

STATE OF SOUTH CAROLINA

: IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

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Van's Camp, LLC,

**SUMMONS**

Plaintiffs,

**(Jury Trial Demanded)**

vs.

South Carolina Department of Health and  
Environmental Control [SCDHEC]; and Upstream  
Property Owners: Naturaland Trust, South Carolina  
Department of Natural Resources, Lonnie E.  
Alverson, L. Denise Alverson, J. Gary Barbare, Sr.,  
Mark E. Bunner, Brenda E. Bunner, Jennifer  
McGovern and Elizabeth Skahen, Trustees of the  
Springdale Trust, Brenda P. Brooks, Alma Jean  
Cisson, William B. Hardin, Jr., Mitchell Jones,  
Ray Jones, Daniel M. Phillips, Roseanne R.  
Phillips, Elizabeth Yokley Tickle; and John Doe  
and Richard Roe as Representatives of the  
General Public,

Defendants.

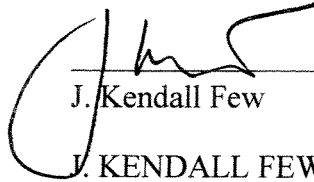
FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSHER  
2013 DEC 20 PM 12 23

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint upon the attorney for the Plaintiffs at 95 Stillhouse Ridge, Greer, SC 29650, within thirty (30) days after service upon you, exclusive of the date of service, and if you fail to answer the Complaint within this time, Plaintiff will apply to the Court that a Declaratory Judgment for the relief demanded in the Complaint.

Dated at Greenville, South Carolina

December 19, 2013



J. Kendall Few

J. KENDALL FEW, P.A.

95 Stillhouse Ridge

Greer, SC 29650

Telephone: (864) 334-1400

Facsimile: (864) 334-1401

Phyllis@jkendallfew.com

**ATTORNEY FOR PLAINTIFFS**

State of South Carolina  
County of Greenville

Van's Camp, LLC,

Plaintiff,

vs.

South Carolina Department of Health and  
Environmental Control [SCDHEC]; and Upstream  
Property Owners: Naturaland Trust, South Carolina  
Department of Natural Resources, Lonnie E.  
Alverson, L. Denise Alverson, J. Gary Barbare, Sr.,  
Mark E. Bunner, Brenda E. Bunner, Jennifer  
McGovern and Elizabeth Skahen, Trustees of the  
Springdale Trust, Brenda P. Brooks, Alma Jean  
Cisson, William B. Hardin, Jr., Mitchell Jones,  
Ray Jones, Daniel M. Phillips, Roseanne R.  
Phillips, Elizabeth Yokley Tickle; and John Doe  
and Richard Roe as Representatives of the  
General Public,

Defendants.

In the Court of Common Pleas

C/A No. 2013-CP-23-06719

## COMPLAINT

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2013 DEC 20 PM 12 23

### DESCRIPTION OF THE PARTIES

1. Plaintiff is a Limited Liability Corporation located in Greenville County, South Carolina which owns approximately 80 acres at Blythe Shoals on the South Saluda River in Greenville and Pickens Counties.

2. Based upon representations by the Office of the Attorney General and the Department of Natural Resources [See attached Exhibits A and B], Plaintiff is informed and believes that the South Carolina Department of Health and Environmental Control (SCDHEC), an agency of the State of South Carolina which is entrusted with jurisdiction over navigable waterways, is the only necessary and proper governmental agency to be named as a Defendant in this case.

SCHDEC has previously designated the stream segment involved in this case as a navigable stream, and has refused to withdraw this designation. This designation has encouraged and contributed to members of the general public trespassing on Plaintiff's property

3. Upon information and belief, the Upstream Property Owner Defendants consist of all property owners in Greenville and Pickens Counties whose property abuts upon the South Saluda River beginning immediately above the Plaintiff's property and extending 2-1/2 miles upstream to the Highway 11 bridge. Plaintiff is informed and believes that one or more of these property owners contests Plaintiff's allegations that the segment of the South Saluda River in question is non-navigable.

