

STATE OF SOUTH CAROLINA

CONSERVATION EASEMENT  
AND ACCEPTANCE

COUNTY OF BERKELEY

THIS INDENTURE, is made this 16<sup>th</sup> day of DECEMBER, 2002, by and between WESTVACO CORPORATION ("Grantor"), a Delaware corporation, whose address is 180 Westvaco Road, Summerville, South Carolina, and , LORD BERKELEY CONSERVATION TRUST, a non-profit charitable corporation incorporated under the laws of South Carolina ("Holder"), whose address is 223 N. Live Oak Drive, Moncks Corner, SC 29461.

WHEREAS, Grantor is the owner in fee simple of certain real property located in Berkeley County, South Carolina, more particularly described as 1400 acres, more or less, being a portion of Westvaco's Pigeon Pond Unit, further identified on the attached Exhibit A, hereinafter referred to as the "Protected Property";

WHEREAS, Grantor desires to convey to the Holder a conservation easement placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition forever;

WHEREAS, Holder is a "qualified conservation organization," as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations, thereunder (the "Code"), is qualified to hold a conservation easement, and is a charitable, not-for-profit corporation, qualified under § 501(c)(3) and § 170(h) of the Internal Revenue Code, the purposes or powers of which include one or more of the purposes (a) - (e) listed below;

WHEREAS, the purposes of this Conservation Easement include, without limitation, one or more of the following:

- (a) retaining or protecting natural, scenic, or open-space aspects of real property;
- (b) ensuring the availability of real property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air or water quality;
- (e) preserving the historical, architectural, archaeological, or cultural aspects of real property;

WHEREAS, the Protected Property has been approved by the Mitigation Bank Review Team (MBRT) for use as a mitigation bank, to be known as the Pigeon Pond Mitigation Bank to be operated by Pigeon Pond, L.L.C., a South Carolina limited liability company pursuant to that certain Mitigation Banking Instrument entitled "Pigeon Pond Mitigation Bank, Berkeley County, South Carolina dated August 21, 2002 (the "Mitigation Banking Instrument") which Plan has been incorporated into that certain Memorandum of Agreement ("Pigeon Pond Mitigation Bank") (the "Mitigation MOA") between Pigeon Pond, L.L.C., Westvaco Corporation

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Register of Deeds Berkeley Co., SC

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and the participating member agencies of the South Carolina Mitigation Bank Review Team ("MBRT"); and

WHEREAS, the Mitigation Banking Instrument divides the Protected Property into three different types of areas: (a) 141 acres of upland buffers (collectively, the "Buffer"); (b) 171 acres restoration area (the "Restoration Area") and (d) 1088 acres of Carolina Bay wetlands (the "Wetlands"), each as more fully shown on the sketch attached as **Exhibit B**

WHEREAS, the term "natural condition" shall mean the condition of the Protected Property at the time of this grant, and shall be evidenced in part by a surveyed plat of the Protected Property showing all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States, shall be recorded in the RMC office for each county in which the Protected Property is situated prior to the recording of this Conservation Easement, and is recorded at [insert book and page references, county and date of recording]. The natural condition of the Protected Property may also be evidenced by:

- (a) a current aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made;
- (b) on-site photographs taken at appropriate locations on the Protected Property, including of major natural features; and,
- (c) Mitigation Banking Instrument.

NOW THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights, and agreements herein, Grantor hereby conveys to Holder a conservation easement over the Protected Property consisting of the following:

#### **A. RESTRICTIONS**

These Restrictions shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, or other occupiers and users, and are subject to the Reserved Rights which follow.

1. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography in any manner, except as expressly permitted in Section 8 of Grantor's Reserved Rights.

2. **Waters and Wetlands.** In addition to the General restrictions above, there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and, no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended, except as expressly permitted in Section 8 of Grantor's Reserved Rights.

3. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly permitted in Grantor's Reserved Rights; and there shall be no planting or introduction of non-native or exotic species of trees or vegetation.

4. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed, except as expressly permitted in Section 7 of Grantor's Reserved Rights.
5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
6. **New Roads.** There shall be no construction of new roads, trails or walkways without the prior written approval of the Holder, which approval right shall include approval over the manner in which such improvements are constructed.
7. **Utilities.** There shall be no new construction or placement of utilities or related facilities without the prior written approval of Holder. The Grantor and Holder acknowledge the existence of the South Carolina Public Service Authority (SCPSA) 150 foot Powerline Easement granted by Westvaco on August 6, 1982 and the right of SCPSA to exercise its rights and privileges as granted by said easement.
8. **Pest Control.** There shall be no application of pesticides or biological controls, including applications for problem vegetation, without prior written approval from the Holder. The prior written approval of the Holder will not be required for the use of herbicides for forest management activities which are expressly approved by the Mitigation Banking Instrument..
9. **Restoration** The Grantor agrees to restore the Protected Property to its natural condition to the extent required by the Mitigation Banking Instrument and the MOA, as these documents may be amended from time to time.
10. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

## **B. GRANTOR'S RESERVED RIGHTS**

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its heirs, successors, administrators, and assigns the following Reserved Rights subject to applicable law and permitting requirements:

1. **Landscape Management.** Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.
2. **Forest Management.** Harvesting and management of timber by Grantor in the Wetlands and the Restoration Area shall be permitted only to the extent necessary to restore preferred

wetland forest species, in accordance with the Banking Instrument, or to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and management in the Wetlands and the Restoration Area shall be carried out in accordance with Best Management Practices approved by the South Carolina Forestry Commission or successor agency, as amended. Harvesting and management of timber by Grantor in the Buffer areas shall be permitted provided such timber harvest and management shall be carried out in accordance with the Banking Instrument and Best Management Practices approved by the South Carolina Forestry Commission or successor agency, as amended.

3. **Recreation.** Grantor reserves the right to engage in any outdoor recreational activities, including hunting (excluding planting or burning) and fishing, and to lease or license the use of this right to private citizens and clubs, with income reserved to Grantor. This reserved right does not include the right to build any structures or to otherwise disturb the natural condition of the Protected Property by such activities as planting or burning.

4. **Mineral Interests.** Grantor specifically reserves a qualified mineral interest (as defined in § 170(h)(6) of the Code) in subsurface oil, gas or other minerals and the right to access such minerals provided that any person exploring for, developing or extracting minerals, gas, oil or related hydrocarbon products on the Protected Property shall insure the following:

a) No water shall be utilized on the Protected Property which would cause interference with surface water, streams or other sources of water on the Protected Property.

(b) No new roads shall be constructed

(c) Any surface disturbance resulting from permitted subsurface exploration or extraction activities shall be restored upon completion to a condition similar or equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation.

(d) Any wastewater resulting from such activities which is of materially poorer quality than the existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies.

(e) There shall be no exploration or extraction of minerals, gas, oil or related hydrocarbons by any surface mining method, within the meaning of Section 170 (h) (5) (B) of the Code and the regulations promulgated thereunder, nor shall there be any exploration or extraction by any surface mining method if such activity would, in the sole judgment of the Holder and the US Army Corps of Engineers, results in the destruction of a significant natural, scenic wildlife habitat, or other conservation attribute of the Protected Property.

(f) The Grantor shall provide Holder and the US Army Corps of Engineers with advance written notice at least sixty (60) days prior to engaging in any exploration for or extraction of (or leasing, selling, or otherwise disposing of the rights thereto) minerals, gas, oil and other hydrocarbon products from beneath the Protected Property whether or not such



exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance.

(g) There shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with the continuing natural condition of the Protected Property.

5. **Road Maintenance.** Grantor reserves the right to maintain existing roads, trails or walkways. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.

6. **Other Reserved Rights.** Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems.

7. **Sale of Mitigation Credits.** Grantor reserves the sole and unrestricted right to sell credits or other entitlements or interests in the Protected Property in order to perfect and carry out the purpose of a mitigation bank.

8. **Modification of Hydrology.** Grantor reserves the right to modify hydrology by the use of ditch plugs, weirs, and other methods to meet the objectives outlined in the Mitigation Banking instrument.

### **C. GENERAL PROVISIONS**

The following General Provisions shall be binding upon, and inure to the benefit of, the Grantor, Holder, and the heirs, successors, administrators, assigns, lessees, licensees and agents of each:

1. **Rights of Access and Entry.** Holder, with twenty-four (24) hours written notice to Grantor, shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions. No right of access or entry by the general public to any portion of the Protected Property is conveyed by this Conservation Easement.

