

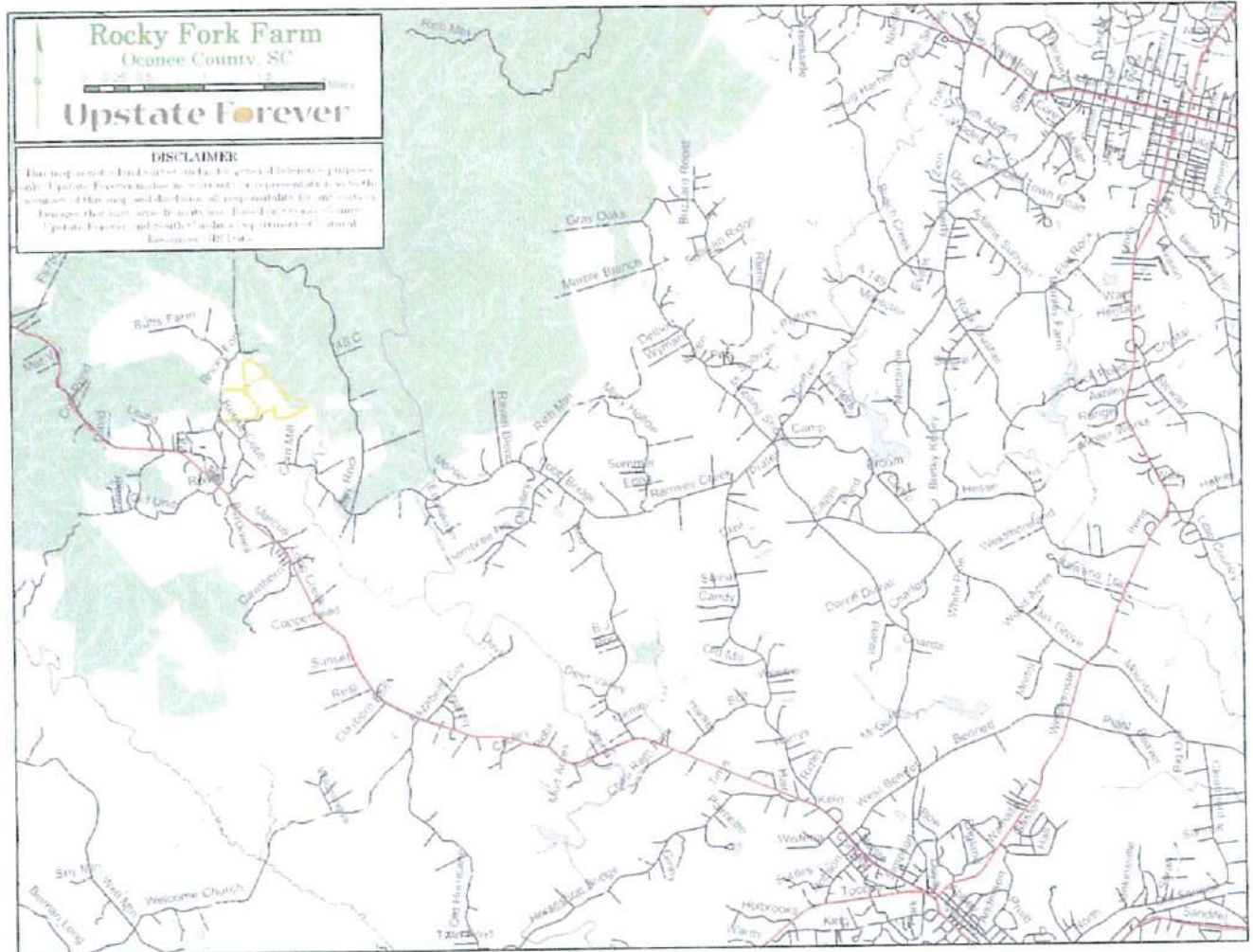
# Upstate Forever

Promoting Sensible Growth and  
Protecting Special Places in the Upstate

## Rocky Fork Farm Driving Directions

From Downtown Greenville, take South Academy St/US-123 South toward Easley. Travel through Easley, Clemson and Seneca on US-123 (approximately 35 miles). US 123 South becomes US-123 BYP S/US-76 BYP W/SC-28 W. Approximately 2.4 miles later, this becomes US-76 W. Continue for 15.4 miles. Turn right onto Cobb Bridge Rd and in less than 0.1 miles, turn left onto Reese Cobb Rd and then (after 0.4 miles) right onto Mill Shoals Rd. End at 455 Mill Shoals Rd.

# Rocky Fork Farm Location Map



# Upstate Forever

Promoting Sensible Growth and  
Protecting Special Places in the Upstate

## BASELINE REPORT

FOR

## ROCKY FORK FARM

As of:

*October 30, 2007*

## 1. General Description.

Rocky Fork Farm, owned by Edward Land, consists of 130.91 acres located in Westminster in Oconee County. See the Base Map at Attachment A. Rocky Fork Farm shares approximately 35% of its boundary with Sumter National Forest. The property contains five streams, including Rocky Fork Creek. All are tributaries of the Chauga River, the drinking supply for the City of Westminster.

The topography of the site is rolling, with a low point of 920 feet above sea level and a high point of 1080 feet above sea level. See the Topographic Map at Attachment B.

There are several existing structures on the property. These include a main residence, a barn, a cabin, three sheds, a gazebo, three culverts, two pedestrian bridges and a dam and small pond. There are also fences, as more particularly described in the Structures Map found at Attachment C.

Agricultural uses of the property include livestock grazing and a vegetable garden.

## 2. Description of Natural Resources.

The property is primarily characterized by mature Piedmont hardwood forest, which comprises approximately 72% of the land cover. Approximately 23% consists of open pasture with the rest in wetlands, creeks and streams. Typical tree species include southern red oak, red maple, mockernut and butternut hickory, and short leafed and Virginia pine. Local native plant, reptile, and amphibian expert, John Gorton, walked a large portion of the Rocky Fork Farm on March 7, 2007 in order to identify native flora and fauna found on the property and also to assess the potential for rare and endangered species. Due to the season of survey no rare plants were identified but potential habitat was evident at the Rocky Fork Farm. His findings are listed in Attachment D.

Typical species found on the site include bear, white tailed deer, wild turkey, and hawks in addition to a variety of native snake species. The property's streams are home to typical native firewater fish, insects, amphibians and reptiles such as occasional brook trout, spotted salamanders, and red spotted newts.

