MITIGATION PLAN KINGFIELD BUFFER MITIGATION SITE

Jones County, NC
NCDEQ Contract No. 0103-01
NCDMS ID No. 100176
NCDWR Project No. 2021-0020v2
RFP No. 16-20200103



Neuse River Basin HUC 03020204

August 2021 (Revised December 2021)

Prepared For:

NC Department of Environmental Quality

Division of Mitigation Services

1652 Mail Service Center, Raleigh, NC 27699-1652







December 22, 2021

Lin Xu 1652 Mail Service Center Raleigh, NC 27699-1652

Subject: Task 3 Draft Mitigation Plan Comments (DWR) – Kingfield Buffer Mitigation Site (DMS #100176) Neuse 03020204; Jones County, NC, Contract No. 0103-01

Dear Lin,

SWE/Eco Terra has addressed comments received by Katie Merritt (DWR) on December 15, 2021 for the Draft Mitigation Plan, Kingfield Buffer Mitigation Site. We have revised the document to include grammatical corrections and revisions based on DWR comments. Our responses to specific comments are below in blue:

1. Page 2: Project boundary and credit types are not compliant with the Site Viability Letter provided by DWR. One cannot simply change a stream origin point or modify the viability potential of a feature type.

this map was not the map used to determine project viability for the buffer mitigation and nutrient offset potential. the additional area (in orange) represents a ditch, not a stream. And therefore, this ditch is not viable for buffer credits to its depth exceeding 3'. This ditch would be viable for nutrient offset though. Modify the entire mitigation plan, including figures and applicable tables, including the Credit Asset Table, to reflect this area as only being viable to generate nutrient offset credits, not buffer credits.

The credit area and CE has been adjusted to align with the original stream determination letter and subsequent viability letters.

- 2. Page 3: change DWR ID# to 2021-0993v2 Revised.
- Page 4: remove this reference to an Instrument. DMS does not have an Instrument with DWR for nutrient offset or buffer mitigation sites - add reference to the 15A NCAC 02B .0703 "Nutrient Offset Credit Trading" Revised.
- 4. Page 5: break out your Figures by name. Usually the Tables are also broken out by name. Revised.
- 5. Page 5: there were two site viability letters for this project but only one was included in the Plan. Add the other letter to this plan and reference this letter accordingly within the Plan (sic)

 The second revised viability letter is now also included and referenced accordingly.

- 6. Page 5: in order to use the diffused flow reduction policy for ditches, DMS has to request to use the DWR Diffused Flow Clarification Memo. There is a need to account for the lack of diffused flow of the ditch entering the main channel. By including the Clarification Memo as an appendix to this Plan, DWR can approve the use of this memo for meeting the diffused flow requirements. the memo is found at this link: https://deq.nc.gov/media/4742/download
 Perennial streams enter and exit the project site at all locations. The project origin and associated stream (not stream origin) of UT1 (as shown on the DWR stream determination map) was determined perennial (DA=4.82 mi²). The project origin (not stream origin) on Musselshell Creek was determined perennial (DA=3.94 mi²). No ditches enter the project site within proposed credited areas and therefore the reference is not needed.
- 7. Add another Figure titled "Nutrient Offset Conceptual Map" and add clarification that this Figure only represents areas that are viable for nutrient offsets if ever DMS converted the RBCs. These areas shown in the Figure as being viable for NOC should match the asset table for what is deemed convertible to Nutrient Offset
 - A new figure (Figure 8b) is included in the Plan and aligns with Table 9.
- 8. Page 6: Add the following statement to the first paragraph: This Site Plan is being submitted for buffer mitigation credit and nutrient offset credit in the Neuse River Basin Hydrologic Unit Code 03020204, in accordance with the Consolidated Buffer Mitigation Rule (15A NCAC 02B .0295) and the Nutrient Offset Credit Trading Rule (15A NCAC 02B .0703) respectively. Revised accordingly.
- 9. Page 7: this objective alone does not adequately address the sediment load occurring on this site. There are areas of unstable and eroding banks that all need to be remediated as part of the Plan to achieve this goal.
 Noted. Additional attention to unstable banks along UT1 and methods to stabilize are addressed in the revised plan.
- 10. Page 7: There should be current photos mentioned in this paragraph with a reference to where those photos are within the Plan. No photos showing existing conditions were included in the Plan. Add photos that represent the current status of the riparian areas since the date of the DWR's site visit and make sure the photos include the date they were taken. Added photo documentation. No land use changes, or other site modifications have occurred since the DWR site visits and leading up to the date of submittal that may nullify or affect site viability and per Rule 15A NCAC 02B 0703 (e)(2)(C) Project Plan Requirements.
- 11. Page 7: this section does not mention active bank erosion along UT1. the site viability letter indicates this is an issue of concern and this section should include this information as "existing conditions" since it affects the riparian areas around the Top of Banks.

 Revised accordingly to include areas of erosion along streambanks of UT1.
- 12. Page 8: there needs to be a statement in this paragraph regarding the need to account for "Diffused Flow" for the ditch entering UT1 beyond CE boundary. Add a reference to the Clarification Memo that is supposed to be in the Appendix so that DWR can approve the use of that Memo to address the non-diffused flow on the site.
 - As noted in Comment #6.
- 13. Page 8: there were two viability letters, correct reference here to account for that extra letter. Revised to reference both viability letters.
- 14. Page 8: add the Ditch feeding into UT1 as a feature for this project since there are now credits being proposed adjacent to the ditch that wasn't included in the Site Viability letter.

 As noted in Comment #6.

- 15. Page 8: no language is provided in this table acknowledging that the service area for these credits is limited to the 03020204 HUC. Add language that speaks to this and reference the Service area
 - The HUC/Service Area is shown on Figure 2, cover page, and here on Table 2. Table 2 has been modified for clarity. .
- 16. Page 8: add, "with flexibility to convert to Nutrient Offset if needed" This amount will change based on previous comments amount additional area added on post site viability letter " Revised Table 2. Riparian Buffer credits may be converted to nutrient offset as indicated in Table 9 and illustrated with a new Figure 8b.
- 17. Page 8: this planting date may not be met. Updated Table 2 accordingly.
- 18. Page 13: What exactly is meant by "sediment and erosion control measures"? Need to specify what measures the Provider intends to use if needed. Revised. Sediment and erosion control measures may include seeding, mulching, haying, and temporary sediment containment around any land disturbance areas other than tree planting rows.
- 19. Page 13: include a figure showing where the Fence boundary will be to show where cattle will be excluded from the stream from the conservation easement. The existing fence and cattle will be moved outside of the project to at least the edge of the proposed CE on Parcel 4499-99-68-7100, shown on the preliminary plat (Sheet 2 of 4) in the Plan. The owner has not specified exactly where the fence will go or if cattle will remain following construction, however fencing will be installed, if necessary, per DMS standards following construction and as-built report to protect the CE and project.
- 20. Page 13: This section needs more information. Define the minimum and maximum widths from TOB for the riparian restoration. Provider should also include information on how they will address the unstable eroding banks actively contributing to the sediment load in the streams. Some areas appear to be less than 50 on corresponding figures included in the Appendix of this Plan. Revised Figure 9. Proposed restored riparian buffer area measured landward from TOB on viable
 - streams should be at least 50ft in width, so 50-100 ft across the project. It was noted during the response review the proposed CE did not overlap the minimum buffer needed for nutrient offset conversion along some vertices and was revised accordingly and all references to the CE.
- 21. Page 14: Bald Cypress is a softwood and only hardwoods are allowed to be planted and counted towards performance standards. Either remove Cypress from your planting plan or add a note that the species will not be able to counted towards the performance standards (sic). Or, provide a justification for DWR to review under Rule 0295 (n)(2)(B). Per 15A NCAC 02B .0295 (n)(B), stems are considered native trees or shrubs and trees. The Rule further defines trees as "hardwood" trees, but also allows the Authority to review and approve alternative vegetation plans based on site conditions and other factors. Although defined as a softwood, bald cypress is a component of the proposed plant community, appropriate, and well suited for the site due to soil type and wetness. We request acceptance of this vegetation plan as proposed to include bald cypress as a "native tree stem" that counts toward the final performance standard.
- 22. Page 14: the rule also requires that a minimum of 4 different species be planted as well. Add language that speaks to this. Revised. A minimum of four (4) species will be planted, however the intent is to plant a more

diverse site in accordance with Table 8. Actual species composition will be based on availability, cost, quantities, and site conditions at the time of construction.

- 23. Page 14: Commit to ensuring that stem species will be well mixed before planting to promote site wide diversity of planted species

 Suitable species available at the time of planting will be mixed to ensure site wide diversity in accordance with the vegetation performance standards.
- 24. Page 14: Planting cannot be performed prior to DWR written approval of this Plan. It is not expected that written approval by DWR will be issued by January 2022 Revised to February 2022.
- 25. Page 14: there are areas that appear to be <50 that would not be allowed to convert to nutrient offsets since the minimum width for nutrient offset viability is > or = 50 feet. See viability letter where this is noted. Also add language about DMS wanting the flexibility to convert buffer credits to nutrient offset credits as well. keeping in mind not all buffer credits can be converted to Nutrient. Add a reference to the new Nutrient Offset Credit concept map requested in the comments on the Table of Contents page of this Plan.

 Revised Table 9, Figure 8 (now Figure 8a), and Figure 9 according to the original DWR Stream Determination Letter. A new Figure 8b showing potential nutrient offset credits is now included in
- 26. Page 14: the table to use needs to be referenced as October 2020
 Revised accordingly. However, please note the <u>link</u> from DWR indicates a file date of August 3, 2020 and the "Instruction Sheet" within the file displays "last updated 1/17/2020" at the bottom left of the page.

the Plan.

- 27. Page 14: the last sentence in Section 5.3 should speak to "diffused flow" and reference the Clarification Memo as well as include the total deduction of ft2 from the "Total Area" from the Asset Table

 As noted in Comment #6.
- 28. Page 15: break out areas <50. if no areas are less than 50, then that should be stated in previous text in the Plan for assurance since the figures show the possibility, change N/A to Yes Revised Table 9. As noted in Comment #25. Proposed restored riparian buffer area measured landward from TOB on viable streams should be at least 50ft in width. It was noted during the response review the proposed CE did not overlap the minimum buffer needed for nutrient offset conversion along some vertices and was revised accordingly and all references to the CE.
- 29. Page 15: as stated in previous comments, provide a figure to support this table where it says "YES" for convertible to Nutrient Offset.

 Revised to include Figure 8b Potential Nutrient Offset Credit in accordance with Table 9.
- 30. Page 15: add a row to show the Diffused Flow deduction on the ditch feeding into UT1, otherwise, it is assumed that the Total Creditable Area of buffer mitigation column has not appropriately been deducted per the Clarification Memo. for Feature Name = Diffused Flow deductions (insert Feature name for ditch). Total Area = enter the ft2 deducted. Check "No" for both columns As noted in Comment #6.
- 31. Page 15: DMS is expecting to have the flexiblity to convert to nutrient offset as indicated by this table, please add text below the table that speaks to that directly. Using a text box may be the easiest way to add that Text (sic).

 Revised Table 9 accordingly.
- 32. Page 15: add the following statement to this table somewhere appropriate "Credit conversions must be calculated using the guidance provided in the Clarified Procedures for Calculating Buffer

Mitigation Credits and Nutrient Offset Credits letter issued by the DWR in November 2020" and located at

 $\underline{https://files.nc.gov/ncdeq/Water\%20Quality/Surface\%20Water\%20Protection/401/Mitigation/Issues}\\ ---Resolutions-Ver-1.0-buffer-mitigation-nutrient-offset.pdf$

If DMS prefers this letter be referenced by including the PDF in an Appendix to this Buffer Plan instead of included as a link on this table, that will be acceptable as well.

Updated Table 9 accordingly.

33. Page 16: recommend changing title to "Performance Standards" since that's how it is now referred to in the Rule 0295

Revised.

34. Page 16: another performance standard in the rule requires at least 4 species of trees. Add language that speaks to this.

Revised. As noted in Comment #22

35. Page 16: this indicates more of a Qualitative monitoring approach and lacks wording about Quantitative monitoring. Add language that addresses this.

Revised to include both quantitative and qualitative examples.

- 36. Page 16: since there is fencing necessary to exclude cattle on this site, there needs to be performance standards for fencing. include the following for visual assessments of hte fencing conditions documented each monitoring year (sic):
 - Fencing is in good condition throughout the site;
 - no cattle access within the conservation easement area;
 - no encroachment has occurred;
 - diffuse flow is being maintained in the conservation easement area; and
 - there has not been any cutting, clearing, filling, grading, or similar activities that would negatively affect the functioning of the buffer.

Revised Section 7.3. The owner has not specified exactly where the fence will go outside of the CE, or if cattle will remain following project construction, however the performance standards have been modified for implementation as necessary.

37. Page 20: this vicinity map is too blurry. Replace this Figure with one where the names of roads and highways can be deciphered.

Revised Figure 1.

38. Page 21: clarify that this is the service area for "Riparian Buffer Credits" and "Nutrient Offset Credits"

Revised Figure 2.

39. Page 22: the stream origin of UT1 is incorrect. Add the stream origin of UT1 based on the stream call determination made by DWR and provided in the Appendix. Then, above the stream origin of UT1, you need to label the ditch that is now going to be included in project site and corresponding easement.

Revised Figure 3. As noted in Comment #6.

- 40. Page 26: show diffused flow where ditch meets CE boundary As noted in Comment #6.
- 41. Page 26: label all features, including the ditch feeding into UT1 using the origin from the stream call Revised Figure 7. No ditches enter the project as noted in Comment #6.

- 42. Page 26: show proposed fence boundary As noted in Comment #19.
- 43. Page 27: Non-credit areas are just the footprint of the stream channel, correct? maybe clarify that Correct. Non-credit areas include the stream channel area within the top of bank per Rule.
- 44. Page 27: DWR needs to see what mitigation type (Restoration, Enhancement, Preservation) is being generated on the site. Change "Riparian Buffer Credit" to "Riparian Restoration for Buffer Credit" Revised Figure 8 (now Figure 8a).
- 45. Page 27: Buffer credit is not viable adjacent to the ditch feeding into UT1. Remove t his area from credit area. It would only be viable for nutrient offset (sic).

 As noted in Comment #6.
- 46. Page 27: show diffused flow where ditch meets CE boundary As noted in Comment #6.
- 47. Page 27: there are widths that don't meet the minimum 50' criteria to be allowed to convert to nutrient offset. create another figure showing only the areas >50' that would meet nutrient offset criteria.

Revised Figure 8 (now Figure 8a). Figure 8b shows potential nutrient offset credits. As noted in Comment #25.

48. Page 27: label all features
Revised Figure 8 (now Figure 8a) and Figure 9.

- 49. Page 28: there are areas less than 50' shown on this map. Revised Figure 9 and supporting CE plat.
- 50. Page 28: address comments about ditch and origins on this figure. As noted in Comment #6.
- 51. Page 28: add labels of features
 Revised Figure 9 and other relevant Figures.

Included in this letter package (via email) is one (1) pdf copy of the revised mitigation plan and supporting data. Please let us know if additional information is needed.

Sincerely,

Scott J. Frederick SWE Group

sifrederick@swegrp.com

Sott J Funder X

cc: Norton Webster, Eco Terra

DRAFT MITIGATION PLAN KINGFIELD BUFFER MITIGATION SITE

Jones County, NC

NCDEQ Contract No. 0103-02 & NCDMS ID No. 100176

NCDWR Project No. 2021-0020v2

RFP No. 16-20200103

Neuse River Basin HUC 03020204

Prepared For:



NC Department of Environmental Quality Division of Mitigation Services

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Prepared By:





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This Mitigation Plan has been written in conformance with the requirements of the following:

- 15A NCAC 02B.0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers.
- 15A NCAC 02B.0703 Nutrient Offset Credit Trading

These documents govern DMS operations and procedures for the delivery and compensatory mitigation.

Contributing Staff

Michael Beinenson, Eco Terra Principal in Charge Scott Frederick, Eco Terra/SWE Project Manager Norton Webster, Eco Terra Construction Oversight Robbie Bently, Eco Terra Quality Assurance

Table of Contents

1.0 In	troduction	1
2.0 M	litigation Project Summary	2
2.1	Existing Site Conditions	3
2.2	Watershed Characterization	4
2.3	Soils	5
2.4	Geology	5
2.5	Vegetation	5
2.6	Site Constraints and Access	6
2.7	Site Resources	5
3.0 Si	te Protection Instrument	6
3.1	Site Protection Instruments Summary Information	6
3.2	Current Ownership and Long-Term Protection	6
4.0 Re	egulatory Considerations	7
4.1	Threatened and Endangered Species	7
4.2	Cultural Resources	8
4.3	FEMA Floodplain Compliance	8
4.4	Other Environmental Issues	8
5.0 In	nplementation Plan	8
5.1	Parcel Preparation	9
5.2	Riparian Buffer Area Restoration Activities	9
5.3	Determination of Credits	12
6.0 M	onitoring Plan	12
7.0 Pe	erformance Standards	12
7.1	Vegetation	12
	Photo Reference Stations	
7.3	Visual Assessments	13
7.4	Performance Criteria	13
7.5	Maintenance and Contingency Plans	13
8.0 Ste	ewardship	13
9.0 Re	ferences	14
TABLE		
Table	•	
Table	•	
Table	3	
Table Table	•	
Table	•	
Table	y y	
Table		
Table	·	
Table		

FIGURES

Figure 1: Vicinity Map Figure 2: Service Area

Figure 3: Existing Conditions
Figure 4: Drainage Area

Figure 5: Soil Survey

Figure 6: 1976 Historical Aerial

Figure 7: Planting Zones

Figure 8a: Proposed Riparian Buffer Credit
Figure 8b: Potential Nutrient Offset Credit

Figure 9: Riparian Buffer Zones

Figure 10: Vegetation Monitoring Plots

APPENDICES

Appendix A: NCDWR On-Site Stream Buffer Determination

NCDWR Site Viability for Buffer Mitigation Letters

Appendix B: Draft Conservation Easement
Appendix C: Signed Categorical Exclusion

1.0 Introduction

The Kingfield Buffer Mitigation Site is a buffer restoration project located approximately 3.4 miles northeast of Trenton in Jones County, NC (Figure 1). The Project Site is associated with

three property parcels, owned by Elvin James Lee, Jr. (PIN 4499-99-68-7100, Elvin James Lee, Jr. et al. (PIN 4499-88-58-3900), and Elvin James Lee, III (PIN 5409-09-76-0100). This Site Plan is being submitted for buffer mitigation credit and nutrient offset credit in the Neuse River Basin Hydrologic Unit Code 03020204, in accordance with the Consolidated Buffer Mitigation Rule (15A NCAC 02B .0295) and the Nutrient Offset Credit Trading Rule (15A NCAC 02B .0703) respectively. The proposed riparian corridor restoration will reduce the amount of sediment and nutrients that are entering



Right bank UT1 near Project terminus (9/2/20)

the Project streams by restoring riparian buffers and other riparian areas along an unnamed tributary (UT1) to and along Musselshell Creek proper, a direct tributary of the Trent River. A conservation easement, encompassing at most 8.59 acres, will be recorded to protect the Project Site in perpetuity.