4. John Doe and Richard Roe are anonymous Defendants who represent the interests of the general public.

#### NATURE OF THE SUBJECT ACTION

5. This is a Declaratory Judgment action in which the Plaintiff seeks a judgment declaring that a segment of the South Saluda River traversing the Plaintiff's property is a non-navigable stream as to which the Plaintiff holds legal title to the stream bed with the right to exclude members of the general public.

6. The stream segment in question as shown on attached Exhibit C consists of three sections with a total length of 1141 linear feet including:

- a) Section A consists of 240 linear feet from the crest of a waterfall commonly known as Blythe Shoals Falls to the bottom of such falls shown on Exhibit C as Point B to Point C, which is surrounded on both sides of the stream by Plaintiff's property;

- b) Section B consists of an adjoining pool of water 512 feet in length shown on Exhibit C as Point C to Point D which is surrounded on both sides of the stream by Plaintiff's property; and
- c) Section C designated as the Boulder Garden consists of a narrow stream bed of 389 feet in length surrounded on both sides of the stream by more than 100 large boulders with a typical height above the surface of the stream of five to seven feet. Section C, as shown in Exhibit C, is surrounded on both sides of the stream by Plaintiff's property.

7. It is Plaintiff's contention that the three stream segments described in ¶ 5 above are non-navigable.

#### JURISDICTION AND VENUE

8. This Court has jurisdiction under Article V, §11, of the South Carolina Constitution, South Carolina Code § 14-1-80, the Common Law of South Carolina, and the South Carolina Declaratory Judgments Act, §§15-53-10 et seq. of the South Carolina Code.

9. Venue is proper in Greenville County because the Plaintiff is domiciled in Greenville County and because the stream segment in question forms the boundary line between Greenville and Pickens Counties.

#### PLAINTIFF'S TITLE TO STREAM BANK

10. Plaintiff's title to the stream bed is derived from one or more Land Grant Deeds from the State of South Carolina pursuant to an act of the South Carolina Legislature dated February 19, 179\_\_ entitled "An Act for Establishing the Mode of Granting the Lands Now Vacant in this State, etc," which conveyed title of the bed of the stream of the property in question to Plaintiff's predecessors in title.

11. All subsequent deeds in Plaintiff's chain of title have conveyed the title to the stream bed down to the Plaintiff.

## JUDICIAL DETERMINATION OF NAVIGABILITY

12. Insofar as the property rights of the abutting property owners are concerned, a determination of whether the stream bed is navigable or non-navigable is reserved to a Judicial Determination by a court of competent jurisdiction.

13. Dating back to the original Land Grant to Plaintiff's property, there has been no Judicial Determination as to whether the stream segment in question is navigable or non-navigable.

## SCDHEC'S DESIGNATION OF NAVIGABILITY

14. On a date unknown to the Plaintiff and unspecified by SCDHEC, without any examination of the topography of the stream bed in question, SCDHEC arbitrarily designated the stream bed in question to be a navigable stream. Although SCDHEC has admitted that it *"has no basis for determining the navigability"* of the stream segment in question, it has refused Plaintiff's request it withdraw its arbitrary determination [See Exhibit D].

15. As a result of this unwarranted designation, members of the general public, and in particular, daredevils and thrill-seekers in small kayaks who are willing to assume the risk of serious personal injury or death, have been encouraged to trespass and have trespassed upon Plaintiff's property, in derogation of Plaintiff's rights to the exclusive possession and enjoyment of Plaintiff's property.

## TOPOGRAPHY OF THE SUBJECT STREAM SEGMENT

### A. Blythe Shoals Falls

16. The configuration of Blythe Shoals Falls is shown on a Partial Topographic Survey entitled "Fall Profile" dated June 22, 2012 by Fant, Reichert & Fogleman which is incorporated by reference as a component of this Complaint. This survey shows that the height of the falls is 21.8 feet and that the length of the falls is 240 feet. At the crest of the falls the stream width is approximately 98 feet and the stream width at the foot of the falls is approximately 31 feet.