2. **Enforcement.** In the event of a breach of the Restrictions by Grantor or another party, the Holder must notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Grantor fails to take such corrective action within thirty (30) days, or fails to complete the necessary corrective action, the Holder may undertake such actions, including legal proceedings, as are necessary to effect such corrective

action. Among other relief, Holder shall be entitled to a complete restoration for any breach of the Restrictions. Breaches of General Provisions of this Conservation Easement shall be actionable without notice. The costs of a breach, correction or restoration, including the Holder's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Holder, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification. The U. S. Army Corps of Engineers Charleston District and/or Department of Justice shall have a third party right of enforcement of this conservation easement.

3. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Holder to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes.

4. **Obligations of Ownership.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantor shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantor. Holder shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits which may apply to the exercise of the Reserved Rights.

5. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

6. **Eminent Domain.** Whenever all or part of the Protected Property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, the Grantor and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

7. **Proceeds.**

This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Holder shall be entitled to 0.25% percent of the net proceeds resulting from such a transaction. Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

8. **Notification.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor: Westvaco Corporation  
Attn: Lands Sales Supt.  
180 Westvaco Road  
Summerville, SC 29484

To Holder LORD BERKELEY Conservation Trust  
223 N. LIVE OAK DRIVE  
MONCK'S CORNER SC 29146

9. **Assignment.** This Conservation Easement is transferable by the Holder, but only to a qualified holder under the South Carolina Conservation Easement Act of 1991, Section 27-8-10, et seq., as such may be amended or replaced, from time to time (the "S.C. Act") which has been approved in writing by the Grantor. Grantor agrees that it will not unreasonably withhold of delay its approval of such an assignment. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement under paragraph 12.

10. **Failure of Holder.** If at any time Holder is unable or fails to enforce this Conservation Easement, or if Holder ceases to be a qualified holder under S.C. Act, and if within a reasonable period of time after the occurrence of one of these events the Holder fails to make an assignment pursuant to paragraph 9, then the Holder's interest shall become vested in such other qualified holder as shall be designated by Grantor after thirty (30) days prior notice to Holder or its successor in interest. Such designation shall be subject to written approval of the designee by the U.S. Army Corps of Engineers, Charleston District.

11. **Subsequent Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument which transfers any interest in all or a portion of the Protected Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of transfer. Grantor shall have no obligation to give prior notice of the transfer of any mitigation credits. The failure of Grantor to comply with this paragraph shall not impair the validity or enforceability of this Conservation Easement.

12. **Amendment.** This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including the S.C. Act, and is consistent with the conservation purposes of this grant. Any proposed amendment must be pre-approved in writing by the U.S. Army Corps of Engineers, Charleston District.

13. **Severability.** Should any separable part of this Conservation Easement be found void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

14. **Warranty.** Grantor warrants that it owns the Protected Property in fee simple, and that Grantor either owns all interests in the Protected Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property which have not been expressly subordinated to this Conservation Easement.

15. **Perpetuity.** The burdens of this Conservation Easement shall run with the land and shall be enforceable against the Grantor and all future owners, tenants and users in perpetuity.

IN WITNESS WHEREOF, Grantor and Holder have executed this Conservation Easement on the date written above.

**Execution by Grantor**

IN THE PRESENCE OF:

WESTVACO CORPORATION

Candice H. O'Brien

By: Mark T. Watkins

David L. Quenon  
Anthony P. Mollish  
STATE OF SOUTH CAROLINA

Its: Senior Vice President

**PROBATE**

COUNTY OF Berkeley

PERSONALLY appeared before me Anthony P. Mollish, the undersigned witness, and made oath that he/she saw the within named Mark T. Watkins [by Westvaco Corporation, its Senior Vice President,] sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

Anthony P. Mollish  
[type name of witness under signature line]

SWORN to and subscribed before me  
this 16<sup>th</sup> day of December, 2002.


Miriam L. Holladay  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: July 22, 2008



Execution by Holder

IN THE PRESENCE OF:

[Name of **HOLDER**]

  
Gisa Winningham

By: Benjamin H. Miller

Its: PRESIDENT

ATTEST:

By: 

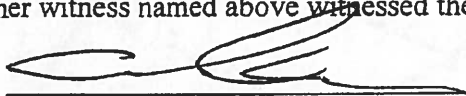
Its: Secretary

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me Elizabeth Warner, the undersigned witness, and made oath that he/she saw the within named Lord Berkeley Conservation Trust by Benjamin H. Miller its President, ] sign, seal and as its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

  
[type name of witness under signature line]