The Project UT is located in HUC 03020204010071, along a UT to and Musselshell Creek proper

and within the greater Trent River watershed that ultimately flows into the Neuse River (Figure 2). This watershed is designated as a Targeted Resources Area for both Hydrology and Water Quality according to NCDMS. The watershed consists of large managed timberland areas in loblolly pine rotations and agriculture, both row crops and permitted animal operations. The Project will be implemented along a Class C, Sw, NSW, and impaired/303(d) stream and will meet the goal of implementing nutrient removal projects in the watershed under the Buffer programs.



UT1 Project origin (9/2/20)

Musselshell Creek is an 303(d) listed water impaired for aquatic life and ecological and biological integrity according to the DEQ 303(d) Final List, 2018. Musselshell Creek drains into the Crooked

Kingfield Buffer Mitigation Site-Mitigation Plan DMS No: 100176 Creek targeted watershed(HUC 03020204010070) as identified in the NC Division of Mitigation Services (NCDMS) 2018 Neuse River Basin Restoration Priorities (RBRP) document. The restoration of riparian buffers and other riparian areas to address agricultural nonpoint source inputs and preservation or restoration of contiguous forested wetland habitat to develop Strategic Habitat Areas (SHAs) and connect to Natural Heritage Areas and other conservation lands are identified as a *Priorities* for the 8-digit CU and overall for the Neuse River Basin in the 2018 RBRP.

The Kingfield Buffer Mitgation Site will help to reduce future sediment and nutrient loading into Musselshell Creek and tributaries and downstream Crooked Creek and Trent River. It will also improve terrestrial habitats along these streams by establishing riparian corridors and allowing the land to undergo natural succession to forested community types. Adjacent land use is in agriculture and little vegetated buffer exists along the length of the UT Musselshell Creek and Musselshell Creek proper within the Project Site. The project will restore vegetative buffers and other riparian areas to the streams and will remove row crop rotations and fertilizer inputs. The restored riparian buffer areas will filter runoff from the surrounding farm fields. Invasive vegetation will be treated as needed within the project area to promote native vegetation.

2.0 Mitigation Project Summary

The goal of the Kingfield Buffer Mitigation Project (hereinafter referred to as the Project, Site, or Project Site) is to provide ecological uplift to the existing and nearby stream channels via the restoration and establishment of a forested riparian buffer and riparian corridor. The goals and objectives defined below as part of Table 1 are consistent with those of the NCDMS, and the specific goals outlined in the 2018 Neuse RBRP. As proposed, the Kingfield Buffer Mitigation Project will further help NCDMS to meet these goals.

Table 1: Goals and Objectives

Goal	Objective	Supported CU-wide and HUC RBRP Goals
Reduce nutrient levels	Nutrient input will be decreased by filtering runoff from the agricultural land/pastures through restored forested riparian buffers and other riparian areas.	Promote nutrient and sediment reduction in agricultural areas by restoring riparian buffers. *^
Reduce sediment levels	Sediment input will be decreased by filtering runoff from the agricultural land/pastures through restored forested riparian buffers and other riparian areas and stabilizing any eroding banks.	Promote nutrient and sediment reduction in agricultural areas by restoring riparian buffers.*^
Project protection in perpetuity	Implement a project in an NSW water and record a conservation easement.	Continue implementation of projects under the Buffer programs. *^
Restore Riparian buffer areas will be restored with native vegetation and invasive vegetation will be managed (as necessary).		NCDMS' programmatic goal, <i>North Carolina General</i> <i>Statue 143-214.10</i> *^

^{*} HUC: 03020204 RBRP goal, ^ CU: RBRP 030202 goal

2.1 Existing Site Conditions

The Project Site is located within three parcels (~135 acres) being used for row crop agriculture rotations and animal pasture (Figure 3). Adjacent land use is agriculture, both row crops and pasture, and little vegetated buffer exists along the length of the unnamed tributary to and Musselshell Creek proper within the Project Site. Periodic erosion and sediment-laden runoff is entering the channels from these areas during crop rotations and

from some actively eroding streambanks.

Overall Pr



Overall Project view south toward confluence of UT1 and Musselshell Creek (12/10/21)

Historical aerials denote that land uses at the Project Site have been agriculture since at least

1956 (Figure 6). Musselshell Creek and the UT to Musselshell Creek (UT1) are mapped on the Natural Resources Conservation Service's (NRCS) 1981 Jones County Soil Survey (Figure 5) and the 2013 US Geological Survey's (USGS) Trenton Quadrangle (Figure 1) as stream channels (Figure 5).

Musselshell Creek and the UT to Musselshell Creek meet the definition of perennial per the NCDWR On-Site Determination for Applicability to the Neuse Buffer Rules Letter (Buffer Letter), and deemed suitable



Musselshell Creek Project origin (12/10/21)

for riparian buffer credits per the NCDWR Site Viability for Buffer Mitigation Letters. (Appendix A). A farm pond that was in place on the left bank of Musselshell Creek prior to the Neuse Buffer Rules, and exempt from the rules will remain, however outside of the conservation easement. Project attributes associated with the proposed buffer site are provided in Table 2.

Table 2: Buffer Project Attributes

Kingfield Buffer Mitigation Site
03020204*
Neuse
35.110000, -77.330000
Conservation Easement
Riparian Buffer (315,087.000 BMU)**
October 2021
February 2022
March 2022
November 2022
November 2023
November 2024
November 2025
November 2026
May 2027

^{*}Project Service Area (also illustrated in Figure 2)

2.2 Watershed Characterization

The Project is located in HUC 03020204010071, along a UT to and Musselshell Creek proper and within the greater Trent River watershed that ultimately flows into the Neuse River. The watershed consists of large managed timberland areas in loblolly pine rotations and agriculture, both row crops and permitted animal operations. Musselshell Creek is an 303(d) listed water impaired for aquatic life and ecological and biological integrity according to the DEQ 303(d) Final List, 2018. The watershed is also designated as a Targeted Resource Area for both water quality and hydrology. Jones County remains mostly undeveloped aside from the areas in and surrounding the Town of Trenton. The County's population decreased 7.4% since the 2010 census.

Drainage areas for the on-site streams and buffer areas were determined by delineating watersheds in USGS Stream Stats. Figure 4 shows the watershed boundaries for each stream. Table 3 describes the current land use and drainage area for each stream.

^{**}Riparian Buffer credits may be converted to nutrient offset credits as calculated by Table 9 and illustrated by Figure 8b.

Table 3: Drainage Area and Land Use

Reach Name	NCDWR Stream Designation	Watershed Area Upstream/Downstream (mi²)	Land Use
Musselshell Creek	Perennial	3.88 / 3.94	Agriculture/Forestry
Musselshell Creek (UT1)	Perennial	4.73 / 4.82	Agriculture/Forestry

2.3 Soils

Elevations at and surrounding the Project Site are nearly level to gently sloping through the stream valley. Soils underlying the area are mapped as loams and consist of the Muckalee series extending along both stream corridors. (Figure 5). Specific soil mapping units are listed in Table 4.

Table 4: Riparian Buffer Site Soil Series

Soil Name	Map Unit Symbol	Hydric Soil Rating (USDA-NRCS Web Soil Survey)
Muckalee loam, 0-2% slopes	Mk	B/D

Source: https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx, accessed September, 2020

The Muckalee (Mk) soils are typically linear in shape and comprise the majority of the soils mapped by NRCS underlying the Project. Muckalee soils consist of poorly drained soils formed in loamy and sandy alluvium in stream floodplains of the Coastal Plain region. These soils have moderate permeability and slow runoff. The water table is typically less than 1.0 feet. An image of the printed (NRCS) 1981 soil survey map of the Project is shown in Figure 5.

2.4 Geology

Geologically, the Project Site is located within the Coastal Plain physiographic province. Coastal Plain stream systems are characterized by broad, flat floodplains and interstream divides adjacent to low to medium-gradient stream channels.

2.5 Vegetation

Vegetative communities within the project area consist of row crops and early successional, herbaceous vegetation in the near-bank stream/ditch region. The near-bank stream/ditch area is maintained with herbicide and mechanical mowing equipment annually. The wetter ditch areas have wetland herbaceous vegetation present including *Salix nigra* (black willow), and *Typha latifolia* (cattail).

2.6 Site Constraints and Access

The Site can be accessed via a dirt farm road from Kingfield Road. A permanent general access easement from Kingfield Road will be recorded as part of the project. There are no public use airports within a five-mile radius of the Project. No other site constraints are known to exist.

Directions from Raleigh:

- Follow US-70 East to HWY 41 Trenton Road south.
- Turn right onto HWY 41 South and follow for 2.4 miles
- Turn left onto Kingfield Road (SR1320) and follow for ~0.5 miles and turn right onto a dirt farm road that passes between two buildings south toward the project origin.

2.7 Site Resources

The Site has been in agricultural production since at least 1956 and no changes have been observed to the current stream configuration since that time (Figure 6). The property owner has verified that the property has been in some form of agricultural production for the past 65 years.

NCDWR staff visited the Site to determine subjectivity of on-site resources to the Neuse buffer rules and their suitability for riparian buffer mitigation per the Consolidated Buffer Mitigation Rule (15A NCAC 02B .0295). Musselshell Creek and an unnamed tributary to Musselshell Creek was found to be suitable for riparian buffer mitigation in the Neuse River Basin. Additionally, a Site Viability review was completed by NCDWR to determine site suitability for the establishment of riparian buffers and other riparian areas for buffer mitigation credits. The resulting NCDWR letters are in Appendix A.

3.0 Site Protection Instrument

3.1 Site Protection Instrument Summary Information

The property needed to restore the riparian buffer and other riparian areas, access the easement, and manage the Site includes portions of the parcel listed in Table 5. The proposed conservation easement on this property has not been recorded. A copy of the draft land protection instrument is included in Appendix B.

3.2 Current Ownership and Long-Term Protection

The Site is located on three parcels owned by Elvin Lee, Jr. and Elvin James Lee, III (Table 5). Option agreements for the project area were signed by the property owners and were recorded at the Jones County Register of Deeds. The option agreements allow restriction of the land use

in perpetuity through a conservation easement. Eco Terra will convey the conservation easement to the State to provide long term protection of the Site.

Table 5: Current Ownership and Long-Term Protection

Parcel Identification Number	County	Owner	Conservation Easement (~ac)	Deed Book and Page Number	Site Protection Instrument	Identified Conservation Easement Holder
4499-99-68-7100	Jones	Elvin Lee, Jr.	5.43	To be recorded	Conservation Easement	State of North Carolina
4499-88-58-3900	Jones	Elvin Lee, Jr., et al.	1.68	To be recorded	Conservation Easement	State of North Carolina
5409-09-76-0100	Jones	Elvin Lee, III	1.48	To be recorded	Conservation Easement	State of North Carolina

4.0 Regulatory Considerations

Table 6 summarizes the regulatory considerations for the proposed project. These considerations are expanded upon in Sections 4.1-4.4. A copy of the signed Categorical Exclusion Form is provided in Appendix C.

Table 6: Regulatory Considerations

Parameter	Applicable	Resolved	Supporting Documentation
Waters of the U.SSection 404	No	N/A	N/A
Waters of the U.SSection 401	No	N/A	N/A
Endangered Species Act	Yes	Yes	Signed CE Appendix C
Historic Preservation Act	Yes	Yes	Signed CE Appendix C
Coastal Zone Management Act	No	N/A	N/A
FEMA Floodplain Compliance	No	N/A	N/A
Essential Fisheries Habitat	No	N/A	N/A

4.1 Threatened and Endangered Species

The US Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) identifies three federally threatened or endangered species and two proposed threatened or endangered species under the Endangered Species Act. One species is protected under the Bald and Golden Eagle Protection Act (Table 7). A review of the NC Natural Heritage Program (NCNHP) Data Explorer identified no known occurrences of federally listed species within one mile of the Project Site.

Table 7: Federally Listed Species for Jones County

Scientific Name	Common Name	Federal Status*	Suitable Habitat
Haliaeetus leucocephalus	Bald Eagle	BGPA	No
Picoides borealis	Red-cockaded woodpecker	E	No
Alligator mississippiensis	American alligator	T	No
Myotis septentrionalis	Northern Long-eared Bat	Т	No
Necturus lewisi	Neuse River waterdog	PT	No
Noturus furiosus	Carolina madtom	PE	No

^{*} BGPA - Bald and Golden Eagle Protection Act, E - Endangered, PT - Proposed Threatened, PE - Proposed Endangered

4.2 Cultural Resources

The National Historic Preservation Act declares a national policy of historic preservation to protect, rehabilitate, restore, and reuse districts, sites, buildings, structures, and objects significant in American architecture, history, archaeology, and culture, and Section 106 mandates that federal agencies take into account the effect of an undertaking on a property that is included in, or is eligible for inclusion in, the National Register of Historic Places. The NC State Historic Preservation Office's (SHPO) online mapping resource was reviewed to determine the presence of known historic resources at or near the Project Site listed on the National Register. There are no existing structures in the project area.

According to the database, one resource occurs (King-Boyette House and Friendship Original FWB Church) within one mile of the Project. SHPO was contacted for completion of the Categorical Exclusion and SHPO had no concerns or comments on the Site. The approved Categorical Exclusion is in Appendix C.

4.3 FEMA Floodplain Compliance

The Project is not located within a FEMA regulated floodplain and will not require FEMA coordination or a floodplain development permit.

4.4 Other Environmental Issues

An EDR Radius Map Report with Geocheck was ordered for the Site through Environmental Data Resources, Inc. (EDR) as part of the Categorical Exclusion. The target property and the adjacent properties are not listed in any of the Federal, State, or Tribal environmental databases searched by EDR. There are no known or potential hazardous waste sites identified within one mile of the Site. The Executive Summary of the EDR report is included in Appendix C.

5.0 Implementation Plan

The project design will restore high quality riparian buffers to Musselshell Creek and a UT to Musselshell Creek. The project will not have any adverse impacts to on-site wetlands; no grading activities will occur within jurisdictional wetland boundaries. Figure 7 depicts the planting plan for the Site. More detailed descriptions of the proposed restoration activity are found in Sections 5.1 through 5.3.

5.1 Parcel Preparation

The land proposed for buffer restoration is currently in agriculture row crops and pasture management. Only the planting rows will be ripped to improve soil compaction prior to planting in the upland areas or during mechanical planting. Soil scarification for temporary and permanent seeding may be required depending on the site condition at the time of planting and equipment used for seed application. Some minor bank stabilization will be completed using machinery in select areas noted in the DWR viability letter along UT1. These areas will be stabilized with hay and planted with temporary/permanent seed and trees selected from Table 8. No other soil disturbance is anticipated, and sediment and erosion control measures will be used to prevent sediment from entering the streams during a rain event, should any additional soil disturbing activities become necessary. Sediment and erosion control measures may include seeding, mulching, haying, and temporary sediment containment.

Pre-emergent herbicide will be used in the tree rows to control potential herbaceous weed competition. All herbicides will be applied by a licensed herbicide applicator. The near-bank region along the stream within the project area contains a limited number of invasive plants. Aquatic invasive plants are also present, and if necessary, an aquatic safe herbicide will be used in appropriate areas where there is an existing population of non-native invasive plant species. In the event that drain tiles are found during construction, they will be noted and removed. The existing farm pond to the east of Musselshell Creek will remain and no restoration activities will occur between the farm pond and the stream. No additional spoil will be removed during parcel preparation outside of creditable areas.

Appropriate fencing according to DMS standards will be installed to keep cattle and other pasture animals out of the conservation easement, if necessary, following construction and asbuilt report. The existing fencing will be replaced or modified accordingly.

5.2 Riparian Buffer Restoration Activities

The revegetation plan for the buffer restoration area will include permanent seeding in the active farming areas. The Site will be planted to replicate a Coastal Plain Small Stream Swamp (blackwater subtype) community with one planting zone, floodplain. Riparian restoration will occur on viable streams from a minimum of 50 feet to a maximum of 100 feet for riparian buffer credit. Proposed tree species are shown in Table 8.

Table 8: Proposed Vegetation Species List

Scientific Name	Common Name	Planting Zone	Strata	%
Nyssa sylvatica	Swamp blackgum	Floodplain	Canopy	<5
biflora				

Platanus occidentalis	Sycamore	Floodplain	Canopy	10
Betula nigra	River birch	Floodplain	Canopy/Understory	10
Diospyros virginiana	Persimmon	Floodplain	Canopy/Understory	10
Quercus laurifolia	Laurel oak	Floodplain	Canopy	10
Fraxinus pennsylvanica	Green ash*	Floodplain	Canopy	<5
Liriodendron tulipifera	Tulip poplar	Floodplain	Canopy	<5
Quercus michauxii	Swamp chestnut oak	Floodplain	Canopy	10
Quercus nigra	Water oak	Floodplain	Canopy	10
Quercus phellos	Willow oak	Floodplain	Canopy	10
Quercus falcatta var. pagodaefolia	Cherrybark oak	Floodplain	Canopy	10
Quercus shumardii	Shumard oak	Floodplain	Canopy	10
Taxodium distichum	Bald cypress**	Floodplain	Canopy	<5
Cornus amomum	Silky dogwood	Floodplain	Understory	<5
Sorgastrum nutans	Indian grass	Permanent Seed Mixture	Herb	n/a
Agrostis alba	Redtop	Permanent Seed Mixture	Herb	n/a
Andropogon geradii	Big bluestem	Permanent Seed Mixture	Herb	n/a
Panicum virgatum	Switchgrass	Permanent Seed Mixture	Herb	n/a
Setaria italica	Foxtail millet	Temporary Seed Mixture	Herb	n/a
Pennisetum glaucum	Pearl top millet	Temporary Seed Mixture	Herb	n/a

^{*} Green ash will be \leq 5% of total stems

Trees will be planted at a density sufficient to meet the performance standards outlined in the Rule 15A NCAC 02B .0295 of 260 trees per acre at the end of five years. A minimum of four species will be planted where no one tree/shrub species will be greater than 50% of the established stems. A mixed species density of approximately 600-800 trees per acre is proposed for the initial planting. Actual species composition will be based on availability, cost, quantities, and site conditions at the time of construction. Planting will occur during the dormant season between January 15 and March 15 unless weather patterns or unforeseen circumstances allow or require a later planting date, respectively. An appropriate temporary seed mix will also be applied as necessary to provide temporary ground cover for soil stabilization and reduction of sediment loss during rain events, helping establish buffer functional uplift during early forest succession. Temporary seed mix species are found in Table 8. This will be followed by an appropriate permanent seed mixture.

