to reflect the River Bluff Estates subdivision. Minor adjustments were made to the floodway stations on both sides until the resulting floodway surcharges were less than 1.0 foot.

Summary

The HEC-2 hydraulic model used to create the August 1999 Revised Preliminary FISs was calibrated to historic floods in 1908, 1912, 1916, 1928, 1936, 1964, 1976 and 1990. The data presented in this report indicate that this was well calibrated.

The August 1999 floodway conveys the 1% annual chance Congaree River peak flow discharge without exceeding the allowable surcharge of 1.0 foot. The floodway boundary in Richland County generally follows the toe of the agricultural dike along the Congaree River. This reflects the ineffective flow assumption built into the hydraulic model. The floodway boundary in Lexington County generally follows that shown on the previous preliminary FISs.

Computer Files

Transmitted with this report are several HEC-2 computer models. The files are as follows:

FINALLOW.DAT	Input file for calibration run less than 200,000 cfs
FINALLOW.OUT	Output file for calibration run less than 200,000 cfs
FINALHGH.DAT	Input file for calibration run greater than 200,000 cfs
FINALHGH.OUT	Output file for calibration run greater than 200,000 cfs
8-11MUL.DAT	Input file for revised preliminary multiple profile
8-11MUL.OUT	Output file for revised preliminary multiple profile
8-11-FW.DAT	Input file for revised preliminary floodway
8-11-FW.OUT	Output file for revised preliminary floodway

Furness said Witt's agency is on target with its goal of discouraging such development.

"We have had a good experience with FEMA," Furness said. "I met with Witt in Washington. I'd say his direction is right in terms of trying to prevent disasters, particularly of the flooding kind."

Brett Hulsey, a senior Midwest representative for the Sierra Club, said Witt's meetings with local officials usually make sobering points.

"What he does sometimes is he'll get an old picture of the place that somebody wants to develop when it was 10 feet under water," Hulsey said, "and he'll say, 'Which part of this land would the developer or builder want to live in?'"

The Federal Emergency Management Agency will hold meetings this week in Columbia to discuss the final location of flood lines along the Congaree River. Meetings to talk about how the agency sets proposed flood boundaries will be:

- * Wednesday from 2:30 to 5:30 p.m.
- * Thursday from 8:30 a.m. to 5 p.m.

A meeting place has not yet been set.

FEMA spokeswoman Mary Hudak said only people with technical data or those who have appealed new flood boundaries for the river will be allowed to speak at the meetings.

But Hudak said, the public is welcome to attend and listen.

FEMA decided to open the meetings so people could hear more about proposals to establish the flood zone, she said. Several groups, including the state Department of Natural Resources, have appealed the agency's proposed flood lines, saying the boundaries are not strict enough.

The most contentious issue is where to establish a no-construction zone, or floodway.

FEMA's existing proposal sets the floodway along the edge of the Congaree River in Richland County. That would make it easier for developer Burroughs & Chapin to build a massive project on the land.

The Knight Ridder News Service contributed to this story. Reach Sammy Fretwell at (803) 771-8537 or sfretwell@thestate.com

CAPTION:
PHOTO COLOR

Witt

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13/9/68

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10616015

DEVELOPMENT IS 'RISKY,' SAYS FEMA HEAD THE DIRECTOR OF THE FEDERAL
EMERGENCY MANAGEMENT AGENCY CRITICIZES BURROUGHS & CHAPIN'S PLAN TO
DEVELOP IN A FLOOD PLAIN

STATE (COLUMBIA) (CS) - Tuesday, April 25, 2000

By: MICHELLE R. DAVIS, Washington Bureau

Edition: FINAL Section: FRONT Page: A1

Word Count: 851

<http://www.dialogclassic.com/DialogClassic/dialog>

06/09/2000

DEF-00001410

TEXT:

WASHINGTON - The director of the Federal Emergency Management Agency called a proposed Richland County development "high risk" Monday and stressed his opposition to flood plain development.

FEMA director James Lee Witt met with several Richland County Council members Monday to discuss the planned \$1 billion Burroughs & Chapin Co. development. The project would be located southeast of the city of Columbia on 4,600 acres of farmland, much of which is in a flood plain.

"Any time you're within the 100-year flood plain, it's very high risk," Witt said in an interview just after his meeting with Richland County officials. It was the first time FEMA officials have criticized the project, but Witt stressed that the ultimate decision of what the development will look like is up to local officials.

When asked why this project merited a face-to-face meeting with Richland County officials, Witt responded: "Particularly when you've got such a risk factor here, I try to meet with local officials and work with them."

Among other concerns, Witt said he worried that levees, which ring the property and help prevent flooding, did not guarantee safety. Changes to those levees proposed by Burroughs & Chapin also could affect surrounding properties, including the Congaree Swamp National Monument downstream.

"Levees are false protection," he said. "It's like a roll of the dice."

Though County Council members said they were impressed by Witt's knowledge and the seriousness of his concerns when it came to flood plain development, they said they hoped to study the issue further. Councilwoman Kit Smith said she expected some assistance from FEMA on a study that would calculate possible damages and impact from a flood, hurricane or other natural disaster.

"I felt like he was adamant: You should not develop in a flood plain," said Smith, who added that Witt seemed very familiar with the local situation.

Developer Burroughs & Chapin is waiting for FEMA to set flood plain map lines so it can detail its plans for a development likely to include homes, businesses and golf courses on the property, which surrounds I-77 between Bluff Road and the Congaree River.

Martin Becker, a consultant representing Burroughs & Chapin, said the developers were confident their final plan would take concerns into consideration.

"We're just optimistic that people will be favorably impressed with our plans and the flood plain management practices that go with them," Becker said.

Though federal laws allow building on flood plains if developers comply with certain regulations, Witt is working to change that. He says he wants to prevent millions of dollars in damage and the loss of life that comes when homes and businesses are drenched by flooding.

FEMA's maps also estimate where a river's floodway is. Building is prohibited in floodways, where dangerous, rushing waters are expected in a flood.

The latest maps, FEMA's third change in Congaree floodlines since 1996, shrank the river's expected floodway zone, freeing up hundreds of new acres for development.

The maps are being appealed by some state and local officials.

Critics of the Burroughs & Chapin project have a host of environmental concerns with the planned development and have said politics might be playing a part when it comes to the flood plain map. Richland County Councilwoman Bernice Scott, whose district includes the planned development

area, said Monday's meeting will help local politicians sort through those criticisms.

"We're trying to get all the facts so we'll know and not speculate," she said. "There's too much speculating going on."

However, Witt was quick to point out he knew little about the proposed development or the developers, though he said he would be happy to meet with them. What he objected to was development in a flood plain.

Richland County Administrator Cary McSwain said there were two issues to consider: the public policy issue of flood plain development and the issue of having FEMA develop the best flood plain map, based on the most accurate information. It's important that those matters be considered separately, he said.

"Most of the people who have been in opposition to the flood plain maps have been opposed to development," McSwain said. "Those are two separate issues."

But Burroughs & Chapin doesn't want to debate policy with Witt. Instead, they've been intent on providing the information FEMA needs to set the flood plain lines, said Becker, who added he would welcome a meeting with Witt.

"We have spent all our efforts focusing with FEMA on technical issues based on established policies," he said. "We'll continue to do that, but, at the same time, we welcome input from as many learned people in the flood plain management field as we can come in contact with."

However, the director of the nation's disaster agency director acknowledged the "difficult situation" local politicians are in.

"They see the possibility of an economic area that could potentially be a benefit, but they see what it could potentially cost them, or the taxpayers, in the future," Witt said. "Just because our rules and regulations say you can do this doesn't mean it's the right thing to do in certain circumstances."

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DESCRIPTORS: RICHLAND COUNTY DEVELOPMENT FLOOD AGENCY

13/9/99

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10618097

FEMA CHIEF LINKS PROJECT AND FLOODING DIRECTOR SAYS BURROUGHS & CHAPIN'S
PROPOSED DEVELOPMENT WILL CAUSE PROBLEMS
STATE (COLUMBIA) (CS) - Thursday, April 27, 2000
By: LISA M. COLLINS and APRIL SIMON, Staff Writers
Edition: FINAL Section: FRONT Page: A1
Word Count: 890

TEXT:

FEMA Director James Lee Witt had more to say about the hazards of a proposed mega-development in Columbia than he revealed earlier this week.

Witt told Midlands officials flooding is likely in Lexington County, the Congaree Swamp National Monument and throughout Lower Richland if Burroughs & Chapin's \$1 billion development moves forward as planned.

Witt's statements - passed along by local officials and confirmed by his office Wednesday - don't help the increasingly controversial development proposal. Witt echoed some local concerns that new development and bolstered levees will flood property across the river and downstream.

<http://www.dialogclassic.com/DialogClassic/dialog>

06/09/2000

DEF-00001412

**Technical Report for the Final Flood Elevation Determination
for the Congaree River in Richland and Lexington Counties,
South Carolina**



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

August 20, 2001

FEMA-001-000169

Technical Report for the Final Flood Elevation Determination for the Congaree River in Richland and Lexington Counties, South Carolina

Introduction

On September 26, 2000, the Federal Emergency Management Agency (FEMA) issued the appeal resolution for the Congaree River flood studies in Richland and Lexington Counties, South Carolina, at a public meeting in Columbia, South Carolina. A comment period was provided from September 26, 2000, to February 15, 2001, which was subsequently extended to allow for further comments. FEMA reviewed all the information received during the comment period and has conducted several meetings with local government officials, appellants, and other interested parties to render this final determination.

Issues Addressed in the Final Determination

The major issues addressed in this final flood elevation determination are presented below.

Hydrologic Analysis

The 1% annual chance discharge, reported in the September 26, 2000, appeal resolution, of 292,000 cubic feet per second (cfs) on the Congaree River at Columbia was computed using an approach that weighted two different frequency analysis methods. Information was submitted by the appellants that supported both increasing and decreasing the appeal resolution 1% annual chance discharge. The different 1% annual chance discharges presented by the appellants primarily varied in the treatment of the peak annual flow records before the construction of Lake Murray, which was built between 1928 and 1930.

The 1% annual chance discharges presented by the appellants during the comment period were identical to those presented prior to the appeal resolution. The two alternatives presented are either not statistically different from our appeal resolution value or include peak flow records prior to the 1892 flood. Despite comments to the contrary, we remain convinced that the peak flows for the major storms of 1852, 1886, and 1888 should not be used in a frequency analysis due to the uncertainty in the gage datum, uncertainty in the historical stages, and uncertainty in the rating curve. Therefore FEMA has determined that a revision to the 1% annual chance discharge presented in the appeal resolution is not warranted.

Base Flood Elevations (BFEs)

For the appeal resolution, the HEC-2 model was used to compute the BFEs in Lexington County with the Manning's dike acting as a barrier preventing significant conveyance in the Richland overbank. The HEC-2 model was also used to compute the BFEs in Richland County assuming significant conveyance exists landward of the Manning's dike. The methodology outlined above is in accordance with the requirements of the National Flood Insurance Program (NFIP) procedures specified in the Flood Insurance Study Guidelines and Specifications for Study Contractors (FEMA 37) and 44 Code of Federal Regulations (CFR) Section 65.10.

Comments received recommended that BFEs be computed in a manner that is not consistent with the Flood Insurance Study Guidelines and Specifications for Study Contractors (FEMA 37). We also received comments and data regarding the friction factors at specific locations along the Congaree River. The HEC-2 model has been revised to reflect friction factor changes, where appropriate. However, we have not deviated from our standard hydraulic modeling guidelines for levees which do not meet the minimum NFIP requirements for certification.

Floodway

The September 26, 2000, appeal resolution floodway was based on the equal conveyance method available in the HEC-2 hydraulic model assuming conveyance landward of the Manning's dike. As a tool to evaluate effective flow behind Manning's dike, simulations were performed using the two-dimensional model RMA-2. After reviewing the data submitted during the comment period, we remain convinced that the existing dike will breach, and as a result, significant flow under Interstate 77 in the Richland overbank will result. Significantly reducing or eliminating this flow would increase flood levels beyond those accepted under 44 CFR 60.3(d)(3). Therefore although minor adjustments to the floodway boundary have been made to account for changes in the friction factors the areas landward of the Manning's dike remains within the floodway. As defined in 44 CFR 59.1, "regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height."

Final Determination

The data and comments submitted after the appeal resolution of September 26, 2000, are similar to those submitted prior to the appeal resolution. Therefore the 1% annual chance flow remains unchanged from 292,000 cfs, and the BFE and floodway concepts remain unchanged. Revisions to the appeal resolution FISs and FIRMs are based on the revised HEC-2 model. The revisions include increases to BFEs from 1 to 3 feet upstream of the Manning's dike, and narrowing of the floodplain and floodway, on average, from 100 to 600 feet in some areas in the vicinity of Manning's dike and downstream of Interstate 77.

Southern Environmental Law Center

**Board of Trustees Meeting
November 7-9, 2003**

Minutes

The meeting of the Board of Trustees of the Southern Environmental Law Center was held on Saturday, November 8, 2003, in Greenville, South Carolina. The meeting convened at 9:30 a.m. attended by Trustees (Martin Brown, Dennis Crumpler, Stephen Dockery, Elizabeth Haskell, Matt Hapgood, Anna Kate Hipp, Doug Jones, Elliott Levitas, Mark Logan, Nim Long, Allen McCallie, Rick Middleton, Rick Montague, Susan Mullin, Jeanie Nelson, Kit Smith, and Billy Want) and President's Council (Bobbi Hapgood, Will Martin); guests; and staff.

Approval of Minutes

The minutes of the May 16-18, 2003 Annual Meeting were approved as set forth at Tab B of the materials and attached hereto.

Nominations

Kathryn "Kit" Smith was presented for election to the board of trustees and was so approved.

SEL0000152

The following slates of officers, President's Council, and committees were approved:

3

SEL0000153

-391-

5876

Officers (to serve through May 2004):

Chairman of the Board -- Rick Montague
President -- Rick Middleton
Executive Director -- Rick Middleton
Vice President (Vice-Chair) -- Jeanie Nelson
Secretary -- Hayley Parrish
Treasurer -- Mary Rice

President's Council (Initial Cluster):

Robert Atkinson
Bobbi Hapgood
Pricey Taylor Harrison
Will Martin
Dudley Porter
John Scott
Fred Stauback
Cameron Vowell
Brad Wyche

Executive Committee:

Rick Montague (chair)
Martin Brown
Marion Cowell
Anna Kate Hipp
Mark Logan
Rick Middleton
Jeanie Nelson
Steve O'Day

Nominations Committee:

Jeanie Nelson (chair)
Rick Montague
Rick Middleton

Investment Committee:

Marion Cowell (chair)
Dennis Barnes
Stephen Dockery
Hugh Lane
Mary Lib Lupton
Will Martin (President's Council)
Mary Rice (ex officio as Treasurer)

Development Committee:

Susan Mullin (co-chair)
Anna Kate Hipp (co-chair)

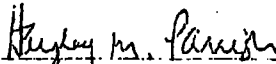
Marie Hawthorne (staff liaison)
Future committee members to be determined

Litigation Approval Committee:

Allen McCallie (chair)
Glynn Key
Elliott Levitas
Matt Hapgood
Kit Smith
Jim Hanes
Bill Want

The meeting adjourned at 4:15 p.m.

Respectfully submitted:



Hayley M. Parish
Corporate Secretary

SEAL

SEL0000155

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made this 20th day of December, 2003, by and between Columbia Venture, LLC, a South Carolina limited liability company ("Owner"), and White House Plantation, LLC, a South Carolina limited liability company ("Manager").

RECITALS

Owner is the owner of the property commonly referred to as the Green Diamond Property, more specifically described on the attached Exhibit A (the "Property").

Manager is a limited liability company whose members are Manning Kirk and Associates, Inc., Charles L. McCallum, and Hughes Development Corporation.

Owner wishes to employ Manager to provide exclusive management services, including any necessary implementation, for properly disposing of the Property in accordance with the terms of this Agreement, and Manager wishes to serve in that capacity.

TERMS OF AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound, the parties agree as follows:

1. Appointment. Owner hereby appoints Manager as its sole and exclusive agent to devise, manage and implement the exit strategies for the Property during the term of this Agreement.

2. Acceptance. Manager hereby accepts the above appointment and agrees to perform those services necessary for management and implementation of the exit strategies for the Property, on the terms and conditions provided in this Agreement. Manager agrees to work in good faith and to commit the necessary time and resources to formulate plans and strategies according to the terms of this Agreement. Manager will establish a formal communication process with Owner to keep Owner informed as to plans and progress, which at a minimum will include scheduled meetings with Owner on at least a quarterly basis.

3. The Project. The management and implementation of the exit strategies for the Property on the terms and conditions provided in this Agreement will sometimes be referred to as the "Project" in this Agreement.

4. Term. The term of this Agreement will begin on the date first set forth above and continue through December 31, 2010 (the "Initial Term"), provided that (i) the term will automatically be extended for one additional year at the end of the Initial Term or any succeeding extension thereof, unless either Owner or Manager gives at least 90 days notice to the other party that the term will not be extended; and (ii) either party may terminate this Agreement in its sole discretion at any time upon 90 days written notice to the other party. The Initial Term,

[Handwritten signatures]

CV014227

together with any extensions under this section will be referred to as the "Term." The Agreement may also be terminated as provided in the section below entitled "Termination for Cause." At the end of the Term, whether by expiration, non-renewal, or termination, the section below entitled "Rights Upon Termination" will be applicable.

5. FEMA Negotiations. Manager will pursue negotiations with FEMA as quickly as practical, provided that Owner will at all times be kept advised of available options and recommendations, and that no agreement or commitment of any kind will be made without Owner's written consent. Manager agrees that Owner's legal counsel will be kept informed and will be involved at all steps of the process. The basic objective will be to maximize the net present value to Owner, recognizing that a quick settlement on a lesser percentage of the Property may have more value than a protracted fight to secure more of the Property. Manager will prepare a development plan at the lowest practical cost to use in negotiations with FEMA. Any contracts for outside services related to the FEMA negotiations will be submitted to Owner for prior approval, either in the budget or by separate action.

6. Studies and Plans. Manager will independently review and consider all existing studies and plans for the Property. In addition, Manager will implement an Urban Land Institute Panel Advisory Services Study to aid in determining the best development potential and strategies for the Property. Recommendations and conclusions will be reported to Owner.

7. Simultaneous Pursuit of Alternative Strategies. Manager will simultaneously devise and pursue several different strategies for the disposal of the Property, giving due consideration to the interrelationship of the strategies and the impact one may have upon the other. Each such strategy will be presented to Owner.

8. Terms of Block Sale. The initial price for a block sale will be \$34,000,000.00 in net proceeds to Owner, and this price will increase at the prime rate of Carolina First Bank on each anniversary of this Agreement, plus the expenses (including commissions or fees) incurred by Owner under this Agreement. The block sale price, as determined from time to time under this section, will be referred to herein as the "Target Price." Manager will investigate and market approaches that may generate a quick block sale. Any offers or proposals will be immediately communicated to Owner, and no offer will be accepted without Owner's written approval.

9. Manager's Fee for a Block Sale. (a) If a block sale of all or substantially all the Property to a party listed on Exhibit C is under binding contract approved by Owner on or before February 29, 2004, then payment to Manager will be made as follows: (i) if the block sale is closed on or before December 31, 2003, a payment of \$150,000.00 will be made to Manager; (ii) if the block sale is closed after December 31, 2003, and on or before January 31, 2004, a payment of \$200,000.00 will be made to Manager; (iii) if the block sale is closed after January 31, 2004, and on or before February 29, 2004, a payment of \$250,000.00 will be made to Manager; and (iv) if the block sale is closed after February 29, 2004, payment to Manager will be made as provided in subsection (b) below.

(b) If a block sale not coming within the provisions of subsection (a) above is closed at or above the Target Price on or before December 31, 2004, a payment of \$750,000.00 will be made to Manager. If a block sale is closed at or above the Target Price after December 31, 2004, a payment of \$500,000.00 will be made to Manager.

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(c) In the event of any block sale coming within this section, no sales commission will be owed to the Listing Broker under the section below entitled "Sales Commissions." If in any block sale under this section a third party broker is involved, the commission negotiated for that third party broker will be paid separately by Owner and will not reduce the payment to Manager, with the understanding that the Target Price is to be measured in net proceeds to Owner.

10. Sales of Individual Parcels. If the Property is not sold in a block sale, Manager will establish values for individual parcels based on market analyses and will submit them to Owner for review and approval. The values will be considered approved unless Owner submits revisions within fourteen (14) days, and Owner may revise individual values only if supported by valid market data. Manager will monitor market conditions and comparable sales and may from time to time present revised values to Owner under this same procedure. The values established by Manager will be "as is" values until a Long Term Disposal Budget is adopted as provided below and the Property is prepared for individual parcel sales, at which time Manager will establish values under the procedure set out in this section. All proposed contracts and offers for individual parcels will be promptly communicated to Owner by Manager, and no offer will be accepted without Owner's written approval.

11. Long Term Disposal Budget. If a block sale is not quickly accomplished, Manager will propose a budget for the disposal of the Property over a long term (the "Long Term Disposal Budget") to enhance the value of the individual parcels. No such expenses will be incurred until Owner has approved the Long Term Disposal Budget. Upon approval of the Long Term Disposal Budget, Manager will proceed with the agreed work for the account of Owner. Material changes to the Long Term Disposal Budget will be submitted to Owner for approval before additional expenses are incurred. The Long Term Disposal Budget will be a separate budget from the Operating Budget described in the section entitled "Expenses."

12. Sales Commissions. With respect to sale of individual parcels, the Property will be listed with The McCallum Company, Inc., in Columbia (the "Listing Broker"). The Listing Broker will receive a commission of seven percent (7%) of the gross sales price for each completed sale, payable upon closing of the sale. Of that amount, four percent (4%) will be payable to any third party broker involved in the sale, unless the Listing Broker negotiates a lesser percentage to be paid to a third party broker.

13. Manager's Purchase Option. Manager will have the option to purchase any unsold parcel at any time during the Term of this Agreement, provided that either (i) a sale of a majority of the Property has occurred or is contracted to occur, or (ii) more than twenty-five percent (25%) of the property identified on the attached Exhibit A (measured by acreage) has been developed on behalf of Owner. The purchase price for Manager's purchase option will be calculated as follows: The Target Price will be initially allocated to the individual parcels as set forth on the attached Exhibit B. (This allocation is relevant only for purposes of this section of the Agreement.) The allocation for each parcel will increase in proportion to the Target Price on each anniversary date of this Agreement. Manager will have the right to buy any unsold parcel on the schedule for the allocated price of that parcel at the time the purchase option is exercised, plus ten percent (10%) of that price. The closing must occur within thirty (30) days of Manager's notice of exercise, unless delayed through no fault of Manager. In the event of any sale to Manager under the terms of this section, no sales commission will be owed to the Listing Broker under the section entitled "Sales Commissions." Any such sale to Manager will be on the

11/27/77



condition that Manager is prohibited from selling the parcel for a period of two years from the date of acquisition.

14. Expenses. All expenses related to the provision of services by Manager under this Agreement will be incurred or paid for the account of Owner. Owner will either pay such expenses directly or reimburse Manager for any expenses advanced by Manager. Expenses to be paid by Owner include, but are not limited to, legal and accounting fees, marketing and advertising expenses, wages and related expenses of personnel assigned to the Project (but only to the extent they are providing services for the benefit of Owner and the Project), office expenses and materials, utilities, and other items contained in the budget or reasonably necessary for the performance of Manager's services. Prior to any amounts being spent or committed on behalf of Owner, a budget (the "Operating Budget") will be prepared and presented to Owner for its review and approval. Owner will not be responsible for reimbursing any internal legal or accounting fees of Manager or any amounts related to the time spent by the members of Manager. In addition to the Operating Budget and the Long Term Disposal Budget, Manager will present a budget to Owner for its prior approval for any other necessary expenses that Manager would expect Owner to reimburse.

15. Exclusive Agency. Beginning January 1, 2004, Manager will be the exclusive representative of Owner with respect to the planning, preparation, and sale of the Property. During the Term of this Agreement, no member of Owner will, without the prior written consent of Manager, (i) contract or bind Owner in any way with respect to the Property, (ii) make any representation to any third party regarding the plans or intentions of Owner with respect to the Property, or (iii) purport to represent the Owner in any negotiation or dealing with respect to the Property. The members of Owner will refer all contacts regarding the Property to Manager. All equipment, prospect lists, correspondence, files (other than files of Owner's legal counsel) and any other items necessary or useful in operating the business of Owner with respect to the Property and the Project will be turned over to Manager as soon as possible after the execution of this Agreement.

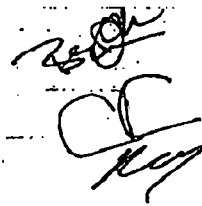
16. Confidentiality. Manager agrees to keep confidential all non-public financial information regarding Owner and the Property, together with any other information designated as confidential by Owner. This obligation of confidentiality will continue both during and after the Term of this Agreement, except for any information that should become known to other parties through sources other than Manager.

17. Legal and Accounting Services. Manager agrees to continue the legal representation of Owner and the Project by the law firm of Haynsworth Sinkler Boyd, P.A. Manager will retain a new independent CPA accounting firm for the Project, subject to Owner's written approval.

18. Employees. Manager expects to have the equivalent of one full-time employee assigned to the management and oversight of the Property and the Project. These duties may be divided among two or more persons in the discretion of Manager.

19. Authority of Manager. Manager will have the authority to sign checks on behalf of Owner and to execute contracts binding Owner for payments for any amounts contained in budgets that have been approved by Owner. Manager will also have the authority to open bank

00077

Handwritten signature and initials, possibly "R. S. Boyd" and "J. R. Boyd", in dark ink.

accounts, to apply for permits, and to make other similar decisions in the management and administration of the Property and the Project without prior specific consent by Owner.

20. Termination for Cause. In addition to the rights set forth above to terminate this Agreement or elect not to renew the Agreement upon ninety days notice to the other party, either party may terminate this Agreement for cause as follows:

- a. If the other party defaults in the performance of observance of any material covenant contained in this Agreement, and such default is not cured within thirty days after written notice of such default; or if such default is not capable of being cured within thirty days, if the other party has not commenced the cure within thirty days or does not pursue the cure with due diligence thereafter.
- b. Immediately upon any act of fraud, misappropriation, or other willful or intentional act resulting in any damage to the other party.

21. Rights Upon Termination. In the event of any termination or non-renewal of this Agreement, Manager will provide Owner with a written list of active prospects, together with status reports and plans for negotiation with each prospect. In the event any sale is made to a listed prospect within six months following the date of notice of termination or non-renewal, or in the event listed negotiations produce a block sale of the Property, then Manager and Listing Broker will be compensated as set forth in this Agreement as if the sale had been completed during the Term of this Agreement. For purposes of this provision, a sale will be considered to have occurred upon the execution of a contract or agreement of sale, provided that the sale does thereafter take place, but regardless of whether the closing occurs during or after the six month period. Manager agrees to indemnify and hold Owner harmless from and against any and all claims, actions, costs, damages or expenses (including reasonable attorneys' fees) or any damage to the Property resulting from any improper or illegal action or inaction of Manager or its agents, representatives and employees with respect to the Property during the Term of this Agreement.

22. Assignment. Neither Owner nor Manager will have the right to assign this Agreement without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of the other party.

23. Relationship of Parties. It is the intention of the parties that Manager will be an independent contractor in carrying out the terms of this Agreement. Nothing contained herein will be construed as creating any relationship of employer/employee, partnership, or joint venture between Owner and Manager.

24. Notices. All notices, demands, requests and other communications required or permitted under this Agreement will be in writing and will be deemed to be delivered when either (i) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, or (ii) sent by Federal Express or other generally recognized overnight delivery service providing proof of delivery, addressed as follows:

If to Owner:

Burroughs & Chapin Company, Inc.
2411 North Oak Street, Suite 402
P.O. Box 2095
Myrtle Beach, South Carolina 29578

140737

5

Handwritten signatures and initials:
BCH
CF
Kef

Attention: President
Telecopier: (843) 916-9142

Lockwood Greene Engineers, Inc.
P.O. Box 491 (29304)
1500 International Drive
Spartanburg, SC 29303
Attention: Mr. Michael E. McKelvy
Telecopier: (864) 599-4117

Regent Columbia, LLC
c/o Regent Partners, LLC
3340 Peachtree Road, NE, Suite 1000
Atlanta, GA 30326
Attention: Mr. William Diffenderfer
Telecopier: (404) 995-1556

Green Diamond, LLC
4801 Kilbourne Road
Columbia, SC 29206
Attention: Mr. Burwell D. Manning
Telecopier: (803) _____

The South Financial Group, Inc.
P.O. Box 1029
Greenville, SC 29602
Attention: Mr. Mack Whittle
Telecopier: (864) 239-4605

NBLF, LLC
4605 Oleander Drive
Myrtle Beach, SC 29577
Attention: Dr. Wade Nichols
Telecopier: (843) _____

and to

Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211-1889
Attention: William C. Boyd, Esq.
Telecopier: (803) 765-1243

If to Manager:

White House Plantation, LLC
c/o Robert E. Hughes, Jr.
Hughes Development Corporation
18 W. North Street (zip 29601)

6

Handwritten initials and signature:
2/28/01
CF
Key

Post Office Box 2002
Greenville, SC 29602-2002

And to:

White House Plantation, LLC
c/o Charles McCallum
The McCallum Company
Suite 200
4875 Forest Drive
Columbia, SC 29206

Addresses for notice may be changed by providing notice in accordance with this Section.

25. Section Headings. The Section headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope of meaning of the terms and provisions of this Agreement.

26. Terms Binding. All the terms of this Agreement are binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns.

27. Amendment. This Agreement may be amended only by an instrument in writing signed by both parties.

28. Governing Law. This Agreement will be governed by and enforced in accordance with the laws of the State of South Carolina, without regard to the conflict of laws principles thereof.

29. Severability. In the event any provision contained in this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

[SIGNATURES ON FOLLOWING PAGES]

010707

7

Handwritten signature and initials, possibly "CE" or "CF", with a flourish underneath.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first set forth above.

OWNER:

COLUMBIA VENTURE, LLC

By: BURROUGHS & CHAPIN COMPANY, INC.,

Member

By: *Douglas P. Wendel*

By:

Name: Douglas P. WENDEL

Title: President

MANAGER:

WHITE HOUSE PLANTATION, LLC

Manning Kirk and Associates, Inc., Member

Hein Manning
by: B. Deas Manning, Member *President*

and

John C. Kirk
by: John C. Kirk, Member *Vice President*

Charles L. McCallum
Charles L. McCallum, Member

Hughes Development Corporation, Member

Robert E. Hughes, Jr.
by: Robert E. Hughes, Jr., Member *President*

CF

From: KitSalley@aol.com [mailto:KitSalley@aol.com]

Sent: Thursday, January 22, 2004 12:41 PM

To: wizworks@mindspring.com

Cc: bholman@selcnc.org

Subject: Change in Flood Ordinance Schedule

Because changes to the ordinance will require amending two parts of our code, the Planning Commission will have to review and make a recommendation to us. I think the Planning Commission will take it up at their meeting in Feb. (Feb. 2, I think?) You should request a copy of the proposed language as soon as its available or call Milton Pope and ask him if SELC (Blan) can review it before it's released, hopefully, to make suggestions so we can avoid any major controversy about it.

Staff has informed me that the intention is to create special exceptions for infrastructure that must pass over/through a floodway: roads, sewer, water, power/cable lines. The exception will be very specific and clear. I expressed concern about the county accepting roads into our system that have a higher risk of flood damage and suggested that homeowners or commercial owners be required to pay for any damage resulting from flooding. Don't know if that's possible or not.

DNR will review as well.

Blan, can you give me some advice?

Kit

SEL0000009

From: Blan Holman
Sent: Thursday, January 22, 2004 4:52 PM
To: 'KitSalley@aol.com'; 'wizworks@mindspring.com'
Cc: Blan Holman
Subject: RE: Change in Flood Ordinance Schedule

I'm glad to help review any proposed language and offer whatever help I can on this.

Best regards,

Blan

SEL0000010

From: AMELIA LINDER [mailto:amelialinder@richlandonline.com]

Sent: Monday, February 23, 2004 3:05 PM

To: 'WESTON@WESTONADAMS.COM'

Cc: Blan Holinan; gfred@aol.com

Subject: RE: Ordinance change

Right now, I can't find any staff available for tomorrow - and Ralph Pearson and Harry Reed are both out today. I think we are going to have to go with what we have, especially since the changes to Chapter 8 will be considered by the D&S committee tomorrow evening. It was felt that we needed to define the language referencing impede, and we have done so. It was also my understanding that Mungo's proposed development would not increase the base flood elevation, and therefore, he was ok with the draft language.

Amelia R. Linder, Esq.

Assistant County Attorney

Richland County Government

2020 Hampton Street, Suite 4018

Columbia, South Carolina 29204

Phone: (803) 576-2072

FAX: (803) 576-2139

SEL0000090

From: AMELIA LINDER [amelialinder@richlandonline.com]
Sent: Tuesday, February 24, 2004 3:21 PM
To: Blan Holman
Cc: gfred@aol.com; 'Weston Adams'
Subject: Draft ord re Chapter 26 (Zoning)

Blan,

Attached is an attempt to incorporate your desired changes with the changes already recommended by county staff. New language is double underlined, and deleted language is struck out. If you would like to amend this further, to the best of your ability, please keep it in Richland County ordinance format. In addition, it is felt at staff level here that your changes (if any) would be best served in Chapter 26. To the extent possible, I am trying to avoid redundancy in our County Code of Ordinances and do not recommend saying the same thing in two different parts of the Code unless absolutely necessary.

For reference purposes, I have also attached our proposed changes to Chapter 8.

Please feel free to call me after you have had a chance to review these documents.

Thank you!

<<amending zoning re impede (W Adams).doc>> <<amending stormwater (impede).doc>>

Amelia R. Linder, Esq.
Assistant County Attorney
Richland County Government
2020 Hampton Street, Suite 4018
Columbia, South Carolina 29204
Phone: (803) 576-2072
FAX: (803) 576-2139

SEL00000091

From: Weston Adams [WESTON@WESTONADAMS.COM]
Sent: Monday, February 23, 2004 3:39 PM
To: AMELIA LINDER
Cc: Blan Holman; gfred@aol.com
Subject: RE: Ordinance change

Amelai--A majority of both committe and council members have indicated to us that they want our input before this is final, and they have not received our input. I will talk to them about this-- My guess is this will be put off and not voted on Tuesday night--I will get back to you about rescheduling our meeting after I confirm that this will be put off. Thanks

SEL0000002

From: AMELIA LINDER [amelialinder@richlandonline.com]
Sent: Tuesday, February 24, 2004 3:21 PM
To: Blain Holman
Cc: gfred@aol.com; 'Weston Adams'
Subject: Draft ordinance Chapter 26 (Zoning)

Blain,

Attached is an attempt to incorporate your desired changes with the changes already recommended by county staff. New language is double underlined, and deleted language is struck out. If you would like to amend this further, to the best of your ability, please keep it in Richland County ordinance format. In addition, it is felt at staff level here that your changes (if any) would be best served in Chapter 26. To the extent possible, I am trying to avoid redundancy in our County Code of Ordinances and do not recommend saying the same thing in two different parts of the Code unless absolutely necessary.

For reference purposes, I have also attached our proposed changes to Chapter 8.

Please feel free to call me after you have had a chance to review these documents.

Thank you!

<<amending zoning re impede (W Adams).doc>> <<amending stormwater (impede).doc>>

Amelia R. Linder, Esq.
Assistant County Attorney
Richland County Government
2020 Hampton Street, Suite 4018
Columbia, South Carolina 29204
Phone: (803) 576-2072
FAX: (803) 576-2139

SEL0000001

March 4, 2004

VIA FACSIMILE AND U.S. MAIL

Cary McSwain
Richland County Administrator
2020 Hampton Street
Columbia, SC 29201

Re: Proposed Revisions to Richland County Drainage and Zoning Ordinances To Address
Construction in the Regulatory Floodway

Dear Mr. McSwain:

Thank you for joining our meeting this morning to discuss proposed revisions to Richland County ordinances that address floodway management. In follow-up to that meeting and our phone discussion last week, this letter discusses two proposals that have been put forth to alter Richland County Ordinances (Zoning, Ch. 26 and Stormwater Management, Ch. 8). We appreciate your willingness to discuss this matter and look forward to continuing discussions regarding floodplain management in Richland County with particular focus on the regulatory floodway issues.

This office represents Richland and Lexington County citizens and organizations in the current federal lawsuit pending against the Federal Emergency Management Agency ("FEMA") regarding the 2001 delineation of flood elevations and floodway boundaries in those counties. We participated extensively in the administrative appeals process regarding FEMA's flood maps and were vindicated by FEMA's final decision, which accurately maps flood hazards in the Columbia area caused by the Congaree River. We are very well acquainted with recent flood management issues in Richland County and appreciate staff's efforts to modernize ordinances without opening the door to a wave of new development in the regulatory floodway.

The recent push to change these ordinances, as we understand it, was sparked by two concerns. First, it was thought that there needs to be a means by which to allow for limited crossings of regulatory floodway in Richland County with a bridged roadways and associated infrastructure. Second is ongoing dissatisfaction with the current ordinance provisions, which are confusing, somewhat inconsistent and which use undefined terms. Two approaches to dealing with these concerns are set forth below. After having reviewed them and discussed this issue with the Association of Floodplain Managers and floodplain engineers from other municipalities, it is our view that Richland County should, at this stage, take the narrower approach to permitting roads and associated utilities in regulatory floodways, with a view towards more comprehensive revision to floodway provisions in the future, perhaps in conjunction with the Land Development Code process. A broader approach at this point, while understandable, raises serious questions that should not be broached at this juncture in Richland County without a comprehensive reworking of all floodplain related ordinances.

SEL0000265

1. The Broad Approach: Adoption of New "No-Rise" Standard In Richland County

Currently, limitations on construction and activities in the regulatory floodway are found in both the Zoning Ordinance, Ch. 26 and the Stormwater Management Ordinance, Ch. 8. Both ordinances prohibit structures in the regulatory floodway that will "impede" the flow of floodwaters. Both ordinances also contain exemptions for some activities in the floodway. The zoning ordinance, for example, allows specific uses such as agriculture, parking, open air uses accessory to residential uses, and "streets, bridges, overhead utility lines, storm drainage facilities, sewerage lines, waste treatment plant outlets, and water supply intake structures." RCC 26-73.4(3)(f). It is unclear, however, if such use is allowed if the attendant structures would "impede" flow, since the zoning ordinance also prohibits the "placing of material" in such a manner as to "impede free flow of water during a time of flood or in such manner that the elevation of floodwaters will be increased." RCC 26-73.4(2).

The broad approach to modifying the ordinances would replace the "impede" standard with a "diminish" standard, which is in turn defined to mean a "rise" in flood waters above the determined base flood elevation ("BFE") of the 100-year flood. The rise, or no-rise, is to be demonstrated by hydraulic and hydrologic analysis as performed by a professional engineer "in accordance with standard engineering practice" as approved by the County Flood Plain Coordinator. The proposal exempts from regulation agricultural land practices including the construction of buildings and structures that cause "no-rise," as well as certain utilities crossings, which are currently exempt under the stormwater ordinance.

The staff amendment gets rid of the current outright ban on "levees, dikes, fill material, structures or obstructions that will impede the flow of water during times of flood" in the regulatory floodway, currently contained at RCC 8-26(h). The current ban on fill, levees and structures in the regulatory floodway is currently subject to several exceptions, for example for structures used by schools and wastewater treatment plants that are in the regulatory floodway. The staff language bans "encroachments such as" levees, fill and structures, but the term "encroachment" is not defined, and the existing ban on "obstructions" has been left out of the list of disallowed activities.

Further, the list of exceptions to the "encroachment" ban would now include all structures "consistent with" the uses found in the proposed amended zoning ordinance at Subsection 26-73.4(3). The uses there include "agricultural" uses, parking and loading, open-air residential uses, recreational uses, golf courses, airport runways and utility crossings, along with existing schools and wastewater treatment plants. These uses all contain a "no-rise" limitation, meaning that such uses are allowed if they are shown to cause no rise in the base flood. Taken together, this language replaces the current ban on impediments in the floodway with a standard that allows some structures and obstructions where it can be shown that such will cause "no-rise."

As attractive as a no-rise standard might appear at first glance, the proposed language attempting to install that standard in Richland County leads to a number of serious questions and problems that could undercut the County's adopted objective of avoiding and prohibiting "filling, grading, mineral extraction, placing of obstructions within flood channels and other activities, uses or characteristics of uses which may increase flood damage." RCC 26-73.2 (Intent). The main reason is that the no-rise determinations for construction can be too easy to obtain where very specific guidelines and regulatory provisions are not in place directing exactly how such determinations are to be studied and demonstrated. The concept may sound simple ("draw a map and see if the proposed structure will cause area elevations to rise"), but in practice consultants paid by their clients to demonstrate a "no-rise" will have a host of assumptions and variables that can be employed to show no rise even where more conservative calculations would show a rise to be present.

Indeed, experience with paid flood consultants and engineers and liberal "no-rise" determinations has led other municipalities to enact and adopt extensively detailed guidelines and requirements for how such studies are to be conducted. Factors specified include Manning's roughness factor; effective area of cross-section; ratio of areas to the wetted perimeter; prescribed horizontal water expansion rate; prescribed vertical water expansion rate; treatment of structural and topographical expansions and contractions; orientation of cross-sections; ratio of compensatory storage to lost floodplain storage; placement of compensatory floodway storage in floodplain; floodway surface area conservation requirements; limitations on increase in the average channel or regulatory floodway velocities or stage for all flood events; limitations on scour, erosion and sedimentation; tailwater condition assumptions; demonstration that other practicable alternatives do not exist; slope requirements; stabilization requirements; base conditions including changed conditions and tributary backwater assumptions, among others. The floodplain ordinance of Des Plaines, Illinois, which experienced devastating floods in the eighties, contains multiple pages on exactly what a study must include and the assumptions that must be used. Charlotte-Mecklenburg is in the process of issuing guidelines that contain a similar level of detail.

The point is that simply adopting a "no-rise" standard – without comprehensively revising floodplain management in Richland County – will likely result in a significant weakening of protections in the regulatory floodway. This is particularly problematic in Richland County given the state of flood maps there and the proposal to initiate a very large development in the regulatory floodway. As discussed, the no-rise limitation is only a limitation if it would cause a rise in base flood elevations ("BFEs"). Currently applicable maps in Richland and Lexington Counties have BFEs drawn as if a system of agricultural dikes along the Congaree River near I-77 will both fail and not fail. The areas behind the dikes, or landward of them, have flood elevations that assume the levees will fail – a conservative assumption that will keep development out of harm's way should the levees fail, as FEMA has found they likely will. The areas riverward of the dikes and into Lexington County assume the levees will not fail, again a conservative assumption that will help keep development and people out of harm's way since the levees, though apt to fail, might not do so until late into a flood, by which time they will have shoved a considerable amount of water (and thus increased flood elevations) riverward. The problem with a no-rise standard is that the operator of the agricultural dikes might argue that major restoration of the dikes would cause no rise to the BFE, since the BFE already assumes, in some sense, that the dikes will work. The operator would claim that fill in the floodway to repair the levees would cause "no-rise" and would, therefore, not be prohibited under the proposed language.

This risk illustrates the hazards of adopting a "no-rise" standard without comprehensive amendment of all floodplain related ordinances in Richland County. Unintended consequences are particularly likely given the particular mapping situation in Richland County and the proposal to upgrade a system of agricultural dikes. A more limited approach, to deal with the road and utilities crossing issue, would avoid these risks. To the extent that the real problem motivating the current proposal is broader staff dissatisfaction with the "no impede" standard, efforts should either be made to give some definition to that term¹ or, conversely, to propose a comprehensive rewrite of all floodplain-related ordinances in a

¹ Staff have requested that we define the term "impede." As currently used, the term appears to encompass not only rises in flood elevations but increases in flood water velocity. A no-rise standard as proposed by staff does not address velocity and, given the lack of guidelines, may not prevent obstructions that actually cause flood elevations to be higher than they would be without the structure. We welcome the opportunity to better define "impede" in a comprehensive revision to the floodplain management related ordinances in Richland County, but will not propose a definition here because the term cannot be defined in isolation without a comprehensive rewrite, especially given the availability of a much more limited option to solve the current issue, which is road construction. We also note that the fact that a term is not defined in the regulation should not be a barrier to rational interpretation and implementation. Staff's proposed changes, for example, include the term "encroachment," but that important term is defined. See also RCC 26-73.6(3)(a) (containing undefined terms such as "seriously disturb," "interfere" and "significantly increase").

systematic fashion. Simply replacing "no impediment" with "no-rise," without more, will only lead to a host of new problems with potentially major ramifications at odds with the conservative floodplain management that has kept flood damages in Richland County to a minimum.

2. The Narrow Approach: Tailored Exemption for Road and Utilities Crossings

The second approach to the current situation is language containing a very narrowly tailored amendment to allow for the construction of bridges and other infrastructure that must cross floodplains if (1) such structures are shown by accepted engineering methods not to cause a rise in area flood elevations; (2) the structures are properly floodproofed; and (3) the structures won't be used to enable new development in the floodway. This achieves the narrow purpose of allowing road and utility crossings -- which occasionally must cross waterways and their regulatory floodways -- without opening up flood hazard areas to new development or causing area flood elevations to rise. While inclusion of the "no-rise" standard will require particular vigilance on the County's part to see that the standard is not abused, the narrow scope of the exclusion guarantees that the scope of any mischief will be small. This is by far the more conservative approach to permit needed utility and road work to proceed and will avoid the need to for a comprehensive ordinance rewrite.

Regrettably, an approach that combines this specific exemption with the broader proposal above would not achieve a compromise. Instead, it would add an exemption to a newly relaxed standard, cumulatively weakening the current system in a way so as to make the exemption superfluous. While we look forward to working with staff on other compromises or proposals, the simple combining of text will for obvious reasons not resolve the serious problems outlined above. We note, however, that adopting a limited exemption at this time does nothing to preclude a more comprehensive look at all ordinance provisions related to the regulatory floodway to deal with current inconsistent and undefined language. We would be pleased to work with staff towards that long-term end, perhaps as part of the Land Development Code process currently underway.

Thank you for your attention to this important matter and I look forward to discussing this in the future. Please let me know if we can provide any further information.

Very truly yours,

J. Blanding Holman IV

EXCERPTS FROM MINUTES OF
RICHLAND COUNTY
PALNNING COMMISSION'S
MARCH 5, 2004
MEETING

DEF-00002782

1 CHAIRMAN GREEN: Next on our agenda is the proposed flood protected areas
2 ordinance. Is the ordinance that you passed out today the same draft ordinance that we
3 had in our Planning Commission meeting?

4 MS. LINDER: No, there's still some additional amendments to it. It was brought
5 to my attention that we needed to maybe clean up our definition of flood plain because it
6 referenced the wrong maps and the wrong dates in the maps. But other than that -

7 CHAIRMAN GREEN: Other than that this is the same?

8 MS. LINDER: Well, also I think the draft you had before you at the Planning
9 Commission meeting, on page 3 where we talked about streets and bridges, we added
10 two further provisions.

11 CHAIRMAN GREEN: Those all right. Which number are you?

12 MS. LINDER: On page 3 F.

13 CHAIRMAN GREEN: Okay.

14 MS. LINDER: Sub-paragraphs 1 and 2. We added that. Other than those - oh,
15 excuse me. There might - and I don't remember about this - about whether we have to
16 put anchoring(?) requirements in at the last meeting. But that has been added.

17 CHAIRMAN GREEN: The draft we have in front of us is the form and substance
18 that staff is recommending to Planning Commission to send forward to County Council.
19 Is that correct?

20 MR. CRISS: Yes.

21 MS. LINDER: That is correct. It's reviewed by County Administration, Public
22 Works, Planning, and Legal. And I believe if you've got questions. Mr. McSwain will
23 address those.

1 MR. CARY McSWAIN: Mr. Chairman, would you like an overview or -

2 CHAIRMAN GREEN: Sure. Please. Very much so.

3 MR. McSWAIN: I think there's been a lot of discussion and some consternation
4 about the wording of what the Staff has been directing the Council to do. If I could
5 characterize what we actually have done - is the whole problem seemed to be focused
6 on one single word, the word "impede". And for several years, I don't know how long,
7 probably 100 or 200 years, however long Ralph Pearson's been over the county,
8 [laughter] that that particular section of our ordinance has been, had a liberal, I guess
9 you would say, translation or interpretation relative to what it subsequently became.
10 And in the ordinance there are things that are allowed in a floodway and things like, that
11 I didn't know were in there, like air landing strips and picnic areas and roads. Roads
12 weren't in there, I don't think, back then. But agricultural, horticultural uses, recreational
13 uses, open area uses, parking and loading areas, and things of that nature but our
14 ordinance excluded buildings and use or in conjunction with those things. And it still
15 does. But those things in terms of the interpretation of the word "impede", well we got in
16 the very highly contentious issue of development down on the Congaree River. That
17 became a focused word. And Legal then had to interpret what "impede" meant. And
18 since it was not defined in our ordinance, it had to use the ordinary dictionary term of
19 what "impede" meant. And then a subsequent interpretation of that definition from
20 Webster by our County Engineer basically said you couldn't do any of the things that the
21 ordinance already assumed that were permitted in a floodway because it would
22 impeded. Any of those things would impede. Any disturbance of the flood carrying
23 capacity or the floodwaters. So we decided at that time nothing was going to be done

1 or addressed about. At some time later it would be considered. I think we're a year and
2 a half or so past that. And what we have done, at the direction of Council, I was asked
3 that Staff bring forward a draft to Council. They have been really concerned that it's
4 taken so long, at least some of the Members, that it's taken so long and that we're
5 taking a very thorough review of this ordinance. However, I thought it was critical that
6 we have input from those people who had some opposition to the developments and so
7 forth prior to that. And, also, to me it's very critical that we have this reviewed by FEMA
8 since we are approved for them as a flood insurance program. I will tell you that didn't
9 exist when I came here in 1994. I think we had lost that status and we worked with the
10 Planning Department and got re-certified and have a floodplain coordinator and so forth.
11 So that status has changed and we do have cheaper flood insurance rates for our
12 citizens now because the Planning Department does have a floodplain coordinator, a
13 flood hazard area coordinator, that is able to review these things. If I could characterize
14 basically what has been done, it's one thing. We have taken out the word "impede".
15 Substituted that with a phrase called "diminish the flood carrying capacity". Then we
16 had defined "flood carrying capacity", "diminishing the flood carrying capacity", which is
17 what originally the interpretation of "impede" was. But we've made it a little more
18 restrictive. And I would assure you that in all the reviews that we've done of Chapter
19 26, which would be the Ordinance Text Amendment, it has a brother or sister chapter in
20 our ordinance as Chapter 8, which is "Storm Water Or Drainage, Erosion, Sediment
21 Control" and "Storm Water Management". And it's important that whatever the zoning
22 ordinance says is also reflected in Chapter 8 on "Storm Water Management". That
23 wasn't exactly consistent before, either. So we have to review both of those chapters

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1 and make sure we're fully consistent. So if you see on your page there, the definition of
2 "flood carrying capacity" is "to reduce the flow of flood waters by creating a situation that
3 causes flood waters to rise above the determined base flood elevation of a 100-year
4 flood. The determination of a rise or no-rise of a 100-year flood elevation shall be
5 demonstrated by hydraulic and hydrologic analysis as performed by a properly
6 credentialed professional engineer and in accordance with standard engineering
7 practice and reviewed and approved by the County Floodplain Coordinator." A rather
8 lengthy definition. And some of the discussions we've had with those who have brought
9 issues to us, Mr. Adams and Bland Holmann, Bland Holmann and Robert Weston
10 Adams have met with us and some others. I think Earl McCloud met with - we had
11 everybody in the room together, including Flood Plain Coordinator, the County
12 Engineer, County Attorney, Assistant County Administrator, and myself. Just a whole
13 array of people reviewing this and to get input from Mr. Adams. And the first meeting
14 we had Mr. Holmann was on a conference phone with us. He explained that what they
15 would like to see would be to retain the word "impede". I asked him to define it. They
16 said they would prefer not to define it. It shouldn't be defined. It should stay as it is and
17 that you simply put in exemptions that exist already in the ordinance. That would be the
18 best way to handle this because he also said that he had concerns about our definition
19 of "diminishing the flood carrying capacity". That it contains the words "of a
20 determination of a rise or no-rise". In his view that is a very technical process. It can be
21 debatable. And I would certainly agree with that after having gone through the Green
22 Diamond discussions for all the scientific data. There was enough people on both sides
23 of that issue to make their case. However, FEMA has standards. And they have

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1 standards in how that is formulated and determined and what is acceptable to them in
2 terms of what a "no-rise" is. I am still awaiting a discussion with the FEMA Regional
3 Director For Flood Plain Management and Coordination. I think whatever language we
4 have, should pass muster at that level. And if they have any recommendation as to
5 whether "rise" or "no-rise" should be in this definition, we would certainly entertain their
6 advice with regard to that, too, as professionals who day-to-day, hour-to-hour are
7 responsible for this area and for regulating, just as we are. So we will - I've already
8 faxed a copy of this to them. I've left them messages. They apparently are in meetings
9 or out of the office. And the last meeting we had was yesterday and since yesterday
10 I've not been able to get in touch with Todd Davis [inaudible] or Michael Miller in
11 Washington, DC, or Atlanta. But we will and they will review this and give us any input
12 or any suggestion as to whether our language is appropriate or it needs to be tightened
13 up or what. I will submit to you that our language is still considerably more stringent
14 than the FEMA regulations. The only question about FEMA would be that question of a
15 "rise" or "no-rise" determination. And so if you look through the entire ordinance, except
16 for a little cleanup stuff that I think Ms. Linder had mentioned, all we've done is define
17 "impede" as "diminishing the flood carrying capacity", inserting that term where "impede"
18 was before, or if it was "impediment" we substituted that term. And in one case, though,
19 I think in Chapter 8, Ms. Linder used "encroachments" as a substitution for "impede" or
20 "diminish". Would you add anything to what I said?

21 MS. LINDER: No, I think Mr. McSwain's explained it pretty well, what the intent of
22 this ordinance was and what we've been directed by Council to do.

23 MR. VAN DINE: Mr. McSwain, I just have a couple of questions [inaudible].

1 MR. McSWAIN: Thank you.

2 CHAIRMAN GREEN: Any questions?

3 MR. McSWAIN: If I could say there's one other quick thing, on the 2nd page
4 Section 5, where it refers to permitted uses on a floodway, the language very
5 specifically says "The following uses will be permitted in those areas designated FW."
6 And that's on the FEMA maps. But it also says "... and excluding buildings in
7 connection with these permitted uses." So if you're permitted to have a recreational
8 facility there, you couldn't have any kind of buildings or structures there like a bathroom
9 or something like that. It'd just have to be playing fields. You could have soccer goals
10 as a minor structure but you couldn't have a building to house equipment in or
11 something in a floodway. This prohibits any kind of buildings related, or structures
12 related to these particular permitted uses. I'm sorry.

13 CHAIRMAN GREEN: Thank you, sir.

14 MR. VAN DINE: You had mentioned that there was changes to Chapter 8?

15 MR. McSWAIN: Yes.

16 MR. VAN DINE: Do we have specific language related to 13 in Chapter 8
17 because is there are changes, I mean, we've got to see those changes as well?

18 MR. McSWAIN: They're not a part of the zoning ordinance.

19 MR. VAN DINE: But don't we need to have them at least to be able to verify that
20 the changes that are being in there are consistent with, or whatever, the changes that
21 are being made here?

22 MR. McSWAIN: You're certainly entitled to look at them.

1 MS. LINDER: But, yes, we have reviewed it to make sure there are
2 consistencies. So it has been reviewed.

3 MR. McSWAIN: The basic document is the ordinance and the ordinance text and
4 we have to make Chapter 8 reflect what Chapter 26 says.

5 MR. VAN DINE: Is there anything that Chapter 8 goes further on than what we're
6 asking to do here? I mean, making sure they're compatible and then making sure that's
7 nothing that adds or detracts from what we're trying to here -

8 MS. LINDER: The language "impede" is not in Chapter 26.

9 MR. McSWAIN: It was, but it's been replaced. Some parts of it was and it's been
10 replaced.

11 MS. LINDER: I believe it was in Chapter 8 and that's what we attempted to do.
12 The bulk of the changes were in Chapter 8. And then we made the changes to Chapter
13 26 to be consistent with the changes we were making to Chapter 8.

14 MR. VAN DINE: I guess what's - if Chapter 8 changes are being made without
15 our review, I think it's appropriate that we should at least have the Chapter 8 changes to
16 see what's being done to make sure that whatever is being done here holds the course
17 with what those changes are and we can get a sense of what is being kept so that we
18 can make sure that this particular ordinance is, in fact, meeting that intention.

19 MR. McSWAIN: Well, we can certainly give you a copy of that for your review.
20 The Council already -

21 MR. VAN DINE: I would like to see that so I can make sure [inaudible].

22 MR. McSWAIN: Sure.

23 CHAIRMAN GREEN: Any further questions for Staff, or comments?

1 MR. VAN DINE: I have three or four questions if you want me to run down them.

2 CHAIRMAN GREEN: Please.

3 MR. VAN DINE: How would the changes that are being proposed here, in
4 Chapter 8, Impact upon the proposed Land Development Code, which is being
5 debated? Would we have to go back to the proposed Land Development Code and
6 make additional modifications to make sure that this particular language is encapsulated
7 in that revision?

8 MS. LINDER: Yes. I think that is being contemplated, that we would go back to
9 the Land Development Code and make some changes that, you know, as it progresses
10 in the readings.

11 MR. VAN DINE: So this change could be easily "dropped in" to, for lack of a
12 better word, the proposed Land Development Code that's out there?

13 MS. LINDER: That's correct.

14 MR. McSWAIN: Exactly.

15 MR. VAN DINE: Good.

16 MR. McSWAIN: In our vote of next Friday, indicate that we're voting not only to
17 change this document but to change the draft that we can send to County Council.

18 MS. WYATT: Then wouldn't we be amending?

19 CHAIRMAN GREEN: Whatever procedure [inaudible] can do things at the next
20 meeting.

21 MR. VAN DINE: We just need to make sure that whatever we do, however we do
22 it, make sure that the proposed Land Development Code that is being debated now,

1 everybody's brought -- all of that is brought to people's attention. This should be
2 considered a modification to that in relation to, if they decide to even talk about it.

3 MS. LINDER: [inaudible] planning to adopt any recommended changes you're
4 now making between now and January 1st, 2005, to get those incorporated in the new
5 document. Also that would also apply to the recent cell tower ordinance that you
6 recommend approval of.

7 MR. VAN DINE: I guess what I just want to make sure of is that we are making
8 steps to make sure that we are --

9 MS. LINDER: Carrying forward.

10 MR. VAN DINE: Carrying forward into the proposed because we don't want to
11 do something twice.

12 MS. LINDER: That's correct.

13 MR. VAN DINE: In discussions that we had earlier, it's my understanding that it's
14 your intention to use FEMA Standards, FEMA definitions, plan in discussing the "no-
15 rise" aspects of it. Is that correct?

16 MR. McSWAIN: Their advice on what the wording should be or whether there
17 should be any further technical language in there with regard to how you determine a
18 "rise" or "no-rise" determination, yes. Mr. Holmann has said if we were to do that it
19 would required pages and pages of technical documentation. As he's looked at it
20 matter across the country, I would say that that's what he told us. And what I'm doing is
21 running that by those people that have to regulate that and have to make the final
22 determination and give us some confirmation that this language is adequate. Or if there

1 needs to be anything else in there, we would like to take their advice and add any
2 additional technical language they would have for that determination, for that definition.

3 MR. VAN DINE: Would that be in the form of regulations as opposed to
4 ordinance language, or how would you propose to make sure that anything that FEMA
5 requires or suggests that we do relates to this "rise/no-rise" actually becomes a
6 requirement?