Rocky Fork Creek is classified by the South Carolina Department of Health and Environmental Control (SCDHEC) as an "Outstanding Resource Water," an outstanding recreational or ecological resource or those freshwaters suitable as a source for drinking water supply purposes with treatment levels specified by the SCDHEC. For further information, see the excerpt from SCDHEC Watershed Water Quality Assessment, Technical Report Number 03060102-120 appended as Attachment E.

According to the Oconee County Soil Survey, the soils on the property are classified as Hayesville-Cecil-Halewood association: Moderately shallow to deep, well-drained soils in gently sloping to steep areas: red to yellowish-brown subsoil. Prime farmland soils are among those found on the property. For more information, see the general soil survey map at Attachment F, or the site-specific soil map appended at Attachment G.

3. Historical and Archeological Significance.

According to the South Carolina Department of Archives and History, there are no documented sites of historical or archeological significance on the property.

4. Visit to the Site.

Shed Airey of the Upstate Forever staff visited the property on July 19, 2007 and Erin Knight of the Upstate Forever staff visited on October 11, 2007. The photographs taken during those visits are keyed to the map on Attachment H and are printed and described in Attachment I. The digital photograph files are contained in the CD appended as Attachment J. An aerial photograph of the property is found in Attachment K.

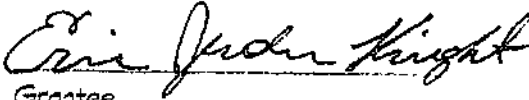
5. Qualification.

This document records the baseline characteristics of the protected property. Site characteristics recorded in this baseline report are not necessarily protected under the terms of the conservation easement.

Certification

The undersigned certify, in accordance with Section 1.170A-14(g)(5) of the federal tax regulations, that the foregoing baseline report provides an accurate description and representation of the property as of the date of the signing of the Conservation Easement.