^{**} Bald cypress will be planted in appropriate wet areas as allowed by the Authority

Vegetation management and herbicide a	pplications may	be needed to p	revent competi	tion of
invasive species with the planted species.	Planting is sched	duled to begin in	February 2022	

able 9. Kingfiel	ld Buffer Mitigat	ion Site, DMS N	lo: 100176, Proj	ect Credits: 315,087	7.000 BMU											
	N 02	020204														
	Neuse 03 19.16			Project Area												
	19.16 N/			N Credit Conversion												
Credit Type	Location	Subject? (enter	Feature Type	P Credit Conversion Mitigation Activity	Min-Max Buffer Width (ft)	Feature Name	Total Area (ft²)	Total (Creditable) Area of Buffer	Initial Credit	% Full Credit	Final Credit Ratio (x:1)	Convertible to	Riparian Buffer Credits	Convertible to	Delivered Nutrient Offset:	Delivered Nutrient Offs
		or ditch 1)						Mitigation (ft ²)			, , , , , , , , , , , ,				N (lbs)	P (lbs)
Buffer	Rural	Yes	I/P	Restoration	0-100	UT1	133,012	133,012	1	100%	1.00000	Yes	133,012.000	Yes	6,940.746	-
Buffer	Rural	Yes	I/P	Restoration	0-100	Musselshell Creek	182,075	182,075	1	100%	1.00000	Yes	182,075.000	Yes	9,500.932	-
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						Total Buffer (ft2):	315,087	315,087								
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					T-4-1 F-1-1	4 (62) (6 41)	0	0								
						eral Area (ft²) for Credit:					_					
						ole Ephemeral Area (ft²):	78,772	0.0%		aches as % TABI	М					
ter Preservatio	n Credits Below				Total Eligib	ole for Preservation (ft²):	105,029	0.0%	Preservation as % TABM							
Credit Type	Location	Subject?	Feature Type	Mitigation Activity	Min-Max Buffer Width (ft)	Feature Name	Total Area (sf)	Total (Creditable) Area for Buffer Mitigation (ft ²)	Initial Credit Ratio (x:1)	% Full Credit	Final Credit Ratio (x:1)	Riparian Buffer Credits				
	Rural	Yes	I/P		0-100				10	100%		-				
	Rural	Yes	Ephemeral		0-100				10	100%		-				
												-				
												-				
												-				
					Preserva	tion Area Subtotals (ft²):	0	0								
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Mitigatio		Square Feet	Credits													
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	Phosphorus:		0.000	1												

5.3 Determination of Credits

Mitigation credits shown in Table 9 and Figure 8 are based on surveyed top of banks of the streams and conservation easement. All areas within specific buffer zones will be planted and counted as buffer mitigation units (Figures 8a and 9). Table 9 and Figure 8b calculate and illustrate the nutrient offset credit potential of the Site, respectively, should DMS convert any riparian buffer credits to nutrient offset credits. Credit calculations were done according to the most recent version of the DWR Credit Calculation Tool V3 (Ocotober 2020) and the guideance, Clarified Procedures for Calculating Buffer Mitigation Credits & Nutrient Offset Credits (November 2019).

6.0 Montoring Plan

The Site monitoring plan was developed to demonstrate that the required performance standards are met and project goals and objectives are achieved. The monitoring report shall provide project data and chronicle issues that arise during the five-year montiroing period. These reports will assist in population of DMS databases and assist in the close-out process. Table 10 summarizes the proposed monitoring plan components associated with this project.

Table 10: Monitoring Plan Components

Success Criteria	Monitoring Protocol	Reaches	Quantity	Frequency
Vegetation	CVS Level I/Photos	All	7	Annual
Reference Stations	Photos	All	7	Annual
Visual Assessments	Visual Assessment/Photos	All	As needed	Semi-annual
Easement Boundary*	Visual Assessment	All	As needed	Semi-annual
Exotic/Nuisance Vegetation	Visual Assessment	All	As needed	Semi-annual

^{*} If fencing is required, fencing integrity along the easement will be monitored.

7.0 Performance Standards

The performace standards for the Project follow approved cirteria presented in the Consolidated Buffer Rule (15A NCAC 02B .0295). Annual monitoring and semi-annual site visits will be conducted to assess the condition of the finished project. Performance standards will be evaluated throughout the five-year post-construction monitoring period.

7.1 Vegetation

The Consolidated Buffer Rule (15A NCAC 02B .0295) requires survival of at least 260 stems per acre at the end of a five year monitoring period consisting of at least four species, with no one species representing greater than 50 percent of the stems. Seven (7) permanent vegetation 100 m² monitoring plots, representing at least two percent (2%) of the planted area, will be placed throughout the Site to document tree survivial. Vegetation monitoring will follow the CVS-EEP Level I Protocol for Recording Vegetation (2008). Quantitative measurements will be recorded annually including tree species and tree height. Qualitative measurements will also be recorded such as tree vigor, tree damage, and other observations. Approximate locations of permanent vegetation plots are shown on Figure 7.

7.2 Photo Reference Stations

Photographs of vegetation plots will be taken each year and there will be an additional seven (7) photographs taken to document stream condition and easement integrity. These photos will be taken at the same location and direction each year.

7.3 Visual Assessments

Visual assessments will be performed twice a year during the five years of monitoring. Areas of concern, low stem density, invasive species or easement encroachment, will be mapped and photographed and described in the monitoring report. Problem areas will be re-evaluated during subsequent site visits. Easement encroachment includes fence integrity (if necessary), presence of livestock, mowing, cutting, filling, grading, or similar activities that would negatively affect project performance standards.

7.4 Reporting Performance Criteria

A baseline monitoring document and as-built record drawing depicting deviations from the proposed planting to the actual planting will be provided. Annual monitoring reports will use the DMS Riparian Buffer and Nutrient Offset Baseline and Annual Monitoring Report Template version 2.0 (May 2017). The monitoring reports will be submitted to DMS in the fall of each year for a total of five years or until performance criteria have been met.

7.5 Maintenance and Contingency Plans

Actions will be taken to correct issues identified in the annual monitoring reports that jeopardize the success of the project. If required, additional trees will be planted, selected from the species listed in Table 8.0, invasive species will be controlled, and additional signage will be installed. Additional post planting herbicide and mechanical mowing will be used within the planting rows for at least the first three years as needed. These are examples of remedial actions and others may become necessary through the five-year monitoring period.

8.0 Stewardship

The Site will be marked with signage by the Provider prior to as-builts. The Provider will inspect the boundary marking on a yearly basis and repair as needed during the monitoring period.

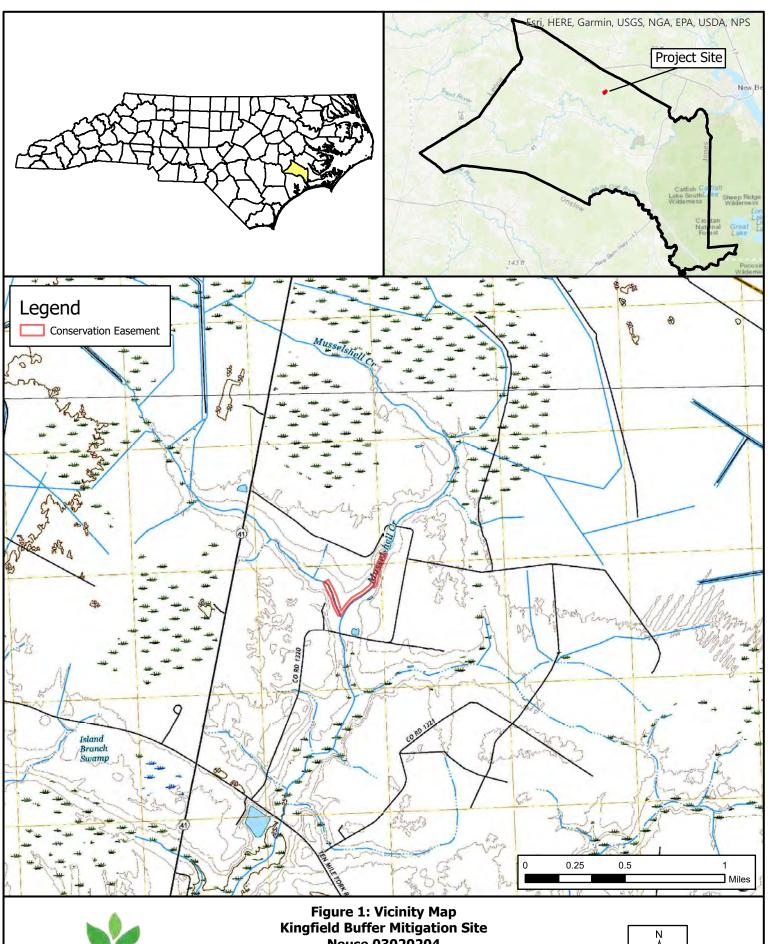
The Site will be transferred to the NCDEQ Stewardship Program. The Stewardship Program shall serve as the conservation easement holder and long-term steward for the property and conduct inspections of the Site to determine whether the conservation easement is being upheld. The NCDEQ Stewardship Program is developing an endowment system within the non-reverting, interest-bearing Conservation Lands Conservation Fund Account. The use of funds from the Endowment Account will be governed by North Carolina General Statue GS 113A-232(d)(3). Interest gained by the endowment fund may be used for stewardship, monitoring, stewardship administration, and land transaction costs, if applicable.

Kingfield Buffer Mitigation Site-Mitigation Plan DMS No: 100176 As discussed previously, fencing is planned for a portion of this project where the existing fence and pasture is maintained. Fencing appropriate for DMS specifications will be installed if necessary. The draft Site Protection Instrument can be found in Appendix B.

9.0 References

- 15A NCAC 02B .0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers. 2015.
- N.C. Department of Environmental Quality. Division of Mitigation Services. 2018. Neuse River Basin Restoration Priorities.
- N.C. Department of Natural and Cultural Resources. N.C. State Historic Preservation Office. 2020. (http://gis.ncdcr.gov/hpoweb/) (Accessed September, 2020).
- N.C. Floodplain Mapping Program. 2020. N.C. Flood Risk Information System. (https://fris.nc.gov/fris/Index.aspx?FIPS=145&ST=NC&user=General%20Public) (Accessed September, 2020).
- U.S. Census Bureau. 2020. QuickFacts, Jones County, North Carolina. Updated September, 2020 https://www.census.gov/quickfacts/fact/table/jonescountynorthcarolina,US/POP010210
- U.S. Department of Agriculture. Natural Resources Conservation Service. 1981. Soil Survey of Jones County, North Carolina.
- U.S. Department of Agriculture. Natural Resources Conservation Service. 2020. Web Soil Survey. (https://websoilsurvey.nrcs.usda.gov/app/). (Accessed September 20, 2020).
- U.S. Fish and Wildlife Service, 2020. Endangered Species, Threatened Species, Federal Species of Concern, and Candidate Species, Jones County, North Carolina. Updated 17 July 2020. https://www.fws.gov/raleigh/species/cntylist/jones.html
- U.S. Geological Survey. 2013. Trenton. 1:24,000. North Carolina Topographic Quadrangle (7.5-minute series). Reston, VA: U.S. Department of the Interior, USGS, 2013.
- U.S. Geological Survey. 2018. StreamStats. (https://streamstats.usgs.gov/ss/) (Accessed September, 2020).
- U.S. Geological Survey. 2018. StreamStats. (https://streamstats.usgs.gov/ss/) (Accessed May, 2021).

Kingfield Buffer Mitigation Site-Mitigation Plan DMS No: 100176

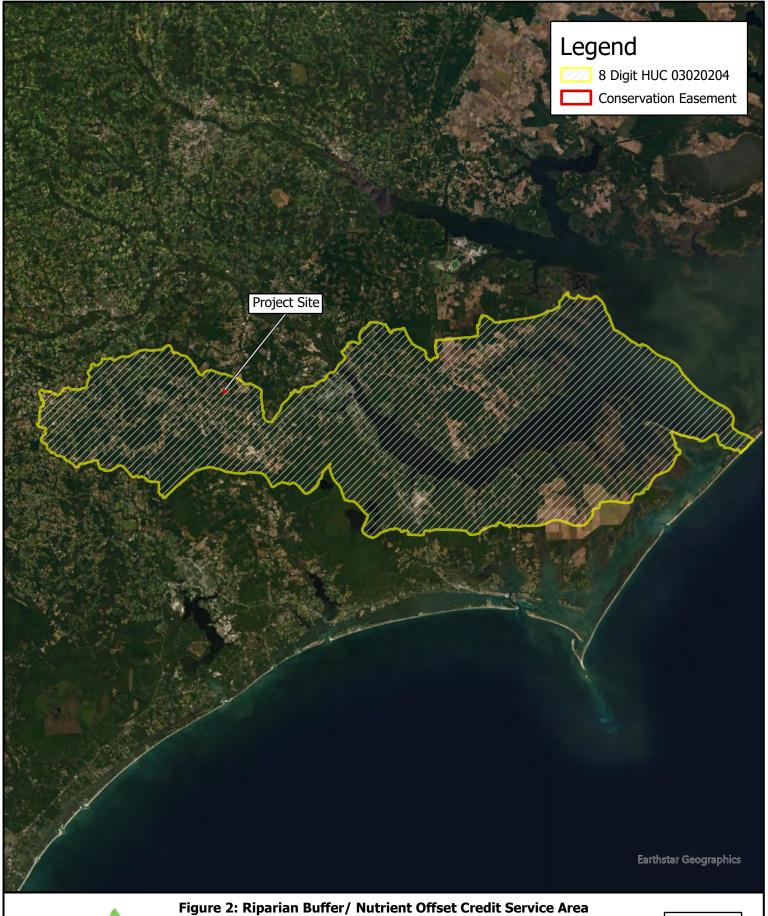




Neuse 03020204 **Jones County, North Carolina** August 2021



USGS 2019 Topographic Quadrangles: Cove City & Trenton





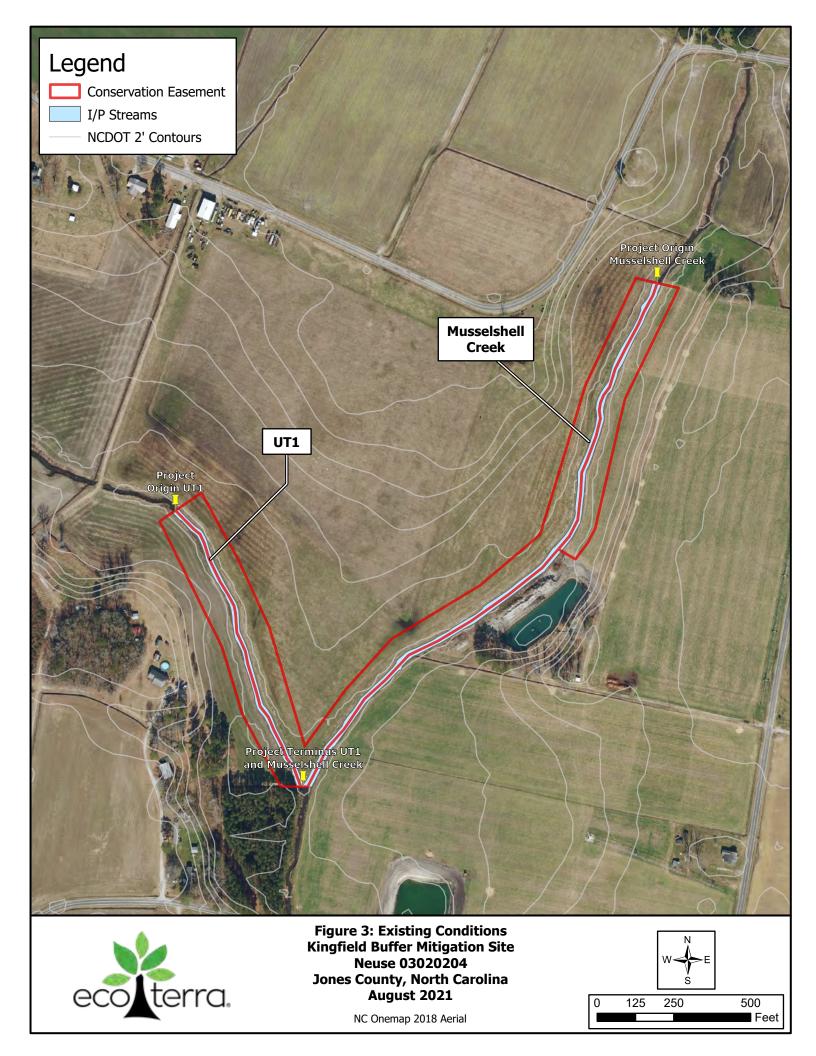
Kingfield Buffer Mitigation Site
Neuse 03020204
Jones County, North Carolina
August 2021

August 2021 ESRI Aerial Basemap

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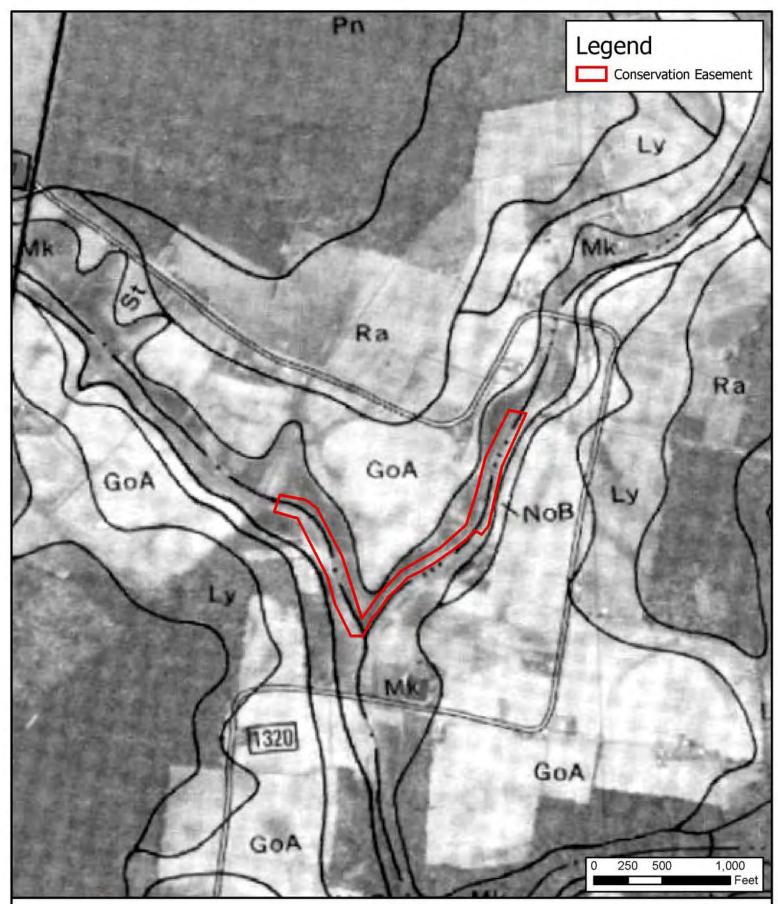