17. The stream depth at five typical measuring points downstream from the crest of the falls are as follows:

- a) Near the center of the stream, approximately 45 feet from the west bank and approximately 70 feet downstream from the crest of the falls the stream depth is 0.15 feet or approximately 1.8 inches with a fall in elevation of approximately seven feet from the crest of the falls. From the top of the falls to a point 89 feet downstream, the average grade is one vertical foot for every ten horizontal feet.
- b) Approximately five feet from the east bank and approximately 100 feet downstream from the crest of the falls, there is a stream depth of 0.19 feet or approximately 2.3 inches. From this point the surface of the stream descends approximately 7 feet in elevation over a linear distance of 36 feet for an average grade of one vertical foot of fall for every five horizontal feet.
- c) Three separate stream depth measurements were taken at a cross section 151 to 168 feet downstream from the crest of the falls, at a point where the stream width has narrowed to an average of approximately 35.7 feet. At one point four feet from the western bank and 151 feet from the crest of the falls the stream depth is 0.18 feet or approximately 2.2 inches. At a second point 12 feet from the western bank and 168 feet downstream from the crest of the falls the stream depth is 0.27 feet or 3.3 inches. At a third point 28 feet from the western bank and 164 feet downstream from the crest of the falls the stream depth is 0.37 feet or approximately 4.5 inches. At this cross section, the average stream depth is approximately 3.3 inches. For approximately 101' from the top of the falls to 28' above the bottom of the falls, the grade is one vertical foot of fall for every five horizontal feet.

- d) The overall slope of the stream from the crest to the foot of the falls is approximately 8.75 feet of lineal fall for every 100 feet of horizontal distance. The average stream depth of the falls at these five measuring points is approximately 2.8 inches.

#### TOPOGRAPHY OF THE POOL SEGMENT

18. Between the foot of Blythe Shoals Falls and the beginning of the Boulder Garden there is an adjoining pool segment approximately 512 feet in length which has a drop in elevation of approximately 3.6 feet as shown on a Partial Topography Survey entitled "Boulder Garden Profile" also prepared by Fant, Reichert and Fogleman dated June 22, 2012. This survey is also incorporated by reference as a component of this Complaint.

19. This pool segment extends from the foot of the falls to the start of the Boulder Garden and is surrounded on both sides of the stream by the property of the Plaintiff.

#### TOPOGRAPHY OF THE BOULDER GARDEN

20. The topography of the Boulder Garden is shown on a second Partial Topographic Profile by Fant, Reichert and Folgman designated as the "Boulder Garden Profile." It is approximately 389 feet in length with a fall in elevation of approximately 9.8 feet. In the Boulder Gardens the stream is surrounded on both sides by a series of more than 100 multi-ton boulders with a height above the surface of the stream of 2.1 to 7.7 feet as shown on the "Boulder Garden" Partial Topography Survey referred to in ¶ 11 above.

#### NAVIGABILITY OF THE SUBJECT STREAT SEGMENT

21. Due to the precipitous slope of the topography, its shallow stream depth, its swift current and the surrounding boulders, this stream segment is not navigable by conventional



watercraft other than small kayaks manned by dare-devils and thrill seekers who are willing to assume the risk of serious personal injury or death.

#### APPLICABLE STATUTES AND REGULATIONS

22. South Carolina Code §49-1-10 defines navigable streams as those "which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber."

23. SCDHEC Regulation 19-450 defines navigable streams as those waters which "are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstructions, by rafts of lumber or timber or by small pleasure or sport fishing boats."

24. Due to its topography as described in ¶¶ 9 - 13 above, the subject stream segment is not now, nor has it ever been, nor can it ever be rendered navigable by rafts of lumber or timber or by small pleasure or sport fishing boats.