\_\_\_\_\_  
Grantors

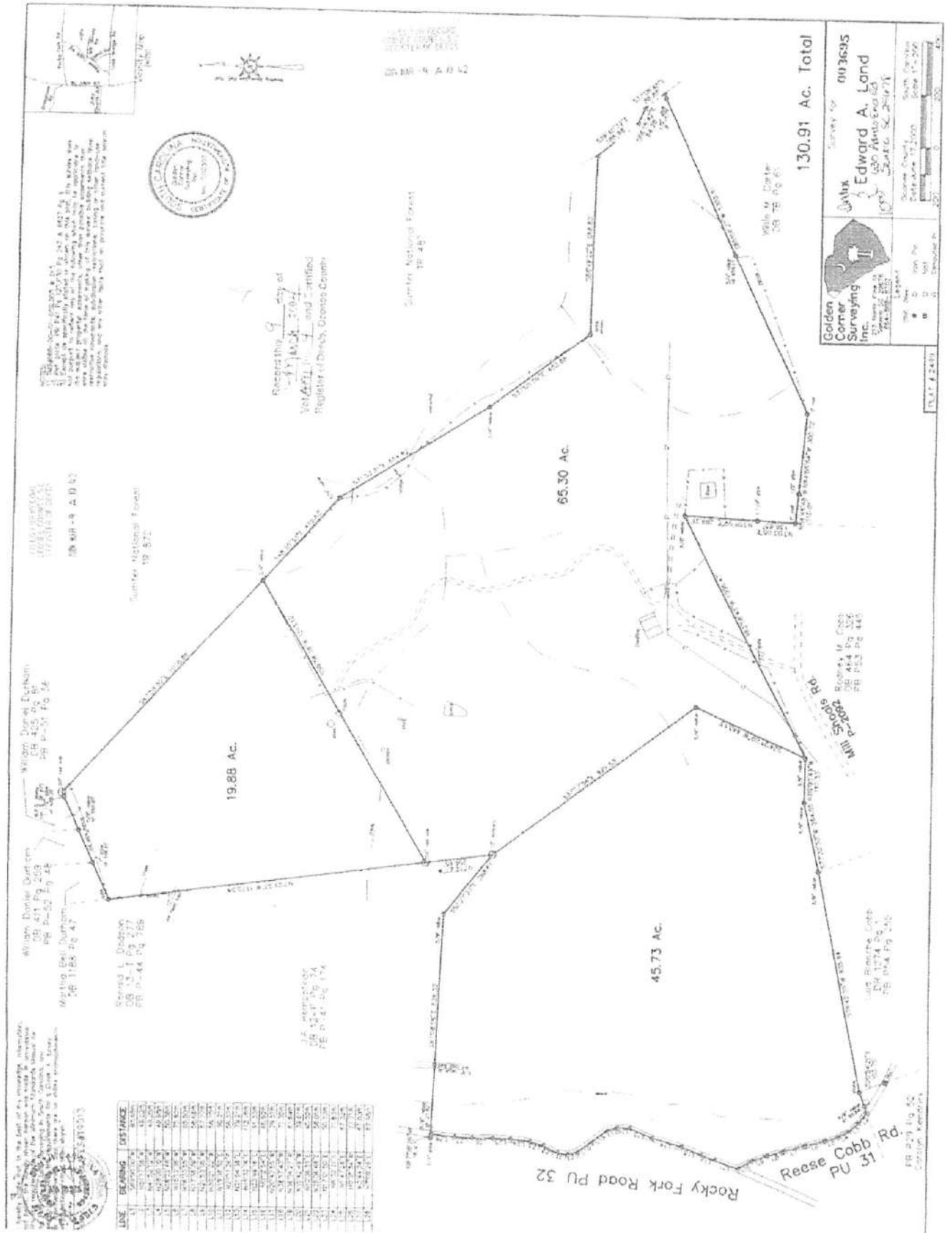
  
\_\_\_\_\_  
Grantee

Dated: \_\_\_\_\_

Dated: 10-30-07

# Rocky Fork Farm Base Map

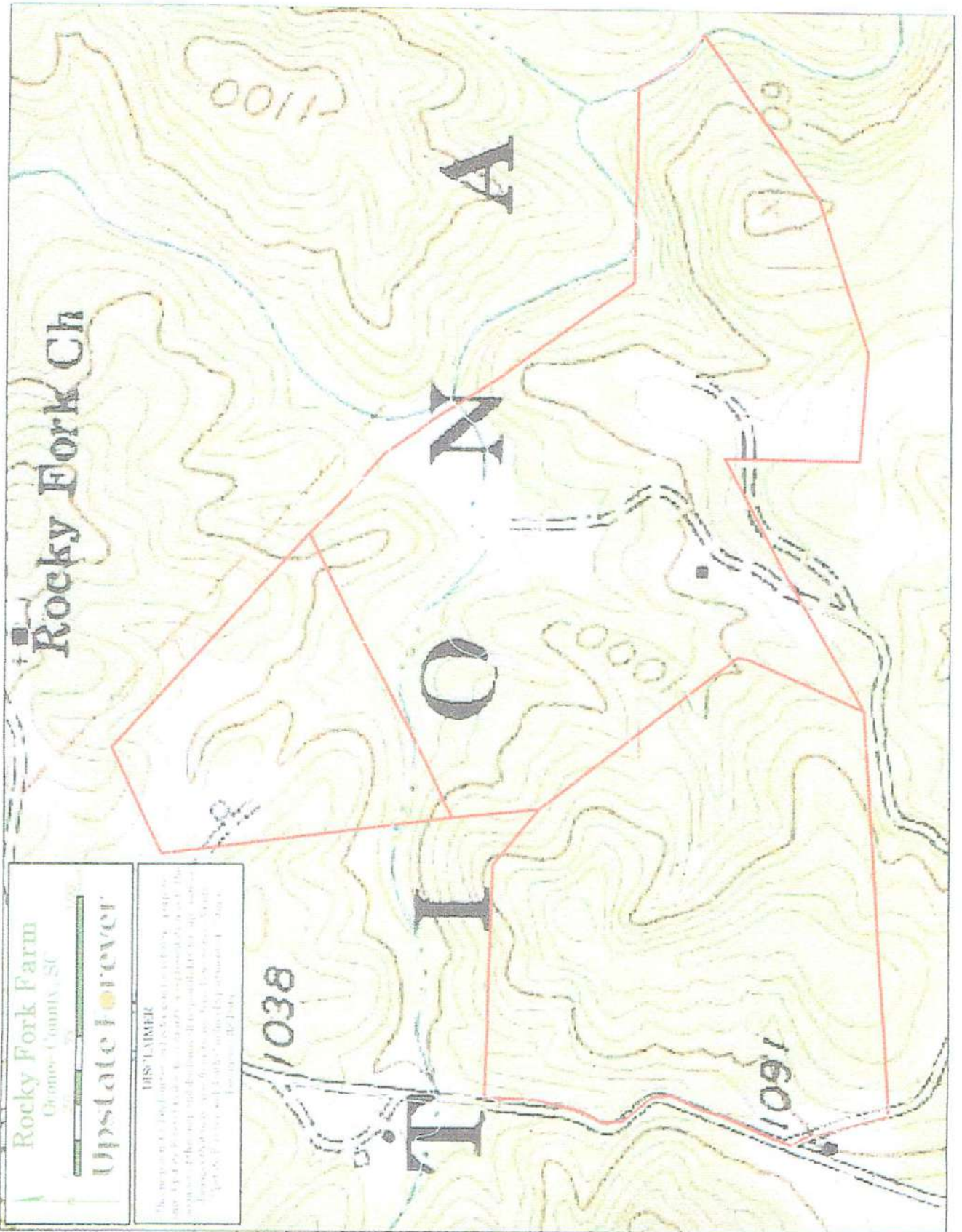
# ATTACHMENT A





Rocky Fork Farm  
Topographic Map

ATTACHMENT B





# Rocky Fork Farm Structures Map

# ATTACHMENT C





Rocky Fork Farm  
Botanical Survey

ATTACHMENT D

Species Noted on March 7, 2007 Visit to Rock Fork Farm

River otter - *Lontra canadensis*  
Ground cedar - *Lycopodium complanatum*  
Red horse minnow/ yellow fin shiner - *Cyprinella lutrensis*  
Hornet head/ blue head chub - *Nocomis leptocephalus*  
Black snake - *Elaphe obsoleta obsoleta*  
King snake - *Lampropeltis getulus getulus*  
Pine snake - *Pituophis melanoleucus melanoleucus*  
Copperhead snake - *Agkistrodon contortrix*  
Timber rattlesnake - *Crotalus horridus horridus*  
Trout lily - *Erythronium umbilicatum*  
Dogwood - *Cornus florida*  
American holly - *Ilex opaca*  
Sourwood - *Oxydendrum arboreum*  
Sweet shrub - *Calycanthus floridus*  
Southern red oak - *Quercus falcata*  
Galax - *Galax urceolata*  
Red maple - *Acer rubrum*  
Yellow poplar - *Aesculus octandra*  
Short leaf pine - *Pinus echinata*  
Virginia pine - *Pinus Virginiana*  
White oak - *Quercus alba*  
Carolina rhododendron - *Rhododendron carolinianum*  
Rhododendron - *Rhododendron minus*  
Mountain laurel - *Kalmia latifolia*  
Red spotted newt - *Notophthalmus viridescens viridescens*  
Spotted salamander - *Ambystoma maculatum*  
Red shoulder hawk - *Buteo lineatus*  
Turkey - *Meleagris gallopavo*  
Wood frog - *Rana sylvatica*  
Shrew - genus and species not established  
Mole - genus and species not established  
Woodchuck - (*Marmota monax*)  
Butternut hickory - *Carya cordiformis*  
Mockernut hickory - *Carya tomentosa*  
Spring peeper - *Hyla crucifer*  
Bream (*Lepomis macrochirus*)  
Brook trout (*Salvelinus fontinalis*)

# Rocky Fork Farm SCDHEC Watershed Water Quality Assessment

ATTACHMENT E

03060102-120

(Chauga River)

## General Description

Watershed 03060102-120 is located in Oconee County and consists primarily of the *Chauga River* and its tributaries. The watershed occupies 70,768 acres of the Blue Ridge region of South Carolina. The predominant soil types consist of an association of the Pacolet-Hayesville-Madison series. The erodibility of the soil (K) averages 0.23, and the slope of the terrain averages 22.3%, with a range of 6-80%. Land use/land cover in the watershed includes: 93.9% forested land, 4.9% agricultural land, 0.4% water, 0.1% forested wetland, 0.4% urban land, and 0.3% barren land.

Village Creek (West Village Creek, Mountain Rest Lake) and East Village Creek (Clear Branch, Big Stakey Creek, Ores Mill Creek, Chattooga Lake, Taylor Creek) join to form the Chauga River. The river accepts drainage from Jerry Creek (Crystal Lake, Lake Becky, Oconee State Park Lake), Miller Field Branch, Coppermine Branch, Limestone Creek (Grapevine Branch), Bone Camp Creek (Sawyer Branch, Orchard Branch, Chambers Branch), Hell Hole Creek (Long Branch), and Shingle Mill Branch. Further downstream, the Chauga River accepts drainage from Hickory Flat Branch, Rhoda Branch, Mill Creek (Woodall Branch), Double Branch, Spider Valley Creek (Persimmon Branch, Laurel Creek, Sand Creek), Doran Creek, and Crooked Creek. Cedar Creek (Baker Branch) enters the river next, followed by Spy Rock Creek, Devils Fork Creek (Flint Creek), Barton Creek, Muddy Creek (Findley Branch), and Rocky Fork. The Chauga River and its tributaries from its origin to 1 mile above U.S. 76 are classified ORW, with the exception of Jerry Creek (FW).