Figure 5: Soil Survey
Kingfield Buffer Mitigation Site
Neuse 03020204
Jones County, North Carolina
August 2021



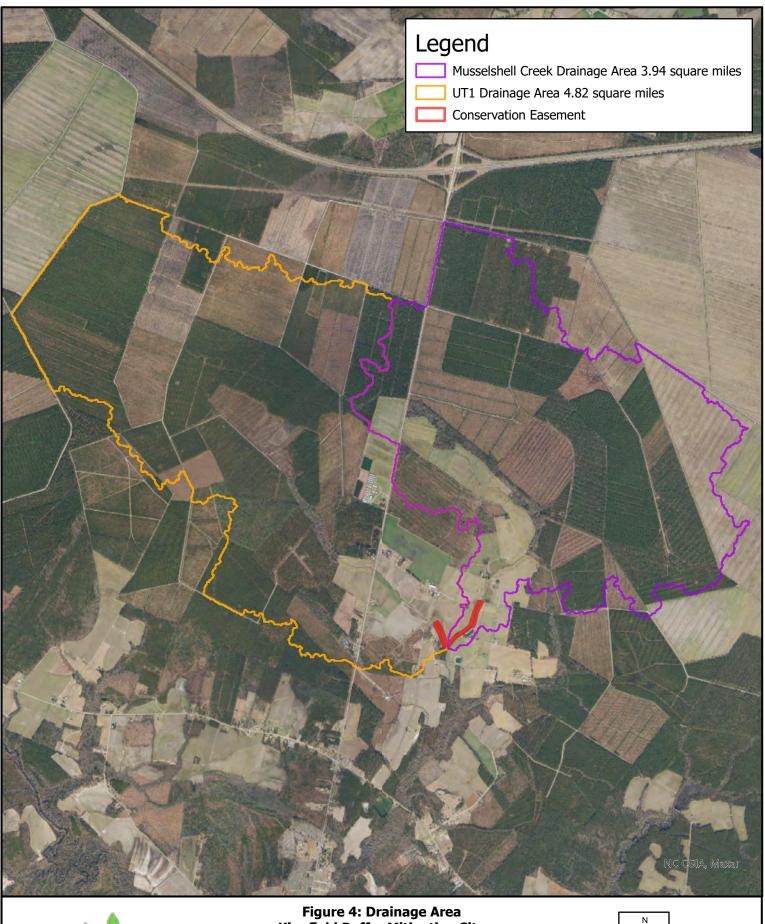




Figure 4: Drainage Area Kingfield Buffer Mitigation Site Neuse 03020204 Jones County, North Carolina August 2021

USGS Stream Stats



0 0.25 0.5 1 Miles

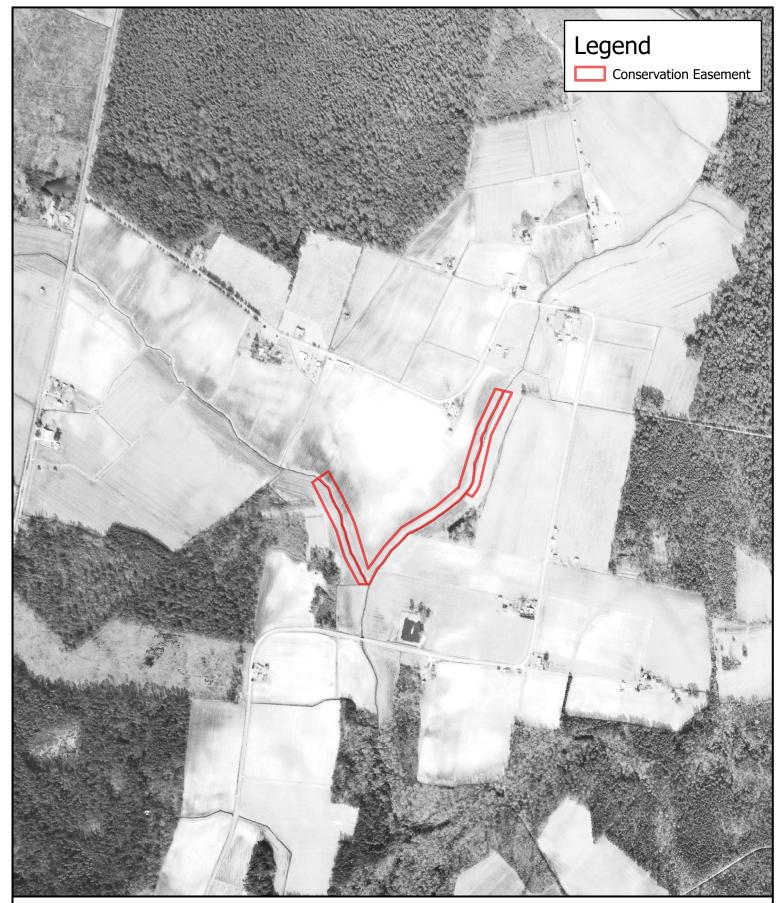


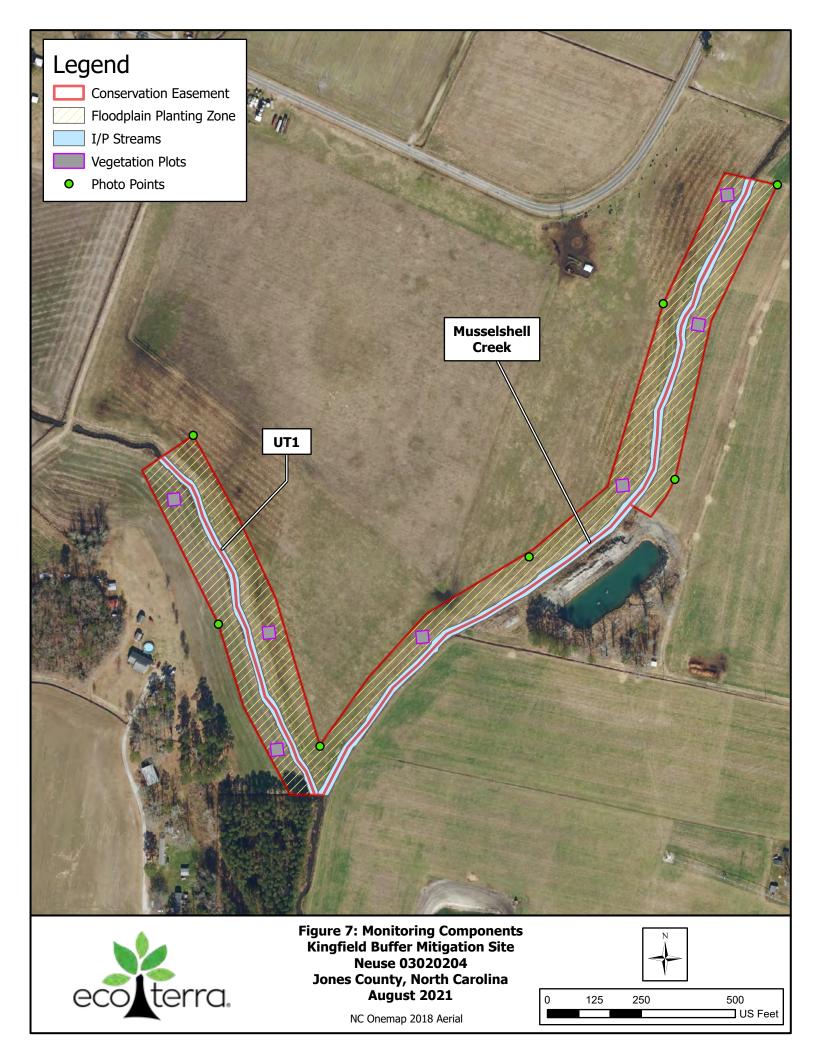


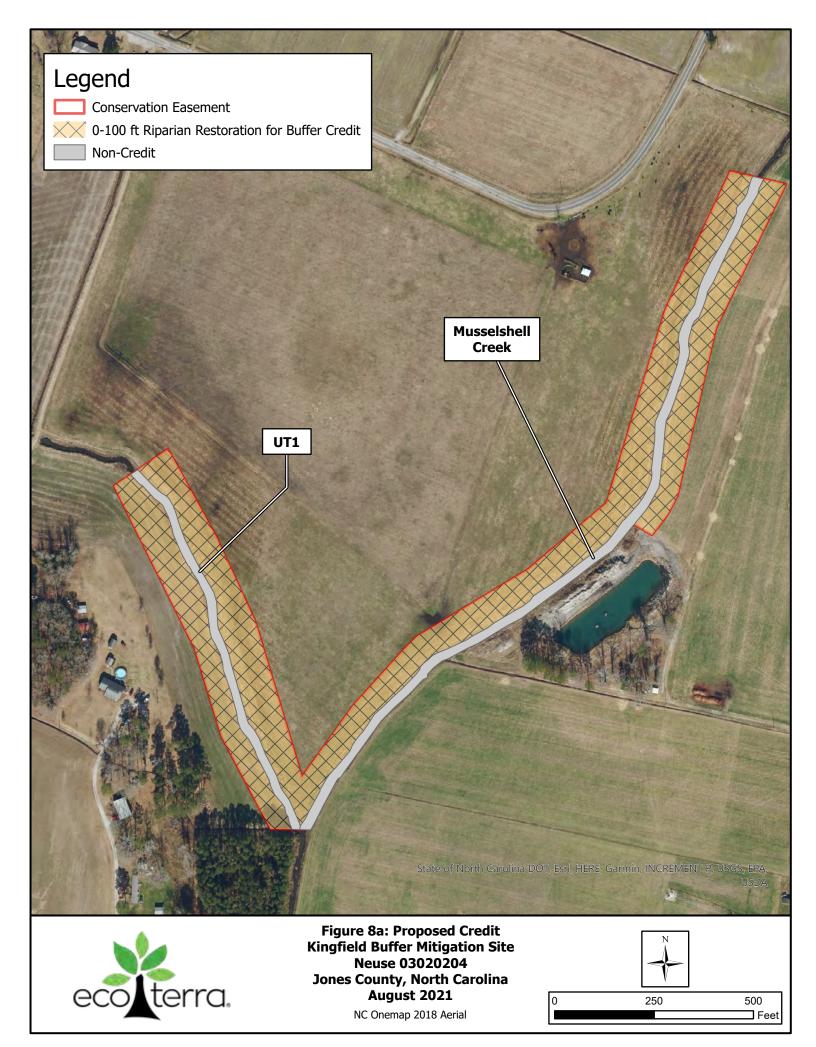
Figure 6: 1977 Historic Aerial Kingfield Buffer Mitigation Site Neuse 03020204 Jones County, North Carolina August 2021

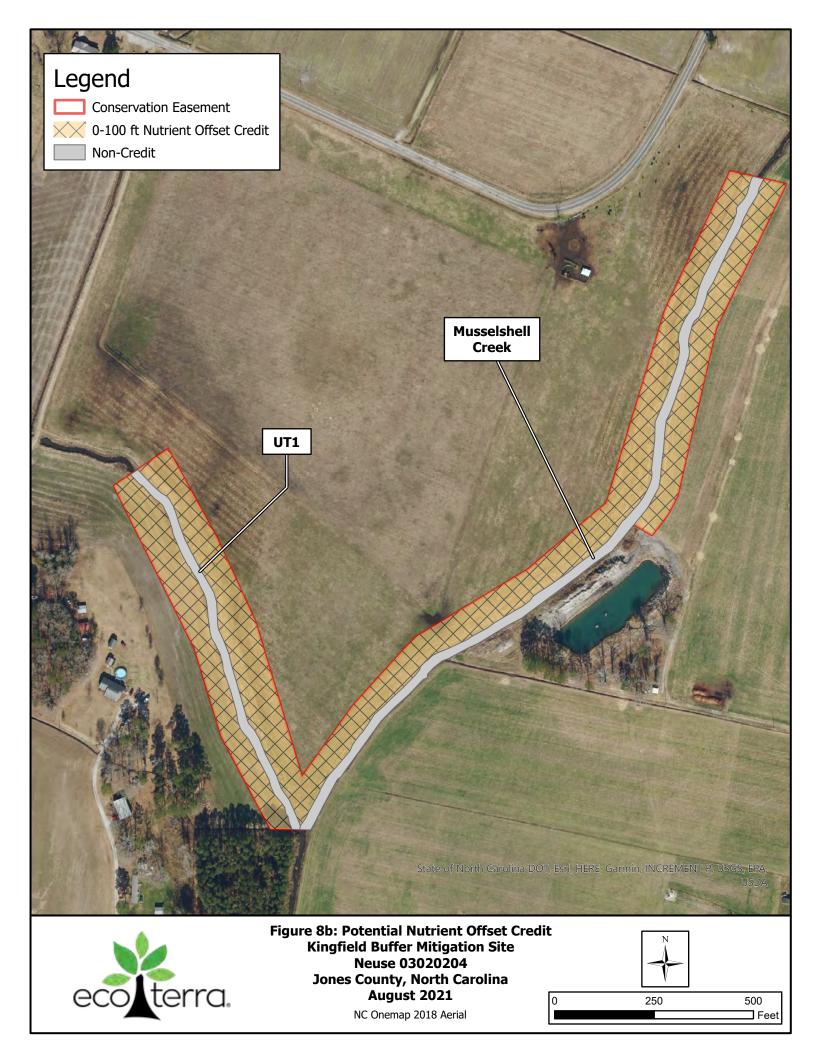
USGS Earth Explorer Aerial Single Frame

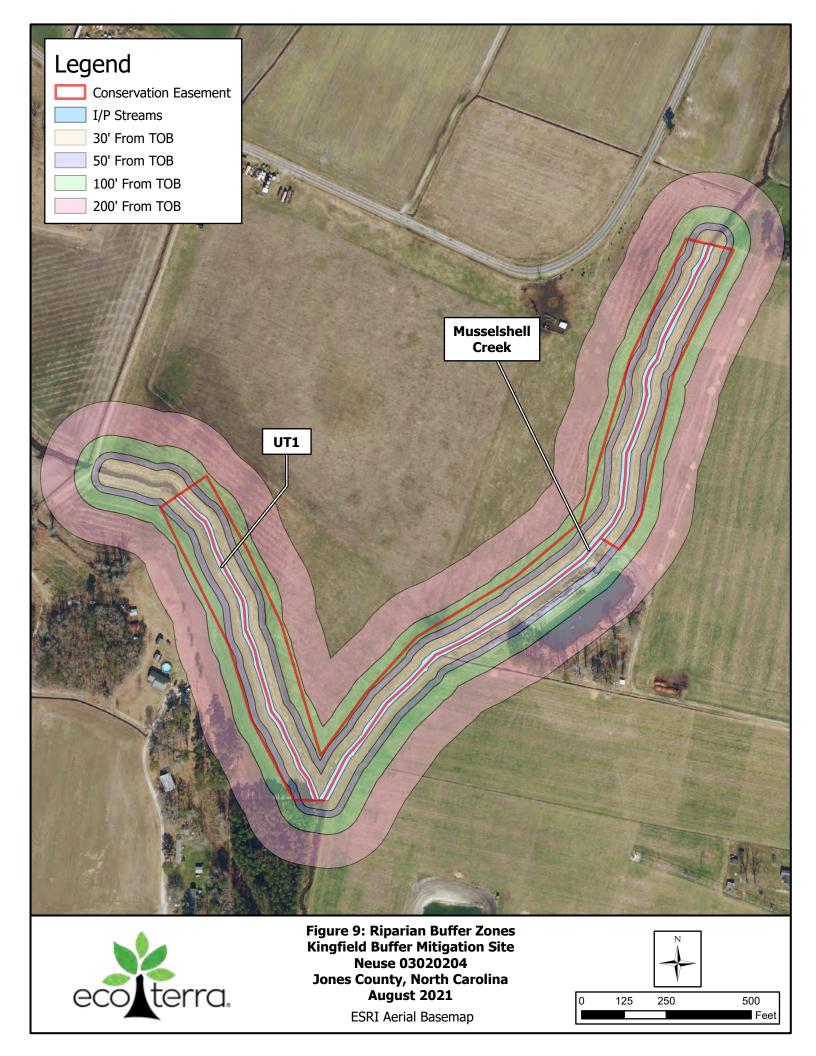


0 500 1,000 Feet









APPENDIX A

NCDWR On-Site Stream Buffer Determination NCDWR Site Viability for Buffer Mitigation Letters

ROY COOPER
Governor
DIONNE DELLI-GATTI
Secretary
S. DANIEL SMITH
Director



April 30, 2021

Elvin James Lee Jr. 1359 Kingfield Road Trenton, NC 28585 (404) 840-2697

2021 0020 v1 Jones County

Subject: On-Site Determination for Applicability to Neuse Riparian Buffer Rules (15A NCAC 02B .0714)

Subject Property/ Project Name: Kingsfield Buffer Mitigation Site

Address/Location: 1359 Kingfield Road, Trenton, NC 28585 Jones County

Stream(s) Evaluated: (2) – Musselshell Creek, Unnamed Tributary to Musselshell Creek (UT1)

Determination Date: February 22, 2021

Staff: Allen Stewart

Determination Type:

Buffer: Stream:

X - Neuse (15A NCAC 02B .0714) X - Intermittent/Perennial Determination

- Tar-Pamlico (15A NCAC 02B .0734

- Catawba (15A NCAC 02B .0614)

- Jordan (15A NCAC 02B .0267) (governmental and/or interjurisdictional projects)

- Randleman (15A NCAC 02B .0724)

- Goose Creek (15A NCAC 02B .0605-.0608)

Stream	E/I/P*	Not Subject	Subject	Start@	Stop@	Soil Survey	USGS Topo
Musselshell Creek	Р		Х	35.113643, -77.325478	35.108759, -77.329753	Х	Х
UT1	Р		Х	35.111283, -77.331121	35.108759, -77.329753	Х	Х

^{*}Ephemeral / Intermittent / Perennial

Mr. Lee,

The Division of Water Resources has determined that the stream listed above and included on the attached map has been located on the most recent published (1981) NRCS Soil Survey of Jones County, North Carolina and/or the most recent copy of the 2019 Trenton USGS Topographic map at a 1:24,000 scale and evaluated for applicability to the Neuse Riparian Buffer Rule. For each stream that is checked "Not Subject" it has been determined to not be at least intermittent or not present on the property. Streams that are checked "Subject" have been mapped on (1981) NRCS Soil Survey and/or USGS Topographic map 1:24,000, located on the property and possess characteristics that qualify them to be at least intermittent streams. There may be other streams or features located on the property that do not appear on the maps referenced above but may be considered jurisdictional according to the US Army Corps of Engineers and subject to the Clean Water Act.

