



Easement Summary
Board Meeting: June 25, 2010
AMENDMENT

Owner/Property Name: Richard M. Helms and Carolyn L. Phillips	County: Albemarle	Acres: 196.9
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Property Features and Current Use:

The property is currently in easement and was placed into easement in 2005. The landowners have requested an amendment to their original easement to extinguish a retained division right and add language reflecting affiliation with the 500-Year Forest Foundation.

Statements of Conservation Value, Public Benefit and Supporting Governmental Policy

Conservation/Open Space Values:

- Preservation of land for: forestall use, and preservation of scenic open space.
- The Property is mostly forested and contains mature hardwood species of oak, hickory, and poplar, providing natural wildlife habitat.

Public Benefit:

- The Property lies within the Big Spring Valley on the flanks of Castle Rock Mountain and Long Arm Mountain, most of which is within the Mountain Protection Area as designated by the Albemarle County Board of Supervisors in its Comprehensive Plan.
- The Property lies in close proximity to the Chalk Mountain Agricultural and Forestal District as designated by the Board of Supervisors of Albemarle County.
- The property lies within the Chesapeake Bay watershed.
- The Property is located in the Upper Mechums River watershed (South Fork Rivanna Reservoir for City of Charlottesville and portions of Albemarle County) and North Fork Hardware River watershed.

Other Supporting Governmental Policy:

- The Property is designated as in the Rural Area in the 2005 Albemarle County Comprehensive Plan and has been approved for use value assessment by the County of Albemarle.

Easement Terms:

- No division
- 2 principal single-family dwellings not to exceed 3,000 sq. feet of enclosed above-grade living space each.
- 2 secondary dwellings or dwellings units not to exceed 2,000 sq. ft. of enclosed above-grade living space each.
- Non-residential outbuildings for each permitted dwelling not to exceed 2,000 sq. ft. in ground area.
- Farm buildings not to exceed 2,000 sq. ft. without prior approval.
- No building permitted above 1,300 foot elevation contour.
- 35 foot riparian buffer strip on two primary intermittent streams that merge to form the tributary to Whiteside Branch.
- Woodland Preservation Area protected by the 500-Year Forest Foundation with no commercial timber harvest; area outside of preservation area to retain template VOF forestry language.

Conformance with Guidelines: (The basis of Staff Recommendation)

The easement is being amended to extinguish retained subdivision rights and add language to reflect affiliation with 500-Year Forest Foundation as requested by the landowners. Additionally, VOF has requested the amendment also include clarification of the legal property description by inserting a stronger legal property description and clarification of the intermittent streams that are protected by the riparian buffer.

Staff Recommendation: Approve As Presented: Approve Subject to Suggested Changes: Deny:

(Suggested Changes):

Variation from Deed Template:

The amendment incorporates language from both the original easement template and language to update to the current deed template. Certain portions of the original easement template could not be updated to the current deed template because they were significantly less restrictive.

The 500-Year Forest Foundation language for the Woodland “Preservation Area” includes:

“It is the intent of the Grantor that the existing woodlands within the “preservation area” shown on Exhibit A, attached hereto and made a part hereof, remain in their natural state. No commercial timber harvest is permitted within the preservation area. The cutting of trees within the preservation area for the following purposes is permitted: (a) removing trees which present an imminent hazard to human health and safety, (b) eliminating invasive or exotic species of flora, (c) cutting firewood for domestic consumption, (d) removing trees from existing pervious-surface trails and for the purpose of developing additional pervious-surface trails, (e) and for de minimis forest management to promote a healthy, biologically diverse mature forest that provides wildlife habitat, promotes biodiversity, and conserves soil and water.

In furtherance of the purposes of the above paragraph, the Grantor intends to request and use the services of the 500-Year Forest Foundation, a 501c (3) non-profit organization, whose goal is to sustain natural, healthy woodlands and wildlife habitat, and to promote old-growth forest. Grantor and the 500-Year Forest Foundation will work jointly to devise a forest conservation plan for the preservation area that is mutually satisfactory to both parties and that is in accordance with the terms of this Easement. This plan will allow periodic revision at least every ten years. Grantor will provide an informational copy of the plan and subsequent updates to Grantee with the understanding that the Grantee has no responsibility for supervising or enforcing the provisions of the plan.