The Chauga River then accepts drainage from Ramsey Creek (Collins Lake) and Dickson Lake. West Toxaway Creek and East Toxaway Creek join to form Toxaway Creek (Big Branch, Little Longnose Creek, Sourwood Branch, Little Toxaway Creek, Harper Pond), which flows into the Chauga River near the base of the watershed to form an arm of Lake Hartwell. The Chauga River and its tributaries from 1 mile above U.S. 76 to its confluence with the Tugaloo River are classified FW. There are a total of 177.4 stream miles and 506.1 acres of lake waters in this watershed. The upper two thirds of the watershed resides within the Sumter National Forest.

## Surface Water Quality

<u>Station #</u>	<u>Type</u>	<u>Class</u>	<u>Description</u>
SV-675	BIO	ORW	CHAUGA RIVER AT S-37-193
SV-344	W	FW	CHAUGA RIVER AT S-37-34
SV-225	BIO	FW	TONAWAY CREEK AT S-37-34

*Chauga River* - There are two monitoring sites along the Chauga River. At the upstream site (*SV-675*), aquatic life uses are fully supported based on macroinvertebrate community data. At the downstream site (*SV-344*), aquatic life uses are also fully supported. Recreational uses are partially supported at this site due to fecal coliform bacteria excursions.

*Toxaway Creek (SV-225)* - Aquatic life uses are fully supported based on macroinvertebrate community data.

***Natural Swimming Areas***

<i>FACILITY NAME</i>	<i>RECEIVING STREAM</i>	<i>PERMIT #</i>	<i>STATUS</i>
CAMP CHATUGA	ORES MILL CREEK	37-N04	ACTIVE
OCONEE STATE PARK	JERRY CREEK	37-N02	ACTIVE

**NPDES Program**

***Active NPDES Facilities***

<i>RECEIVING STREAM</i>	<i>FACILITY NAME</i>	<i>PERMITTED FLOW (w/ PIPE (MGD))</i>	<i>NPDES#</i>	<i>TYPE</i>	<i>COMMENT</i>
JERRY CREEK	SCPT/OCONEE STATE PARK	PIPE # 001 FLOW 0.06	SC0024872	MINOR DOMESTIC	

**Water Supply**

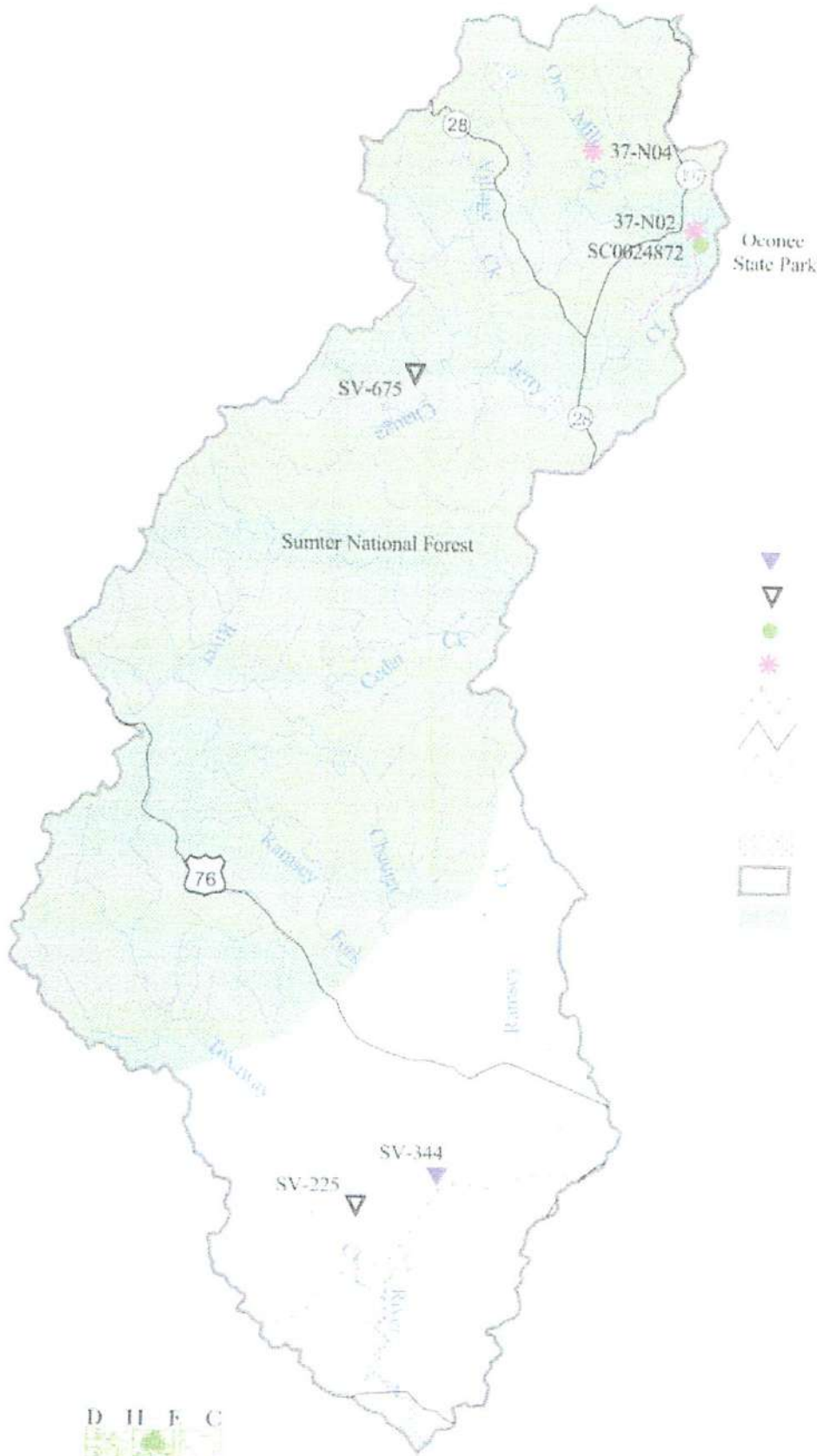
<i>WATER USER (INTAKE #)</i>	<i>STREAM</i>	<i>TOTAL PUMP CAPACITY (MGD)</i>	<i>RATED PUMP CAPACITY (MGD)</i>
TOWN OF WESTMINSTER (S37103)	RAMSEY CREEK	3.8	1.8
TOWN OF WESTMINSTER (S37104)	CHATUGA RIVER	8.0	4.0

**Growth Potential**

There is a low potential for growth in this watershed, which has a large area residing within the Sumter National Forest. The steep slopes of this region would limit establishment of infrastructure and any serious growth.