This on-site determination shall expire five (5) years from the date of this letter. Landowners or affected parties that dispute a determination made by the DWR may request a determination by the Director. An appeal request must be made within sixty (60) calendar days of date of this letter to the Director in writing.

If sending via US Postal Service: c/o Paul Wojoski DWR – 401 & Buffer Permitting Unit 1617 Mail Service Center Raleigh, NC 27699-1617 If sending via delivery service (UPS, FedEx, etc.):

c/o Paul Wojoski

DWR – 401 & Buffer Permitting Unit

512 N. Salisbury Street

Raleigh, NC 27604



This determination is final and binding as detailed above unless an appeal is requested within sixty (60) days.

This determination only addresses the applicability to the buffer rules and does not approve any activity within the buffers or waters. The project may require a Section 404/401 Permit for the proposed activity. Any inquiries regarding applicability to the Clean Water Act should be directed to the US Army Corps of Engineers Raleigh Regulatory Field Office at (919)-554-4884 Ext. 22.

If you have questions regarding this determination, please feel free to contact Allen Stewart at (252) 946-6481.

Sincerely,

Robert Tankard

Robert Tankard, Assistant Regional Supervisor Water Quality Regional Operations Section Division of Water Resources, NCDEQ

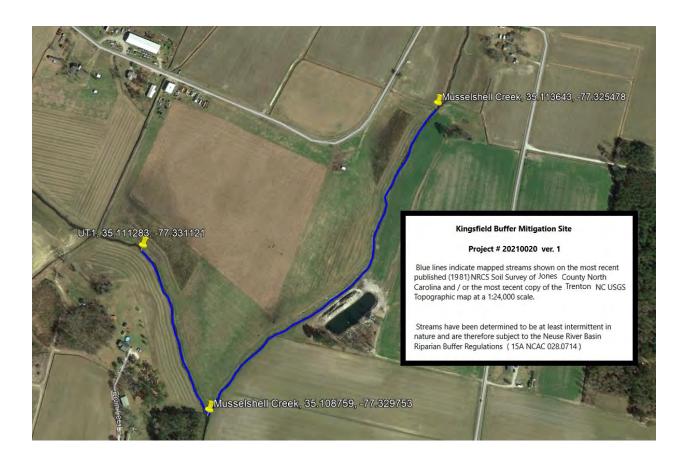
cc: WaRO DWR File Copy/LASERFICHE

Raymond Holz, Restoration Systems LLC, rholz@restorationsystems.com

Katie Merritt, NCDWR 401 & Buffer Permitting Branch, Katie.Merritt@ncdenr.gov

Samantha Dailey, US Army Corps of Engineers Raleigh Regulatory Field Office, samantha.j.dailey@usace.army.mil





ROY COOPER Governor JOHN NICHOLSON Interim Secretary S. DANIEL SMITH Director



June 10, 2021

Jamey O' Shaughnessey Eco Terra Partners, LLC (via electronic mail: jamey@ecoterra.com)

Re: Site Viability for Buffer Mitigation & Nutrient Offset – Kingfield Site

Trenton, NC (near 35.11154, -77.33190)

Neuse 03020204 Jones County

Dear O' Shaughnessey,

On May 20, 2021, Katie Merritt, with the Division of Water Resources (DWR), received a request from you on behalf of Eco Terra Partners, LLC (Eco Terra) for a site visit near the above-referenced site in the Neuse River Basin within the 8-digit Hydrologic Unit Code 03020204. The site visit was to determine the potential for riparian buffer mitigation and nutrient offset within a proposed conservation easement boundary, which is more accurately depicted in the attached map labeled "Figure 2: Existing Conditions" (Figure 2) prepared by Eco Terra. The proposed easement boundary in Figure 2, includes all riparian areas intended to be proposed as part of a mitigation site. On April 27, 2021, Ms. Merritt performed a site assessment of the subject site. Staff with Eco Terra were also present.

Ms. Merritt's evaluation of the features onsite and their associated mitigation determination for the riparian areas are provided in the table below. This evaluation was made from Top of Bank (TOB) and landward 200' from each feature for buffer mitigation pursuant to 15A NCAC 02B .0295 (effective November 1, 2015) and for nutrient offset credits pursuant to 15A NCAC 02B .0703.



<u>Feature</u>	Classification onsite	Subject to Buffer Rule	Riparian Land uses adjacent to Feature (0-200')	Buffer Credit Viable	3Nutrient Offset Viable	4.5 Mitigation Type Determination w/in riparian areas
Musselshell Creek	Stream	Yes	Non-forested agricultural fields and pasture. An offline pond is present on left bank. Forested areas around the pond were present between 1993-2016+ (see map) over 21,000 ft² of fill material from an excavated pond is located in riparian areas including Zone 1 and Zone 2 of the riparian buffer (see attachments). Placement of fill in Zone 1 & Zone 2 may be a violation of the Neuse Buffer Protection Rule.	Yes (excluding fill & pond footprints)	Yes (excluding fill & pond footprints)	Non-forested fields (excluding fill and pond footprints) - Restoration Site per 15A NCAC 02B .0295 (n) Footprint of areas previously in forest around pond— no mitigation determination until confirmation is received that no violation has occurred. Footprint of fill material (berm) impacts within 50' (Zone 1 & Zone 2) of Neuse buffer — no mitigation determination until confirmation is received that no violation has occurred. Footprint of fill material (berm) impacts within 51'-200' - no mitigation determination until confirmation is received that no violation has occurred within Zone 1 & Zone 2.
UT1	Stream	Yes	Non-forested agricultural fields and pasture Actively eroding banks were observed.	Yes	Yes (non- forested areas only)	Non-forested fields - Restoration Site per 15A NCAC 02B .0295 (n) Minor bank stabilization efforts and grading needed where bank stability is compromised and where erosional rills, sink holes and gullies are observed

¹Subjectivity calls for the features were determined by DWR in correspondence dated April 30, 2021 (DWR# 2021-0020) using the 1:24,000 scale quadrangle topographic map prepared by USGS and the most recent printed version of the soil survey map prepared by the NRCS.

Determinations provided in the table above were made using a proposed easement boundary showing proposed mitigation areas shown in Figure 2. The map representing the proposal for the site is attached to this letter and initialed by Ms. Merritt on June 10, 2021. Additional information regarding the site related to land use changes within the riparian areas from 1999 to present is attached as Figure 1 and initialed by Ms. Merritt on June 10, 2021. Substantial changes to the proposed easement boundary as well as any site constraints identified in the table above, could affect the Site's potential to generate buffer mitigation and nutrient offset credits.

This letter does not constitute an approval of this Site to generate buffer and nutrient offset credits. Pursuant to 15A NCAC 02B .0295, a mitigation proposal and a mitigation plan shall be submitted to

²The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent (25%) of the total area of buffer mitigation per 15A NCAC 0295 (o)(5) and 15A NCAC 0295 (o)(4). Site cannot be a Preservation Only site to comply with this rule.

³NC Division of Water Resources - Methodology and Calculations for determining Nutrient Reductions associated with Riparian Buffer Establishment

⁴Determinations made for this Site are determined based on the proposal provided in maps and figures submitted with the request.

⁵ All features proposed for buffer mitigation or nutrient offset, must have a planted conservation easement established that includes the tops of channel banks when being measured perpendicular and landward from the banks, even if no credit is viable within that riparian area.

⁶The area of the mitigation site on ephemeral channels shall comprise no more than 25 percent (25%) of the total area of buffer mitigation per 15A NCAC 02B .0295 (o)(7).

Kingfield Site Eco Terra June 10, 2021

DWR for written approval **prior** to conducting any mitigation activities in riparian areas and/or surface waters for buffer mitigation credit. Pursuant to 15A NCAC 02B .0703, a proposal regarding a proposed nutrient load-reducing measure for nutrient offset credit shall be submitted to DWR for approval prior to any mitigation activities in riparian areas and/or surface waters.

All vegetative plantings, performance criteria and other mitigation requirements for riparian restoration, enhancement and preservation must follow the requirements in 15A NCAC 02B .0295 to be eligible for buffer and/or nutrient offset mitigation credits. For any areas depicted as not being viable for nutrient offset credit above, one could propose a different measure, along with supporting calculations and sufficient detail to support estimates of load reduction, for review by the DWR to determine viability for nutrient offset in accordance with 15A NCAC 02B .0703.

This viability assessment will expire on June 10, 2023 or upon approval of a mitigation plan by the DWR, whichever comes first. This letter should be provided in any nutrient offset, buffer, stream or wetland mitigation plan for this Site.

Please contact Katie Merritt at (919) 707-3637 if you have any questions regarding this correspondence.

Sincerely,

DocuSigned by:

Paul Wojoski
949D91BA53EF4E0...

Paul Wojoski, Supervisor 401 and Buffer Permitting Branch

PW/kym

Attachments: Figure 1: Photos of landuse changes; Figure 2: Existing Conditions

Cc: File Copy (Katie Merritt)

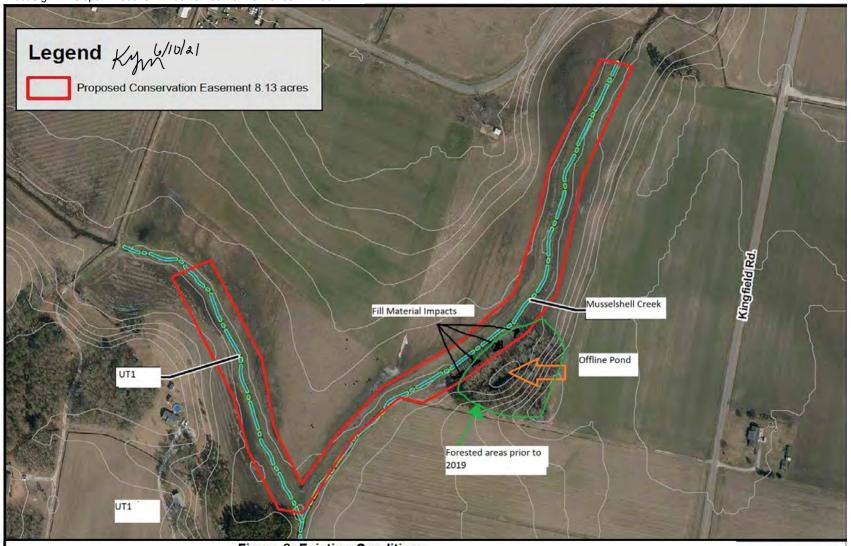




Figure 2: Existing Conditions Kingfield Buffer Mitigation Site Neuse 03020204 Jones County, North Carolina September 2020

2016 NC Onemap Aerial & NCDOT Contours

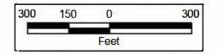




FIGURE 1: Photo documentation of land use changes since 1993





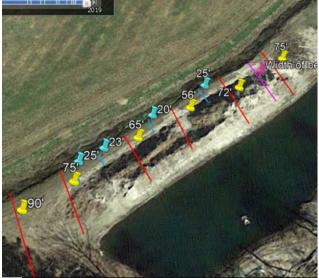
1999 Imagery showing pond riparian areas vegetated. Zone 1 & Zone 2 of riparian buffer in maintained ag



2014 imagery (fall) showing pond riparian areas vegetated & approximate measurements taken from top of bank along stream to edge of forest (not dripline). Zone 1 & Zone 2 of riparian buffer in maintained ag.



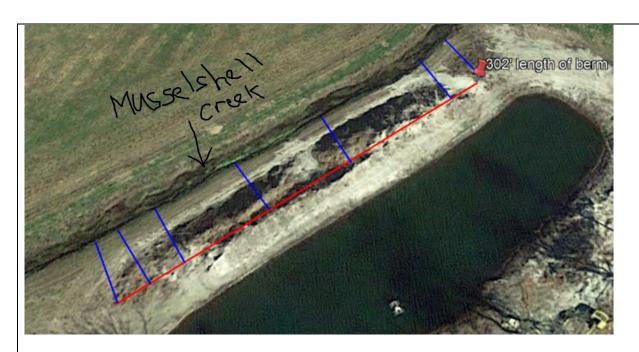
2016 Imagery showing pond riparian areas vegetated. Zone 1 & Zone 2 of riparian buffer in maintained ag



2019 imagery showing pond footprint, recent removal of trees, & excavated material/berm pile located in Zone 1 and some of Zone 2 of riparian buffer. Approximate measurements taken in feet from top of bank along stream to previous (before clearing) edge of forest (Red lines) & approximate measuremnts in feet taken from top of bank along stream to edge of berm pile (Blue lines).

FIGURE 1: Photo documentation of land use changes since 1993





Width of berm pile (measured in red) within the 50' neuse buffer (measured in blue lines) of Musselshell creek is approximately 302' x 70'

ROY COOPER Governor ELIZABETH S. BISER Secretary S. DANIEL SMITH Director



September 8, 2021 revises original letter issued July 13, 2021

Jamey O' Shaughnessey
Eco Terra Partners, LLC
(via electronic mail: jamey@ecoterra.com)

Re: Site Viability for Buffer Mitigation & Nutrient Offset – Kingfield Site

Trenton, NC (near 35.11154, -77.33190)

Neuse 03020204 Jones County

Dear Mr. O' Shaughnessey,

On July 13, 2021, the Division of Water Resources (DWR) issued a site viability letter for the above referenced site. Since the issuance of the letter, DWR received additional information on August 31, 2021 that affects the mitigation determination associated with an area adjacent to Musselshell Creek where fill material from the excavation of an irrigation pond was placed in Zone 1 and Zone 2 of the riparian buffer. Correspondence from DWR is included as an attachment to this letter. This letter replaces the letter issued on July 13, 2021.

On May 20, 2021, Katie Merritt, with the Division of Water Resources (DWR), received a request from you on behalf of Eco Terra Partners, LLC (Eco Terra) for a site visit near the above-referenced site in the Neuse River Basin within the 8-digit Hydrologic Unit Code 03020204. The site visit was to determine the potential for riparian buffer mitigation and nutrient offset within a proposed conservation easement boundary, which is more accurately depicted in the attached map labeled "Figure 2: Existing Conditions" (Figure 2) prepared by Eco Terra. The proposed easement boundary in Figure 2, includes all riparian areas intended to be proposed as part of a mitigation site. On April 27, 2021, Ms. Merritt performed a site assessment of the subject site. Staff with Eco Terra were also present.

Ms. Merritt's evaluation of the features onsite and their associated mitigation determination for the riparian areas are provided in the table below. This evaluation was made from Top of Bank (TOB) and landward 200' from each feature for buffer mitigation pursuant to 15A NCAC 02B .0295 (effective November 1, 2015) and for nutrient offset credits pursuant to 15A NCAC 02B .0703.



<u>Feature</u>	Classification onsite	1Subject to Buffer Rule	Riparian Land uses adjacent to Feature (0-200')	Buffer Credit Viable	3Nutrient Offset Viable	4.5 Mitigation Type Determination w/in riparian areas
Musselshell Creek	Stream	Yes	Non-forested agricultural fields and pasture. An offline pond is present on left bank. Forested areas around the pond were present between 1993-2016+ (see map) and were located beyond 50' from top of bank. over 21,000 ft² of fill material from an excavated pond is located in riparian areas including Zone 1 and Zone 2 of the riparian buffer (see attachments). Placement of fill in Zone 1 & Zone 2 was determined to not be a violation of the Neuse Buffer Protection Rule.	Yes	Yes (excluding previously forested areas around pond)	Non-forested fields (excluding fill footprint) - Restoration Site per 15A NCAC 02B .0295 (n) Footprint of fill material (berm)— Restoration Site per 15A NCAC 02B .0295 (n) if all fill material is graded level with top of bank, stabilized, seeded and planted. Footprint of areas previously in forest around pond— Restoration Site per 15A NCAC 02B .0295 (n) for buffer credit only
UT1	Stream	Yes	Non-forested agricultural fields and pasture Actively eroding banks were observed.	Yes	Yes (non- forested areas only)	Non-forested fields - Restoration Site per 15A NCAC 02B .0295 (n) Minor bank stabilization efforts and grading needed where bank stability is compromised and where erosional rills, sink holes and gullies are observed

¹Subjectivity calls for the features were determined by DWR in correspondence dated April 30, 2021 (DWR# 2021-0020) using the 1:24,000 scale quadrangle topographic map prepared by USGS and the most recent printed version of the soil survey map prepared by the NRCS.

Determinations provided in the table above were made using a proposed easement boundary showing proposed mitigation areas shown in Figure 2. The map representing the proposal for the site is attached to this letter and initialed by Ms. Merritt on June 10, 2021. Additional information regarding the site related to the fill material within the riparian areas is attached as Figure 1 and initialed by Ms. Merritt on June 10, 2021. Substantial changes to the proposed easement boundary as well as any site constraints identified in the table above, could affect the Site's potential to generate buffer mitigation and nutrient offset credits.

²The area of preservation credit within a buffer mitigation site shall comprise of no more than 25 percent (25%) of the total area of buffer mitigation per 15A NCAC 0295 (o)(5) and 15A NCAC 0295 (o)(4). Site cannot be a Preservation Only site to comply with this rule.

³NC Division of Water Resources - Methodology and Calculations for determining Nutrient Reductions associated with Riparian Buffer Establishment

⁴ Determinations made for this Site are determined based on the proposal provided in maps and figures submitted with the request.

⁵ All features proposed for buffer mitigation or nutrient offset, must have a planted conservation easement established that includes the tops of channel banks when being measured perpendicular and landward from the banks, even if no credit is viable within that riparian area.

⁶The area of the mitigation site on ephemeral channels shall comprise no more than 25 percent (25%) of the total area of buffer mitigation per 15A NCAC 02B .0295 (o)(7).