7 MR. McSWAIN: That it would become a requirement because it would be defined
8 that in order to - a permitted use requires that it not diminish the flood carrying capacity.
9 And that is defined here. So in order to able to get a permit for a permitted use, they
10 would have to submit all that engineering information based on those technical
11 definitions for that "diminishing of flood carrying capacities".

12 MR. VAN DINE: And you indicate it's going to be defined. Is it going to be
13 defined within ordinance document or it's going to be defined within a regulation that is
14 referenced in the ordinance or how are people going to know what they have to do or
15 not do in order to be able to comply with the "rise/no-rise" aspect of it?

16 MR. McSWAIN: It would depend on the length of what the definition would be. If
17 this is an adequate definition, it's in the ordinance already. And it will be in the
18 ordinance. But if it's a very lengthy, highly technical document, then it will probably be
19 referenced here because it may change at some point.

20 MS. LINDER: I think we're going to be looking at whether there's a rise or not is
21 based on what that engineer - and we very much want that to be a credentialed
22 professional engineer that's capable of making that determination. And they submit
23 their report as to whether it's a rise and then it's supposed to be reviewed internally to

1 see, you know, whether we concur with that opinion. I would suspect that if we had
2 some questions on it we'd go back to the engineer to verify the accuracy of the report.

3 MR. McSWAIN: But the question is --

4 MR. VAN DINE: Going back to my original question, "rise/no-rise" is an undefined
5 term. Just heard there's a whole lot of problems with the word "impede" being
6 undefined. You're trying to bootstrap a "rise/no-rise" by using the "diminish the flood
7 carrying capacity" and so you're making a circular argument that one defines the other
8 which defines the first one. And so you're just going around in a circle here. And what
9 I'm trying to get to, is there any plan or is there any way we can actually get a definition
10 of "rise/no-rise" in relation to what FEMA requires and the discussions that you intend to
11 have? Because if we're worried about non-defined terms, then let's plan on defining it
12 and getting it some place in there. Because it's another undefined term, frankly, to me
13 in this particular language. It says "with standard engineering practice." Somebody
14 better tell me what "standard engineering practice" is because I can go out there and
15 find six engineers who can change what they consider to be the standard of practice.
16 And the only way that you're going to be able to define that is to have expert testimony
17 on both sides as to what the industry standard may be within a particular jurisdiction.
18 So those are undefined terms which don't get you beyond the problems that you talked
19 about earlier with the "impede" issue.

20 MR. McSWAIN: Well the answer to your question is "yes".

21 MR. VAN DINE: For all of it?

22 MR. McSWAIN: Yes. And --

1 MR. VAN DINE: So we will see in the future a definition of "rise/no-rise" and we
2 will see in the future a definition of "standard engineering practices".

3 MR. McSWAIN: I think they're integrally related. And a definition of "no-rise" will
4 include that. Taken out of context, "standard engineering practice", but in context, it has
5 to be "rise or no-rise", "100-year based flood elevation", "hydraulic and hydrologic
6 analysis". And we put in "properly credentialed professional engineer" because there's
7 specificity in terms of what model they use and which engineers are experienced and
8 qualified to do these kinds of studies and that relates to the "standard engineering
9 practice". So I think if we define to FEMA's standard what a "no-rise" or "rise"
10 determination is we will have resolved that whole thing.

11 MR. VAN DINE: And I'm not suggesting that I can sit up here and tell you
12 whether whatever definition you come up with is right or wrong because I am not a flood
13 plain person and I don't -- I know enough to be dangerous and that's about all.

14 MR. McSWAIN: But I think so do we all.

15 MR. VAN DINE: But I just want to make sure that when we put something out
16 there in this form that we're not just either compounding the problem or we're just
17 shifting one problem for another problem.

18 MR. McSWAIN: Right. Well we're very sensitive to that. We'd certainly not like
19 to end up with another large problem. But the English language is never perfect. We
20 have to do the best we can. And I think with further definition of that, because it was
21 pointed out by Mr. Holmann, I think it's incumbent on us to further look at the definition
22 of that and see what we need to add to it. And whether it be written specifically in this

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1 ordinance or referenced in a regulatory document, that's dependant upon what that
2 definition would be, I would say. That decision has been made.

3 MR. VAN DINE: Mr. Chairman, I guess for next Friday's purposes what I'd like to
4 at least have a report as to what the general direction, if not - if the - if they have the
5 language, great but if not I understand it would take awhile to get some of this stuff - to
6 have at least a report to us relating to how they intend to deal with these particular
7 issues so that we can have it for part of our deliberation.

8 CHAIRMAN GREEN: Michael, is that possible?

9 MR. CRISS: Yes sir?

10 CHAIRMAN GREEN: Good. Any other questions, comments for Staff?
11 Otherwise the voting on both the buffer yard table and this ordinance in our meeting
12 next Friday.

13 MR. VAN DINE: Mr. Chairman, there is one other thing. Everybody should have
14 received, at least today, a copy of proposed language that Mr. Adams and his group
15 had proposed, proposed a letter. At least for the purposes of our discussion everybody
16 ought to read that. Frankly I have read it and I don't understand most of it. I'm sure that
17 Michael or whoever would be more than happy to discuss any definitions.

18 AUDIENCE MEMBER: I have additional copies of that if you need them.

19 CHAIRMAN GREEN: Anything else from the Commission since we can't take a
20 vote today?

21 AUDIENCE MEMBER: Mr. Chairman, might I just ask, since you're going to
22 eliminating barns and any other structure that are related to farms, that before you take
23 Mr. Adams' recommendations that we meet again and include the property owners?

1 Farmers, every farmer has waterway property. And if you're going to be excluding them
2 from [inaudible] to have the barns to house their crops or their livestock, they really
3 need to be included.

4 CHAIRMAN GREEN: Thank you.

5 MR. JACKSON: [Inaudible] include all structures. Is it possible to have a proper
6 engineered designed structure that would not impede or alter flow?

7 MS. LINDER: Well a structure is defined differently than a building is defined.

8 MR. JACKSON: A structure is different from -

9 MS. LINDER: Some structures are allowed. Buildings are not allowed.

10 MR. JACKSON: Okay, structures like bridges because of their structure.

11 MS. LINDER: I'm sorry?

12 MR. JACKSON: A bridge would be considered a structure?

13 MS. LINDER: Yes.

14 MR. JACKSON: Okay, a building then. Isn't it possible to design a building,
15 where engineer designed a building, so designed that it would not impede or alter the
16 flow? I mean, engineers can design almost anything.

17 MR. CRISS: Yes, it is.

18 MR. JACKSON: So, that's why I have concern about buildings excluded because
19 it may impede. If there's a building that could be designed properly that would not
20 impede, where would the problem be?

21 MR. CRISS: You are inviting human habitation and land use in a dangerous
22 portion of the floodplain.

1 MR. JACKSON: Yes, but so when you have a playground, a place where people
2 can -- a picnic area -- where people can be there [Inaudible]. So my concern was even
3 a bathroom, but people could stay there and have a picnic.

4 MR. CRISS: Although they can be designed to stand the hydrostatic hydraulic
5 flows of floods, there's still the risk that the structure will fail, will collapse, will contribute
6 to the debris stream and create additional flooding.

7 MR. JACKSON: Yeah, I understand, but like I said engineers at this time and the
8 technology we have, I'm pretty sure there's a way we can design a structure or a
9 building that could be used properly that the possibility of it happening would be a
10 minimum.

11 MR. MILTON POPE: Mr. Jackson, your question is exactly that "could" be
12 done, but I just want to remind the Planning Commission that our attempt was not to
13 change anything in our existing ordinance as it is now that's specifically prohibited.
14 Right now, basically, the way that I boil it down is under FEMA regulations you can build
15 just about anything in the floodway if you can determine that it has a "no-rise". Our
16 ordinance specifically prohibits everything except for the exemptions that we have. But
17 we can't use those things because of the word "impede" and it was never defined.
18 That's what we're trying to accomplish. So this is not about, at all, taking anything out
19 or not allowing people to build anything or anything like that. It's just doing the same
20 thing, what's on the books right now, but in order to just facilitate that.

21 MR. JACKSON: I wasn't worried about not taking anything out. I was just
22 concerned, or just questioning the possibility of when it was mentioned earlier about a
23 playground.

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1 MR. POPE: You would have to then change the intent of what our ordinance is
2 and how, and exactly I agree clearly with what Mr. Criss said, is our ordinance is way
3 more restrictive because it's more protective as far as flood hazard type things.

4 MR. JACKSON: [inaudible]

5 MR. POPE: Not that you can't do it.

6 MR. JACKSON: Yeah, it's just something I just point out to understand why when
7 it was mentioned that not even a bathroom placed there, but they can have a picnic
8 area, but you couldn't have one. And that was the only question.

9 MR. POPE: And just one other point that I certainly want the Planning
10 Commission to be aware of, and Mr. Van Dine was asking about "no-rise" and those
11 type things. Our ordinance refers to a lot of the information that's in the CFR program
12 on the Federal regs, which references what "no-rise" and those type things are. So, you
13 know, a question about whether or not you need to define it and have it in our ordinance
14 or not, I think it's a very valid one. But pretty much we're kind of referencing what those
15 Federal guidelines are and how you go about determining what a "no-rise" standard is.

16 MR. VAN DINE: Can you have these for next meeting? Tell us where that
17 reference is so that we -

18 MR. POPE: Sure.

19 MR. VAN DINE: If you are, in fact, referencing the Federal standards, Federal
20 standard as laid out, that may be the issue that I'm talking about. I just have not seen
21 where the actual Federal standards have been referenced [inaudible].

22 CHAIRMAN GREEN: Mr. Criss, would it be a fair statement to say that under the
23 proposed draft that we have in front of us we're not changing anything to do with what is

1 permitted in an agricultural rural area that's not permitted now? If we were to
2 recommend this document, that doesn't change anything other than the use, definition,
3 of "impede"? It doesn't affect any, it doesn't allow anything that we previously didn't
4 allow or delete anything that we currently allow.

5 MR. CRISS: This change restores the original intent of the current ordinance.
6 Remember that the smaller streams and creeks in farm scapes typically don't have
7 floodways designated in the middle of the floodplain. It's only the larger water bodies.

8 MR. VAN DINE: There is, however, just to be fair, if you go to page 3 under F,
9 there are additional requirements under streets and bridges that are being proposed
10 that were not in the original ordinance. Page 3 under F1 and 2 are additional
11 requirements. But we're not changing the present Code. That was my first question I
12 asked is this is easily dropped in and the answer was yes because, in essence,
13 everything else was part of the proposed Land Development Code.

14 CHAIRMAN GREEN: Any other comments, questions for Planning Commission?
15 If not we will stand adjourned until we meet next Friday. The time is 12 o'clock again?

16 MR. CRISS: Yes, sir.

17 MS. LUCIUS: 12:30.

18 MR. VAN DINE: 12:30 it says here.

19 CHAIRMAN GREEN: 12:30?

20 MR. CRISS: 12 o'clock is what mine is.

21 CHAIRMAN GREEN: How we advertised it that's the key. Whatever we've
22 advertised is what we're doing.

1 MR. PALMER: Somebody tell me where I can go to an archery range at? That's
2 allowed now in a -

3 MR. CRISS: We will communicate with Planning Commission to verify that time.

4 CHAIRMAN GREEN: I appreciate our -

5 MR. CRISS: A place could be set up at noon.

6 CHAIRMAN GREEN: I appreciate our 100% attendance. Since we're not sure
7 whether we're meeting at 12:00 or 12:30 next Friday, I would assume we'll have a fairly
8 short meeting, but I again appreciate everybody taking the time out for two extra
9 meetings this month.

10 MR. VAN DINE: Gene, the only thing we're going to do next week is vote on the
11 two -

12 CHAIRMAN GREEN: Correct.

13 MR. VAN DINE: -Things that we've just talked about. Nothing else is -

14 CHAIRMAN GREEN: Nothing else is on the agenda. And we're advertising both
15 of these items appropriately. We're advertising both of these items and that's all that's
16 on the agenda.

17 MR. CRISS: Yes, sir. Right. These two items.

18 CHAIRMAN GREEN: Thank you.

19

20

[Adjourned 1:10 p.m.]

From: KitSalley@aol.com
Sent: Thursday, March 11, 2004 8:16 AM
To: Blan Holman
Subject: Stormwater Ordinance

Blan,

First, hi and thanks for your help on this.

Is my understanding correct?

The Staff proposal only deals with exemptions basically keeping the shall not impede standard as applicable to all uses except those exempt.

The exemptions, however, as written are very broad allowing an undefined number of things to be built in the floodway by replacing the shall not impede standard with no rise. So there are two problems: the definition of what structures can be built and the no rise standard.

First, while there is an effort to limit the structures there is no assurance that they are limited enough because of the broad definition and the elimination of some outright prohibitions.

Secondly, the no rise standard does not have guidelines for how the no rise engineering studies will be conducted leaving the county at the will of engineers hired by builders/developers to develop thier own assumptions and methodologies.

I understand the part about 'no rise' vs. 'shall not impede' and the questions of sound engineering, I'm a bit fuzzy on the other point, if indeed, it is a point at all.

I've got to be able to articulate this if I'm going to be able to help. Do you have a sign off from Mungo in writing?

Kit

SELC000012

From: KitSalley@aol.com

Sent: Monday, March 22, 2004 10:53 PM

To: Blan Holman

Subject: Re: To my Go To Boyz

Thanks. I also told John Foster to contact you re: floodway ordinance. What a mess! I'm suggesting we adopt your draft IF our county attorney will give us a thumbs up on it then reopen the issue this fall when we all have more time and energy to focus on it. Don't know if I can prevail with that thinking, however. The anti-B&C crowd is being portrayed as 'unreasonable' because, I think, no one understands what you're saying. I do need a little more prep on this. Wish it wasn't so complicated. Kit

SEL0000013

From: KitSalley@aol.com

Sent: Monday, April 05, 2004 1:28 PM

To: Blan Holman

Subject: Question

Blan, supposedly under our existing ordinance, ag. levees can already be maintained.

Is the problem that under the 'no rise' standard the levees may be improved, expanded or raised because engineers could play games with assumptions in doing calculations? But if it's only for ag purposes, who cares?

Or is it that improving on our side could have bad impact on Lex side?

Help me understand this. Kit

SEL0000015

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Columbia Venture, LLC,	)	
	)	
Plaintiff,	)	
vs.	)	C/A No. 3:01-4100-24
	)	
The Federal Emergency Management Agency,	)	PLAINTIFF'S MOTION TO VACATE
	)	
Defendant.	)	
	)	

Plaintiff, Columbia Venture, LLC ("CV"), files this Motion to Vacate pursuant to Section 706(2)(D) of the Administrative Procedures Act ("APA"), 5 U.S.C. § 706(2)(D), and 42 U.S.C. § 4104, on the grounds that Defendant, the Federal Emergency Management Agency ("FEMA"), promulgated its Final Rules for the Congaree Floodplain without observing procedures required by law, thereby rendering its 2001 Final Base Flood Elevations ("BFEs") and Floodway Determinations "null and void."

Specifically, FEMA failed to publish its Proposed BFEs for the Congaree river in the Federal Register as required by statute, a fact concealed by FEMA and unknown to CV until receipt of FEMA's letter dated August 2, 2005. In that letter, FEMA admits that: (1) FEMA did **not** publish its Proposed Base Flood Elevations for Unincorporated Richland County (where CV's property lies) in the Federal Register in **September of 1999**, contradicting the sworn Declaration of FEMA engineer Douglas Bellomo filed on December 13, 2002; and (2) FEMA, in fact, first published its Proposed Rule for Unincorporated Richland County in the Federal Register on **February 16, 2001**, after the appeal period had run, the comment period had closed, and FEMA's deadline for submitting information to the agency had passed.¹ Upon

¹ The statute makes clear that FEMA's first notice obligation is to publish "for comment" in the Federal Register. In the case at bar, however, publication in the Federal Register did not occur until after FEMA's deadline for receiving additional information, after the comment period had closed, and after the 90-day the appeal period had run. See Declaration of Doug Bellomo (Dec. 13, 2002) at ¶ 18 [Ex. 1] (90-day appeal period "elapsed on

further investigation, CV has learned that FEMA also failed to comply with its statutory notice obligations for all communities along the Congaree river affected by FEMA's 2001 Flood Insurance Studies ("FISs") and Flood Insurance Rate Maps ("FIRMs") (Richland and Lexington Counties).

As a result, FEMA's Final BFEs and Floodway determinations for the Congaree River are "null and void." CV requests that the Court immediately vacate the 2001 Final BFEs and FIRMs for the Congaree floodplain.

Local Rule 7.02(D), D.S.C. exempts this Motion from the duty to consult before filing.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By s/ Manton M. Grier

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Attorneys for Plaintiff

August 22, 2005

December 13, 1999", 90-days after the September 14, 1999 publication in The State); and Defendant's Motion to dismiss, at p. 9 [Ex. 1] ("After the close of the comment period on January 2, 2001, FEMA posted all of the materials received during the post-appeal resolution period on its website and provided the public an opportunity to review the data submitted and to respond by February 15, 2001."). Thus, FEMA's publication of notice in the Federal Register on February 16, 2001 came more than one year after the appeal period expired, 45 days after the comment period closed, and one day after FEMA's deadline for submitting responses.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

COLUMBIA VENTURES, LLC	)	CA. NO. 3:01-4100
	)	COLUMBI, SC
PLAINTIFF,	)	NOVEMBER 14, 2007
	)	
AND	)	
	)	
HEATHWOOD HALL EPISCOPAL	)	
SCHOOL,	)	
	)	
PLAINTIFF-INTERVENOR	)	
	)	
VERSUS	)	
	)	
	)	
THE FEDERAL EMERGENCY	)	
MANAGEMENT AGENCY,	)	
	)	
DEFENDANT.	)	
	)	
SOUTH CAROLINA WILDLIFE	)	
FEDERATION RIVERLAND PARK	)	
NEIGHBORHOOD ASSOCIATION,	)	
DR. JOHN GREGO AND DR. DAN	)	
TUFFORD,	)	

BEFORE THE HONORABLE MARGARET B. SEYMOUR
UNITED STATES DISTRICT COURT JUDGE
TELEPHONE CONFERENCE

APPEARANCES:

FOR THE PLAINTIFF:	MANTON MCCUTCHEN GRIER, ESQ.
	WILLIAM CLARENCE BOYD, ESQ.
	SARAH MICHAELS MONTGOMERY, ESQ.
	HAYNSWORTH, SINKLER, BOYD
	P. O. BOX 11889
	COLUMBIA, SC 29211-1889

1 APPEAL, IT IS STILL OUR POSITION THAT THERE WAS NO
2 JURISDICTION TO DO THAT. THAT IS JUST OUR POSITION.

3 THE COURT: I HAVE JURISDICTION TO CLARIFY MY ORDER
4 IF THE PARTIES REQUESTED IT. I MEAN, HAVEN'T CHANGED IT.
5 THAT IS EXACTLY WHAT I MEANT. AND I THINK I AM IN THE BEST
6 POSITION TO EXPRESS WHAT I MEANT. I THOUGHT MY ORDER WAS VERY
7 CLEAR. THE FACT THAT FEMA DIDN'T UNDERSTAND IT THE WAY I
8 INTENDED IT IS TOTALLY UNFORTUNATE, AND IF THEY DIDN'T
9 UNDERSTAND IT, THEY SHOULD HAVE ASKED FOR CLARIFICATION BACK
10 THEN.

11 MS. PILGRIM: UNFORTUNATELY, YOUR HONOR, AS YOU
12 INDICATED EARLIER, WE THOUGHT YOUR ORDER WAS CLEAR. WE
13 THOUGHT YOU SETTING ASIDE THE 2001 BASE FLOOD ELEVATION
14 DETERMINATIONS, I AM NOT ADDRESSING THE SCIENCE AND TECHNICAL
15 MATTERS OF THE COMPLAINT, AND SO WE UNDERSTOOD THE ORDER, WE
16 THOUGHT, VERY CLEARLY. EVEN UNDER A CLARIFICATION PROCESS,
17 ONCE UPON APPEAL --

18 THE COURT: MS. BEES -- I MEAN, MS. PILGRIM, LOOK
19 AT MY JUDGMENT. IT SAYS:

20 "THE COURT HAVING HEARD AND GRANTED
21 THE PLAINTIFF'S MOTION TO VACATE THE
22 2001 BASE FLOOD ELEVATIONS AND
23 FLOODWAY DETERMINATIONS FOR THE
24 CONGAREE RIVER FLOOD PLAIN
25 PROMULGATED BY FEMA."

1 MS. PILGRIM: YOUR HONOR, IN THE RELIEF THAT YOU
2 GRANTED IN YOUR WRITTEN DECISION, AS WELL AS THE RELIEF YOU
3 INDICATED IN YOUR BENCH DECISION, YOU DID NOT ADDRESS THE
4 FLOODWAY DETERMINATION.

5 THE COURT: WHAT DOES MY JUDGMENT SAY? WHAT DOES
6 THE JUDGMENT SAY?

7 MS. PILGRIM: ARE YOU TALKING THE RULE 58 ENTRY OF
8 JUDGMENT?

9 THE COURT: I AM TALKING ABOUT THE JUDGMENT THAT WAS
10 FILED ON NOVEMBER 18TH, 2005, WHICH SAYS "DECISION BY THE
11 COURT."

12 MS. PILGRIM: YOU ARE RIGHT, YOUR HONOR, AND IT DOES
13 NOT SAY "FLOODWAY DETERMINATIONS."

14 THE COURT: I AM READING IT, MS. PIL GRIM. IT
15 SAYS:

16 "THE COURT HAVING HEARD AND GRANTED
17 THE PLAINTIFF'S MOTION TO VACATE THE
18 2001 FINAL BASE FLOOD ELEVATIONS AND
19 FLOODWAY DETERMINATIONS."

20 MS. PILGRIM: THAT'S RIGHT. THAT IS THE NAME OF
21 THEIR MOTION. BUT WHEN YOU WENT THROUGH YOUR WRITTEN
22 DECISION, YOU SAID, I AM NOT ADDRESSING THE SCIENTIFIC AND
23 TECHNICAL CLAIMS IN THEIR COMPLAINT, AND I AM DISMISSING THAT
24 WITHOUT PREJUDICE. AND IN YOUR CONCLUSION YOU SAID, I AM
25 VACATING BY OPERATION OF LAW THE 2001 BASE FLOOD ELEVATION

1 DETERMINATION FOR THE CONGAREE RIVER IN RICHLAND COUNTY.

2 THE COURT: I GRANTED THE MOTION, MS. PILGRIM.

3 THAT IS WHAT THE MOTION WAS. I GRANTED IT.

4 MS. PILGRIM: BUT, YOUR HONOR, GRANTING A MOTION
5 AND --

6 THE COURT: ARE YOU GOING TO TELL ME WHAT GRANTING A
7 MOTION MEANS?

8 MS. PILGRIM: NO, YOUR HONOR, I AM SIMPLY TRYING TO
9 EXPLAIN WHAT WE --

10 THE COURT: ARE YOU GOING TO TELL ME WHAT I
11 INTENDED? I AM TELLING YOU WHAT MY INTENTION WAS AND WHAT I
12 DID.

13 MS. BOWENS: YES, YOUR HONOR.

14 MS. PILGRIM: YES, YOUR HONOR, I UNDERSTAND THAT.
15 FEMA CAN REVISE ITS FLOOD PLAIN MANAGEMENT TOOLS INVOLVING THE
16 FLOODWAY DATA WITHOUT PUBLISHING NOTICE AND COMMENT. AND HAD
17 THE COURT'S ORDER INCLUDED THE WORDS "AND FLOODWAY
18 DETERMINATION," WE WOULD HAVE MOVED IMMEDIATELY TO DO THAT.
19 BECAUSE BY PROVIDING A RETURN TO AN INACCURATE DEPICTION OF
20 THE FLOODWAY, IT GAVE AN IMMEDIATE HARM TO THAT COMMUNITY AND
21 THE NEIGHBORING COMMUNITIES, AND WE WOULD HAVE MOVED QUICKLY.
22 CONGRESS DID NOT REQUIRE THE FLOODWAY DATA AND THE FLOOD PLAIN
23 MANAGEMENT TOOL INFORMATION TO BE PUBLISHED THROUGH A NOTICE
24 AND COMMENT PROCESS INVOLVING FEDERAL REGISTER PUBLICATION;
25 THEREFORE, WHEN CV CHALLENGED IN ITS MOTION TO VACATE THAT

1 PARTICULAR FEDERAL REGISTER NOTICE, THAT IS WHAT WE
2 UNDERSTOOD WAS BEFORE THE COURT.

3 THE COURT: WELL, YOU UNDERSTOOD INCORRECTLY, I AM
4 SAD TO SAY.

5 MS. PILGRIM: HAD THE COURT ADDRESSED THE SCIENTIFIC
6 AND TECHNICAL CLAIMS IN CV'S UNDERLYING COMPLAINT, THEN THE
7 REMAND ACTION MIGHT HAVE TAKEN A DIFFERENT TURN, BUT STILL
8 THERE IS NO REQUIREMENT TO PUBLISH IN THE FEDERAL REGISTER --
9 IN THE FEDERAL REGISTER THE FLOODWAY DATA. AND THAT IS WHY
10 IN OUR RULE 59(E), BASED ON THE NOVEMBER 2ND, 2007 ORDER, WE
11 ASKED THE COURT TO RECOGNIZE THAT NO ONE HAS EVER IDENTIFIED
12 ANY STATUTORY OR REGULATORY AUTHORITY REQUIRING FLOODWAY DATA
13 TO BE PUBLISHED FOR NOTICE AND COMMENT. 4104 SIMPLY DOES NOT
14 -- THERE ARE OTHER REGULATIONS, OTHER PROVISIONS OF THE
15 NATIONAL FLOOD INSURANCE ACT THAT WE IDENTIFIED IN OUR REPLY
16 BRIEF AND IN OUR EARLIER FILING THAT DEMONSTRATE CONGRESS
17 RECOGNIZED THE DIFFERENCE BETWEEN FLOOD PLAIN AND FLOODWAY
18 DATA AND THE BASE FLOOD ELEVATION DETERMINATION. AND IF YOU
19 LOOK AT PARAGRAPH 15 OF COLUMBIA VENTURE'S ORIGINAL COMPLAINT,
20 YOU WILL SEE THAT THEIR FIGHT -- THEIR DEFINITION OF THE BASE
21 FLOOD ELEVATION DETERMINATION DOES NOT INCLUDE FLOODWAY
22 DETERMINATION.

23 MR. GRIER: YOUR HONOR, THIS IS MANTON GRIER AGAIN.
24 I THINK WE HAVE GOTTEN TO A POINT NOW WHERE THEY ARE TRYING TO
25 ARGUE WITH YOUR HONOR'S RULING. BUT I WOULD JUST CALL THE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Columbia Venture, LLC,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
Heathwood Hall Episcopal School,	)	
	)	
Plaintiff-Intervenor	)	
	)	
vs.	)	C/A No. 3:01-4100-JFA
	)	
The Federal Emergency Management	)	
Agency,	)	
	)	
Defendant,	)	
	)	
South Carolina Wildlife Federation,	)	
Riverland Park Neighborhood Association	)	
Dr. John Grego and Dr. Dan Tufford,	)	
	)	
Defendant-Intervenor.	)	

STIPULATION OF COMPROMISE SETTLEMENT

In return for Columbia Venture's (CV's) and Plaintiff-Intervenor's dismissal with prejudice of the Complaint and any outstanding claims or appeals against FEMA currently pending or which could have been brought pursuant to litigation:

1. Within one year from the execution of this Stipulation of Compromise Settlement and the dismissal with prejudice from the Court, FEMA will initiate a restudy of the areas that are subject to the lawsuit consistent with applicable statutory, regulatory and agency standards including the National Flood Insurance Act (NFIA), its implementing regulations, and Agency specifications and guidance;
2. FEMA agrees that nothing in this Stipulation of Compromise Settlement prevents CV from filing a Letter of Map Revision (LOMR) in conformance with the NFIA and its implementing regulations.

3. FEMA will pay to CV the sum of \$75,000.00 upon execution by CV and the Plaintiff-Intervenor of an Order of Dismissal, as provided hereinabove.

4. CV agrees to withdraw/dismiss all pending FOIA requests to FEMA and agrees not to file any FOIA requests seeking documents related to the above-captioned lawsuit.

STIPULATED AND AGREED to this 4th day of September, 2009.

By: s/ William C. Boyd

William C. Boyd, Esq., Fed. ID No. 1432
Manton M. Grier, Esq., Fed. ID No. 2461
Elizabeth H. Black, Esq., Fed. ID No. 10088
Haynsworth Sinkler Boyd, P.A.
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Counsel for Plaintiff-Intervenor, Heathwood Hall Episcopal School

By: s/ W. Walter Wilkins

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U.S. Attorney
Barbara M. Bowens, Esq., Fed. ID No. 4004
Civil Division Chief
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Barbara Montoya, Esq.
Deputy Associate Chief Counsel
Lynda Pilgrim, Senior Trial Attorney
Federal Emergency Management Agency
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Counsel for FEMA

By: s/ J. Blanding Holman

J. Blanding Holman, IV, Esq., Fed. ID No. 9805

Southern Environmental Law Center

38 Broad Street, Suite 200

Charleston, South Carolina 29401

Counsel for Defendant-Intervenors, South Carolina Wildlife Federation, Riverland
Park Neighborhood Association, Dr. John Grego, and Dr. Dan Tufford

Columbia: 1253540 v.1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Columbia Venture, LLC,
Plaintiff,
and
Heathwood Hall Episcopal School,
Plaintiff-Intervenors,
v.
The Federal Emergency Management
Agency,
Defendants,
and
South Carolina Wildlife Federation,
Riverland Park Neighborhood Association,
Dr. John Grego and Dr. Dan Tufford,
Defendant-Intervenors.

C/A No. 3:01-4100-JFA

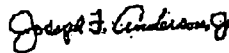
**ORDER OF DISMISSAL
WITH PREJUDICE**

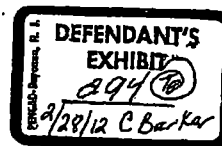
This matter comes before the court on the Stipulation of Dismissal filed by Columbia Venture, LLC, Heathwood Hall Episcopal School, The Federal Emergency Management Agency and the Defendant-Intervenors South Carolina Wildlife Federation, Riverland Park Neighborhood Association, Dr. John Grego and Dr. Dan Tufford, resolving all issues between them and desiring to have this action dismissed.

It is hereby ordered that this action be dismissed with prejudice.

IT IS SO ORDERED.

September 8, 2009
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge



Report of A. Carroll Barker, Sr.

My opinions, which are based on a reasonable degree of certainty, are as follows:

1. At the time Columbia Venture acquired its property, structural improvements could have been made to the Manning levees sufficient to certify them under 44 C.F.R. 65.10, and that such structural improvements would not have caused a rise in the base flood levels or a reconfiguration of the floodway.

2. FEMA in its flood mapping efforts recognizes certified levees as providing protection from the base flood:

3. FEMA's August 12, 1999, FIS and FIRM, which placed the floodway at the Manning levees in Richland County, were based in part on 2-D studies of the floodplain conducted by the USGS dating back to 1981, which included a worst case scenario that removed the Manning dike, simulated a proposed dike on the Lexington side (the Otarre dike) and used the largest flood of record (the 1908 flood). That 2-D study supported FEMA's conclusion in its August 12, 1999, FIS and FIRM that the area landward of the Manning levees was an area of ineffective flow that did not contribute to conveyance of flow in the general flow direction. Accordingly, this area would not be, and was not, included within a regulatory floodway based on equal reduction of conveyance:

4. In reversing its conclusion in 2000 and 2001 and vastly expanding the floodway landward of the Manning levees, FEMA used the same USGS studies but made inappropriate changes to the topography of the 2-D models that invalidated the results generated by the 2-D simulations. FEMA also used the wrong flood flow rate with its flawed 2-D model to assess areas of ineffective flow and assumed breaches in the Manning levees that were not supported by

the geotechnical evidence. The unfortunate result is that CV's land has been burdened with an expansive floodway that is uncalled for based on sound engineering and science.

5. The conveyance values in the Richland County overbank area of the 1-D simulations FEMA used in 2000 and 2001 do not match the conveyance results produced by the 2-D models FEMA used in 2000 and 2001. Therefore, the 1-D results are not consistent with the 2-D model and the 1-D model is invalid.

6. The regulatory floodway is derived from the base flood elevations (BFEs) and is based on a prescribed surcharge over the BFEs (for example, 1 foot). The floodway that Richland County adopted for the Congaree floodplain after the federal court vacated the 2001/2002 BFEs and reinstated the 1994/1995 BFEs was not derived from and had no rational relation to the 1994/1995 BFEs and the floodway elevation was in fact lower (not higher) than the 1994/1995 BFEs.

My opinions above are based on my knowledge of the National Flood Insurance Program (NFIP), its statutes, and regulations. My opinions 1 and 2 are confirmed by correspondence between Richland County and FEMA.

In formulating my opinions 3 - 6, I relied on the Reports of Alan Zundel, Ph.d., Hanif Chaudhry, Ph.d., Exponent, Inc., and the Affidavit of Mark Hester, P.E. I have also been provided with and considered materials from the administrative record certified by FEMA and produced by FEMA to the federal court in connection with Columbia Venture, LLC's judicial appeal of FEMA's final determination of the BFEs and floodway for the Congaree floodplain in Richland County. These reports and materials are identified in the schedule attached to my report.

The exhibits I plan to use at trial are also described in a separate schedule attached to my report.

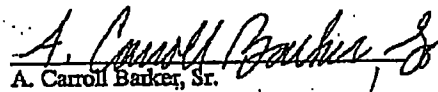
At the trial I may also provide testimony relating in general to the NFIP and FEMA's flood mapping efforts under that program to assist the court and jury in understanding the issues in the case.

My qualifications are listed in my resume, a copy of which is attached hereto.

I have not testified at trial or by deposition in any case during the previous four years.

I am being compensated for my time in preparing this study and testimony as follows:

<u>Category</u>	<u>Rate</u>
Principal	\$200/hr
Sr. Engineer	\$175/hr
CADD Tech	\$ 85/hr
Tech Typist	\$ 65/hr


A. Carroll Barker, Sr.

April 13, 2010

Schedule of Trial Exhibits

1. Aerial photograph(s) of property.
2. Overall site plan.
3. Floodway schematic from J.A. Roberson, J. I. Cassidy and M. H. Chaudhry, Hydraulic Engineering at 477 (Second Edition).
4. Floodway schematic from FEMA Flood Insurance Studies.
5. Exhibit showing HEC-2 Cross Sections for Congaree floodplain.
6. USGS open file report 81-1194 Plates 5 & 6. COSD005-00993 & 994.
7. Output of USGS 2-D simulation (after modification by Dewberry & Davis) with HEC-2 cross-sections.
8. Copies of certain figures, diagrams, charts, exhibits or images included in FEMA's appeal resolution dated September 26, 2000, or the reports of Alan Zundel, Ph.d., Hanif Chaudhry, Ph.d., Exponent, Inc., or the Affidavits of Mark Hester, P.E., which have been identified on the previous schedule.
9. The various Flood Insurance Studies and Flood Insurance Rate Maps for the Congaree floodplain in Richland County.
10. Floodway data tables for the cross sections that transect the Manning levees showing the base flood water surface elevations with and without floodway from the July 17, 1995, and August 20, 2001, Richland County Flood Insurance Studies.
11. A composite floodway data table for these same cross sections combining the July 17, 1995, base flood water surface elevations without floodway and the August 20, 2001, base flood water surface elevation with floodway.
12. 2-D unsteady model CD FEMA-002-000100.
13. Photograph of 1976 flood.

Cohrabie; 1340634 v.1

Documents provided to Carroll Barker

Columbia Venture, LLC v. Richland County
Richland County Case No. 2004-CP-40-3929
HSB File No. 11404.0008

Doc Date	Description	Bates Range
00/00/0000	Illustration from J.A. Roberson, J.J. Cassidy & M.H. Chaudry, Hydraulic Engineering at 477 (Second Edition)	Exhibit 1 to Complaint in re: Columbia Venture et al. v. FEMA et al.; 3:01-4100-MBS)
00/00/0000	Overall Site Plan	
00/00/0000	CD from the Administrative Record	FEMA-001-000137
00/00/0000	2 CONGLXFW files reviewed by Paul Makowski	
00/00/0000	Cross section map	
00/00/0000	2-D Unsteady Model	
00/00/0000	Exponent Sensitivity Analysis	
00/00/0000	Exponent 2-D Flow Analysis Maps	
00/00/0000	Congaree River Hydraulic Summary	COSD001-00531 to COSD001-00553
00/00/0000	1981 USGS Map- Computed Velocity Field and Water-Surface Elevations, Congaree River Near Columbia, SC, Otarre Diike in Place, August 1908 Flood	COSD005-00993
00/00/0000	2-D Unsteady Model (CD) FEMA-002-000100	FEMA-002-000100
00/00/0000	Documents produced by Parsons Brinckerhoff	PB000001 - 251
00/00/0000	Dewberry native models	FEMA TR 6758
00/00/0000	USGS comments on Exponent's 2-D models (Letter from J. Michael Norris to Mike Buckley at FEMA)	FEMA-002-000257 to FEMA-002-000267
00/00/0000	Exhibit 10 to Plaintiff's Appendix to Complaint	in re: Columbia Venture et al. v. FEMA et al.; 3:01-4100-MBS)
00/00/0000	2009 FIRM for Augusta-Richmond County, Map Panel 135	
00/00/0000	Observations of Floodway Definition for the Congaree River in Richland and Lexington Counties	
00/00/0000	Table labeled Congaree River Boundary Condition Downstream	FEMA Touhy Release 06.06.07 CV v. D&D 363-370
00/00/0000	CD- Released FEMA Touhy 6699 - RMA-2 Modeling	
00/00/0000	CD- Dewberry Data Files	FEMA TR 6758

Doc Date	Description	Bates Range
00/00/0000	CD- Dewberry Files Released 10/22/2007	FEMA Touhy 6756
00/00/0000	CD- Exponent Technical Memos of 8/2/01, 5/6/01, and 5/31/01 (RMA-2 Models & HEC-RAs unsteady)	
00/00/0000	CD- Congaree Flood Maps (1994 & 2007)	
00/00/0000	CD- Lockwood Greene Workmap Congaree River (aerial)	COSD003-00724
00/00/0000	CD- Ex. 12 th 292 (with Appeal Resolution)	FEMA-002-001059
00/00/0000	Various maps, plats created by Genesis Consulting Group	
00/00/0000	Evaluation of Water Surface Elevations for Effective, Duplicate Effective, Existing Condition, and Post Project Condition, Congaree River (table)	
00/00/0000	Lake and Management TWC Power Point Presentation – Land Rehabilitation: How to Allocate Future Development Lands for a New License Term	
00/00/0000	Various floodway data tables for the Congaree River	
00/00/0000	SCANA letter from Neville O. Lorick to Doug Belloino re Saluda Hydro Project (Lake Murray Dam)	COSD002-00062
00/00/0000	FEMA letter from Mike Buckley to William Timmerman responding to his 10/4/00 letter re SCE&G operating procedures for the Lake Murray Dam	FEMA FOIA000578-000579
00/00/0000	Issues and Positions – The Saluda Dam	COSD002-00063
00/00/0000	Power Point Presentation by Kleinschmidt on “SCE&G Reservoir Operations Modeling Using Army Corps of Engineers HEC-ResSIM	
00/00/0000	Power Point Presentation by Kleinschmidt on “Flow Release Study; Obtaining Dynamic Flow Routing Information on the Lower Saluda River”	
00/00/0000	Title III from Farm Bill (Conservation)	
00/00/0000	Appendix B; Weighting of Independent Estimates	
00/00/0000	Analyzing the Effects of Regulated Streamflow on the Hydrology of Congaree National Park Using Data Mining Techniques	
00/00/0000	Separating Anthropogenic Influences on Hydrology Using Data Mining Techniques – A Case Study of the Congaree National Park, South Carolina	
00/00/0000	Printout of a portion of the 1995 FIS	
00/00/0000	Printout of a portion of the 2001 FIS	

Doc Date	Description	Bates Range
00/00/0000	South Carolina Water Resources Research Institute Annual Technical Report FY 2004	
00/00/0000	Various hand-written notes	
00/00/0000	Various printout showing the peak Stages and Discharges of the Santee River Basin from 1926 through 1945	
00/00/0000	Various printout showing the peak Stages and Discharges of the Santee River Basin from 1897 through 1906	
00/00/0000	Various printout showing the peak Stages and Discharges of the Santee River Basin from 1926 through 1950	
00/00/0000	Various printouts showing the peak Stages and Discharges of the Santee River Basin from 1852 through 1927	
00/00/0000	Printout from http://sc.water.usgs/publications/feaster/README on the FORTAN program scff	
00/00/0000	RCGEO aerial maps	
00/00/0000	SynTerra aerial maps	
00/00/0000	Richland County Spatial Data Licensing computer printouts	
00/00/0000	DHBC maps of Congaree River and Sandy Run Watersheds	
00/00/0000	Folder titled, "Lockwood Greene Data Analysis including an April 15, 1999 Lockwood Greene submittal for the Columbia Venture Project; Sediment and Erosion Control Plan, among other printouts, tables, and summaries	
00/00/1908	USGS Map of a Portion of the Congaree River Valley	
12/09/1976	Law Engineering Testing Company's Report of Geotechnical Investigation of Dike Failure	COSD005-01001 to COSD005-01061
12/09/1976	Law Engineering Testing Company's Report of Geotechnical Investigation of Dike Failure	COSD005-00997 - 01061
00/00/1981	USGS, "A Finite-Element Model Study of the Impact of the Proposed I-326 Crossing on Flood Stages of the Congaree River Near Columbia, S.C.	
00/00/1981	USGS 1981 Maps	COSD005-00988 - 00996
00/00/1981	1981 USGS Open-File Report 81-1194	COSD005-00923 to COSD005-00987
00/00/1985	USGS Hydrology and its Effects on Distribution of Vegetation in Congaree Swamp National Monument, S.C.	

Doc Date	Description	Bates Range
05/00/1991	Printout of U.S. Army Corps of Engineers Hydrologic Engineering Centers HEC-2 Water Surface Profiles for Richland and Lexington Counties	
05/00/1991	U.S. Army Corps of Engineers Hydrologic Engineering Center HEC-1	
00/00/1992	USGS Congaree River Maps- Water-Surface Elevation Contours and Velocity Vectors for the 100-Year Discharge with Open Fields in the Flood Plain and Without 12 th Street Extension.	
00/00/1992	USGS Congaree River Maps - Lines of Equal Backwater for the 100-Year Discharge Produced by Semi-Mature Pine Trees in the Flood Plain	
00/00/1992	USGS Simulation of the Effects of Proposed Construction of Twelfth Street Extension and of Flood-Plain Reforestation on Flood Elevations, Congaree River, Near Columbia, S.C.	COSD003-00771 - 00815
01/19/1994	Richland County FIRM (Panel 160)	
07/17/1995	Flood Insurance Study for Richland County and Incorporated Areas, Vols. 1 & 2	
07/17/1995	FIS- Richland County (Volume I)	
07/17/1995	1995 Base Flood Water Surface Elevation Table (excerpt from Flood Insurance Study: Richland County South Carolina, and Incorporated Areas, Vol. 1, Table 3 (revised July 17, 1995)	
08/02/1995	St. Louis County, Missouri FIRM (Panel 135) and USGS Levee maps of same	
00/00/1999	Various pages from Techniques for Estimating the Magnitude and Frequency of Floods in Rural Basins of South Carolina, 1999.	
01/26/1999	FEMA letter from Matthew B. Miller, P.E., Chief to Ms. Lisa Holland, State Coordinator, Flood Mitigation Program of SCDNR informing that FEMA would revised the applicable FIRM to remove the Special Flood Hazard Area designation and floodway if the levee is upgraded to meet in total the applicable portions of 44CFR, Part 65.10.	DEF-00000053
02/02/1999	Richland County Council Regular Session minutes unanimously approving to accept the responsibility to maintain the levee system and the effect on the taxpayers.	DEF-00000066
02/02/1999	County Administrator's Report of Council Actions, Regular Session wherein it is reported that the Council agreed to accept responsibility for	DEF-00000068

Doc Date	Description	Bates Range
	local inspection and enforcement of the levee system, and, if required by FEMA, to accept operation and maintenance responsibility for the system contingent upon certain conditions.	
02/17/1999	Lockwood Green letter from H.W. Tillotson, Jr., P.E. to Mr. George Gregory of Burroughs & Chapin re attaching summary of the FEMA and floodway issues relating to the property location in Columbia and some other relevant documentation.	CV008651 - CV008662
02/17/1999	Richland County Council letter from Paul Livingston, Chair, to Michael K. Buckley, P.E., Director of Technical Services Division of FEMA re informing that Richland County has agreed to accept responsibility for local inspection and enforcement of the operations and maintenance plan for the levee system.	DEF-00000079
03/30/1999	Survey and Mapping Services Cross Section Sheets for Congaree Property of Levee Section One	
05/18/1999	S&MB Boring Profiles, Figures 7-28	
05/19/1999	S&MB Section Location Map, Figure 3	
05/22/1999	S&MB Boring & Test Pit Location Map, Figure 5	
06/10/1999	Dewberry & Davis Record of Communication regarding SCE&G having no record nor calculation showing regulated peak flows in the Congaree from 1925-1929	COSD002-00692
06/30/1999	Lockwood Greene Manning Levee System, Conditional letter of Map revision Levee Upgrades to FEMA 44 CFR 65.10	C-001 - C-022
07/14/1999	CD- Lexington County, SC Topo Maps	COSD003-00723
08/10/1999	S&MB's Report of Geotechnical Exploration that was submitted to FEMA	COSD003-00375 to COSD003-395 and COSD003-00427 to COSD003-433
08/10/1999	S&MB Report of Geotechnical Exploration	COSD003-00375 - 00722
08/12/1999	General Summary of Hydraulic Analysis of Congaree River in Lexington and Richland Counties, South Carolina, as Presented in August 12, 1999, Revised Preliminary Flood Insurance Studies (FIS)	COSD002-00408 to COSD002-00412
08/12/1999	CD- CD filed with Court by FEMA on 5/18/05, Docket #91.(3:01-4100-MBS), Revised Preliminary	COSD001-00051.1
01/24/2000	CD- Flood Hazards Along Congaree River	COSD001-00107 -

Doc Date	Description	Bates Range
		COSD001-00125
02/21/2000	Columbia Venture, LLC HEC-IFH Data Input Summary	
04/30/2000	U.S. Army Corps of Engineers Design and Construction of Levees; Engineer Manual	
07/12/2000	FEMA engineer Ralph Beene's Geotechnical Report	COSD002-00199 to COSD002-00202
07/25/2000	Todd Davison email to Doug Bellomo re copy of the Congaree River Hydrology report	FEMA_FOIA000463
07/25/2000	Thomas Wilbert email to Mark Viera and Todd Davison re copy of Congaree River Hydrology Report2	FEMA_FOIA000461 - 000462
08/01/2000	Issues and Positions; The Saluda Dam	COSD002-00114 & COSD002-00112)
08/10/2000	Memo from Conor Shea, Parsons Brinckerhoff, to Zekrollah Momeni, re: Quality Review of Two Dimensional Hydraulic Modeling of the Congaree River, Lexington and Richland Counties, SC	FEMA Priv 3449
08/31/2000	FEMA engineer Ralph Beene's subsequent report	COSD002-00043 to COSD002-00044
09/21/2000	Wilbert Thomas email to Doug Bellomo re SCE&G report	FEMA Touhy Release 06.06.07 CV v. D&D 1318 - 1319
09/26/2000	Appeal Resolution for Congaree River in Richland and Lexington Counties	
10/04/2000	SCANA letter to Mike Buckley from Bill Timmerman re Saluda Dam	FEMA-001-001076 - 001077
10/13/2000	Doug Bellomo email to Mike Buckley re draft letter to SCANA	FEMA_FOIA000577
10/26/2000	Appeal of Technical Information from FEMA presented 26 September 2000	FEMA-001-000977 to FEMA-001-000993
11/17/2000	SCANA letter from Neville O. Lorick to Mike Buckley re Lake Murray Dam Flood Modeling	FEMA-001-000948 - 000949
11/17/2000	Comments on November 17 Letter from Neville O. Lorick to Doug Bellomo	FEMA Touhy Release 06.06.CV v. D&D 1633 - 1634
01/03/2001	Email from Zhida Song-James to Mathini Streetham re: FW: more thoughts on Congaree	FEMA Touhy Release 06.06.07 CV v. D&D 3493-95)
01/05/2001	SCANA letter from Neville O. Lorick to Doug Bellomo re operation during a flood at Saluda	FEMA-001-000878
02/12/2001	Expanded Two Dimensional Flow Analysis and Determination of No Floodway for the Congaree River Floodplain in Richland County, South	

Doc Date	Description	Bates Range
	Carolina	
02/12/2001	Exponent Expanded Two-Dimensional Flow Analysis and Determination of No Floodway for the Congaree River Floodplain in Richland County, South Carolina	
02/15/2001	Columbia Venture's Technical Information Submittal	EXPONENT000126 - 311
02/15/2001	Columbia Venture Technical Information Submittal Revision 0	FEMA-002-000695
02/15/2001	Congaree submitted; review comments, Jeff Gangai	FEMA Touhy Release 06.06.07, CV v. D&D 141-144
02/15/2001	Columbia Venture, LLC Technical Information Submittal	
02/15/2001	CD- Columbia Venture Technical Information Submittal Revision	After FEMA-002-00695
03/05/2001	Email from Zhida Song-James to Michael Grimm & Doug Bellomo & Bill Blanton re: Mike 21 comments for the accepted model list	FEMA Touhy Release 06.06.07 CV v. D&D 603-608
04/12/2001	SCE&G letter from James M. Landreth to Constantine G. Tjournas re Project No. 516	FEMA-002-000004 - 000010
04/18/2001	Email from Gangai to Perl, cc: Sreetharan, George, Momeni, Groover, re: 2-D Technical Review [Proposed Questions]	FEMA Touhy 3416 - 3417
04/18/2001	Email from Jeff Gangai to Craig Perl re: 2-D technical review.	FEMA Touhy Release 06.06.07 CV v. D&D 3416
04/22/2001	Columbia Venture Clarification, 04/22/01	FEMA-002-000510
04/24/2001	Alan Zundel Model Review and Clarification	
04/24/2001	Model review and clarification for: Hydraulic Models of the Congaree River in Richland and Lexington Counties, SC; Report by Alan K. Zundel & Darren S. Gonzales	FEMA-002-000367-000402
04/27/2001	Presentation by Doug Hamilton clarifying the 02/15/01 report by Exponent, Inc. presented at the 04/27/01 Meeting with FEMA in Columbia, SC	FEMA-002-000471 - 510; Dewberry 1149 - 1162
04/27/2001	Presentation by Doug Hamilton clarifying the February 15, 2001 report by Exponent, Inc. Presented at the April 27, 2001 meeting with FEMA in Columbia, South Carolina	FEMA-002-000471-000510 & Dewberry 1149-1162
05/31/2001	Exponent Technical Memo: One Dimensional Unsteady State Analysis for the Congaree River Near the Congaree Swamp National Monument, SC	LG 03063 -03128

Doc Date	Description	Bates Range
05/31/2001	Exponent Technical Memorandum, One Dimensional Unsteady State Analysis for the Congaree River Near the Congaree Swamp National Monument, SC	LG03063 - LG031281
06/06/2001	SCDOT letter (Robert L. Pratt) to FEMA (Michael Buckley) Re: proposal for revision of the floodway along the Congaree River	FEMA-001-000590 to FEMA-001-000591
06/20/2001	Review of Technical Data Received During Comment Period September 26, 2000 to February 15, 2001	FEMA-BDD-001394 - 001444
06/29/2001	Exponent, Attachment 8: Data Files	FEMA-002-000330
06/29/2001	CD- Exponent Attachment 8L Data Files	FEMA-002-00330
07/06/2001	Letter to Mr. Shea; Technical basis for determination of no floodway on the Richland County side of the Congaree levee	FEMA-002-000331 - 402
07/06/2001	Letter from William C. Boyd to Robert F. Shea of FEMA enclosing written summary and supporting information titled, "Technical Basis for Determination of No Floodway on the Richland County Side of the Congaree Levee, Submitted to Federal Emergency Management Agency by Columbia Venture, LLC (dated 7/6/01)	FEMA-002-000331 - FEMA-002-000366
07/23/2001	Exponent Data	FEMA-002-000241
07/23/2001	Reference sheet for internal use; hydraulic models in the "Accepted Models" List	Dewberry 1127-1130
07/23/2001	CD- Exponent Data, presentation and video clip	After FEMA-002-00241
07/24/2001	Congaree Flood Map Meeting Participants Sign-In Sheet; Presentation by Alan K. Zundel "Observations of Floodway Definition for the Congaree River in Richland and Lexington Counties"; Exponent Sensitivity Analysis, 04/27/01	FEMA-002-000221 - 256
07/24/2001	Congaree Flood Map Meeting Participants Sign IN Sheet with attachments (1) Observations of Floodway Definition for the Congaree River by Alan K. Zundel and (2) Exponent's Sensitivity Analysis 4/27/01	FEMA-002-000221 - FEMA-002-000256
07/27/2001	Exponent 4/27/01 Revised Model	FEMA-002-000201
07/30/2001	Exponent Memorandum	FEMA-002-000190 to FEMA-002-000200
07/30/2001	Email from Zekrollah Momeni to Mike Buckley	FEMA FOIA 001925

Doc Date	Description	Bates Range
	re: Congaree	
07/31/2001	Letter to Robert Shea, FEMA, from Bill Boyd, HSB	FEMA-002-000190 - 200
07/31/2001	Draft non-decisional Congaree River USGS review of RMA-2 model	FEMA Touhy Release 06.06.07 CV v. D&D 94-102
07/31/2001	Letter from William C. Boyd to Robert Shea of FEMA re: Congaree river - Columbia Venture, LLC	FEMA-002-000190-000200
08/02/2001	Exponent backup technical data supporting the animation	FEMA-002-000095 to FEMA-002-000189
08/02/2001	Exponent, Inc. RMA-2 Unsteady State Model and Documentation	FEMA-002-000100
08/02/2001	Exponent response to request for additional information by FEMA regarding the RMA-2V unsteady, 2-Dimensional Flow Simulation of Congaree River Levees	FEMA Touhy Release 06.06.07 CV v. D&D 25-28
08/02/2001	Exponent memorandum re: unsteady state model documentation	FEMA-002-000095-99
08/02/2001	CD- Exponent, Inc. RMA-2 Unsteady State Model and Documentation	FEMA-002-000100)
08/03/2001	Email from Mathini Sreetharan to Jeff Gangai re: congb-c. 803x15	FEMA Touhy Release 06.06.07 CV v. D&D 3580-3589
08/08/2001	Draft pre-decisional Congaree River History of RMA-2 models with modeled scenarios	FEMA Touhy Release 06.06.07 CV v. D&D 3592-3593
08/13/2001	USGS subsequent review	FEMA-EDD-002062
08/15/2001	RMA-2 unsteady state model; review of August 2, 2001 Exponent submitted; Jeff Gangai	FEMA Touhy Release 06.06.07 CV v. D&D 89-93
08/16/2001	Exponent Memorandum	FEMA-001-001116 to FEMA-001-001118
08/20/2001	Technical Report for the Final Flood Elevation Determination for the Congaree River in Richland and Lexington Counties, South Carolina	FEMA-001-000169 to FEMA-001-000171
08/20/2001	2001 Base Flood Water Surface Elevation Table (excerpt from Flood Insurance Study: Richland County South Carolina, and Incorporated Areas, Vol. 1; Table 3 (August 20, 2001))	
08/20/2001	Congaree Final-LFD AEC-2 Models FEMA RMA-2 Models	FEMA-001-001371
08/20/2001	2001 FIRM for Lexington County (annotations	

Doc Date	Description	Bates Range
	added by CV, Map Panel 283	
08/20/2001	2001 FIRM for Richland County (annotations added by CV), Map Panel 160	
11/26/2001	CD- CV drawings	
00/00/2002	SC DNR's Impact of Removing the Granby Dam on Water Levels in the Congaree River	
02/20/2002	Richland County FIRM (Panel 178)	
02/20/2002	Flood Insurance Study for Richland County, Vol 1 of 2	
02/20/2002	Richland County FIRM (Panel 190)	
06/28/2002	SC DHEC Standards for Stormwater Management and Sediment Reduction	
09/24/2004	Affidavit of Mark Hester	
10/00/2004	National Flood Insurance Program FEMA Letters of Map Change; INAFSM Conference	
01/05/2005	MERC Associates plat	
04/15/2005	Affidavit of M. Hanif Chaudhry	
06/28/2005	Illustrations (1908_levee.tif, congarce.tif, existing12th292.doc, floodway overlay (historio).pdf, illus_1.pdf, illus_3.pdf, Latest floodway.pdf, Levee sections.pdf)	
07/06/2005	Affidavit of Civil Engineer, Mark Hester	
07/06/2005	Affidavit and attachments of Mark Hester	
03/00/2006	U.S. Army Corps of Engineers Levee Owner's Manual for Non-Federal Flood Control Works; The Rehabilitation and Inspection Program; Public Law 84-99	
06/27/2006	South Carolina Flood Damage Prevention Ordinance	
06/27/2006	Draft of South Carolina Model Flood Damage Prevention Ordinance, City of Cayce (Draft with revisions)	
09/00/2006	SCE&G Saluda Hydroelectric Project (FERC No. 516); Downstream Recreation Flow Assessment Study Plan - Final	
10/13/2006	Exponent Technical Memo: Two-Dimensional Modeling of Congaree River	
10/30/2006	Exponent Technical Memo: Steady State Two Dimensional Modeling of the Congaree River, at the City of Columbia, SC	
12/19/2006	Meeting Notes from SCE&G's Hydro Project Relicensing	
00/00/2007	Incorporating Climate Change and Variability into Bulletin 17B LP3 Model by Veronica W. Griffis and Jerry R. Stedinger	

Doc Date	Description	Bates Range
03/30/2007	Bmail from Kevin Higgins to Daryl Fontenot re Congaree LOMR response letter	HSMME00424-000426 & HSMME001463-001464
07/00/2007	Hydraulic model mesh; hydraulic model elevation comparison; hydraulic model elevation comparison upper section; hydraulic model elevation comparison lower section	
07/24/2007	Affidavit of M. Hanif Chaudhry	
07/27/2007	St. Louis Business Journal article, "Howard Bend Construction Finally Set to Begin in Fall"	
08/24/2007	Declaration of Jonathan E. Wescott in re: Columbia Venture, LLC v. FEMA; 3:01-4100-MBS, with attachments	
09/00/2007	Lexington County Checklist for Design of Commercial Developments (multiple handwritten drafts)	
09/12/2007	Richland County FIRM (Panel 190)	
10/05/2007	Excerpts of motions hearing (argument by Gary Flynn on behalf of FEMA)	
10/16/2007	44 CFR Part 67; Proposed Flood Elevation Determinations	
10/17/2007	FEMA letter from William R. Blanton, Jr. to Joseph McEachern	
11/01/2007	USGS Survey - Annual peak flow frequency analysis following Bulletin 17-B Guidelines	
11/02/2007	CD- Exponent Unsteady Flow Model Congaree River	
11/02/2007	S&ME Fax to Deas Manning from John C. Lessley re Repair of the Levee Penetrations	
11/05/2007	Fax from Greenfield Construction, LLC (Deas Manning) to Carroll Barker attaching S&ME report regarding levee penetrations	
11/16/2007	S&ME letter to Michael Fletcher of Columbia Venture, LLC re Geotechnical Exploration, Relocation of Levee North, Consultation re Final Design of Maintenance Upgrades and Ring Levee	
11/26/2007	CD- Storm and USGS; 1-77 Bridge Row Plans, GCG Project 07-094	
11/30/2007	Michael Fletcher email to Bob Hughes, Deas Manning, Manton Grier, Carroll Barker, Doug Hamilton re 1995 FIS v. 2001 FIS	
12/00/2007	SCE&G Saluda Hydroelectric Project, Project Operations	
12/03/2007	Lockwood Greene Sediment and Erosion Control	

Doc Date	Description	Bates Range
	Plan for Columbia Venture, LLC	
12/21/2007	Declaration of Alan K. Zundel	
12/31/2007	Genesis Stormwater Design Report for Heathwood Tract, Linear Fill Sections: A, B, C, & D (Prepared for Columbia Venture, LLC)	
01/02/2008	Declaration of M. Hanif Chaudhry	
02/25/2008	Genesis's Storm Water Pollution Prevention for Construction for Heathwood Tract, Linear Fill Sections: A, B, C & D	
03/27/2008	SC DHEC Notice of Intent for Stormwater Discharges from Large and Small Construction Activities, NPDES General Permit SCR100000	
04/03/2008	FEMA letter from William R. Blanton, Jr. to Avery B. Wilkinson, Jr. enclosing preliminary copies of the revised Flood Insurance Study (FIS) report and Flood Insurance Rate Maps (FIRMs)	
04/17/2008	Email from Michael Fletcher to Carroll Barker re FEMA letter to Cayce and 2008 FIS revisions	
04/21/2008	Email from Michael Fletcher to Bob Hughes, Deas Manning, Carroll Barker, and Manton Grier re Saluda flow representations to FERC (attachment: Congaree National Park Research Symposium February 26-28, 2008)	
04/28/2008	Email from Michael Fletcher to Carroll Barker and Bob Hughes re 100-year flow at Congaree @ Columbia gage.	
05/00/2008	Power Point Presentation by Kleinschmidt on "Saluda Dam Reservoir Operations Model"	
06/27/2008	City of Cayce letter from John C. Sharpe to David Maurstadt at FEMA re Response to letter dated June 6, 2008 Notice of Intent to Request Change in Effective Map, City of Cayce, S.C.	
07/14/2008	Draft letter from Michael Fletcher to William R. Argentieri at SCE&G re Request for HEC ResSIM model and BRASS model assistance	
11/19/2008	CD- FEMA maps from the City of Cayce	
02/28/2009	Elevation Certificate by the U.S. Department of Homeland Security, FEMA with color pictures attached	
04/04/2009	The State newspaper article, "Court Blocks New Levees"	
08/13/2009	Affidavit of Carroll Barker, Sr.	
09/03/2009	BP Barber letter from Henry B. Dingle to Deas Manning re levee elevation and survey finding it to be 137.80 mean sea level	

Doc Date	Description	Bates Range
09/09/2009	Exhibits Prepared by Alan Zundel in Preparation for Hearing - September 9-10, 2009	
09/09/2009	The State newspaper article, "Developer Drops Fight Over Flood Plain"	
10/02/2009	The State newspaper article, "Cayce East Project Canceled"	
07/30/2010	Jeff Gangai email to Zekrollah Momeni re: data to request from CV	FRMA Touhy Release 06.06.07 CV v. D&D 4003-4004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-8943R
Columbia Venture, LLC,	)	
	)	
Plaintiff,	)	
v.	)	
Richland County,	)	
Defendant.	)	

AFFIDAVIT OF ELIZABETH SUMMERS

After first being duly sworn, I, the undersigned Elizabeth Summers, do testify and state under oath as follows:

1. My name is Elizabeth Summers. I am a resident of Columbia, South Carolina.
2. I am currently employed as the Assistant Head, Director of Finance and Operations, of Heathwood Hall Episcopal School, 3000 South Beltline Boulevard, Columbia, South Carolina, 29201 ("Heathwood"). I have been employed in this or a similar position at Heathwood since June, 2001.
3. In my position, I am responsible for the administrative, finance, and operations functions of Heathwood and its endowment fund, including construction and maintenance of buildings on Heathwood's real property.
4. Heathwood's real property is located in Richland County, South Carolina, and is comprised of approximately 122 acres of land located adjacent to the Congaree River and land belonging to Columbia Venture, LLC and the City of Columbia's wastewater treatment facility. Heathwood's real property is protected from flooding by a levee system known as the Manning Levees, which run along the western edge of Heathwood's real property.