# Chauga River Watershed

(03060102-120)



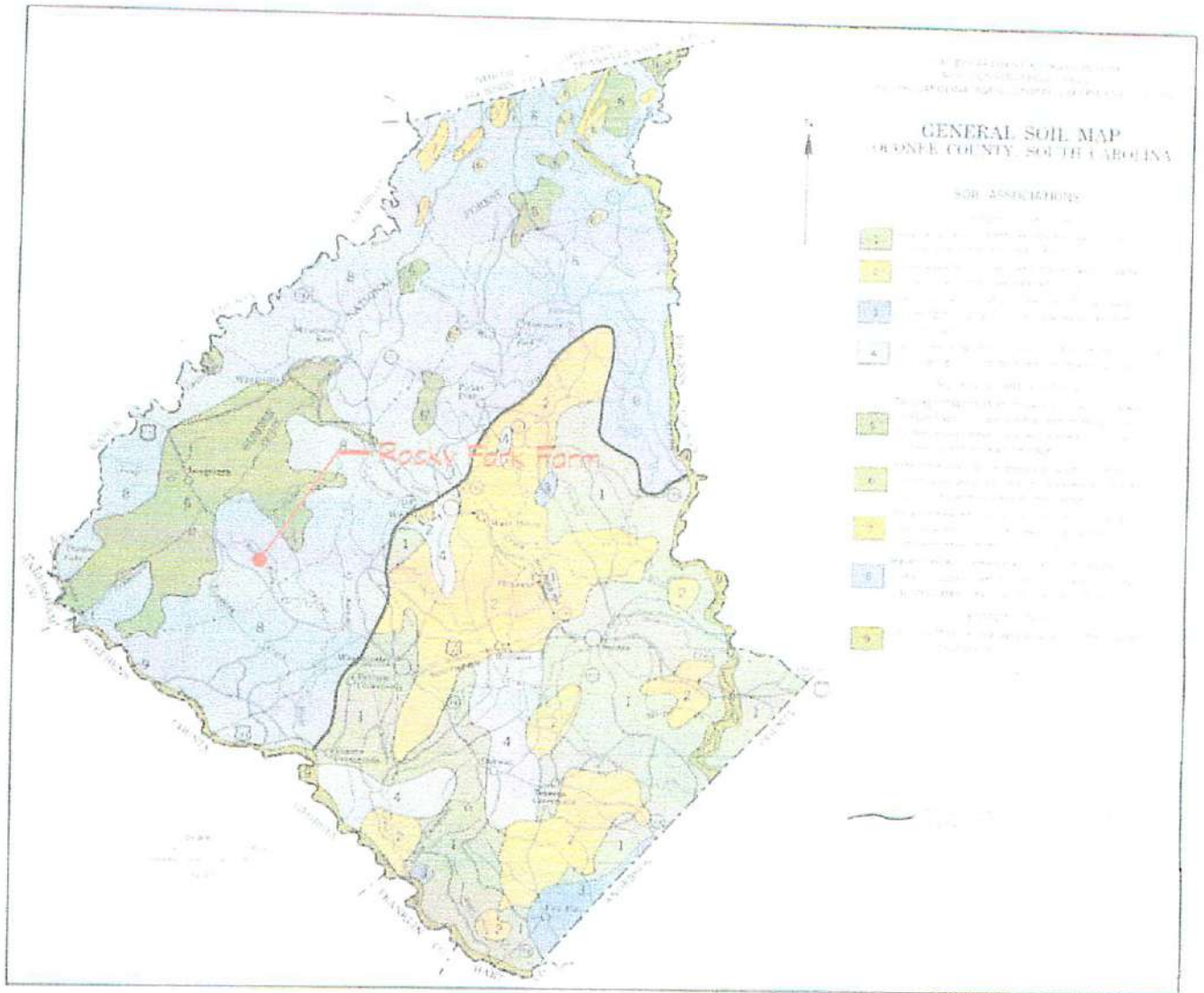
-  Water Quality Monitoring Sites
-  Biological Monitoring Sites
-  NPDES Permits
-  Natural Swimming Areas
-  Rail lines
-  Highways
-  Modeled Streams
-  Streams
-  Lakes
-  SCDHEC 11-Digit Hydrologic Units
-  Public Lands