Kingfield Site Eco Terra September 8, 2021

This letter does not constitute an approval of this Site to generate buffer and nutrient offset credits. Pursuant to 15A NCAC 02B .0295, a mitigation proposal <u>and</u> a mitigation plan shall be submitted to DWR for written approval **prior** to conducting any mitigation activities in riparian areas and/or surface waters for buffer mitigation credit. Pursuant to 15A NCAC 02B .0703, a proposal regarding a proposed nutrient load-reducing measure for nutrient offset credit shall be submitted to DWR for approval prior to any mitigation activities in riparian areas and/or surface waters.

All vegetative plantings, performance criteria and other mitigation requirements for riparian restoration, enhancement and preservation must follow the requirements in 15A NCAC 02B .0295 to be eligible for buffer and/or nutrient offset mitigation credits. For any areas depicted as not being viable for nutrient offset credit above, one could propose a different measure, along with supporting calculations and sufficient detail to support estimates of load reduction, for review by the DWR to determine viability for nutrient offset in accordance with 15A NCAC 02B .0703.

This viability assessment will expire on June 10, 2023 or upon approval of a mitigation plan by the DWR, whichever comes first. This letter should be provided in any nutrient offset, buffer, stream or wetland mitigation plan for this Site.

Please contact Katie Merritt at (919) 707-3637 if you have any questions regarding this correspondence.

Sincerely,

— DocuSigned by:

Paul Wojoski

949D91BA53FF4F0

Paul Wojoski, Supervisor 401 and Buffer Permitting Branch

PW/kvm

Attachments: Figure 1: Photos of fill material; Figure 2: Existing Conditions; DWR Email Correspondence

cc: File Copy (Katie Merritt)

FIGURE 1: Photo documentation of land use changes since 1993





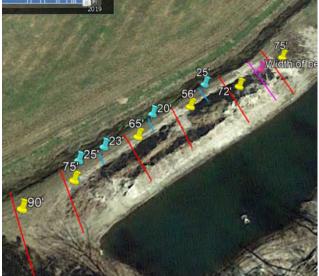
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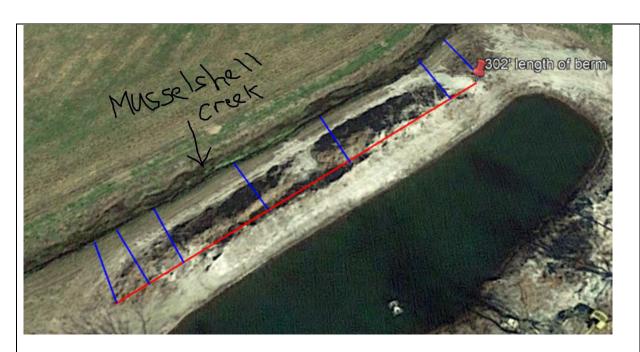
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FIGURE 1: Photo documentation of land use changes since 1993





Width of berm pile (measured in red) within the 50' neuse buffer (measured in blue lines) of Musselshell creek is approximately 302' x 70'

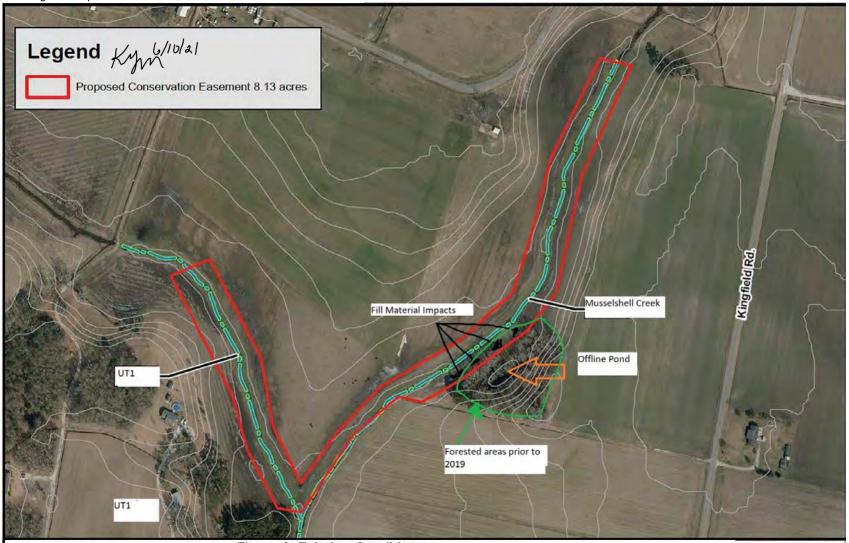
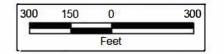




Figure 2: Existing Conditions Kingfield Buffer Mitigation Site Neuse 03020204 Jones County, North Carolina September 2020

2016 NC Onemap Aerial & NCDOT Contours





From: Sullivan, Shelton
To: Merritt, Katie

Cc: Wojoski, Paul A; Tankard, Robert; Pullinger, Robert C; Stewart, Glenn A

Subject: RE: Potential Buffer Violation

Date: Tuesday, August 31, 2021 10:44:32 AM

Attachments: image001.png image002.png

image002.png image003.png

Katie,

DWR Central and Regional staff discussed the Kingfield Site associated with DWR ID# 2021-0020. It was determined that the overall existing use of the property is still agriculture and that there is currently no clear buffer violation on the site.

Regards,

Shelton Sullivan

401 & Buffer Permitting Branch
Division of Water Resources
North Carolina Department of Environmental Quality

(919) 707-3636 office (919) 239-0238 current cell (919) 807-6494 fax

shelton.sullivan@ncdenr.gov

Location: 512 N. Salisbury Street, Archdale Bldg #942G, Raleigh, NC 27604

US Mail: 1617 Mail Service Center, Raleigh, NC 27699-1617



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

Location: 512 N. Salisbury Street, Archdale Bldg #942G, Raleigh, NC 27604

US Mail: 1617 Mail Service Center, Raleigh, NC 27699-1617



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Merritt, Katie

Sent: Thursday, June 10, 2021 1:35 PM

To: Pullinger, Robert C < chris.pullinger@ncdenr.gov>

Cc: Stewart, Glenn A <<u>Glenn.Stewart@ncdenr.gov</u>>; Wojoski, Paul A <<u>Paul.Wojoski@ncdenr.gov</u>>;

Tankard, Robert < robert.tankard@ncdenr.gov>

Subject: Potential Buffer Violation

Hey Chris,

DWR WaRO performed a stream call determination on a site in Trenton, NC back in April 2021. I recently went to this site in late May to perform a site viability assessment of the features and their respective riparian areas (out to 200' from top of banks) for purposes of generating buffer mitigation credits. While I was there, I noticed impacts to the riparian buffer along Musselshell creek. Those impacts are shown in the attached document with photos and consist of signficant fill material within both Zone 1 & Zone 2 of the riparian buffer from the recent excavation of an off-line pond (pond has been there since before the 90's, but it appears the landowner decided to excavate it out and make it deeper and wider. The excavated material is within the buffer and was at least 10' in height for reference. Additionally, there were no sediment & erosion control efforts in place to prevent runoff impacts to the creek. The material has created a berm that measured approximately 302' x 70' plus or minus.

I plan to put my Site Viabilty Assessment letter on hold until I receive input from WaRO on if this constitutes a buffer violation.

Thanks, katie

Katie Merritt Nutrient Offset & Buffer Banking Coordinator 401 & Buffer Permitting Unit North Carolina Department of Environmental Quality Office: 919-707-3637

Work Cell: 919-500-0683

Website: http://portal.ncdenr.org/web/wg/401bufferpermitting

512 N. Salisbury Street, Raleigh, NC 27620

APPENDIX B

Draft Conservation Easement

STATE OF NORTH CAROLINA

DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT

JONES COUNTY

SPO File Number:

DMS Project Number: 100176

Prepared by: Office of the Attorney General

Property Control Section

Return to: NC Department of Administration

State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, made
thisday of, 20, by Elvin J. Lee Jr., Gloria Hill Lee, Rebecca
Lynn Lee Meadows (1/3), Dennis James Lee (1/3), & Susan Marie Lee (1/3) (collectively,
"Grantor"), whose mailing address is PO Box 213 Trenton, NC 28585, to the State of North
Carolina, ("Grantee"), whose mailing address is State of North Carolina, Department of
Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The
designations of Grantor and Grantee as used herein shall include said parties, their heirs successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as
required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Division of Mitigation Services (formerly known as the Ecosystem Enhancement Program and Wetlands Restoration Program) within the Department of Environmental Quality (formerly Department of Environment and Natural Resources), for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and

riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, this Conservation Easement from Grantor to Grantee has been negotiated, arranged and provided for as a condition of a full delivery contract between *Eco Terra Partners*, *LLC*, *1328 Dekalb Ave. Atlanta*, *GA 30307* and the North Carolina Department of Environmental Quality, to provide stream, wetland and/or buffer mitigation pursuant to the North Carolina Department of Environmental Quality Purchase and Services Contract Number 0103-01.

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Understanding, (MOU) duly executed by all parties on November 4, 1998. This MOU recognized that the Wetlands Restoration Program was to provide effective compensatory mitigation for authorized impacts to wetlands, streams and other aquatic resources by restoring, enhancing and preserving the wetland and riparian areas of the State; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003, which recognizes that the Division of Mitigation Services (formerly Ecosystem Enhancement Program) is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the Department of Environment and Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Division of Water Quality, the North Carolina Division of Coastal Management, and the National Marine Fisheries Service entered into an agreement to continue the In-Lieu Fee operations of the North Carolina Department of Natural Resources' Division of Mitigation Services (formerly Ecosystem Enhancement Program) with an effective date of 28 July, 2010, which supersedes and replaces the previously effective MOA and MOU referenced above; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, the Division of Mitigation Services in the Department of Environmental Quality (formerly Department of Environment and Natural Resources), which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in *Trenton* Township, *Jones* County, North Carolina (the "Property"), and being more particularly described as that certain parcel of land containing approximately 43.13 acres and being conveyed to the Grantor by deed as recorded in **Deed Book** 206 at Page 143 of the *Jones* County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access over the herein described areas of the Property, thereby restricting and limiting the use of the areas of the Property subject to the Conservation Easement to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept said Easement and Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of *Musselshell Creek and one of its unnamed tributaries*.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement and Right of Access together with an access easement to and from the Conservation Easement Area described below.

The Conservation Easement Area consists of the following:

Tracts Number 4499-99-68-7100 containing a total of 5.63 acres as shown on the pl	ats of survey
entitled "Final Plat, Conservation Easement for North Carolina Division of Mitigat	ion Services,
Project Name: Kingfield Buffer Mitigation Site, SPO File No, DI	MS Site No.
100176, Property of Elvin J. Lee," dated August 10th, 2021 by Chris Paderick, PL	S Number <i>L</i> -
4189 and recorded in the Jones County, North Carolina Register of Deeds at Plat Bo	ook
Pages	

See attached "Exhibit A", Legal Description of area of the Property hereinafter referred to as the "Conservation Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or riparian resources in the Conservation Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Conservation Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the

use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. ACCESS EASEMENT

[GENERAL LOCATION OPTION] Grantor hereby grants and conveys unto Grantee, its employees, agents, successors and assigns, a perpetual, non-exclusive easement for ingress and egress over and upon the Property at all reasonable times and at such location as practically necessary to access the Conservation Easement Area for the purposes set forth herein ("Access Easement"). This grant of easement shall not vest any rights in the public and shall not be construed as a public dedication of the Access Easement. Grantor covenants, represents and warrants that it is the sole owner of and is seized of the Property in fee simple and has the right to grant and convey this Access Easement.

III. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Conservation Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

- **A.** Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Conservation Easement Area for the purposes thereof.
- **B.** Motorized Vehicle Use. Motorized vehicle use in the Conservation Easement Area is prohibited except within a Crossing Area(s) or Road or Trail as shown on the recorded survey plat.
- C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Conservation Easement Area not inconsistent with this Conservation Easement, and the right of access to the Conservation Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.
- D. **Damage to Vegetation.** Except within Crossing Area(s) as shown on the recorded survey plat and as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Conservation Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Conservation Easement Area is prohibited.

- **E.** Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Conservation Easement Area.
- **F. Agricultural Use.** All agricultural uses are prohibited within the Conservation Easement Area including any use for cropland, waste lagoons, or pastureland.
- **G.** New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Conservation Easement Area.
- H. **Roads and Trails.** There shall be no construction or maintenance of new roads, trails, walkways, or paving in the Conservation Easement.

All existing roads, trails and crossings within the Conservation Easement Area shall be shown on the recorded survey plat.

- I. Signs. No signs shall be permitted in the Conservation Easement Area except interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Conservation Easement Area.
- **J. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Conservation Easement Area is prohibited.
- **K. Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, drilling, hydraulic fracturing; removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
- L. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water in the Conservation Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Conservation Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Conservation Easement Area may temporarily be withdrawn for good cause shown as needed for the survival of livestock on the Property.
- M. Subdivision and Conveyance. Grantor voluntarily agrees that no further subdivision, partitioning, or dividing of the Conservation Easement Area portion of the Property owned by the Grantor in fee simple ("fee") that is subject to this Conservation Easement is allowed. Any future transfer of the Property shall be subject to this Conservation Easement and Right of Access and to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Conservation Easement Area for the purposes set forth herein.

- **N. Development Rights.** All development rights are permanently removed from the Conservation Easement Area and are non-transferrable.
- **O. Disturbance of Natural Features**. Any change, disturbance, alteration or impairment of the natural features of the Conservation Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the Division of Mitigation Services, 1652 Mail Services Center, Raleigh, NC 27699-1652.

IV. GRANTEE RESERVED USES

- A. Right of Access, Construction, and Inspection. The Grantee, its employees, agents, successors and assigns, shall have a perpetual Right of Access over and upon the Conservation Easement Area to undertake or engage in any activities necessary to construct, maintain, manage, enhance, repair, restore, protect, monitor and inspect the stream, wetland and any other riparian resources in the Conservation Easement Area for the purposes set forth herein or any long-term management plan for the Conservation Easement Area developed pursuant to this Conservation Easement.
- **B.** Restoration Activities. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.
- C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.
- **D.** Fences. Conservation Easements are purchased to protect the investments by the State (Grantee) in natural resources. Livestock within conservations easements damages the investment and can result in reductions in natural resource value and mitigation credits which would cause financial harm to the State. Therefore, Landowners (Grantor) with livestock are required to restrict livestock access to the Conservation Easement area. Repeated failure to do so may result in the State (Grantee) repairing or installing livestock exclusion devices (fences) within the conservation area for the purpose of restricting livestock access. In such cases, the landowner (Grantor) must provide access to the State (Grantee) to make repairs.
- E. Crossing Area(s). The Grantee is not responsible for maintenance of crossing area(s), however, the Grantee, its employees and agents, successors or assigns, reserve the right to repair crossing area(s), at its sole discretion and to recover the cost of such repairs from the Grantor if such repairs are needed as a result of activities of the Grantor, his successors or assigns.

V. ENFORCEMENT AND REMEDIES

- A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Conservation Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features in the Conservation Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall, except as provided below, notify the Grantor in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Conservation Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief, if the breach is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.
- **B.** Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Conservation Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor is complying with the terms, conditions and restrictions of this Conservation Easement.
- C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Conservation Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life or damage to the Property resulting from such causes.
- **D.** Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.
- **E. No Waiver.** Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VI. MISCELLANEOUS

- A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- **B.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.
- C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein or to other addresses as either party establishes in writing upon notification to the other.
- **D.** Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed is subject to the Conservation Easement herein created.
- **E.** The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.
- F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement. The owner of the Property shall notify the State Property Office and the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property or of any request to void or modify this Conservation Easement. Such notifications and modification requests shall be addressed to:

Division of Mitigation Services Program Manager NC State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321

and

General Counsel
US Army Corps of Engineers

69 Darlington Avenue Wilmington, NC 28403

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VII. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Conservation Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Conservation Easement Area, and the right of quiet enjoyment of the Conservation Easement Area,

TO HAVE AND TO HOLD, the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes,

AND Grantor covenants that Grantor is seized of the Property in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY, WHEREOF, the Grantor has hereunto set his hand and seal, the cand year first above written.	lay
(SEAL)	
NORTH CAROLINA COUNTY OF JONES	
I,, a Notary Public in and for the County and State aforesa do hereby certify that <i>Elvin J. Lee Jr.</i> , Grantor, personally appeared before me this day a acknowledged the execution of the foregoing instrument.	ıid and
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20	
Notary Public	
My commission expires:	

IN TESTIMONY, WHEREOF , the Grantor has hereunto set his hand and seal, th and year first above written.	e day
(SEAL)	
NORTH CAROLINA COUNTY OF JONES	
I,, a Notary Public in and for the County and State aford do hereby certify that <i>Rebecca Lynn Lee Meadows</i> , Grantor, personally appeared before m day and acknowledged the execution of the foregoing instrument.	esaid
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20	
Notary Public	
My commission expires:	

IN TESTIMONY, WHEREOF, the Grantor has hereunto set his hand and seal, the dand year first above written.	ay
(SEAL)	
NORTH CAROLINA COUNTY OF JONES	
I,, a Notary Public in and for the County and State aforesa do hereby certify that <i>Susan Marie Lee</i> , Grantor, personally appeared before me this day a acknowledged the execution of the foregoing instrument.	id no
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20	
Notary Public	
My commission expires:	

IN TESTIMONY, WHEREOF, the Grantor has hereunto set his hand and seal, the dand year first above written.	ay
(SEAL)	
NORTH CAROLINA COUNTY OF JONES	
I,, a Notary Public in and for the County and State aforesa do hereby certify that <i>Dennis James Lee</i> , Grantor, personally appeared before me this day a acknowledged the execution of the foregoing instrument.	id no
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20	
Notary Public	
My commission expires:	

Exhibit A

[LEGAL DESCRIPTION]

AREA 1

LYING IN CHINQUAPIN TOWNSHIP, JONES COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NEW IRON STAKE AND CAP; SAID NEW IRON STAKE AND CAP HAVING NAD 83/2011 GRID COORDINATES, N=499,763.2822 FEET, E=2,498,892.6240 FEET;

