

RECEIVED

Apr 15 2021

SC Court of Appeals

EXHIBIT B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO.: 2018-CP-26-06064
)	
South Carolina Electric & Gas Company,)	
)	
Condemnor,)	
)	
vs.)	MOTION TO RECONSIDER,
)	ALTER AND/OR AMEND
Barbara A. Todd,)	
)	
Landowner,)	
)	
and)	RECEIVED
)	Apr 15 2021
Public Service Authority; Pitch Landing,)	SC Court of Appeals
LLC; and David O. Heniford, Jr.,)	
)	
Other Condemnees.)	

Pursuant to Rules 52, 58, 59, and 60, SCRCP, and all other legal authority, Landowner respectfully requests the Court reconsider its Form 4 Orders: granting Landowner’s Motion to Restore dated March 2, 2021 and filed on March 3, 2021 in C/A No.:2018-CP-26-06064; and, denying Landowner’s Motion to Consolidate dated March 2, 2021 and filed on March 3, 2021 in C/A No.:2018-CP-26-06424. The grounds for this Motion are:

1. The ruling erroneously relies on the *S.C. DOC v. Clemson Univ.* (2020 S.C. App. Lexis 123; 2020 WL 6751311) case, which is not a final ruling as there is currently a Petition for Certiorari pending before the South Carolina Supreme Court.
2. The *S.C. DOC v. Clemson Univ.* case is readily distinguishable from the case at hand.
 - a. The School District in the Clemson matter was provided a full evidentiary hearing before a Special Referee consented to by all parties on the issue of

whether the School District held an interest in the portion of the parcel its buildings occupied, specifically, whether the Leasehold interest remained intact following the expiration of the lease it once held. The Referee held the School District had no written leasehold or other documented property interest in the tract, but that it enjoyed an equitable interest as a result of improvements it had constructed thereupon.

- b. By contrast, the larger Pitch Landing tract includes an easement appurtenant providing permanent, location-specific access through the property sold to Barbara Todd (see Deed Book 2878 Page 247) (See attached Exhibits A and B). This easement, referenced in Paragraph 3 of Civil Action 2018-CP-26-06424 (See attached Exhibit C) and Paragraph 4(b) of Civil Action 2018-CP-26-06064 (See attached Exhibit D) is a dominant, appurtenant easement, separate and distinct from Todd's fee simple estate. The Pitch Landing real interest in the Todd tract is that "which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal..." *Black's Law Dictionary, Sixth Ed.*, definition, in part, of "appurtenance." Here, the easement is annexed to the Pitch Landing tract "more worthy as principal." As such, Pitch Landing as the property owner of this easement interest should have been fully included in the matter against Todd, in order to properly compensate Pitch Landing for all impacts of the taking of its affected real property interest.

3. Alternatively, Condemnor could have named Pitch Landing in a separate condemnation proceeding, as a landowner, in order to take its interest in the easement.
4. As a third alternative, Condemnor could have included the taking of the appurtenant easement across the servient tract in the taking of property from Pitch Landing as the owner of the dominant tract. However, dispensing with Pitch Landing's easement interest in the Todd action is improper and can be cured only by including the acquisition of the Pitch Landing easement appurtenant to the just compensation calculation in the matter against Pitch Landing as the Landowner.
5. On the date of the taking, Barbara Todd held fee simple of the servient tract subject to the appurtenant easement withheld in its grant by the owner of the dominant tract, Pitch Landing.
6. In the present matter, the only property taken from Barbara Todd was the precise real property amounting to the 50' easement appurtenant to the Pitch Landing adjacent parcel.
7. No opportunity was given to provide evidence or testimony as to the question of equitable interest and therefore the ruling was premature.