5. It is my understanding that, since February 20, 2002, all of Heathwood's real property has been located in a regulatory floodway, as defined on flood maps of the Federal Emergency Management Association.

6. Since February 20, 2002, Heathwood has constructed the following buildings or structures upon its real property:

- a. An elevated middle school building consisting of approximately 16 classrooms and common areas and approximately 30,000 sq. ft. of usable space. Pictures of the middle school building are attached hereto as Exhibit A.
- b. An elevated athletic center and gymnasium consisting of approximately 3,500 sq. ft. of usable space, along with improvements to Heathwood's athletic fields, and football and baseball stadium structures. Pictures of the athletic center-gymnasium and athletic fields are attached hereto as Exhibit B.
- c. An elevated chapel consisting of approximately 3,500 sq. feet of usable space. Pictures of the chapel are attached hereto as Exhibit C.
- d. An elevated dining commons consisting of a full service kitchen, dining areas, and conference room, and approximately 13,000 sq. ft. of usable space. Pictures of the dining commons are attached hereto as Exhibit D.
- e. A bell tower (which does not provide any other usable space). Pictures of the bell tower are attached hereto as Exhibit E.

7. For each of the above buildings, Heathwood was required to obtain a building permit and certificate of occupancy from Richland County. In order to obtain the building permit from Richland County, Heathwood was required to provide engineering studies and

certificates indicating that the construction of the building would not cause an increase in the level of floodwaters on adjacent properties in the event of flooding.

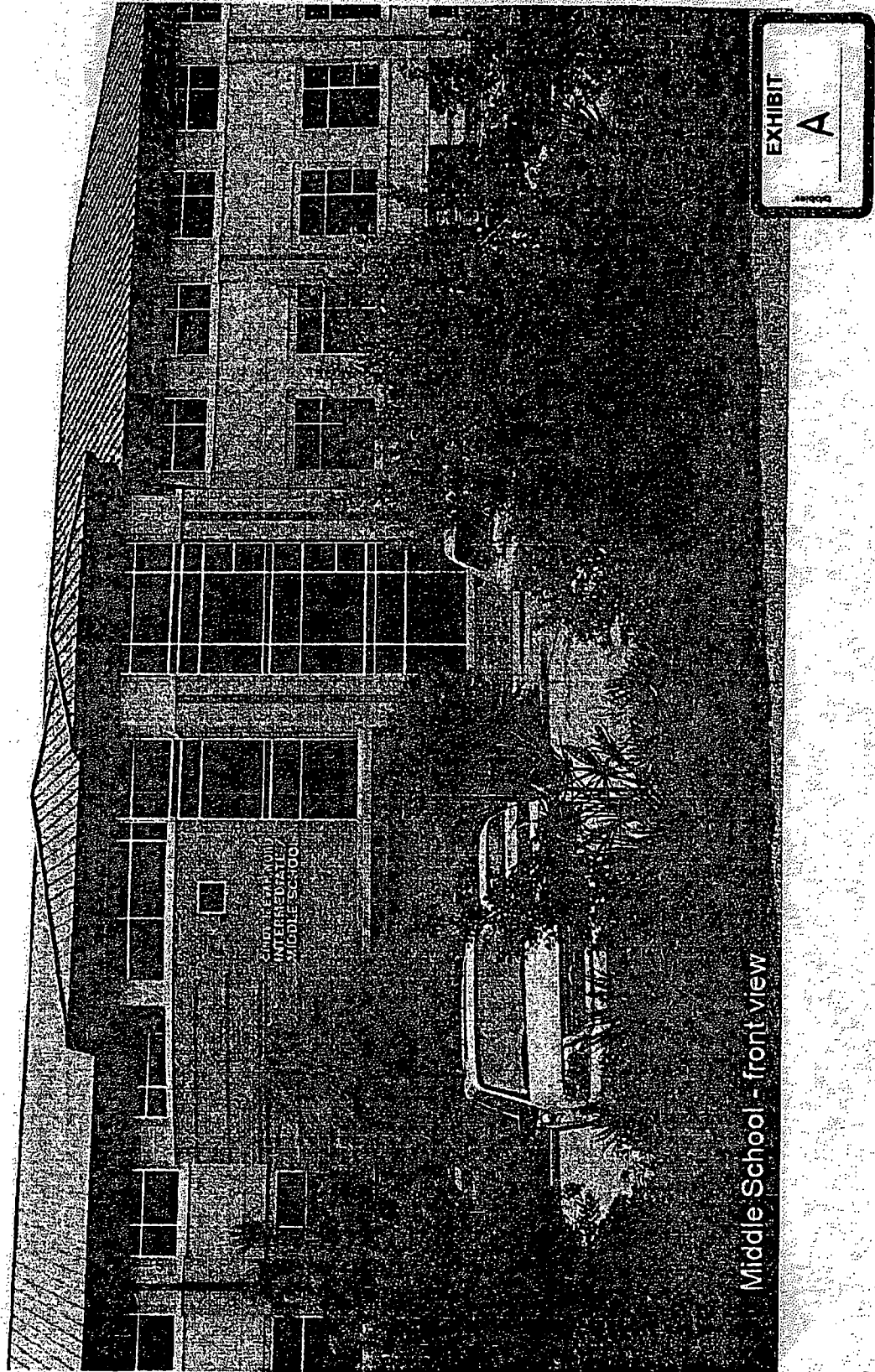
FURTHER AFFIANT SAYETH NOT.

E. E. Summers
Elizabeth Summers

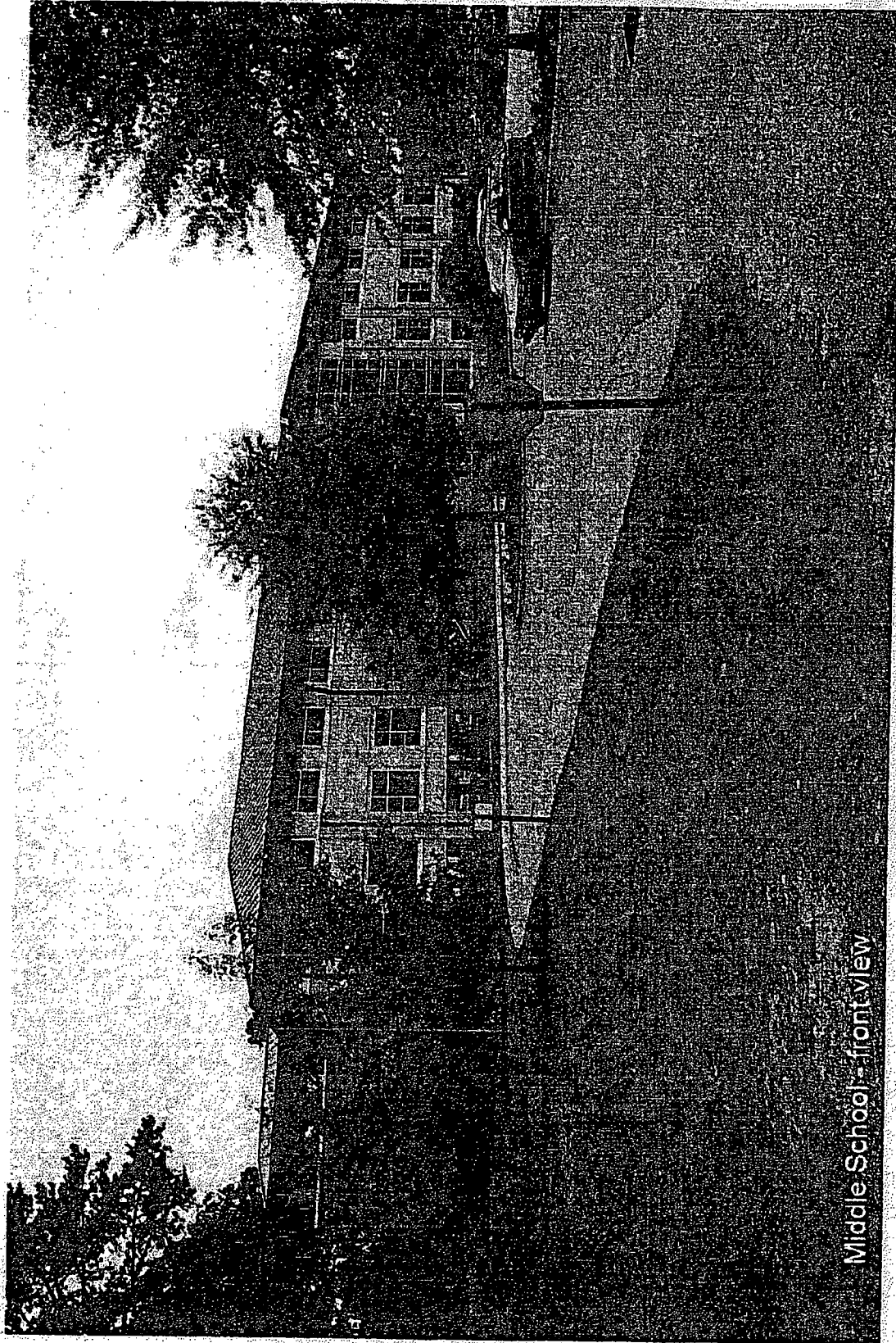
SWORN TO BEFORE ME this 10th day of July, 2012.

Brian Vaden
Notary Public for South Carolina

My Commission Expires: 7/3/2016

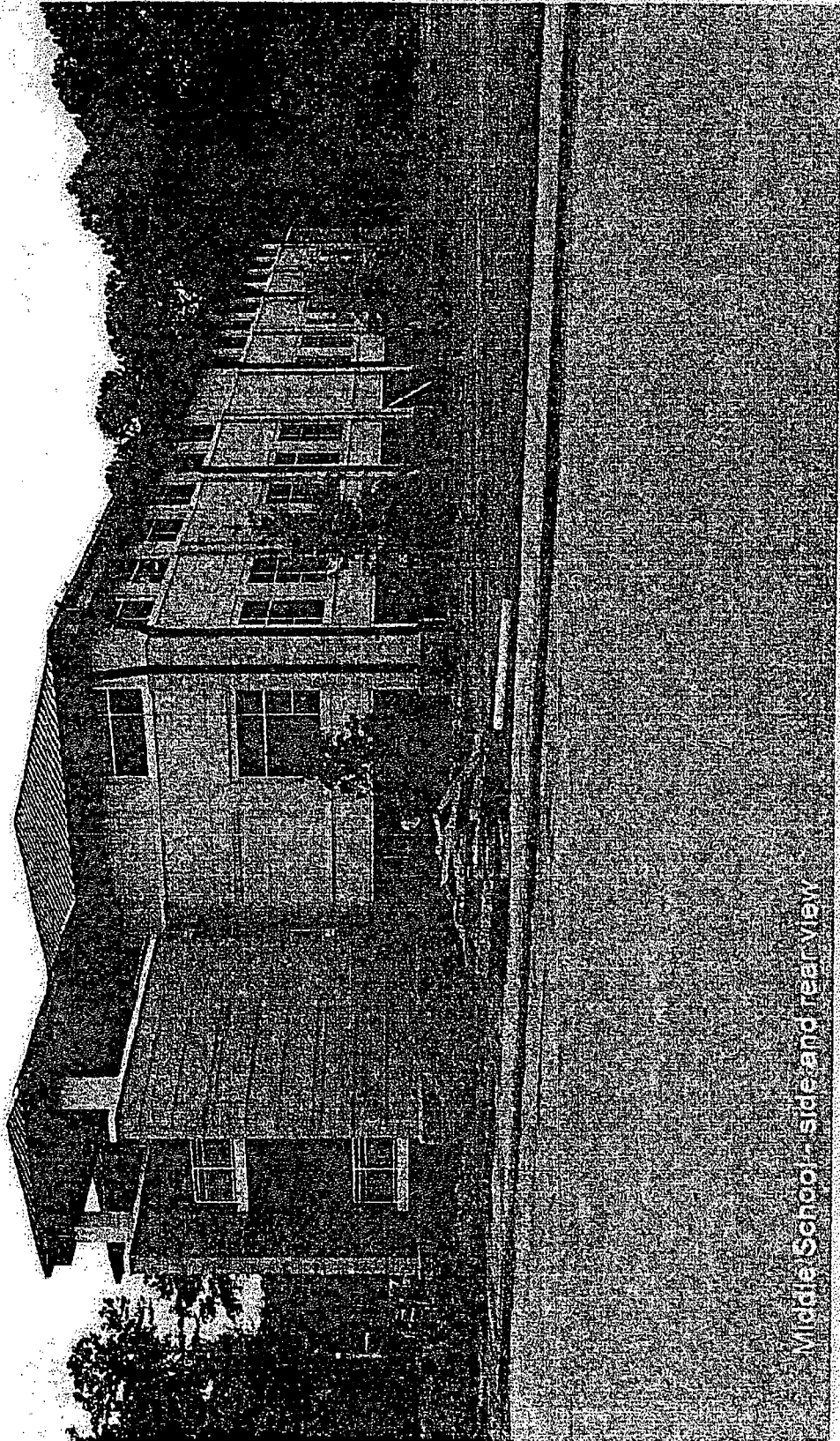


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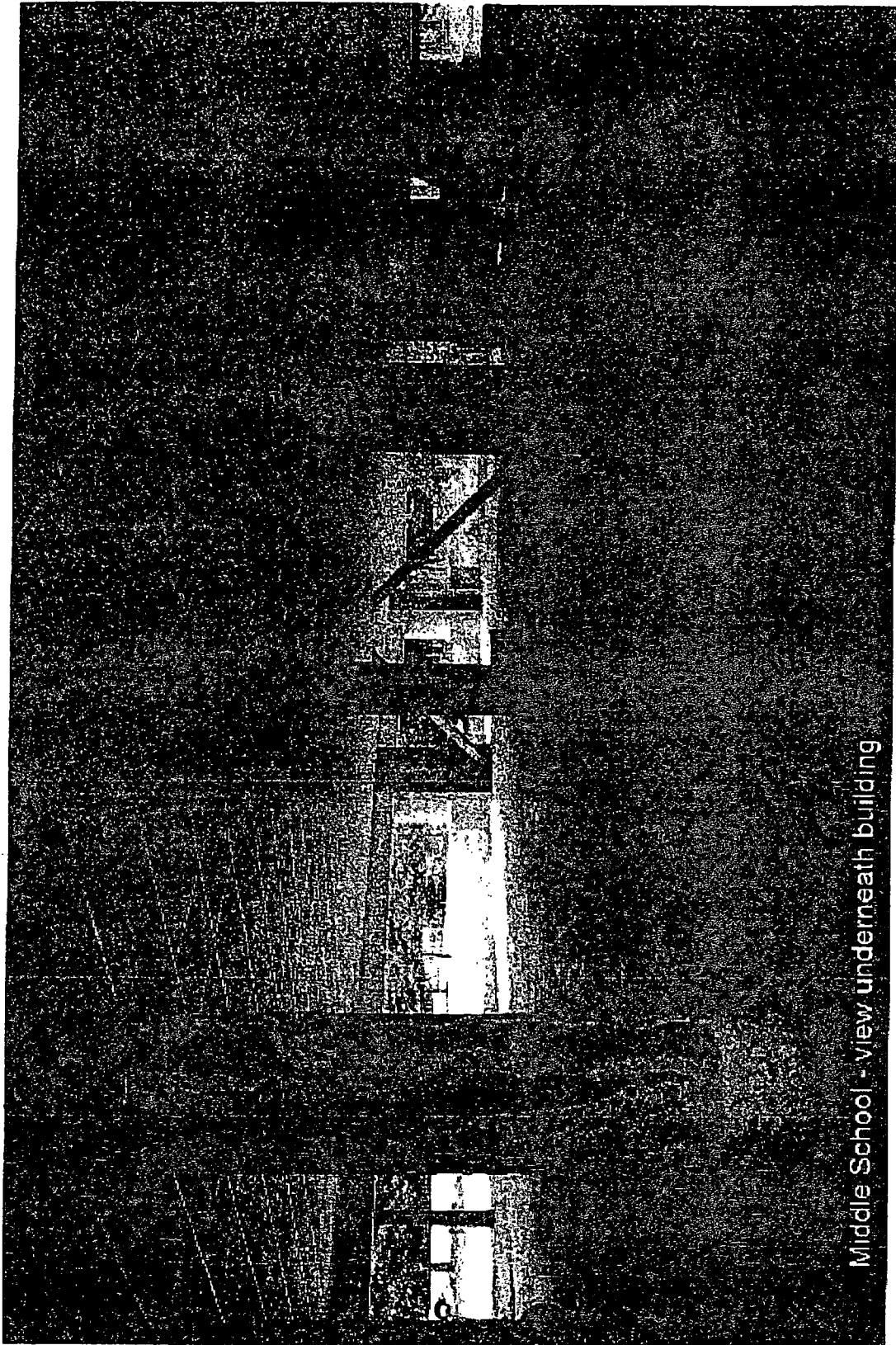


Middle School - front view

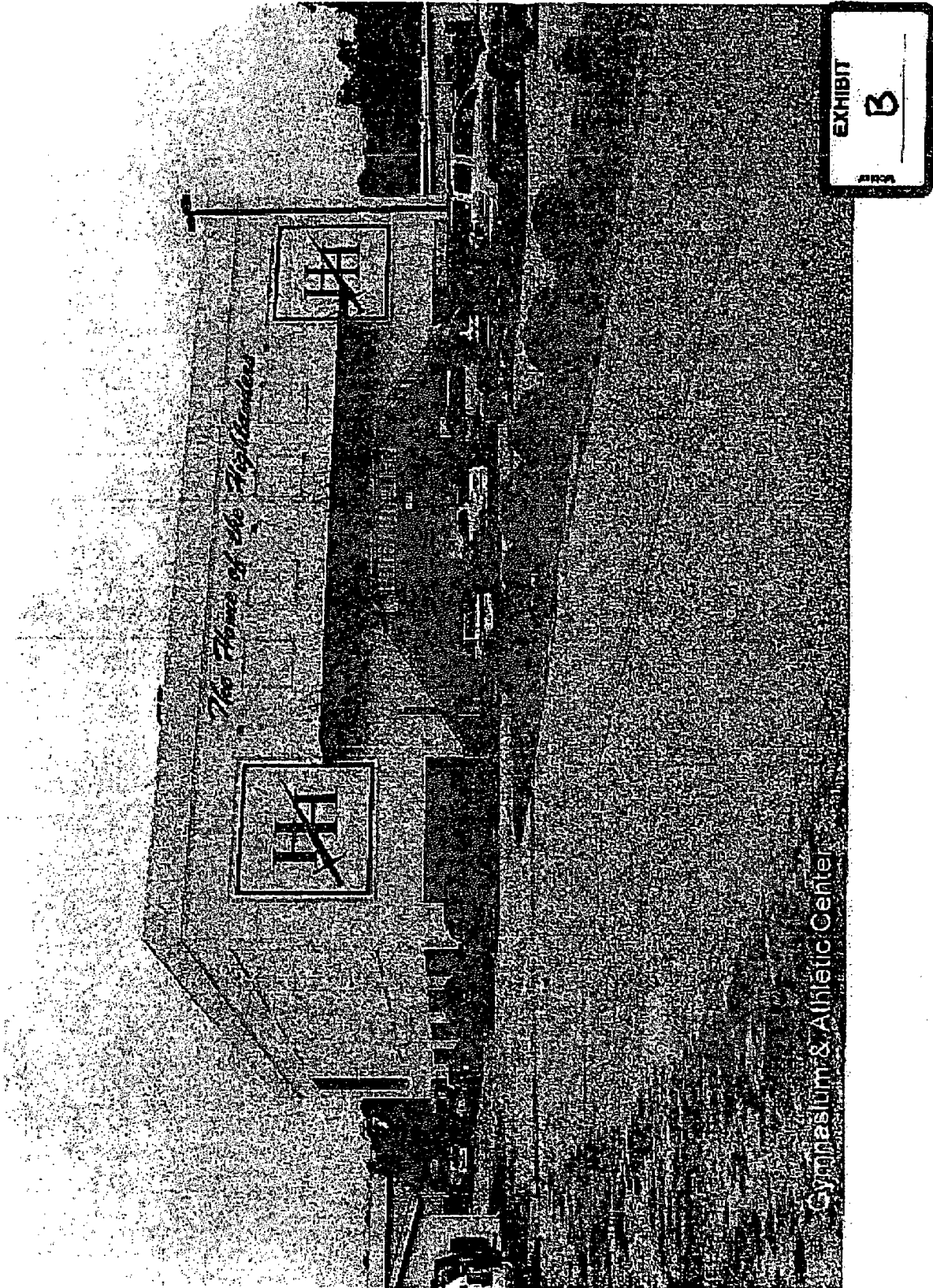
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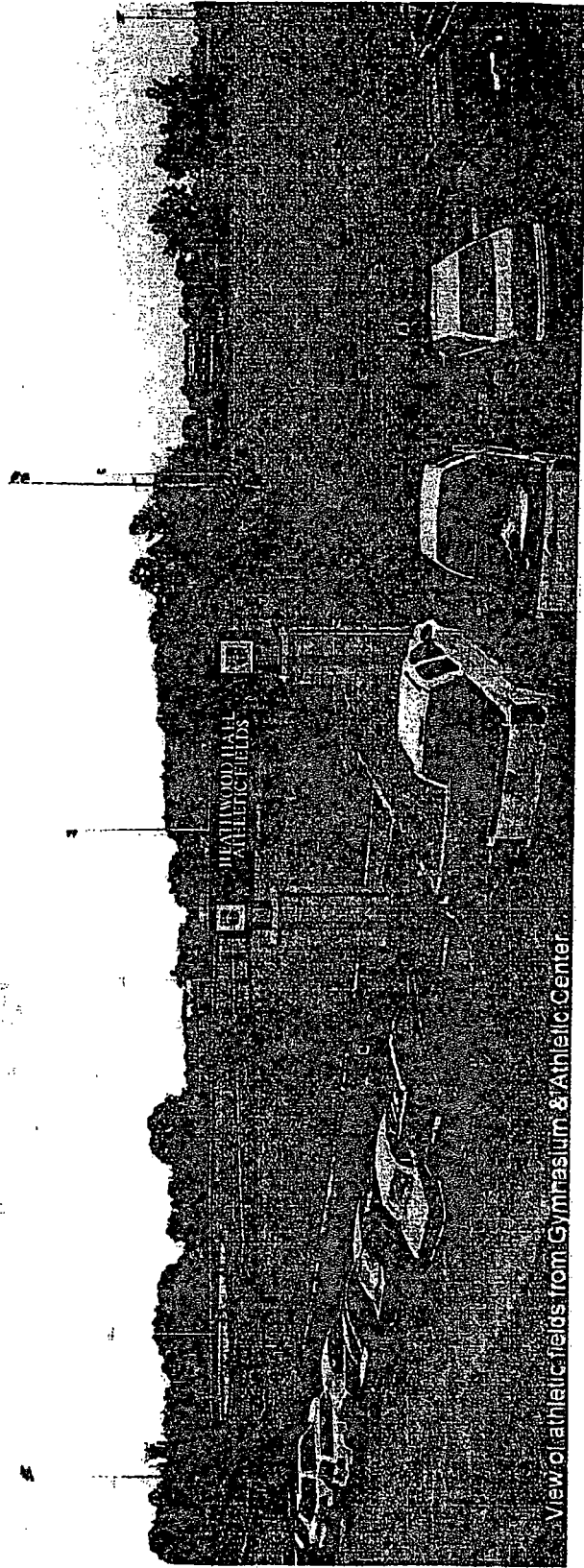


Middle School - side and rear view

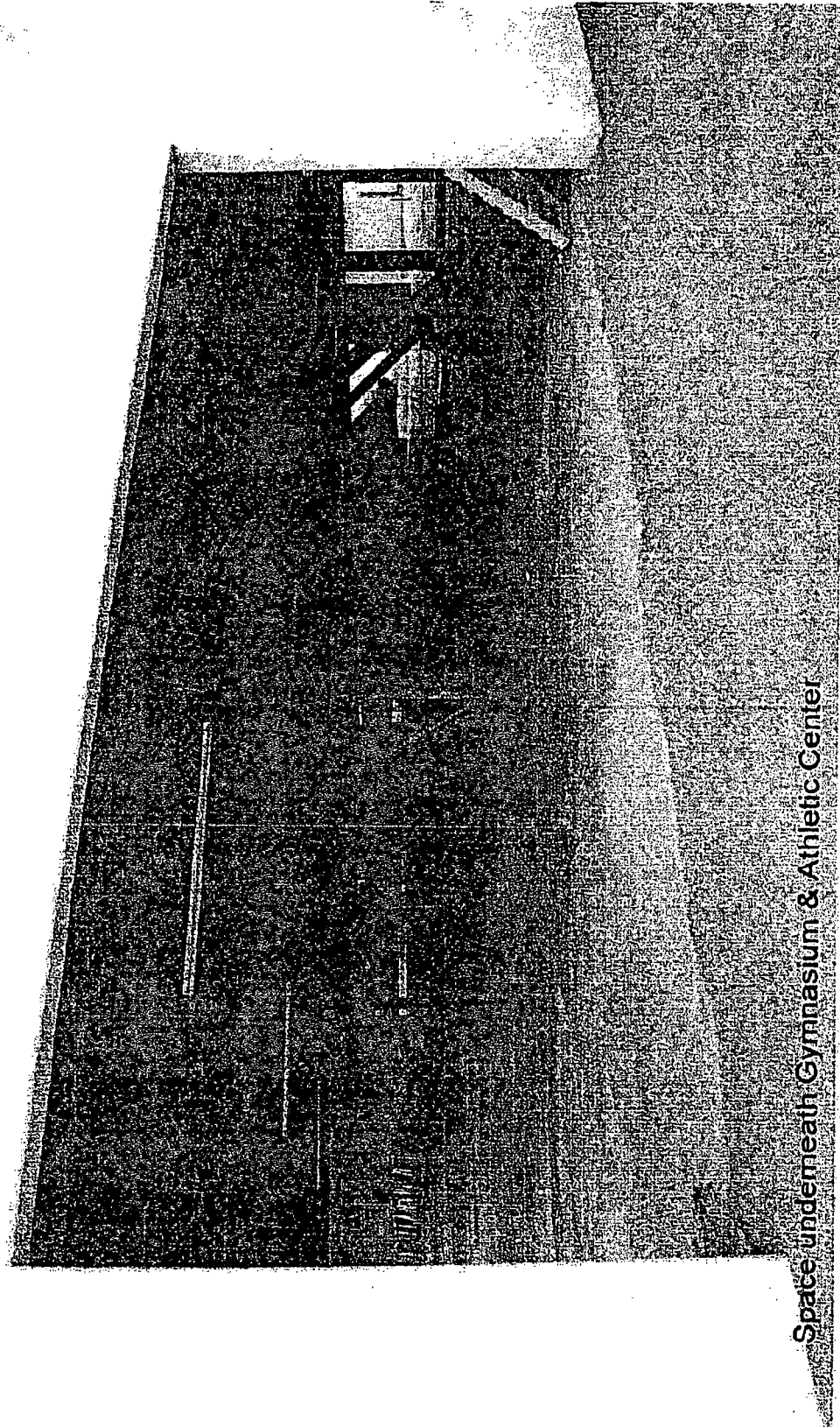


Middle School - view underneath building

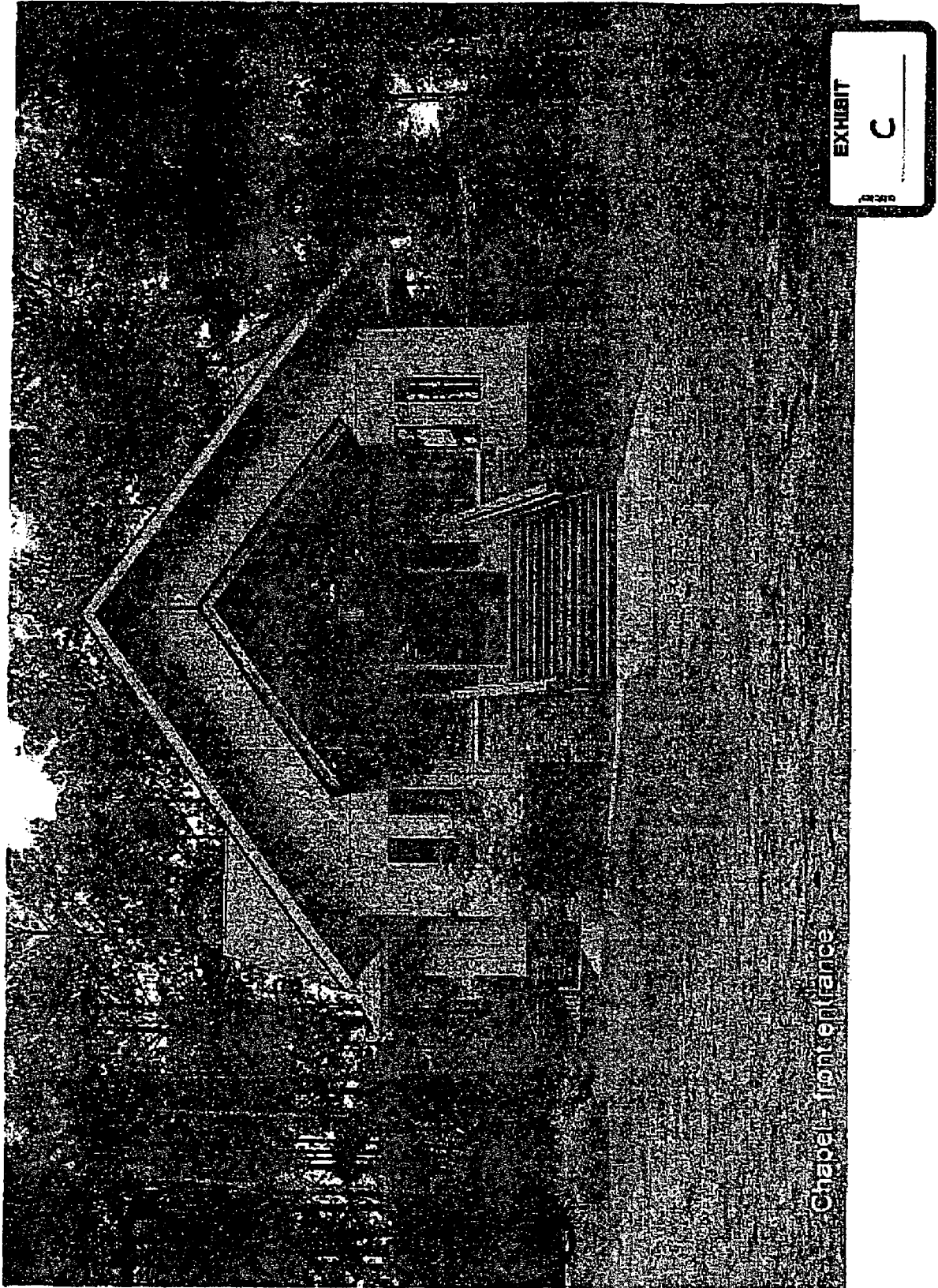




View of athletic fields from Gymnasium & Athletic Center

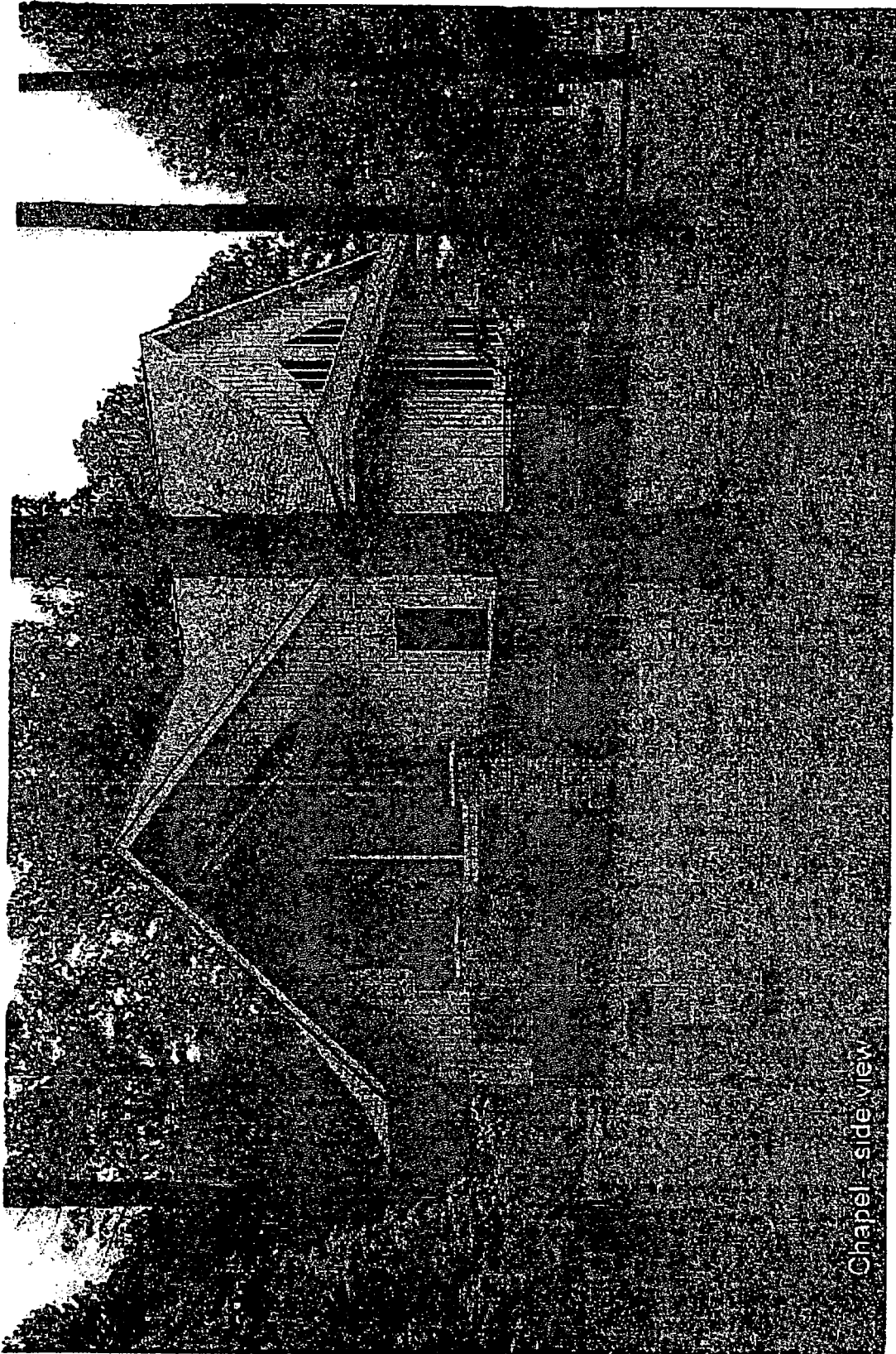


Space underneath Gymnasium & Athletic Center

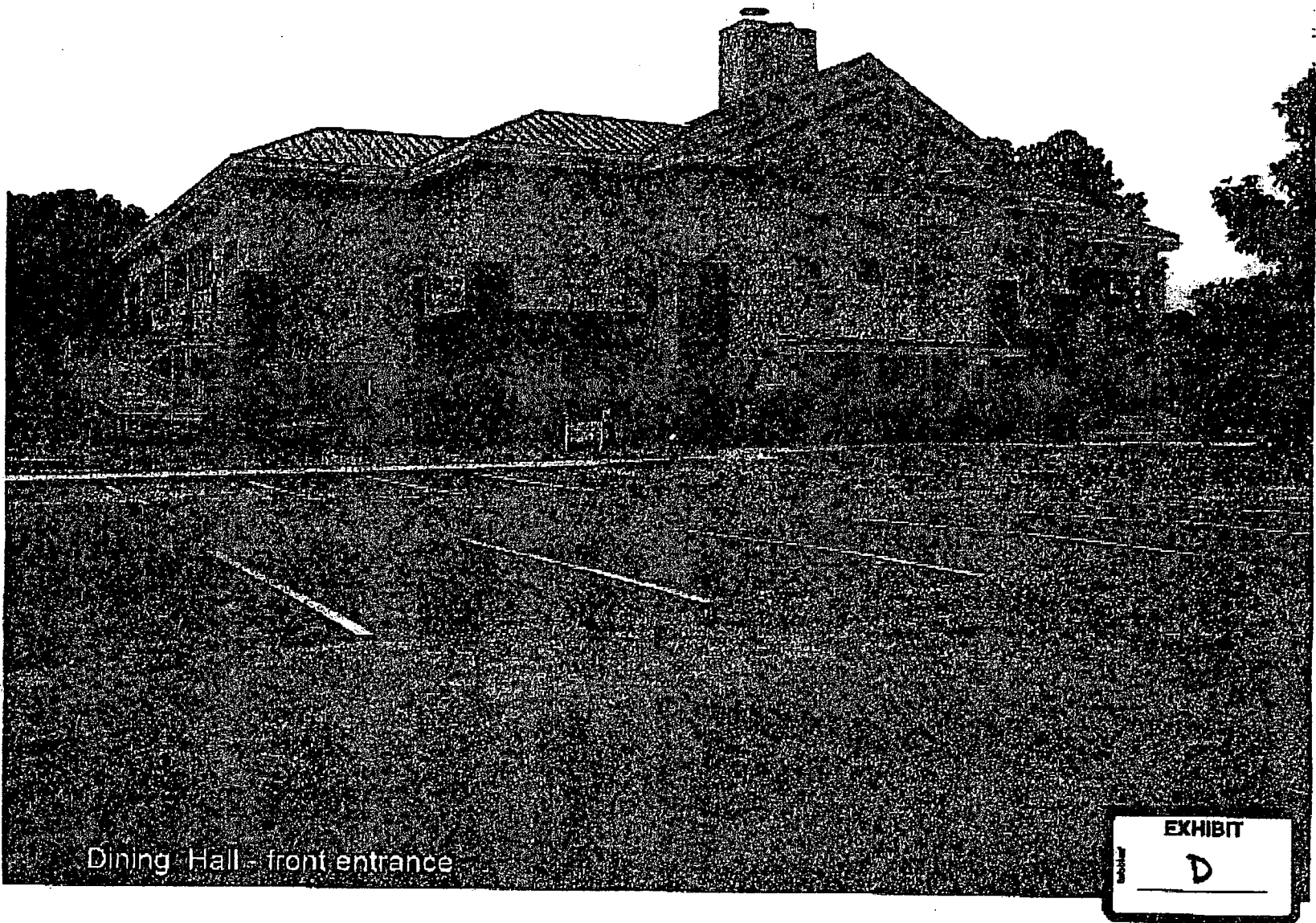


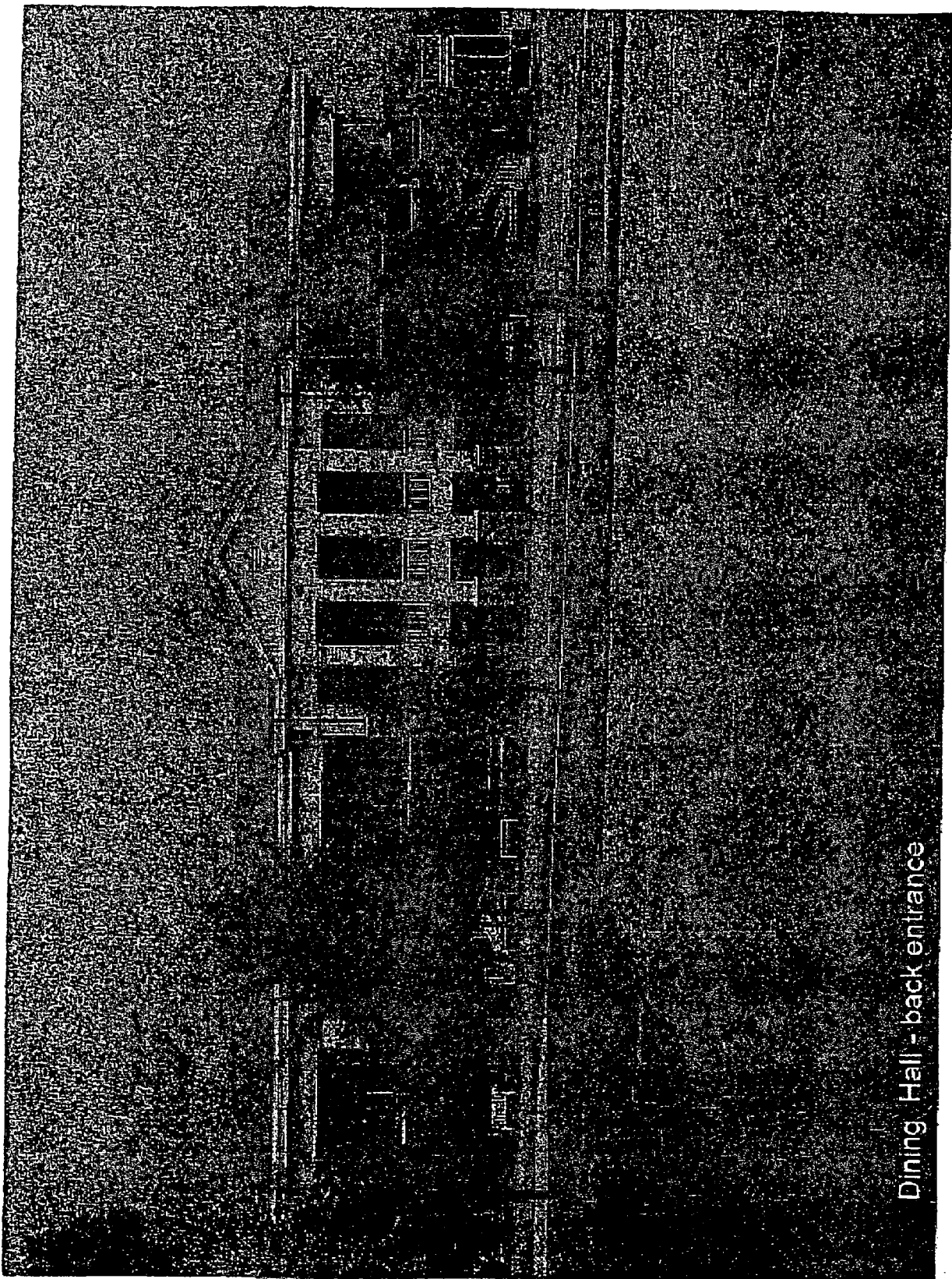
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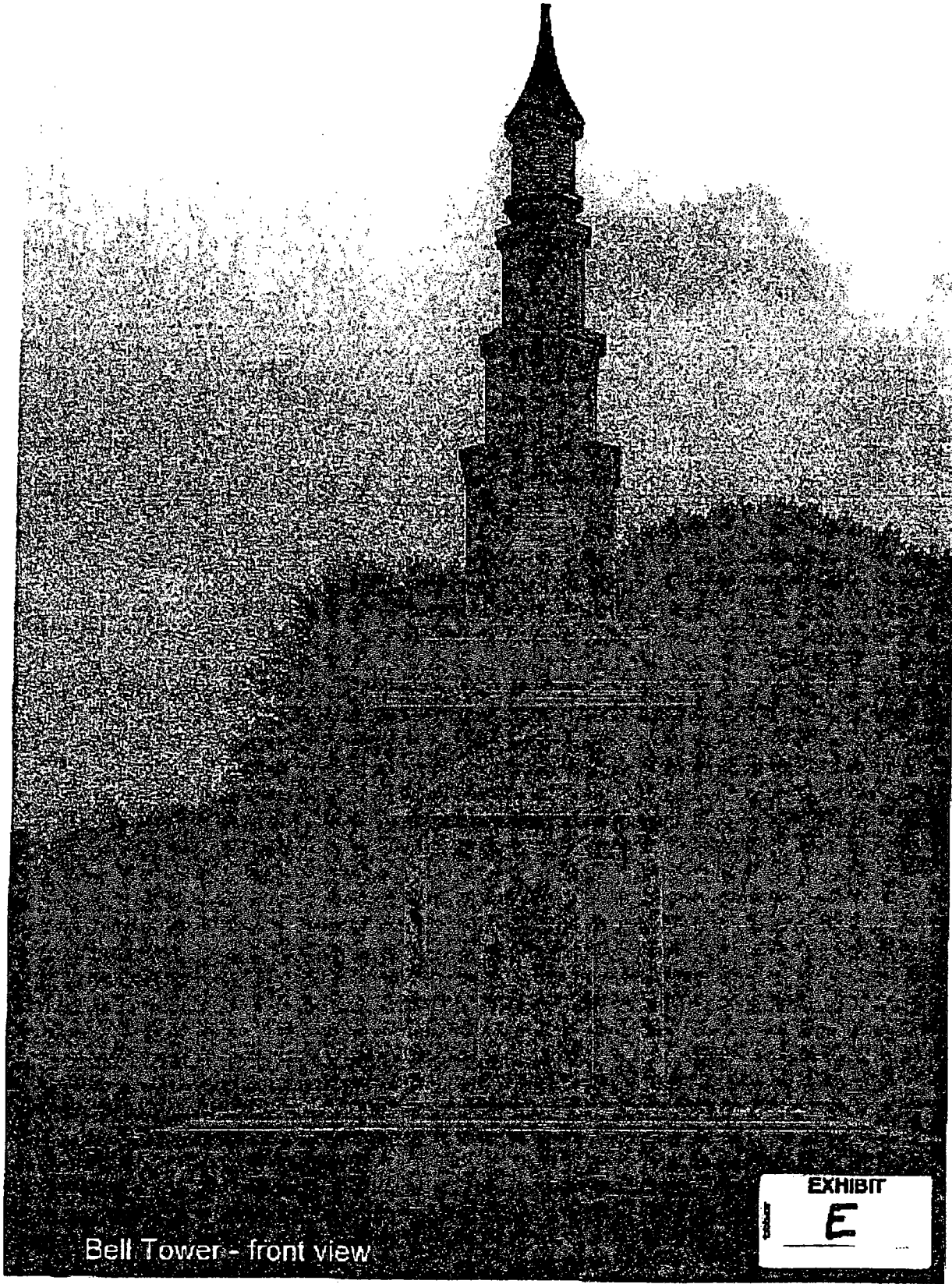


Chapel - side view



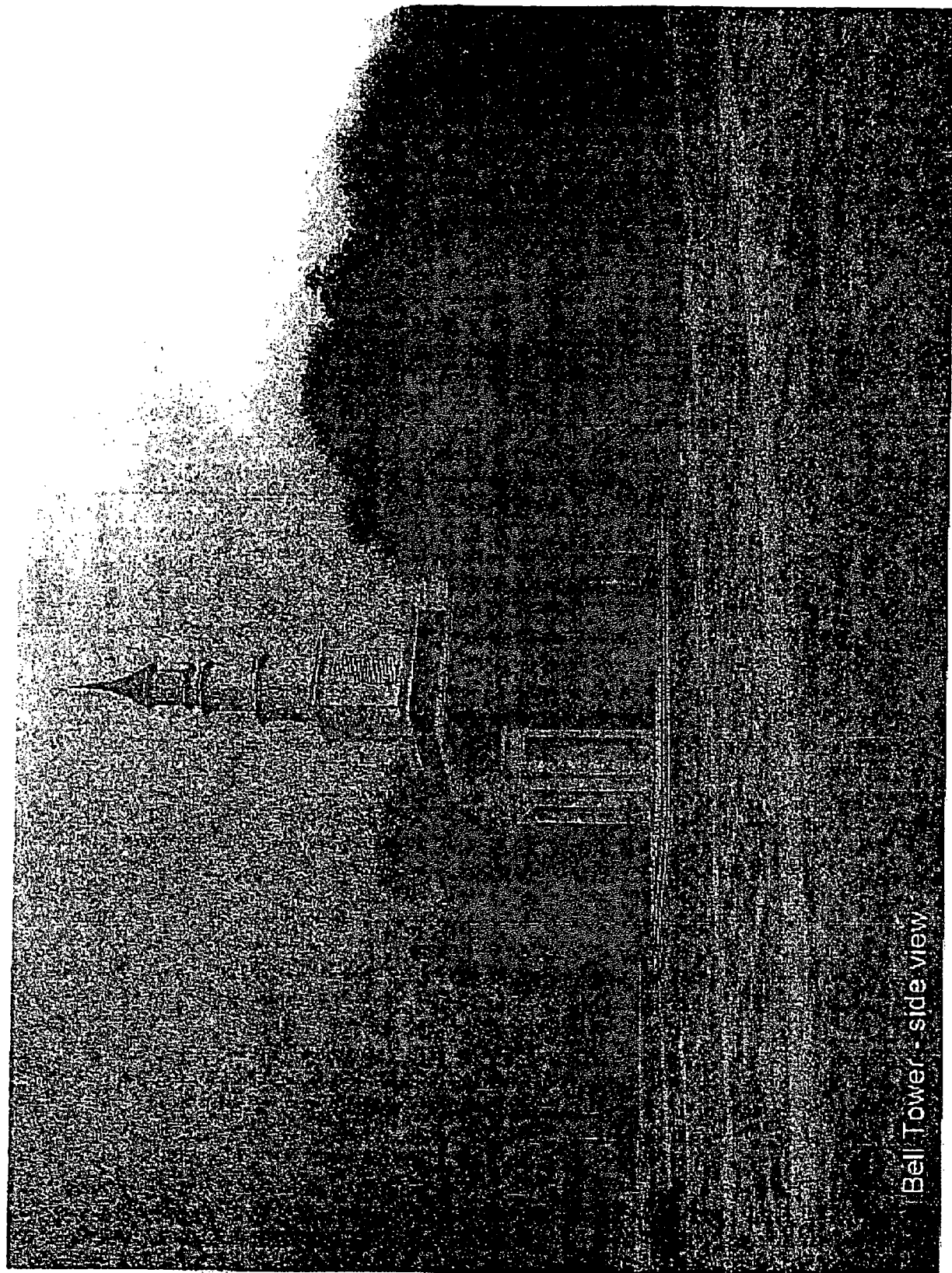


Dining Hall - back entrance



Bell Tower - front view

EXHIBIT
E



Bell Tower - side view

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND CASE NO. 2010-CP-40-8943R
3 COLUMBIA VENTURE, LLC,
4 Plaintiff,
5 vs.
6 RICHLAND COUNTY,
7 Defendant.

8 DEPOSITION OF: BRENDA L. CARTER
9
10 DATE: March 2, 2011
11 TIME: 10:05 a.m.
12 LOCATION: Law Offices of
13 McAngus, Goudelock & Courie
14 1320 Main Street, 10th Floor
15 Columbia, South Carolina
16
17 TAKEN BY: Counsel for the Plaintiff
18
19 REPORTED BY: ANGELA D. ZUVER,
20 Court Reporter
21
22
23
24
25

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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21	(803) 731-5224	(864) 234-7030	(704) 573-3919

Page 18

1 Q. Now, can you tell me in words or
2 substance what you and Mr. Reed discussed about
3 this particular document, Plaintiff's Exhibit 61?
4 A. We were discussing the fact of -- we
5 were discussing the order itself and what happened
6 and the issues of the order and the -- just the
7 document itself. That was -- and that was the
8 first -- our first discussion with it.
9 Q. Did the county formulate a strategy in
10 reaction to or to deal with this particular order,
11 Plaintiff's Exhibit 61?
12 A. When you say county, who do you --
13 Q. Richland County.
14 A. Richland County as a whole?
15 Q. Right.
16 A. I'd have to say no.
17 Q. Did you and Mr. Reed or anyone on the
18 staff formulate a strategy to deal with this
19 particular document, this order, Plaintiff's
20 Exhibit 61?
21 A. Our planning staff decided to talk
22 about some of the things that we could do to
23 reestablish the BFEs.
24 Q. And what was your -- what did that
25 strategy -- what form did it take?

Page 19

1 A. We talked about several things, but the
2 form that we came up with was to do a LOMR.
3 Q. Who came up with the idea of doing a
4 LOMR?
5 A. It was Harry Reed.
6 Q. Harry Reed. Now, if we look at
7 Plaintiff's Exhibit 64 -- have you got that in
8 front of you?
9 A. Uh-huh.
10 Q. This is the Congaree River floodplain
11 chronology. The first item numbered number one
12 there is an ordinance establishing a temporary
13 moratorium on approval of floodplain ordinance
14 book, management permits for developments, slash,
15 construction within a portion of the Congaree
16 River. Now, was this part of the -- this order,
17 was this part of the strategy that you and Mr. Reed
18 formulated to deal with the order of vacatur?
19 A. No.
20 Q. Did you have any role in drafting or
21 presenting this ordinance to the county council?
22 A. No.
23 Q. Do you know who did?
24 A. I don't.
25 Q. Would your answer be the same for the

Page 20

1 second ordinance there and the third ordinance?
2 A. Yes.
3 Q. What about the last ordinance,
4 Ordinance Number 4 adopting the 1995 base flood
5 elevations along the Congaree?
6 A. It would be the same.
7 Q. It would be the same?
8 A. Yes.
9 Q. So you didn't have any role in drafting
10 or formulating any of these ordinances and you
11 don't know who did?
12 A. That would -- that would be correct.
13 (PLF. EXH. 65, E-mail dated May 22,
14 2006, subject Meeting (Lisa Jones), Bates
15 DEF-00012575, was marked for identification.)
16 BY MR. GRIER:
17 Q. You've been handed what's been marked
18 for identification as Plaintiff's Exhibit 65.
19 A. Uh-huh.
20 Q. And this is from Harry Reed -- an
21 e-mail, I believe it is, from Harry Reed sent
22 Monday, May, 22, 2006, to Larry Smith with a copy
23 to you.
24 A. Uh-huh.
25 Q. It says: Meeting, Lisa Jones. It

Page 21

1 says: Larry, per your request I have scheduled a
2 meeting with Lisa Jones, Department of Natural
3 Resources, for Thursday, May 25, 2006 at 10:30 a.m.
4 in your conference room. Thursday is the only time
5 this week that she will be available. I have
6 confirmed this date and time with your
7 receptionist.
8 Now, did you attend this meeting?
9 A. I did.
10 Q. Tell me who else was there.
11 A. Let's see. There was Anna, Donnie,
12 myself, Larry. Harry was there, and that's -- I
13 think that's all I can recall.
14 Q. So Anna, Donnie, Harry, Larry. Was
15 Ms. Jones there?
16 A. Ms. Jones was present, yes.
17 Q. What was discussed at that meeting?
18 A. We were discussing the options because
19 the -- I think the moratorium was coming to a final
20 time. But we were discussing our option of doing a
21 LOMR.
22 Q. I think you indicated that idea
23 originated with Mr. Reed?
24 A. Uh-huh.
25 Q. For the record, LOMR is L-O-M-R and it

Page 22

1 stands for letter of map revision?

2 A. Yes.

3 Q. That's capital L-O-M-R?

4 A. Exactly, yes.

5 Q. Now, was there any discussion as to

6 which department within the county should head up

7 this effort to obtain a LOMR?

8 A. That actually had already been

9 determined because the floodplain coordinator was

10 in the planning department and we'd already been

11 discussing it. So that's where it would come from,

12 because that was a part of Mr. Reed's duties, was

13 the floodplain coordinating for the county.

14 Q. So Mr. Reed was the floodplain

15 coordinator?

16 A. Yes, sir.

17 Q. So his department was going to head up

18 the county's efforts to seek a LOMR?

19 A. Yes.

20 Q. Now, approximately how long did this

21 meeting last?

22 A. Forty-five minutes, maybe.

23 Q. Did it take place at the county

24 offices?

25 A. Yes.

Page 23

1 Q. Was there any discussion about trying

2 to keep the county's efforts to obtain a LOMR not

3 necessarily secret, but not to make a -- not to

4 make it publicly known that the county was seeking

5 a LOMR?

6 A. No.

7 Q. Was there any discussion about keeping

8 the county's efforts to obtain a LOMR -- keeping

9 that information confidential?

10 A. No.

11 Q. Was there any effort to -- was there

12 any discussion about keeping this information sort

13 of circumspect so that Columbia Venture would not

14 find out about it?

15 A. No.

16 Q. I believe you were involved in the

17 effort to obtain this LOMR, were you not?