The 500-Year Forest preservation area may be modified by mutual written agreement between the Grantor, Grantee, and the 500-Year Forest Foundation.

For forested areas not lying within the preservation area [transition to VOF forestry template language]

Further Discussion:

1. Survey- A final copy of the survey for the 500-Year Forest Foundation “Preservation Area” could not be provided before the Board Meeting but will be required before recordation. Old Albemarle Surveying provided a preliminary copy of the survey area providing a graphic representation with approximate acreages. Approximately 158 acres will be included in the Woodland Preservation Area as depicted on the attached Exhibit A Special Conditions Map. The surveyor has marked the rods and pins on the ground, but did not have a more advanced copy of the survey plat to provide at this time. A final copy will be available at the end of June.
2. In comparison to the original deed, some parts of the updates to new template language may be viewed as being somewhat less restrictive. Review by legal staff indicated that the amendment as a whole had to be taken into consideration and that it was a balancing act to determine if the amendment would be less restrictive as a whole. Based on that recommendation both the lawyer and landowner left in new template language regarding Section 2(d) roads; 2(e) utilities; 3(ii) small-scale incidental commercial or industrial operations; and 5(ii)(a,b,d,f) regarding permitted activities within the buffer strips and 6(ii-iii) re: stream restoration. Legal staff indicated the others were okay if the amendment as a whole was not less restrictive, but did have concern with 3(ii) small-scale incidental commercial or industrial operations and indicated the phrase should be left out if landowner did not want it. However, the landowner did request that language be included.

This chart displays a comparison between the original deed language and the excerpt of the new template language requested that were reviewed for the issues discussed above:

	Original Deed Language	Excerpt of New Template Language depicting the main difference from Original Deed Language
Roads	Private roads... that serve permitted buildings or structures in this Paragraph 6 may be constructed.	Roads with permeable surfaces for other permitted uses, such as farming or forestry; and
Utilities	Utilities that serve permitted buildings or structures in this Paragraph 6 may be constructed.	Public or private utilities to be constructed in whole or in part to serve other properties shall not cross the Property unless Grantee determines that the construction and maintenance of such utilities will not impair the conservation values of the Property and gives its prior written approval for such construction and maintenance, which approval shall take into consideration the visibility and other impact of such utilities on the conservation values of the Property. Grantor reserves its separate rights to approve such public or private utilities.
Industrial or Commercial Activities	Industrial or commercial activities other than the following are prohibited: (i) agriculture including animal husbandry, viticulture, aquaculture, silviculture, horticulture, and equine and equestrian activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected, and (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing.	(ii) small-scale incidental commercial or industrial operations related to activities set forth in (i) above that Grantee approves in writing as being consistent with the conservation purpose of this Easement;
Riparian Buffer	There shall be no plowing, cultivation, or similar earth disturbing activity within thirty-five (35) feet of each	(ii) Notwithstanding the foregoing, permitted within the buffer strips are (a) wetland or stream bank restoration, or erosion control, pursuant to a

	<p>bank of Whiteside Branch on the Property. This buffer shall be protected from degradation by livestock.</p> <p>Removal of non-native species of plants and minimal harvest of trees is permitted, provided that the function of the buffer to protect water quality is not impaired. Fords and crossings of the Branch may be constructed and maintained.</p>	<p>government permit, (b) fencing along or within the buffer strip (c) construction and maintenance of stream crossings for pedestrians, livestock and vehicles that minimize obstruction of water flow, (d) creation and maintenance of trails with unimproved surfaces, (e) planting of non-invasive species, and (f) dam construction to create private ponds.</p>	
Grading, Blasting, and Mining	<p>Grading, blasting, or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, or as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads.</p> <p>Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the Open Space Values of the Property.</p> <p>Mining on the Property by surface mining or any other method is prohibited.</p>	<p>(ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to an erosion and sediment control plan, or</p>	

# of Existing Dwellings: 1 principal dwelling; 1 secondary dwelling	Total # Dwellings Allowed: 2 principal dwellings; 2 secondary dwellings
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Existing Principal Buildings: List size and describe location in terms of public visibility.
 Main Dwelling, 2,771 sq. ft.