#### APPLICABLE LAW

25. The following generally accepted legal principles are applicable to a determination of navigability in this case.

- a) The navigability of a stream should be determined on a segment by segment basis.<sup>1</sup>
- b) The burden of proving navigability rests upon the party who asserts it.<sup>2</sup>
- c) Under South Carolina law, the stream segment in question must serve some useful purpose as a highway for a traveler for business or pleasure.<sup>3</sup>

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<sup>1</sup> See *PPI Montana v. Montana*, 132 S. Ct. 1215 (2012).

<sup>2</sup> See *Harrison v. Fite*, 148 Fed. 781 (E.D. Ark. 1906); *Boerner v. McAllister*, 89 S.E. 2d 23 (Va. 1955); *Culley v. Pearl River Inc. Comm.*, 108 So. 2d 390 (Miss. 1959); and *North Dakota v. Board of University School Lands*, 972 F. 2d 235 (8th Cir. 1992).

<sup>3</sup> See *Heyward v. Farmers Mining Co.*, 42 S.C. 138, 19 S.E. 963 (1894), quoted with approval by the South Carolina Court of Appeals in *White's Mill Colony v. Williams*, Opinion No. 3293 (S.C. App. 2005) as "a seminal case setting forth the modern test of navigability."

- d) Under South Carolina law, the proponent of navigability must demonstrate "a connection beyond an isolated locus to other navigable waters" to avoid "the untenable result that any backyard pool would necessarily be navigable."<sup>4</sup>
- e) Under South Carolina law, the determination of the navigability of a stream segment "should depend upon whether water is used or useable as a broad highway for commerce and transport in quantity of goods and people."<sup>5</sup>
- f) Under South Carolina law, the "basic difference" between a navigable and a non-navigable stream "is that between a trade-route and a point of interest."<sup>6</sup>
- g) Under South Carolina law, to be navigable, a stream segment must "demonstrate an established history of navigational use."<sup>7</sup>
- h) Under South Carolina law, "the use of a canoe or kayak in the area" for a limited period of time does not "constitute an established history of navigational use."<sup>8</sup>
- i) Under generally accepted principles of Common Law, "the mere fact that waters have been used, or are capable of being used, by small boats or pleasure craft, such as canoes, rowboats, small skiffs, or launches, does not of itself render them navigable."<sup>9</sup>
- j) Under generally accepted principles of Common Law, in order to constitute a navigable stream, "it must have sufficient capacity to be used for useful purposes of navigation, that is, for trade and travel in the usual and ordinary modes."<sup>10</sup>

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<sup>4</sup> See *White's Mill Colony*, supra, note 2.

<sup>5</sup> See *White's Mill Colony*, supra, note 2, quoting with approval from *Lakeside Pack Co. v. Forsmark*, 153 A. 2d 486 (Pa. 1959).

<sup>6</sup> See note 4 above.

<sup>7</sup> See *Jones v. SCDHEC*, Opinion No. 4583 (S.C. App. 2009).

<sup>8</sup> See *Jones v. SCDHEC*, supra, note 6. See also *Wehby v. Turpin*, 710 So. 2d 1243 (Sup. Ct. Ala. 1998).

<sup>9</sup> See *Elder v. Delcour*, 263 S.W. 2d 221 (Mo. App. 1953).

<sup>10</sup> See *Elder v. Delcour*, supra, note 8.