THENCE FROM THE POINT OF BEGINNING SO LOCATED; RUNNING S 78°29'43" E 194.23 FEET TO A NEW IRON STAKE AND CAP: THENCE S 54°00'30" E 98.88 FEET TO A NEW IRON STAKE AND CAP; THENCE S 27°48'12" E 400.81 FEET TO A NEW IRON STAKE AND CAP; THENCE S 17°32'09" E 475.15 FEET TO A NEW IRON STAKE AND CAP; THENCE N 35°39'47" E 221.39 FEET TO A NEW IRON STAKE AND CAP; THENCE N 43°42'20" E 228.81 FEET TO A NEW IRON STAKE AND CAP: THENCE N 59°29'23" E 328.44 FEET TO A NEW IRON STAKE AND CAP; THENCE N 48°39'28" E 261.35 FEET TO A NEW IRON STAKE AND CAP; THENCE N 17°25'32" E 241.85 FEET TO A NEW IRON STAKE AND CAP; THENCE N 14°07'20" E 272.67 FEET TO A NEW IRON STAKE AND CAP: THENCE N 26°20'54" E 385.74 FEET TO A NEW IRON STAKE AND CAP: THENCE S 79°04'06" E 71.97 FEET TO A POINT IN THE CENTERLINE OF A CANAL; THENCE ALONG THE CENTERLINE OF SAID CANAL THE FOLLOWING COURSES: S 19°18'12" W 43.68 FEET TO A POINT; THENCE S 28°20'15" W 61.78 FEET TO A POINT; THENCE S 23°35'15" W 45.40 FEET TO A POINT; THENCE S 28°28'29" W 90.05 FEET TO A POINT; THENCE S 26°41'15" W 73.37 FEET TO A POINT; THENCE S 16°59'28" W 61.12 FEET TO A POINT; THENCE S 36°09'44 W 33.30 FEET TO A POINT; THENCE S 22°23'47" W 27.00 FEET TO A POINT; THENCE S 08°15'31" W 25.06 FEET TO A POINT; THENCE S 08°15'09" E 26.40 FEET TO A POINT; THENCE S 13°46'26" W 59.38 FEET TO A POINT; THENCE S 20°38'30" W 85.08 FEET TO A POINT; THENCE S 23°43'46" W 41.51 FEET TO A POINT; THENCE S 02°47'37" W 68.33 FEET TO A POINT; THENCE S 06°24'40" W 86.82 FEET TO A POINT; THENCE S 27°11'19" W 59.71 FEET TO A POINT; THENCE S 40°33'09" W 55.24 FEET TO A POINT; THENCE S 40°33'09" W 79.42 FEET TO A POINT; THENCE S 52°56'19" W 81.72 FEET TO A POINT; THENCE S 50°51'27" W 48.43 FEET TO A POINT; THENCE S 54°04'12" W 157.60 FEET TO A POINT; THENCE S 58°45'52" W 126.19 FEET TO A POINT; THENCE S 64°36'48" W 86.85 FEET TO A POINT; THENCE S 62°37'48" W 21.19 FEET TO A POINT; THENCE S 43°08'57" W 111.63 FEET TO A POINT; THENCE S 47°51'03" W 90.39 FEET TO A POINT; THENCE S 34°19'31" W 68.68 FEET TO A POINT; THENCE S 33°53'54" W 51.16 FEET TO A POINT; THENCE S 39°23'49" W 50.80 FEET TO A POINT; THENCE S 45°26'44" W 28.97 FEET TO A POINT; THENCE S 27°10'40" W 143.53 FEET TO A POINT AT THE INTERSECTION OF ANOTHER CANAL HEADING TO THE NORTHWEST; THENCE RUNNING ALONG THE CENTERLINE OF SAID CANAL HEADING TOWARD THE NORTHWEST THE FOLLOWING COURSES; N 89°18'07" W 21.78 FEET TO A POINT;

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AG reviewed 11 May 2017

THENCE N 20°43'37" W 66.42 FEET TO A POINT; THENCE N 37°23'04" W 37.83 FEET TO A POINT; THENCE N 20°22'02" W 42.11 FEET TO A POINT; THENCE N 27°00'47" W 56.82 FEET TO A POINT; THENCE N 23°07'37" W 47.94 FEET TO A POINT; THENCE N 37°38'24" W 43.83 FEET TO A POINT; THENCE N 14°37'53" W 45.41 FEET TO A POINT; THENCE N 17°02'15" W 99.02 FEET TO A POINT; THENCE N 11°07'14" W 41.91 FEET TO A POINT; THENCE N 24°03'58" W 67.33 FEET TO A POINT; THENCE N 04°07'25" W 63.84 FEET TO A POINT; THENCE N 11°19'05" W 23.32 FEET TO A POINT; THENCE N 28°13'10" W 39.79 FEET TO A POINT; THENCE N 31°28'33" W 50.64 FEET TO A POINT; THENCE N 25°47'49" W 82.96 FEET TO A POINT: THENCE N 16°44'05" W 51.73 FEET TO A POINT; THENCE N 24°55'55" W 33.96 FEET TO A POINT; THENCE N 51°42'43" W 25.33 FEET TO A POINT; THENCE N 44°50'44" W 52.23 FEET TO A POINT; THENCE N 44°00'17" W 80.88 FEET TO A POINT; THENCE S 85°32'33" W 35.17 FEET TO A POINT; THENCE N 70°19'59" W 54.27 FEET TO A POINT; THENCE N 73°06'20" W 26.96 FEET TO A POINT; THENCE N 85°41'13" W 32.96 FEET TO A POINT; THENCE N 73°04'54" W 25.29 FEET TO A POINT; THENCE LEAVING SAID CANAL AND RUNNING N 18°51'55" E 71.64 FEET TO THE POINT AND PLACE OF BEGINNING;

CONTAINING 5.635 ACRES MORE OR LESS AND BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 206, PAGE 143, AS RECORDED IN THE JONES COUNTY REGISTER OF DEEDS OFFICE.

STATE OF NORTH CAROLINA

DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT

JONES COUNTY

SPO File Number:

DMS Project Number: 100176

Prepared by: Office of the Attorney General

Property Control Section

Return to: NC Department of Administration

State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321

	THIS DEED OF COM	NSERVATION 1	EASEMENT A	ND RIGHT OF ACC	ESS, made
this _	day of	, 20	_, by <i>Elvin Jan</i>	nes Lee III, ("Granto	r"), whose
mailin	g address is PO Box 21.	3 Trenton, NC 28	8585 , to the Stat	e of North Carolina, ("	Grantee"),
whose	mailing address is State	e of North Caroli	na, Department	of Administration, Star	te Property
Office	, 1321 Mail Service Ce	nter, Raleigh, NO	27699-1321.	The designations of C	Frantor and
Grante	ee as used herein shall i	nclude said parti	es, their heirs, s	successors, and assigns	s, and shall
includ	e singular, plural, mascu	line, feminine, or	r neuter as requi	red by context.	

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Division of Mitigation Services (formerly known as the Ecosystem Enhancement Program and Wetlands Restoration Program) within the Department of Environmental Quality (formerly Department of Environment and Natural Resources), for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, this Conservation Easement from Grantor to Grantee has been negotiated, arranged and provided for as a condition of a full delivery contract between *Eco Terra Partners*, *LLC*, 1328 *Dekalb Avenue Atlanta*, *GA* 30307 and the North Carolina Department of Environmental Quality, to provide stream, wetland and/or buffer mitigation pursuant to the North Carolina Department of Environmental Quality Purchase and Services Contract Number 0103-01.

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Understanding, (MOU) duly executed by all parties on November 4, 1998. This MOU recognized that the Wetlands Restoration Program was to provide effective compensatory mitigation for authorized impacts to wetlands, streams and other aquatic resources by restoring, enhancing and preserving the wetland and riparian areas of the State; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003, which recognizes that the Division of Mitigation Services (formerly Ecosystem Enhancement Program) is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the Department of Environment and Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Division of Water Quality, the North Carolina Division of Coastal Management, and the National Marine Fisheries Service entered into an agreement to continue the In-Lieu Fee operations of the North Carolina Department of Natural Resources' Division of Mitigation Services (formerly Ecosystem Enhancement Program) with an effective date of 28 July, 2010, which supersedes and replaces the previously effective MOA and MOU referenced above; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, the Division of Mitigation Services in the Department of Environmental Quality (formerly Department of Environment and Natural Resources), which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in *Trenton* Township, *Jones* County, North Carolina (the "Property"), and being more particularly

described as that certain parcel of land containing approximately 36.60 acres and being conveyed to the Grantor by deed as recorded in **Deed Book** 339 at **Page** 358 of the **Jones** County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access over the herein described areas of the Property, thereby restricting and limiting the use of the areas of the Property subject to the Conservation Easement to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept said Easement and Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of *Musselshell Creek and one of its unnamed tributaries*.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement and Right of Access together with an access easement to and from the Conservation Easement Area described below.

The Conservation Easement Area consists of the following:

Tracts Number 5409-09-76-0100 containing a total of 1.30 acres as shown on	the plats of survey
entitled "Final Plat, Conservation Easement for North Carolina Division of M	Mitigation Services,
Project Name: Kingfield Buffer Mitigation Site, SPO File No	, DMS Site No.
100176, Property of Elvin James Lee, III," dated August 10th, 2021 by Cl	hris P aderick <u>,</u> PLS
Number L-4189 and recorded in the Jones County, North Carolina Register of	Deeds at Plat Book
Pages	

See attached "Exhibit A", Legal Description of area of the Property hereinafter referred to as the "Conservation Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or riparian resources in the Conservation Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Conservation Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. ACCESS EASEMENT

[GENERAL LOCATION OPTION] Grantor hereby grants and conveys unto Grantee, its employees, agents, successors and assigns, a perpetual, non-exclusive easement for ingress and egress over and upon the Property at all reasonable times and at such location as practically necessary to access the Conservation Easement Area for the purposes set forth herein ("Access Easement"). This grant of easement shall not vest any rights in the public and shall not be construed as a public dedication of the Access Easement. Grantor covenants, represents and warrants that it is the sole owner of and is seized of the Property in fee simple and has the right to grant and convey this Access Easement.

III. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Conservation Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

- **A.** Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Conservation Easement Area for the purposes thereof.
- **B.** Motorized Vehicle Use. Motorized vehicle use in the Conservation Easement Area is prohibited except within a Crossing Area(s) or Road or Trail as shown on the recorded survey plat.
- C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Conservation Easement Area not inconsistent with this Conservation Easement, and the right of access to the Conservation Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.
- D. **Damage to Vegetation.** Except within Crossing Area(s) as shown on the recorded survey plat and as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Conservation Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Conservation Easement Area is prohibited.
- **E.** Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Conservation Easement Area.
- **F. Agricultural Use.** All agricultural uses are prohibited within the Conservation Easement Area including any use for cropland, waste lagoons, or pastureland.

- **G.** New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Conservation Easement Area.
- H. **Roads and Trails.** There shall be no construction or maintenance of new roads, trails, walkways, or paving in the Conservation Easement.

All existing roads, trails and crossings within the Conservation Easement Area shall be shown on the recorded survey plat.

- I. Signs. No signs shall be permitted in the Conservation Easement Area except interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Conservation Easement Area.
- **J. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Conservation Easement Area is prohibited.
- **K. Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, drilling, hydraulic fracturing; removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
- L. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water in the Conservation Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Conservation Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Conservation Easement Area may temporarily be withdrawn for good cause shown as needed for the survival of livestock on the Property.
- M. Subdivision and Conveyance. Grantor voluntarily agrees that no further subdivision, partitioning, or dividing of the Conservation Easement Area portion of the Property owned by the Grantor in fee simple ("fee") that is subject to this Conservation Easement is allowed. Any future transfer of the Property shall be subject to this Conservation Easement and Right of Access and to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Conservation Easement Area for the purposes set forth herein.
- **N. Development Rights.** All development rights are permanently removed from the Conservation Easement Area and are non-transferrable.
- O. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Conservation Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

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AG reviewed 11 May 2017

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the Division of Mitigation Services, 1652 Mail Services Center, Raleigh, NC 27699-1652.

IV. GRANTEE RESERVED USES

- A. Right of Access, Construction, and Inspection. The Grantee, its employees, agents, successors and assigns, shall have a perpetual Right of Access over and upon the Conservation Easement Area to undertake or engage in any activities necessary to construct, maintain, manage, enhance, repair, restore, protect, monitor and inspect the stream, wetland and any other riparian resources in the Conservation Easement Area for the purposes set forth herein or any long-term management plan for the Conservation Easement Area developed pursuant to this Conservation Easement.
- **B.** Restoration Activities. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.
- C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.
- **D.** Fences. Conservation Easements are purchased to protect the investments by the State (Grantee) in natural resources. Livestock within conservations easements damages the investment and can result in reductions in natural resource value and mitigation credits which would cause financial harm to the State. Therefore, Landowners (Grantor) with livestock are required to restrict livestock access to the Conservation Easement area. Repeated failure to do so may result in the State (Grantee) repairing or installing livestock exclusion devices (fences) within the conservation area for the purpose of restricting livestock access. In such cases, the landowner (Grantor) must provide access to the State (Grantee) to make repairs.
- **E.** Crossing Area(s). The Grantee is not responsible for maintenance of crossing area(s), however, the Grantee, its employees and agents, successors or assigns, reserve the right to repair crossing area(s), at its sole discretion and to recover the cost of such repairs from the Grantor if such repairs are needed as a result of activities of the Grantor, his successors or assigns.

V. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Conservation Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features in the Conservation Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall,

except as provided below, notify the Grantor in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Conservation Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief, if the breach is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

- **B.** Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Conservation Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor is complying with the terms, conditions and restrictions of this Conservation Easement.
- C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Conservation Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life or damage to the Property resulting from such causes.
- **D.** Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.
- **E. No Waiver.** Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VI. MISCELLANEOUS

A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

- **B.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.
- C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein or to other addresses as either party establishes in writing upon notification to the other.
- **D.** Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed is subject to the Conservation Easement herein created.
- **E.** The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.
- F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement. The owner of the Property shall notify the State Property Office and the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property or of any request to void or modify this Conservation Easement. Such notifications and modification requests shall be addressed to:

Division of Mitigation Services Program Manager NC State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321

and

General Counsel US Army Corps of Engineers 69 Darlington Avenue Wilmington, NC 28403

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code,

and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VII. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Conservation Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Conservation Easement Area, and the right of quiet enjoyment of the Conservation Easement Area,

TO HAVE AND TO HOLD, the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes,

AND Grantor covenants that Grantor is seized of the Property in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

(SEAL)
NORTH CAROLINA COUNTY OF JONES
I,, a Notary Public in and for the County and State aforesa do hereby certify that <i>Elvin James Lee III</i> , Grantor, personally appeared before me this day a acknowledged the execution of the foregoing instrument.
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20
Notary Public
My commission expires:

Exhibit A

AREA 2

LYING IN CHINQUAPIN TOWNSHIP, JONES COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN A CANAL; SAID POINT IN CANAL BEING FURTHER LOCATED S 79°38'06" E 1448.76 FEET FROM A NEW IRON STAKE AND CAP; SAID NEW IRON STAKE AND CAP HAVING NAD 83/2011 GRID COORDINATES, N=499,763.2822 FEET, E=2,498,892.6240 FEET;

THENCE FROM THE POINT OF BEGINNING SO LOCATED AND RUNNING THE CENTERLINE OF SAID CANAL THE FOLLOWING COURSES; N 40°33'09" E 55.24 FEET TO A POINT; THENCE N 27°11'19" E 59.71 FEET TO A POINT; THENCE N 06°24'40" E 86.82 FEET TO A POINT; THENCE N 02°47'37" E 68.33 FEET TO A POINT; THENCE N 23°43'46" E 41.51 FEET TO A POINT; THENCE N 20°38'30" E 85.08 FEET TO A POINT; THENCE N 13°46'26" E 59.38 FEET TO A POINT; THENCE N 08°15'09" W 26.40 FEET TO A POINT; THENCE N 08°15'31" E 25.06 FEET TO A POINT; THENCE N 22°23'47" E 27.00' TO A POINT: THENCE N 36°09'44" E 33.30 FEET TO A POINT: THENCE N 16°59'28" E 61.12 FEET TO A POINT; THENCE N 26°41'15" E 73.37 FEET TO A POINT; THENCE N 28°28'29" E 90.05 FEET TO A POINT; THENCE N 23°35'15" E 45.40 FEET TO A POINT; THENCE N 28°20'15" E 61.78 FEET TO A POINT; THENE N 19°18'12" E 43.68 FEET TO A POINT; THENCE LEAVING SAID CANAL AND RUNNING S 79°04'06" E 57.88 FEET TO A NEW IRON STAKE AND CAP; THENCE S 24°35'06" W 429.80 FEET TO A NEW IRON STAKE AND CAP; THENCE S 12°27'21" W 442.71 FEET TO A NEW IRON STAKE AND CAP; THENCE S 38°00'19" W 82.69 FEET TO A NEW IRON STAKE AND CAP; THENCE N 60°01'50" W 47.46 FEET TO A NEW IRON STAKE AND CAP; THENCE CONTINUING N 60°01'50" W 15.00 FEET TO THE POINT AND PLACE OF BEGINNING;

CONTAINING 1.301 ACRES MORE OR LESS AND BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 399, PAGE 358, AS RECORDED IN THE JONES COUNTY REGISTER OF DEEDS OFFICE.

STATE OF NORTH CAROLINA

DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT

JONES COUNTY

SPO File Number: DMS Project Number:

Prepared by: Office of the Attorney General Property Control Section Return to: NC Department of Administration State Property Office 1321 Mail Service Center

1321 Mail Service Center Raleigh, NC 27699-1321

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, made this ______ day of _____, 20__, by Elvin J. Lee Jr., ("Grantor"), whose mailing address is PO Box 213 Trenton, NC 28585, to the State of North Carolina, ("Grantee"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations of Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Division of Mitigation Services (formerly known as the Ecosystem Enhancement Program and Wetlands Restoration Program) within the Department of Environmental Quality (formerly Department of Environment and Natural Resources), for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, this Conservation Easement from Grantor to Grantee has been negotiated, arranged and provided for as a condition of a full delivery contract between *Eco Terra Partners*, *LLC*, *1328 Dekalb Ave. Atlanta*, *GA 30307* and the North Carolina Department of Environmental Quality, to provide stream, wetland and/or buffer mitigation pursuant to the North Carolina Department of Environmental Quality Purchase and Services Contract Number 0103-01.

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Understanding, (MOU) duly executed by all parties on November 4, 1998. This MOU recognized that the Wetlands Restoration Program was to provide effective compensatory mitigation for authorized impacts to wetlands, streams and other aquatic resources by restoring, enhancing and preserving the wetland and riparian areas of the State; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003, which recognizes that the Division of Mitigation Services (formerly Ecosystem Enhancement Program) is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the Department of Environment and Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Division of Water Quality, the North Carolina Division of Coastal Management, and the National Marine Fisheries Service entered into an agreement to continue the In-Lieu Fee operations of the North Carolina Department of Natural Resources' Division of Mitigation Services (formerly Ecosystem Enhancement Program) with an effective date of 28 July, 2010, which supersedes and replaces the previously effective MOA and MOU referenced above; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, the Division of Mitigation Services in the Department of Environmental Quality (formerly Department of Environment and Natural Resources), which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in *Trenton* Township, *Jones* County, North Carolina (the "Property"), and being more particularly

described as that certain parcel of land containing approximately 36.12 acres and being conveyed to the Grantor by deed as recorded in **Deed Book** 406 at **Page** 318 of the **Jones** County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access over the herein described areas of the Property, thereby restricting and limiting the use of the areas of the Property subject to the Conservation Easement to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept said Easement and Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of *Musselshell Creek and one of its unnamed tributaries*.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement and Right of Access together with an access easement to and from the Conservation Easement Area described below.