18 A. Yes.

19 Q. Did you head up that effort?

20 A. Head up? What --

21 Q. I mean, were you in charge of it?

22 A. I wouldn't say in charge of it, but

23 because it was in the planning department I was

24 kind of -- and I was Harry's supervisor, it was a

25 coordination. I guess I was coordinating.

Page 24

1 Q. Now, did you ever appear before the

2 county council to describe for the council your

3 efforts or Mr. Reed's efforts to obtain this LOMR?

4 A. No.

5 Q. Did you ever discuss it with any member

6 of the county council?

7 A. No.

8 (PLF. EXH. 66, Calendar entry for May

9 22 - 24, Bates DEF-00012563, was marked for

10 identification.)

11 BY MR. GRIER:

12 Q. You've been handed what's been marked

13 for identification as Plaintiff's Exhibit 66. Can

14 you tell me what that is?

15 A. Yes. It is a copy from one of my

16 calendars.

17 Q. Now, you can see that from May, is it

18 not?

19 A. Yes, it is.

20 Q. This is May 2006?

21 A. Yes.

22 Q. On the 24th you've got, if we look at

23 that last line, Lisa Holland, meeting, legal. Lisa

24 Holland, that's the same as Lisa Jones, is it not?

25 A. Yes.

Page 25

1 Q. Did this meeting take place on the 24th

2 or the 25th? Because if we look at Plaintiff's

3 Exhibit 65, the meeting was initially set up for

4 Thursday, May 25th, but you have it on here as

5 Wednesday.

6 A. I believe it took place actually on the

7 25th.

8 Q. Now, do you keep a log of your

9 telephone conversations with people you speak with

10 over the telephone?

11 A. No, I don't.

12 Q. Why was the county concerned with

13 obtaining this LOMR? What was the need for the

14 county to seek this LOMR rather than just waiting

15 for FEMA to revise the flood insurance rate map?

16 A. Because at that time there was no -- we

17 kept asking FEMA for direction and we didn't get

18 any direction from FEMA as to what should the

19 county do while everything was going on in that

20 area. So there was kind of like no regulation for

21 that area, so the county wanted to know what should

22 we do. It was unclear, so in order to not be

23 unclear we wanted a definite answer. So we felt we

24 had to do -- we had to put something in place.

25 Q. Was part of the concern here that

Page 26

1 Columbia Venture might be able to improve its
 2 levies and develop its property unless the county
 3 took some action?
 4 A. No. No.
 5 Q. That was not?
 6 (PLF. EXH. 67, State of South Carolina,
 7 County Council for Richland County, Ordinance No.
 8 009-06HR, Bates DEF-00008614-8615, was marked for
 9 identification.)
 10 BY MR. GRIER:
 11 Q. You've been handed what's been marked
 12 for identification as Plaintiff's 67. Are you
 13 familiar with this document?
 14 A. I am now.
 15 Q. Now, this is the first moratoria that
 16 was adopted by the county council in response to
 17 the November 18, 2005 order of the United States
 18 District Court; is that correct?
 19 A. Yes.
 20 Q. Looking at it, it only applied to the
 21 Congaree River floodplain; is that correct?
 22 A. Yes.
 23 Q. So it didn't have any application to
 24 any other flood prone areas in the county other
 25 than the Congaree River floodplain; is that

Page 27

1 correct?
 2 A. That's correct.
 3 Q. And the county didn't see the need to
 4 address other flood prone areas in the county other
 5 than the Congaree River floodplain; is that
 6 correct?
 7 A. That would be sufficient to say.
 8 Q. I'm sorry?
 9 A. Yes.
 10 Q. Now, going back to your meeting on
 11 May 25, 2006 with, among others, Lisa Jones or Lisa
 12 Holland, was there any discussion that there was a
 13 need or was not a need to apprise the planning
 14 commission of your efforts to obtain a LOMR?
 15 A. I don't -- I don't recall if that was
 16 discussed or not.
 17 Q. Did you ever have a discussion with
 18 Mr. Reed or anyone else involved in this effort
 19 that there was or was not a need to apprise the
 20 planning commission of the county's efforts to
 21 obtain a LOMR?
 22 A. That would not have been my
 23 responsibility, so I don't -- I don't recall if I
 24 personally did that or not. That would have been
 25 the director's or somebody else's responsibility,

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1 so I don't -- I didn't do it.
 2 Q. Now, you said the director?
 3 A. Right.
 4 Q. Who would that be?
 5 A. That would have been Donnie Phipps at
 6 that time. He was the interim director at that
 7 time.
 8 Q. Now, do you know whether or not the
 9 planning commission was ever informed of the
 10 county's efforts to obtain a LOMR?
 11 A. I don't -- I don't recall.
 12 Q. Who authorized the application for a
 13 LOMR? Who authorized you or your department or
 14 Mr. Reed to actually apply to FEMA for a LOMR?
 15 A. Nobody authorized us to do it. We --
 16 our acting director --
 17 Q. Mr. Phipps?
 18 A. Uh-huh. After our discussion, the
 19 people in the room, we all came to a consensus that
 20 that was the best thing to do, and that's what we
 21 did.
 22 Q. But you didn't seek authority from
 23 anybody with the county to authorize you to go
 24 forward?
 25 A. No.

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1 (PLF. EXH. 68, E-mail string, subject
 2 Status Update on Congaree LOMR, Bates DEF-00012590,
 3 12591, 12588, 12589, was marked for
 4 identification.)
 5 BY MR. GRIER:
 6 Q. Are you familiar with this document
 7 that's been marked Plaintiff's Exhibit 68?
 8 A. Uh-huh.
 9 Q. You need to answer yes for the --
 10 A. I'm sorry.
 11 Q. This is an e-mail chain, is it not?
 12 A. Yes, it is.
 13 Q. And the first one in there -- the
 14 original one is on page DEF-00012589, which would
 15 be the last page; is that correct?
 16 A. Yes. That's the original you have on
 17 this thread, yes.
 18 Q. And this is from Donnie Phipps to
 19 Milton Pope?
 20 A. Yes.
 21 Q. Dated August 21, 2006?
 22 A. Yes.
 23 Q. With a copy to Larry Smith and a copy
 24 to you?
 25 A. Yes.

Page 34 1 letter before? 2 A. Yes. 3 Q. Do you see the third paragraph? 4 A. Yes. 5 Q. It says: Currently the parties to this 6 lawsuit are participating in a Fourth Circuit Court 7 of Appeals mediation in an effort to resolve the 8 issues in the lawsuit. Since this process is 9 ongoing and may definitely resolve the matter if 10 successful, there has been no occasion for FEMA to 11 take a formal action. If the mediation fails to 12 resolve the litigation, FEMA will take other action 13 as appropriate. 14 Were you aware of this fourth circuit 15 mediation that FEMA was involved in with Columbia 16 Venture and others? 17 A. I was aware there was mediation, yes. 18 Q. And you were aware that because of that 19 mediation FEMA had not taken action to revise the 20 flood elevation determinations in Richland County? 21 A. Yes. 22 Q. Nevertheless, Richland County saw the 23 need to proceed -- not wait on FEMA and proceed 24 with this LOMR application? 25 MR. LYDON: Object to the form.	Page 36 1 concerns the FEMA LOMR requisition, does it not? 2 It says: Subject FEMA LOMR requisition? 3 A. That's what the subject is, yes, but 4 the body of it doesn't talk about the requisition. 5 Q. And you've got importance high? 6 A. Yes. 7 Q. It talks about a conversation that 8 Mr. Fontenot of Watershed Concepts had with some 9 officials at FEMA, does it not? 10 A. Yes, it does. 11 Q. In the last sentence of that first 12 paragraph it says: Mr. Bellamo suggested that the 13 county hold off on doing anything concerning the 14 LOMR until the letter has been received and its 15 content examined. He indicates that a letter is to 16 be forthcoming. 17 A. Yes. 18 Q. You said: Donnie and I discussed what 19 Daryle told me and I have signed the requisition, 20 but will hold it until the letter from FEMA is 21 received, read and instructions given to us from 22 you as to the direction you wish to take. 23 Do you recall what direction Mr. Pope 24 directed you to take? 25 A. No direction was given, as a letter
Page 35 1 THE WITNESS: Yes. 2 (PLF. EXH. 70, September 5, 2006 3 letter, Bates DEF-00004420 - 4427, was marked for 4 identification.) 5 BY MR. GRIER: 6 Q. You've been handed Plaintiff's 7 Exhibit 70. Are you familiar with this document? 8 A. Yes. 9 Q. This is the proposal by Watershed 10 Concepts to prepare the application for the LOMR on 11 behalf of the county? 12 A. Yes. 13 (PLF. EXH. 71, E-mail string, subject 14 Re: FEMA LOMR requisition, Bates DEF-00004428 - 15 4429, was marked for identification.) 16 BY MR. GRIER: 17 Q. You've been handed what's been marked 18 as Plaintiff's Exhibit 71. It's an e-mail chain. 19 Have you ever seen this before? 20 A. I have seen a portion of this before, 21 yes. 22 Q. In fact, one of -- It looks like the 23 first e-mail here is from you, is it not? 24 A. Yes, it is. 25 Q. And it's from you to Mr. Pope and it	Page 37 1 never came. 2 Q. You're saying the letter never came? 3 A. Yes. 4 Q. Well, did the county stand down, so to 5 speak, on its efforts to obtain the LOMR waiting on 6 this letter? 7 A. No, we did not. The letter never 8 showed, so we proceeded. 9 Q. You just moved ahead? 10 A. Yes. 11 (PLF. EXH. 72, Calendar entry 14 - 17 12 September, Bates DEF-0012564, was marked for 13 identification.) 14 BY MR. GRIER: 15 Q. You've been handed a document which has 16 been marked Plaintiff's Exhibit 72. Can you tell 17 us what this is? 18 A. It is another copy of something from my 19 calendar dated September 15th. I don't know which 20 year this is. 21 Q. Look at the entry for Friday the 15th. 22 A. Uh-huh. 23 Q. Read that for us, if you would. 24 A. It says: FEMA meeting, legal. Sent 25 off the requisition to Watershed Concepts.

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1 Q. On the 15th you went ahead and sent off
2 the requisition to Watershed Concepts; is that
3 right?
4 A. Yes.
5 Q. Would you assume this was in 2006?
6 A. I would assume, yes.
7 Q. And the previous document we looked at,
8 Plaintiff's Exhibit 71, the e-mail from you was
9 dated September 8, 2006?
10 A. Yes.
11 Q. Where Mr. Fontenot indicated that FEMA
12 had asked you to hold -- suggested that the county
13 hold off doing anything concerning a LOMR until a
14 letter had been received and its content examined.
15 A. Correct.
16 Q. So that was on the 8th, but on the 15th
17 you went ahead and sent the requisition to
18 Watershed Concepts to present the LOMR application?
19 A. Yes.
20 (PLF. EXH. 73, Memo, Bates
21 DEF-00012576 - 12577, was marked for
22 identification.)
23 BY MR. GRIER:
24 Q. You've been handed a document which has
25 been marked for identification as Plaintiff's

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1 Exhibit 73. This is -- it's signed by you, it's to
2 Donnie. Can you tell us what this is?
3 A. It is a weekly summary that managers
4 would turn in to the department director of what
5 our staff and what we did throughout the week.
6 Q. So this is for the week of -- this is
7 for the weeks of September the 4th through the 8th
8 and September 11th through the 15th?
9 A. Correct.
10 Q. Of 2006?
11 A. Yes.
12 Q. Now, look at that first entry,
13 floodplain. Can you interpret that for and tell us
14 what that refers to?
15 A. That refers to Mr. Reed, what his week
16 was -- or those were weeks were for him. He had 12
17 flood inquiries, which was people to walk in and on
18 the phone. He did 24 flood determinations. He had
19 seven commercial plans that he reviewed. He had
20 seven residential plans that he reviewed. He went
21 out to do a flood visit, and that was the address,
22 536 Green Springs Drive. He had two flood
23 inspections. He attended a flood meeting in legal,
24 and he reviewed a CRS, a flood research, for the
25 purpose of an upcoming county recertification. And

Page 40

1 then he had other routine flood-related duties,
2 including sending out response letters.
3 Q. Now, the 24 flood determinations, would
4 he determine whether something -- tell me what that
5 would be.
6 A. That determines whether something was
7 in or out of the floodplain based on people calling
8 or people coming to the counter to get permits, and
9 they would ask Mr. Reed whether it was in the
10 floodplain or not so that they could get their
11 permits.
12 (PLF. EXH. 74, Calendar entry September
13 18 - 20, Bates DEF-00012565, was marked for
14 identification.)
15 BY MR. GRIER:
16 Q. You've been handed Plaintiff's
17 Exhibit 74. Can you tell us what that is?
18 A. Yes. It's another copy of one of my
19 calendar notes.
20 Q. Now, look at Tuesday the 19th. It
21 says: Council meeting, flood BFE. Is that stuff?
22 A. Stuff, uh-huh.
23 Q. And then FEMA?
24 A. Uh-huh.
25 Q. Legal meeting?

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1 A. Uh-huh. And it says: Finished zoning
2 presentation.
3 Q. Does this indicate you appeared before
4 the council that evening?
5 A. No, it doesn't indicate that I was
6 appearing before council.
7 Q. Tell me what that means.
8 A. It meant that council was having a
9 meeting that night and that they probably would be
10 discussing the flood BFE stuff, that it was on the
11 agenda.
12 Q. Let me see the exhibits real quick.
13 Look back at Plaintiff's Exhibit 64. Do you see an
14 entry for that last ordinance?
15 A. Uh-huh.
16 Q. Which is Number 4. When was the first
17 reading on that ordinance?
18 A. The first reading, 9/19/06.
19 Q. Would that be the FEMA BFE stuff that
20 was going to be discussed at the council that
21 night?
22 A. Yes, it could be.
23 (PLF. EXH. 75, Richland County Planning
24 Commission minutes, Bates DEF-00004895 - 4941, was
25 marked for identification.)

Page 50 1 So we had a moratorium on all of those 2 panels that were involved. So he had to have some 3 regulations to go by. So, therefore, from a 4 planning perspective, we needed something done, so 5 our strategy just was -- and when I say our, the 6 planning department's strategy was to get something 7 in place, which was the LOMR, so that he could 8 continue to do his job. 9 Q. Why couldn't you just -- as we know, 10 Judge Seymour ultimately invalidated the 2001 base 11 flood elevation determinations and reinstated the 12 1995 base flood elevation determinations. Why 13 couldn't you and Mr. Reed simply use the 1995 base 14 flood elevation determinations? 15 A. Because after reading and discussing 16 the order -- in just reading it, it appeared that 17 there was nothing wrong per se with the actual 18 data, it just appeared that she had thrown out the 19 data based on a technicality, which was that it 20 didn't get to the registry on time. 21 Q. Well, didn't you understand that she 22 had -- did you understand that she had invalidated 23 the 2001 floodway? 24 A. No, not at that time. 25 Q. But in the court's judgment it	Page 52 1 A. Correct. 2 Q. And your piece of the puzzle, as it 3 were, was simply to apply for the LOMR? 4 A. Duly apply for the LOMR, yes. 5 Q. Do you have an understanding of -- you 6 said you had a general understanding of the 7 National Flood Insurance Program. Do you know how 8 the -- sort of the general definition of the 9 floodway? 10 A. General definition, yes. 11 Q. Do you understand that the engineers 12 sort of determine where the line is going to be for 13 the floodway using these hydraulic models? 14 A. Yes. 15 Q. Do you understand it's based on, in 16 Richland County's case, a one-foot rise in the 17 level of the floodwaters? 18 A. Yes. 19 Q. And that is in fact the definition in 20 the FEMA regulations and the Richland County 21 regulations, it's a one-foot rise floodway; is that 22 correct? 23 A. Yes. 24 Q. Now, once the county reinstated the 25 1995 BFEs and at the same time retained the 2001
Page 51 1 indicates that she had invalidated the -- she had 2 granted a motion to invalidate the floodway 3 determinations? 4 A. But this is something that I did not 5 see. 6 Q. We know now that she did in fact 7 invalidate the 2001 floodway, do we not? 8 A. Now I have read this and that's what it 9 says. 10 Q. And the Exhibit Number you're referring 11 to? 12 A. Sixty-two. 13 Q. So we know now that she did, in fact, 14 in November of 2005 not only invalidate just the 15 base flood elevation determinations, but also the 16 floodway elevation determinations, correct? 17 MR. LYDON: Object to the form. 18 BY MR. GRIER: 19 Q. We know that now, do we not? 20 A. In 2005 she did. 21 Q. As I understand it, you were not 22 involved in the strategy to pass this ordinance, 23 which ultimately was passed on a third reading on 24 December 5, 2006, that would have reinstated the 25 1995 BFEs and retained the 2001 floodway?	Page 53 1 floodway, the 2001 floodway, at least in the 2 Congaree floodplain, was no longer based on a 3 one-foot rise at the base flood elevation, was it? 4 A. I'm not an engineer. I'm not sure. 5 Q. I'm sorry? 6 A. I said I'm not sure. 7 Q. The 2001 floodway, would you agree with 8 me, was not derived from the 1995 BFEs? 9 A. No, they were not. 10 Q. They were in fact derived from the 2001 11 BFEs -- I mean the 2001 floodway was derived from 12 the 2001 BFEs, correct? 13 A. Correct. 14 Q. And those were the BFEs, you would 15 agree with me, that you and the county were aware 16 that the federal judge had invalidated as of 2005? 17 MR. LYDON: Object to the form. 18 THE WITNESS: Yes. 19 (PLF. EXH. 80, Watershed Concepts fax 20 transmittal dated December 5, 2006, Bates 21 DEF-00004472 - 4476, was marked for 22 identification.) 23 BY MR. GRIER: 24 Q. You've been handed what's been marked 25 for identification as Plaintiff's Exhibit 80. Is

Page 62 1 BY MR. GRIER: 2 Q. I'm going to hand you, Ms. Carter, 3 Plaintiff's Exhibit 84. This is an e-mail from 4 Mr. Fontenot to you and an e-mail from you back to 5 Mr. Fontenot dated December 12, 2006. He's simply 6 asking had you sent the packet to FEMA, is he not? 7 A. Yes. 8 Q. And you respond that it went back off 9 the same day. I believe we've established that it 10 went to FEMA on the 7th of December? 11 A. Yes. 12 Q. Now, were you sort of the point person 13 to deal with Watershed Concepts? 14 A. Yes. 15 (PLF. EXH. 85, E-mail string, subject 16 Re: 07-04-1190P, Congaree River, Bates 17 DEF-00004492 - 4513, was marked for 18 identification.) 19 BY MR. GRIER: 20 Q. I'm going hand you Plaintiff's 21 Exhibit 85. This is, first, an e-mail from a 22 Rabeya Noor to Harry Reed, and then it's a letter 23 from -- an e-mail from Mr. Fontenot back to 24 Ms. Noor copied to you and Harry Reed. On 25 January 4th, Ms. Noor in effect asked for	Page 64 1 manager, yesterday regarding our yesterday's 2 conversation about this LOMR. I understand the 3 matter of what happened. According to the brief 4 description about the LOMR you sent and my 5 conversation with Syed, what I understood is that 6 the 2002 effective BFEs are null until FEMA revises 7 them and the 1995 BFEs are currently effective. 8 Your LOMR request is to reinstate exactly the 2002 9 BFEs and floodplain boundaries, right? 10 You have shown the 2002 BFEs and 11 delineation of floodway 100 and 500-year floodplain 12 boundaries on the 1995 FIRM panels. I would like 13 to call you this afternoon to discuss these issues 14 again. I would appreciate if you could get ready 15 with the copies of the annotated FIRM you sent us 16 and also the 2002 FIRM panels which might be 17 helpful, I think, to discuss. Thanks. 18 Now, she accurately describes the 19 purpose of your LOMR, does she not? 20 A. Yes. 21 (PLF. EXH. 88, E-mail string, subject 22 Review's Recommendation, Bates DEF-0004529 - 4530, 23 was marked for identification.) 24 BY MR. GRIER: 25 Q. Plaintiff's Exhibit 88. This is again
Page 63 1 additional information, and then Mr. Fontenot 2 supplied it on January 8, 2007? 3 A. Yes. 4 (PLF. EXH. 86, E-mail string, subject 5 07-04-1190P, Congaree River, Bates DEF-00004416 - 6 4517, was marked for identification.) 7 BY MR. GRIER: 8 Q. I'm going to hand you 86. I believe 9 you simply forwarded what we've previously 10 discussed as Plaintiff's Exhibit 85 to Mr. Smith 11 and Mullen Taylor for their information? 12 A. Yes. 13 (PLF. EXH. 87, E-mail string, subject 14 07-04-1190P, Congaree River, Bates DEF-00004526 - 15 4528, was marked for identification.) 16 BY MR. GRIER: 17 Q. I'm going to hand you Plaintiff's 18 Exhibit 87. This looks like a continuation of the 19 e-mails we've discussed in Plaintiff's Exhibits 85 20 and 86, and it has -- but it has an additional 21 e-mail from Ms. Noor dated January 10th to Kevin 22 Higgins with a copy to Harry Reed and Daryle 23 Fontenot. 24 It says: I talked to -- I don't know 25 how you pronounce that, S-Y-E-D -- Syed, my	Page 65 1 an e-mail chain, and the first e-mail there is from 2 you, dated Tuesday, January 30, 2007, to Daryle 3 Fontenot. Review of recommendations. Daryle, do 4 you know what the review's recommendations are? 5 Thanks. 6 And he writes back: From all 7 indication, the reviewer understood what we 8 proposed and was forwarding that to FEMA for 9 decision. 10 And you sent it to Ms. Taylor for her 11 information. Ms. Taylor writes back: Does that 12 mean the review had no recommendation? 13 And then you asked Mr. Fontenot -- you 14 say: Mullen is an attorney working with the county 15 on a LOMR project. Can you answer her question 16 below? 17 He says: My understanding is that the 18 review is coordinating with FEMA on whether to 19 approve or not approve the LOMR. If the review had 20 technical issues with the LOMR they would have come 21 back to us to get additional data and would not be 22 coordinating with FEMA concerning the LOMR. 23 Now, was it your understanding that 24 Ms. Noor -- she was with a FEMA contractor; is that 25 correct? Did you understand that? In other words,

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1 marked for identification as Plaintiff's
2 Exhibit 102. This is another federal register
3 notice which indicates that the prior federal
4 register notice is being withdrawn. If you look on
5 Page 2, that first sentence: The purpose of this
6 federal register publication is to withdraw the
7 proposed flood elevation and determinations
8 published on October 16, 2007 at Federal Register
9 58598 for unincorporated areas of Richland County,
10 South Carolina. This document also provides notice
11 that FEMA has withdrawn the September 12, 2007
12 physical map revision and canceled the November 1,
13 2007 to January 31, 2003 appeal period associated
14 with the withdrawn proposed flood elevation and
15 determinations. The reason for this withdrawal and
16 cancelation is to address the federal court's
17 November 14, 2007 finding that the October 16, 2007
18 notice proposing new flood elevation determinations
19 for the Congaree River in the unincorporated areas
20 of Richland County did not comply with the court's
21 November 18, 2007 order of vacatur. FEMA intends
22 to initiate new revisions and propose new flood
23 hazard information. However, affected areas should
24 utilize the effective flood hazard information in
25 accordance with the November 18, 2005 order of

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1 vacatur until such time as updated flood hazard
2 information is proposed by FEMA.
3 So FEMA is in effect here withdrawing
4 that earlier notice and the appeal period
5 associated with the physical map revision, correct?
6 A. Yes.
7 Q. And they're saying that until they
8 revise and propose new flood hazard information you
9 should utilize the effective flood hazard
10 information in accordance with Judge Seymour's
11 November 18, 2005 order; is that correct?
12 A. Yes.
13 Q. And in Judge Seymour's order she, as we
14 now know, vacated not only the 2001/2002 base flood
15 elevation and determinations but also the base
16 flood floodway determinations, correct?
17 A. Yes.
18 Q. And she reinstated the 1994/1995 base
19 flood elevations, including the 1994/1995 floodway
20 determinations, correct?
21 A. Yes.
22 Q. And so we know now that all along those
23 were the effective flood hazard information as of
24 November 18, 2005, correct?
25 MR. LYDON: Object to the form.

Page 88

1 THE WITNESS: No.
2 BY MR. GRIER:
3 Q. As of November 18, 2005, Judge Seymour
4 invalidated the 2001 and 2002 base flood elevation
5 determinations, including the floodway
6 determinations, correct?
7 MR. LYDON: Object to the form.
8 THE WITNESS: She did, yes.
9 BY MR. GRIER:
10 Q. And she reinstated as of that date,
11 November 18, 2005, the 1994 and 1995 base flood
12 elevation determinations, including the floodway
13 determinations, correct?
14 MR. LYDON: Object to the form.
15 THE WITNESS: Yes.
16 BY MR. GRIER:
17 Q. What FEMA is saying here is that
18 affected areas should utilize that effective flood
19 information in accordance with her November 18,
20 2005 order, correct?
21 MR. LYDON: Object to the form.
22 THE WITNESS: That's what FEMA says,
23 but that's not necessarily what the county has to
24 use.
25

Page 89

1 BY MR. GRIER:
2 Q. Explain that to me, if you would.
3 A. There's also a part in the FEMA
4 regulations that says that the counties can be more
5 stringent than the FEMA regulations.
6 Q. Don't the county regulations state that
7 the regulatory floodway is determined based on a
8 rise in the base flood elevation?
9 A. It does.
10 Q. And you wouldn't comply with the
11 county's regulations if you just arbitrarily
12 adopted a floodway that had no relationship to the
13 base level elevations, would you?
14 A. You would not.
15 Q. And the concept of a regulatory
16 floodway, as you understand it, is based on base
17 flood elevation and a rise in that base flood
18 elevation to determine the boundaries of the
19 floodway, correct?
20 A. Correct.
21 Q. And I think you've already testified
22 that the 2001/2002 floodway was not derived from
23 the 1994/1995 base flood elevation determinations,
24 correct?
25 A. Yes, if I recall.

23 (Pages 86 to 89)

Page 90 1 MR. GRIER: Let's take a break. 2 (A luncheon recess transpired.) 3 BY MR. GRIER: 4 Q. Let me hand you Exhibit 95. Go to the 5 second page, if you would, Ms. Carter. In this 6 summary of the conference call that Watershed 7 Concepts had with FEMA it says in the third 8 paragraph: FEMA explained that in order to defend 9 using the 2002 data for the LOMR they wanted an 10 evaluation of that data to make sure that no 11 changes have occurred that would need to be 12 included in the LOMR. FEMA wants a validation that 13 no development or other changes to the floodplain 14 have been made would make the 2002 data no longer 15 valid. The request also asks for the county's 16 concurrence in this validation. 17 Now, can you tell us what the county 18 did in order to make that verification? 19 A. I don't know. 20 Q. If we could find Plaintiff's 21 Exhibit 68. I just happened to look upon it right 22 here. Now, this is the e-mail chain that we talked 23 about. If you'd go to the third page, which is 24 DEF-00012588. 25 A. Yes.	Page 92 1 county solicit any bids from anybody else, any 2 other engineering firm to do the LOMR work? 3 A. No, they did not. 4 Q. See if we can find 73. If you'd look 5 on the second page under GIS manager. Now, were 6 you the GIS manager at that time? 7 A. Yes. 8 Q. So this is recounting what your 9 activities were during this period of time? 10 A. Yes. 11 Q. And you see, if we look six paragraphs 12 down, it says: Meeting in legal to discuss 13 Congaree area flood study. The requisition was 14 sent to procurement so that we could move forward. 15 Does that refer to the LOMR? 16 A. That was referring to Watershed. 17 Q. So that's the LOMR? That's the 18 requisition to LOMR so they can begin the process? 19 A. The requisition for Watershed Concepts 20 so they can start. 21 Q. Let me make sure I understand. That's 22 the requisition to the county for the money so that 23 you could start the process, or how does that work? 24 A. Yeah. We had to get -- we had to 25 requisition Watershed Concepts to begin the
Page 91 1 Q. It says this is from Donnie Phipps to 2 Milton Pope, Valeria Smith and Brenda Carter. Down 3 at the bottom, do you see that -- 4 A. Yes. 5 Q. -- e-mail, August 21, 2006? 6 A. Yes. 7 Q. It says: I'll ask Brenda to answer 8 your questions. And I believe the questions have 9 been redacted, or the answer to the questions or 10 the questions. Something's been redacted here. 11 But it says: I'll ask Brenda to answer your 12 questions. As for funds, I'll use monies from the 13 professional services Number 2300-5265. However, 14 this was not a budgeted item and was a request of 15 council after the budget process. 16 Now, can you tell me, if you know, what 17 he's referring to, this request of council after 18 the budget process? 19 A. I do not know. 20 Q. So you are not aware of any request 21 from the council to initiate this LOMR process? 22 A. I was not aware, no. 23 Q. By the way, you indicated that 24 Mr. Reed, I think, selected Watershed Concepts 25 because he maybe was familiar with them. Did the	Page 93 1 process. 2 Q. So the requisition was sent -- that 3 refers to the -- let me start over. 4 The requisition was sent to procurement 5 so we can move forward. So you sent a requisition 6 to procurement to sort of start the process to get 7 the money to pay Watershed Concepts to move 8 forward? 9 A. Right. Yes. 10 Q. Then the next one is: Met briefly with 11 Anna and Larry Smith to discuss the procedure for 12 reintroducing the matter of the Congaree flood 13 study back to council. It was stated that it could 14 go to the planning commission on the next agenda or 15 that council could send it to the planning 16 commission. Larry had a clear understanding of the 17 procedure. 18 Can you tell me what that refers to? 19 A. That refers to a meeting that we had, 20 and we were discussing what we wanted to do as far 21 as a LOMR, and then the discussion about the 22 planning commission and the agenda, and the rest of 23 it was just -- during that meeting, but it was with 24 different people in the meeting. 25 Q. Now, does this refer to the LOMR or

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND
3
4 COLUMBIA VENTURE, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CP-40-8943R
7 RICHLAND COUNTY,
8 Defendant.
9

10 DEPOSITION OF: MICHAEL P. CRISS, AICP, LEED AP,
11 LLC

12 DATE: May 11, 2011

13 TIME: 9:07 A.M.

14 LOCATION: Law Offices of
15 McAngus Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: LORI S. MORTGE,
18 Certified Court
Reporter, CCR
19

20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

Page 38 1 many years but have never been considered certified 2 levies by FEMA? 3 A. That is my understanding. 4 Q. All right. And it appears under this 5 table that in the without floodway column and with 6 floodway column it refers to Footnote 8 that says: 7 Elevation computed without consideration of the 8 hydraulic effects of the levee. 9 A. Mm-hmm. Yes. 10 Q. Okay. All right. So this table does 11 not consider the levee in its calculations? 12 A. Those columns do not. 13 Q. And so the -- if we look the same way we 14 did with the 1995 study, the data in the without 15 floodway and compare it to the with floodway, none 16 of the increases are more than one foot; is that 17 correct? 18 A. Correct. 19 Q. Okay. Mr. Criss, what is your 20 understanding of what the purpose of the floodway 21 is, in general? 22 A. The portion of the floodplain that must 23 be reserved to assure the future carrying capacity 24 of the base flood without significant loss of life 25 and property.	Page 40 1 Richland County, did you have any discussions with 2 anybody at the County about any earlier debates 3 about that particular ordinance? 4 A. Surely we did. 5 Q. Okay. Do you recall who you spoke with 6 about that? 7 A. Well, senior staff in the Department of 8 Planning & Development Services. I imagine County 9 Administration, legal department, Public Works -- 10 all County personnel involved in stormwater 11 management. 12 Q. Okay. Do you recall that that debate 13 centered on the interpretation of the phrase impede 14 the free flow of water? 15 A. I do remember that debate and it seemed 16 to center on the County Engineer Ralph Pearson's 17 interpretation. 18 Q. Okay. And what do you recall that his 19 interpretation was? 20 A. As I recall, the County Engineer felt 21 that a certification would suffice for development 22 encroaching on the floodway. But I think it was the 23 County Attorney, Larry Smith, who took up more 24 conservative interpretation of the language. 25 Q. And do you know an approximate time when
Page 39 1 Q. Okay. All right. I realize this was 2 before your time at Richland County, but is it your 3 understanding that prior to February 20th, 2002 the 4 effective Flood Insurance Study and effective Flood 5 Insurance Rate Map for Richland County were those 6 from 1994/1995? 7 A. I learned that after arriving at 8 Richland County. 9 Q. Okay. All right. And is it your 10 understanding that the -- a different effective 11 Flood Insurance Study and Flood Insurance Rate Map 12 went into effect in Richland County on February 13 20th, 2002? 14 A. Yes, I learned that after arriving at 15 Richland County. 16 Q. All right. And prior to November 18th, 17 2005 Richland County used the 2001/2002 Flood 18 Insurance Study and Flood Insurance Rate Map for its 19 floodplain management; correct? 20 A. Yes. 21 Q. Okay. Were you involved in any way with 22 the passage or debate about any amendments to the 23 stormwater ordinance in April of 2001? 24 A. No. 25 Q. Okay. Did you -- upon coming to	Page 41 1 that occurred, the more conservative approach to the 2 language? 3 A. No, I don't recall that. 4 Q. And what -- would you agree that the 5 interpretation -- the more conservative 6 interpretation is what Richland County adopted as 7 its practice from April 2001 forward? 8 A. There was apparently a difference of 9 opinion between Public Works and the legal 10 department, but Public Works was in charge of 11 issuing land disturbance permits. So they had 12 principal authority and responsibility for the 13 decision. So the County Engineer's opinion, 14 interpretation, I assume would supersede that of the 15 County Attorney, but... 16 Q. Do you know if it did or did not? 17 A. I don't know. 18 Q. Okay. Under the -- we'll call it the 19 County Attorney's interpretation as you called it 20 with the more conservative view. What -- what would 21 be allowed to be done in a floodway under a no 22 impede standard? 23 A. Well, taken to its extreme, no physical 24 obstruction of the flow of the base flood within the 25 floodway could be permitted, even abutments and

Page 66 1 one side of one river. And it was clear from the 2 order that the scientific and technical validity of 3 the flood maps had not been overturned, that a 4 procedural flaw led to this order. So we, in 5 Planning & Development and legal department, were 6 striving collectively to simultaneously conform to 7 the Judge's order, protect the public interest in 8 building out of harm's way in a floodplain, and 9 maintaining the good standing of Richland County in 10 the National Flood Insurance Program. So we turned 11 to FEMA for guidance and advice. 12 Q. Now, I think you said it was your 13 understanding from the Judge's order that the 14 scientific and technical data for the 2001/2002 15 floodway determinations by FEMA were not overturned? 16 A. By this order. 17 Q. By this order? 18 A. What -- those issues were a matter of 19 litigation. 20 Q. Did you -- was it your understanding 21 that the Judge's order even considered the 22 scientific evidence at all? 23 A. My understanding was that the Judge 24 rested her order on the procedural flaw and 25 specifically did not overturn, revoke, void the	Page 68 1 chance to discuss it, there began a discussion about 2 a moratorium to be put in effect for the 3 consideration of permits in the Congaree River 4 floodplain; is that correct? 5 A. Yes, on the Richland County side of 6 course. 7 Q. Correct. Was the beginning of those 8 discussions, was that a result of the Order of 9 Vacatur? 10 A. Yes. That was a direct result of the 11 two departments primarily involved in the response 12 to essentially buy time to resolve the matter. 13 Q. All right. I'm going to hand you what 14 has been marked as Exhibit 64 to Ms. Carter's 15 deposition. (Tendering.) Is this a document that 16 you have ever seen before? 17 A. (Reading.) I saw it in preparation for 18 the deposition previously. 19 Q. I see you're not -- your name does not 20 appear on it. 21 A. I don't recall seeing this particular 22 document. I was aware that Amelia Linder, as 23 Assistant County Attorney, kept a variety of log 24 books, ordinance inventories upon which I often 25 relied for other unrelated matters.
Page 67 1 scientific and technical basis for the flood maps of 2 2002. 3 Q. But do you know if she even considered 4 the scientific evidence in writing this? 5 A. I wasn't part of the court proceedings. 6 And I didn't see transcripts or other documents 7 related to it, so I don't know. 8 Q. Was it your -- 9 A. If that issue was reached, sorry. 10 Q. Was it your general understanding as 11 part of the National Flood Insurance Program 12 generally that someone that files a judicial appeal 13 of FEMA's determinations has to have scientific and 14 technical data that shows a different result than 15 FEMA came up with? 16 A. Yes. I understand that you have to have 17 more than a strong opinion. 18 Q. Okay. All right. And was it your 19 understanding that Columbia Venture at least 20 asserted that it had such scientific and technical 21 evidence? 22 A. Yes. It was my understanding that they 23 made such an assertion. 24 Q. All right. Can you -- I believe after 25 the Order of Vacatur came down and the County had a	Page 69 1 Q. Okay. Just looking at these, this 2 appears to set out the -- in order the various 3 ordinances that came about in 2006 that dealt with 4 the floodplain and floodway in the Congaree River. 5 A. Yes. 6 Q. And essentially we're just going to use 7 it as a chronology tool as a good way to kind of 8 boil everything down. 9 Beginning with the first ordinance 10 that's listed, did these dates that are listed for 11 all four of these generally comport with your 12 recollection of when these events happened? 13 A. Yes. I remember a flurry of activity on 14 the part of Planning & Development and legal 15 department in 2006 to respond to the U.S. District 16 Court's order. 17 Q. Okay. When do you -- we see that the 18 first -- under Number 1, the first reading on the 19 initial moratorium was held on January 3rd, 2006. 20 What do you recall in the discussions leading up to 21 that date? 22 A. Which confirms my recollection that I 23 must have seen the Order of Vacatur before the end 24 of 2005 because I would have been involved in all 25 the discussions about the -- well, at least the two

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
3) FIFTH JUDICIAL CIRCUIT
4) FILE NO.: 2010-CP-40-8943R
5 COLUMBIA VENTURE, LLC,)
6 PLAINTIFF,) DEPOSITION
7 VS.) OF
8 RICHLAND COUNTY,) GEORGE GREGORY
9 DEFENDANT.)
10)
11)
12)
13)
14)
15)
16)
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25)

Deposition of George Gregory, taken pursuant to the
South Carolina Rules of Civil Procedure, commencing at
the hour of 9:39 a.m., Wednesday, October 12th, 2011, at
Haynsworth Sinkler Boyd, PA, 1201 Main Street, 22nd
Floor, Columbia, South Carolina.

COPY

Reported by
Janni Jardine

Page 162 1 Mr. DuBose: Why don't we remove them? 2 Ms. Taylor: Right. 3 Marked as Defendant's Exhibit Number 4 249; February 4, 2001 Memorandum to 5 Richland County Council from Rocky 6 Archer, Stormwater Services Manager; 7 41 pages. 8 Q I'm handing you Defendant's Exhibit 249, which is a 9 memorandum to Richland County Council regarding an 10 Amended County Stormwater Ordinance, Bates Numbers 11 DEF-00002173. 12 A All right. 13 Q The reason I'm putting this before you is to ask 14 you if you were aware of Richland County's 15 requirement to amend its stormwater ordinance 16 during this time period as a result of its NPDES 17 stormwater permit? 18 A I was aware that they did. 19 Q They did what? 20 A I was aware of the requirement, to answer the 21 question. 22 Q Okay. And if you turn to -- let's see -- Page 22 23 of the attached document, that's the actual 24 ordinance showing the amended ordinance at this 25 point. Are you with me?	Page 164 1 had been on other projects as a no rise as opposed 2 to just an absolute impede, and how Richland County 3 viewed it and interpreted it at that time was 4 extremely important to us, so that's what we knew 5 going forward. And, specifically, if you look at 6 the provision above it, with the 500-year plus 3 7 feet of freeboard, you also asked that. The 8 question we asked is we wanted to know exactly from 9 Richland County what it was that was different 10 about their ordinance versus that of the FEMA regs 11 and upgrading and doing the levee, and we were -- 12 we were told this was more stringent, and how is it 13 more stringent. And the answer was the 500-year 14 flood plus 3 feet of freeboard. And that's why I 15 say, from the very beginning, that I've always 16 maintained that's where we were going anyway. We 17 were going to follow the ordinance. And, so, that 18 just simply backs up what I've been saying the 19 entire time. 20 Q And whose interpretation are you referring to 21 regarding Section -- Subsection H? 22 A There are -- There are a number of things, and 23 there were prior projects and talking to, you know, 24 public works people, engineers, to Gary McSwain, to 25 everybody to understand the difference, and that
Page 163 1 A I'm on Page 22. 2 Q Right. And Section G there, it's actually a 3 subsection of an earlier section, 826, has the 4 provision -- I'm sorry -- H. Forgive me. H, which 5 states, "No levees, dikes, fill materials, 6 structures or obstructions that will impede the 7 free flow of water during times of flood will be 8 permitted in the regulatory floodway." Were you 9 aware that this provision had been a part of 10 Richland County Stormwater Ordinance prior to 2000? 11 A Yes. 12 Q And were you aware that it had been part of the 13 Richland County's provisions for at least ten 14 years? 15 A Yes. 16 Q Okay. 17 A I don't know about ten years, but I know for some 18 time. 19 Q For many years. And this ordinances -- this 20 particular provision was something that you or 21 someone else at Columbia Venture looked at at the 22 time of purchase? 23 A It was, and I remember Richland County was asked, 24 and we looked at various things on how that was 25 interpreted, and it was interpreted that time and	Page 165 1 was the answer we got across the board. 2 Q And what was your answer again? 3 A The answer was the difference between the Richland 4 County ordinance. It was more stringent than what 5 the FEMA regs provided for, was the 500-year plus 3 6 feet of freeboard, and that the interpretation of 7 the -- will impede the free flow meant a no rise. 8 Q Were you aware that there were statements made by 9 Richland County officials that stated otherwise 10 prior to purchase of the property? 11 A No, I wasn't. Is there a letter or anything that 12 was addressed to me that I could look at? 13 Q No. 14 A Okay. Thank you. 15 Q I'm handing you what's been marked as -- previously 16 marked as Defendant's 199. Have you seen this 17 letter before? 18 A I have not. 19 Q Were you aware, at the time, that Richland County 20 Council had suggested moving forward with reviewing 21 a Columbia Venture proposal for development of 22 Green Diamond? 23 A If you don't mind, I'm taking a moment to 24 familiarize myself with it. 25 Q Sure.

42 (Pages 162 to 165)

Page 166 1 A It refers to a February 12 letter. Is that 2 available? 3 Q I'm sure it's available. I'm not sure if I have it 4 presently available. My question to you is -- 5 A That seems to be the -- The only reason I ask, 6 that seems to be the object of this response, was 7 this is a response to that particular letter. 8 Q My question to you, Mr. Gregory, is simply whether 9 you were aware that Richland County had proposed to 10 a process to review a proposal from Columbia 11 Venture? 12 A Not in this formal way, no. I knew in general, but 13 not in this -- not aware of this formal letter. 14 (Mr. Lydon leaves the deposition room.) 15 Q What did you know, in general? 16 A That Jim was making efforts to try to get them to 17 revisit certain issues and, as this letter does 18 point out, I was aware that there was a lot of 19 acrimony and finger pointing and things like that 20 going on, and this seems to be an effort on behalf 21 of Kit who tried to calm some of that down, 22 because, I mean, a lot of it was directed toward 23 her and things directed back from her. 24 Q Do you recall if this process was an issue? 25 A I do not know.	Page 168 1 what was going on on April 2nd then. I mean, if 2 you've got something to show me anything I'm 3 involved with or things like that, I'm happy to 4 look at it. It might refresh my memory. 5 Q I'm handing you what's been previously marked as 6 Defendant's Exhibit 204. 7 A Are we through with the previous documents? 8 Q We are. Are you familiar with this document? 9 A It seems like I remember it because of the -- the 10 title to it is one that you would remember. 11 Specifically, I'm not sure who -- who put it 12 together. 13 Q What was the purpose of this document? 14 A Without reading it, I couldn't begin to tell you. 15 I mean, its title is The Simple Truth. My guess is 16 there were a lot of things -- as we discussed when 17 we were talking more on the PR documents we were 18 looking at earlier, that there were a lot of things 19 that were out there, and things that had been put 20 on the public about this project and about 21 Burroughs & Chaplin and about whether or not -- you 22 know, what the real benefits were. The project and 23 -- my guess is this was a -- a PR document that had 24 probably been put out to try to overcome some of 25 those negative perceptions that were out there
Page 167 1 Q I'm handing you what's been previously marked as 2 Defendant's 205 -- our exhibits are out of order -- 3 Bates Number DEF-00008366, letter from Jim Wiseman 4 to Kit Smith dated April 2nd, 2001. This letter, 5 if you would look toward the middle of the first 6 page, indicates that Columbia Venture is working 7 very hard on completing a formal development 8 proposal. 9 A Okay. 10 Q Do you recall that? 11 A I do. 12 Q Did you have any involvement in formulating a 13 development proposal to Richland County? 14 A No. Jim was -- Jim was -- had sort of taken the 15 lead on this by this time. 16 Q Do you recall if there was a formal development 17 proposal submitted to Richland County? 18 A No, I don't recall, is my simple answer. 19 Q What was your role in Columbia Venture during this 20 time period? 21 A I wore many different hats, you know, in -- in 22 this, and, again, pitching in, doing things, doing 23 what was requested. In this specific time frame, 24 what I was particularly working on in April, you 25 know, eleven or twelve years ago, I can't remember	Page 169 1 falsely, be it with council people, be it with 2 governmental officials, be it with the public at 3 large. I don't know. That's my guess. Given that 4 it's in the same time frame of the meeting, this 5 may well be the document -- the previous documents 6 we were referring to. 7 Q I'm handing you what's been previously marked as 8 Defendant's 210. This is a cover letter from 9 Haynsworth Sinkler Boyd to the City of Columbia 10 dated May 15th, 2001, which is -- attaches a draft 11 ordinance for -- a zoning ordinance for a planned 12 development district and also includes petitions 13 for annexation, which states that in the cover 14 letter. 15 A All right. 16 Q Were you involved in discussing -- And also we'll 17 note that you were CC'd on this letter. 18 A I was CC'd on it. I think that was prior to when 19 that occurred. I was not -- I was not heavily 20 involved with the politics or the legal side of 21 trying to annex the land into the City of Columbia. 22 Q Who was involved in this issue? 23 A I don't know. I mean, you know, all I can do is 24 look at the people that were copied on it and 25 things like that, but, obviously, it's something

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

COLUMBIA VENTURE, LLC,) C/A NO.: 2010-CP-40-8943R

PLAINTIFF,)

VS.)

RICHLAND COUNTY,)

DEFENDANT.)

DEPOSITION

OF

ROBERT E. HUGHES, JR.

Deposition of Robert E. Hughes, Jr., taken pursuant
to the South Carolina Rules of Civil Procedure,
commencing at the hour of 9:38 a.m., Wednesday, June
22nd, 2011, at Haynsworth, Sinkler & Boyd, P.A., 1201
Main Street, Columbia, South Carolina.

Reported by
Cheri B. Williams, CVR

Page 74 1 June 9, 2004. Have you looked at these minutes 2 before today? 3 A Yes. 4 Q On page two there's an update on -- a final report 5 on repairs and maintenance of the levees. Do you 6 recall what the final report entailed? 7 A No. We did them several times. Generally it was 8 he would summarize what work was done, what it 9 cost, what Richland County said about it. 10 Q Do you recall what the work was done? What the 11 work was? 12 A No. Deas would know because we did it several 13 times. They all run together. 14 Q Okay. I think that's it for these minutes. 15 Defendant's Exhibit No. 71, Columbia Venture 16 Meeting Minutes dated 10/6/04; two pages. 17 Q Seventy-one, Bates number CV009834 for October 6, 18 2004 meeting. Have you reviewed these minutes? 19 A Yes. 20 Q At the bottom of page one it refers to a meeting 21 between yourself and Dr. Sorenson of USC. Here it 22 is where he's expressing his passionate interest. 23 Can you describe the substance of this meeting? 24 A We had a meeting talking about -- I think I was 25 actually referred there by Edgerton Burroughs of	Page 76 1 easier to obtain as well because it's clear we 2 couldn't use Section 1 without a levee. 3 Q And settlement, by that do you mean settlement with 4 FEMA? 5 A Yeah. I don't know whether our problem was with 6 FEMA or Richland County at this point. I think the 7 problem was with both, so I use settlement more 8 broadly. Although there may not have been a 9 lawsuit going on, Richland County -- it had become 10 -- somewhere in here it became obvious that the 11 problem was Richland County and not exactly FEMA. 12 So we had to always have Richland County in our 13 mind. 14 Q Explain that. 15 A When I came to work on this, like I said, I -- they 16 said you won't believe how bad this is and it gets 17 worse. And just through the -- I was skeptical 18 about that when I started. And through the time, 19 we wound up with moratoria, with interpretations of 20 ordinances where -- I think the first thing I saw 21 was a Richland County ordinance that said you can't 22 build out here, but maybe there's an exception for 23 the sewer plant. There's an exception for private 24 schools. But anyone else in this circumstance -- 25 there was only one other person in the circumstance
Page 75 1 Burroughs & Chapin who said that Dr. Sorenson had 2 the interest. And we were talking about sort of an 3 expansion of the campus out here. The equestrian 4 team, I believe, was nationally ranked at the time 5 or maybe -- not national champions, but something. 6 There was discussion, thought there might be a 7 hotel out there. The university was interested. I 8 think they were starting to look at the Farmers 9 Market. And so the idea of an equestrian center on 10 Levee Section 3. I don't know. I'm looking what 11 was on Levee Section 2. I'm not sure what that 12 was. The 250 acres on Levee Section 1 would have 13 been sort of a resort hotel site. Down to 14 Heathwood, as I recall. And I think Dr. Sorenson 15 was very interested. I think later discussions 16 were he was particularly interested if it was in 17 the form of a gift. It sort of morphed. There was 18 less cash coming to us. 19 Q Well, there was a discussion of -- there's a range 20 of numbers here between 13 million for a 1500 acre 21 portion of Levee Unit Section 3 and then seven 22 million for 250 acres in Section 1. 23 A Yes. We felt really good about some of this. I 24 think the -- I think part of the idea was if the 25 school was involved maybe settlements would be	Page 77 1 and that was us -- couldn't do anything. But if 2 you use the levee to protect you, you can build a 3 levee. So we went back and said hey, they're using 4 our levee. Can we build over a levee? They said 5 no, no, no. If they had a levee they could do it, 6 but you have a levee and you can't do it. And we 7 said well, if we give you a no rise, and at some 8 point it was well, you can't even impede the flow, 9 so if you -- someone said if you drove a pencil in 10 the ground you've violated Richland County 11 ordinance. Therefore, we couldn't do anything with 12 Richland County. And so the things -- it kept 13 moving. And so settlement -- settlement to you 14 means settlement of the case. In some cases, 15 settlement to me just means settlement of the 16 problem. And it was approached like a settlement. 17 What do we have to give up in order to get some 18 economic value out of this property? And so 19 clearly it was a political problem. I think we 20 were hoping here that if the university was on our 21 side we would have some more political clout and we 22 could go in and say look, if the university is 23 doing this and this, would this work for us. 24 Because the equestrian center is down on three, 25 we'll take it totally out of development. So

20 (Pages 74 to 77)

Page 78 1 instead of 4500 acres being developed, let's say 2 3,000 is developed. You know, is that helpful to 3 you? And so this was sort of the beginning of our 4 -- I made the joke about the family pig. You know, 5 the three-legged pig that the family had running 6 around. They loved that pig. It was a pet pig. 7 And so why does it only have three legs? They said 8 well, we love it so much we can't stand to eat it 9 all at once. You know, how much of the pig did we 10 have to cut off to still have something left? So 11 that's what we were -- we were doing was basically 12 carving up the pig to see what we could do. 13 Q Were you aware that Richland County's ordinance 14 provisions dealing with levees had contained the 15 word impede that had caused such a problem with 16 Columbia Venture since at least 20 years? 17 A Yeah, I was aware that it was not a new word. It 18 was the interpretation. Apparently impede had 19 meant no rise up until 2000-something. And then 20 impeded -- 21 Q That's your understanding? 22 A That's my understanding, yes. 23 Q And so when you say the ball was moving, is that 24 what you're referring to? 25 A That's one of them, sure. I mean, the moratoria --	Page 80 1 or anything like that because it didn't have sewer. 2 It couldn't have a sewer because the plant was 3 going to be so expensive that they had to -- then 4 they were going to have to add water to be sure 5 that they had enough water flowing through the 6 sewer plant to be sure that they had high enough 7 rates. So it kept compounding. 8 Q Are you referring to the City of Columbia's 9 wastewater treatment? 10 A I'm talking about Lower Richland County. 11 Q Right. But when you say -- 12 A The city's plant could be upgraded with our 13 wetlands and then you could simply pump from the 14 lower part of the county. 15 Q But did you ever make any proposal to Richland 16 County about constructed wetlands? 17 A Richland County couldn't use the constructed 18 wetlands because they didn't have a sewer treatment 19 plant. 20 Q That's what I'm getting at. Okay. So you were not 21 making a present to the county, but to the City of 22 Columbia? 23 A Right. But assuming that the county -- Richland 24 County knew about it. We certainly knew about it 25 because we assumed that their citizens were paying
Page 79 1 the rolling moratoria that would happen. The 2 change in the -- there was a change in the Land Use 3 Ordinance with some other words, I think, that were 4 added later. The fact that there were exceptions 5 for everyone else in our circumstance but not us. 6 All of those things, in my opinion, meant we were 7 in a very hostile atmosphere and I kept trying to 8 diffuse that. 9 Q Did you go talk to any Richland County Council 10 members about the situation? 11 A I think I met with all of them. I think the first 12 meeting was with -- with Ms. Smith, I think. We 13 had a nice lunch together. And -- but then 14 ultimately, I think we started going to all the 15 council members and saying look, if we cut off 1500 16 acres, if we do this, if we do -- constructed 17 wetlands was an idea that we would save sewer 18 payers millions of dollars in sewer charges. We 19 would create the opportunity for Lower Richland 20 County to get treated sewer, sewage, sewerage, 21 whatever the right word is for it, at a far less 22 expensive cost because there were all kinds of 23 problems that they -- that area of the county was 24 never going to get -- in my opinion, going to get 25 significant economic development or manufacturing	Page 81 1 these sewer rates and that they would see a benefit 2 to their citizens and, thus, perhaps be more 3 supportive of this constructed wetlands idea. 4 Q Was there any request to Richland County to support 5 the constructed wetlands idea? 6 A It was -- there were numerous requests to Richland 7 County to allow us to develop what was left. That 8 was the idea. Can we not get to some settlement, 9 back to my word again, that involves -- you know, 10 we'll hunt 1500 acres, we'll put wetlands on 1500 11 acres and we'll only develop the 1500 acres that 12 you already allowed two people to build levees in 13 and we'll promise a no rise and we'll promise to 14 meet all of FEMA's requirements. All you have to 15 do is let us move dirt. And that's when they 16 started -- no, we change our interpretation. No, 17 you've got a moratorium on dirt moving. No, now 18 your Levee can't be -- I said hey, I don't even 19 have to make it taller. If you'll just pay 20 attention, if the water doesn't come behind it and 21 I build on the back of it to make it thicker, then 22 I didn't even impede the water. Practically 23 speaking, if the water doesn't come through and I 24 put some dirt back here, I didn't impede it. 25 Q Uh-huh.

21 (Pages 78 to 81)

Page 82 1 A Would you let me do that? And they changed the 2 ordinance to say we couldn't make them wider. So 3 it was a game of me proposing an idea that I 4 thought would get there and Richland County 5 changing the rule so I couldn't do it. And that 6 really got frustrating. So that's sort of, I 7 guess, the gist of why we're here. 8 Q Describe to me your conversation with Kit Smith. 9 A What went wrong. Certainly me asking what went 10 wrong. Why is this so -- so poisoned? Is there 11 any way we're ever going to get along? And, you 12 know, I came away that she was a nice person. We 13 had one friend in common at least, that being her 14 husband. And we had a nice discussion, but, I 15 mean, I came away convinced that she was not going 16 to ever support this so I needed to work it out 17 without her support. 18 Q Right. And there are 11 county council members on 19 Richland County Council; is that correct? 20 A I don't know. 21 Q There's more than one? 22 A Yeah. Yeah. 23 Q And who else did you meet with on Richland County 24 Council? 25 A Because I think we met with all of them. I would	Page 84 1 this. Then there would be legislative action in 2 response to that. Or we would go to council 3 members and say do you think we can get this 4 through? No, you couldn't get that through, but 5 you might get that through. And we'd get ready and 6 some other action would take place. Not about what 7 we were talking to them about, but, you know, the 8 new interpretation by the engineer. The 9 application for a LOMR. You know, this is -- we 10 don't understand how this works. 11 Q On page two of these meeting minutes, this is kind 12 of a similar discussion we've already had. There 13 was a statement here that there was an effort to 14 meet with the Richland County attorney to attempt 15 some baseline for settlement. Was that meeting -- 16 did that meeting take place? 17 A I think so. Certainly meetings with the attorney 18 took place at some point. So I don't know if 19 that's this one. 20 Q Were you at this meeting? This was -- remember the 21 date is October 6, 2004. 22 A Was I at this CV meeting? 23 Q No. With this meeting with the Richland County 24 attorney? 25 A I don't -- I have been to meetings with the
Page 83 1 be surprised if there was anybody on Richland 2 County Council I didn't meet with. 3 Q Did you ask any of these council members for a 4 approval or consideration of a specific request? 5 A I went through sort of what I just went through 6 with you. What if we took 1500 acres out, would 7 that work for you would. You know, if we took -- 8 if we did constructed wetlands on part. And many 9 of them said they liked some of the ideas. But 10 then there would be a vote and these weird things 11 would happen, you know. I mean, I think at one 12 time Richland County voted to do one thing in open 13 session, went into executive session, came out and 14 did the opposite. You know, you just scratch your 15 head. It's not really happening like I keep 16 hearing it's going to happen. 17 Q So to make sure I understand you correctly, in your 18 opinion, if there was a request made to Richland 19 County Council members, you felt that whatever 20 subsequent legislative action was in response to 21 that request? 22 A No. I don't think. That's not exactly what I 23 said. I mean, I don't -- I wouldn't say some of 24 that didn't happen, but I would say that what I was 25 -- we would go to staff and say we think we can do	Page 85 1 Richland County attorney. 2 Q Okay. 3 A But I don't recall -- 4 Q You don't recall if it was this particular one? 5 A Yeah, I don't recall. 6 Q Okay. 7 A Like I said, things compress as you go back in 8 time. I don't -- this may have been a meeting 9 about this case. This may be a settlement meeting 10 about this case. That's the way it reads to me. 11 Q Okay. But you do not recall the substance of that 12 conversation? 13 A I mean, the settlement meeting for this case, do I 14 recall this conversation? It's easier for me to 15 arrange it by what it was about than it is for me 16 to arrange it by -- 17 Q Okay. 18 A -- when. We had -- it was one of the settlement 19 meetings. And I guess I'm testifying about 20 settlement negotiations then. 21 Q Yeah. Let's just move on then. 22 A Okay. 23 Q I just couldn't tell from this. 24 A Yeah. I'm pretty sure that's what that was. 25 Defendant's Exhibit No. 72, Columbia Venture

22 (Pages 82 to 85)

1 State of South Carolina) Court of Common Pleas
2 County of Richland) No.: 2004-CP-40-3929
3
4
5 Columbia Venture, LLC,)
6 Plaintiff,)
7 vs.) Deposition of
8 Richland County,) THOMAS CARY MCSWAIN
9 Defendant.) April 16, 2010
10
11

12 Deposition on oral examination of THOMAS CARY
13 MCSWAIN, reported by Brad H. Thomas, Certified
14 Realtime Reporter and Notary Public in and for the
15 State of South Carolina; said deposition taken
16 pursuant to agreement and in accordance with the
17 South Carolina Rules of Civil Procedure, at the
18 Offices of McAngus, Goudelock & Courie, L.L.C., 700
19 Gervais Street, Suite 300, Columbia, South Carolina,
20 on April 16, 2010, at the hour of 9:00 a.m.
21

22
23 GARBER REPORTING SERVICE, INC.
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Page 26 1 rate map was dated February 20, 2002? 2 MR. LYDON: Object to the form. 3 THE WITNESS: I don't remember the 4 exact date of 2002. You would have to define 5 effective or what your question means. I think I 6 know what that means with regard to FEMA, but the 7 way your question is. 8 BY MR. GRIER: 9 Q. Okay. The effective map is the one that's 10 effective that the County uses in terms of its flood 11 mapping activities, flood mapping plan. 12 A. As opposed to? Effective as opposed to 13 what other kind of map? 14 Q. Preliminary, revised preliminary. Are you 15 familiar with that process or not? 16 A. Oh, yes. 17 Q. Okay. 18 A. The effective map would be one that has 19 been through the appellate process and has been 20 approved and finalized for the County's utilization 21 in the flood insurance. There are two categories. 22 I don't recall the exact date when that file was. 23 Q. Okay. Let's go back to Plaintiff's 24 Exhibit 1. 25 A. As you called it an effective date.	Page 28 1 inclusive in the flood map, yes. 2 Q. All right. Now, are you familiar with the 3 Manning levees, so-called Manning levees that were 4 on the property? 5 A. Yes. Yes. 6 Q. Is it your understanding that the 7 regulatory floodway on the effective flood insurance 8 rate map and the effective flood insurance study as 9 of July 1995 would have been at the Riverside toe of 10 the Manning levees? 11 A. I would have to look and see. I know that 12 the 1994 were. 1994 maps, I think, were at the 13 river toe of the levees. 14 Q. Okay. So that the levees themselves were 15 not within the regulatory floodway, correct? 16 A. Not in the '94 map. And that's reflected 17 right here. 18 Q. Now, you're pointing to Plaintiff's 19 Exhibit 1? 20 A. Yes, sir. 21 Q. Okay. 22 A. Here again I would say looking at the map, 23 it can be a confusing map because there's stuff here 24 that's kind of covered up that's hard for me to tell 25 what it is, but if the depiction of the dark area is
Page 27 1 Q. Plaintiff's Exhibit 1 and Plaintiff's 2 Exhibit 3. Have you got those in front of you? 3 A. Yes. 4 Q. All right. Look at Plaintiff's Exhibit 3 5 and look at Page -- the second page. All right. Do 6 you see an effective date down there? 7 A. Yes. 8 Q. And that's January 19, 1994? 9 A. That's correct. 10 Q. All right. And the next map that would 11 have an effective date you don't recall precisely, 12 but was it not February 20, 2002? 13 MR. LYDON: Object to the form. 14 THE WITNESS: As I said, I don't 15 specifically recall the exact date. 16 BY MR. GRIER: 17 Q. Okay. Now, is it your understanding that 18 as of the effective maps as of January 19, 1994, and 19 the effective flood insurance study as of July 17, 20 1995, designated a regulatory floodway on the 21 property that was acquired by Columbia Venture 22 sometime in 1999? 23 A. From what I understand about the property 24 that was acquired by Columbia Venture or preceding 25 that Burroughs & Chapin, it would have been	Page 29 1 what I think it is with an unclear map, it was on 2 the toe side of the levees, on the river side toe 3 levee. 4 Q. Okay. Take a look at Plaintiff's Exhibit 5 3 and turn to Page 8, if you would. 6 A. Okay. 7 Q. All right. You see the first paragraph 8 there? 9 A. Yes. 10 Q. All right. I'm going to read it. "Floods 11 on the Congaree River between the confluences of 12 Gills Creek and the City of Columbia are affected by 13 a levee built along the east bank of the river. 14 Elevations along the top of the levee vary, but are 15 above the elevations of the 100-year flood. The 16 levee was built in the mid-1960s to protect farm 17 land in the floodplain along the east side of the 18 river. At the time this report was prepared, the 19 development within the area protected by the levee 20 included sewage treatment facilities owned by the 21 City of Columbia; a private school operated by the 22 Episcopal Church; and offices, barns, storage sheds, 23 and other facilities owned by the developer of the 24 levee. The remainder of the property within the 25 levee system is primarily used for agriculture.