The court's decision contradicts established treatise and caselaw. Where the easement supporting the dominant estate has been taken, the just compensation is the difference between the value of the dominant estate with the easement and its value without the easement. Nichols on Eminent Domain, § 12(D).02(1). In cases like the present, "the amount of compensation for the fee simple interest of the servient estate will not adequately compensate the dominant estate which has lost its access since ordinarily an access road...will not diminish the value of the servient estate

by the amount it benefits the dominant estate.” *Condemnation of Easements*, James L. Thomspson, *Eminent Domain and Land Valuation Litigation*, January 2003.

In *United States v. Gossler*, 60 F.Supp.971 (1945), the Court determined that the owner of a dominant tenement was entitled to compensation for his interests separate from the fee held by the owner of the servient estate. The condemnor unsuccessfully argued the owner of the easement was only entitled to share in the single award paid to the owner of the servient estate. The Court disagreed, reasoning:

The fallacy of the reasoning which lies at the basis of these motions arises from the concept of the title of real property as a thing with physical attributes, whereas title is a conglomerate of jurisdiction and substantive legal rights fused with the residuals of equitable remedies all developed historically out of feudal notions and medieval conditions. By this proceeding the United States does not acquire a physical thing by taking the fee simple title of the Gosslers, but sets up another title by extinguishment of all interests inconsistent with use by the Government. Since the United States is investing itself with an utterly new title and extinguishing the whole aggregate of rights connected with this piece of ground by condemnation, the Fifth Amendment requires compensation for all property rights so erased.

The United States cannot abrogate all, but pay for the particular right known as the fee simple title alone. The owner of another recognized property interest attached to the soil would then receive no compensation just or otherwise. Indeed in practice, the value of the fee simple title might well be materially reduced by the existence of this right of way. If payment were made for a specific interest such as the fee title, out of the aggregate, the Government would abrogate the other interests without paying monetary consideration therefor. Such a result does not satisfy the demands of the amendment. The United States is liable to the owner of an easement appurtenant in a suit condemning the fee of the servient estate. *Id.* at 973-974.

Accordingly, Pitch Landing hereby respectfully moves this Honorable Court reconsider its Orders and permit Pitch Landing, as Landowner, to proceed to jury trial on the matter of determining just compensation for the property taken from its dominant parcel, including the easement appurtenant across the servient Todd tract, by placing the servient tract taking (2018-

CP-26-06064) on the jury trial roster and consolidating it with the dominant tract taking (2018-CP-26-6424).

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

s/Robert S. Shelton

Robert S. Shelton, SCB# 68543

Post Office Box 357

Myrtle Beach, SC 29578-0357

(843) 448-2400

rshelton@bellamylaw.com

*Attorney for Defendant/Landowner/Other
Condemnee Pitch Landing, LLC*

NEILL LAW FIRM, PA

s/Mark D. Neill, Esq.

Mark D. Neill, Esq., SCB# 14273

P.O. Box 2810

Murrells Inlet, SC 29576

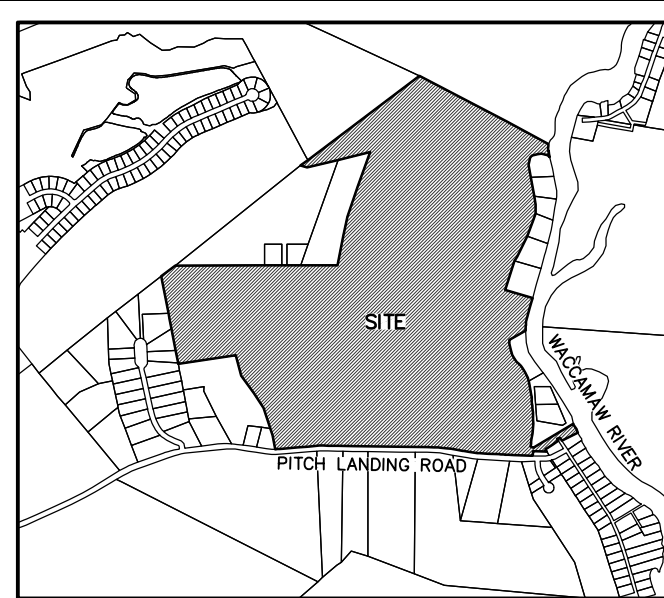
(843) 651-8580

mneill@neilllawfirm.com

*Attorney for Defendant/Landowner/Other
Condemnee Pitch Landing, LLC*

Dated: March 15, 2021
Myrtle Beach, South Carolina

EXHIBIT A



VICINITY MAP
(NOT TO SCALE)