# Rocky Fork Farm Oconee County General Soils Map

ATTACHMENT F







Rocky Fork Farm  
 Map Keyed to Site Photographs

ATTACHMENT H



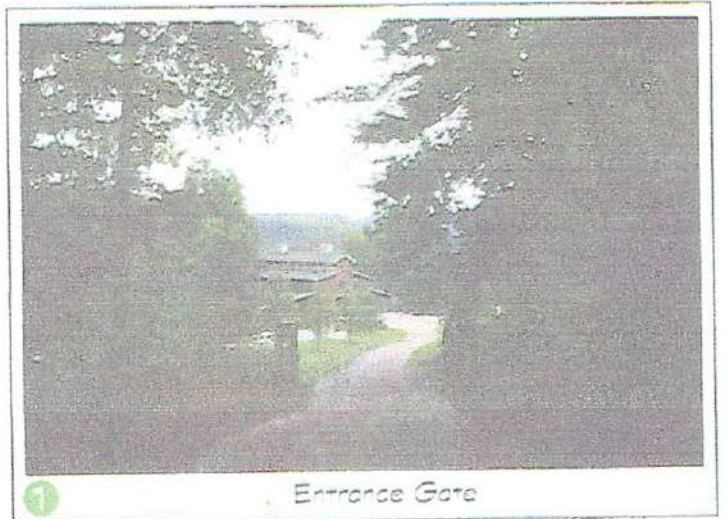


Rocky Fork Farm  
Site Photographs and Descriptions

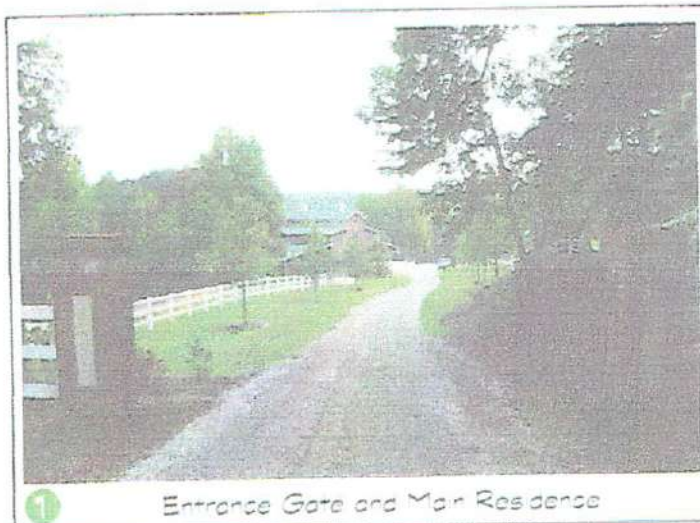
ATTACHMENT I



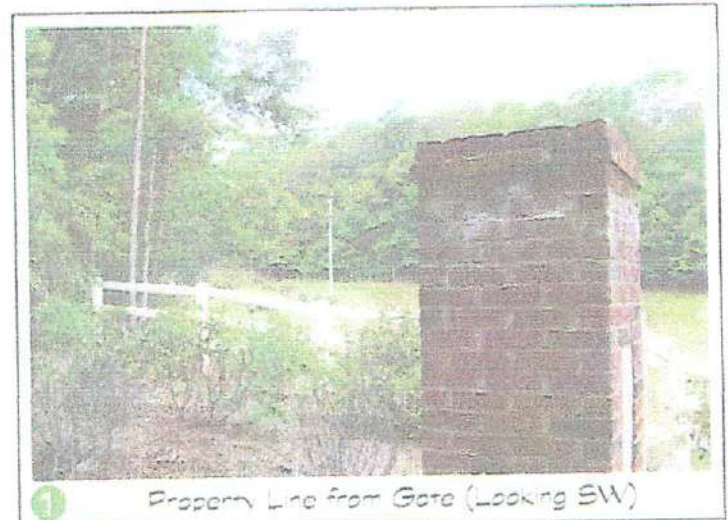
① Gravel Road at Entrance



① Entrance Gate



① Entrance Gate and Main Residence



① Property Line from Gate (Looking SW)



① Property Line from Gate (Looking NE)



② Residence



(16 more pages  
of photos)

Attachment J  
is CD of  
photographs



CORRECTED (if checked)

FILER'S name, address, city, state, ZIP code, and telephone no. <b>N. GRUBER SIRES, JR.</b> <b>ATTORNEY AT LAW</b> <b>P. O. BOX 1277</b> <b>SENECA, S. C. 29678</b>	1 Date of closing 032307	OMB No. 1545-0997 <b>2007</b> Form 1099-S
	2 Gross proceeds \$ [REDACTED]	

Proceeds From Real Estate Transactions

FILER'S federal identification number [REDACTED]	TRANSFEROR'S identification number [REDACTED]	3 Address or legal description 10.405 acres Rocky Point Road Seneca, SC 29678
TRANSFEROR'S name Edward A. Land Street address (including apt. no.) 430 Land's End Road City, state, and ZIP code Seneca, SC 29678		
Account or escrow number (see instructions)		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>
		5 Buyer's part of real estate tax \$ [REDACTED]

Copy B

For Transferor

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

Form 1099-S

(keep for your records)

Department of the Treasury - Internal Revenue Service

OCONEE COUNTY

STATE TAX 344.50  
COUNTY TAX 145.75  
EXEMPT \_\_\_\_\_

**CONSERVATION EASEMENT**

For and in consideration of the sum of \$132,500 provided by the South Carolina Conservation Bank and other good and valuable consideration, **THIS CONSERVATION EASEMENT** entered into this 30th day of October, 2007 by and between **EDWARD LAND**, a citizen and resident of Oconee County (hereinafter referred to as "Grantor") and **UPSTATE FOREVER**, a nonprofit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as "Grantee").

JWK  
1902  
007877

**WITNESSETH:**

WHEREAS, Grantor is the owner in fee simple of certain real property, more particularly described on Exhibit 1, attached hereto and hereinafter referred to as the "Protected Property";

WHEREAS, the Protected Property includes substantial frontage along Rocky Fork Creek, a major tributary to the Chauga River, mature hardwood forests, prime soils, special natural beauty, a variety of flora, and important habitat for wildlife (hereinafter referred to collectively as "conservation values") of great importance to Grantor and Grantee and the people of Oconee County and the State of South Carolina;

WHEREAS, Grantor intends that the conservation values of the Protected Property be preserved and maintained by allowing only limited and carefully controlled activities thereon, in accordance with the terms and conditions provided herein;

WHEREAS, Grantee is a non-profit corporation having tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), has been established as a public charity for the purpose of preserving and conserving natural habitats, environmentally sensitive areas and open space and for other charitable, scientific and educational purposes, and meets the requirements of a "qualified organization" under Section 170(h)(3) of the Code;

WHEREAS, Sections 27-8-20 and 27-8-30 of the South Carolina Code of Laws permit the granting of conservation easements for recreational, ecological, environmental, educational and open-space uses;

WHEREAS, Grantee has prepared, and Grantor has reviewed and approved, a Baseline Report that documents the condition of the Protected Property as of the date of the signing of this Conservation Easement (hereinafter referred to as "the Baseline Report");

90 4 03 100 1002

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS



WHEREAS, Grantee agrees to enforce the terms of this Conservation Easement to ensure the preservation and protection of the conservation values of the Protected Property in perpetuity for the benefit of Grantee and its successors and assigns and for the people of Oconee County and the State of South Carolina;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms, conditions and restrictions herein contained, Grantor, intending to be legally bound and intending for this Conservation Easement to remain in effect in perpetuity, agrees on behalf of himself and his heirs, successors and assigns as follows:

**1. Restrictions on Uses of the Protected Property.**

There shall be no building or development or any residential, commercial or industrial use or activity of any nature undertaken or allowed on the Protected Property or any portion thereof with the following sole exceptions:

**A. *Residences.*** Grantor shall have the right to maintain the existing residence and ancillary structures on the Protected Property, which are more particularly described in the Baseline Report. Grantor shall also have the right to remove the existing residence and ancillary structures and replace them with a residence and structures of the same or smaller size. Grantor shall have the right to allow the existing residence to be rented or operated as a Bed and Breakfast for guests; provided all renters and guests shall be subject to the terms of this Conservation Easement.