8 (Pages 26 to 29)

THOMAS CARY MCSWAIN

Page 162 1 map or map favorable to Columbia Venture if they 2 were still in favor of the project? 3 A. If you'll recall, the attitude all along 4 has been one of openness, fairness, accuracy, and 5 whatever process it takes to assure that as an end 6 result. And there are a lot of groups and 7 information that was submitted to the County that 8 opposed parts of that and they wanted it to be -- to 9 have -- they wanted there to be an opportunity for 10 everybody to review the data or give additional 11 data. And so in order to assure that everybody had 12 that opportunity it is still along the same lines, 13 same attitude and approach of openness, accuracy, 14 fairness, so forth. 15 Q. Were there certain groups, environmental 16 groups, that were opposed to any development behind 17 these levees? 18 A. There were some, yes. 19 Q. And who would those be? 20 A. I don't remember them all. I can't 21 remember specific names. I know the Wildlife 22 Federation, the Sierra Club, I think the Audubon 23 Society. There's some others whose names I don't 24 recall right at the moment. 25 (Exhibit No. 34 was marked for	Page 164 1 received any individual or community appeals. Do 2 you see that? 3 A. Yes. 4 Q. And a discussion took place and George 5 Gregory of Burroughs & Chapin was there. And it 6 says, "Mr. Pearce moved, seconded by Mr. Mizzell, to 7 go into Executive Session." 8 And then at the bottom I can't read all of 9 that, but, "It was moved and seconded to come out of 10 Executive Session. The" -- something. I can't make 11 that out. 12 On the next page it says, "Ms. Smith 13 offered an amendment to the Resolution which was 14 stated as follows: 'Provided however that if the 15 information submitted does not rise to the level of 16 appeal as evaluated by South Carolina Department of 17 Natural Resources and the County Administrator, the 18 information shall be forwarded to FEMA, but not as 19 an official appeal.' 20 Ms. Smith moved, seconded by Mr. Mizzell, 21 to approve the Resolution as amended. 22 Mr. Tuten requested to change 'officially 23 appeal' to 'respectfully appeal'. 24 Mr. Morris made a substitute motion to 25 direct Mr. McSwain to gather all of the appropriate
Page 163 1 identification.) 2 BY MR. GRIER: 3 Q. Now, I'm going back in time a little bit 4 here to December 7 of 1999, about a week earlier. 5 And this -- let me get the Bates number. This is 6 DEF-00000427 through 438. These are minutes of the 7 regular session of the Richland County Council dated 8 December 7, 1999; is that correct? 9 A. That's on the document, yes, but as a part 10 of that statement you had said a week earlier in 11 time, but it appears to be the same time. 12 Q. Well, let's see. 13 A. You may have been looking at the seal put 14 on by the deputy clerk. 15 Q. Okay. You're right. So this resolution 16 was adopted at the same time as these minutes? 17 A. I won't know until I look at it, but that 18 would be my guess. They would have to have been 19 done at the December 7 meeting. 20 Q. All right. And I want to direct you to 21 the Bates numbered Page 430. 22 A. Okay. 23 Q. And you see the item FEMA? 24 A. Yes. 25 Q. It says you state that you have not	Page 165 1 data and make the determination according to the 2 law. 3 The motion died for a lack of a second. 4 Mr. Meetze called for the question. The 5 vote in favor of the call for the question was 6 unanimous. 7 The vote for the Resolution as amended was 8 as follows:" Then in favor and oppose. 9 "The motion passed." 10 And again I have a hard time interpreting 11 what happens with these parliamentary maneuvers 12 here. What was the motion that actually passed 13 here, if you can tell? 14 A. It would have been the motion that was -- 15 is not on the bottom of the page. 16 Q. The motion not on the bottom of the page? 17 A. That's what I would guess. When they come 18 out of executive session I don't see another motion 19 on the floor. 20 Q. So Ms. Smith's amendment there was not 21 adopted? Is that the way you interpret this? 22 A. I would interpret it to be whatever the 23 original motion was and Ms. Smith's amendment was 24 moved and seconded to approve the resolution as 25 amended. Mr. Morris made -- let's see. Mr. Tuten

42 (Pages 162 to 165)

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Page 190 1 being a high risk, yes, he did say that, but the 2 third line says, "First time FEMA officials have 3 criticized the project." I don't recall him 4 criticizing the project. That's an editorial 5 comment related to what his comment was. 6 Q. Okay. So you don't recall him mentioning 7 the Green Diamond at your meeting? 8 MR. LYDON: Object to the form. 9 BY MR. GRIER: 10 Q. On the 24th with Mr. Witt you don't recall 11 him mentioning the Burroughs & Chapin Green Diamond 12 project? 13 A. I don't recall him mentioning it as it 14 specifically would be a criticism, no. 15 Q. Okay. But he said he thought that 16 building in a flood plain was high risk? 17 A. Well, what I remember were anecdotal 18 things and situations that he described that would 19 be building in a 100-year flood plain and that had 20 been flooded and characterized as being a risk. 21 Q. All right. Now, in that same paragraph it 22 says, "But Witt stressed that the ultimate decision 23 of what the development will look like is up to 24 local officials." Did he tell you that on April 24? 25 A. He did.	Page 192 1 plain maps have been opposed to development,' 2 McSwain said. "Those are two separate issues." 3 Does that sound like something you told the 4 reporter? 5 A. I have no recollection of that. 6 Q. Is that consistent with your recollection 7 at the time that most of the people who had been in 8 opposition to the flood plain maps had been opposed 9 to the development? 10 MR. LYDON: Object to the form. 11 THE WITNESS: I've often had 12 reporters allege I said certain things and put them 13 in quotes that I never said. So I don't really know 14 specifically on this one. 15 BY MR. GRIER: 16 Q. Well, I'm going to ask you the question 17 this way. Is it true or not true that in your view 18 as of April of 2000 that most people who were 19 opposed to the flood map were opposed to 20 development? 21 A. No. 22 Q. That's not true? The statement is not 23 true? 24 A. No. Because there are oppositions to the 25 flood maps that didn't relate to the development
Page 191 1 Q. Okay. If we go over to Page 84, it looks 2 like the third paragraph down, "However, Witt was 3 quick to point out he knew little about the proposed 4 development or the developers, though he said he 5 would be happy to meet with them. What he objected 6 to was development in a flood plain." 7 Is that consistent with what he told you 8 on the 24th, that he objected to development in a 9 flood plain? 10 A. All he had said is what I remembered. I 11 remembered his examples. And the examples being 12 that he thought it was a risk to build or develop in 13 a flood plain. 14 Q. All right. Now, the next paragraph there 15 has a report of a conversation with you. "Richland 16 County Administrator Cary McSwain said there were 17 two issues to consider: The public policy issue of 18 flood plain development and the issue of having FEMA 19 develop the best flood plain map, based on the most 20 accurate information. It's important that those 21 matters be considered separately, he said." Do you 22 recall saying that? 23 A. It sounds familiar. 24 Q. All right. And it says, "Most of the 25 people who have been in opposition to the flood	Page 193 1 itself. 2 Q. Well, one way to stop the development 3 would be to appeal the flood map and see if you 4 could obtain a more restrictive map? Wouldn't that 5 be one strategy if you were opposed to development? 6 A. If you were opposed, I would assume that 7 that would be one strategy, yes. 8 Q. All right. In the last paragraph there 9 Witt said, last sentence, "Just because our rules 10 and regulations say you can do this doesn't mean 11 it's the right thing to do in certain 12 circumstances." 13 So he's saying even though it might be 14 permitted under the rules, maybe the local 15 community, who has the ultimate decision over the 16 matter, shouldn't do it; is that fair? 17 A. I don't know. I didn't hear him say 18 anything like that. If I did, I don't recall it. 19 It doesn't ring any bells with me. 20 Q. If we look on Page 85, you've got three -- 21 this is the third -- fourth paragraph down, "This 22 man is on a crusade to stop development in flood 23 plains across the country," said Richland County 24 Councilman Greg Pearce. "Why doesn't he go to St. 25 Louis or New Orleans and ask them to stop

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND
3
4 COLUMBIA VENTURE, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CP-40-894
7 RICHLAND COUNTY,
8 Defendant.

10 DEPOSITION OF: GREGORY PEARCE
11 DATE: October 27, 2011
12 TIME: 9:31 A.M.
13
14 LOCATION: Law Offices of
15 McAngus Goudelock & Courie, LLC
16 1320 Main Street, 10th Floor
17 Columbia, SC
18
19 TAKEN BY: Counsel for the Plaintiff
20
21 REPORTED BY: LORI S. MORTGE,
22 Certified Court
23 Reporter, CCR

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Page 162 1 any impact on Lexington. 2 So all I -- the point I'm trying to 3 make, I'm not trying to be a smart aleck about this, 4 but I'm just saying I wasn't the same person in 1999 5 as I am in 2000 and -- and so perception changed. 6 The regulations, yes. 7 Q. Well -- 8 A. It's the same regulation. 9 Q. FEMA regulations didn't change between 10 1999 -- 11 A. Not to my knowledge. 12 Q. -- and 2001, did they? 13 A. Not to my knowledge it didn't. I don't 14 think. 15 Q. The only thing that changed during this 16 process, in terms of regulations, were Richland 17 County's ordinances; correct? FEMA's regulations 18 didn't change at all during this time? 19 A. I don't know that for a fact. I mean, 20 I'll take your word for it that they didn't change, 21 and I do know that -- I guess our regulations did 22 change. 23 Q. All right. Now, let me bring you -- 24 we're going to fast forward about four years -- 25 A. Okay.	Page 164 1 These are either minutes or a report of the Richland 2 County Council Development & Services Committee for 3 a meeting held on December 20th, 2005. This looks 4 like both the agenda and then the minutes of a prior 5 meeting. 6 A. That's correct. 7 Q. To which are attached a proposed 8 emergency ordinance establishing a temporary 9 moratorium on approval of floodplain management 10 permits for development or construction within a 11 portion of the Congaree River floodplain; is that 12 correct? 13 A. Yes, sir. 14 Q. Okay. You were on the Development & 15 Services Committee on December 20th, 2005; is that 16 right? 17 A. Yes, sir. 18 Q. Do you recall attending that meeting? 19 A. No, sir. Forgive me, I was shown this 20 last week. 21 Q. Okay. 22 A. All right. I mean, I saw -- I remember 23 it now, but I didn't remember it then. 24 Q. But you do now? You have a recollection 25 of that meeting?
Page 163 1 Q. -- in the process. 2 A. That should improve my memory somewhat. 3 Q. To a point at which Judge Margaret 4 Seymour, the Federal District Court Judge here in 5 Columbia, who was hearing a case filed by Columbia 6 Venture against FEMA had vacated the floodway map, 7 the FEMA floodway map, that placed 70 percent of the 8 Columbia Venture property within the regulatory 9 floodway. She had held that the appropriate notice 10 was not given prior to the start of that floodplain 11 map in process. And as a result of that failure to 12 follow that administrative requirement, she vacated 13 the old map -- vacated the new map, the most recent 14 map; okay? That was in late 2005 -- 15 A. Mm-hmm. 16 Q. -- that that occurred. I want to show 17 you next two things. These have both been marked 18 previously. These are Exhibits 133 and 149. Do you 19 recognize Exhibit 149? 20 A. 149? You mean when I pick it up do I 21 recognize it? 22 Q. Yes. 23 A. No. Let me read it real quickly. 24 (Reading.) I'm not familiar with this. 25 Q. Okay. Then let's look at Exhibit 133.	Page 165 1 A. Not what -- I obviously attended the 2 meeting. 3 Q. Okay. The only item for action, 4 according to this agenda, other than approval -- 5 A. Excuse me. Excuse me. I don't know 6 whether this is the meeting or not that I -- I was 7 on the committee, I did attend this, and I don't 8 know whether I have seen this -- I did not see this 9 particular document, I don't believe. 10 Q. Okay. Well, it's been produced to us 11 from the County in discovery. 12 A. But it's the document. I mean, it's a 13 document that is correct, it's the minutes of the 14 meeting and the agenda. And a report of -- I 15 believe it's a report of what happened in the 16 meeting. 17 Q. Well, those are the minutes of the 18 previous meeting, but attached to them are -- as 19 Pages 4 and 5 are the item that was for action on 20 the meeting of December 20th, 2005. 21 A. Right. 22 Q. Excuse me, 4, 5 and 6 -- Pages 4, 5 and 23 6. The only item for action of the committee on the 24 meeting at five p.m. on December 20th, 2005 was that 25 emergency ordinance; is that correct?

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Page 170 1 MS. TAYLOR: Jamie, I just told you 2 that -- I mean, this e-mail that's before you I'm 3 not going to object to questioning Mr. Pearce as far 4 as his recollection of what's stated in this e-mail. 5 I'm objecting to your question which was 6 a general question as to, you know, why Mr. Pearce 7 or why the committee made a legislative decision. 8 And I think that legislative decisions can include 9 much more deliberate aspects than simply what's 10 contained in this e-mail, so I think I feel pretty 11 good about the position. 12 But I want to make clear if you think 13 that I am going to instruct Mr. Pearce not to answer 14 any questions about simply what's stated here in 15 this e-mail, I'm not instructing him to -- dealing 16 with this particular exhibit, 148. 17 MR. BECK: Yeah. The question I had to 18 him was a general one. 19 MS. TAYLOR: Why don't you pose it 20 before we -- 21 MR. BECKER: I already did and you 22 already instructed him not to answer. And that was 23 why was it necessary, in your opinion, for the 24 County to pass a temporary moratorium on approval of 25 floodplain management permits within a floodway?	Page 172 1 Wislinski to Robert Adams and others, dated December 2 21st, 2005, in which he forwarded to you on December 3 21st, 2005 at 7:30 p.m. Do you see that? 4 A. Okay. All right. Yes. 5 Q. You see at the very -- 6 A. Yes, sir. I see. 7 Q. It started off original message? 8 A. All right. 9 Q. And then moving up from that. 10 A. So that -- this -- I'm sorry. We 11 can't -- this is the original message? 12 Q. Right. It says -- you see where it says 13 original message right there? (Indicating.) 14 A. Yes, sir. 15 Q. Okay. That was an e-mail from Robert 16 Wislinski to Robert Adams and others, dated December 17 21st, 2005 at 4:39 p.m. Do you see that? 18 A. Yes, sir. I see that. 19 Q. Okay. Right up above that is an 20 indication that this e-mail was forwarded to you -- 21 A. To me. 22 Q. By Bob Wislinski with a carbon copy to 23 Robert Adams at 7:30 p.m. Do you see that? 24 A. Yes, sir. 25 Q. All right. Let's start with the
Page 171 1 MS. TAYLOR: Well, I think -- 2 MR. BECKER: And you instructed him not 3 to answer. I think -- 4 MS. TAYLOR: I think, Jamie, that if you 5 look at the ordinance itself it answers that 6 question. And I think this e-mail here really 7 doesn't provide any more information. 8 MR. BECKER: Well, if the ordinance 9 itself answers the question, why can't Mr. Pearce 10 testify about it? 11 MS. TAYLOR: Because I think what you're 12 asking him for is his thoughts and reasoning as to 13 why he chose or why the committee chose to make the 14 decision that it did outside of what's clearly and 15 plainly stated on the face of the ordinance. 16 MR. BECKER: Okay. Well, let's -- we 17 can move on. You've already instructed him not to 18 answer. 19 Q. And let's move on, Mr. Pearce, to 20 Exhibit 148 which is a series of e-mails that you 21 exchanged with a Mr. Robert C. Wislinski. 22 A. I believe it's just one. 23 Q. Well, let's look -- look on the next 24 page, Page 2 of Exhibit 148. This is an e-mail 25 thread that began with an e-mail from Robert	Page 173 1 original message. Mr. Wislinski -- now, he was a 2 member of the Congaree Task Force; is that correct? 3 A. I believe that's correct. He's also a 4 constituent of mine. 5 Q. And Robert Adams was a member of the 6 Congaree Task Force, too? 7 A. That's correct, and he's a constituent 8 of mine. 9 Q. Right. The message says from 10 Mr. Wislinski to Mr. Adams: I just finished talking 11 to Greg Pearce (Robert Adams is talking to him too) 12 and Damon Jeter -- to him too and Damon Jeter. In 13 reaction to the recent court decision throwing out 14 the newest flood map, Council passed a 60-day 15 moratorium for floodway development out of one of 16 its committees last night in order to do due 17 diligence and make sure they have a workable flood 18 map. I may be getting this wrong, it's been a while 19 since I worked with this material. 20 The problem is that Damon Jeter added a 21 provision on this ordinance in committee that allows 22 the current owners of affected property to begin 23 repairs to any levees under current county law. 24 Damon claims he did this to get it the full measure 25 out of committee and onto council (Bernice S. was

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1 going to kill it in committee and had the votes to 2 do so). He had a prepared typed ordinance, but 3 claims he's had no conversations with CV developers 4 and that the amendment was his own idea. Other 5 friends on council think this is problematical. 6 Did I read all that correctly? 7 A. Yes, sir. 8 Q. Looking back at Exhibit 149. 9 A. Is that in here? 10 Q. Yes -- keep going. 11 A. Yeah, it is. 12 Q. Is that the typed provision that 13 Mr. Wislinski was referring to in that e-mail? 14 A. I have no way of knowing that. 15 Q. Okay. Well -- 16 A. I mean, it says what he says here. 17 Q. Right. 18 A. That's all I can tell you. 19 Q. Okay. 20 A. I don't know if it's the same one. 21 Q. Did you have -- you obviously had a 22 conversation with Mr. Wislinski on December 21st, 23 2005 -- or prior to December 21st, 2005 at 4:39 24 p.m.; is that right? 25 A. Prior to December -- it says I did.	1 occurred back on December 20th, 2005 at five p.m.? 2 A. Mr. Wislinski? 3 Q. Yeah. 4 A. I don't know. 5 Q. You don't think so? 6 A. I just don't know. 7 Q. Don't know at all. Okay. But you 8 were -- 9 A. Yes, sir. 10 Q. So what -- the moratorium that was 11 considered in the meeting that night was -- Is 12 mentioned here in Exhibit 133. And that moratorium, 13 if you look on the bottom of what is marked Page 4 14 of that exhibit: Therefore, be it enacted that 15 Richland County Council hereby declares a moratorium 16 on the approval or denial of any permit submitted to 17 Richland County for construction, development, 18 zoning, building, disturbance of land or for 19 stormwater management purposes. 20 Did I read that correctly? 21 A. Yes, sir. 22 Q. So this is the -- this is the moratorium 23 that was before the committee that night? 24 A. Yes, sir. 25 Q. And it would have prohibited the
Page 175	Page 177
1 Q. Well, he said you had a conversation 2 with him, because he said: I just finished talking 3 to Greg Pearce. 4 A. Yeah. 5 Q. So you must have spoken with him prior 6 to the time he wrote this e-mail; right? 7 A. According to this it says I did. I 8 don't remember talking to him. 9 Q. He couldn't have gotten the information 10 about what happened at the Development & Services 11 committee meeting from anyone other than somebody 12 that was there? 13 A. That's correct. 14 Q. And you and Damon Jeter were both there; 15 right? 16 A. That's correct. 17 Q. So do you think -- are you the one who 18 told him about the -- what he says in this e-mail? 19 A. In this e-mail? 20 Q. Mm-hmm. 21 A. I don't recall. 22 Q. You don't recall if you're the one who 23 told him that or not? 24 A. No, sir. 25 Q. But he wasn't at that meeting that	1 approval or denial of any permit -- 2 A. That's correct. 3 Q. For construction of -- within a 4 floodway; is that right? 5 A. That's what it says, yes, sir. 6 Q. And apparently, according to 7 Mr. Wislinski who had talked to you about what 8 happened at the meeting, Bernice Scott was going to 9 kill this moratorium in the committee and had the 10 votes to do it? 11 A. We're talking about... 12 Q. We're talking about -- 13 A. This? 14 Q. The original e-mail message, we're still 15 on that. 16 A. All right. (Reading.) That's what it 17 says. 18 Q. Okay. Mr. Jeter added a provision in 19 the ordinance that would have allowed the current 20 owners of affected property -- and that would be -- 21 that would be Columbia Venture; right? 22 A. It doesn't say there but it goes down -- 23 it mentions them later so I would assume that's what 24 he's talking about, yes. 25 Q. Well, it says allows the current owners

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Page 178 1 of affected properties to begin repairs -- 2 A. On levees. 3 Q. -- on levees. 4 A. Columbia Ventures was the only 5 company... 6 Q. That had levees? 7 A. That was going to do any work on any 8 levees, that's correct. 9 Q. Okay. So he was referring to Columbia 10 Venture? 11 A. Yes, sir. 12 Q. So it appears that Mr. Wislinski's 13 assessment of the situation was that as long as 14 Mr. Jeter's amendment to that moratorium was in 15 place that Columbia Venture could have begun repairs 16 or improvements to their levees under current County 17 law; is that right? 18 A. If this is Mr. Jeter's amendment, that's 19 correct. 20 Q. Okay. In fact, it went even further 21 than that if this was, indeed -- Exhibit 149 was, 22 indeed, what the Jeter amendment was. It said: The 23 moratorium does not apply to permit applications for 24 maintenance of existing structures, levees or 25 buildings or to bring existing levees into	Page 180 1 Q. This is your response to Mr. Wislinski 2 at 9:36 p.m. that night. I'm going to go ahead and 3 read the first two paragraphs into the record. 4 MS. TAYLOR: Wait. I think this meeting 5 was on December 20th and wasn't this e-mail the 6 21st? 7 MR. BECKER: Yeah. He -- he responded 8 to Mr. Wislinski on the same day as he got the 9 original e-mail from him. 10 MS. TAYLOR: I'm sorry. I thought I was 11 correcting you saying that this e-mail was sent the 12 night of the committee meeting, and the committee 13 meeting met on the 20th and the date on here was the 14 21st. 15 MR. BECKER: Right. No, let's clarify 16 all that. 17 Q. I think you understood that; right, 18 Mr. Pearce? That the committee meeting had occurred 19 the day before, on the evening of December 20th, and 20 all of these e-mail exchanges between you and 21 Mr. Wislinski were occurring the following evening 22 on December 21st, 2005? 23 A. Yes, sir. 24 Q. Okay. All right. Your response back to 25 Mr. Wislinski at 9:36 that evening of the 21st,
Page 179 1 compliance with Richland County ordinances and/or 2 standards of the Army Corps of Engineers applicable 3 to certified levees. 4 Correct? 5 A. Yes, sir. 6 Q. So it would have allowed improvements to 7 the levees to bring them up to Federal standards; is 8 that right? 9 A. I believe that's correct. 10 Q. Okay. So that's the Jeter amendment? 11 A. Yes, sir. 12 Q. And the Jeter amendment was part of the 13 moratorium resolution as it was passed by the County 14 Development & Services Committee on the evening of 15 December 20th, 2005; correct? 16 A. Yes, sir. 17 Q. So if the moratorium with the Jeter 18 amendment was passed by the full County Council, 19 then Columbia Venture would have been able to move 20 forward, improve its levees and seek certification 21 of them pursuant to Federal law? 22 A. That would follow. 23 Q. Okay. All right. Let's move on to the 24 first page of Exhibit 148. 25 A. Mm-hmm.	Page 181 1 December 21, 2005, you write: Bob. When we came 2 out of Executive Session, I honestly believed I was 3 sunk - "sunk" as in I was the only person who would 4 vote to pass the proposed ordinance. My belief was 5 based on what the other committee members said 6 during the exec session portion of the meeting. I 7 also completely failed to take into account a 8 Council rule that permits an item defeated in a 9 committee to be brought to the full Council if three 10 members of Council sponsor the item. Before we 11 could vote, Damon Jeter came down to my seat, showed 12 me his proposal for the addendum and said he thought 13 Bernice would buy into that. Since the moratorium 14 ordinance does not become "law" until passed by the 15 full Council, my thinking was getting it before 16 Council was the most important thing to do (again 17 believing this was the only way to get it before 18 full Council.) It passed as amended and moves on. 19 Hopefully, the full Council will pass the ordinance 20 as drafted by our lawyers. 21 Did I read all of that correctly? 22 A. Yes, sir. 23 Q. Now, do you admit that this is -- you 24 sent this e-mail to Mr. Wislinski? 25 A. I did not recall sending this to

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Page 182 1 Mr. Wislinski until I saw this last week. But it is 2 my e-mail address, it looks to be original, does not 3 look to be fabricated so I, apparently, did send 4 this. 5 Q. Okay. And in it you're describing to 6 Mr. Wislinski what occurred during the executive 7 session portion of that meeting. 8 A. No, sir. I don't believe I did that. 9 When I came out of executive session we were getting 10 ready to take a public vote, that was a public vote 11 and I don't believe -- I did not discuss any -- who 12 said what in executive session, what was -- you 13 know, I commented on my own vote and my sense that, 14 you know, nobody else was going to vote with me. 15 But I certainly didn't -- in my mind I 16 didn't say anything about the content -- I didn't 17 say who was -- anything that was discussed in that 18 room. Now, I had -- I did discuss what happened 19 after we came out and what my belief was, but that 20 was my opinion. I don't believe that I said 21 anything that would report anything that went on 22 inside an executive session. 23 Q. Okay. 24 A. And that's my personal belief. 25 Q. All right. It's clear from this e-mail	Page 184 1 going to -- this was a temporary set aside, we were 2 going to get new maps, and it just was going to 3 create all manner of problems for the County. 4 This wasn't targeted against -- I wasn't 5 targeting against anyone -- one group or one issue, 6 although the person that wrote me, of course, was 7 concerned about Columbia Ventures. 8 Q. Well, let's go back and look at the 9 Jeter amendment. The -- it's saying -- if you will, 10 look back at Exhibit 149. It says: The moratorium 11 does not apply to permit applications for 12 maintenance of existing structures in the floodway, 13 doesn't it; right? 14 A. Moratorium does not -- does not apply to 15 existing structures. 16 Q. Permit applications for maintenance of 17 existing structures. 18 A. All right. 19 Q. Now, there were plenty of people in the 20 floodway who had existing structures; right? The 21 City of Columbia wastewater treatment plant? 22 A. Right. 23 Q. Correct? The Heathwood Hall Episcopal 24 School? 25 A. Correct.
Page 183 1 that you wanted the full Council to pass the 2 ordinance without the Jeter amendment in it; is that 3 right? 4 A. That's absolutely correct. 5 Q. So you were not in favor of giving 6 Columbia Venture an opportunity to move forward with 7 improvement of its levees up to FEMA and Federal 8 standards? 9 A. That's absolutely correct, nor did I 10 believe that anyone else should have been permitted 11 to apply. If this had passed it would have opened 12 the door for other parties to permit permits in 13 flood prone areas, and I did not believe that was in 14 the best interest of the County. The maps were set 15 aside based on a technicality, not based on any -- 16 and it goes on to read in the document my reasoning 17 of why I did not feel it was a good idea to pass 18 that -- the moratorium as amended. I'd be glad 19 to -- 20 Q. No, you've explained it in that second 21 paragraph and I can read that. 22 A. This was not -- as I mentioned earlier, 23 I had other people that were having problems with 24 the flood thing and, to me, we did not know what was 25 going on. We didn't know whether the judge was	Page 185 1 Q. They had what, about \$150 million worth 2 of existing structures in the floodway at that time? 3 A. That's right. 4 Q. And it would have been good for them to 5 obtain permits to maintain those existing 6 structures, wouldn't it? 7 A. (Reading.) That's correct. 8 Q. And they had a levee that protects the 9 school. You know that, don't you? 10 A. Yes, sir. 11 Q. And perhaps they would have wanted to 12 improve or repair those levees; correct? 13 A. That's possible. 14 Q. What would be wrong with allowing 15 Heathwood Hall to maintain its existing structures? 16 A. Nothing wrong with them maintaining the 17 exist.. 18 Q. Then what would be wrong with the Jeter 19 amendment? 20 A. It was a period -- the period there -- 21 we had no way of knowing what the floodway situation 22 would turn out. And how can you -- it just did not 23 make any sense to me to just -- to have people 24 changing things in floodways when it could very well 25 be that they were simply going to create problems

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Page 186 1 for themselves later on. 2 I mean, what if Heathwood Hall, for 3 example -- you mentioned them. What if they had 4 built their gymnasium on the ground. Instead of 5 elevating it? And then the floodway -- then it 6 would have been put back -- and the map had come 7 back in the floodway and then Heathwood Hall would 8 have been -- you know, they would have had this 9 potentially hazardous building, according to FEMA. 10 Q. Well, we're talking about here 11 maintenance of existing structures, not building a 12 new one. 13 A. Okay. This is what it is and that's my 14 best recollection of what my position was about 15 that. And I don't know of any further way to answer 16 your question. 17 Q. In the second paragraph of your e-mail 18 response to Mr. Wislinski, in the final sentence -- 19 well, in the sentence before that you say: It, 20 referring to the moratorium, will either need a 21 two-thirds majority vote of Council to put it into 22 effect on an "emergency" (i.e. immediate) basis or 23 three readings and a public hearing to get it 24 through on a regular basis. If it goes this latter 25 route of three readings that would push it well into	Page 188 1 plant. 2 A. And one other -- at least one other 3 person that I know of. 4 Q. Who was that? 5 A. John Foster, who owns property on the 6 opposite side of -- 7 Q. Right. 8 A. -- Interstate 77. 9 Q. That farmland down there? 10 A. Yes, sir. 11 Q. It's all farmland; right? 12 A. Well, he has -- he had contacted me 13 about construction of a horse barn. 14 Q. Okay. Anything else other than the 15 horse barn? 16 A. Well... 17 Q. Would building a horse barn on his 18 property have created a problem? 19 A. I don't know that it would or had. I'm 20 just saying he con -- 21 Q. How many horses -- 22 A. You asked me if there were other people 23 that would be affected, that was your question, and 24 I'm answering it was those people and this person 25 over there.
Page 187 1 February which may be too late to make any 2 difference. 3 What did you mean by that sentence? 4 A. I have no idea what I meant by that. 5 The phrase too late to make any difference I do not 6 understand -- I do not know why that was written 7 that way. 8 Q. Is it possible that Columbia Venture 9 could have come forward and submitted a permit 10 application to improve or repair its levees? 11 A. I have -- is it possible? 12 Q. Yeah. 13 A. I guess that would be possible, yes. 14 Q. Is that what you were referring to? 15 A. I do not recall that that had anything 16 to do with that sentence, no, sir. 17 Q. You clearly wanted to prevent -- you and 18 other members of Council who -- and we'll get into 19 how this was dealt with by the full County Council. 20 But it's clear, isn't it, that the vote on the 21 emergency moratorium with the Jeter amendment, a 22 vote for the moratorium with the Jeter amendment 23 would have allowed the three existing property 24 owners with land in the floodway -- Columbia 25 Venture, Heathwood and the City wastewater treatment	Page 189 1 Q. Okay. How many horse barn -- how many 2 horses did he plan to keep down there? 3 A. I have no idea. 4 Q. Was it just for his own personal horses 5 and use of horses? 6 A. I have no idea. I can't... 7 Q. He wasn't planning to put any office 8 buildings there, was he? 9 A. It was -- as I recollect he wanted to 10 know if he had to build a two-story horse barn, 11 something to that effect; all right? To get him 12 above -- he has a house down there, it was an old 13 family farm house. He wanted to make some 14 improvements to the property. 15 Q. Well, that's an existing structure; 16 right? 17 A. I guess it would be, yes. 18 Q. So under the Jeter amendment -- 19 A. I didn't know that he wanted to 20 construct something else. I do not know. 21 Q. Okay. Well, if I need to I'll go ask 22 him. 23 A. That would be fine. 24 Q. But the Jeter amendment would have 25 allowed him to obtain a permit to maintain the old

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Page 190 1 family place down there on his property, wouldn't 2 it? 3 A. I guess it would, yes, sir. 4 Q. And it would have allowed either the 5 City wastewater treatment plant or Heathwood Hall or 6 Columbia Venture to apply for a permit application 7 to improve the existing levees that protected their 8 property, wouldn't it? 9 A. Yes. 10 Q. All right. Let's look at what happened 11 on the night of January 3rd, 2006 when this 12 temporary moratorium was considered by the full 13 County Council. This is Plaintiff's Exhibit 134. 14 A. This record has people's handwritten 15 notes on it. 16 Q. Right. I believe those are 17 Ms. Taylor's, but -- 18 MR. BECKER: Is that your handwriting, 19 Mullen? 20 MS. TAYLOR: Yes. 21 BY MR. BECKER: 22 Q. This is the best copy we have, I 23 believe, but these are the minutes of the regular 24 session of the Richland County Council that occurred 25 on January 3rd, 2006 at six p.m. Let's start with	Page 192 1 A. Yes, sir. 2 Q. And you can look at the ordinance that 3 was attached to that recommendation page and it 4 says -- you can see on Page 45 where it was amended 5 to provide that the moratorium would not apply to 6 permit applications for maintenance of existing 7 structures, levees or buildings, or to bring them 8 into compliance with County ordinances and/or U.S. 9 Army Corps of Engineers' standards. 10 Do you see that down at the bottom? 11 A. Yes, I do. 12 Q. So that was the ordinance that was in 13 front of the full County Council for consideration 14 on the evening of January 3rd, 2006; correct? 15 A. Yes, sir. 16 Q. We know from Ms. Taylor's handwritten 17 notes that a two-thirds majority vote failed. Do 18 you see that where -- it's right there in the middle 19 of Page 3 of 48 in Exhibit 134? 20 A. Yes, sir. 21 Q. That would have been the vote to pass it 22 with a two-thirds majority with only one reading; is 23 that right? 24 A. Yes, sir. 25 Q. Okay. All right. Let's move, then, on
Page 191 1 the -- 2 MS. TAYLOR: Jamie, I think this is the 3 agenda, not the minutes. 4 MR. BECKER: Okay, I'm sorry. 5 Q. The agenda. Let's start with the 6 recommendation that was attached to the agenda, it's 7 Pages 44, 45 and 46 and 47 of 48. You can see that 8 there was a recommendation, if you're looking at 9 Page 44, of the Development & Services Committee of 10 which you were a member. It says: Items for 11 Action, Emergency Ordinance Establishing a Temporary 12 Moratorium on Approval of Floodplain Management 13 Permits for Development or Construction Within a 14 Portion of the Congaree River Floodplain - The 15 ordinance was amended to state that the moratorium 16 would not be applicable to applications for 17 maintenance of existing structures, levies or 18 buildings; or to bring existing structures into 19 compliance with Richland County ordinances and/or 20 U.S. Army Corps of Engineers standards. The 21 committee recommended that Council give first 22 reading approval to the amended ordinance. The vote 23 in favor, from the Development & Services Committee, 24 was unanimous. 25 Did I read all that correct?	Page 193 1 to the next exhibit which is 151. These are the 2 minutes of that meeting, and if you look on Page 5 3 of that document there was an original motion -- 4 here we see the report of the Development & Services 5 Committee meeting and what Council action was on 6 that. It says: Mr. Montgomery made a substitute 7 motion, seconded by Ms. Hutchinson, to adopt the 8 ordinance striking the amendments noted in the 9 proposed ordinance. 10 And you voted in favor of that; correct? 11 A. Yes, sir. 12 Q. There were four who voted in opposition 13 to it, so that's the motion that failed on a 14 two-thirds vote; is that right, for failure to 15 obtain a two-thirds vote? 16 A. (No response.) 17 Q. I'm not sure that's really that 18 important. In any event, what happened next was 19 that Ms. Smith, that would be Kit Smith, made a 20 substitute motion, seconded by Mr. McEachern, to 21 give First Reading approval to the ordinance with 22 the committee amendment stricken; is that right? 23 A. Right. With that being the second one, 24 then that -- to answer your other question I believe 25 you were correct, that this was the emergency

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Page 194 1 ordinance first. 2 Q. Right. 3 A. It did not get two-thirds. 4 Q. And so it failed? 5 A. So it failed, so then there was another 6 motion made by Ms. Smith. That's correct. 7 Q. So the motion on the table then was to 8 give First Reading approval to the ordinance without 9 the Jeter amendment? 10 A. That's correct. 11 Q. Ms. Scott made a substitute motion to 12 send a proposed ordinance back to the Development & 13 Services Committee and that substitute motion 14 failed -- 15 A. That's correct. 16 Q. -- correct? So what did receive 17 approval from County Council that night was 18 Ms. Smith's substitute motion which was to give 19 First Reading approval to the proposed ordinance 20 with the Jeter amendment adopted in committee 21 stricken? 22 A. That's correct. 23 Q. And you voted in favor of that? 24 A. That's correct. 25 Q. As did a majority of Council that night.	Page 196 1 BY MR. BECKER: 2 Q. -- to that vote that it took on February 3 2nd, 1999; wouldn't you agree? 4 MS. TAYLOR: Object as to form. 5 THE WITNESS: In the actual contents of 6 the words that you were using, you are correct. 7 However, if I can offer a however, I mean, I 8 don't -- I don't -- I think when County Council made 9 that original vote -- wait a minute. I can't speak 10 for County Council. I can only speak for me. 11 When I made my original vote, I made my 12 original vote as someone who was -- had no 13 information about floodplain ways, who had no 14 information about rivers, who had no information 15 about -- anything to do with this. It would -- it 16 was, as I said, knock your socks off -- I've been 17 quoted in here, and it was a knock your socks off 18 project. 19 As the years have ensued and the -- the 20 science of it, again in quotes, piled up as the -- 21 I'll give you as the politics of it piled up, as the 22 debate piled up, that there were countless number of 23 factors that I think changed the context. 24 So the answer is yes, it did change, but 25 were there not -- it seems to me, in my mind anyway,
Page 195 1 In fact, it was a seven to five vote; correct? 2 A. To four. 3 Q. Seven to four, excuse me. 4 A. You really can't take any more members. 5 Q. Mr. Pearce, it had been now going on 6 seven years since Columbia Venture first bought the 7 property; right? 8 A. Between this date and the original? 9 Q. Right. They bought it in February 1999? 10 A. You're correct, yes, sir. 11 Q. And they bought that property with the 12 understanding, did they not, as we've discussed 13 before in this deposition, that Richland County 14 would work with Columbia Venture in a cooperative 15 fashion to allow Columbia Venture to improve its 16 levees and bring them up to FEMA standards so that 17 it could develop the property; Isn't that correct? 18 A. Yes, sir. 19 MS. TAYLOR: I object as to form. You 20 can still answer. 21 BY MR. BECKER: 22 Q. And the vote that Richland County 23 Council took on the night of January 3rd, 2006 was 24 diametrically opposed -- 25 MS. TAYLOR: Object as to form.	Page 197 1 my vote in this was based on what I had learned and 2 not my uncomfortable with the whole situation. 3 Where are those maps, where do they belong? Are the 4 levees really protected? 5 And one of the overriding concerns for 6 me was what is the liability that I have been told 7 that the protection -- if a levee were to fail 8 which, you know, if they build certified levees 9 they're not supposed to fail. They've had certified 10 levees in other cities that have failed, so there is 11 that outside potential. So if it failed, what would 12 it be to the people I represent? Should they be 13 responsible for paying the damages that would be 14 caused by that? And I wasn't satisfied in my mind 15 that they would be protected? 16 So I'm saying to you, sir, that there 17 are many, many factors that intervened in there that 18 may have brought me -- that did, not may, they did 19 bring me to raise my hand this way to buy us time, 20 as it says in my memorandum here to Mr. Wislinski, 21 to give us six -- a chance to find out where we 22 stood on this. 23 BY MR. BECKER: 24 Q. Well, we -- 25 A. And what -- and what there was to do.

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND CASE NO. 10-CP-40-8943R
3 COLUMBIA VENTURE, LLC,
4 Plaintiff,
5 vs.
6 RICHLAND COUNTY,
7 Defendant.
8

9 DEPOSITION OF: RALPH PEARSON

10 DATE: MAY 3, 2011

11 TIME: 9:35 A.M.

12 LOCATION: McANGUS GOUDELOCK & COURIE, LLC
13 Meridian Building
1320 Main Street, 10th Floor
14 Columbia, SC

15 TAKEN BY: Counsel for the Plaintiff

16 REPORTED BY: G. MICHAEL ALEXANDER, Registered
Professional Reporter, CSR

17

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Page 10 1 control. 2 Now, in general terms, if I wanted to 3 disturb the land in Richland County, and I didn't 4 meet any of the exemptions, then I would need 5 some type of permit? 6 A. Yes. 7 Q. And what would you call that permit? 8 A. Well, ultimately we ended up calling 9 this a land disturbance permit. 10 Q. Okay. And would that require a 11 certain type of plan that I would have to have in 12 place to control any erosion, or drainage, that 13 type thing? 14 A. Yes. The ordinance required you, as a 15 developer, to submit a sediment erosion control 16 plan. 17 Q. Sometimes I see where there's some 18 grading going on. They will have like bales of 19 hay, or certain things like that, that look like 20 they were put there to try and control the runoff 21 or the erosion. Is that part of the plan that 22 you would require if somebody wanted to disturb 23 the land? 24 A. Yes. 25 Q. Okay. Now, let's go to the second	Page 12 1 A. Yes. 2 Q. And that's any land area susceptible 3 of being inundated by the base flood, and that's 4 a 100-year flood? 5 A. Correct. 6 Q. And it says as determined on an 7 official flood hazard boundary map, flood 8 insurance rate maps, and other available 9 information. Now, what would be the official 10 flood hazard boundary maps or the flood hazard 11 insurance or flood insurance rate maps? Where 12 would I find those? 13 A. Well, we would have a copy of them in 14 our office. 15 Q. Okay. And those would be the ones 16 that are effective as of the time I applied for a 17 permit or a letter approving my plan? 18 A. That's right. 19 Q. Okay. 20 A. Now, I might mention, too, I think 21 that FEMA made copies of the flood insurance rate 22 maps available to the public. 23 Q. Okay. 24 A. You could get those. 25 Q. I could also get them from the
Page 11 1 part here, 8-50, the storm drainage and flood 2 protection order. 3 A. Yes. 4 Q. Now, in general terms here, if I were 5 going to, let's say, develop a subdivision, or 6 something like that, I would have to come up with 7 some plan for storm drainage and flood 8 protection. 9 A. That's correct. 10 Q. And then your office would approve 11 that plan? 12 A. Yes. 13 Q. And if you approved it then I would 14 get some permit to be able to go forward with my 15 development. 16 A. At that time all we issued was a 17 letter saying we reviewed your plans and they're 18 approved. 19 Q. Okay. Now, if we look at some of the 20 definitions in this, that go with that 3826, up 21 at the top, that Bates number, it defines 22 definitions, and it that starts out with section 23 8-54. And it says, if you flip back over to 825, 24 it defines an area of special flood hazard. Do 25 you see that?	Page 13 1 county's office? 2 A. Yes. 3 Q. So I could either get them from FEMA 4 or I could get them from the county? 5 A. Yes. 6 Q. As far as development, on the next 7 page, it says any manmade change to improved or 8 unimproved real estate, including but not limited 9 to buildings or other structures, mining, 10 dredging, filling, grading, paving, excavation, 11 or drilling operations. 12 A. Correct. 13 Q. So any kind of grading or paving or 14 filling I would need to submit a plan for your 15 approval. 16 A. That's right. 17 Q. And we look down and it has primary 18 drainage channel. It says -- see subsection (r). 19 A. Okay. 20 Q. It says drainage channel, stream, 21 creek, that drains in an area of 300 acres or 22 more. 23 A. Right. 24 Q. All right. Would that include any 25 sort of stream or river?

4 (Pages 10 to 13)

Page 14 1 A. Yes. In fact It probably should say 2 river but it doesn't. 3 Q. Okay. Now, the next thing is a 4 regulatory floodway. 5 A. Okay. 6 Q. That's subsection (s). And it says a 7 channel of a river or other watercourse and the 8 adjacent land areas that must be reserved in 9 order to discharge the base flood without 10 cumulatively increasing the water surface 11 elevation more than one foot. As identified on 12 an official flood insurance rate map or other 13 available information. 14 A. Okay. 15 Q. Now, the engineers would refer to that 16 as a one-foot rise floodway? 17 A. Yes. 18 Q. And that's the minimum required by the 19 FEMA regulations? 20 A. Well, yeah. That's addressed to the 21 FEMA regulations. 22 Q. Okay. Are you generally familiar with 23 the FEMA regulations and the National Flood 24 Insurance Program? 25 A. Yes.	Page 16 1 A. Yes. 2 Q. So some of these flood maps use 3 cross-sections, do they not? They have 4 cross-sections going across the floodplain? 5 A. Yes. 6 Q. So some of the cross-sections of the 7 rise can be less than one foot. But you can't 8 exceed more than one foot on any of those 9 cross-sections, correct? 10 A. That's right. Yes. 11 Q. Okay. What I'm getting at is the 12 community, if it wanted to, say Richland County, 13 you can put in there, instead of one-foot, you 14 can have like six inches? 15 A. Yes. 16 Q. Okay. 17 A. Yeah. I mean there are places where 18 the floodway was drawn like along a lake 19 shoreline, because that's kind of the obvious 20 place to put it, rather than put it where it 21 would result in less than a one-foot rise. 22 Q. Are you familiar with the FEMA 23 regulations dealing with where a river, a 24 watercourse, is the boundaries separating two 25 political subdivisions? That in that
Page 15 1 Q. Okay. And my understanding, and 2 correct me if I'm wrong, but this one-foot rise 3 floodway is determined using a hydraulic computer 4 program, is it not? 5 A. Normally, yes. 6 Q. It's a computer generated program. 7 A. Uh-huh. 8 Q. That determines where floodway 9 boundaries are? 10 A. That's correct. 11 Q. Now, the one-foot surcharge, is that 12 not the minimum requirement of FEMA? 13 A. That comes from the FEMA regulations, 14 yes. 15 Q. Right. And you could or the county 16 could have a, say, like a half-a-foot rise 17 floodway. Could you not? 18 A. Yes. I think the regulations are 19 written so it says a maximum of a one-foot rise. 20 There are places where the floodway is drawn for 21 other reasons that would result in less than a 22 one-foot rise. 23 Q. It has to be cumulative, right? 24 A. Yes. 25 Q. Cumulative increases?	Page 17 1 circumstance FEMA requires the floodway to be 2 determined using an equal reduction of 3 conveyance? Are you familiar with that? 4 A. From my understanding of that, that's 5 the way the floodplain is determined. I didn't 6 know it was related to whether or not it's in a 7 boundary, whether it was the boundary. 8 MR. GRIER: Mark that. 9 (PLF. EXH. 106, Flood insurance study 10 guidelines and specifications for study 11 contractors, was marked for identification.) 12 MS. TAYLOR: This is one of the 13 documents we have not received? 14 MR. GRIER: I mean we didn't notify 15 you. Do you want to go talk with him about it? 16 MR. LYDON: Yes, let's talk to him 17 about it. 18 MR. GRIER: Okay. 19 (A recess transpired.) 20 BY MR. GRIER: 21 Q. I'm going to hand you a document 22 that's been marked for identification as Exhibit 23 106. 24 A. Okay. 25 Q. And this is some pages from a document

5 (Pages 14 to 17)

Page 18 1 called Flood Insurance Study Guidelines 2 Specifications for Study Contractors and the FEMA 3 cognizant refers to this as FEMA 37. Are you 4 familiar with it? 5 A. No. 6 Q. Okay. Now, let me -- see the little 7 numbers at the bottom, 5-3? 8 A. Yes, sir. 9 Q. Well, first of all, what's the first 10 page? This has got a date January '95, right? 11 1995? 12 A. That's right. 13 Q. If you look at 5-3, at the bottom of 14 the page, the last sentence says where the stream 15 forms the border between contiguous communities, 16 and the floodway designation affects both of 17 them, equal reduction of conveyance must, and 18 must is underlined. Do you see that? 19 A. Yes. 20 Q. Do you know what equal reduction of 21 conveyance refers to? 22 A. I'll be honest with you, I'm not sure 23 exactly how that works, no. 24 Q. Okay. Do you understand in general 25 that FEMA determines the volume of conveyance on	Page 20 1 A. Okay. 2 Q. And then the next section (i), 3 National Flood Insurance Program, all applicable 4 regulations of the National Flood Insurance 5 Program are incorporated by reference herein. 6 A. Yes. 7 Q. All right. I want to refer to -- are 8 you generally familiar with the FEMA regulations 9 under the National Flood Insurance Program? 10 A. Yes, I am. 11 Q. Okay. I want to refer to a specific 12 one. And I'm not going to make this an exhibit. 13 I'll read a section of it. I'll give you a copy 14 of it. If you look at page 254. 15 A. Okay. 16 Q. And you see this is 44CFR, section 17 60.3. And I'm on the wrong page. Look at 256, 18 if you would, please. 19 A. Okay. 20 Q. Are you there? 21 A. I think so. The page numbers are kind 22 of cut off at the bottom but I think that's 23 right. 24 Q. Here they are. And I'm going to be 25 referring to this subsection (d). This is 44CFR,
Page 19 1 either side of, say, a river. And the floodway 2 is determined by reducing the conveyance on 3 either side of the river by equal amounts? 4 A. That's my general understanding, yes. 5 Q. And according to this document, when 6 the stream forms the border between contiguous 7 communities, and the floodway designation affects 8 both of them, that's when equal conveyance must 9 be used to determine floodways. 10 A. Right, according to this. 11 Q. All right. And going back to Exhibit 12 105, which is the 1994 ordinance. Do you want to 13 look at that some more? 14 A. No. 15 Q. Going back to Exhibit 105. We look at 16 the numbers at the top of the page again, 3830. 17 A. Okay. 18 Q. All right. If you look at (h), 19 subsection (h) on that page -- 20 A. Okay. 21 Q. -- it says no levees, dikes, fill 22 materials, structures, or obstructions, that will 23 impede the free flow of water, during times of 24 flood, will be permitted in the regulatory 25 floodway.	Page 21 1 section 60.3, subsection (d), and then subsection 2 (3). 3 A. Okay. 4 Q. And in general what this subsection 5 (d) requires a community to designate a 6 regulatory floodway, and it says a community 7 shall, go down to subsection (3), prohibit 8 encroachments, including fill, new construction, 9 substantial improvements, and other developments, 10 within the adopted regulatory floodway. Unless 11 it has been demonstrated through hydrologic and 12 hydrolic analyses, performed in accordance with 13 standard engineering practices, that the proposed 14 encroachment would not result in any increase in 15 flood levels within the community during the 16 occurrence of the base flood discharge. 17 Now, is that what engineers typically 18 refer to as a no rise standard? 19 A. That's what we call it, yes. 20 Q. Okay. And that means that anything 21 you want to -- that the community has to prohibit 22 any encroachment in the regulatory floodway, 23 unless you can demonstrate, through this 24 engineering, that it won't cause a rise -- 25 A. Right.

6 (Pages 18 to 21)

Page 22

1 Q. -- in the flood levels.
 2 A. Correct.
 3 Q. Now, starting in 1994, when this
 4 ordinance, Exhibit 105, was adopted, July 19th,
 5 1994, was it the view of your office that
 6 subsection (h), that we referred to awhile ago,
 7 that said no levees, dikes, or fill materials, or
 8 obstructions, that will impede the free flow
 9 water, during times of flood, will be permitted
 10 in regulatory floodways, that that was
 11 essentially a no rise standard.
 12 A. Say that again.
 13 Q. Yes. If you look at subsection (h) --
 14 MR. LYDON: What page are you
 15 referring to?
 16 MR. GRIER: 3830.
 17 THE WITNESS: Yes. Okay.
 18 BY MR. GRIER:
 19 Q. Subsection (h). No levees, dikes,
 20 fill materials, structures, or obstructions that
 21 will impede the free flow of water, during the
 22 times of flood, will be permitted in the
 23 regulatory floodway.
 24 Was it the interpretation, your
 25 interpretation, as county engineer that, say, in

Page 23

1 1994, that this was essentially a no rise
 2 standard?
 3 A. That's the way we viewed it. We felt
 4 like if you could demonstrate no rise then you
 5 weren't impeding the free flow of water.
 6 Q. Okay. Now, I want to ask you about
 7 this particular 1994 ordinance, which was
 8 effective on July 19th, 1994.
 9 After it became effective, did your
 10 office ever have occasion to approve a stormwater
 11 or storm drainage plan, I believe it is referred
 12 to, under this ordinance, that would involve
 13 development or improvements in a regulatory
 14 floodway?
 15 A. In general you mean?
 16 Q. Yes.
 17 A. Anywhere in the county?
 18 Q. Right. In other words would you ever
 19 have occasion to, if somebody came in, and they
 20 wanted to either do some grading, or filling, or
 21 build a deck, or whatever, in a regulatory
 22 floodway, you know, that you required this kind
 23 of engineering, hydraulic, hydrologic analyses?
 24 A. There were a few, not a lot.
 25 Q. But sitting here today can you recall

Page 24

1 any specific ones?
 2 A. I can't recall a specific one other
 3 than the Green Diamond project.
 4 Q. Okay. But in general you recall there
 5 were a few.
 6 A. Yes.
 7 Q. Okay. And you recall that there were
 8 a few where you actually approved the plan on
 9 this showing of, this engineering showing, of a
 10 no rise with the hydraulic and hydrologic
 11 engineering?
 12 A. I can't specifically remember an
 13 example of that.
 14 (PLF. EXH. 107, Richland County
 15 Council request of action, was marked for
 16 identification.)
 17 BY MR. GRIER:
 18 Q. Mr. Pearson, I hand you what's been
 19 marked for identification as Exhibit 107.
 20 A. Okay.
 21 Q. Do you recognize this document?
 22 A. Yes.
 23 Q. Okay. And this was a Richland County
 24 council request for action.
 25 A. Yes. One that I wrote.