LEGEND

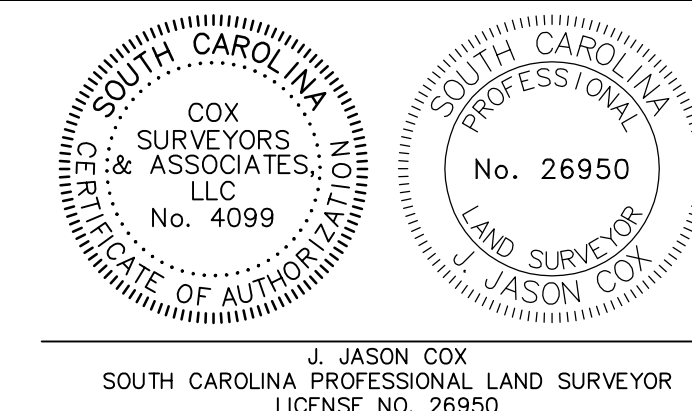
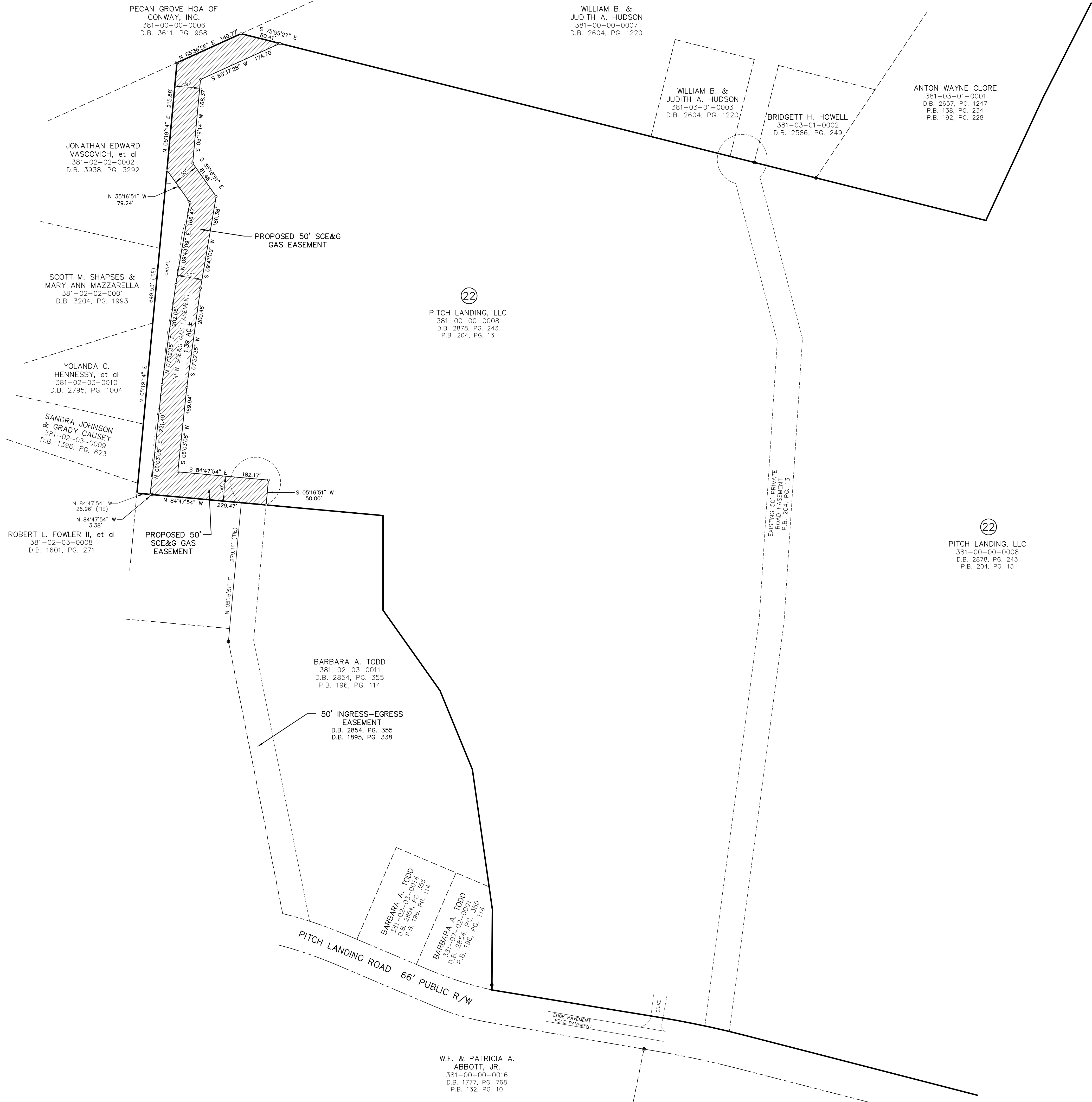
- 1/2" IRON PIPE FOUND
- 5/8" IRON REBAR FOUND
- BOUNDARY POINT
- D.B. DEED BOOK
- P.B. PLAT BOOK
- PC. PAGE
- S.F. SQUARE FEET
- AC. ACRE
- B.S.L. BUILDING SETBACK LINE
- R/W RIGHT-OF-WAY
- ▨ PROPOSED SCE&G GAS EASEMENT