- k) Under generally accepted principles of Common Law, "while pleasure boating can sometimes indicate a river's susceptibility for commercial use," "running the rapids" of a "white water" stream is insufficient to constitute navigability.<sup>11</sup>
- l) Under the Common Law rule adopted in South Carolina, the owners of land underlying the surface waters of a non-navigable watercourse are entitled to its exclusive control with the right to exclude members of the general public.<sup>12</sup>

26. Following these principles in the application of generally accepted principles of Common Law, courts have found that segments of the following rivers were not navigable streams:

- a) A 47 mile segment of the Chattahoochee River north of Atlanta between Lake Lanier and Peachtree Creek.<sup>13</sup>
- b) Segments of the Missouri, Madison and Clark Fork Rivers in Western Montana.<sup>14</sup>
- c) Segments of the Little Missouri River in Western North Dakota.<sup>15</sup>
- d) A segment of the Seneca River at Portman Shoals in Anderson County, South Carolina.<sup>16</sup>
- e) A segment of the Pearl River below Columbia, Mississippi.<sup>17</sup>
- f) A segment of the Jackson River above the City of Covington, Virginia.<sup>18</sup>
- g) A segment of the Meramec River in Dent County, Missouri.<sup>19</sup>

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<sup>11</sup> See *U.S. v. Crow, Pope and Land Enterprises*, 340 F. Supp. 25 (N.D. Ga. 1972).

<sup>12</sup> See *White's Mill Colony v. Williams*, *supra*, note 3.

<sup>13</sup> See *U.S. v. Crow, Pope & Land Enterprises, Inc.*, 340 F. Supp. 25 (N.D. Georgia 1972).

<sup>14</sup> See *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (February 2012).

<sup>15</sup> See *State of North Dakota v. U.S.*, 972 F.2d 235 (8th Cir. 1992).

<sup>16</sup> See *U.S. v. 531. Acres in Anderson County, South Carolina*, 243 F. Supp. 981 (W.D.S.C. 1965).

<sup>17</sup> See *Culley v. Pearl River Industrial Comm.*, 108 So. 390 (1959).

<sup>18</sup> See *Boerner v. McCallister*, 197 Va. 169, 89 S.E. 2d 23 (1955).

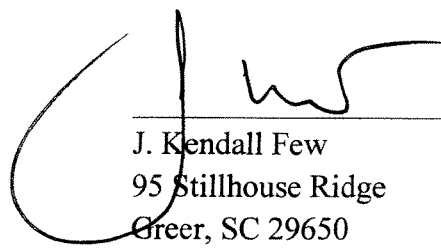
<sup>19</sup> See *Elder v. Delcour*, 263 S.W. 2d 221 (1953).

27. Consistent with the principles cited in ¶ 25 above, the stream segment in question is not navigable because:

- a) It does not serve any useful purpose as a highway for a traveler for business or pleasure.
- b) The defendants cannot demonstrate "a connection beyond an isolated locus to other navigable waters."
- c) It is not used or useable as "a broad highway for commerce or transport in quantity of goods and people."
- d) It is neither a "trade route" or a recreational route for members of the general public.
- e) It is not susceptible to "trade or travel " in the usual and ordinary modes.
- f) It serves no public use and is only traversable by dare-devils and thrill seekers in small kayaks who are willing to assume the risk of serious bodily injury or death.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a declaratory judgment that the segment of the South Saluda River described above is a non-navigable stream within the meaning of S.C. Code §49-1-10, SCDHEC Regulation 19-450, the Common Law of South Carolina and other generally accepted principles of Common Law.



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J. Kendall Few  
95 Stillhouse Ridge  
Greer, SC 29650  
864-334-1400  
864-334-1401 (fax)  
email: Phyllis@Jkendallfew.com

Date: December 19, 2013

Attorney for the Plaintiff



ALAN WILSON  
ATTORNEY GENERAL

June 20, 2013

J. Kendall Few, Esquire  
Attorney at Law  
95 Stillhouse Ridge  
Greer, SC 29650


Re: South Saluda River Navigability at Van's Camp, LLC at Blythe Shoals

Dear Mr. Few:

I am responding to your letter of May 8, 2013 in which you request that "the appropriate representative of the state make a public declaration that" a specified portion of the South Saluda River is a non-navigable stream. You also sent the letter to the Department of Health and Environmental Control and the Department of Natural Resources.