Conservation Purpose (DCR Criteria)		Additional Information	Yes	No
Agricultural Use	<input type="checkbox"/>	Riparian Buffer Zones:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Forestal Use	<input checked="" type="checkbox"/>	Rare species and/or Karst:	<input type="checkbox"/>	<input type="checkbox"/>
Natural Habitat and Biological Diversity	<input type="checkbox"/>	Possible Conflict with VDOT/Rail/Utility Plans:	<input type="checkbox"/>	<input type="checkbox"/>
Historic Preservation	<input type="checkbox"/>	In Chesapeake Bay Watershed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Natural-Resource Based Outdoor Recreation or Education	<input type="checkbox"/>	Notes: Conservation purpose of original deed was for open-space and scenic resources. 35 Ft. riparian buffer exists from original easement. Property is already in easement so typical new easement checklist not completed.		
Watershed Protection	<input type="checkbox"/>			
Preservation of Scenic Open Space	<input checked="" type="checkbox"/>			
Conservation and Open Space Lands Designated by Local Government	<input type="checkbox"/>			

Site Visit Dates: N/A- Amendment		Site Visit Staff: N/A- Amendment		
Maps in File:	Topo: <input checked="" type="checkbox"/>	Tax: <input checked="" type="checkbox"/>	Survey/Plat: <input checked="" type="checkbox"/>	Aerial: <input checked="" type="checkbox"/>

Lienholder: Bank of America- PRLAP	Title Report: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Not Yet <input type="checkbox"/>	County Notified: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
Legal Description in Easement Draft: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		Contact: N/A- Amendment
If NO, explain why		

Tax Map or PIN:	Acreage:
0970001700	157
0970001800	40

Location: 2774 Miller Lake Road, Afton, VA 22920		
Directions: Rt. 29 South from Charlottesville to Crossroads. Right onto Route 692 (Plank Road). Left onto Route 693 (Stillhouse Creek Road). Left onto Route 694 (Miller Lake Road). Property is at the end.		
Owner Mailing and Property Addresses:	Phone/Fax/Email:	Additional Contact Info:
Richard M. Helms & Carolyn L. Phillips Mailing Address: P.O. Box 164 North Garden, VA 22959 Property Address: 2774 Miller Lake Road Afton, VA 22920	434-823-5728 (home) rickhelms@earthlink.net carolynlphillips@earthlink.net	Forbes Reback Boyle, Bain, Reback & Slayton 420 Park Street Charlottesville, VA 22902 434-977-6155 (office) 434-977-3298 (fax) forbes.reback@bbrs.net

List Size and Type of Existing Structures: (for BDR)
Main Dwelling, 2,771 sq. ft. Attached Frame Garage, 576 sq. ft.

Secondary Dwelling (Cabin), 192 sq. ft.
Miscellaneous Building, 600 sq. ft,
Storage Building, 240 sq. ft.

With regard to Deed Section 2, Paragraph 2(iv): *“The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% of the total area of the Property...”*
1% of total area of property (196.9 ac) = 85,769.64 sq. ft.

Mapping Information (for BDR):

Easement boundary created using compilation of property surveys and metes and bounds information. Data sources include: Preliminary copy of survey from Old Albemarle Surveying for 500-Year Forest Foundation Woodland “Preservation Area”; Metes and Bounds for 40+/- acre tract of land (Deed Book 297 Page 390); Survey Plat for 200 acre tract (Deed Book 148 Page 294) and surveys for off-conveyances of 39.8 acres (Deed Book 221 Page 537) and 3.3 acres (Deed Book 164 Page 59) from the 200 acre tract.

MCF: B

Notes (for BDR):

Secondary Considerations

Threat Level Considerations:

- Property already in easement.

Project’s Readiness:

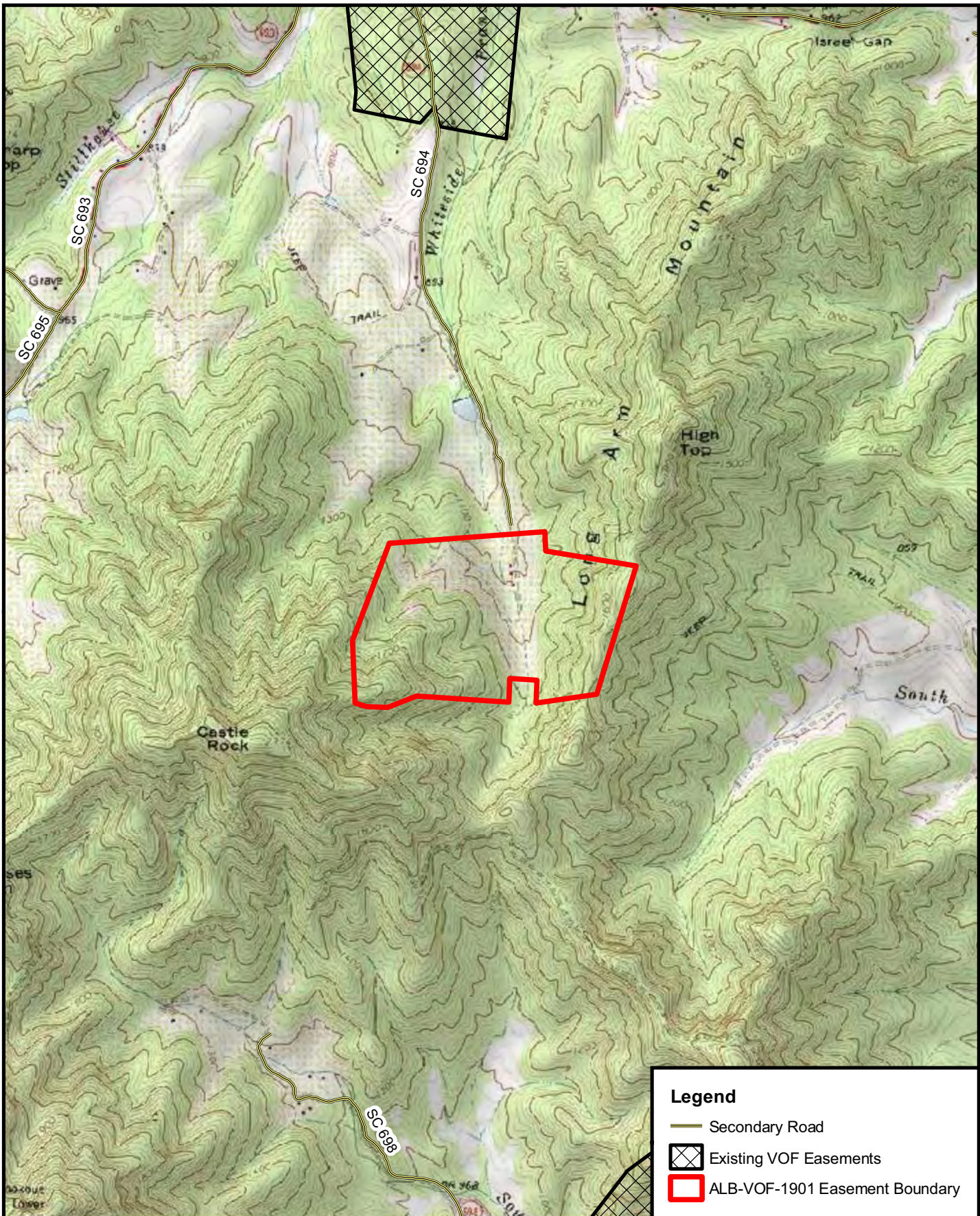
- Deed of Trust only covers one tax parcel of the two tax parcels on the property. Working with the landowner and lawyer to resolve. Landowner plans to request supplemental deed of trust to add second tax parcel to Lender’s collateral; will be settled before recordation.
- Final survey for woodland “preservation area” for the 500-Year Forest Foundation could not be completed until the end of June. Old Albemarle Surveying has provided VOF staff with a preliminary copy of the survey plat. A final copy will be attached to the easement deed.
- Experienced advisors.

Conclusions from Stage 1 Review Team:




- Proceed
- Proceed with conditions:** *500-Year Forest Foundation language to be altered slightly.*
- Do not proceed at this time

Conclusions from Stage 2 Review Team (Regional Board Mtg)

- Consent Agenda for Board Meeting:** *Final acceptance contingent on appraisal and resolution of Deed of Trust issue.*
- Needs discussion at Board Meeting
- Not ready for full Board review