Page 25

1 Q. And you wrote this one.
 2 A. Yes.
 3 Q. And if you look at the background
 4 discussion, section B.
 5 A. Uh-huh. Yes.
 6 Q. And you say, section 8-26 (I), on the
 7 other hand, incorporates applicable regulations
 8 of the NFIP into the county code. Those
 9 regulations permit levees, dikes, fill, and
 10 structures in a regulatory floodway, provided it
 11 can be demonstrated that they cause no rise in
 12 the base flood (100-year flood) elevation. In
 13 the past, this office reasoned that if an
 14 encroachment in the floodway caused no rise in
 15 the base flood elevation, then it did not impede
 16 the free flow of water. However, we have
 17 recently been advised by the county attorney's
 18 office that we are not legally entitled to make
 19 that interpretation, and that impede means
 20 exactly what the word means. Consequently,
 21 virtually all fill, structures, and obstructions
 22 in a floodway are prohibited under section 8-26
 23 (h) since they will "impede" the free flow of
 24 water.
 25 Now, my question is when were you

Page 46 1 don't know if I've seen this one at all. 2 Q. Okay. Look at Mr. Holman's letter. 3 A. Yes. Rather than, down here, maybe 4 his last paragraph -- rather than being rushed 5 through as part of the stormwater/quality 6 provisions, the proposed variance procedures for 7 floodplain management regulations should be 8 removed, at this time, and reconsidered, and any 9 future variance procedures should only be 10 developed after full consultation with FEMA. 11 Q. Let me ask you a question. Are you 12 familiar with -- you indicated you never met with 13 Mr. Holman, that you can recall. 14 A. I can't recall. I don't know who he 15 is. 16 Q. All right. Are you familiar with this 17 organization, the Southern Environmental Law 18 Center? 19 A. Yeah, I've heard of it. 20 Q. Okay. At that time, November 28th, 21 2000, were you aware of any connection between 22 Kit Smith and the Southern Environmental Law 23 Center? 24 A. No. 25 Q. Were you ever aware of any connection	Page 48 1 sometime later or did you -- 2 A. I don't know. 3 Q. Okay. So the conversation you had 4 with Larry Smith, could it have occurred in 5 November of 2000? 6 A. It could have, yes. 7 Q. So you're just not clear on when. 8 A. I don't remember the sequence of 9 events of when all this occurred. 10 Q. All right. And you don't know whether 11 Ms. Scott's motion was the moving factor behind 12 Mr. Smith's coming to see you. 13 A. No. 14 (PLF. EXH. 116, E-mail dated 15 11/09/2000, was marked for identification.) 16 BY MR. GRIER: 17 Q. I'm handing you what's been marked for 18 identification as 116. This is an e-mail chain 19 here. The first one is from Mr. Jim Weisman to 20 Mullen Taylor. He refers in the second paragraph 21 there to a rumor du jour day. Kit Smith has 22 informed Heathwood Hall people that she will work 23 diligently to get both the school and the sewer 24 plant out of the floodway while leaving our 25 property in the floodway.
Page 47 1 between Kit Smith and the Southern Environmental 2 Law Center? 3 A. No. 4 Q. Now, do you remember discussing the 5 variance provisions with anyone from the county 6 and agreeing to eliminate them from the draft 7 order? 8 A. I don't recall that. 9 (PLF. EXH. 115, Motion for Bernice 10 Scott regarding stormwater ordinance dated 11 11/28/2000, was marked for identification.) 12 BY MR. GRIER: 13 Q. I'm going to hand you a document which 14 has been marked as Exhibit 115. 15 A. Okay. 16 Q. Have you ever seen this before, this 17 document? 18 A. I don't think so. 19 Q. And you don't recall, this document 20 was dated November 28th, 2000. You don't recall 21 this issue of no rise, no impede coming up during 22 this period? 23 A. Oh, yeah, I remember it coming up. 24 Q. All right. And was this the time you 25 had the conversation with Larry Smith or was it	Page 49 1 My question to you is did you hear 2 that same rumor at or near the time of this 3 e-mail which is November 3rd, 2000? 4 A. No. I don't think so, no. 5 Q. I want to show you an exhibit that was 6 marked as Exhibit 44 to Mr. McSwain's deposition. 7 MS. TAYLOR: What's the number? 8 MS. BLACK: 44. 9 BY MR. GRIER: 10 Q. That is a letter from Mr. Holman, 11 again, of the Southern Environmental Law 12 Center -- 13 A. Okay. 14 Q. -- to members of council. It's dated 15 March 16th, 2001. It says, as you know, the city 16 of Columbia and Heathwood Hall School are 17 concerned that Richland County stormwater 18 ordinance would limit their ability to improve 19 and conduct existing facilities near the Congaree 20 River. And he goes on to propose a, if you look 21 on the last page there, a provision to be 22 inserted in the ordinance that would exempt 23 Heathwood Hall school and the city on this 24 wastewater treatment plan from the no impede 25 provision in the proposed ordinance. Do you see

13 (Pages 46 to 49)

Page 50 1 that? 2 A. What paragraph are you looking at? 3 Q. Look on the last page. 4 A. Well, the last page is an excerpt from 5 the ordinance. 6 Q. Well, if you read through -- 7 A. The last page of this letter? 8 Q. Yes. Well, the last page is an 9 excerpt from the ordinance. But he is proposing 10 that to the county council that they adopt this 11 particular provision in order to exempt Heathwood 12 Hall school and the city of Columbia's wastewater 13 treatment plant from the no impede standard -- 14 A. I see the paragraph where it says we 15 propose the attached language to maintain the 16 existing high level of protection and county -- 17 THE REPORTER: I'm sorry. You need to 18 speak up. 19 THE WITNESS: You want me to start 20 over? 21 THE REPORTER: Please. 22 THE WITNESS: I see the paragraph 23 where he says we propose the attached language to 24 maintain the existing high level of protection 25 for the people of Richland County, while meeting	Page 52 1 flood insurance rate map that had been issued on 2 September the 26th, 2000 by FEMA? 3 A. Okay. I couldn't have told you the 4 date. But I do recall that FEMA's final map that 5 they adopted would have put them in a floodway, 6 yes. 7 Q. All right. Now, as of March 16th, 8 2001, the effective flood insurance rate map for 9 the Congaree floodplain, where Heathwood Hall 10 school is located, and the city of Columbia's 11 wastewater treatment plant is located, was the 12 flood map that was dated in January of 1994. Is 13 that correct? 14 A. Say that again. 15 Q. Yes. As of the date March 16th, 2001, 16 the effective flood insurance rate map, not the 17 one that was a revised preliminary. 18 A. Okay. Now, that's the date, the 19 effective date of the final map? 20 Q. No. Let me show you -- I can show you 21 an exhibit here. I'm going to show you a McSwain 22 exhibit. This is No. 1 to the deposition of 23 Mr. McSwain. And that's the flood insurance rate 24 map effective January 19th, 1994. 25 A. Okay.
Page 51 1 the concerns of the city of Columbia's wastewater 2 treatment plant and Heathwood Hall. 3 BY MR. GRIER: 4 Q. And his proposed language is attached 5 to his letter, is it not? 6 A. Right. 7 Q. And in effect what that language would 8 do, if the county adopted it, would be to exempt 9 Heathwood Hall school and the city of Columbia's 10 wastewater treatment plant from the no impede 11 standard in the ordinance. 12 A. I think that's correct, yes. 13 Q. All right. And is it your 14 understanding that at or near the time of this 15 letter, March 15th, 2001, that Heathwood Hall 16 school and the city of Columbia's wastewater 17 treatment plant were in a floodway that was on a 18 revised preliminary flood change rate map? 19 Proposed by the -- had been sort of issued by the 20 Federal Emergency Management Agency. 21 A. Okay. What's your question? 22 Q. Was it your recollection that as of 23 March 16th, 2001, the Heathwood Hall school and 24 the city of Columbia's wastewater treatment plant 25 were in a floodway shown on a revised preliminary	Page 53 1 Q. And that was a map that was effective 2 in Richland County until the county adopted 3 FEMA's final determination on February 20th, 4 2002. Is that correct? 5 A. Exactly. You could say that, yes. 6 Q. Okay. And FEMA's final determination 7 was dated August 20th, 2001, and the county 8 adopted it six months later, on February 20th, 9 2002, correct? 10 A. I don't know those dates. 11 Q. Okay. But if I'm right on the dates, 12 the form you've got in front of you right now, 13 Exhibit 1 to McSwain, was the effective flood 14 insurance rate map in Richland County until the 15 county adopted FEMA's final determination. And 16 the date I'm saying was February 20th, 2002. 17 A. Right. Okay. 18 Q. Okay. 19 A. Do you want that back? 20 Q. Yes. Is it your recollection that the 21 county council did amend the ordinance, 22 stormwater ordinance, to include the provision 23 exempting Heathwood Hall school and the city of 24 Columbia's wastewater treatment plant that 25 Mr. Holman had proposed on March 16th, 2001 in

Page 54 1 Exhibit 116? 2 A. As I recall that's right. 3 Q. Okay. McSwain 51. 4 A. Do you need this back? 5 Q. We can keep that right there. That's 6 an extra copy. 7 I'm going to show you another exhibit 8 from Mr. McSwain's deposition. It's No. 51. 9 A. Okay. 10 Q. And this looks like some excerpts from 11 the regular session of the Richland County 12 council on March 20, 2001. And, if we look, 13 there's a report appended to this, a county 14 council report, encroachments in the floodway. 15 A. Okay. 16 Q. And if we look over on the last page 17 of that report, page 6, it has recommendations. 18 Do you see that? Keep going. 19 A. Okay. 20 Q. It says, ideally, the administrator's 21 office recommends option 1, which is to wait 22 until the county has a draft floodplain 23 management ordinance and decide on the floodway 24 issue at that time. This option would allow 25 council to consider a comprehensive approach to	Page 56 1 Q. That was your preference all along, 2 was it not? 3 A. Yes. 4 Q. Okay. And the council, which option, 5 to your recollection, did the council take? 6 A. I don't know. 7 Q. Okay. And they didn't adopt a no rise 8 standard did they? 9 A. I don't think so. 10 Q. Except for Heathwood Hall and the city 11 of Columbia's wastewater treatment plant. 12 A. Yes. 13 Q. Let's look at McSwain 45. I'm going 14 to show you another exhibit from Mr. McSwain's 15 deposition. That's deposition Exhibit 45. 16 A. Okay. 17 Q. This is the actual stormwater 18 ordinance that was adopted on the third reading 19 on April 17th, 2000. Is it not? Look at the 20 last page, I think it states it on there. 21 A. Attested, third reading, April 17th, 22 2001, yes. 23 Q. Okay. And this is the ordinance that 24 maintained the no impede standard as opposed to 25 the no rise standard throughout the county, with
Page 55 1 floodplain management instead of in a piecemeal 2 fashion. On the other hand, if council feels 3 compelled to act now, the county engineer, in 4 concurrence with the administrator's office, 5 recommends option 3, which is to use the FEMA 6 standard. This standard, while considered to be 7 the minimum allowed by FEMA, is still restrictive 8 and serves to protect public safety. Do you see 9 that? 10 A. Uh-huh. 11 Q. All right. And it was your office's 12 recommendation on option 3 that they adopt FEMA's 13 no rise standard? 14 A. Did I write this? I don't see any -- 15 Q. You did not write it. It was prepared 16 by Mullen Taylor -- 17 A. Okay. I see that. 18 Q. -- on 2/9/01. And she is reporting to 19 the council what she understands, I guess, is the 20 county's engineer's position on option 3. 21 A. Okay. 22 Q. That's consistent with your 23 recollection, is it not, that you were 24 recommending a no rise, a FEMA no rise standard. 25 A. Yes, that was my preference, yes.	Page 57 1 the exception of Heathwood Hall school and the 2 city of Columbia's wastewater treatment plant. 3 A. I think that's right. 4 Q. Let's look at 46. I show you another 5 exhibit from Mr. McSwain's deposition, No. 46. 6 And that's a letter of June 20th, 2001 from 7 Mullen Taylor to Mr. John Dooley with the city of 8 Columbia. And it encloses a copy of an amendment 9 to the zoning ordinance. And that essentially 10 conforms with the zoning ordinance, does it not, 11 through the stormwater ordinance that the county 12 had passed on April 17th of 2001? Do you see it 13 on that first page there? It says permitted uses 14 in the designated floodway. 15 A. Yes. Any existing or future facility 16 that is or will be a part of or used by public or 17 private schools. And any existing or future 18 facility as this is or will be -- yeah. 19 Q. All right. Now, this issue about no 20 impede versus no rise, it came up again in 2004. 21 We know that from looking at the earlier exhibits 22 107 and 108. This issue came up again in 2004. 23 Do you recall the circumstances under which it 24 came up again in 2004? 25 A. No. You would have to tell me more.

15 (Pages 54 to 57)

Page 82 1 engineer, Ralph Pearson. There have been three 2 such maps available in the past three years. 3 A. Okay. 4 Q. That's the reason the county initially 5 denied the permit. Is that the reason you denied 6 the permit? 7 A. I'm not sure what I meant there. 8 Q. I take it you don't -- 9 A. I think why we denied the permit is 10 pretty self-explanatory from the letter. 11 Q. Right. But I think your testimony was 12 you don't know whether or not they resubmitted 13 it. 14 A. I don't recall. 15 MR. LYDON: Objection to the form. 16 THE WITNESS: Yeah. I don't recall a 17 resubmittal at all. 18 BY MR. GRIER: 19 Q. I think you said that they may have, 20 you just don't recall. 21 MR. LYDON: Object to the form. 22 BY MR. GRIER: 23 Q. I believe that was your testimony. 24 A. I think that's right, yeah. 25 Q. All right. Now, if you go on down	Page 84 1 A. Okay. 2 Q. And that's consistent with what you 3 said earlier, I believe. 4 A. Yes, I think so. 5 (PLF. EXH. 122, Newspaper article 6 dated 8/20/99, was marked for identification.) 7 BY MR. GRIER: 8 Q. I show you what's been marked as 9 Exhibit No. 122. This is, again, what purports 10 to be a newspaper article. And this one is dated 11 Friday, August 20th, 1999. 12 A. Right. 13 Q. And down toward the bottom they've got 14 a statement that's attributable to you. "In my 15 opinion," see where it has quotation "In my 16 opinion"? 17 A. Uh-huh. Yes. 18 Q. "In my opinion you can improve the 19 levee, Richland County public works director 20 Ralph Pearson said. I think we can demonstrate a 21 no rise, but I'm going to let the attorneys make 22 that call." 23 A. Okay. 24 Q. Why would you let the attorneys make 25 the call on whether or not you got an engineering
Page 83 1 it's got, in the middle of the page, the quote 2 there from, I believe it's Mr. McSwain. It says 3 "The latest map hasn't been fully approved and 4 hasn't been determined to be accurate." 5 A. Okay. 6 Q. McSwain said, "We won't issue permits 7 to build in that area, and I think that was 8 FEMA's primary concern." See that? 9 A. Yes. 10 Q. He says, "It's fair and reasonable to 11 allow this company to do maintenance on that 12 property." 13 A. Okay. 14 Q. All right. And I think we've 15 discussed earlier the difference between 16 maintenance and improvement, correct? 17 A. Uh-huh, yes. 18 Q. And so it's okay for them to maintain, 19 but not to improve, not to make them bigger, not 20 to make them taller, not to make them wider. 21 A. Correct. 22 Q. All right. And according to what 23 Mr. McSwain says here it was that we won't issue 24 permits to build in that area. And I think that 25 was FEMA's primary concern.	Page 85 1 insufficiency or no rise? 2 A. Don't know. 3 (PLF. EXH. 123, Richland County 4 Regular Session dated 9/7/99, was marked for 5 identification.) 6 BY MR. GRIER: 7 Q. I show you what's been marked as 8 Exhibit No. 123. This is the Richland County 9 Council Regular Session, September 7th, 1999. 10 A. Okay. 11 Q. And on the second page down at the 12 bottom where it says, Congaree levees. 13 A. Uh-huh. 14 Q. Down where it says, Congaree levees, 15 Mr. McSwain briefed council on FEMA's approval 16 process of the proposed maps. He stated that 17 that FEMA -- that the new map would be finalized 18 by the spring of 2000. He stated that FEMA 19 advised the county to use the 1995 maps until the 20 new maps come out. It was noted that under the 21 1995 maps the county could issue a maintenance 22 permit to maintain the existing levees. 23 All right. Now, under the 1995 maps, 24 it's actually a 1994 map, the levees were not in 25 a regulatory floodway were they?

Page 86 1 A. That's right. 2 Q. But yet he's saying that he will issue 3 a maintenance permit, but he doesn't say he would 4 issue a permit of approval does he? 5 A. He just talks about maintenance 6 permit, right. 7 Q. Right. And that's consistent with the 8 earlier statement that he made to the State 9 newspaper that they could maintain, that Columbia 10 Venture could maintain the levees, but that they 11 weren't going to issue any permits. That the 12 county wasn't going to issue any permits to 13 improve the levees until FEMA had completed this 14 process. 15 A. Correct. 16 Q. Now, let's take a look at 48. 17 A. 48 what? 18 Q. I'm talking to her. 19 A. Oh. 20 (PLF. EXH. 124, Faxed letter dated 21 10/10/2000 with attachments, was marked for 22 identification.) 23 BY MR. GRIER: 24 Q. I'm going to hand you Plaintiff's 25 Exhibit 124. And this is a letter from Dewberry	Page 88 1 other people, appealed that map. Do you recall 2 that? When I say map, it's a revised preliminary 3 flood insurance study. 4 A. I can't say that I do, no. 5 Q. You don't recall that? 6 A. I don't. 7 Q. You don't recall that there was an 8 appeal resolution that was issued in September 26 9 of 2000? 10 A. Well, resolution by council? 11 Q. No, by FEMA. 12 A. Oh. I'm sorry. Again, you know, 13 there were so many of these and different 14 versions of the map, and each one of them had an 15 appeal process and all. So I can't say that I 16 can remember the dates and the sequence of events 17 of all those. 18 Q. Isn't it a fact that the only map that 19 had an appeal process associated with it was the 20 one that was issued in August of 1999? 21 A. No. 22 Q. And I say that, but that map, my 23 understanding, it was appealed and there was an 24 appeal resolution, September 26, of 2000. And I 25 believe the document you have got in your hands
Page 87 1 & Davis. It's a fax, I believe, from Dewberry & 2 Davis. And attached to that is a letter to Kit 3 Smith, Mr. Johnny Jeffcoat, and Bob Coble. It's 4 from FEMA, Michael Buckle. And it purports to be 5 some questions and answers that were given at a 6 meeting that was on October the 4th, 2000. 7 A. Okay. 8 Q. Did you go to that meeting? 9 A. Was that the one in Atlanta? 10 Q. I don't know. I don't think so. 11 A. All right. Headquarters in 12 Washington. 13 Q. There's a list of people. If you look 14 on -- 15 A. I don't think that I did. 16 Q. See the 012987? I don't see you on 17 there. 18 A. Yeah. I don't ... I've looked through 19 this. I didn't see it and I don't believe that I 20 was there. 21 Q. Do you recall that FEMA issued a map, 22 that was published in the State newspaper, they 23 issued a map in August of '99, and they gave 24 public notice of the map in the State newspaper 25 in September of '99. And that the county, among	Page 89 1 right now was a meeting that took place after 2 that appeal resolution came out. 3 But what I wanted to ask you about was 4 a question No. 14, question No. 14, by Kit Smith, 5 that says how should Richland County use the 6 September 26, 2000 revised preliminary FIRM, 7 along with the effective FIRM, for the floodplain 8 management purposes? Kit Smith. See that? 9 A. Uh-huh. Yes. 10 Q. And FEMA's answer was according to the 11 NFIP presentation the community may use its 12 effective FIRM for floodplain management purposes 13 until FEMA issues a letter of final determination 14 finalizing the primary FIRM. 15 A. Preliminary FIRM. 16 Q. Excuse me, preliminary FIRM. 17 A. Yes. 18 Q. After that the community should use 19 the FIRM defined by the letter of final 20 determination as best available data from 21 floodplain management. As explained at the 22 meeting, there is a six-month period between the 23 date of the letter of final determination and the 24 effective date of the new FIRM. After the 25 six-month period flood insurance applications of

Page 106 1 it's got January 3rd '85, April 17th, '87, 2 December 5th, 1989, and January 19th, 1994. 3 A. Okay. 4 Q. And then this revision would have been 5 as of July 16th, 1995. 6 A. This revision? 7 Q. The document we're looking at right 8 now. On the first page it says -- 9 A. Oh, yeah, right. 10 Q. And what this is is prior history. 11 A. Right. 12 Q. Now, my question to you is that in all 13 of these prior FIRM revisions, January 3rd, '85, 14 April 17th, '87, December 5, '89, January 19th, 15 '94, none of them had the Manning levees in the 16 regulatory floodways do they? 17 A. I think that's correct. 18 Q. Now, and on none of these FIRMs did 19 FEMA recognize the Manning levees as providing 20 protection from the base flood. 21 A. That's right. They always showed the 22 floodplain area -- 23 Q. Behind the -- 24 A. -- protected by the levees as zone A. 25 Q. Floodplain?	Page 108 1 reduction of conveyance floodway? Is it method 2 4? 3 A. I don't know. 4 Q. Did anyone with the county, your 5 office, or anyone else with the county, check to 6 see if FEMA actually used method 4 on that equal 7 reduction of conveyance method to determine the 8 floodway for the Congaree River? 9 A. No. I say no. Nobody in my office 10 did or nobody that I ... 11 Q. Nobody that you were aware of. 12 A. No, that I was aware of. 13 Q. Were you aware that FEMA had a 14 geotechnical engineer take a look at these data 15 concerning these levees? 16 A. I can't say that I am. 17 Q. Okay. You never reviewed any reports 18 from a geotechnical engineer that FEMA utilized 19 to study these levees? 20 A. I have seen geotechnical reports, but 21 I wasn't aware that FEMA had contracted for it. 22 Q. Geotechnical reports were provided to 23 you by Lockwood Greene? 24 A. I think so, yes. 25 (PLF. EXH. 126, Levee profiles, was
Page 107 1 A. Floodplain. 2 Q. Okay. So that tells us that none of 3 these prior studies did FEMA recognize the levees 4 as certified levees -- 5 A. Right. 6 Q. -- providing protection from the base 7 level. 8 A. That's right. 9 Q. We talked earlier about the equal 10 reduction of conveyance floodway. Do you 11 remember that discussion that we had? 12 A. Yes. 13 Q. And that that document, FEMA 37, 14 required the study contractor to use that method 15 when setting a FIRM of floodway on a watercourse 16 that serves as the boundary between two 17 communities. 18 A. Right, I recall that. 19 Q. Now, are you familiar with, I think 20 you said you were generally familiar with the 21 HDC-2 hydrolic program that FEMA uses to 22 determine floodways. 23 A. Generally. 24 Q. Do you know which method under that 25 program was used to determine the so-called equal	Page 109 1 marked for identification.) 2 BY MR. GRIER: 3 Q. I'm going to hand you what has been 4 marked as Exhibit 126. Have you seen these, 5 looks like some levee profiles? 6 A. Cross-sections. 7 Q. Is it cross-sections here? 8 A. Yes. 9 Q. Have you seen this before? 10 A. Yes. 11 Q. And when did you see these before? 12 A. Maybe yesterday. 13 Q. Well, were these part of the 14 application that Lockwood Greene submitted to the 15 county for an application to improve the levees? 16 A. I don't know. These appear to just be 17 cross-sections of the existing levee. But I 18 don't know if they were submitted or not. 19 (PLF. EXH. 127, Letter dated 5/2/99, 20 was marked for identification.) 21 BY MR. GRIER: 22 Q. I'm going to show you a document 23 that's been marked as Exhibit 127. It's a letter 24 from S&ME to Lockwood Greene dated May 2nd, '99. 25 And the same question for you. Was this part of

28 (Pages 106 to 109)

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1 involved in any of the county's appeal or any of
 2 that?
 3 A. No, sir, none of that.
 4 (PLF. EXH. 125, Memorandum dated
 5 11/30/99, was marked for identification.)
 6 BY MR. GRIER:
 7 Q. Let me see 35. I show you what's been
 8 marked as Exhibit 125. The Bates number is
 9 DEF-00008146. And the second page is
 10 DEF-00008147. Then the next one is 8148, 8149,
 11 8150. I hand you Exhibit 125.
 12 A. Okay.
 13 Q. Is this a document that you have seen
 14 before?
 15 A. I don't believe so.
 16 MS. TAYLOR: I don't recall this
 17 being -- could have been.
 18 MR. GRIER: Do you want to talk about
 19 that?
 20 MS. BLACK: Yes.
 21 MS. TAYLOR: It was? Okay. My error.
 22 Yes, there were.
 23 BY MR. GRIER:
 24 Q. So you don't believe you've seen this.
 25 But look on the second page. Mr. Knudsen, who

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1 was Mr. Knudsen at that time?
 2 A. He was in our planning department.
 3 Q. Was he under you?
 4 A. No.
 5 Q. Okay. Sort of the middle of the page
 6 there, the second page, he says, my big questions
 7 at this time are these. The county, through its
 8 administrator, requested a delay because it did
 9 not agree with the floodway line. Now it has
 10 been changed back to essentially 1994 levels.
 11 How do we disagree with that finding? If we were
 12 to appeal would we basically appeal on public
 13 opinion or technical data?
 14 Now, did you have any knowledge of any
 15 technical data that the county possessed on which
 16 to base an appeal of the August 1999 flood map
 17 with FEMA?
 18 A. No.
 19 Q. And as I understand it Mr. McSwain
 20 didn't ask you to review any of the technical
 21 materials submitted by any appellant in
 22 September, October, November, December of 1999.
 23 A. No.
 24 Q. And you didn't otherwise review it on
 25 your own.

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1 A. Correct.
 2 Q. Now, did you have any discussions with
 3 anybody from the South Carolina Department of
 4 Natural Resources concerning the technical
 5 aspects of their appeal?
 6 A. Yes. Seemed like in some of the
 7 public meetings we went to with them that I had
 8 an opportunity to discuss some of it with
 9 basically the guy that did the model for them.
 10 Q. Would that have been Mr. Fontenal?
 11 A. No, I don't recognize that name.
 12 Q. Can you tell me his name?
 13 A. No. It seems like it was an Arab
 14 name.
 15 Q. Shadray?
 16 A. I don't know. That doesn't ring a
 17 bell either.
 18 Q. What meeting was this that you're
 19 talking about?
 20 A. I can't tell you exactly. Just some
 21 of the meetings that were organized to talk about
 22 the pros and cons of the appeals and how the
 23 models were developed and all that.
 24 Q. To do with FEMA? FEMA responsive
 25 meetings?

Page 97

1 A. I think we had a FEMA meeting and we
 2 had some, I think, just some local meetings, I
 3 believe.
 4 Q. Okay. Now are you familiar with --
 5 A. Is it Bud Bader?
 6 Q. -- Bud Bader? Okay. Are you familiar
 7 with this one-dimensional model called, I think,
 8 HEC-2?
 9 A. To a certain extent, yes.
 10 Q. All right. Are you familiar with the
 11 two-dimensional model?
 12 A. Not really. I think I have a
 13 comprehension of what it refers to but no.
 14 Q. Okay.
 15 A. I haven't done any.
 16 Q. Do you know whether or not FCD&R, or
 17 anybody else, submitted any two-dimensional
 18 models to FEMA in connection with an appeal from
 19 the August 1999 revised preliminary flood
 20 insurance rate map?
 21 A. No, I don't know.
 22 Q. You don't know?
 23 A. Don't know.
 24 Q. Now, did the county have anybody to
 25 verify the technical aspects of any of these

25 (Pages 94 to 97)

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 COLUMBIA VENTURE, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CP-40-8943R
7 RICHLAND COUNTY,
8 Defendant.
9

10 DEPOSITION OF: J. MILTON POPE
11 DATE: August 24, 2011
12 TIME: 9:44 A.M.
13
14 LOCATION: Law Offices of
15 McAngus Goudelock & Courie, LLC
16 1320 Main Street, 10th Floor
17 Columbia, SC
18
19 TAKEN BY: Counsel for the Plaintiff
20
21 REPORTED BY: LORI S. MORTGE,
22 Certified Court
23 Reporter, CCR
24
25

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Page 70 1 Q. And when it's a public hearing, you have 2 to invite comments from the public? Is that what 3 that means? 4 A. Yes. They have an opportunity on the 5 agenda to speak to the item that's actually on the 6 agenda. 7 (PLF. EXH. 152, E-mail to 8 brad.loar@dhs.gov from Mullen Taylor, 9 dated January 4, 2006, Bates Stamp 10 Numbers DEF-00004400 - DEF-00004401, was 11 marked for identification.) 12 BY MR. GRIER: 13 Q. Now, this is a memorandum from Mullen 14 Taylor -- or an e-mail, I guess, from Mullen Taylor 15 to Brad Loar, it looks like, with the Department of 16 Homeland Security, a copy going to Larry Smith and a 17 copy going to you, subject: Richland County, South 18 Carolina. 19 In the last paragraph there she said: 20 The first questions to answer are whether FEMA will 21 reinstate -- reinstitute, excuse me, the 22 promulgation of the 2001 Congaree River BFEs, and if 23 so, when. If FEMA is not planning to re-promulgate 24 the 2001 Congaree River BFEs, we ask that FEMA 25 promptly, in writing, provide the County with data	Page 72 1 Q. Is that correct? 2 A. Yes. 3 Q. Okay. So the regulatory floodway itself 4 is derived from the base flood elevation? 5 A. Yes. 6 Q. Okay. Now, did the County at this point 7 embrace the view that the Federal Judge had only 8 invalidated the BFEs and not the regulatory 9 floodway? 10 A. If I recall correctly, and as I 11 previously stated, I think we were trying to get 12 information to know exactly what we should be doing. 13 And that's why we were contacting FEMA, to get 14 information so we could make a determination for how 15 we regulated the floodplain area. 16 Q. All right. From your -- from what 17 you're saying right now, the County never said one 18 way or the other whether or not the Federal Judge 19 had invalidated the 2001 floodway; is that correct? 20 A. The County never said that? 21 Q. Never took the position that the Federal 22 Judge did not invalidate the 2001 floodway. In 23 other words, did the County take the position that 24 the 2001 floodway was still in effect after the 25 judge had issued her November 2005 order and
Page 71 1 to be used to regulate development in the Congaree 2 River floodplain. I suggest that we arrange a 3 conference call with appropriate FEMA and Richland 4 County representatives as soon as reasonably 5 possible to discuss these preliminary issues. 6 You notice she focuses on BFEs. Do you 7 know -- that's a base flood elevation; correct? 8 A. That's correct. 9 Q. Is it your understanding that base flood 10 elevation is something different from the regulatory 11 floodway? 12 A. Yes. 13 Q. Are the two related in your 14 understanding? 15 A. Are they related? 16 Q. Yeah. Is the regulatory floodway 17 determined by reference to the base flood elevation? 18 A. Could you restate the question? 19 Q. Yeah. Aren't the -- the regulatory 20 floodway, isn't it determined by reference to the 21 base flood elevations? If you look at the County 22 ordinances and FEMA's regs, I believe it defines the 23 regulatory floodway as being a one-foot rise over 24 the base flood elevations. 25 A. That's correct.	Page 73 1 judgment? 2 A. (No response.) 3 Q. Do you want me to say it again? 4 A. Yes. 5 Q. I probably didn't say it clearly enough. 6 In other words, did the County -- the judge, in her 7 order and judgment, vacate the 2001 base flood 8 elevation determinations? And if you look at the 9 judgment it says floodway. 10 But did the County take the position 11 that the 2001 regulatory floodway was still in 12 existence after November 2005? I'm talking about 13 2005/2006. 14 A. When you say take a position, if you 15 mean did the County actually take an official vote 16 or something like that, I can't say -- I can't 17 recall that we did. However, I guess my only 18 response to that is we were trying to get the 19 information to make a determination of exactly, from 20 a regulatory position, what authority that we -- 21 that we had in that area because of the order. 22 Q. All right. Let me -- let me ask it 23 again. As I understand what you just said, the 24 County Council never took a position on it as 25 Council. Did you, as administrator, take a position

19 (Pages 70 to 73)

Page 86 1 A. Seems to be, yes. 2 Q. Okay. You've been handed what's been 3 previously marked as Plaintiff's Exhibit 65 to the 4 deposition of Brenda Carter. And this is an e-mail 5 from Harry Reed to Larry Smith, copy going to Brenda 6 Carter, Donny Phipps, Anna Almeida, subject: 7 Meeting Lisa Jones. 8 It says: Larry, per your request, I 9 have scheduled a meeting with Lisa Jones, Department 10 of Natural Resource for Thursday, May 25th, 2006 at 11 10:30 a.m. in your conference room. Thursday is the 12 only time this week she will be available. I have 13 confirmed this date and time with your receptionist. 14 Were you present at this meeting? 15 A. No, I don't -- I don't recall. 16 Q. Do you recall at some point there was a 17 decision made to seek a letter or map revision from 18 FEMA in connection with the vacation of the 2001 19 flood elevation determination by the Federal Court? 20 A. Yes. 21 Q. Tell me what you remember about that, if 22 you will. 23 A. What I recall is, there again, due to 24 the confusion what -- and because we could not get 25 information from FEMA, we sought some clarification	Page 88 1 Letter of Map Revision (LOMR) 2 07-04-1190P, et al., Bates Stamp Numbers 3 DEF-0002736 - DEF-0002752, was marked 4 for identification.) 5 BY MR. GRIER: 6 Q. Can you tell me what 153 is, Exhibit 7 153? 8 A. It is the LOMR. I guess I have to read 9 it first. (Reading.) 10 Q. Are you finished reading? 11 A. Yes. 12 Q. Take your time. Take your time. 13 A. (Reading.) 14 Q. All right. Now, this says in the last 15 paragraph: This LOMR is an attempt by Richland 16 County only (City of Columbia is not involved in 17 this LOMR) to restore the February 2002 base 18 floodplain elevation determinations for the Congaree 19 River. 20 Is that -- that was the purpose of this 21 LOMR? 22 A. Yes. 23 Q. Okay. And it has a copy of the judge's 24 order and it also has a letter to Mr. Maurstad from 25 Larry Smith and a letter back to Larry Smith, dated
Page 87 1 In the affirmative to kind of know where we stood 2 with the best available data. 3 Q. All right. Now, was -- this effort to 4 obtain a letter of map revision, the purpose of that 5 would have been what? 6 A. To get definitive information regarding 7 the best available data. 8 Q. Was the purpose of the letter -- they 9 call them LOMRs, L-O-M-R. Was -- the purpose of the 10 LOMR was to reinstate the 2001 base flood 11 elevations? 12 A. I think the purpose was to get 13 clarification. 14 Q. All right. Now, the -- who came up with 15 this idea of seeking a LOMR from FEMA? 16 A. If I recall correctly, it came out of a 17 series of meetings -- of staff meetings that we had 18 and thinking of the best possible ways that we could 19 have appropriate information for the County. 20 And this kind of goes back to the thing 21 we were talking about previously, is us not being 22 able to get adequate or timely information from 23 FEMA. And so, you know, we were thinking of ways 24 and -- in order to just get the best available data. 25 (PLF. EXH. 153, Document Entitled,	Page 89 1 August 30, 2006. In looking at Mr. Maurstad's 2 letter back to Larry Smith, and you're welcome to 3 look at the whole thing if you want to, but he says 4 in one, two -- the third paragraph down: Currently, 5 the parties to the lawsuit are participating in a 6 Fourth Circuit Court of Appeals mediation in an 7 effort to resolve the issues in the lawsuit. Since 8 this process is ongoing, and may definitively 9 resolve the matter if successful, there has been no 10 occasion for FEMA to take a formal action. If the 11 mediation fails to resolve the litigation, FEMA will 12 take other action as appropriate. 13 Do you see that? 14 A. Yes. 15 Q. Okay. So FEMA -- in all of your 16 conversations with FEMA or -- your conversation, I 17 mean the County's, your staff, communicating with 18 FEMA and they would have reported back to you what 19 they found out from FEMA or shown you e-mails they 20 had got from FEMA; correct? 21 A. Well, I would have been more than likely 22 briefed on things that I need to be briefed on. 23 Q. Right. And is it fair to say that you 24 couldn't get satisfactory information out of FEMA? 25 A. Yes.

23 (Pages 86 to 89)

Page 94 1 A. Mm-hmm. 2 Q. -- vacated the 2001 maps and reinstated 3 the 2000 -- the 1994/'95 maps. Was that perceived 4 as a problem in that the 1994/1995 maps Columbia 5 Venture levees were no longer in a regulatory 6 floodway? 7 A. Just my response to that is rather than 8 it being a problem of Columbia Venture, what we 9 wanted was the best available information to 10 regulate the floodway regardless of who the property 11 owner was. 12 Q. All right. Now -- 13 A. I mean, it wasn't anything -- from a 14 staff perspective, there was no inherent problem 15 with Columbia Venture. We just wanted the best 16 available information to be able to regulate the 17 floodway or floodplain. 18 Q. How did the -- why did you need a 19 moratorium if all you needed was the best available 20 information? Why did you need a moratorium on 21 construction within the Congaree floodplain? 22 A. We needed -- we needed the moratorium to 23 be able to get the best information that we could 24 get, answers to know actually how to -- how to move 25 forward.	Page 96 1 Of course, what we did not want to do, 2 of course, was to impact anyone inappropriately by a 3 decision. And since the moratorium was passed by 4 the Council, it allowed us additional time to seek 5 the best available information out there, to make 6 good public policy decision. 7 Q. Let me ask you this, I'm going to ask -- 8 was there any concern, from your standpoint or the 9 County's standpoint that you're aware of, that after 10 the Federal Court's order and judgment in November 11 of 2005 that Columbia Venture might ask for a permit 12 to improve the levees during that period of time 13 while the 1994/1995 maps were in place? Was that 14 any concern at all in the actions of the County? 15 A. It was a concern -- it was a concern of 16 ours of any property owner coming to the County 17 asking for permits and us not having the best 18 available information to be able to make a 19 determination on how to actually recommend or to 20 provide acceptance or whatnot on their permit. 21 Q. Well, isn't it fair to say that the most 22 visible property owner that might be applying for a 23 permit would be Columbia Venture? 24 A. Could have been, yes. 25 Q. Could have been?
Page 95 1 Q. Well, I'm a little bit confused here. 2 You had a flood map that was in place in 1994/1995 3 and you're asking FEMA what to do. And FEMA is not 4 concerned, apparently, because they don't respond, 5 they haven't sent you any e-mails or telephone 6 calls, threatened you with any action under the 7 National Flood Insurance Program. 8 A. Mm-hmm. 9 Q. And, yet, there's this concern, you 10 know, this effort to put a moratorium in place on 11 construction within the Congaree floodplain. 12 A. Mm-hmm. 13 Q. It looks like to me that the County was 14 concerned that somebody might have asked for a 15 permit to improve these levees. That wasn't part of 16 your consideration at all? 17 MR. LYDON: Objection. 18 BY MR. GRIER: 19 Q. You can answer it. 20 A. There were several questions in there, 21 but FEMA is the regulatory agency that we had to get 22 the information from. I mean, they were one of the 23 ones that actually could provide information to us, 24 to clarify the questions that we had. That's why we 25 sought that information.	Page 97 1 A. Yes. 2 Q. And I mean -- 3 A. As well as other property owners. 4 Q. In all fairness, that was a concern, was 5 it not? 6 MR. LYDON: Object to the form. 7 THE WITNESS: What was a concern? 8 BY MR. GRIER: 9 Q. That Columbia Venture might seek a 10 permit under the '95 -- '94/'95 map. 11 A. Like I said before, clearly any property 12 owner who owned property in that area could have 13 come to the County for a permit as well as Columbia 14 Venture. 15 Q. Okay. And Columbia Venture would be one 16 of the more visible ones on your radar, would it 17 not? 18 A. Yes, because of everything that was 19 going on, correct. You're exactly correct. 20 Q. You've been handed Plaintiff's Exhibit 21 68 from the deposition of Brenda Carter. And this 22 is an e-mail chain, and I want to direct your 23 attention to the next to the last page, from Donny 24 Phipps to you. 25 A. Next to last page?

25 (Pages 94 to 97)

Page 102 1 well, actually Joe Chapman of his office had a 2 conference that week with Doug Bellamo and Matt 3 Miller of FEMA, and he's reporting on what 4 Mr. Bellamo told Mr. Chapman. 5 Do you see that? 6 A. Yes. 7 Q. Okay. Watershed Concepts, they were the 8 engineering firm that was hired to process the LOMR; 9 correct? 10 A. Yes. Those consultants, they processed 11 the application. 12 Q. And then it says in the last sentence of 13 the first paragraph: Mr. Bellamo suggested that the 14 county hold off on doing anything concerning a LOMR 15 until the letter has been received and the contents 16 examined. 17 Do you see that? 18 A. Yes. 19 Q. All right. Did the County accede to 20 Mr. Bellamo's request and withhold going forward on 21 the LOMR until after they received the letter from 22 FEMA? 23 A. I don't recall if we did or we didn't. 24 Q. You've been handed what's been 25 previously marked as Exhibit 77 to the deposition of	Page 104 1 considering was one that would enact the 1995 BFEs 2 and at the same time enact the 2001 regulatory 3 floodway; correct? 4 A. Yes. 5 Q. That's what was being considered? 6 A. Yes. 7 Q. Okay. Now, you've been handed what's 8 been previously marked Plaintiff's Exhibit 78 to the 9 deposition of Brenda Carter. This was, again, from 10 Mullen Taylor to Mr. Durrin, and she says here: If 11 you recall, we discussed a while ago Richland 12 County's adoption of data in the aftermath of the 13 United States District Court order vacating the 14 Congaree River BFEs. For your reference, I've 15 attached our e-mail correspondence concerning this 16 issue. As we discussed, the County's plan is to 17 adopt the 1995 Congaree BFEs in accordance with the 18 court order, with the 2001 FIRMs still in force and 19 effect. The County is also preparing a LOMR to 20 bring the Congaree BFEs back in line with the 2001 21 FIRMs. In response to the County's first reading of 22 an ordinance to adopt the 1995 Congaree BFEs, 23 Columbia Venture sent the County a letter contending 24 that, one, (sic) the 2001 BFEs were vacated by the 25 court order, not just the Congaree BFEs; and, two,
Page 103 1 Brenda Carter. This is an e-mail from Mullen Taylor 2 to Mr. Robert Durrin of FEMA, and she is seeking 3 guidance here as to whether Richland County should 4 adopt the Congaree River floodplain. And she says 5 under that numbered Paragraph 1 there: The 2001 6 Congaree River BFEs are vacated, but the 2001 7 Congaree special flood hazard area, found in the 8 2001 FIRM, remains in effect for purposes of 9 floodplain management. 10 Do you see that? 11 A. Yes, sir. 12 Q. When do you recall that the County 13 formulated or crystallized that position that the 14 2001 -- 2002 flood hazard areas were still in effect 15 for purposes of floodplain management? 16 A. I don't recall specifically; however, it 17 must have been the determination of our legal 18 counsel and recommendation to our staff that that 19 was our position. 20 Q. Okay. Now, the -- so the ordinance that 21 was going to be considered by County Council would 22 be one that would reinstate the 2000 -- reinstate 23 the 1995 BFEs -- let me put that otherwise. Strike 24 that, let me start over. 25 The ordinance that the County was	Page 105 1 the 2001 FIRMs are also vacated for land use 2 purposes. I've attached this letter for your 3 review. Once again, I seek FEMA's guidance. If the 4 2001 BFEs are null and void, does that also mean 5 that the 2001 FIRMs are null and void? 6 And Mr. Durrin writes back: I have 7 forwarded your EMAIL to FEMA headquarter -- HQ, I 8 assume that's headquarters -- for support. I've 9 asked, at this point, about contacting you directly 10 with FEMA legal staff. Since I'm not imminently 11 familiar with the Congaree River issues, and the 12 legal resolution are being -- and legal resolutions 13 are being explored, I think it best to involve legal 14 staff that have that familiarity and aptitude. 15 Now, to your knowledge did Mr. Durrin or 16 anyone else from FEMA get back and advise you 17 concerning the questions put to FEMA by Ms. Taylor 18 in her e-mail dated November 14th, 2006? 19 A. No, not that I recall. 20 Q. And Ms. Taylor, in this e-mail, she 21 outlines the strategy, does she not, that is, to 22 adopt the 1995 BFEs to retain the 2001 FIRMs and at 23 the same time apply for a LOMR to reinstate the 2001 24 BFEs? That was the plan, was it not? 25 A. Yes.

27 (Pages 102 to 105)

Page 106 1 Q. I'm going to refer to your -- you've 2 been handed an exhibit -- Plaintiff's Exhibit 96 to 3 the deposition of Brenda Carter. And this was, 4 again, an e-mail chain and the first one there is 5 from Mullen Taylor to Larry Smith, subject RE: 6 Status Report from Richland County LOMR, April 9, 7 2007. Thanks. FYI, Lynn Keating -- Keaten -- 8 Keating called me earlier this afternoon wanting a 9 copy of the August 30th letter from FEMA asap. She 10 said something about Damon Jeter asking for it and a 11 Columbia Venture person physically present at the 12 County. I emailed her the letter. 13 Okay. Who is Lynn Keating? 14 A. She's my executive assistant. 15 Q. Okay. Did Ms. Keating tell you about 16 Mr. Jeter asking for a copy of this letter and a -- 17 a person from Columbia Venture -- Columbia Venture 18 physically being present at the County? 19 A. I don't recall that. 20 Q. You don't recall that? 21 A. Her mentioning that to me. 22 Q. Was there any concern about keeping the 23 County's efforts to obtain a LOMR kind of secret 24 from Columbia Venture? 25 A. No.	Page 108 1 Q. Is it your understanding that the way 2 they found out about it was through FEMA and 3 mediation with FEMA? 4 A. I can't... 5 Q. You don't recall that? 6 A. Yeah. 7 Q. Well, let me show you -- 8 A. Of course, all of our Council members 9 knew we were submitting it. 10 Q. All of your Council members in executive 11 session? 12 A. Yes. 13 Q. And they're expected not to disclose 14 what goes on in executive session to members of the 15 public? 16 A. They are expected as I mentioned before; 17 however, they have to judge themselves by their own 18 protocol as to if they abide by that or not. 19 Q. And, of course, we saw earlier that 20 Mr. Pearce felt free to disclose to others outside 21 of County Council matters that were discussed during 22 the executive session? 23 A. Evidently, yes, sir. You're exactly 24 correct. 25 Q. Now, you've been handed that document --
Page 107 1 Q. I think you've already indicated it was 2 discussed at executive session and it was not really 3 discussed in open session, was it? 4 A. That's correct, mm-hmm. 5 Q. And if it was discussed in executive 6 session, the public would not generally be aware? 7 A. That's correct. 8 Q. That the County was seeking a LOMR? 9 A. That's correct. That's correct. 10 However, from -- If I recall back at that time we 11 know that when, of course, any time when a local 12 government gets a letter of map revision, I mean, 13 that just happens -- I mean, it's not every day but 14 it happens pretty regularly, that actually in the 15 process it is actually published and becomes a 16 public document. So, I mean, all of the reporting 17 and that stuff would happen actually -- when it's 18 actually submitted. 19 Q. Do you recall that Columbia Venture 20 didn't find out about the County's efforts to obtain 21 a LOMR until sometime in 2007? 22 A. Not specifically. I know that there was 23 some mention or something that they may have been -- 24 if I recall correctly, they were upset about the 25 County submitting an application for the LOMR.	Page 109 1 what's the exhibit number on there? 2 A. Eighty. 3 Q. All right. And if you will look at 4 the -- let me see that a minute. 5 A. (Tendering.) 6 Q. (Reading.) Do you see at the bottom 7 there, Number 5? 8 A. The bottom? 9 Q. Yeah. Page Number -- I mean, five 10 things, one, two, three, four, five. I -- let me 11 see it -- yeah. The page number is 4474. It says 12 for LOMR request, does this request require property 13 owner notification and acceptance of BFE increases? 14 And it's got -- somebody's checked no in there. Do 15 you know who checked that no box? 16 A. Who checked that? 17 Q. Yes. 18 A. That would have been our -- our 19 consultants who worked on behalf of the County to 20 submit the application. 21 Q. It was signed by -- if you look at the 22 last page it was signed by Harry Reed and your 23 consultant, was it not? 24 A. Yes, mm-hmm. 25 Q. Okay. Now, you say that eventually the

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Page 110	Page 112
1 LOMR would have been published? 2 A. Yes, sir. 3 Q. Now -- 4 A. Once it goes to -- that's my 5 understanding. 6 Q. But at this point the consultant or 7 Harry Reed or whoever checked the box where you 8 didn't have to go notify property owners that you 9 were applying for this LOMR; correct? 10 A. Well, what it says is this does not 11 require notification and acceptance of the BFE 12 increases. 13 Q. Right. And so it was -- the County was 14 proceeding with this LOMR at this time without 15 having notified the property owners that the County 16 was, in fact, applying for this LOMR to reinstate 17 the 2001 base flood elevations; correct? 18 A. Okay. The way I read that is that 19 wasn't a requirement. 20 Q. And you didn't, in fact, do it? 21 A. No. 22 Q. Now, just to kind of short-circuit 23 things here, is it your recollection that FEMA came 24 back eventually and said you couldn't do what you 25 were trying to do with a LOMR, you needed a physical	1 original one is from you to Damon Jeter, copy to 2 Larry Smith, Subject FEMA, importance high, per your 3 request, J. Milton Pope. At the top it's from Larry 4 Smith to Elizabeth McLean. 5 Who is Elizabeth McLean? 6 A. She is a staff attorney in the County 7 Attorney's office. 8 Q. Importance high. Mr. Jeter was asking 9 for these letters? 10 A. Yes, that seems to be the indication 11 from my e-mail. 12 Q. Had he not seen them before? 13 A. The documents? 14 Q. Yes. The letters themselves. Had he 15 not -- he was a member of Council. Had he not been 16 briefed on all this? 17 A. Oh, yes. I'm sure he's been briefed, 18 but he wanted a copy for whatever his reasons were. 19 Q. You don't know why he was asking for 20 them at that time? 21 A. No, I don't recall. 22 Q. Okay. You have been handed what's 23 previously been marked as Plaintiff's Exhibit 100 in 24 the deposition of Brenda Carter. You've probably 25 seen this before. This is a letter from Reverend
Page 111	Page 113
1 map revision in order to accomplish what you were 2 trying to do? 3 A. I believe that was the case. 4 Q. And that the physical map revision would 5 require a full blown publication in the Federal 6 Register and in the newspaper? 7 A. That's still my understanding, that's 8 correct. 9 Q. And would require a 90-day comment 10 period and appeal period? 11 A. Yes. 12 Q. So reinstating the 2001 BFEs by LOMR, 13 according to FEMA, would not -- would not work and 14 you need a letter of map revision -- physical -- 15 letter of physical map revision; correct? 16 A. Yes. 17 Q. And that would require all that public 18 notice and appeal and comment period. 19 (PLF. EXH. 154, E-mail to Damon 20 Jeter from Milton Pope, dated April 10, 21 2007, et al., Bates Stamp Numbers 22 DEF-00004643 - DEF-00004647, was marked 23 for identification.) 24 BY MR. GRIER: 25 Q. Okay. 154, this was an e-mail -- the	1 Neal to you? 2 A. (Reading.) Yes. 3 Q. And dated October 9, 2007. And is it 4 fair to say that Reverend Neal was somewhat 5 concerned that the Council in three public 6 sessions -- yeah, public sessions -- three readings, 7 one public session had enacted an ordinance to 8 reinstate the 1995 base flood elevations in the 2001 9 floodway and then by LOMR they were seeking to sort 10 of undo what they had done and replace the 1995 BFEs 11 with the 2001 BFEs by LOMR, which was not done with 12 three readings and a public hearing -- 13 MS. TAYLOR: Object as to form. 14 MR. GRIER: Yeah, I hadn't finished. 15 MS. TAYLOR: I still object to the form. 16 BY MR. GRIER: 17 Q. And that he was concerned that the 18 County had enacted something through public readings 19 and a public hearing and they were going to undo it 20 with a LOMR that did not involve that same process? 21 Was that his concern? 22 A. It seems from the letter that he's 23 concerned about applying for the revision of the 24 LOMR. 25 Q. Okay. Isn't that part of his concern,

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Page 114 1 that the 1995 BFEs were done through three readings, 2 a public hearing, and then they were going to be, in 3 effect, undone without going through that same 4 process? 5 A. I don't know if that was his -- what I 6 recall about -- this is if my recollection serves me 7 correctly, I was -- I guess what he's referring to 8 is this meeting with the members of the committee. 9 If I recall correctly I was asked by one of my 10 Council members, who was actually Council Member 11 Bernice Scott, to attend this luncheon with -- with 12 these folks. I attended that meeting per her 13 request, and then I guess I received this follow-up 14 letter after that. 15 Q. Okay. Now, he was concerned -- he 16 wanted -- is it fair to say that he wanted an 17 additional public hearing input on this LOMR? 18 MS. TAYLOR: Object as to form. 19 THE WITNESS: Seems to be -- 20 BY MR. GRIER: 21 Q. Is that what he says here? 22 A. Seems to be, yes. 23 Q. In fact, he says if you find that no 24 formal vote was taken, he wants you to notify FEMA 25 that you are withdrawing -- I ask that you	Page 116 1 because it was another entity deciding those. 2 Q. All right. Did you have any discussions 3 with anyone about approaching the Attorney General 4 to intervene and oppose the annexation -- annexation 5 by Cayce of a large portion of Columbia Venture's 6 property? 7 A. No. Not on our part, no. 8 Q. I think you mentioned earlier that you 9 were familiar with this Southern Environmental Law 10 Center and the fact they were representing 11 intervenors in the action opposing Columbia Venture 12 in the Federal litigation with FEMA? 13 A. Yes, I was aware of that. 14 Q. Okay. And I think -- maybe you've said 15 this, maybe not, but you were aware Brian Holman was 16 a lawyer working for the Southern Environmental Law 17 Center? 18 A. Yes. 19 Q. Did you ever learn that Kit Smith, a 20 member of County Council, was also a board member of 21 the Southern Environmental Law Center? 22 A. I think someone -- I may have generally 23 understood that. 24 Q. When did you learn that? 25 A. I don't know. Sometime in that process.
Page 115 1 immediately notify FEMA that the County is 2 withdrawing its LOMR application in order to gain 3 additional public input. 4 He says that, does he not? 5 A. That's what the letter says. 6 Q. All right. Do you recall, in December 7 of 2007, that the City of Cayce annexed a large 8 portion of Columbia Venture's property? 9 A. Yes. 10 Q. All right. And do you recall any 11 discussions with any members of your staff and 12 County Council concerning that annexation? 13 A. I certainly discussed that matter with 14 members of my staff, yes. 15 Q. Okay. And were there concerns that once 16 the property had been annexed into City of Cayce 17 that Columbia Venture may be able to improve -- make 18 physical improvements to the levees and get them 19 certified under the FEMA standards? 20 A. I think what our initial concern was is 21 that we had another political subdivision that was 22 actually -- and those citizens were still, however, 23 Richland County residents. And what had been the 24 County's policies before could be somewhat different 25 in us not having the ability to manage those things	Page 117 1 Q. Did you ever have a conversation with 2 her about that, whether that might pose a conflict 3 of interest for her as a member of the Richland 4 County Council? 5 A. No. 6 Q. Now -- 7 A. In fact, I didn't know if it was 8 actually true or not. 9 Q. You never asked her? 10 A. No. 11 Q. Do you know who told you about it? 12 A. No, and I don't know if anyone told me. 13 It just may have been in conversation with someone 14 saying that. 15 Q. All right. And did you know -- did you 16 ever learn that Kit Smith was not only a board 17 member but also on the litigation approval committee 18 of the Southern Environmental Law Center? 19 A. No, I don't think I knew that. 20 Q. And from November of 2005 -- (reading.) 21 From November of 2005 until April 29th, 2008 -- 22 MR. GRIER: Let me strike that and start 23 over. 24 (PLF. EXH. 155, E-mail to Annie Stafford 25 from KitSalley@aol.com, dated January

30 (Pages 114 to 117)

Page 118 1 14, 2008, et al., Bates Stamp Numbers 2 Smith 031 - Smith 032, was marked for 3 identification.) 4 BY MR. GRIER: 5 Q. Okay. You've been handed what's been 6 marked as 155. This is an e-mail chain, and I want 7 to refer you to the e-mail from -- looks like Blan 8 Holman, says -- see that in a message dated 9 1/14/2008, 9:44? 10 A. Yes. 11 Q. a.m. Eastern Standard Time Blan -- I 12 think that's Blan Holman's e-mail address writes -- 13 do you see that? 14 A. Yes. 15 Q. Okay. And see the P.S. right under his 16 name Blan? Do you see that? 17 A. Yes. 18 Q. So P.S. This past Friday, we filed a 19 motion with Judge Seymour to stay her order, the one 20 vacating the floodway, pending our appeal to the 21 Fourth Circuit. I'll send it to Mullen Taylor. 22 I'll explain it in full detail Friday. 23 Now, do you recall that at on or about 24 the date of this e-mail here the Intervenor, in the 25 Federal suit that Columbia Venture had with FEMA,	Page 120 1 lunch? 2 (A luncheon recess transpired.) 3 BY MR. GRIER: 4 Q. Mr. Pope, we're back from lunch. We saw 5 from this Deposition Exhibit 4 to the deposition of 6 Mr. McSwain that -- the last sentence: The 7 Administrator postpones permit approvals until after 8 the flood maps are finalized. 9 And my recollection in the deposition of 10 Ralph Pearson, the engineer, he testified that he 11 was not going to grant a permit while the flood 12 mapping was ongoing until someone directed him to do 13 so -- unless someone directed him to do so. 14 My question to you is did anybody 15 suggest to you that you, as the County 16 Administrator, simply say we're not going to issue 17 any permits after Judge Seymour's order until that 18 matter is cleared up rather than passing a formal 19 moratorium of Council? 20 A. Could you restate your question again, 21 please? 22 Q. Yeah. In other words, Mr. McSwain, 23 according to this chronology in the newspaper 24 articles we looked at, made a decision that the 25 County would not issue any permits while the flood
Page 119 1 filed a motion to stay Judge Seymour's order? Are 2 you familiar with that? 3 A. Not specifically, but -- not 4 specifically. 5 Q. Okay. And from November of 2005, when 6 Judge Seymour signed an order and entered the 7 judgment, through December of 2007, to your 8 knowledge did the Intervenor file a motion to 9 stay -- in the Federal Court to stay Judge Seymour's 10 order? 11 A. Not to my knowledge. 12 Q. Not to your knowledge. Okay. And 13 during that period, November of 2005 through 14 December of 2007, Columbia Venture's property was 15 within the corporate limits of Richland County, was 16 it not? 17 A. Yes. 18 Q. Okay. And after the annexation became 19 effective, it was no longer within the corporate 20 limits of Richland County but within the corporate 21 limits of the City of Cayce; is that correct? 22 A. It was still in Richland County, but in 23 the political subdivision of the City of Cayce. 24 MR. GRIER: That's correct. Thanks for 25 that clarification. Okay. You want to break for	Page 121 1 mapping was ongoing. And in the deposition of 2 Mr. Ralph Pearson, the engineer, he said he wouldn't 3 issue any permits while the flood mapping was 4 ongoing unless someone directed him to do so. 5 And my question is did -- after Judge 6 Seymour issued her order did anybody suggest that 7 you follow that same course of action to simply say 8 the Council is not going to issue any permits until 9 the issues raised by Judge Seymour are cleared up? 10 A. Well, actually, the official action of 11 the Council with the moratorium basically did just 12 that. 13 Q. Yeah. My question was, though, did 14 someone suggest that you, simply as the County 15 Administrator, by edict -- 16 A. You mean just solely as the County 17 Administrator? 18 Q. Yeah, as -- 19 A. No. 20 Q. Say we're not going -- the County is not 21 going to issue any permits until these issues are 22 cleared up, rather than going through the formal 23 process of enacting moratoria? 24 A. No. 25 Q. Nobody suggested that. Okay. Now, is

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Page 122 1 anybody -- any property owner in the Congaree 2 floodplain that was subject to the moratoria that 3 you can think of right now, sitting here, that the 4 County might have been -- other than Columbia 5 Venture that might -- the County might be concerned 6 about would seek a permit under the '95 Flood 7 Insurance Rate Map? 8 A. I can't think of any right off. 9 Q. Okay. 10 A. Not specifically. 11 Q. Now, would you agree with me that the 12 purpose of a LOMR is to seek a revision of a flood 13 map and it's not essentially a vehicle to obtain 14 information? 15 A. Restate the question again. 16 Q. Yeah. Would you agree with me the 17 purpose of a LOMR is not to seek information but, 18 rather, to seek a change in a flood map -- a 19 revision in a flood map? 20 A. Yes. 21 Q. Now, we've talked a little bit about the 22 executive privilege and the individual members of 23 Council and how they might waive the privilege for 24 their own purposes for themselves. Is that sort of 25 your understanding that a Council member could waive	Page 124 1 moving equipment being physically present on top of 2 the levees? 3 A. No, I don't recall. 4 Q. Did you ever meet with Bob Hughes? 5 A. Yes, I had a meeting -- I can't recall 6 specifically when it was. I think he maybe came by 7 and introduced himself or something like that, but I 8 think so. 9 Q. Okay. Any substantive issues discussed? 10 Did he talk about his plans that he wanted to 11 accomplish once he had taken over sort of the 12 management with the Columbia Venture project? 13 A. Not specifically. I think it was just a 14 general meeting. 15 Q. And do you just recall one meeting or 16 more than one? 17 A. Just one. 18 Q. Just one? 19 A. Mm-hmm. 20 (PLF. EXH. 156, Revised Preliminary Map 21 and Appeal Resolution for Congaree River 22 in Richland and Lexington Counties, SC, 23 dated September 26, 2000, Bates Stamp 24 Numbers DEF-00001635 - DEF-00001670, was 25 marked for identification.)
Page 123 1 the privilege for his or herself but not necessarily 2 for the entire Council? 3 MR. LYDON: Object to the form. 4 THE WITNESS: I don't know if they could 5 actually waive the privilege. As I understand in 6 Robert's Rules, those matters discussed in executive 7 session are matters that are privileged information. 8 BY MR. GRIER: 9 Q. And they're not supposed to be 10 discussing those matters outside of the meetings of 11 Council, are they? 12 A. That is my understanding. 13 Q. But if they do, I think you indicated 14 that that's something that they -- you know, they 15 have to decide for themselves? 16 A. Yes, sir. 17 Q. And I suppose from time to time members 18 of Council do that on occasion, that they either 19 tell the press or somebody else about matters that 20 were discussed in executive session; is that a fair 21 statement? 22 A. That appears to be the case. 23 Q. From time to time. Now, do you ever 24 recall having a conversation with Dave Manning or 25 Bob Hughes or anyone else about items of earth	Page 125 1 BY MR. GRIER: 2 Q. I'm going to hand you what has been 3 marked as Exhibit 156 to your deposition. Do you 4 recognize this as the September 26, 2000 appeal 5 resolution that was issued by FEMA? 6 A. (Reading.) Not specifically, no. 7 Q. Did you ever have occasion to review 8 this document? 9 A. I don't recall that. 10 Q. Okay. Well, this is the document that 11 FEMA released, along with the Revised Preliminary 12 Flood Insurance Rate Map, Flood Insurance Studies, 13 dated September 26, 2000 which moved the floodway 14 from the landward toe of the levees inward to 15 include the lavish relief bridge on the I-77. 16 And in this report, if you look at 17 the geotechnical investigation on 1652, FEMA 18 concludes -- without going into a lot of detail, but 19 they conclude in here that these levees, as they 20 presently exist, are likely to fail during the 21 occurrence of a base flood, which is a 100-year 22 flood. 23 And if FEMA is correct in that, then 24 would you agree that there's a risk that these 25 levees would fail in the event of a 100-year flood?