The Office of the Attorney General does not have authority under State law to designate rivers as navigable or non-navigable although it may represent State interests in ensuring access to rivers that are navigable. According to your letter and attachments thereto, you have previously corresponded with DHEC about this matter, and my understanding is that DHEC is sending you a response.

Sincerely,



J. Emory Smith, Jr.  
Deputy Solicitor General

cc: Paul S. League, Deputy General Counsel, DNR  
Roger P. Hall, Senior Counsel, DHEC

South Carolina Department of

# Natural Resources



**DNR**

Alvin A. Taylor  
**Director**

**Office of Chief Counsel**  
Buford S. Mabry, Jr.  
Paul S. League

June 20, 2013

J. Kendall Few  
95 Stillhouse Ridge  
Greer, SC 2950

Re: Navigability of South Saluda River on Van's Camp, LLC Property at Blythe Shoals

Dear Mr. Few:

Your letter dated May 8, 2013 to Director Taylor has been forwarded to me for reply. The issue you raise is one of some interest to the SCDNR, given the presence of State owned land a short way upstream of your client's property. The SCDNR, however, is not authorized under State law to make determinations of navigability for the State's watercourses. Therefore, the SCDNR is not in a position to make any declaration with respect to the status of the South Saluda River as a navigable stream.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul S. League".

Paul S. League  
Deputy Chief Counsel

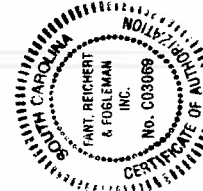
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| L1         | 245.90 | S43°43'00"E |
| L2         | 45.00  | N62°19'00"E |
| L3         | 44.40  | S81°33'00"E |
| L4         | 43.20  | N01°10'00"W |
| L5         | 48.65  | S81°44'00"W |
| L6         | 104.90 | S24°47'00"E |
| L7         | 286.52 | S12°33'00"E |
| L8         | 112.37 | S05°22'00"E |
| L9         | 172.84 | S14°17'00"W |
| L10        | 180.28 | S72°20'00"W |
| L11        | 263.00 | N11°16'00"E |
| L12        | 180.00 | N88°32'00"W |
| L13        | 235.00 | S44°05'00"W |

- NOTE:
- 1) PART OF TAX MAP NO. 0878010100300
  - 2) SITE ADDRESS: BLYTHE SHOALS ROAD GREENVILLE & PICKENS COUNTY SOUTH CAROLINA
  - 3) PROPERTY SUBJECT TO ANY AND ALL EASEMENTS AND R/W OF RECORD AND NOT OF RECORD
  - 4) FIELD WORK COMPLETED: 8-1-12
  - 5) THIS PLAT DOES NOT REPRESENT A LAND SURVEY, WAS NOT PREPARED FOR RECORDING AND IS NOT SUITABLE FOR DEEDING PROPERTY. COMPLETE BOUNDARY SURVEY MUST BE CONDUCTED. BOUNDARY SHOWN IS APPROXIMATE AND PER REFERENCE PLAT ONLY.
  - 6) REFERENCES: PG 9-1 PG 85 PG 25 PG 850
  - 7) APPROXIMATE DISTANCES TO POINTS OF INTEREST:  
A TO B - 880'  
B TO C - 240'  
C TO D - 512'  
D TO E - 1087'  
E TO F - 1851'