REFERENCE MAP:
 1. "COMBINATION PLAT OF 185.95 ACRES OF LAND LOCATED ON PITCH LANDING ROAD NEAR PITCH LANDING," BY CULLER LAND SURVEYING CO., INC. DATED FEBRUARY 4, 2005 AND RECORDED AT Horry County R.O.D. IN P.B. 204, PG. 13.

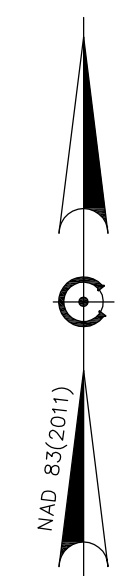
NOTES:

1. PIN NO. 381-00-00-0008
2. ALL BEARINGS AND COORDINATES SHOWN ON THIS SURVEY ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM NAD83(2011) AND OBTAINED FROM GPS OBSERVATIONS VIA THE S.C.G.S. VRS NETWORK.
3. A TITLE SEARCH WAS NOT PERFORMED BY THIS OFFICE ON THIS DATE.
4. THIS EXHIBIT WAS PREPARED FOR EASEMENT PURPOSES ONLY.
5. NO BOUNDARY SURVEY PERFORMED ON THE ENTIRE PROPERTY FOR WHICH THIS EASEMENT IS LOCATED ON.
6. DEED & PLAT REFERENCES: AS SHOWN.

THIS INSTRUMENT AND REPRODUCIBLE COPIES OF THIS INSTRUMENT ARE OWNED BY COX SURVEYORS & ASSOCIATES, LLC. REPRODUCTIONS OF THIS INSTRUMENT ARE NOT PERMITTED WITHOUT WRITTEN CONSENT OF COX SURVEYORS & ASSOCIATES, LLC UNLESS RETURNED THROUGH MATTERS OF PUBLIC RECORD.
 ALTERATIONS TO THIS DOCUMENT ARE NOT PERMITTED.