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Page 174 1 EXAMINATION 2 BY MR. GRIER: 3 Q. Mr. Pope, you were asked about these 4 various Minutes of the County Council, Exhibits 148, 5 147, 144, 149 and 150. And you were asked some 6 questions about subjects that might have been 7 discussed in executive session. Do you recall that? 8 A. Yes. 9 Q. And some of the agendas and the Minutes 10 indicate that the litigation involving Columbia 11 Venture and FEMA was discussed in executive session. 12 Do you recall that? 13 A. Yes. 14 Q. Is it your recollection that in 15 discussing the litigation between Columbia Venture 16 and FEMA in Executive Session that the issues -- or 17 the subjects of the LOMR and the subjects of the 18 moratoria and the subjects of the ordinance that was 19 passed on December 5, or had a final reading on 20 December 5, 2005, were discussed? 21 A. They could have been. 22 Q. They could have been. Under the context 23 of discussing the subject of the litigation of 24 Columbia Venture versus FEMA? 25 A. Could they have been discussed?	Page 176 1 Mizzell, Chair and the Members of Richland County 2 Council. I believe your testimony was that these 3 letters would have been referred to counsel for the 4 County for analysis, and the analysis received from 5 counsel for the County would have been discussed 6 with the Council members in executive session. I 7 believe that is what you said? 8 A. I believe what was said was this would 9 have been something that the County Attorney would 10 have been involved in and could have been discussed 11 in executive session. 12 Q. Okay. But you don't know whether it was 13 or not, you just think it could have been? 14 A. Yes. 15 Q. Okay. And we know that despite the 16 various arguments that are advanced in these two 17 exhibits, 145 and 146, the County Council gave a 18 third reading, a public hearing and a final reading 19 on December the 5th, 2005 of the ordinance that 20 adopted the 1995 base flood elevations in the 2001 21 floodway; correct? 22 A. I believe that was in -- what date did 23 you say it was? 24 Q. Did I say -- wasn't it 2006? I think I 25 said 2005, sorry.
Page 175 1 Q. Yes. 2 A. Could have been. 3 Q. Okay. So when the Council was 4 discussing -- just to make sure I'm clear on this. 5 When they were discussing an issue of the subject 6 matter of the litigation with FEMA and Columbia 7 Venture, there may have also been a discussion of 8 the various moratoria that the County adopted and 9 the LOMR process that the County was engaged in and, 10 also, the statute that was ultimately -- had a final 11 reading on December 5, 2005 adopting the 1995 base 12 flood elevations and the 2001 floodway. Those 13 subjects could have also been discussed under the 14 subject litigation Columbia Venture versus FEMA? 15 A. Those things could have been discussed. 16 Q. Okay. Now, have you got 145 in front of 17 you? Take a look at that. 145 and 146. 18 A. You said 146? 19 Q. 146 and 145, the two letters from my law 20 firm -- 21 A. Okay. I have those. 22 Q. -- to the County. One is -- 146 is to 23 Mitch Willoughby -- 24 A. Right. 25 Q. -- and 145 is to the County -- Tony	Page 177 1 A. Yes. 2 Q. So despite the arguments that were put 3 forth here, the County went ahead and adopted that 4 particular ordinance that adopted the 1995 base 5 flood elevations and the 2001 floodway; correct? 6 A. Yeah. 7 Q. Now, are you aware that the 1995 BFEs 8 were higher than the BFEs in the 2001 Flood 9 Insurance Rate Map/Flood Insurance Study? 10 A. I can't say that I specifically recall 11 that. 12 Q. Okay. Now, looking at -- look at 13 Exhibit 145, if you would. 14 A. Okay. 15 Q. You see the one, two, three -- third 16 paragraph, first sentence? 17 A. Yes. 18 Q. The regulatory floodway under the 19 National -- it says NFIP, I believe that stands for 20 National Flood Insurance Program, is derived from 21 the base flood elevation BFE and it's based on a 22 designated rise in the BFE. 23 That's a true statement, is it not, that 24 one sentence? 25 A. (Reading.) I would assume that's

45 (Pages 174 to 177)

Page 194 1 Q. That Judge Seymour had, in fact, 2 invalidated not only the base flood elevations but 3 the floodway -- the 2001 base flood elevations as 4 well as the 2001 floodway? 5 A. I'm sorry. Are you asking me is the 6 letter consistent with -- 7 Q. No. My question was these letters, 146 8 and 145, advance an argument that Judge Seymour 9 invalidated not the only 2001 BFEs but also the 2001 10 regulatory floodway, do they not? 11 A. Yes, they do advance the argument. 12 Q. And that, in fact, turned out to be 13 accurate; is that correct? 14 A. The vacation of the maps? 15 Q. She -- Judge Seymour, in fact, 16 invalidated both the floodway and the BFEs; correct? 17 A. Yes, I believe so. 18 MR. GRIER: Okay. That's all. 19 MS. TAYLOR: I have a couple of more. 20 EXAMINATION 21 BY MS. TAYLOR: 22 Q. Mr. Pope, are you aware that in 2007 23 there was a text order by the United States District 24 Court that clarified that the 2005 Order of Vacatur 25 also vacated the flood maps?	Page 196 1 the Court? 2 A. Yes, in the middle paragraph? 3 Q. Yeah. It says: The Court, having heard 4 and granted the Plaintiff's motion to vacate base 5 flood elevation -- base -- final base flood 6 elevations and floodway determinations for the 7 Congaree River floodplain. 8 Do you see that? 9 A. Yes, I do. 10 Q. Okay. Is there any ambiguity in that, 11 in your mind, that she not only vacated the base 12 flood elevation but also the floodway? 13 A. (Reading.) Could you repeat -- well, 14 just repeat. 15 Q. Doesn't she say the Court having heard 16 and granted Plaintiff's motion to vacate the 2001 17 final base flood elevations and floodway 18 determinations? 19 A. Yes. That's what it reads, yes. 20 Q. And it says not only final base flood 21 elevation but also floodway determinations. And 22 it's dated what, sir? 23 A. The date of this? 24 Q. Yes. Down at the bottom. 25 A. This says November 18, 2005.
Page 195 1 A. Yes. 2 MR. GRIER: Object to the form of the 3 question. 4 BY MS. TAYLOR: 5 Q. Wouldn't that indicate to you that there 6 may have been some confusion surrounding what the 7 impact of the order of the judgment in 2005? 8 MR. GRIER: Object to the form of the 9 question. 10 THE WITNESS: Yes. 11 BY MS. TAYLOR: 12 Q. Are you aware that the Fourth Circuit 13 Court of Appeals reversed the decision by the 14 District Court -- the District Court's decision that 15 the flood maps and the BFEs were vacated? 16 A. Yes. 17 MS. TAYLOR: No further questions. 18 EXAMINATION 19 BY MR. GRIER: 20 Q. Let me direct your attention to 21 Plaintiff's Exhibit -- what's been previously marked 22 as Plaintiff's Exhibit 62. This is a judgment in a 23 civil case. 24 A. Yes. 25 Q. And you see where it says decision by	Page 197 1 MR. GRIER: Thank you, sir. 2 MS. TAYLOR: One last question here, 3 Mr. Pope. 4 EXAMINATION 5 BY MS. TAYLOR: 6 Q. Dealing with the same Plaintiff's 7 Exhibit 62, did you not testify earlier that you had 8 never seen this document before? 9 A. No. 10 Q. And isn't -- 11 A. No, I haven't seen. 12 Q. Until -- 13 A. Yeah. 14 Q. Did you see this document in 2005? 15 A. No. 16 Q. Did you see this document in 2006? 17 A. No. 18 Q. Did you see this document in 2007? 19 A. No. 20 Q. Would this be a document that you would 21 normally allow your legal counsel to determine its 22 significance? 23 A. That would be expected, yes. 24 MS. TAYLOR: I have no further 25 questions.

50 (Pages 194 to 197)

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 COLUMBIA VENTURE, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CP-40-8943R
7 RICHLAND COUNTY,
8 Defendant.
9

10 DEPOSITION OF: HARRY L. REED

11 DATE: September 8, 2011

12 TIME: 9:42 A.M.

13 LOCATION: Law Offices of
14 McAngus Goudelock & Courie, LLC
15 1320 Main Street, 10th Floor
Columbia, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: LORI S. MORTGE,
18 Certified Court
Reporter, CCR
19

20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

A. WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO

Page 126 1 to make sure everything is done. 2 Q. Who submitted this LOMR? 3 A. After it came to my office, I believe 4 I'm the one that sent it off. If I signed off on 5 it, I put it in the mail. 6 Q. Okay. So would you have been the person 7 that made the submittal? 8 A. No, no. 9 Q. Okay. Tell me who made the submittal. 10 A. I'm not sure who initiated the 11 submittal, who said we need to do a LOMR. What I'm 12 saying is that once the decision has been made and 13 everything has been put together and is sent to my 14 office to go to FEMA, I just sign off on it to make 15 sure I have seen it because, as a rule of thumb with 16 FEMA, if the correct official has not seen it then 17 they may not review it because they don't want a 18 person to go around the county to submit something 19 without their knowledge. 20 Q. So would somebody at the County have the 21 responsibility for making sure that these boxes were 22 all checked appropriately and that all of the 23 information contained in this document was correct? 24 A. To my knowledge, I would think Watershed 25 Concepts would have done that.	Page 128 1 to go across -- mine would be the final. So when I 2 sign the form, that means everything is okay. 3 Q. Okay. Who all reviews it? The County 4 Engineer, does he review it? 5 A. I would think the County Engineer would 6 review it. 7 Q. What other offices within Richland 8 County would review the LOMR? 9 A. Probably the County Engineer's office. 10 Q. Is that all? 11 A. Yeah. I don't see what other department 12 it needs to go to. I mean, it doesn't go to 13 building inspections. 14 Q. If you look on the first page of it, it 15 says to Ms. Brenda L. Carter. And I think you 16 testified earlier that she -- 17 A. On the front? 18 Q. The very front page, yes, sir. You 19 testified she was your supervisor at one point in 20 time. Was she your supervisor as of December 5th, 21 2006? 22 A. Mm-hmm. Yes. 23 Q. Now, I see that you signed it on 24 December 7th, 2006. Did you put it in the mail to 25 FEMA soon after you signed it?
Page 127 1 Q. Okay. If you'll flip over to the last 2 page of the document, ends in 4476. 3 A. 76. 4 Q. Mm-hmm. Last page. 5 A. Okay. 6 Q. And I see where you've signed it two 7 times. 8 A. Mm-hmm. 9 Q. I'm looking right below your first 10 signature and above your second signature. 11 A. Mm-hmm. 12 Q. It says: As the community official 13 responsible for floodplain management, I hereby 14 acknowledge that we have received and reviewed this 15 Letter of Map Revision (LOMR) or conditional LOMR 16 request. Based upon the community's review, we find 17 the completed or proposed project meets or is 18 designed to meet all of the community floodplain 19 management requirements. 20 A. Mm-hmm. 21 Q. So when it says we have received and 22 reviewed this Letter of Map Revision, who is the we? 23 Is that just you, or is that other people within 24 Richland County? 25 A. That's other. Whoever -- it's supposed	Page 129 1 A. I believe I did. 2 Q. Okay. Now, we spoke a little while ago 3 about the ordinance dated December 5th, 2006 that is 4 Exhibit 81. 5 A. Eighty-one? 6 Q. Yes, sir. It's a one-page ordinance -- 7 there you go. Got it? 8 A. Mm-hmm. 9 Q. And I think we established earlier that 10 this ordinance applied the July '95 base flood 11 elevation determinations for the Congaree River, but 12 also the 2002 Flood Insurance Rate Map for the 13 floodway boundaries; is that correct? 14 A. Say that again. 15 Q. I think we discussed earlier that this 16 ordinance of December 5th, 2006 adopted the July 17 1995 base flood elevations for the Congaree River. 18 A. Uh-huh. Okay. 19 Q. And it also adopted the 2002 floodway 20 boundary determinations; is that correct? 21 A. Yes. 22 Q. Okay. And I believe we also discussed 23 earlier that the LOMR was seeking to adopt the 24 2001/2002 base flood elevations for the Congaree 25 River; is that correct?

33 (Pages 126 to 129)

A. WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 COLUMBIA VENTURE, LLC,
5 Plaintiff,
6 vs. CASE NO. 2010-CP-40-8943R
7 RICHLAND COUNTY,
8 Defendant.

9 VOLUME I

10 DEPOSITION OF: KATHRYN S. SMITH
11 DATE: May 17, 2011
12 TIME: 9:10 A.M.
13
14 LOCATION: Law Offices of
15 McAngus Goudelock & Courie, LLC
16 1320 Main Street, 10th Floor
17 Columbia, SC
18
19
20
21
22
23
24
25

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24	Columbia, SC	Greenville, SC	Charlotte, NC
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Page 30 1 A. Yes. 2 Q. Do you see that under the heading for 3 Others Present that your name is mentioned there? 4 A. Yes. 5 Q. Do you recall attending this meeting? 6 A. Yes. 7 Q. And do you recall the proposal that 8 we're discussing now being presented to the 9 committee at that meeting? 10 A. I do. 11 Q. And so you were there while the 12 Development & Services Committee was briefed on that 13 proposal by the County staff? 14 A. I was. 15 Q. Was it your regular practice to attend 16 the meetings of committees you weren't currently a 17 member of? 18 A. That's the general practice in our 19 county. All Council members normally attend both 20 the standing committees -- major ones. 21 Q. All right. But do you know if this 22 qualified as a major one? 23 A. Yes. D&S and A&F are the two major 24 standing committees. 25 Q. If you look on the third page of that	Page 32 1 levies or financing. It was just basically a 2 conceptual land use plan. That was some months 3 before this took place. 4 When this appeared on the agenda, it 5 came as a surprise to me and I was very concerned 6 that the County had not done due diligence on this 7 issue. So I raised, to me, an obvious question 8 about what kind of liability comes with assuming 9 levies. It seemed sort of -- obviously a big step 10 to me and it had not been, apparently, included in 11 the staff report. There was no discussion -- at 12 this time it was being represented to us that the 13 owners of the property would pay for the levies and 14 do all of that construction, so that wasn't an issue 15 at that time. So -- but the liability issue was 16 certainly, to me, an apparent issue that needed to 17 be addressed. 18 Q. Okay. 19 A. And perhaps I injected it. I don't 20 recall whether I was the one that raised that issue 21 or not, but I remember being concerned. 22 Q. Certainly. Okay. Let me step back a 23 minute in time if you will. I'd like to learn a 24 little bit more about the initial briefing or the 25 briefing that you referred to that you got from
Page 31 1 document which bears Bates Stamp Number DEF-64, it 2 has a little forward down in the lower right-hand 3 corner even though it's the third page of this 4 document. There's a section down there at the 5 bottom that's been previously highlighted. It says: 6 Consideration of accepting maintenance of levee 7 system along the Congaree River. Mr. McSwain 8 briefed Council on the background on the Levee 9 System. A discussion took place regarding liability 10 to the County if the acceptance of responsibility is 11 agreed upon. 12 Did I read that correctly? 13 A. Yes, you did. 14 Q. Do you recall what that discussion 15 regarding liability to the County if the acceptance 16 of the responsibility is agreed upon? 17 A. I do to some extent, not in any great 18 detail. 19 Q. What do you recall about it? 20 A. May I give you a little background on 21 that? 22 Q. Please. 23 A. I think -- at least I had been briefed 24 by George Gregory about a proposed building project 25 there that did not include any discussion about	Page 33 1 George Gregory about the development. Mr. Gregory, 2 of course, was employed by Burroughs & Chapin at 3 that time? 4 A. Correct. 5 Q. And this would have occurred sometime in 6 late 1998 or early 1999? 7 A. I sort of recall the Fall, but I don't 8 know exactly when it was. 9 Q. Who else was present at that meeting? 10 A. Mike Ey. 11 Q. Who? 12 A. Mike Ey. 13 Q. E-Y? 14 A. E-Y. 15 Q. Who was Mike Ey? 16 A. He was with the McNair firm. 17 Q. Was there anyone else there? 18 A. No. 19 Q. Where did the meeting occur? 20 A. At the McNair law office. 21 Q. How did it come about? 22 A. I -- my assumption is that they were 23 making the rounds and briefing members of Council. 24 Q. Okay. 25 A. On the proposal.

9 (Pages 30 to 33)

Page 34

1 Q. Who called you to set up the meeting?
 2 A. Probably Mr. Ey.
 3 Q. Do you know Mr. Ey?
 4 A. I do.
 5 Q. Know him from previous...
 6 A. Yes.
 7 Q. Matters?
 8 A. Yes.
 9 Q. Okay. What did Mr. Ey tell you when he
 10 called?
 11 A. I don't know. I don't recall. He
 12 wanted me to have a meeting.
 13 Q. All right. Did he tell you who it would
 14 be with?
 15 A. I don't recall that.
 16 Q. So you met at the McNair firm in --
 17 around the Fall of 1998 with Mike Ey and George
 18 Gregory?
 19 A. (Witness moves head up and down.)
 20 Q. Tell me about what you remember about
 21 the meeting.
 22 A. We looked at a concept plan of land use
 23 for development of that property.
 24 Q. Do you know who prepared the concept
 25 plan?

Page 35

1 A. No.
 2 Q. Was it a map?
 3 A. It was a bubble map.
 4 Q. A bubble map?
 5 A. You know, we're going to put commercial
 6 here, residential here, that kind of thing.
 7 Q. Right.
 8 A. Here are the roads.
 9 Q. All right. What did you think about it?
 10 A. I was impressed.
 11 Q. Okay. What did you think about
 12 Burroughs & Chapin?
 13 A. I've known Egerton Burroughs a long
 14 time, good reputation, Suwanee man. Didn't think
 15 one way or the other. Looked like a good new
 16 urbanist development. I remember I commented that
 17 the internal transportation system looked like it
 18 needed some work, but that it looked pretty good to
 19 me.
 20 Q. You mentioned the phrase new urbanist.
 21 A. Mm-hmm.
 22 Q. Elaborate on what that is.
 23 A. Well, you've got sidewalks, you have --
 24 make it convenient for people to move about more
 25 efficiently. You have open space. There are a lot

Page 36

1 of principles involved in that kind of design that
 2 look like they had included in there.
 3 Q. In your view is new urbanism or new
 4 urbanist design a good thing?
 5 A. I think it's a good alternative, but I
 6 also believe that we still need traditional
 7 development patterns for some folks. You just have
 8 to sort of figure out what's best for what
 9 community.
 10 Q. Okay. How long did the meeting last?
 11 A. An hour, maybe.
 12 Q. Did you indicate to Mr. Ey or
 13 Mr. Gregory how you felt about the proposal, the
 14 plan?
 15 A. I said it looks good I think just on
 16 first blush, but it looks to me like the
 17 transportation system might need a little work. But
 18 you get a briefing like that you don't usually -- I
 19 try not to make a commitment until I've got more
 20 information.
 21 Q. Did you indicate to them that you were
 22 opposed to the project?
 23 A. No, but there was a lot more information
 24 to come.
 25 Q. Certainly. Did you tell them that you

Page 37

1 would reserve judgment on the property?
 2 A. I don't think that was discussed.
 3 Q. So it was basically just a meeting
 4 wherein they would tell you what they had planned
 5 for the property if they purchased it?
 6 A. Yes.
 7 Q. You were aware that at that time they
 8 did not own the property?
 9 A. I don't think I knew one way or the
 10 other.
 11 Q. And you say they were making the rounds.
 12 Who do you believe they were -- or do you know, did
 13 they say, they were making the rounds of?
 14 A. I didn't -- that's an assumption. I
 15 didn't have any firsthand knowledge that they were
 16 briefing other Council members. It's common
 17 practice --
 18 Q. Certainly.
 19 A. -- so it would certainly be a logical
 20 conclusion.
 21 Q. Right. And it would be normal for them
 22 to come and ask to speak with you, a member of the
 23 Richland County Council?
 24 A. Mm-hmm.
 25 Q. In which this property -- over which --

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1 which had jurisdiction over this property?

2 A. Correct.

3 Q. In between that meeting in late Fall of

4 1998 at the McNair Law Firm with Mr. Ey and

5 Mr. Gregory and January 26th, 1999 when the levee

6 maintenance -- levee upgrade and maintenance

7 proposal was presented to the Development & Services

8 Committee, did you have any other meetings with any

9 representative of Burroughs & Chapin or the current

10 owner of the land there, Mr. Manning?

11 A. Not that I recall.

12 Q. So when the subject of development and

13 some County involvement in the development for this

14 property came up at this meeting, you had some

15 understanding of what was planned for the property?

16 A. Yes.

17 Q. And it was based on that meeting that

18 you had with Mr. Gregory and Mr. Ey?

19 A. Yes.

20 Q. In which they showed you a concept plan,

21 a map, a drawing that showed where certain types of

22 development would go?

23 A. Yes.

24 Q. And it was detailed enough for you to

25 make a conclusion that perhaps the transportation

Page 39

1 network inside the 5300-acre development might need

2 a little work; correct?

3 A. On my initial review, yes.

4 Q. Right. Let's go back to the minutes of

5 the Development & Services Committee, which is

6 DEF-62, and look again at the third page which is

7 DEF-64. It says, again: A discussion took place

8 regarding liability to the County if the acceptance

9 of responsibility is agreed upon.

10 Just circling back to that, do you

11 remember any other details about the discussion

12 regarding liability to the County if the acceptance

13 of levee maintenance responsibility was agreed upon?

14 A. I remember that some of the members, I

15 do not remember exactly who, but the statement was

16 made or generally made that we -- we don't have any

17 choice in this matter, we have to do this because of

18 Heathwood and the water plant. I remember that

19 statement.

20 Q. Okay.

21 A. And I don't know why, but I remember

22 that.

23 Q. Okay.

24 A. Probably Mr. Morris said it or maybe

25 Mr. Pearce.

Page 40

1 Q. Because the same levies that protect

2 Burwell Manning's property also protect the

3 wastewater treatment plant and Heathwood Hall

4 school?

5 A. Heathwood for sure. I think the

6 wastewater treatment plant may have its own levies.

7 I'm not sure about that.

8 Q. Now, the -- on the first page it

9 indicates that Mr. Smith, the County Attorney, was

10 present at the meeting. Do you recall if he spoke

11 to the issue of liability to the County if the levee

12 maintenance responsibility was assumed by the

13 County?

14 A. I don't recall.

15 Q. But he was there and could answer

16 questions if people had them?

17 A. Yes.

18 Q. And the issue was duly raised as noted

19 in the minutes?

20 A. Yes.

21 Q. All right. Now, we go back -- let's go

22 back to the document we were discussing previously,

23 which is the County Council report --

24 A. Mm-hmm.

25 Q. -- by the staff. If you'll look on the

Page 41

1 bottom of the second page, which is Bates Number

2 DEF-55, it says -- and it says Our Comments, that

3 being the staff, are as follows: One, property

4 owners intend to upgrade the levee system... the

5 approximate cost of this is in excess of six million

6 dollars.

7 Did I read that correctly?

8 A. Correct.

9 Q. Number 2 was: County agrees to accept

10 responsibility for operation and maintenance...

11 this is shown as a preliminary cost estimate of

12 approximately \$174,500 annually, and then it says

13 see attachment.

14 And then if you look at the very last

15 page of the document there's a draft budget for the

16 maintenance costs that totals \$174,500.

17 Do you see that?

18 A. I do.

19 Q. Okay. Was this report and these

20 drawings and this budget available to the

21 Development & Services Committee members at the time

22 this issue was being discussed?

23 A. I don't recall specifically.

24 Q. It would be normal practice, wouldn't

25 it --

Page 46

1 recall.

2 I think that occurred probably on a

3 Thursday following that meeting. I was going to be

4 out of town that weekend and I kind of didn't know

5 what to do. So I called Mike Ey and said, Mike,

6 I've really got some problems with this. Is there

7 any way we can slow it down until we have more time

8 to look at it? I'm not opposed to it necessarily,

9 I'm not for it necessarily, but I just don't

10 understand it. Need to understand it. The

11 estimates we've got were apparently from

12 Lockwood-Greene and when you take -- when you're in

13 the public sector in the public interest, you want

14 your own guys to kick the tires.

15 Q. Sure.

16 A. And, to me, that hadn't happened.

17 Q. Mm-hmm.

18 A. So I said, Mike, why do we have to push

19 on this thing? He said, we're scheduled to close on

20 the property Wednesday of next week. Apparently if

21 we didn't take action they couldn't buy the

22 property. I've got my own opinions about that, but

23 that was their call.

24 So out of respect for them, and they had

25 been forthcoming with the development plan but there

Page 47

1 had been no discussion about the levies in the

2 meeting that I attended that I recall, and it sort

3 of took me aback. So I worked with Mike over the

4 weekend. I said here are my concerns, let me fax to

5 you what my problems are right now. So I don't know

6 if I faxed him or told him or whatever it was, and

7 he crafted this amendment based on my concerns. I

8 looked it over and accepted it.

9 Q. Okay. So let's back up a minute.

10 You --

11 A. Let me just correct this, I don't want

12 to tell you anything wrong. I may have written it

13 but I think maybe I took the shot at it and then

14 Mike put it in legalese.

15 Q. Okay.

16 A. I can't really remember who pushed the

17 word processor.

18 Q. Right.

19 A. I'm sure it went through staff at some

20 point so there might have been some changes then.

21 Q. So two things that you've mentioned that

22 is new information to me so I just want to ask you a

23 few more questions about them. After the D&S

24 committee meeting on January 26, 1999 you had some

25 concerns about the levee issue and you called Lisa

Page 48

1 Holland. Now, she was at the time an employee of

2 the State Department of Natural Resources; is that

3 correct?

4 A. Yes.

5 Q. How did you -- did you know

6 Ms. Holland --

7 A. No.

8 Q. -- beforehand?

9 A. I did not.

10 Q. How did you go about deciding to call

11 her?

12 A. Well, I probably need to give you a

13 little background. I worked for the State Senate

14 for a number of years and was a research director

15 for a standing committee. And through my experience

16 there, as well as working for several state

17 agencies, I had a network of contacts and policy

18 development analysis -- that was my job. So I don't

19 really remember who I called, my brother-in-law

20 worked for the Heritage Trust at National Resources,

21 I maybe started with -- Tom Cosat is his name.

22 Knows a lot about water issues. I maybe called

23 Freddie Vang who was the head and someone I know

24 through those contacts. I maybe called somebody at

25 the State House that worked for the Natural

Page 49

1 Resources Committee and said, who would you talk to

2 to talk about levies and floods?

3 I'm really not sure how I got to Lisa,

4 but I know I spent a lot of time on the phone the

5 Wednesday after that committee meeting.

6 Q. Okay. You mentioned Mr. Vang. Do you

7 know Mr. Vang?

8 A. I do.

9 Q. How well do you know him?

10 A. I can pick him out of a lineup. We

11 probably had a beer together when we worked at the

12 Statehouse over the years.

13 Q. Okay. So you've known him for some time

14 and mainly from working together with him at the

15 Statehouse?

16 A. Right.

17 Q. Did you work together in the same office

18 or just worked together on some of the same issues?

19 A. I managed -- a lot of my legislation

20 came from DHEC, and so we did the environmental

21 legislation, the health legislation from DHEC. We

22 did the social services legislation. I dealt with

23 mental health -- mental retardation at the time is

24 what they called it then.

25 Q. And so you got referred ultimately to

Page 50 1 Lisa Holland? 2 A. I did. 3 Q. About how many conversations do you 4 think you had with her between then and the 5 following Tuesday when the City Council was going to 6 meet and vote on the recommendation of the 7 Development & Services Committee? 8 A. It was the County Council. 9 Q. Excuse me. What did I say? 10 A. Everybody does that. You said city. 11 Q. Excuse me. Thank you for correcting me. 12 A. You're welcome. Probably two. At the 13 most two. I didn't have a lot of time and I was 14 just very concerned that we needed to understand 15 what we were getting ourselves into if we were going 16 to take over these levies. 17 Q. Right. Okay. So you wanted to be sure, 18 and that's understandable. You were doing your own 19 investigation, as a Council member, to satisfy 20 yourself about the issues you were being asked to 21 vote upon; correct? 22 A. That's correct. 23 Q. What did Ms. Holland tell you? 24 A. I don't remember specifically except 25 that she said there's a great deal of literature out	Page 52 1 the time? 2 A. Well, you pointed out to me there was a 3 newspaper article. I have no idea whether she was 4 aware of that or not. 5 Q. Okay. Could have been? 6 A. Could have been, but I had no indication 7 that she was. 8 Q. All right. And you mentioned that you 9 had a telephone conversation with Mike Ey at the 10 McNair firm about your concerns about the levee 11 maintenance and acceptance of responsibility by the 12 County? 13 A. That's right. 14 Q. Tell me about that conversation. What 15 happened? 16 A. I believe it was probably on Friday that 17 I called him and I said, Mike, I would like to 18 postpone this. And I didn't want to blind side him, 19 he's a perfectly honorable person and didn't feel 20 like anything nefarious was going on. It was just 21 that they probably didn't appreciate that it was as 22 an important issue as I had begun to think that it 23 might be. And I said, is there any way we can 24 postpone this for a while and take a look at it? 25 And that's when he informed me that they
Page 51 1 on this, it's a very serious issue for our local 2 government to get into the levee business. And she 3 affirmed my instinct that we needed to slow the 4 train down and make sure this horse had good teeth. 5 Q. Okay. Do you recall anything else she 6 said? 7 A. No. 8 Q. Did she provide you with any written 9 material? 10 A. She may have. I've got -- you know, 11 over those years I had a ton of stuff and everybody 12 wanted to give you a book to read or, you know, one 13 way or the other. Were they really safe or they 14 weren't safe, and the whole thing just got to be 15 more than anybody needed to know. 16 Q. Okay. Was Ms. Holland familiar with the 17 plan of Burroughs & Chapin to purchase the property 18 and develop it? Did she have any -- 19 A. I don't recall. 20 Q. Was she aware that there was a plan 21 being put forward to improve the levies and have the 22 County accept them? 23 A. Apparently not. I recall that she 24 didn't have any information about that. 25 Q. So this was new information to her at	Page 53 1 were planning on closing. I didn't understand why 2 that was relevant to the closing, but I could make 3 some assumptions and deductions and he didn't want 4 to share that with me. I said, well, I'll work with 5 you to see if we can craft a resolution that will be 6 satisfactory to both of us, but if we can't I'm 7 going to have to raise these issues with the 8 Council. I feel like they have a right to 9 understand and know about this information that I've 10 got. 11 Q. Okay. And you believe you may have even 12 started a first draft or at least an outline of this 13 proposed motion and Mr. Ey worked with you to flesh 14 it out, so to speak? 15 A. Yes. 16 Q. And, again, we're talking here about 17 Document CV014033; is that correct? 18 A. Correct. 19 Q. In between -- so in the conversation 20 with Mr. Ey, you understood that the property was 21 about to be sold? 22 A. Yes. 23 Q. A closing was scheduled for later on and 24 it was important to the participants to that 25 transaction to have the County do something before

Page 54 1 they made -- before the closing occurred? 2 A. Yes. 3 MR. JOHNSON: Object to the form. 4 BY MR. BECKER: 5 Q. And it was important to the owners to 6 have the County speak to the issue of the levee 7 upgrade and acceptance by the County of 8 responsibility and maintenance for the levee? 9 MR. JOHNSON: Object to the form. 10 THE WITNESS: Mr. Ey indicated that to 11 me. 12 BY MR. BECKER: 13 Q. Who was Mr. Ey representing? 14 A. This group has changed so much, I really 15 can't tell you specifically. It was sort of this 16 Burroughs & Chapin was, I guess, the impression I 17 was under. I don't know if Columbia Venture had yet 18 been formed or who the partners were. It's sort of 19 a moveable feast. 20 Q. You're right about that. I'm not sure 21 Columbia Venture had yet been formed, but Mr. Ey was 22 representing Burroughs & Chapin? 23 MR. JOHNSON: Object to the form. 24 BY MR. BECKER: 25 Q. Correct?	Page 56 1 Q. Okay. Let me go back a minute. When 2 you first met with Mr. Ey and Mr. Gregory and he 3 showed you the concept plan for property that they 4 were interested in purchasing and developing, did 5 they -- did you understand that what they had in 6 mind would be a very large development? 7 A. Yes. 8 Q. And that it would have -- did they 9 mention, and in the concept plan they showed you, 10 did it show single-family and multi-family housing 11 on the property? 12 A. I can't remember specifically. 13 Q. Would that have been normal in a 14 development of 5300 acres or 4500 acres? 15 A. I remember it was multiuse. 16 Q. Right. So multiuse would include 17 single-family and multi-family housing on the 18 property? 19 MR. JOHNSON: Object to the form. 20 THE WITNESS: I don't remember 21 specifically, but I remember -- it was a lot of 22 different uses. 23 BY MR. BECKER: 24 Q. Okay. Did you see some golf courses on 25 the property?
Page 55 1 A. To my recollection, I do not know 2 exactly who he was representing. 3 Q. Well, you first introduced -- you were 4 first introduced to George Gregory of Burroughs & 5 Chapin through Mr. Ey; correct? 6 MR. JOHNSON: Object to the form. 7 THE WITNESS: I recall maybe George 8 Gregory. I don't recall specifically who he said he 9 was representing. 10 BY MR. BECKER: 11 Q. Yeah. Would it have been normal for 12 Mr. Ey to tell you that the man in the room was his 13 client? 14 A. Yes -- 15 MR. JOHNSON: Object to the form. 16 THE WITNESS: Yes. 17 BY MR. BECKER: 18 Q. So you had an understanding that Mr. Ey 19 represented Burroughs & Chapin? 20 MR. JOHNSON: Object to the form. 21 THE WITNESS: I don't recall that I 22 specifically knew that he was representing. I 23 recall that that was -- I was under that impression, 24 yes. 25 BY MR. BECKER:	Page 57 1 A. I remember -- yes. 2 Q. You mentioned open spaces and sidewalks, 3 a new urbanism type of development. So that 4 typically includes housing, doesn't it? 5 A. Yes -- well, let me take that back. A 6 lot of times it doesn't. It depends on different 7 forms of housing. 8 Q. Sure. Did they mention commercial 9 buildings like an outlet mall, restaurants, hotels? 10 A. I don't recall any of that detail. 11 Q. In the conversation you had with 12 Mr. Ey about this motion involving the levee matter, 13 what -- your principal concerns were that you didn't 14 know enough at this point and you had some concerns 15 and you wanted to slow the process down? 16 MR. JOHNSON: Object to the form. 17 THE WITNESS: I felt like we needed a 18 lot more due diligence before we moved forward. 19 BY MR. BECKER: 20 Q. Okay. Well, let's take a look at this 21 document now, then. It's called Motion for Levee 22 Matter and it says -- It begins with: I move that 23 the county accept responsibility for local 24 inspection and enforcement of the operation and 25 maintenance plan as submitted by the owner and

15 (Pages 54 to 57)

Page 78 1 Q. Well, the minutes reflect that the vote 2 in favor of the substantive motion that you offered 3 was unanimous; correct? 4 A. Correct. 5 Q. So every member of the County Council 6 voted in favor of this? 7 A. Yes. 8 Q. And certainly implied in that is that 9 every member of County Council had all of their 10 concerns addressed to their satisfaction -- 11 MR. JOHNSON: Object to the form -- 12 MR. LYDON: Object to the form. 13 BY MR. BECKER: 14 Q. Is that a reasonable assumption? 15 A. I can say -- 16 MR. JOHNSON: Object to the form. 17 THE WITNESS: I can only speak for 18 myself Is I don't know why everybody else voted for 19 it. But I felt like the contingencies in the motion 20 gave us the ability -- gave us some maneuvering 21 room. But this did not at all mean we were going to 22 take the maintenance -- we were not wanting to take 23 over the levies and go forward. We had issues to be 24 resolved. 25 BY MR. BECKER:	Page 80 1 MR. JOHNSON: Object to the form. 2 THE WITNESS: I had been told by Mr. Ey 3 that they needed it in order to close but was not 4 given an explanation. 5 BY MR. BECKER: 6 Q. Do you know how much the -- did you know 7 how much land was about to be sold? 8 A. I'm sure that I had that information, 9 but I don't recall. 10 MR. JOHNSON: Are you putting the ones 11 you give her back in these folders? 12 MR. BECKER: You can keep them. Why 13 don't you keep a set for her and a set for you? 14 MR. JOHNSON: Okay. 15 BY MR. BECKER: 16 Q. All right. Let me hand you what's been 17 marked as Exhibit Number 22 in the McSwain 18 deposition. This is a document that was -- this is 19 a letter dated February 17th, 1999 to Michael 20 Buckley from Mr. Paul Livingston, who was chair of 21 the Richland County Council. Again, it's marked as 22 Exhibit 22 in the McSwain deposition and it has 23 Bates Number DEF-74 and 75 -- excuse me, 79 and 80. 24 Have you seen this letter before? 25 A. I don't recall having seen it.
Page 79 1 Q. What kind of maneuvering room did you 2 need? 3 A. To get information. This wasn't -- this 4 didn't close -- it left the door open for further 5 discussion/information gathering. 6 Q. Okay. 7 A. And if I could explain a little bit 8 further. 9 Q. Sure. 10 A. As I recall that meeting, I probably -- 11 well, I know I said I reported that I had done some 12 work with the flood insurance program coordinator, 13 whatever her title was, and that I had some strong 14 reservations about going forward; that I had worked 15 over the weekend with Mr. Ey and he had crafted this 16 motion and it had the support of his clients. 17 Q. Mm-hmm. Okay. 18 A. And that this left us room to look at 19 the liability question and make sure that all the 20 financial issues had been resolved before we took 21 over the levies. 22 Q. Okay. And you knew that this -- this 23 action by Council was necessary to the owner and the 24 purchaser of the land before that transaction 25 closed?	Page 81 1 Q. But you do recall that the motion you 2 drafted with Mr. Ey was designed to authorize the 3 Council Chairperson or his designee to notify other 4 parties of the County's action; correct? 5 A. It was -- 6 MR. JOHNSON: Object to the form. 7 THE WITNESS: My understanding was that 8 it was to -- when the contingencies were met we 9 would go forward. And it authorized if there was 10 notification required before the contingencies were 11 met but with the understanding that those 12 contingencies needed to be met. 13 BY MR. BECKER: 14 Q. Okay. Well, in any event, this was a 15 letter in which Mr. Livingston was notifying 16 Mr. Buckley of FEMA of the action taken by Richland 17 County Council on the night of February 2nd, 1999; 18 is that right? 19 A. Apparently. 20 Q. If you compare the four contingencies 21 set forth in Mr. Livingston's letter to Mr. Buckley 22 to the minutes of the meeting, they're the same 23 contingencies, are they not? They're in a little 24 bit different order and they -- 25 A. I think number -- excuse me.

21 (Pages 78 to 81)

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1 A. Not technically I don't.

2 Q. Okay. Now, we just established that on

3 August 12th, '99 FEMA issued a revised preliminary

4 FIRM showing the regulatory floodway going way back

5 to the landward toe of the levies, so the vast

6 majority of the property protected by the Manning

7 levies was no longer in a regulatory floodway.

8 Ultimately we know, and we'll get to this, but we

9 know that the South Carolina Department of Natural

10 Resources became an appellant in the FEMA

11 administrative process regarding that particular

12 map. Do you recall that?

13 A. I do.

14 Q. And, ultimately, it occurred through a

15 resolution that you and Mr. McEachern were sponsors

16 of, and we'll get to that. Tell me about your

17 earliest understanding of an appeals process of this

18 map and what went on to bring you to the point where

19 you sponsored that amendment on County Council.

20 MR. JOHNSON: Object to the form.

21 THE WITNESS: As I recall, things

22 started heating up by then and there were a lot of

23 folks that had begun to be interested in this issue.

24 I -- I say I technically didn't know about the

25 process, I really don't. I know that you can

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1 appeal. I think I had been told and was under the

2 impression that in order to be taken seriously a

3 local government needed to join in that appeal in

4 some way.

5 And I can remember maybe one

6 conversation with Mr. Vang at DNR, maybe he's the

7 one that asked me to do that. There were a lot of

8 citizens out there and my thinking was, kick the

9 tires. If the numbers -- If it would make the

10 public satisfied, the thing had been looked at

11 thoroughly.

12 And now I recall there was a body of new

13 information that somebody had come up with, John

14 Grego maybe at the University. And in order to make

15 sure -- it didn't seem to me to do any harm to

16 sponsor that appeal or be a party to that appeal.

17 All in the effort to assure the public that we're

18 doing our homework.

19 BY MR. BECKER:

20 Q. A second ago you mentioned that things

21 were heating up by this time. What do you mean?

22 A. You need to run for County Council.

23 Q. No.

24 A. Things get hot. You know --

25 Q. I hope never to do that.

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1 A. You started going -- you get phone

2 calls, you go to the grocery store. It's something

3 that is a top of the mind issue and there's not very

4 many of them. Believe it or not, dogs are a top of

5 the mind issue. The dog kennel can be -- that's a

6 top of the mind issue. There's things that every

7 now and then that just really catch the public's

8 attention, and this was one of them. And I think

9 about that time it had really kind of -- it had been

10 a sleeper for a long time and beginning to get a

11 good bit of attention.

12 Q. Okay. Would you say that was before

13 August 12th of '99 when the new FEMA map was issued

14 or afterwards?

15 A. I can't say specifically when.

16 Q. Had you been contacted in any way by

17 anyone who was opposed to it, or in favor of it, or

18 were people just talking about it?

19 A. I can't remember exactly when it all

20 started but, of course, I was meeting with people at

21 their request, and met with Columbia Venture

22 whenever they wanted to. And that's basically my

23 recollection about this whole appeals map, that a

24 group of citizens wanted it appealed, DNR thought it

25 should be appealed. Little old us sitting there

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1 able to run those -- whatever they run when they

2 come out with all those numbers, it seemed to me not

3 a bad idea just to say, would you guys take another

4 look at this thing? If it doesn't change, fine. If

5 it does change, it changes.

6 Q. Well, of course, we know by August 12,

7 1999 FEMA had looked at it about three times

8 already.

9 A. And it had changed three times.

10 Q. It had changed three times.

11 A. Right.

12 Q. Yeah. This was the fourth. It had

13 already been studied to death, hadn't it?

14 MR. JOHNSON: Object to form --

15 MR. LYDON: Object to form.

16 THE WITNESS: It had gotten a look, but

17 I think the public's perception at the time was that

18 this big rich developer had come to town, hired this

19 lobbyist to go up to FEMA, and they just wanted

20 assurance that everything was okay. And I felt like

21 that was where the public interest was. It didn't

22 hurt to -- and as I recall, they hadn't considered

23 all this other data that the group wanted them to

24 look at.

25 BY MR. BECKER:

Page 142 1 picture and then where do we start? So it was an 2 effort to start outlining those issues and to give 3 some guidance through the Horizon Group to staff as 4 to how to begin. 5 Q. Okay. And so at the beginning you're 6 explaining the situation, and then at the bottom 7 doing sort of a catalog or a checklist of all the 8 different... 9 A. Yes. 10 Q. Policy and management issues that have 11 to be thought through? 12 A. Yes. 13 Q. Did you draft this on your own computer 14 at home, or at the County, or do you recall? 15 A. I'm sure it was on my own computer. 16 Q. Okay. In the first paragraph you say: 17 The extent of development hinges upon a FEMA 18 decision regarding flood Insurance maps for the 19 area, which designate floodway and floodplain zones; 20 correct? 21 A. Correct. 22 Q. Didn't the extent of development hinge 23 upon this decision of whether or not to allow 24 Columbia Venture to upgrade the levies? 25 A. Well, I think the first decision would	Page 144 1 A. Yes, I believe I understood that at the 2 time. Although I have to say at times I was very 3 confused. 4 Q. Yeah. In the beginning of the second 5 paragraph you say: The size of the project coupled 6 with the environmentally sensitive nature of the 7 land portend a tremendous impact on the City of 8 Columbia, Richland County, et cetera. 9 Environmentally sensitive nature of the 10 land. Now, this land was -- had a wastewater 11 treatment plant, a school, and the rest of it was 12 farmed, in different farm crops. What is 13 environmentally sensitive about that? 14 A. I think geography can have -- lead to 15 very specific circumstances. Volcanos for one. 16 This was river bottom land, and we're dealing with 17 meandering rivers in this case. The river had 18 changed courses many times during the eons of years, 19 so it was farm land but it was floodplain. 20 Q. Okay. But other than the fact that it 21 was adjacent to a river, was there anything 22 environmentally sensitive about it? 23 A. I think adjacent to a river with the 24 soil that's there is -- makes it environmentally 25 sensitive.
Page 143 1 have to be whether the levies need to be upgraded or 2 not, depending on the flood maps. A lot of that 3 would be driven by that. 4 Q. Say that again. 5 A. My understanding is that the levee 6 placement, whether or not you can have levies at 7 all, would depend on where the maps were drawn and 8 then whether -- whether or not you could upgrade 9 them to that extent. I remember there was one 10 scenario the levies were going to have to be moved, 11 I can't remember which one it was. But I would say 12 the flood maps were the first decision that had to 13 be made. 14 Q. So it was your understanding that 15 whether or not the levee could be upgraded depended 16 upon where the floodway boundary was? 17 A. No. The extent to which the levies 18 would have to be changed to be upgraded because, as 19 I said, there was one scenario where they would have 20 to be moved. 21 Q. All right. But you did understand that 22 if the levies were upgraded that the land protected 23 by the levies would no longer be classified or 24 could -- could be redesignated as no longer in a 25 floodplain or floodway?	Page 145 1 Q. Okay. Anything else in your view that 2 made it environmentally sensitive? 3 A. I don't know of any little salamanders 4 down there. 5 Q. I don't, either. 6 A. So no. 7 Q. If they had been there, they had 8 probably been run over by a tractor already. 9 A. They would, or flooded in the sewer. 10 Q. All right. A little further down in 11 that same paragraph you say: Richland County (sic) 12 is committed to a thorough and conscientious due 13 diligence process as the many factors of this 14 proposal are considered; is that correct? 15 A. Right. 16 Q. How much -- how much due diligence -- is 17 that what you mean by kicking the tires? 18 A. Yes. 19 Q. How much of this would be necessary? I 20 mean -- 21 A. Pretty big list. 22 Q. Well, is there any way that you, sitting 23 here today, can quantify the amount of conscientious 24 due diligence that you thought would have been 25 necessary to reach a point where County Council

37 (Pages 142 to 145)

Page 194

1 A. I don't -- I don't know. I don't know.
 2 Q. It was faxed either to or from you,
 3 according to the legend up at the top, on October
 4 10th, 2011 at 11:09 a.m. and it's got that number
 5 (864) 836-0422?
 6 A. Mm-hmm.
 7 Q. Is that the number of your home in the
 8 mountains?
 9 A. Mm-hmm.
 10 Q. Do you know if you were faxing it to
 11 someone? I guess if you wrote it you were faxing it
 12 to someone else.
 13 A. Apparently, but I don't remember to whom
 14 or for what purpose.
 15 Q. All right. Do you know if this was ever
 16 published anywhere in the newspaper or a magazine?
 17 A. I don't recall.
 18 Q. Any idea who you might have been sharing
 19 it with in the fax on October 10th, 2000?
 20 A. No.
 21 Q. In it you -- I believe you already
 22 referenced this in different terms. But in the
 23 middle paragraph there you talk about rhetorical
 24 argument known as an ad hominem argument, wherein
 25 you attack the messenger instead of his information

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1 and logic.
 2 Did you feel like that was what people
 3 on either side of the proposed development were
 4 engaging in?
 5 A. I did --
 6 MR. JOHNSON: Object to the form.
 7 THE WITNESS: Maybe not consciously -- I
 8 don't think it was conscious. I think it was human
 9 nature, unfortunately, and it happens a lot in
 10 politics. You get used to it, unfortunately, as
 11 well. You quit crying on Tuesday nights.
 12 BY MR. BECKER:
 13 Q. All right. The next document is a
 14 letter, apparently written from you to Robin Carter
 15 and Dan Tufford, Daniel Tufford, dated October 15,
 16 2000. It's got Bates Numbers Smith 123 and 124. Is
 17 that document familiar to you?
 18 A. I reviewed it when you supplied me with
 19 the document, yes.
 20 Q. Okay. Did you -- do you recall sending
 21 this letter to the addressees?
 22 A. I didn't have any recollection of it
 23 until I looked at it, and it still wasn't much.
 24 Q. Is this something you wrote?
 25 A. Yes.

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1 Q. The paragraph -- last paragraph on the
 2 first page says: There are several interests in
 3 attempting to develop an alternate model to the FEMA
 4 proposed floodway. The City of Columbia's water
 5 treatment plant and Heathwood Hall School have an
 6 interest in an alternate floodway as does Burroughs
 7 & Chaplin (Columbia Ventures.) It is important to
 8 note that providing relief for one does not
 9 necessarily provide relief for the other. That is,
 10 a rerouted floodway may provide relief to Columbia
 11 water plant without providing relief for Heathwood
 12 Hall School or Columbia Ventures - or vice versa.
 13 I'm curious in how you felt that those
 14 properties are all adjacent to each other. And how
 15 is it that, in your view, a rerouted floodway might
 16 affect one but not the other?
 17 A. Well, as you pointed out in that last
 18 meeting with FEMA, that question came up when we
 19 were told you can just computer model a new
 20 floodway. You just have to have somewhere -- leave
 21 somewhere for the water to go. That was sort of the
 22 extent of what I understood, so it seemed to me you
 23 could run the water in different ways. But I'm not
 24 an engineer and it just made my head kind of spin to
 25 try to figure that out.

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1 Q. Right.
 2 A. So I was trying to pair with what I
 3 heard. And as I recall from this letter, as you can
 4 tell from my tone, I was being criticized by this
 5 Audubon group that was very suspicious about what
 6 was going on with Columbia Venture and thought
 7 Richland County was trying to give them a leg up in
 8 an unfair advantage. So I was trying to assure them
 9 that hopefully we were trying to do everything out
 10 in the open and they would have an opportunity to
 11 comment as we went forward.
 12 Q. Because, clearly, the water in the event
 13 of a flood is going to go back where the water wants
 14 to go, not where the computer model would tell it to
 15 go?
 16 A. That's what I would think.
 17 Q. And so the computer model was just to
 18 try to estimate where the water would be and how
 19 deep it would be at a given point in a flood event?
 20 A. That's my understanding.
 21 Q. Yeah. At the top of Page 2, you write
 22 that -- at the beginning of that sentence: While
 23 the engineers involved will look at several modeling
 24 scenarios, it will probably be difficult to shift
 25 the floodway without adverse impact on others and

Page 210 1 scenarios, the intent would NOT be to see how much 2 more floodway can be pushed onto B&C property, but 3 rather, seeking a way to protect the wastewater 4 treatment plant which is a valid public interest. 5 I know this is her response, not yours, 6 but what do you think of that statement? 7 MR. JOHNSON: Objection. 8 THE WITNESS: I have to -- 9 BY MR. BECKER: 10 Q. Is the wastewater treatment somehow a 11 more valid public interest than the plans of the 12 neighboring property owner? 13 A. No. I'll say it again. I think that we 14 had to divide the questions and I think that -- my 15 struggle in all of this is I felt like that we're 16 going to get cost here, so let's watch out. Let's 17 not bite off one thing and resolve it, then move to 18 the next because then you go along and you're going 19 to get a scenario where it felt like we did treat 20 people unfairly, Columbia Venture. And I tried to 21 make it clear from the outset that we shouldn't make 22 incremental decisions. So before we could say 23 whether or not we were going to encourage 24 development there, we needed a lot more information 25 and I felt like it should be a divided question.	Page 212 1 development at all; is that right? 2 A. That's right. 3 Q. They -- the next document there is a -- 4 it's a letter from Blain Holman of The Southern 5 Environmental Law Center to Kit Smith, Chair of 6 Richland County Council. This is the first -- as 7 far as I can tell, the first communication to you 8 from the Southern Environmental Law Center. And I 9 know that later you became involved with the board 10 of that organization and we'll get to that later on, 11 but what -- is this the first time you had ever 12 heard of them or did you have some advance notice 13 that they were interested in this issue? 14 A. I can't say exactly when, but I was 15 introduced to the Southern Environmental Law Center 16 through this issue, yes. 17 Q. Do you know if -- how did you first -- 18 what was your first introduction to the Southern 19 Environmental Law Center? 20 A. The first thing I remember, I think, was 21 Mr. Holman appearing before Richland County Council, 22 and that may have been after this letter or before, 23 but that's the first time I remember seeing -- 24 seeing one of them. 25 Q. Okay. Had you known him before --
Page 211 1 They should stand alone. 2 Q. All right. Let's move on to the next 3 document which is a memorandum, dated November 28, 4 2000. It's got Bates Number DEF-1951. It's a 5 memorandum from the Richland County Council -- from 6 Weston Adams, as chairman of the Congaree Task 7 Force, to Richland County Council, and it discusses 8 the proposed stormwater management, erosion and 9 sediment control ordinance that was under 10 consideration. 11 I think the sentence down there at 12 the end of that -- next to the last sentence, it 13 reads -- of this first page here: The Congaree Task 14 Force believes that no developer should be allowed a 15 variance from the provisions of 8-27(h) because 16 development in the floodway should not be 17 encouraged. 18 Is that, as you understand it, a pretty 19 clear statement of the Congaree Task Force's 20 position on this issue? 21 A. Yes. 22 Q. They were -- what's the word I should 23 use -- urging adoption of restrictions that would 24 prevent any developer obtaining any variance that 25 would permit any development in a floodway, any	Page 213 1 A. No. 2 Q. -- that appearance? Did you know anyone 3 in his family? 4 A. It turned out I did, but I didn't know I 5 did. 6 Q. Who are those family members? 7 A. His sister and later on -- in fact this 8 Christmas I met his mother and stepfather. 9 Q. Okay. But much later after all of this? 10 A. Yeah. I didn't know who these people 11 were at the time. 12 Q. So prior to November 28, 2000 you didn't 13 know Mr. Holman or members of his family? 14 A. No. 15 Q. Did -- and correct me if -- how would 16 you describe the Southern Environmental Law Center 17 and what it does? 18 A. It's a public interest law firm that 19 does advocacy and education, and brings suits when 20 necessary. 21 Q. Okay. And this SELC, Southern 22 Environmental Law Center, they're public interest or 23 environmental issues? 24 A. Yes. 25 Q. Are they -- in general, on which side of

54 (Pages 210 to 213)

Page 226 1 and you get used to it and you do things like this 2 as a result. But you see these campaigns going on 3 and people get one side of the story. And it's so 4 important in public policy formulation to make sure 5 there's balance, to make sure that both sides are 6 weighted, just not both -- all. There's often three 7 or four or five -- the complexities of some of these 8 issues. And it's very frustrating when you sit 9 there and someone has to make the decision in the 10 best public interest and seeing the people who are 11 trying -- people are being persuaded with only one 12 side of the story, and it's your job to look at all 13 of them. 14 So I was probably venting here 15 because -- now that this refreshes my memory I think 16 that the impact, as I said earlier, of these 17 ordinances were going to impact all flood prone 18 land. So you get people with lots on Lake Katherine 19 that are going to have to reconfigure their building 20 plans. 21 So we get heat from a lot of directions 22 but it comes down to, for me, trying to balance 23 everything and it's frustrating when you know 24 someone is being asked to vote without complete 25 information, without an opportunity for complete	Page 228 1 A. I'll have to look it over, but it looks 2 like my work. 3 Q. Okay. Why don't you take a minute and 4 just read it? 5 A. Okay. (Reading.) Got it. 6 Q. Okay. So having read it, is this 7 something you wrote? 8 A. I believe so. It sounds like me. 9 Q. The fourth paragraph begins with: It is 10 unfortunate that those involved in the Burroughs and 11 Chapin Green Diamond project who are so anxious to 12 protect their economic investment that they will 13 resort to unnecessarily alarming citizens of 14 Richland County. 15 What were you referring to when you said 16 unnecessarily alarming citizens of Richland County? 17 A. I don't know. It must have been about 18 the same time I wrote this other document. There 19 must have been some information to some segment of 20 citizens who were looking for a response, and I felt 21 like they had been misled. 22 Q. All right. 23 A. Maybe not intentionally, but given one 24 part of the story. 25 Q. Okay. You do acknowledge that the
Page 227 1 information. If I was Burroughs & Chapin and 2 Columbia Venture, I would have done exactly the same 3 thing. Go out there -- it's not their job to push 4 the other sides, and they were doing a very good job 5 of presenting their case. I just felt like that we 6 needed to keep in mind there's more than one side to 7 the story. 8 Q. Okay. Do you know when this was 9 written? 10 A. I have no idea. 11 Q. Certainly at a point when the public 12 campaigns between -- 13 A. I must have been getting some contact 14 from Lake Katherine folks or the Forest Lake folks 15 or Arcadia Lakes. 16 Q. During the time that this stormwater 17 ordinance revisions -- 18 A. Yes. 19 Q. -- were under active consideration from 20 the County? Okay. All right. 21 The next document is Smith 114. This 22 document is also undated but appears like the others 23 we've been reviewing, have been produced from your 24 files, your computer. Do you recognize this 25 document?	Page 229 1 Burroughs & Chapin and Green Diamond project, the 2 owners, were anxious to protect their economic 3 investment in the property? 4 A. Absolutely, and I respect that. But 5 that's not my job. And their taking a risk on a 6 real estate transaction is not the responsibility of 7 the County to guarantee it. And that -- that's a 8 very difficult thing for a lot of folks to 9 understand. We don't have to make good on their 10 bet. 11 Q. Yeah. 12 A. We have to hold up the public interest 13 as our long-term primary responsibility, and that is 14 very difficult when you're dealing with good friends 15 and people that you've enjoyed mutual respect with 16 over the years, it's very difficult. But it has to 17 come first and it causes a lot of angst in 18 communities. 19 Q. Okay. The next document is Bates Number 20 Smith 33 and Smith 34. Do you recognize this 21 document? 22 A. Yes, I do. 23 Q. All right. Did you write this document? 24 A. Yes, I did. 25 Q. Was this some of the venting?