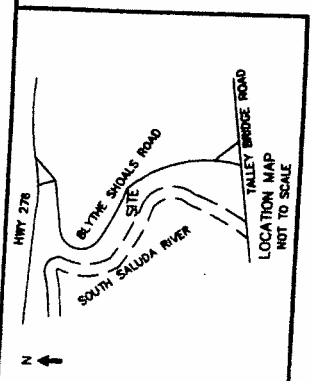
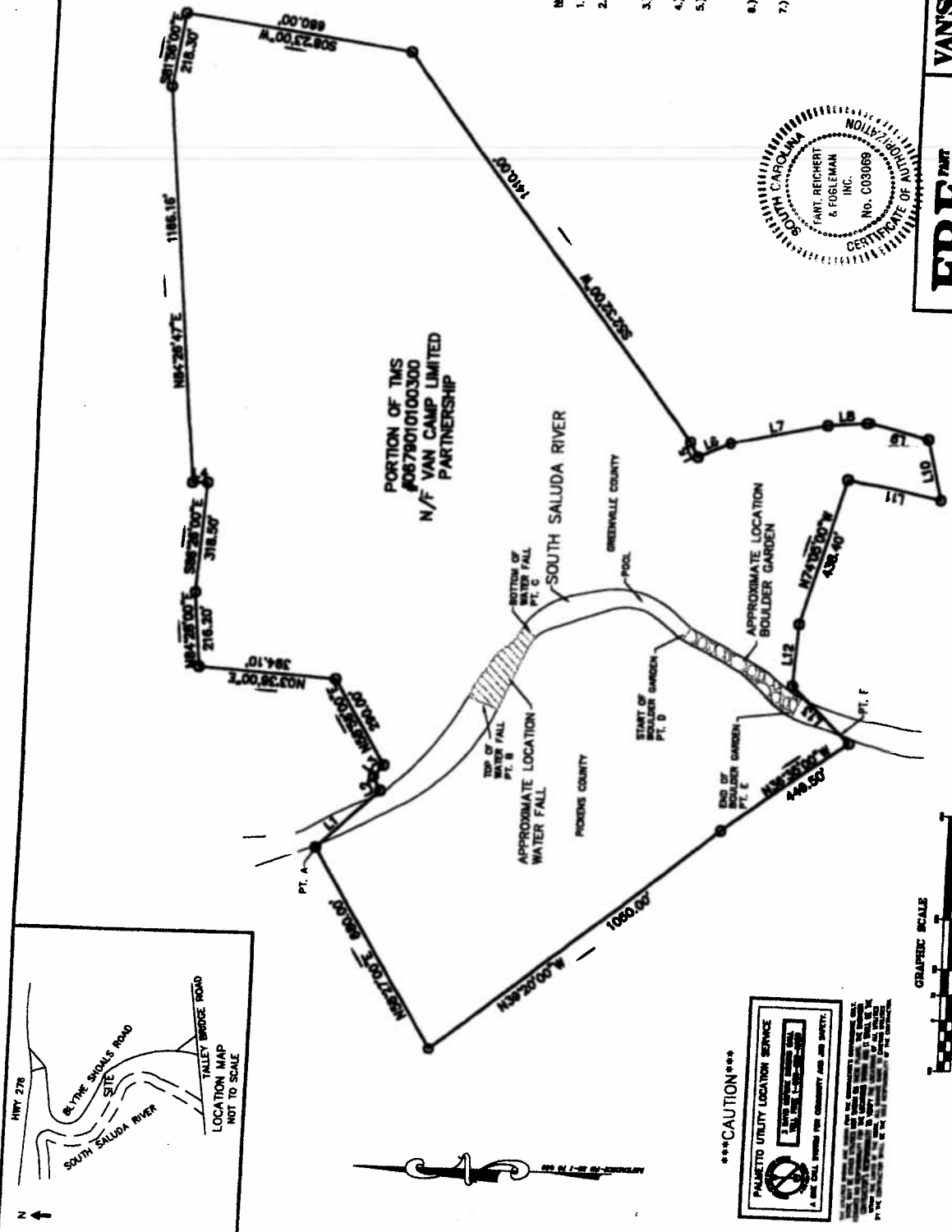
COMPILED MAP OF:

**VAN'S CAMP LIMITED PARTNERSHIP**  
BLYTHE SHOALS ROAD  
GREENVILLE COUNTY &  
PICKENS COUNTY, SC

SCALE: 1" = 300'  
DATE: 8-22-12  
PT. FILE: 12071.TXT  
DWG. NO: 12071-Survey



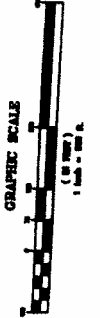
**FRF**  
FANT RECHERT & FOGLEMAN, INC.  
ENGINEERING & SURVEYING  
2100 LEE ROAD  
SUITE 100  
GREENVILLE, SC 29607  
PH: (864) 271-8653



\*\*\*CAUTION\*\*\*

**PALETTE UTILITY LOCATION SERVICE**  
3 DAY SERVICE  
CALL 1-800-255-5555  
A ONE HOUR SERVICE FOR COMMUNITY AND JOB SAFETY.

THE INFORMATION CONTAINED HEREIN IS FOR YOUR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE USER OF THIS INFORMATION SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND FOLLOWING ALL APPLICABLE REGULATIONS. THE USER OF THIS INFORMATION SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND FOLLOWING ALL APPLICABLE REGULATIONS.



7. HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE UNIFORM STANDARD MANUAL PRACTICES OF THE SURVEYING IN SOUTH CAROLINA AND MEETS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN.



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

August 9, 2013

J. Kendall Few  
95 Stillhouse Ridge  
Greer, SC 29650  
Email: [Phyllis@jkendallfew.com](mailto:Phyllis@jkendallfew.com)

Re: Navigability of South Saluda River on Van's Camp, LLC Property at Blythe Shoals

Dear Mr. Few:

Having received final confirmation and approval from the relevant DHEC programs, I am sending this letter in response to your letter dated May 8, 2013, received by the Department June 5, 2013. In the letter, you request "...the appropriate representative of the state make a public declaration that that portion of the South Saluda River extending from the crest of Blythe Shoals Falls to the terminus of the boulder garden... is a non-navigable stream under the laws of the State of South Carolina."

In your letter, you also mention that you previously sent correspondence to Mr. David Wilson of the Department on April 26 and July 16, 2012, but that you had not received any written response. We are attaching a copy of your May 9, 2012, letter in which you reference, the response and the documents you received from the Department following your April 26, 2012 email. We are also providing a copy of correspondence dated July 23, 2012, that was sent in response to your July 16, 2012 letter.

Finally, you reference the map of "Navigable Waters" published by the Department, and in your previous correspondence you have requested that the Department provide a date when this segment of the river was designated to be navigable. As the Department stated in our previous correspondence, this Navigable Waters Map is a provisional map used for preliminary determinations in the permitting process. Under South Carolina Regulation 19-450, *Permits for Construction in Navigable Waters*, the Department must ensure that construction activities in navigable waters do not impede navigation. These regulations are not intended to convey any property rights.



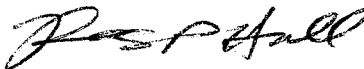
J. Kendall Few  
August 9, 2013  
Page 2

In accordance with R.19-450.4.A.5, "No permit shall convey nor be interpreted as conveying expressly or implicitly, any property right in the land or water in which the permitted activity is located. No permit shall be construed or interpreted as alienating public property for private use, nor does it authorize the permittee to alienate, diminish, infringe upon or other-wise restrict the property rights of other persons or the public."

The Department's only role in determinations of navigability outside of the coastal zone critical area is with respect to the issuance of permits pursuant to Regulation 19-450. Since there is no permit application dealing with this portion of the South Saluda River, the Department has no basis for determining the navigability and is unable to "make a public declaration that that portion of the South Saluda River extending from the crest of Blythe Shoals Falls to the terminus of the boulder garden... is a non-navigable stream." Furthermore, in accordance with R.19-450.4.A.5, cited above, even if the Department were to issue a Navigable Waters permit, that permit would convey no property rights in the subject land or water and the determination of navigability would only be in regard to the necessity of the permit itself.

I hope this letter demonstrates why the Department is unable to oblige your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Roger P. Hall  
Senior Counsel  
SCDHEC