In addition, Grantor shall have the right to construct and maintain on the Protected Property one additional single family residence and up to three ancillary structures (such as sheds or barns) for such residence, provided, that the residence shall not exceed 3,500 square feet in size and the ancillary structures associated with the residence shall not exceed a total of 2,000 square feet in size.

**B. *Additional Structures.*** Grantor shall have the right to maintain, improve, remove, or replace the other existing structures on the Protected Property, namely the picnic shelter, the cabin, and the playhouse; provided (1) the size of the picnic shelter, whether new or expanded, shall not exceed 1,500 square feet; (2) the size of any replacement playhouse shall not exceed 500 square feet; and (3) any replacement cabin shall be of the same size and configuration.

**C. *Subdividing.*** The Protected Property shall not be subdivided with the sole exceptions of providing a tract for each of the single family residences referred to in Section (1)(A) hereof.

**D. *Signs.*** There shall be no construction or placing of signs, billboards, or any type of advertising devices or materials on the Protected

Property except for directional signs required by law, for "no trespassing signs," and for signs to indicate the conservation values of the Protected Property.

**E. Commercial Recreation.** No commercial recreational activities of any kind shall be allowed on the Protected Property, provided Grantor shall have the right to lease the Protected Property for hunting and fishing in accordance with applicable laws and regulations.

**F. Protection of Riparian Buffers.** Grantor shall not remove or cut any trees within, or otherwise alter or disturb, any area of the Protected Property that is within 35 feet of the bank of Rocky Fork Creek and within 15 feet of the bank of any other river, stream, waterway, pond, lake or impoundment with the sole exception of (i) removing trees that are diseased or that pose a significant and immediate hazard to life or property; (ii) maintaining existing roads, bridges, and structures, which are more particularly described in the Baseline Report, provided Grantor shall undertake all reasonable measures to avoid or minimize adverse impacts on the conservation values of the Protected Property during maintenance activities; (iii) maintaining the existing garden, which is more particularly described in the Baseline Report, provided a minimum fifteen foot vegetative buffer shall be maintained; (iv) seasonally mowing vegetative cover (not including trees and shrubs) as presently conducted and as described in the Baseline Report, provided the mowing shall not disturb the root system of such cover; and (v) removing privet and similar undesirable non-indigenous species. In addition, Grantee shall take all steps reasonably necessary to keep livestock out of Rocky Fork Creek. Grantor shall take all steps reasonably necessary to maintain current fences along significant tributaries to Rocky Fork Creek which are more particularly described in the Baseline Report as long as any livestock are managed on the Protected Property.

**G. Utility Systems.** Utility systems, including, without limitation, water, sewer, septic tanks, electrical power, and communication lines and related facilities that are reasonably required to serve the structures allowed under Section 1(A) hereof may be located on Protected Property.

**H. Timber Removal.** Grantor reserves the right to harvest timber from the Protected Property that complies with Section 1(F) of this Conservation Easement and that is in accordance with a written forest management plan that has been prepared by a licensed professional forester, adheres to the best management practices of the South Carolina Forestry Commission or its successor agency, and has been approved in writing by Grantee.

**I. Agricultural Activities and Structures.** Grantor shall have the right to continue to engage in those existing agricultural activities described in the Baseline Report, provided such activities (i) shall not disturb the soil layer; (ii) comply with Section 1(F) of this Conservation Easement; (iii) shall be conducted in accordance with applicable law; and (iv) do not impair the

conservation values of the Protected Property. Grantor shall also have the right to maintain the existing structures and facilities that are currently used for agricultural operations on the Protected Property and are more particularly described in the Baseline Report. Grantor shall have the right to maintain the current fences on the Protected Property and to construct new fences for the reasonable and customary management of livestock and wildlife.

Grantor shall have the right to engage in additional agricultural activities subject to the terms and conditions of a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service (or successor agency), or by a qualified conservation professional approved in writing by Grantee, and provided further, in no event shall the total amount of land devoted to agricultural activities on the Protected Property ever exceed 50 acres. Such plan and all amendments to the plan shall be approved in writing by Grantee.

**J. Roads.** The existing roads and bridges on the Protected Property may be maintained. Grantor shall have the right to replace one existing bridge with a covered bridge, provided Grantor shall undertake all reasonable measures to minimize adverse impacts during construction. New roads or trails and associated bridges may be permitted on the Protected Property subject to all of the following conditions: (i) the roads are needed in order to provide access to the uses or activities permitted under Section 1(A) and (H) hereof; and (ii) Grantor undertakes all reasonable measures to avoid or minimize adverse impacts on the conservation values of the Protected Property.

**K. No Transferable Rights.** Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purpose of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, clustered development arrangement or otherwise; provided, however, that with the prior written consent of Grantee, this Section 1(K) shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

**L. No Other Disturbances.** Except as may be reasonably required in connection with any of the uses and activities expressly permitted by this Conservation Easement and except for the installation, use and maintenance of erosion control measures in full compliance with applicable laws and regulations, there shall be no filling, excavating, dredging, draining, diking, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials; no dumping of trash, garbage, or any other material; and no alteration of the topography of the land in any manner.



**M. Other Uses and Activities.** Any use of the Protected Property and any activity thereon that contravenes the primary purposes of this Conservation Easement are prohibited.

**2. Representation of Title.** Grantor represents and warrants that he owns valid, fee simple absolute title to the Protected Property and has the right to grant and convey this Conservation Easement and that the Protected Property is free and clear of any and all mortgages, liens and encumbrances of any nature whatsoever.

**3. Use of Protected Property.** Grantor may, in his sole discretion, allow access to and use of the Protected Property by members, employees and representatives of The Nature Conservancy, the Boy Scouts, the Girl Scouts, YMCA, The Wilderness Society, the South Carolina Department of Natural Resources, the South Carolina Forestry Commission, Grantee, and similar groups, organizations and agencies, and Grantor shall have the sole right to establish conditions for such access and use including, but not limited to, advance notification, time and duration of the use, and the nature and extent of the use.

Otherwise, access to and use of the Protected Property shall be restricted to Grantor and his heirs, successors, assigns and invitees.

**4. Inspection.** Grantee and its agents, contractors and representatives shall have the right, in a reasonable manner and at reasonable times, to enter the Protected Property for the purpose of inspecting it to determine compliance with the provisions of this Conservation Easement. Grantee shall not inspect the Protected Property more than two times per year unless Grantee is invited to do so by Grantor or unless Grantee determines, or has reason to believe, that a violation of this Conservation Easement has occurred or is occurring.