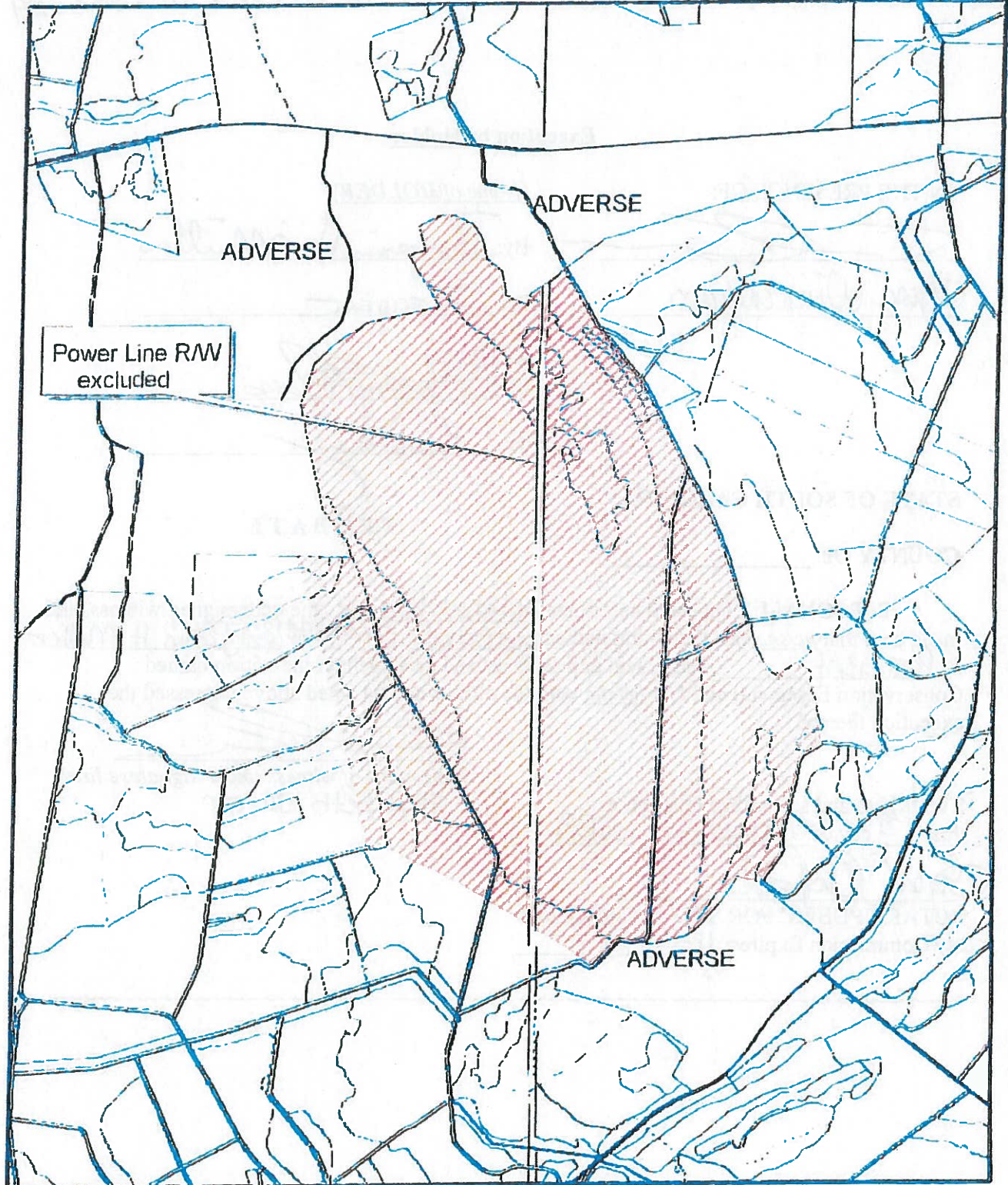
Elizabeth Warner

SWORN to and subscribed before me  
this 1<sup>st</sup> day of April, 2003.

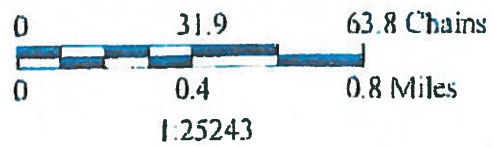


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11-16-03



MeadWestvaco  
Southern Forest  
District: Santee  
Printed: 4/12/02  
Data: 10/30/01



Pigeon Pond  
Mitigation Bank  
~1400 acres