J. JASON COX
 SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR
 LICENSE NO. 26950



PROPOSED
SCE&G GAS EASEMENT
 THE LANDS OF PITCH LANDING, LLC
 PREPARED FOR:
**SOUTH CAROLINA
 ELECTRIC & GAS**
 CONWAY TOWNSHIP
 HORRY COUNTY SOUTH CAROLINA

SCALE: 1 INCH = 100 FEET
 SURVEYED & MAPPED BY

Cox Surveyors & Associates
 A LIMITED LIABILITY COMPANY
 4325 DICK POND ROAD, SUITE A
 MYRTLE BEACH, SC 29588 (843) 650-1500
 www.coxsurveyors.com

DRAWN BY VGB FIELD DATE 05/2018
 REVIEWED JJC PLAT DATE 05/31/2018
 CREW CHIEF CTB FIELD BOOK CS-1168

EXHIBIT B

Exhibit "A"

ELECTRONICALLY FILED - 2023 OCT 25 10:35 AM - Horry - COMMON PLEAS - CASE#2018CP2606064

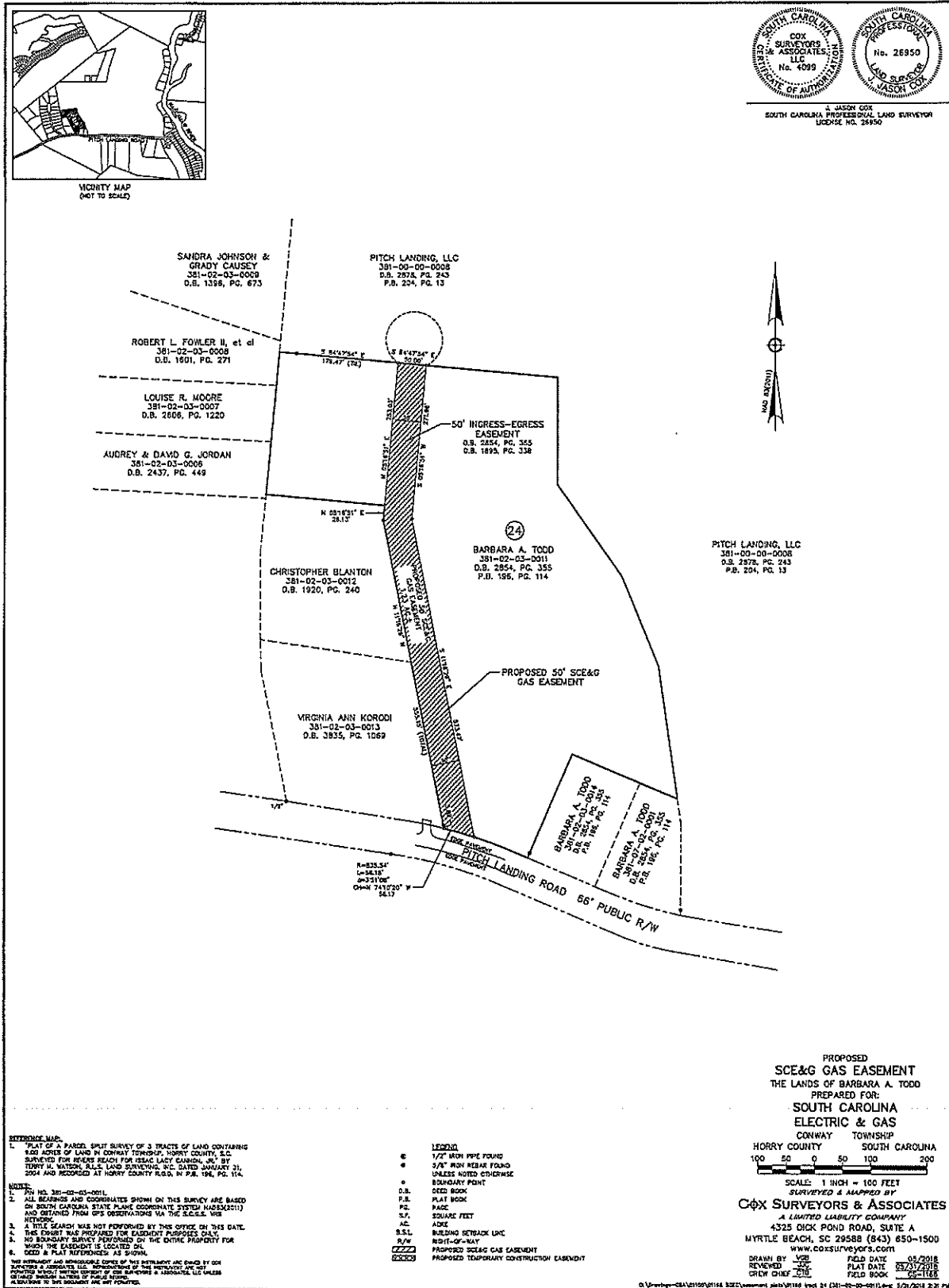


EXHIBIT C

WITNESS the undersigned Hand and Seal this 16th day of March in the year of our Lord two thousand five.

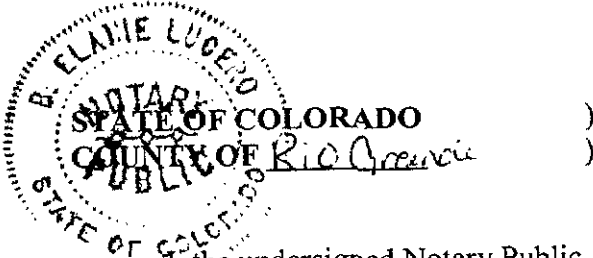
Signed, Sealed And Delivered
In The Presence Of:

NEW RIVER CORPORATION

By: [Signature]
John J. Dargatzis, its President

#1 Phyllis Gonzalez
1st Witness

#2 B. Elaine Lucero
Notary



ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed Grantor(s), personally appeared before me this 16th day of March, 2005 and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 16th day of March, 2005.