Legend

-  Secondary Road
-  Existing VOF Easements
-  ALB-VOF-1901 Easement Boundary



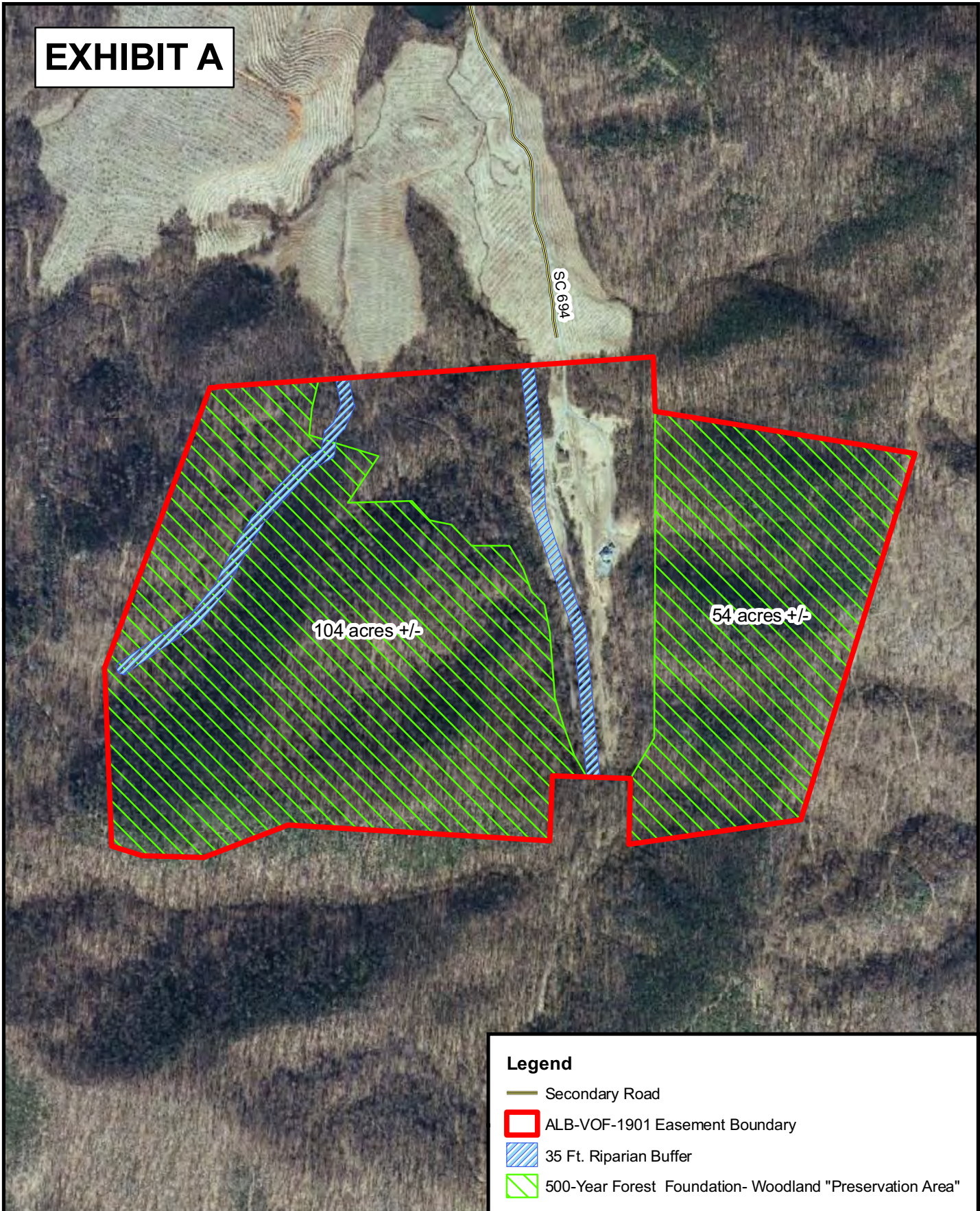
Topographic Map
ALB-VOF-1901- Amendment
Helms & Phillips ~ Albemarle
196.9 Acres

0 Feet 2000

 1:24,000


N

TLC 6/4/2010

EXHIBIT A



Legend

- Secondary Road
- ALB-VOF-1901 Easement Boundary
- 35 Ft. Riparian Buffer
- 500-Year Forest Foundation- Woodland "Preservation Area"

TLC 6/4/2010



EXHIBIT A- Special Conditions Map ALB-VOF-1901- Amendment Helms & Phillips ~ Albemarle 196.9 Acres