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1 A. This was a big vent.
 2 Q. Okay. You start off saying: It's time
 3 to recognize the Green Diamond development for what
 4 it is, a zircon of greed.
 5 A. That was pretty good. I'm sorry. My
 6 lawyer told me not to be funny, I don't mean to be.
 7 I know this is serious, but...
 8 Q. All right. Then on the bottom of the
 9 last page you refer to Burroughs & Chapin as they
 10 are bullies, they are fraudulent -- continuing onto
 11 the second page they are fakes. These are the
 12 bulleted items. They are elitist, they are
 13 indifferent and they are unethical. You conclude by
 14 saying they are corporate welfare pimps, they are a
 15 threat to public education, and they are just not
 16 good neighbors.
 17 I'm detecting a little hostility here.
 18 MR. JOHNSON: Object to the form.
 19 THE WITNESS: I would call it massive
 20 frustration. I wouldn't call it hostility. I would
 21 call it a creative writer with massive frustration.
 22 I think what put me over the edge on
 23 this one was when the folks that I used to represent
 24 in Arthurtown were put on a bus with yellow T-shirts
 25 and brought down to the County Chamber. It -- it

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1 made me very sad.
 2 BY MR. BECKER:
 3 Q. Okay. Describe this incident, because I
 4 don't know that I'm aware of what happened.
 5 A. There were some Arthurtown residents
 6 that I think had been taken to Myrtle Beach for a
 7 tour, and that one night they were given T-shirts to
 8 wear to a County Council meeting to advocate on
 9 behalf of Columbia Venture.
 10 Q. What did you find -- what was wrong with
 11 that, in your view?
 12 A. In my view it was exploitive.
 13 Q. Because why? I mean -- I'm just
 14 curious. Why was that exploiting them?
 15 A. I just felt like it was.
 16 Q. Okay. Ms. Scott represents -- does she
 17 represent the Arthurtown community?
 18 A. She did at that time.
 19 Q. She was, apparently, very much in favor
 20 of the Green Diamond development.
 21 A. Yes, she was, and she was working very
 22 hard for it. I don't think that's wrong, that's
 23 what elected officials do. When you decide you want
 24 to work for something, you work for it. If you want
 25 to work against something, you work against it. The

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1 way things work.
 2 Q. Was Arthurtown adjacent to or close to
 3 the Burroughs & Chapin property?
 4 A. It was.
 5 Q. Well, would it be reasonable for those
 6 people to think that the value of their property
 7 might increase if the adjacent property were
 8 developed in a nice way?
 9 A. I think --
 10 MR. JOHNSON: Object to the form.
 11 THE WITNESS: I don't know what would be
 12 reasonable for them to think. I just know that my
 13 reaction was, one, that it was -- that that would --
 14 the outcome would not necessarily be positive for
 15 them.
 16 BY MR. BECKER:
 17 Q. But you think it was that episode that
 18 induced you to sit down and --
 19 A. I think it was.
 20 Q. Vent by writing what is Document Smith
 21 33 and Smith 34?
 22 A. Mm-hmm.
 23 Q. Okay. That's all we need to do on that
 24 document for now. The next one is Smith 35 and 36.
 25 MR. JOHNSON: I assume you're going to

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1 stop after this one?
 2 MR. BECKER: Yes. In fact, if you want
 3 to take a minute right now we can just --
 4 MR. JOHNSON: You have it out here, so
 5 we might as well knock it out.
 6 BY MR. BECKER:
 7 Q. I'm not sure that I have many questions
 8 about this, Ms. Smith. Let me see. Other than did
 9 you write this?
 10 A. Yes.
 11 Q. Okay. Do you know when you wrote it?
 12 A. No.
 13 Q. It appears that you were -- if you look
 14 on the second page, which is Bates marked Smith 36,
 15 under the Affordable Housing category or caption
 16 heading, you say: The Green Diamond Summary
 17 Statement, and then you refer to Tab 3, Appendix A,
 18 shows only 159 affordable units of housing will be
 19 built out of a total of 4,934.
 20 It appears that you were clearly looking
 21 at some sort of description of the Green Diamond
 22 development there that had tabs and appendixes.
 23 Would that be a safe assumption?
 24 A. Yes.
 25 Q. Okay. So that you had that available to

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4
5 COLUMBIA VENTURE, LLC,
6 Plaintiff,
7 vs. CASE NO. 2010-CP-40-8943R
8 RICHLAND COUNTY,
9 Defendant.

VOLUME II

10 DEPOSITION OF: KATHRYN S. SMITH
11 DATE: May 18, 2011
12 TIME: 8:34 A.M.
13
14 LOCATION: Law Offices of
15 McAngus Goudelock & Courie, LLC
16 1320 Main Street, 10th Floor
17 Columbia, SC
18
19 TAKEN BY: Counsel for the Plaintiff
20
21 REPORTED BY: LORI S. MORTGE,
22 Certified Court
23 Reporter, CCR
24
25

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1 A. What I've said before is that there was
 2 this desire on Columbia Venture's part to enter into
 3 negotiations. To the Council, to the County, that
 4 implied, yes -- when you negotiate, you have a goal
 5 in mind. We were reluctant to call it negotiations,
 6 because that would seem to imply we are going to do
 7 this project. We needed to have more information
 8 before we could decide whether or not to commit to
 9 do the project, so that's a fine line and a nuance
 10 in the approach but I think it was a difficult one
 11 to get over because Mr. Wiseman kept wanting to sit
 12 down and let's negotiate. And we wanted to sit down
 13 and say how much is it going to -- we can't commit
 14 to the cost till we know what the costs are going to
 15 be. How much share do you want us to do? Who is
 16 going to be responsible for the levies, how are they
 17 going to be paid for? So we could have negotiated
 18 those fine things before we got to a bigger
 19 agreement negotiation.
 20 Q. Okay. All right. The next document is
 21 a letter addressed to you dated -- first of all,
 22 it's SELC 123 through 134 Bates numbered. It's a
 23 letter to you from Blain Holman of the Southern
 24 Environmental Law Center, dated January 19th,
 25 commenting upon an expansion of the City of Columbia

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1 wastewater treatment plant amendments to Chapter 8
 2 of the Richland County Code of Ordinances, that
 3 Stormwater Drainage Ordinance.
 4 Do you know who asked Mr. Holman to send
 5 this letter to you, or did he just do it of his own
 6 volition, or do you know?
 7 A. I do not know.
 8 Q. Well, I guess -- do you recall -- do you
 9 have a sense of how involved the Southern
 10 Environmental Law Center was in crafting a variance
 11 versus a LOMR strategy for dealing with floodplain
 12 issues?
 13 A. I do not know.
 14 Q. Do you recall what the distinction
 15 between that might be?
 16 A. Say that again for me.
 17 Q. It was the difference between having a
 18 variance provision in the stormwater ordinance or
 19 seeking a letter of map revision from FEMA that
 20 would simply, for whatever reasons, might be valid
 21 under the National Flood Insurance Program take a
 22 particular property out of the floodway or
 23 floodplain.
 24 A. Well, at this time I couldn't even spell
 25 SELC. And I did not -- I was being introduced to

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1 them through their participation in this issue, but
 2 I didn't work directly with them. I think that I
 3 was probably unaware at the time of the extent of
 4 their involvement in crafting that provision, but
 5 now I'm certainly aware of it from reviewing
 6 everything. So I wasn't sitting down with them and
 7 negotiating at the time.
 8 Q. Ms. Smith, this next document is Bates
 9 Number SELC 30 through SELC 62. It is a memorandum
 10 from Mr. George Wolfe and Mitchell Brown of Nelson
 11 Mullins to you, as chair of the Richland County
 12 Council, with a carbon copy to Mr. McSwain, Larry
 13 Smith and Mullen Taylor. It's dated January 23rd,
 14 2001.
 15 It indicates that the memorandum is
 16 protected by the attorney/client privilege and work
 17 product privilege, and has a footnote at the bottom
 18 that says it's being transmitted to Richland County
 19 for its sole benefit and use. I take it this was --
 20 that the re: line on the memorandum is: Memorandum
 21 on Potential for County Liability to Third Parties
 22 Based on County's Involvement With Levees Relating
 23 to Proposed Congaree Vista Project.
 24 Did I read that correctly?
 25 A. Yes.

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1 Q. And was the proposed Congaree Vista
 2 project the proposed Green Diamond development of
 3 Columbia Venture?
 4 A. Yes.
 5 Q. It says the purpose of this memorandum
 6 provides an analysis of the potential liability of
 7 Richland County to third parties if the County
 8 participates in a request to change the flood maps
 9 by taking responsibility for maintenance of certain
 10 levees.
 11 Those would be the levees -- the Manning
 12 levees surrounding the Columbia Venture property?
 13 A. Yes.
 14 Q. Was this memorandum requested by County
 15 staff at the direction of the Council?
 16 A. I can't remember. I know that even
 17 if -- I remember the D&S committee raised questions
 18 of liability. I don't know if we voted on it, but I
 19 think there was a general consensus for some
 20 document such as this.
 21 Q. I take it -- did you read the memorandum
 22 when it was submitted to --
 23 A. I probably at least skimmed the parts
 24 that I thought I could understand.
 25 Q. Okay. What did you take away from the

Page 330 1 THE WITNESS: That's hard to say. I 2 think some people thought I was straightforward and 3 that my raising questions could be interpreted as 4 criticism. And it often is in politics, but I think 5 my effort was just to try to bring -- gather 6 information for everybody to make a decision and 7 make sure it was balanced. 8 BY MR. BECKER: 9 Q. There's a quote, a direct quote, that 10 begins the next paragraph of this article and it 11 says: Burroughs & Chapin saw through the eyes of a 12 developer, and they saw a wonderful development, 13 Smith said. When public officials looked at it, 14 they saw a wonderful development with risks. There 15 was a real disconnect with our ability to 16 communicate and their ability to understand the view 17 of the officials. 18 Did I read that correctly? 19 A. Yes, you did. 20 Q. Do you think that's an accurate quote of 21 what you may have said for attribution? 22 A. Yes. 23 Q. Okay. Do you feel that that is your 24 view of what happened with the project? 25 A. Well, I don't think that's what happened	Page 332 1 it was in a floodplain? 2 A. Flood hazard area, yes. 3 Q. Finally -- and this is another direct 4 quote. The article says, quoting you: They 5 couldn't have done anything different that would 6 have made it happen. 7 A. That's probably a direct quote. I'm not 8 sure I could stand by that today. 9 Q. What's different today than -- than 10 2003? 11 A. Well, I think that if there had been 12 some concessions about -- had we gotten to the point 13 that we could talk about modifications to the design 14 plan or there could be some -- some development that 15 could have gone there, and I don't know why they 16 decided maybe to completely abandon the effort, but 17 it certainly -- I feel like my impression at that 18 time, based on this news article, was I felt like 19 they were pulling back and weren't going to pursue. 20 Q. All right. That's all I have on that. 21 Ms. Smith, the next document I'll hand you is Bates 22 Number SELC 152 through 155. These are redacted 23 minutes of the Board of Trustees' meeting of the 24 Southern Environmental Law Center. 25 These indicate on the first page there
Page 331 1 with the project. I think it's -- I think it was 2 what happened with the process, that there was a 3 real difficulty to come to an understanding of our 4 appropriate perspective roles in examining this and 5 it created a lot of distrust as a result. 6 Q. Okay. 7 A. A lack of acceptance on behalf of the 8 developers to understand that we were charged with 9 an oath of office to do diligence and that that 10 didn't -- that wasn't nefarious, evil, biased. They 11 were charged with advancing their project to the 12 best of their ability. 13 Q. And did you ever feel like you had 14 enough information to indicate whether or not you 15 would support the project or not? 16 A. There was a lot of data. My main 17 conclusion as we reached probably about this point 18 in time was that it would be difficult for me to 19 support levee development in a floodplain to the 20 extent that they apparently wanted behind levies. 21 Q. Okay. Continuing on in the article the 22 writer says: But she said, referring to you, the 23 reason the development isn't going to happen is 24 still, open quote, a question of geography. 25 There are you referring to the fact that	Page 333 1 that you were elected to the Board of Trustees of 2 the Southern Environmental Law Center at a meeting 3 held on Saturday, November 8, 2003 in Greenville, 4 South Carolina; is that correct? 5 A. Correct. 6 Q. Describe for me what led to your being 7 elected to the Board of Trustees of this 8 organization. 9 A. I recall having a meeting with a couple 10 of other trustees, and perhaps the president of the 11 organization, and I was invited to a retreat to get 12 to know the other members of the board and the 13 staff, or some of the other members of the board and 14 the staff, in late Fall of that year, and then the 15 invitation was issued to me. 16 Q. Okay. Who did you meet with -- do you 17 recall the names of some of the people you met with 18 when you were first being -- 19 A. Anna Kate Hipp and Rick Middleton. 20 Perhaps Billy Want, I can't remember -- two or 21 three. 22 Q. Okay. Who is Ms. Hipp? 23 A. She is a trustee from Greenville, South 24 Carolina. 25 Q. And Mr. Middleton?

24 (Pages 330 to 333)

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1 certainly don't mind sharing this information, I
 2 don't see anything wrong with it in terms of this
 3 case but I -- I just think there might be some
 4 privileged information there for them.
 5 Q. I don't mind giving you a short break to
 6 consult with your attorneys about your concerns.
 7 Why don't you go ahead?
 8 A. I appreciate it. Thank you.
 9 (A recess transpired.)
 10 THE WITNESS: Thank you for that. I'm
 11 very comfortable.
 12 BY MR. BECKER:
 13 Q. So as of 2003 you were a member of the
 14 litigation approval committee?
 15 A. Yes.
 16 Q. And they -- they could -- the committee
 17 on its own could approve whether or not the SELC
 18 staff attorneys would represent parties in
 19 litigation or the SELC -- does the SELC ever -- is
 20 it ever a party in litigation itself? Does it
 21 ever -- or does it always represent others who are a
 22 party in ongoing litigation?
 23 A. As far as my knowledge is, we have
 24 clients.
 25 Q. Okay. Now, were you -- were you aware

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1 that prior to this day, on February -- after
 2 February 20th, 2002 but before November 2003, that
 3 Columbia Venture, after February 20th, 2002 and
 4 the -- when the flood rate map became final, filed a
 5 suit in Federal District Court here in Columbia in
 6 front of Judge Margaret Seymour to challenge FEMA's
 7 Letter of Final Determination?
 8 A. I became aware of that and had knowledge
 9 of that.
 10 Q. Were you also aware that the Southern
 11 Environmental Law Center was representing certain
 12 parties, including Mr. Grego and others, John Grego,
 13 who sought to intervene in that action?
 14 A. I became aware of that.
 15 Q. When did you become aware of that?
 16 A. I can't remember.
 17 Q. It was before November 2003 or --
 18 A. Probably right after it happened.
 19 Q. All right. Was that issue of the fact
 20 that the SELC was representing parties in that
 21 litigation ever discussed in your -- ever a topic of
 22 discussion in your discussions with Ms. Hipp and
 23 Mr. Middleton and other Board members at the time
 24 you were presented for election to the Board of
 25 Trustees?

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1 A. Not that I recall.
 2 Q. At least at the time you were appointed
 3 to the litigation approval committee was that
 4 representation by the SELC ever addressed?
 5 A. There was full disclosure and everyone
 6 knew of the circumstances of that case and the
 7 representation, but there never was any -- there was
 8 never an effort to hide it. It was fully disclosed.
 9 Q. I'm not implying that there was. I'm
 10 simply wondering if -- if that topic came up.
 11 A. No. There was no discussion of that
 12 topic that I recall. There may have been cocktail
 13 party chatter and there may have been how things are
 14 going, that kind of thing, but it was never a big
 15 formal discussion.
 16 Q. Okay. All right. Ms. Smith, I've
 17 handed you a copy of an e-mail produced from SELC,
 18 it's Bates Number SELC 87 and it's dated Monday,
 19 February 23rd, 2004. It's from Blan Holman to
 20 Weston Adams and someone named gfred@aol.com. Do
 21 you know who that is?
 22 A. I do not.
 23 Q. And Amelia Linder, who I can tell you
 24 was a staff attorney at Richland County. It
 25 appears -- and there are other e-mails that go on

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1 and these were some additional changes to the
 2 Richland County Stormwater Ordinance that were being
 3 considered in 2004 that the Southern Environmental
 4 Law Center was working with Weston Adams and others
 5 to review proposed revisions in Richland County
 6 ordinances. Do you recall that?
 7 A. I do.
 8 Q. So did they continue -- were they at
 9 this point formally representing Mr. Adams or the
 10 Congaree Task Force as interested parties appearing
 11 before County Council to comment upon proposed
 12 changes to County ordinances?
 13 A. I don't recall whether they had
 14 officially appeared before them or exactly what
 15 their relationship was at that time.
 16 Q. Okay. You were serving on the
 17 litigation approval committee at this point in time?
 18 A. Yes.
 19 Q. Okay. Is there a difference between
 20 approving representation of a party in a litigation
 21 and providing advice to different parties in
 22 non-litigation matters?
 23 A. I don't understand the question.
 24 Q. Well, for example, litigation involves a
 25 dispute that's in court, where two parties are suing

Page 346 1 Q. Okay. 2 A. So that was the effort on this -- on 3 this particular ordinance, as I recall. 4 Q. All right. This is another e-mail, 5 Ms. Smith, it's Bates Number SELC 13 from you to 6 Blan Holman, dated March 22nd, 2004. Is this an 7 e-mail you wrote Mr. Holman? 8 A. It is. 9 Q. Okay. In it you -- again, you're just 10 discussing these proposed ordinance changes, 11 continuing a dialogue with him about that. There's 12 one statement I want to ask you about in that e-mail 13 where you write: The anti-B&C crowd is being 14 portrayed as unreasonable because, I think, no one 15 understands what yours -- you are saying. 16 Elaborate on that. What did you mean by 17 that? 18 A. It was hard for me to remember the 19 specific circumstances, but as happened so many 20 times this little issue of trying to get 21 infrastructure over wetlands turned into a Green 22 Diamond/Columbia Venture versus the environmental 23 kind of thing. In my mind that's not what it was 24 all about. I also had been approached by John 25 Foster about some land that he wanted to build on.	Page 348 1 you to Mr. Holman. By the way, was he good about 2 responding to you via e-mail? When you would send 3 him an e-mail, would he respond to you via e-mail? 4 A. Sometimes, sometimes not. 5 Q. Okay. Anyway, this is an e-mail from 6 you to him with a question, and you're asking about 7 maintaining ag levies. Is that shorthand for 8 agricultural levies? 9 A. Yes. 10 Q. Such as, say, the Manning levies? 11 A. Yes. 12 Q. In the middle paragraph -- well, you 13 say: Blan, supposedly under our existing ordinance, 14 agricultural levies can already be maintained. Is 15 the problem that under the no rise standard the 16 levies may be improved, expanded or raised because 17 engineers could play games with assumptions and 18 doing calculations? But if it's only for ag 19 purposes, who cares? 20 Help me understand a little bit more if 21 you remember what the issue here was that you were 22 seeking advice. 23 A. I don't know how this happened to come 24 up under the taking up with the wetlands and 25 infrastructure issue. I really don't remember why
Page 347 1 And as I recall, there were just those 2 communications that I felt like weren't being 3 clearly heard by either side. 4 Q. Okay. Who would you consider, looking 5 back on the -- from the vantage point of March 22nd, 6 2004, who would you consider to be the most 7 prominent among the anti-B&C crowd? 8 A. Well, I think it was any of those 9 groups, the Sierra Club, the Audubon Society, the 10 Congaree Task Force -- any of those organizations, 11 and there were just a wrath of people out there who 12 came forward and came to all the public meetings. 13 Q. Okay. When you refer to the anti-B&C 14 crowd, are you referring to those folks who were 15 opposed to the Green Diamond development project? 16 A. I think that's an unfair 17 characterization. I don't think they were anti-B&C. 18 Q. Right. 19 A. I think they were probably concerned 20 about development in flood prone land more than they 21 were anti-B&C, but that was an easy way to 22 characterize for the e-mail. 23 Q. Okay. Ms. Smith, there's one more 24 e-mail to you -- e-mail exchange between you and 25 Mr. Holman, this is SELC 15 and it's an e-mail from	Page 349 1 this got injected into it. It was just everything 2 was so wrapped around the flagpole that you started 3 talking about water, all of a sudden frogs appeared. 4 Q. Was that a concern of the group you 5 would call the anti-B&C crowd, that under a no-rise 6 standard engineers could play games with assumptions 7 in doing calculations? 8 A. People at this point were so paranoid 9 that if we said we were going to put a light post 10 down there they would have gotten all upset. So we 11 had all kinds of questions any time we dealt with 12 anything having to do with wetlands or water or 13 anything at that time. 14 Q. Ms. Smith, this is a copy of an e-mail 15 from Trip Van Noppen to Blan Holman and others and 16 the subject is Kit Smith. I really -- I want to 17 talk to you about the third paragraph of the e-mail. 18 MR. BOYD: What's the number? 19 MR. BECKER: I'm sorry. It's SELC 16, 20 it's dated September 8, 2004. 21 Q. Do you remember a conversation with 22 Mr. Van Noppen regarding the taking suit filed 23 against Richland County? 24 A. I do. 25 Q. And you -- he says you -- there is a

28 (Pages 346 to 349)

Page 354 1 Q. Who is he? 2 A. He's a risk manager for the County, 3 evidently. 4 Q. Was on February 2nd, 1999? 5 A. I assume so. I was told he was a risk 6 manager. 7 Q. Here is -- you've had a chance to read 8 the memorandum? 9 A. I did. 10 Q. It's dated February 2nd, 1999, which was 11 the date that Richland County Council voted on the 12 resolution regarding future acceptance of 13 responsibility for the Manning levies surrounding 14 the Green Diamond property if improved; is that 15 right? 16 A. That's right -- yeah, I assume so. 17 Q. In it, in this memorandum, Mr. Chambers 18 is saying to Mr. McSwain and to Mr. Smith that he 19 was unable to -- he assumed there would be 20 significant liability in accepting responsibility 21 for the maintenance and was unable to obtain any 22 quotes regarding liability insurance for such a 23 responsibility; is that accurate? 24 MR. JOHNSON: Object to the form. 25 THE WITNESS: It's accurate as far as I	Page 356 1 they were improved before the vote on February 2nd, 2 1999? 3 MR. JOHNSON: Object to the form. 4 THE WITNESS: I don't recall discussion 5 either way. 6 BY MR. BECKER: 7 Q. Okay. Would it be normal for 8 Mr. McSwain and Mr. Smith to -- was it your 9 experience that they usually gave a balanced 10 presentation of the advice they had been given 11 regarding issues before Council? 12 MR. JOHNSON: Object to the form. 13 THE WITNESS: The custom and practice is 14 if a Council member asked for information during the 15 committee meeting, then that additional staff 16 information is brought before Council. As you will 17 recall, at the D&S committee meeting information was 18 requested. But a lot of times unless the person 19 asked for it during the Council meeting, it's not 20 offered. You don't want -- the committee is relied 21 upon to sort of do the probing questions and ask for 22 information. 23 BY MR. BECKER: 24 Q. Okay. We know from the newspaper 25 article that it appeared in The State Newspaper on
Page 355 1 can tell, having just read it very quickly. 2 BY MR. BECKER: 3 Q. All right. And, of course, the letter 4 says what it does. He's -- the memo says what it 5 does. He's discussing with Mr. McSwain and 6 Mr. Smith his concerns about the liability insurance 7 and he concludes by saying: I expect the liability 8 insurance, if available, to be expensive. I 9 strongly recommend against accepting any liability 10 related to levies. Floods will occur, and levies 11 will fail. Just the litigation expense will be 12 considerable. 13 That's, of course, similar to the advice 14 that Mr. Wolfe included in his liability memo, is it 15 not? He mentioned litigation expense in the event 16 of a failure would be expensive, did he not? 17 A. He did -- 18 MR. JOHNSON: Object to the form. 19 BY MR. BECKER: 20 Q. Would Mr. McSwain and Mr. Smith have -- 21 well, let me ask. Do you recall them discussing 22 this memorandum from Mr. Chambers when Council was 23 preparing to vote on the resolution pertaining to 24 the Green Diamond property in acceptance of 25 maintenance responsibility for the Manning levies if	Page 357 1 the morning of February 2nd, 1999 that you were 2 concerned about the liability issue. 3 MR. JOHNSON: Object to the form. 4 BY MR. BECKER: 5 Q. Correct? 6 A. I think that was obvious from the 7 beginning of this, that I raised that question with 8 the resolution -- with the contingencies liability 9 included in it. 10 Q. So it's more likely than not, is it not, 11 that you would have raised questions about the 12 liability exposure at the Council meeting on 13 February 2nd, 1999 before the vote on that 14 resolution? 15 MR. JOHNSON: Object to the form. 16 THE WITNESS: As I understand it, it was 17 a member of the D&S committee that raised the 18 questions at the committee level and asked staff to 19 gather information. 20 BY MR. BECKER: 21 Q. Okay. That's all I have on this. 22 Ms. Smith, this next document is Bates Number SELC 23 17. This appears to be an e-mail from you to Blan 24 Holman, dated September 15th, 2004. It's your -- 25 the subject -- the text of the e-mail is apparently

Page 358 1 just to arrange a meeting, but the subject is Green 2 Diamond/Chuckie. What is -- what are you referring 3 to there? 4 A. You know what Green Diamond is. You 5 want to know what Chuckie means? 6 Q. Yes. 7 A. Did you ever see the movie where the 8 little doll named Chuckie, they kept killing him and 9 he kept coming back? 10 Q. No, I haven't seen that. 11 A. Well, that's what that refers to. 12 Q. Okay. Did you write that subject line 13 in the e-mail? Was that your writing? 14 A. I did. I did. 15 Q. You were looking -- asking Mr. Holman 16 for a meeting. You were going to meet with 17 Mr. Holman subsequent to this e-mail on Friday. 18 Said: Friday might work best for me. That's the 19 24th???? 20 Were you going to meet about Green 21 Diamond? 22 A. I -- I had a meeting scheduled to 23 discuss the port issue and somehow I think this was 24 that meeting. You'll have to refresh my memory. 25 When did the -- when was the settlement reached?	Page 360 1 Q. And, clearly, in that e-mail you had 2 arranged with him to set up a telephone conference 3 on September 24, 2004? 4 A. Apparently. 5 Q. Do you recall that conversation? 6 A. I don't. 7 Q. All right. It just occurred to me that 8 what may have occurred was that in August '04, of 9 2004, Columbia Venture filed its -- this lawsuit 10 against Columbia -- against Richland County. Just 11 as another point -- chronology point. Is that 12 possibly what led to the -- your reaching out to 13 Mr. Holman? 14 A. I don't have -- you know, I really just 15 don't have any recollection of it. I do feel very 16 comfortable that anything we discussed was a matter 17 of public record because we -- maybe it was to talk 18 about how we were going to manage our relationship 19 going forward, but I feel very comfortable that we 20 established that ground rule and we stuck by it. 21 Q. Right. And that's, in fact, what this 22 next e-mail discusses. Is that in front of you? 23 A. Yes. 24 Q. SELC 19 is the Bates Number and it's an 25 e-mail from Trip Van Noppen to Rick Middleton, a cc:
Page 359 1 Was this after the settlement was reached? 2 Q. Settlement? 3 A. With FEMA. 4 Q. Oh, no. This was long before that. 5 A. This was long before that? 6 Q. Yes. That didn't occur until 2008 or 7 so. 8 A. Something like that, yeah. I really 9 can't remember what spurred the meeting. 10 Q. Okay. All right. The next document is 11 a similar e-mail. It's Bates SELC 18, it's dated 12 September 23rd, 2004. 13 And in the prior e-mail you suggested a 14 meeting on the 24th, I believe, and this is 15 September 23rd. It looks like you're responding 16 back to Mr. Holman with the same subject line on the 17 e-mail saying: Tomorrow at ten I'll be expecting 18 your call. Kit. 19 Is that -- is that your e-mail? 20 A. Yes. 21 Q. Again, let me ask you. Would Mr. Holman 22 often respond back via e-mail? We haven't seen any 23 e-mails where he's responding to you. 24 A. Sometimes he would, sometimes we'd have 25 a chat on the phone.	Page 361 1 to Brian Holman and it discusses: Kit Smith - facts 2 on potential board member conflict. 3 Let me ask you this because I failed to 4 when we looked at a previous e-mail from Mr. Van 5 Noppen. What was his role at the SELC? 6 A. He was the Number 2 guy at the time. 7 Q. Is he an attorney? 8 A. Yes. 9 Q. Is Mr. Middleton an attorney? 10 A. Yes. 11 Q. All right. This e-mail is from -- dated 12 Friday, September 24th. And it's addressed to 13 Mr. Middleton and it starts out: Rick - you asked 14 for a brief summary of the facts involved in Kit's 15 situation, for use in the Board's overall 16 consideration of how to define and handle potential 17 conflict. Here they are. And they go on in the 18 beginning of the fourth paragraph down, points out: 19 Now the county has been sued in a takings claim by 20 the developer. 21 So the manner in which you decided to 22 handle the conflict is set out here, I'm not going 23 to go into that, there's no need to. But did you -- 24 does this refresh your recollection, did you have a 25 conversation with Mr. Holman on the 24th about this

Page 370 1 A. They're either on the President's 2 Council or former board members or board members. 3 Q. Okay. 4 A. I think, and just because -- I want to 5 qualify that because I'm trying to be accurate. 6 Q. Okay. In it he discusses a ruling by 7 Judge Seymour in the suit against FEMA brought by 8 Columbia Venture in which clients of the SELC had 9 intervened as defendants in the case. As he says, 10 if you see there at the beginning -- end of the 11 first page, the carryover sentence he says: We 12 intervened on the side of FEMA, representing 13 conservationists as well as a neighborhood across 14 the river from the new proposed levies. 15 So he was representing clients who were 16 opposed to Columbia Venture in that lawsuit because 17 the lawsuit was Columbia Venture versus FEMA. Would 18 you agree with that? 19 A. Yes. 20 Q. He states that: Rather than reach the 21 technical merits of the 2001 map -- and that would 22 be the one that was affirmed in the August 20th, 23 2001 Letter of Final Determination -- U.S. District 24 Judge Seymour found that FEMA failed to provide 25 proper notice of the draft map -- draft map in the	Page 372 1 Q. It wouldn't have been about this. And 2 I'm just wondering, based on your recollection, this 3 prompted any further conversation or e-mail 4 communication between you and Mr. Holman about this 5 suit. 6 A. I was very curious about this, but let 7 me just point out again that we -- my understanding 8 and his was we didn't discuss anything that wasn't a 9 matter of public record. I'm sure that this would 10 have been available on the SELC web site, the 11 contemplation of the appeal or anything they were 12 going to do to go forward. It was general knowledge 13 within the public realm. 14 Q. Did you discuss any strategy for 15 preventing Columbia Venture from taking advantage of 16 this development in the litigation to move forward 17 with their development in some way? 18 A. Absolutely not. 19 Q. Okay. Why do you say absolutely not? 20 A. I have said, I've already told you, I 21 did not talk about any -- I did not share any 22 information that I felt was against the rules, 23 proper procedure or the law or ethical conduct. 24 Q. Okay. 25 A. If -- that was absolutely my goal and
Page 371 1 Federal Register and vacated it on that basis. 2 He then concludes by saying: We are 3 evaluating further legal action including a stay of 4 the judge's ruling and an appeal. If you have any 5 questions, please do not hesitate to contact me 6 directly. 7 Did I read all of that correctly? 8 A. You did. 9 MR. JOHNSON: Object to the form. 10 BY MR. BECKER: 11 Q. Did you have a discussion about this 12 with Mr. Holman after this occurred? 13 A. Some -- yes. 14 Q. What discussion did you have? 15 A. General discussion whenever I saw him. 16 As I said, I don't remember this meeting. Perhaps 17 at that meeting -- if I saw him in a board meeting 18 general discussion. 19 Q. Well, we are -- we're up -- we've come 20 forward in the chronology to December 1st, 2005. 21 Previously we were talking about a meeting you may 22 have had with him on September 24, 2004. 23 A. Right. 24 Q. So -- 25 A. So it wouldn't have been about this.	Page 373 1 Mr. Holman's. 2 Q. Ms. Smith, this next document I'm going 3 to hand you is marked Smith 109 which, again, would 4 indicate that it came from your computer. It's 5 dated December 20th, 2005 and it did discuss a 6 Proposed Amendment to Ordinance Section 1, Paragraph 7 4. And the text of it states: This moratorium does 8 not apply to permit applications for maintenance of 9 existing structures, levies or building, or to bring 10 existing levies into compliance with Richland County 11 ordinances and/or standards of the Army Corps of 12 Engineers applicable to certified levies. 13 Did I read that correctly? 14 A. You did. 15 Q. Are you familiar with this document? 16 A. Yes. 17 Q. What is it? 18 A. It is a draft to amend to put in place a 19 moratorium based on the -- not having a good map, 20 FEMA map. 21 Q. Mm-hmm. Okay. Elaborate on that. A 22 moratorium on what? Based on not having a good FEMA 23 map? 24 A. I can't be more articulate than what I 25 already have been, which is -- I'd really have to

Page 374 1 see the whole document. I'm not exactly sure what 2 sections of the code we were amending. 3 Q. Well, is this something you drafted? 4 A. No. 5 Q. Who would have drafted it? 6 A. I would -- County staff in my best 7 guess. 8 Q. After Judge Seymour had vacated the FEMA 9 map, did you have discussions with County staff 10 about the impact of that decision by the judge? 11 A. Of course. 12 Q. Okay. What were those discussions? 13 A. What are we going to do? 14 Q. And what -- what was the conclusion? 15 A. A moratorium. 16 Q. Why was a moratorium necessary? 17 A. There was a lot of confusion about the 18 lack of clarity on the judge's order and what impact 19 that had. Something about whether the BFEs had been 20 vacated or whether the floodway had changed. I 21 can't remember all the details, but it was a pretty 22 complicated situation. I believe we engaged outside 23 counsel to help us make that determination. 24 Q. Okay. Who on staff did you have those 25 conversations with?	Page 376 1 meeting on December 20th, 2005? 2 A. I recall that I was. 3 Q. The minutes do not reflect that you were 4 present at the meeting on November 29, 2005. 5 A. That's correct. 6 Q. Do you recall that you were not in 7 attendance at that meeting? 8 A. I don't recall that meeting. I don't 9 know. 10 Q. It looks like the only item -- action 11 item for the meeting on December 20, 2005 was an 12 emergency ordinance establishing a temporary 13 moratorium on approval of floodplain management 14 permits for development or construction within a 15 portion of the Congaree River floodplain; is that 16 correct? 17 A. That's correct. 18 Q. And it -- attached after the minutes is 19 a draft emergency ordinance; is that right? 20 A. That's right. 21 Q. Section 1 of the ordinance -- proposed 22 ordinance, which appears on the page with Bates 23 Number DEF-12283, provides: Richland County hereby 24 declares a moratorium on the approval or denial of 25 any permit submitted to Richland County for
Page 375 1 A. I don't remember having any private 2 conversations. I think we were briefed -- the 3 Council itself was briefed probably in executive 4 session. I don't recall having any one-on-one 5 conversations. 6 Q. Okay. Was any development imminent at 7 this point that was to occur in a floodway? 8 A. I don't know. 9 Q. Let's go on to the next document. The 10 next document, Ms. Smith, is a document which has 11 been Bates Numbered DEF-12280 through 12285. This 12 looks like -- well, you take a look at it and just 13 tell me what it is, if you can. 14 A. This is an agenda for the Development & 15 Services Committee, with minutes of the prior 16 meeting and staff action on an emergency ordinance. 17 Q. Okay. This first document is an agenda 18 for a meeting to be held on December 20th, 2005 at 19 five p.m.? 20 A. That's correct. 21 Q. And the document that follows that is -- 22 are the minutes of a meeting of that same committee 23 held on November 29th, 2005 at five p.m.? 24 A. That's correct. 25 Q. Were you present at the -- at this	Page 377 1 construction, development, zoning, building, 2 disturbance of land, or for stormwater management 3 purposes, as defined within Chapter 26 of the 4 Richland County Code of Ordinances, on property 5 located in a flood-prone area within the Congaree 6 River Floodplain. 7 Did I read that correctly? 8 A. You did. 9 Q. After defining what flood prone area 10 means and what the Congaree River floodplain area 11 means, the Section 1 states: This moratorium does 12 not apply to permit applications for maintenance of 13 existing structures, levies or buildings. 14 Did I read that correctly? 15 A. You did. 16 Q. Let me ask you again. It also appears 17 that this was in direct response to what was 18 happening in the Federal Court case before Judge 19 Seymour in Columbia Ventures versus FEMA; is that 20 also correct? 21 A. That's correct. 22 Q. Do you recall was this recommended out 23 by the Development & Services Committee? 24 A. I believe it was. 25 Q. Did you have any discussions with other

35 (Pages 374 to 377)

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1 involved in any of the county's appeal or any of
2 that?

3 A. No, sir, none of that.
4 (PLF. EXH. 125, Memorandum dated
5 11/30/99, was marked for identification.)
6 BY MR. GRIER:
7 Q. Let me see 35. I show you what's been
8 marked as Exhibit 125. The Bates number is
9 DEF-00008146. And the second page is
10 DEF-00008147. Then the next one is 8148, 8149,
11 8150. I hand you Exhibit 125.
12 A. Okay.
13 Q. Is this a document that you have seen
14 before?
15 A. I don't believe so.
16 MS. TAYLOR: I don't recall this
17 being -- could have been.
18 MR. GRIER: Do you want to talk about
19 that?
20 MS. BLACK: Yes.
21 MS. TAYLOR: It was? Okay. My error.
22 Yes, there were.
23 BY MR. GRIER:
24 Q. So you don't believe you've seen this.
25 But look on the second page. Mr. Knudsen, who

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1 was Mr. Knudsen at that time?
2 A. He was in our planning department.
3 Q. Was he under you?
4 A. No.
5 Q. Okay. Sort of the middle of the page
6 there, the second page, he says, my big questions
7 at this time are these. The county, through its
8 administrator, requested a delay because it did
9 not agree with the floodway line. Now it has
10 been changed back to essentially 1994 levels.
11 How do we disagree with that finding? If we were
12 to appeal would we basically appeal on public
13 opinion or technical data?
14 Now, did you have any knowledge of any
15 technical data that the county possessed on which
16 to base an appeal of the August 1999 flood map
17 with FEMA?
18 A. No.
19 Q. And as I understand it Mr. McSwain
20 didn't ask you to review any of the technical
21 materials submitted by any appellant in
22 September, October, November, December of 1999.
23 A. No.
24 Q. And you didn't otherwise review it on
25 your own.

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1 A. Correct.
2 Q. Now, did you have any discussions with
3 anybody from the South Carolina Department of
4 Natural Resources concerning the technical
5 aspects of their appeal?
6 A. Yes. Seemed like in some of the
7 public meetings we went to with them that I had
8 an opportunity to discuss some of it with
9 basically the guy that did the model for them.
10 Q. Would that have been Mr. Fontenat?
11 A. No, I don't recognize that name.
12 Q. Can you tell me his name?
13 A. No. It seems like it was an Arab
14 name.
15 Q. Shadray?
16 A. I don't know. That doesn't ring a
17 bell either.
18 Q. What meeting was this that you're
19 talking about?
20 A. I can't tell you exactly. Just some
21 of the meetings that were organized to talk about
22 the pros and cons of the appeals and how the
23 models were developed and all that.
24 Q. To do with FEMA? FEMA responsive
25 meetings?

Page 97

1 A. I think we had a FEMA meeting and we
2 had some, I think, just some local meetings, I
3 believe.
4 Q. Okay. Now are you familiar with --
5 A. Is it Bud Bader?
6 Q. -- Bud Bader? Okay. Are you familiar
7 with this one-dimensional model called, I think,
8 HEC-2?
9 A. To a certain extent, yes.
10 Q. All right. Are you familiar with the
11 two-dimensional model?
12 A. Not really. I think I have a
13 comprehension of what it refers to but no.
14 Q. Okay.
15 A. I haven't done any.
16 Q. Do you know whether or not FCD&R, or
17 anybody else, submitted any two-dimensional
18 models to FEMA in connection with an appeal from
19 the August 1999 revised preliminary flood
20 insurance rate map?
21 A. No, I don't know.
22 Q. You don't know?
23 A. Don't know.
24 Q. Now, did the county have anybody to
25 verify the technical aspects of any of these

Page 106 1 It's got January 3rd '85, April 17th, '87, 2 December 5th, 1989, and January 19th, 1994. 3 A. Okay. 4 Q. And then this revision would have been 5 as of July 16th, 1995. 6 A. This revision? 7 Q. The document we're looking at right 8 now. On the first page it says -- 9 A. Oh, yeah, right. 10 Q. And what this is is prior history. 11 A. Right. 12 Q. Now, my question to you is that in all 13 of these prior FIRM revisions, January 3rd, '85, 14 April 17th, '87, December 5, '89, January 19th, 15 '94, none of them had the Manning levees in the 16 regulatory floodways do they? 17 A. I think that's correct. 18 Q. Now, and on none of these FIRMs did 19 FEMA recognize the Manning levees as providing 20 protection from the base flood. 21 A. That's right. They always showed the 22 floodplain area -- 23 Q. Behind the -- 24 A. -- protected by the levees as zone A. 25 Q. Floodplain?	Page 108 1 reduction of conveyance floodway? Is it method 2 4? 3 A. I don't know. 4 Q. Did anyone with the county, your 5 office, or anyone else with the county, check to 6 see if FEMA actually used method 4 on that equal 7 reduction of conveyance method to determine the 8 floodway for the Congaree River? 9 A. No. I say no. Nobody in my office 10 did or nobody that I ... 11 Q. Nobody that you were aware of. 12 A. No, that I was aware of. 13 Q. Were you aware that FEMA had a 14 geotechnical engineer take a look at these data 15 concerning these levees? 16 A. I can't say that I am. 17 Q. Okay. You never reviewed any reports 18 from a geotechnical engineer that FEMA utilized 19 to study these levees? 20 A. I have seen geotechnical reports, but 21 I wasn't aware that FEMA had contracted for it. 22 Q. Geotechnical reports were provided to 23 you by Lockwood Greene? 24 A. I think so, yes. 25 (PLF. EXH. 126, Levee profiles, was
Page 107 1 A. Floodplain. 2 Q. Okay. So that tells us that none of 3 these prior studies did FEMA recognize the levees 4 as certified levees -- 5 A. Right. 6 Q. -- providing protection from the base 7 level. 8 A. That's right. 9 Q. We talked earlier about the equal 10 reduction of conveyance floodway. Do you 11 remember that discussion that we had? 12 A. Yes. 13 Q. And that that document, FEMA 37, 14 required the study contractor to use that method 15 when setting a FIRM of floodway on a watercourse 16 that serves as the boundary between two 17 communities. 18 A. Right, I recall that. 19 Q. Now, are you familiar with, I think 20 you said you were generally familiar with the 21 HDC-2 hydrolic program that FEMA uses to 22 determine floodways. 23 A. Generally. 24 Q. Do you know which method under that 25 program was used to determine the so-called equal	Page 109 1 marked for identification.) 2 BY MR. GRIER: 3 Q. I'm going to hand you what has been 4 marked as Exhibit 126. Have you seen these, 5 looks like some levee profiles? 6 A. Cross-sections. 7 Q. Is it cross-sections here? 8 A. Yes. 9 Q. Have you seen this before? 10 A. Yes. 11 Q. And when did you see these before? 12 A. Maybe yesterday. 13 Q. Well, were these part of the 14 application that Lockwood Greene submitted to the 15 county for an application to improve the levees? 16 A. I don't know. These appear to just be 17 cross-sections of the existing levee. But I 18 don't know if they were submitted or not. 19 (PLF. EXH. 127, Letter dated 5/2/99, 20 was marked for identification.) 21 BY MR. GRIER: 22 Q. I'm going to show you a document 23 that's been marked as Exhibit 127. It's a letter 24 from S&ME to Lockwood Greene dated May 2nd, '99. 25 And the same question for you. Was this part of

Subj: Re: Meeting with Blan
Date: 1/14/2008
To: bholman@selcnc.org

A law professor friend of mine, Kay Butler, said the lawyer for the other side, Somebody Montgomery?, said the case was NOT decided on a technicality but on bad science. I'd love your response to that!!! when we meet.

I'll check with Joel and confirm time and place. Pencil us in! And thanks. Joel has been so involved in economic development in SC that this is of great concern to him. He views the port as a necessity to our prosperity.

Kit

In a message dated 1/14/2008 9:44:31 A.M. Eastern Standard Time, bholman@selcnc.org writes:

Friday morning/lunch would be perfect. I can meet you wherever you like in Charleston.

Looking forward to it,

Blan

P.S. This past Friday, we filed a motion with Judge Seymour to "stay" her order (the one vacating the floodway) pending our appeal to the Fourth Circuit. I will send it to Mullen Taylor. I'll explain in full detail Friday...

—Original Message—

From: KitSalley@aol.com [mailto:KitSalley@aol.com]
Sent: Monday, January 14, 2008 8:24 AM
To: Annie Stafford
Cc: Blan Holman; Rick Middleton
Subject: Re: Meeting with Blan

Joel and I will be in Charleston this weekend. I think we're planning on coming down Thursday (if not, we'll be there Friday). Would Thursday evening/late afternoon or Friday morning/lunch work??

Cody and Carrie will join us Friday afternoon and we'll be babysitting their child to enable them to participate in wedding festivities of a friend.

Kit

In a message dated 1/11/2008 4:28:01 P.M. Eastern Standard Time, AnnieStafford@selcva.org writes:

Kit, I spoke to Blan today and he would be very pleased to talk with you and Joel about the Charleston Port and SELC's position. I believe you told Rick you would be in Charleston next week, and Blan is available towards the latter part.

Could I ask the two of you to be in touch with each other about setting a meeting time and keep me in the loop?

I'll be seeing both of you soon. Have good weekends.

Smith 031

Annls

Start the year off right. Easy ways to stay in shape
<<http://body.aol.com/fitness/winter-exercise?NCID=solomp00300000002488>>
in the new year.

Smith 032

-605-

6048

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-40-8943R

Columbia Venture, LLC,

Plaintiff,

v.

Richland County,

Defendant.

**APPENDIX TO PLAINTIFF'S
MOTION TO RECONSIDER, ALTER, OR
AMEND ORDER ENTERED MARCH 19, 2013**

1. *A.A. Profiles, Inc. v. City of Ft. Lauderdale*
850 F.2d 1483 (11th Cir. 1988)
2. *Glasscock Co., Inc. v. Sumter County*
361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004)
3. *Hospitality Ass'n of S.C., Inc. v. City of Charleston*
320 S.C. 219, 464 S.E.2d 113 (1995)
4. *Lucas v. S.C. Coastal Council*
505 U.S. 1003 (1992)
5. *Lucas v. S.C. Coastal Council*
309 S.C. 424, 424 S.E.2d 484 (1992)
6. *S.C. State Ports Auth. v. Jasper County*
368 S.C. 388, 629 S.E.2d 624 (2006)
7. S.C. Code Ann. § 4-9-25 (Supp. 2012)
8. Former S.C. Code Ann. § 48-39-300 (1988 version)
9. Richland County Regulations
Division 3 - Preservation of Council Actions, § 2-39 through § 2-48

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Richland County Code

**CODE OF ORDINANCES of RICHLAND COUNTY, SOUTH
CAROLINA**

CODE OF ORDINANCES of RICHLAND COUNTY, SOUTH CAROLINA

CONTAINING THE
GENERAL ORDINANCES OF THE COUNTY

2013 S-17 Supplement

This supplement is current through Ordinance No. 064-12HR

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Richland County Code

Sec. 2-39. Formal system of official actions established.

There is hereby established a formal system to be hereafter employed by the council of enacting, recording and preserving the official actions of the council pursuant to the authority vested in it by the Constitution and laws of the state. No action hereafter taken by the council shall have force and effect unless the same is accomplished in accordance with this division, except as otherwise specifically provided by the law of this state or of the United States.

(Code 1976, § 2-8001)

Sec. 2-40. Permanent enactments, ordinances.

All permanent enactments, resolutions or official actions taken by the council intended to have permanent and continuing effect (as a statute or decree) shall be in the form of and entitled an "ordinance." Such ordinance shall be in writing, shall have a title accurately stating its purpose, shall relate to only one subject, shall be divided into sections with appropriate subtitles, shall be enacted only by majority vote of the whole council in public session which vote shall be recorded and with no vote by proxy permitted, shall state the effective date of the ordinance, shall be signed by the chairman or vice-chairman presiding and attested by the clerk of council; and shall be serially numbered each calendar year commencing with the number one for the first ordinance of each year.

(Code 1976, § 2-8002)

Sec. 2-41. Temporary and enabling enactments, regulations.

All temporary or enabling enactments or official actions taken by the council intended to have only temporary, or enabling, or regulatory effect (as rules or directions to carry out the intent of a law of the state or an ordinance of the council) shall be in the form of and entitled a "regulation." Such regulation shall be in writing, shall have a heading stating its subject and a specific reference to the governing statute or county ordinance pursuant to which it is enacted, shall relate only to matters encompassed by the controlling statute or ordinance, shall be divided into sections with appropriate subtitles, shall be enacted in public session by at least a majority of those members of the council present and voting which vote shall be recorded with no vote by proxy permitted, shall be signed by the chairman or vice-chairman presiding and attested by the clerk. A regulation shall be effective upon the date of enactment unless otherwise specifically provided in the regulation.

(Code 1976, § 2-8003)

Sec. 2-42. Administrative and routine decisions, actions.

Any other official decision, proclamation, motion, resolution, administrative action or routine business involving or requiring consent or decision of the council shall be entitled an "action." Such action shall require no special form or content and may be passed by a majority vote of those members of the council present and voting, in public session or executive session, except that no vote by proxy

shall be permitted. Such action shall be effective upon its official entry in the minutes of the council, which shall be a permanent public record.

(Code 1976, § 2-8004)

Sec. 2-43. Preparation, publication and notice.

Unless waived by a majority vote of those members of the council present and voting, no ordinance or regulation shall be enacted or promulgated by the council unless it has been prepared or reviewed by the county attorney, or other competent attorney approved by the council, and his approval as to form and legality of the proposed ordinance or regulation is endorsed thereon. All ordinances, regulations, resolutions and actions of the council shall be deemed published and public notice thereof shall be effective as of the date the formalities of enactment hereinabove provided are complied with, and are entered into the minutes of the council.

(Code 1976, § 2-8005)

Sec. 2-44. Codification, indexing and distribution.

The council shall provide for permanent codification and preservation of all ordinances enacted by it. Such codification shall be in printing or other form of permanent reproduction, shall be arranged in a simple and convenient manner by subject matter, and shall be indexed in such form as to be easily used and read by the public. Regulations may be included in such codification, and if so shall be inserted at the foot of the ordinance pursuant to which they were promulgated. No codification shall be required of other actions except entry in the minutes of the council, which minutes shall be a public record. The council may provide for reproduction and distribution of codified ordinances and regulations to county officers, to the legislative delegation, and to other interested persons, and may provide for sale of copies thereof to the public.

(Code 1976, § 2-8006)

Cross reference(s)—Supplementation of Code, § 1-7.

Sec. 2-45. Prior decisions and actions preserved.

Whether or not enacted with the formalities herein provided, all prior decisions, enactments and actions of the council and its predecessor governing bodies of the county remain in full force and effect except as heretofore or hereafter overruled, repealed, revoked or amended by law or by subsequent ordinance, regulation, resolution or action of the council.

(Code 1976, § 2-8006)

Sec. 2-46. Legislative and judicial powers not affected.

No ordinance, regulation, resolution or action of the council shall purport to control or affect the legislative and judicial branches of the government of the county or the state, except those enacted

pursuant to specific powers or duties placed upon the council by the constitution or statute; but shall otherwise be binding upon all persons lawfully affected thereby.

(Code 1976, § 2-8006)

Sec. 2-47. Amendment and repeal.

No ordinance, regulation, resolution or action of the council enacted pursuant to this division may be amended or repealed except by the same formal procedure and requirements as provided for the enactment thereof.

(Code 1976, § 2-8009)

Sec. 2-48. Preservation and erasure of tape recordings.

(a) The clerk or duly authorized representative of council shall be responsible for recording the proceedings of county council by shorthand, stenotype and/or electronic recording.

(b) The clerk or duly authorized representative shall be responsible for transcribing said proceedings into the form of minutes for presentation to county council for approval and/or amendment.

(c) The clerk shall maintain the shorthand notes, stenotype tapes and/or electronic recordings of a meeting for a period of two (2) years from the date the minutes of such meeting were approved.

(d) Upon the expiration of the two-year period, the clerk shall destroy shorthand notes, stenotype tapes and shall erase and reuse electronic recordings.

(e) All stenotype tapes, shorthand notes and/or electronic recordings remain the property of the council. Approved minutes of council meetings are available for public review; however, any individual other than a member of the county council desiring information from a filed stenotype tape and/or electronic recording must receive prior permission from the county council after submitting a written request to the clerk of council. No stenotype tape and/or electronic recording may be removed from the clerk of council office. Any listening to such recordings must be done in the presence of the clerk [or] the clerk's designee. Any member of the county council who desires to listen to tapes of an executive session may do so upon verbal request to the clerk of council, but only in the presence of the clerk of council or the clerk's designee. Under no circumstances shall the tapes of executive session minutes be reproduced nor shall same be removed from the office of the clerk of council, except upon favorable vote of a majority of the county council to do so.

(f) All executive session tapes shall be protected from disclosure to any outside individual or agency as provided for in the Freedom of Information Act (Section 30-4-10 of the South Carolina Code of Laws, 1976) and shall not be subject to disclosure pursuant to subpoena, order of the court or otherwise.

(Code 1976, § 2-8010; Ord. No. 1295-85, §§ 1, 2, 5-7-85)

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**Index to Plaintiff's Reply to Defendant's Memorandum in Opposition to
Plaintiff's Motion to Reconsider, Alter, or Amend**

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1	<i>Gartside v. Gartside</i> , 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009)
2	<i>Wright v. City of Florence</i> , 229 S.C. 419, 93 S.E.2d 215 (1956)
3	Certified Copy of Richland County Code of Ordinances (various)

TAB 3

I hereby certify that this is a true and correct copy of
the original document.

Certified By:

Title:

Date:

Michelle Oley
Int. Clerk of Council
4/11/13

Marianne E. Bell
MARIANNE E. BELL
CLERK OF COUNCIL
RICHLAND COUNTY COUNCIL
7-30-74

1972 16

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STATE OF SOUTH CAROLINA

COUNTY COUNCIL FOR RICHLAND COUNTY

ORDINANCE NO. SIX, 1972

To Establish a Formal System of Enactment, Recording and Preserving Official Actions by the County Council of Richland County; To Provide for Enactment of Ordinances Having the Force of Law; To Provide for the Promulgation of Rules and Regulations Thereunder; To Provide for Preparation, Publication and Notice Thereof; To Preserve Prior Decisions and Actions of the Council; To Declare Exceptions Thereto; and To Provide for Amendments and Repeals.

Pursuant to the authority granted by the General Assembly of South Carolina,

Be it enacted by the County Council of Richland County:

Section 1. Formal System of Official Actions Established. - There is hereby established a formal system to be hereafter employed by the County Council of Richland County of enacting, recording and preserving the official actions of the Council pursuant to the authority vested in it by the Constitution and laws of the State of South Carolina. No action hereafter taken by the Council shall have force and effect unless same is accomplished in accordance with this ordinance, except as otherwise specifically provided by the law of this State or of the United States.

Section 2. Permanent Enactments, Ordinances. - All permanent enactments, resolutions or official actions taken by the Council intended to have permanent and continuing effect (as a statute or decree) shall be in the form of and entitled an "ordinance". Such ordinance shall be in writing, shall have a title accurately stating its purpose, shall relate to only one subject, shall be divided into sections with appropriate subtitles, shall be enacted only by majority vote of the whole Council in public session which vote shall be recorded and no vote by proxy permitted, shall state the effective date of the ordinance, shall be signed by the Chairman or Vice-Chairman presiding and attested by the Secretary of the Council; and shall be serially numbered each calendar year commencing with the

Marianne S. Bell 1972 17
MARIANNE S. BELL
CLERK OF COUNCIL
RICHMOND COUNTY COUNCIL
4-30-74

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number one for the first ordinance of each year. Upon the request of any Council member, except in time of emergency as declared by a majority vote of those members of the Council present and voting, any proposed ordinance shall be required to lay upon the table one week before a vote is taken thereon.

Section 3. Temporary and Enabling Enactments, Regulations. - All temporary or enabling enactments or official actions taken by the Council intended to have only temporary, or enabling, or regulatory effect (as rules or directions to carry out the intent of a law of the State or an ordinance of the Council) shall be in the form of and entitled a "regulation". Such regulation shall be in writing, shall have a heading stating its subject and a specific reference to the governing statute or county ordinance pursuant to which it is enacted, shall relate only to matters encompassed by the controlling statute or ordinance, shall be divided into sections with appropriate subtitles, shall be enacted in public session by at least a majority of those members of the Council present and voting which vote shall be recorded and no vote by proxy permitted, shall be signed by the Chairman or Vice-Chairman presiding and attested by the secretary. A regulation shall be effective upon the date of enactment unless otherwise specifically provided in the regulation.

Section 4. Administrative and Routine Decisions, Actions. - Any other official decision, proclamation, motion, resolution, administrative action or routine business involving or requiring consent or decision of the Council shall be entitled an "action". Such action shall require no special form or content and may be passed by a majority vote of those members of the Council present and voting, in public session or executive session, except that no vote by proxy shall be permitted. Such action shall be effective upon its official entry in the minutes of the Council, which shall be a permanent public record.

Marianne E. Bell
MARIAHNE E. BELL
CLERK OF COUNCIL
RICHLAND COUNTY COUNCIL
4-30-74

1972 18

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Section 5. Preparation, Publication and Notice. - Unless waived by majority vote of those members of the Council present and voting, no ordinance or regulation shall be enacted or promulgated by the Council unless same has been prepared or reviewed by the County Attorney, or other competent attorney approved by the Council, and his approval as to form and legality of the proposed ordinance or regulation is endorsed thereon. All ordinances, regulations and actions of the Council shall be deemed published and public notice thereof shall be effective as of the date the formalities of enactment herein above provided are complied with, and same are entered into the minutes of the Council.

Section 6. Codification, Indexing and Distribution. - The Council shall provide for permanent codification and preservation of all ordinances enacted by it. Such codification shall be in printing or other form of permanent reproduction, shall be arranged in a simple and convenient manner by subject matter, and shall be indexed in such form as to be easily used and read by the public. Regulations may be included in such codification, and if so shall be inserted at the foot of the ordinance pursuant to which they were promulgated. No codification shall be required of other actions except entry in the minutes of the Council, which minutes shall be a public record. The Council may provide for reproduction and distribution of codified ordinances and regulations to county officers, to the Legislative Delegation, and to other interested persons; and may provide for sale of copies thereof to the public.

Section 7. Prior Decisions and Actions Preserved. - Whether or not enacted with the formalities herein provided, all prior decisions, enactments and actions of the Council and its predecessor governing bodies of Richland County remain of full force and effect except as heretofore or hereafter overruled, repealed, revoked or amended by law or by subsequent ordinance, regulation or action of the Council.

Margaret S. Bell
MARGARET S. BELL
CLERK OF COUNCIL
RICHLAND COUNTY COUNCIL
4-30-74

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Section 8. Legislative and Judicial Powers not Affected. - No ordinance, regulation or action of the Council shall purport to control or affect the legislative and judicial branches of the government of Richland County or the State of South Carolina, except those enacted pursuant to specific powers or duties placed upon the Council by constitution or statute; but shall otherwise be binding upon all persons lawfully affected thereby.

Section 9. Amendment and Repeal. - No ordinance, regulation, or action of the Council enacted pursuant to this ordinance may be amended or repealed except by the same formal procedure and requirements as provided for the enactment thereof.

Section 10. Effective date. - This ordinance shall be effective as of
January 24, 19 72.

[Signature]
Chairman
County Council for Richland County

Attest this 24th day of April, 1972.

[Signature]
Secretary
County Council of Richland County

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

John Hamilton Smith, Special Referee

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

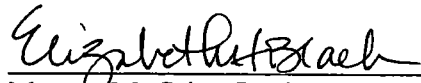
Columbia Venture, LLC, ...Appellant,

v.

Richland County, ...Respondent.

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Revised Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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May 2, 2014