#3 B. Elaine Lucero
Notary Public for CO

My Commission Expires: 07-06-08

File # 05-1124MDN

**PROPERTY DESCRIPTION
FOR DEED**

All and singular that certain piece, parcel or lot of land, situate, lying and being in Conway Township, Horry County, South Carolina and being designated as 185.95 acres more or less as shown on that certain plat prepared for PITCH LANDING, LLC by Culler Land Surveying Co. Inc., dated February 7, 2005 and recorded March 18, 2005 in Plat Book 204 at Page 13, Horry County records.

DERIVATION FOR TMS 150-00-01-001 & 150-00-01-008

This being a portion of that certain property conveyed unto New River Corporation herein by Deed of John J. Dargan recorded March 18, 2005 in Deed Book 2878 at Page 243, Horry County records.

DERIVATION FOR TMS 150-00-01-039

This being a portion of that certain 34.8 acres conveyed unto New River Corporation herein by Deed of John J. Dargan recorded in Book 958 at Page 814, Horry County records.

DERIVATION FOR TMS 150-00-01-009

This being a portion of that certain 50 acres conveyed unto New River Corporation herein by Deed of John J. Dargan recorded in Book 1018 at Page 906, Horry County records.

EXHIBIT D

FILED
HORRY COUNTY, S.C.

2005 JAN 29 PM 2:04

Space Above for Recording Information.....