**5. Grantee's Remedies.** If Grantee determines that a violation of this Conservation Easement has occurred, is occurring or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action to cease or cure the violation or where such violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the Protected Property so injured. If Grantor fails to cease or cure the violation within thirty days after receipt of Grantee's notice or, if the circumstances are such that the violation cannot be cured within the thirty day period, Grantor does not begin curing such violation within the thirty day period, or if Grantor fails to continue diligently to cure the violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. In such action, Grantee may seek a temporary or permanent injunction, damages for violation of this Conservation Easement, including damages for the loss of the conservation values of the Protected

Property, and an order requiring Grantor to restore the Protected Property to the condition that existed prior to injury.

If Grantee, in its sole discretion, determines that a violation of this Conservation Easement has occurred or is occurring and that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Grantee may pursue its remedies under this Section without prior notice to Grantor and without waiting for the thirty day period provided for cure to expire.

Grantor agrees that Grantee's remedies for violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 5, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

All costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne solely by Grantor.

Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any provision hereof by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Conservation Easement or of any of Grantee's rights hereunder. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

Nothing herein shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's reasonable control, including, without limitation, fire, floods, storms or unauthorized wrongful acts of third persons.

**6. Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the ownership, operation, upkeep, and maintenance of the Protected Property, including maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

7. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority.

8. **Hold Harmless.** Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents and contractors and their respective heirs, successors and assigns from and against any and all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees, arising from or any way connected with the breach by Grantor of any provision of this Conservation Easement.

9. **Extinguishment.**

(a) If circumstances arise in the future which render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 9(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Conservation Easement.

(b) This Conservation Easement constitutes a real Protected Property interest immediately vested in Grantee, which, for the purposes of this Section 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Conservation Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code, as amended. For the purposes of this provision, the ratio of the value of the Conservation Easement to the value of the Protected Property unencumbered by the Conservation Easement shall remain constant.

10. **Assignment.** This Conservation Easement is assignable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization which is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and which is authorized to acquire and hold Conservation Easements



under South Carolina law, and any such assignment shall be first approved in writing by Grantor, which approval shall not be unreasonably withheld. An express condition of such assignment is that the assignee organization shall have the commitment, ability and resources to meet its responsibilities and obligations under this Conservation Easement and to take the necessary steps to protect the conservation values of the Protected Property.

If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, or if Grantee is unable or unwilling to carry out its obligations under this Conservation Easement, then Grantee's rights and obligations shall become immediately vested in The Nature Conservancy. If The Nature Conservancy is no longer in existence at the time the rights and obligations under this Conservation Easement would otherwise vest in it, or if at such time The Nature Conservancy is not qualified or authorized to hold conservation easements under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable) or if The Nature Conservancy shall refuse such rights and obligations, then the rights and obligations under this Conservation Easement shall vest in such other qualified organization as a court of competent jurisdiction shall direct pursuant to applicable law.

**11. Subsequent Transfers; Transfer Fee.** Grantor agrees to incorporate the provisions of this Conservation Easement in any deed or other legal instrument by which Grantor divests himself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty days prior to the date thereof. The failure of Grantor to perform any act required by this Section 11 shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

There shall be assessed by Grantee a transfer fee equal to one-half of one (0.5) percent of the sales price or other consideration paid in connection with the transfer of any interest in the Protected Property other than the sale of timber or timber rights, which transfer fee shall be paid to Grantee at the time of the transfer. This sum shall be placed in Grantee's Land Trust Endowment, or such similarly named successor fund, which is used to assist Grantee in meeting its responsibilities to monitor and enforce this Conservation Easement and other conservation easements which it holds.

In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fee which shall be a lien on the Protected Property but which lien shall be subordinate to this Conservation Easement. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina. Grantee may require Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence.

Any transfer subsequent to the conveyance of this Conservation Easement without consideration to a spouse, a lineal descendant or a spouse of a lineal descendent of Grantor (collectively, "Immediate Family Members"), or to an entity at least 50% of the equity interest of which is owned by an Immediate Family Member or to a trust whose presumptive beneficiaries are Grantor or an Immediate Family Member, or to a charitable organization which is tax exempt under 501(c)(3), shall be exempt from the assessment of such transfer fee. An exchange of properties pursuant to Section 1031 of the Internal Revenue Code, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement by an MAI appraiser selected by Grantee, whose appraisal fee shall be paid by Grantee.

**12. Primary Purposes of Conservation Easement.** The parties recognize and agree that the primary purposes of this Conservation Easement are to preserve the Protected Property predominantly in its present condition, to protect the Protected Property's natural and scenic beauty, and to protect, improve and enhance its conservation values. Accordingly, this Conservation Easement shall be liberally construed in favor of these purposes.

**13. Modification.** This Conservation Easement may not be modified or amended except pursuant to a written agreement signed by both parties. Any such modification or amendment shall be consistent with the purposes of this Conservation Easement.

**14. Resolution of Disputes.** The parties shall promptly and in good faith attempt to resolve any dispute arising out of or relating to this Conservation Easement. If those negotiations are not successful, the parties shall in good faith attempt to resolve the dispute through mediation. The parties shall appoint a mutually acceptable person who has been certified as a civil mediator by South Carolina Board of Mediator and Arbitrator Certification (or successor agency). If the parties cannot agree on who should serve as mediator, such Board (or successor agency) shall appoint the mediator. The mediation will be held no later than ninety days after the dispute has arisen, and the costs of the mediation shall be shared equally by the parties. The mediation shall be governed by the rules established by the South Carolina Supreme Court for civil mediations. Except as provided in Section 5 of this Conservation Easement, no judicial action may be instituted by either party until after such mediation has been held. If the mediation is not successful and a judicial action is instituted, the parties shall not assert the defense of the statute of limitations or laches based upon the time devoted to attempting to resolve the dispute in accordance with this Section 14.

**15. Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Edward Land  
630 Lands End Road  
Seneca, SC 29678

To Grantee: Dana H. Leavitt (or successor)  
Land Trust Director  
Upstate Forever  
Post Office Box 2308  
Greenville, South Carolina 29602

**16. Severability.** If any provision of this Conservation Easement is determined by a court of competent jurisdiction to be void and unenforceable, all remaining terms shall remain valid and binding.

**17. Binding Effect.** The burdens of this Conservation Easement shall run with the Protected Property in perpetuity and shall be enforceable against Grantor and his heirs, successors and assigns and all future owners of the Protected Property and all persons or entities having any interest therein, in perpetuity. The benefits of this Conservation Easement shall inure to Grantee and its successors and assigns and to the citizens of Oconee County and of the State of South Carolina.

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

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