STATE OF SOUTH CAROLINA)
REGISTRAR OF DEEDS)
COUNTY OF HORRY)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Issac Lacy Cannon, Jr.**, in State and County aforesaid for and in consideration of the sum of Ninety Four Thousand and No/100ths (\$94,000.00) Dollars, paid by **Barbara A. Todd**, Receipt whereof is hereby acknowledged, have granted, bargained, sold and released; and by these presents, do grant, bargain, sell and release unto the said **Barbara A. Todd**, her Heirs and Assigns forever, the following described property to wit:

All and Singular, that certain piece, parcel or lot of land, together with any and all improvements situate thereon, situate, lying and being in Conway Township, Horry County, South Carolina, containing 9.00 acres, more or less, as shown on plat prepared by Terry M. Watson, RLS, Land Surveying, Inc., for Michael Blanton, dated June 26, 1996, which plat is recorded in the office of the ROD for Horry County in Plat Book 144 at page 48, reference to which is craved as forming a part and parcel hereof.

There is excepted and reserved unto John J. Dargan and/or New River Corporation, their heirs, successor and assigns, an unobstructed, unencumbered easement and right of way, in, over and across that certain 50 foot private road access easement as shown on the above referenced plat for the purpose of ingress, egress and the installation and maintenance of utilities.

Subject to restrictions as recorded in Deed Book 1895 at page 338 in the office of the ROD for Horry County.

This being the identical property conveyed to Issac Lacy Cannon, Jr. by Deed recorded in Deed Book 2595 at page 209 in the office of the ROD for Horry County.

DEED
2854 0355

STATE 244⁴⁰ COUNTY 103⁴⁰

EXEMPT YES

NO

A
355

Address of Grantee(s): 3914 Cowhouse Ct. Labruce Lane, murrells Inlet, SC 29576

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said **Barbara A. Todd**, her Heirs and Assigns forever.

AND I do hereby bind myself and my Heirs and Assigns to warrant and forever defend all and singular the said premises unto the said, **Barbara A. Todd**, her Heirs and Assigns forever, against myself and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS THE EXECUTION HEREOF, this 27 day of January, in the Year of our Lord Two Thousand-Five and in the two hundred twenty-eighth year of the Sovereignty and Independence of the United States of America.

Signed, sealed and Delivered in the Presence of :

[Signature]
Witness
[Signature]
Notary

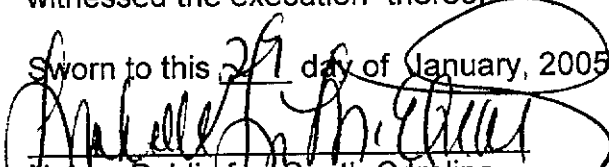
[Signature]
Issac Lacy Cannon, Jr.

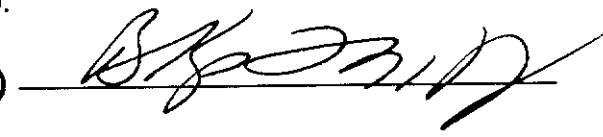
STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named **Issac Lacy Cannon, Jr.** sign, seal and as his act and deed deliver the within Deed and that s/he with the other witness above witnessed the execution thereof

Sworn to this 29 day of January, 2005.


Notary Public for South Carolina
My commission expires: 4/1/14



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

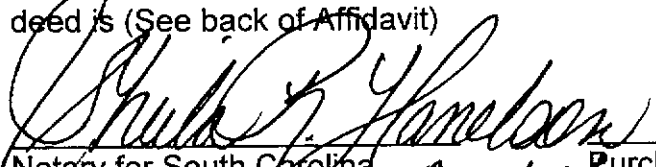
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

Property located and being in Conway Township, Tax Map number _____ was transferred by **Issac Lacy Cannon, Jr. to Barbara A. Todd**

X an arms length real property transaction and the sales price paid or to be paid in money or money's worth was **\$94,000.00**

_____ not an arm's length real property transaction and the fair market value of the property is

The above transaction is exempt, or partially exempt, from the recording fee as set forth in South Carolina Code Ann. Section 12-24-10, et. seq., because the deed is (See back of Affidavit)


Notary for South Carolina _____ Purchaser or Legal Representative
My Commission Expires: 2-24-14

* The Fee is based on the real property's value. Value means the realty fair market value. In arm's length real property transaction, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining after the transfer.