The Conservation Easement Area consists of the following:

Tracts Number 4499-88-58-3900 containing a total of 1.84 acres as sho	wn on the plats of survey
entitled "Final Plat, Conservation Easement for North Carolina Division	on of Mitigation Services,
Project Name: Kingfield Buffer Mitigation Site, SPO File No	, DMS Site No. 100176,
Property of Elvin J. Lee, Jr," dated August 10th, 2021 by Chris Pader	rick, PLS Number L-4189
and recorded in the Jones County County, North Carolina Register of De	eeds at Plat Book
Pages	

See attached "Exhibit A", Legal Description of area of the Property hereinafter referred to as the "Conservation Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or riparian resources in the Conservation Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Conservation Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. ACCESS EASEMENT

[GENERAL LOCATION OPTION] Grantor hereby grants and conveys unto Grantee, its employees, agents, successors and assigns, a perpetual, non-exclusive easement for ingress and egress over and upon the Property at all reasonable times and at such location as practically necessary to access the Conservation Easement Area for the purposes set forth herein ("Access Easement"). This grant of easement shall not vest any rights in the public and shall not be construed as a public dedication of the Access Easement. Grantor covenants, represents and warrants that it is the sole owner of and is seized of the Property in fee simple and has the right to grant and convey this Access Easement.

III. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Conservation Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

- **A.** Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Conservation Easement Area for the purposes thereof.
- **B.** Motorized Vehicle Use. Motorized vehicle use in the Conservation Easement Area is prohibited except within a Crossing Area(s) or Road or Trail as shown on the recorded survey plat.
- C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Conservation Easement Area not inconsistent with this Conservation Easement, and the right of access to the Conservation Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.
- D. **Damage to Vegetation.** Except within Crossing Area(s) as shown on the recorded survey plat and as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Conservation Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Conservation Easement Area is prohibited.
- **E.** Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Conservation Easement Area.
- **F. Agricultural Use.** All agricultural uses are prohibited within the Conservation Easement Area including any use for cropland, waste lagoons, or pastureland.

- **G.** New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Conservation Easement Area.
- H. **Roads and Trails.** There shall be no construction or maintenance of new roads, trails, walkways, or paving in the Conservation Easement.

All existing roads, trails and crossings within the Conservation Easement Area shall be shown on the recorded survey plat.

- I. Signs. No signs shall be permitted in the Conservation Easement Area except interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Conservation Easement Area.
- **J. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Conservation Easement Area is prohibited.
- K. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, drilling, hydraulic fracturing; removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
- L. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water in the Conservation Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Conservation Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Conservation Easement Area may temporarily be withdrawn for good cause shown as needed for the survival of livestock on the Property.
- M. Subdivision and Conveyance. Grantor voluntarily agrees that no further subdivision, partitioning, or dividing of the Conservation Easement Area portion of the Property owned by the Grantor in fee simple ("fee") that is subject to this Conservation Easement is allowed. Any future transfer of the Property shall be subject to this Conservation Easement and Right of Access and to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Conservation Easement Area for the purposes set forth herein.
- **N. Development Rights.** All development rights are permanently removed from the Conservation Easement Area and are non-transferrable.
- O. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Conservation Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

NCDMS Full Delivery Conservation Easement Template

AG reviewed 11 May 2017

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the Division of Mitigation Services, 1652 Mail Services Center, Raleigh, NC 27699-1652.

IV. GRANTEE RESERVED USES

- A. Right of Access, Construction, and Inspection. The Grantee, its employees, agents, successors and assigns, shall have a perpetual Right of Access over and upon the Conservation Easement Area to undertake or engage in any activities necessary to construct, maintain, manage, enhance, repair, restore, protect, monitor and inspect the stream, wetland and any other riparian resources in the Conservation Easement Area for the purposes set forth herein or any long-term management plan for the Conservation Easement Area developed pursuant to this Conservation Easement.
- **B.** Restoration Activities. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.
- C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.
- **D.** Fences. Conservation Easements are purchased to protect the investments by the State (Grantee) in natural resources. Livestock within conservations easements damages the investment and can result in reductions in natural resource value and mitigation credits which would cause financial harm to the State. Therefore, Landowners (Grantor) with livestock are required to restrict livestock access to the Conservation Easement area. Repeated failure to do so may result in the State (Grantee) repairing or installing livestock exclusion devices (fences) within the conservation area for the purpose of restricting livestock access. In such cases, the landowner (Grantor) must provide access to the State (Grantee) to make repairs.
- **E.** Crossing Area(s). The Grantee is not responsible for maintenance of crossing area(s), however, the Grantee, its employees and agents, successors or assigns, reserve the right to repair crossing area(s), at its sole discretion and to recover the cost of such repairs from the Grantor if such repairs are needed as a result of activities of the Grantor, his successors or assigns.

V. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Conservation Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features in the Conservation Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall,

except as provided below, notify the Grantor in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Conservation Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief, if the breach is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

- **B.** Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Conservation Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor is complying with the terms, conditions and restrictions of this Conservation Easement.
- C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Conservation Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life or damage to the Property resulting from such causes.
- **D.** Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.
- **E. No Waiver.** Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VI. MISCELLANEOUS

A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

- **B.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.
- C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein or to other addresses as either party establishes in writing upon notification to the other.
- **D.** Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed is subject to the Conservation Easement herein created.
- **E.** The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.
- F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement. The owner of the Property shall notify the State Property Office and the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property or of any request to void or modify this Conservation Easement. Such notifications and modification requests shall be addressed to:

Division of Mitigation Services Program Manager NC State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321

and

General Counsel US Army Corps of Engineers 69 Darlington Avenue Wilmington, NC 28403

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code,

and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VII. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Conservation Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Conservation Easement Area, and the right of quiet enjoyment of the Conservation Easement Area,

TO HAVE AND TO HOLD, the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes,

AND Grantor covenants that Grantor is seized of the Property in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY, WHEREOF, the Grantor has hereunto set his hand and seal, the datand year first above written.
(SEAL)
NORTH CAROLINA COUNTY OF JONES
, a Notary Public in and for the County and State aforesai do hereby certify that <i>Elvin J. Lee Jr.</i> , Grantor, personally appeared before me this day ar acknowledged the execution of the foregoing instrument.
IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this theday of, 20
Notary Public
My commission expires:

Exhibit A

[LEGAL DESCRIPTION]

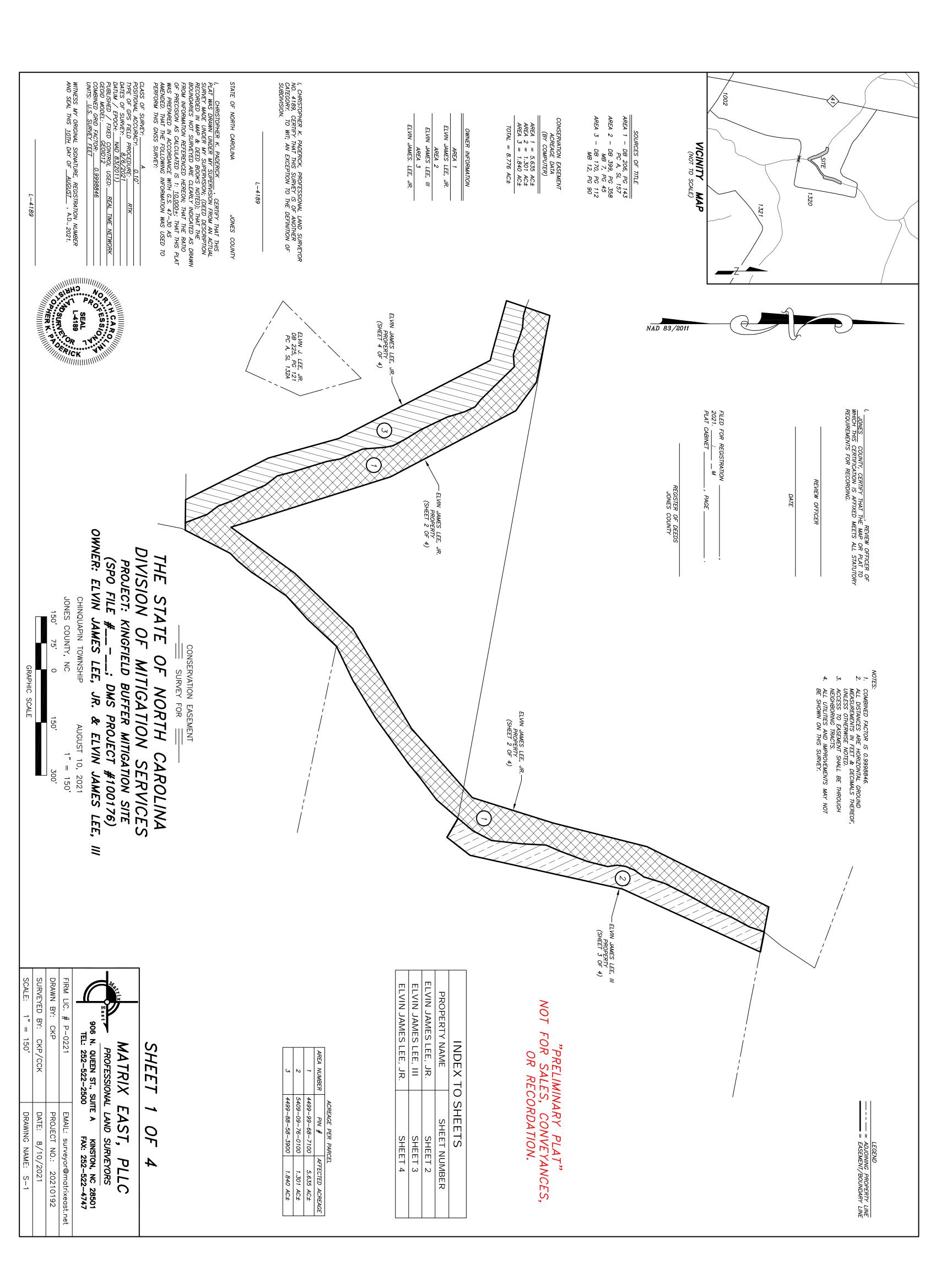
AREA 3

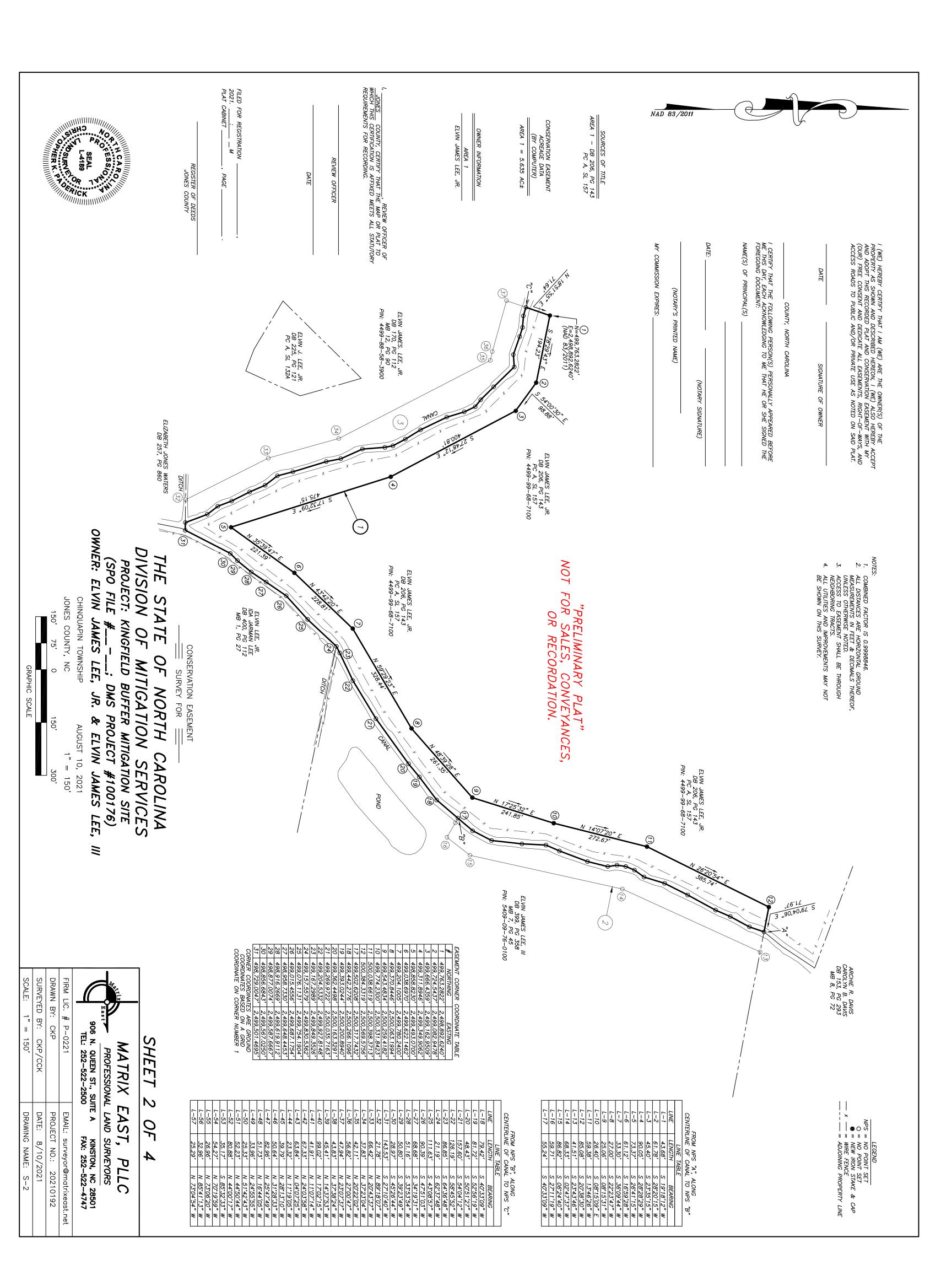
LYING IN CHINQUAPIN TOWNSHIP, JONES COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

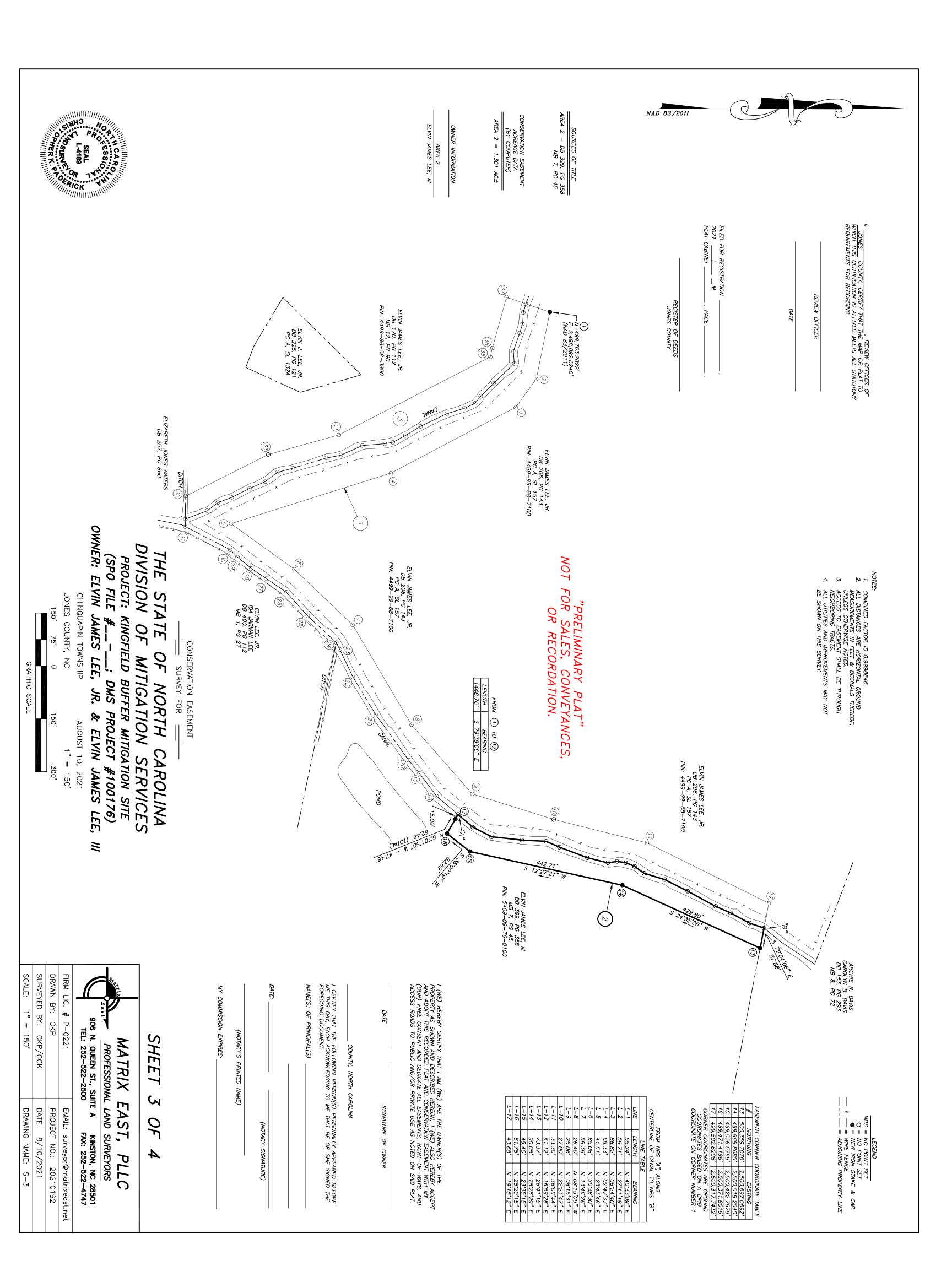
BEGINNING AT A POINT IN A CANAL; SAID POINT IN CANAL BEING FURTHER LOCATED S 18°51'55" W 71.64 FEET FROM A NEW IRON STAKE AND CAP; SAID NEW IRON STAKE AND CAP HAVING NAD 83/2011 GRID COORDINATES, N=499,763.2822 FEET, E=2,498,892.6240 FEET;

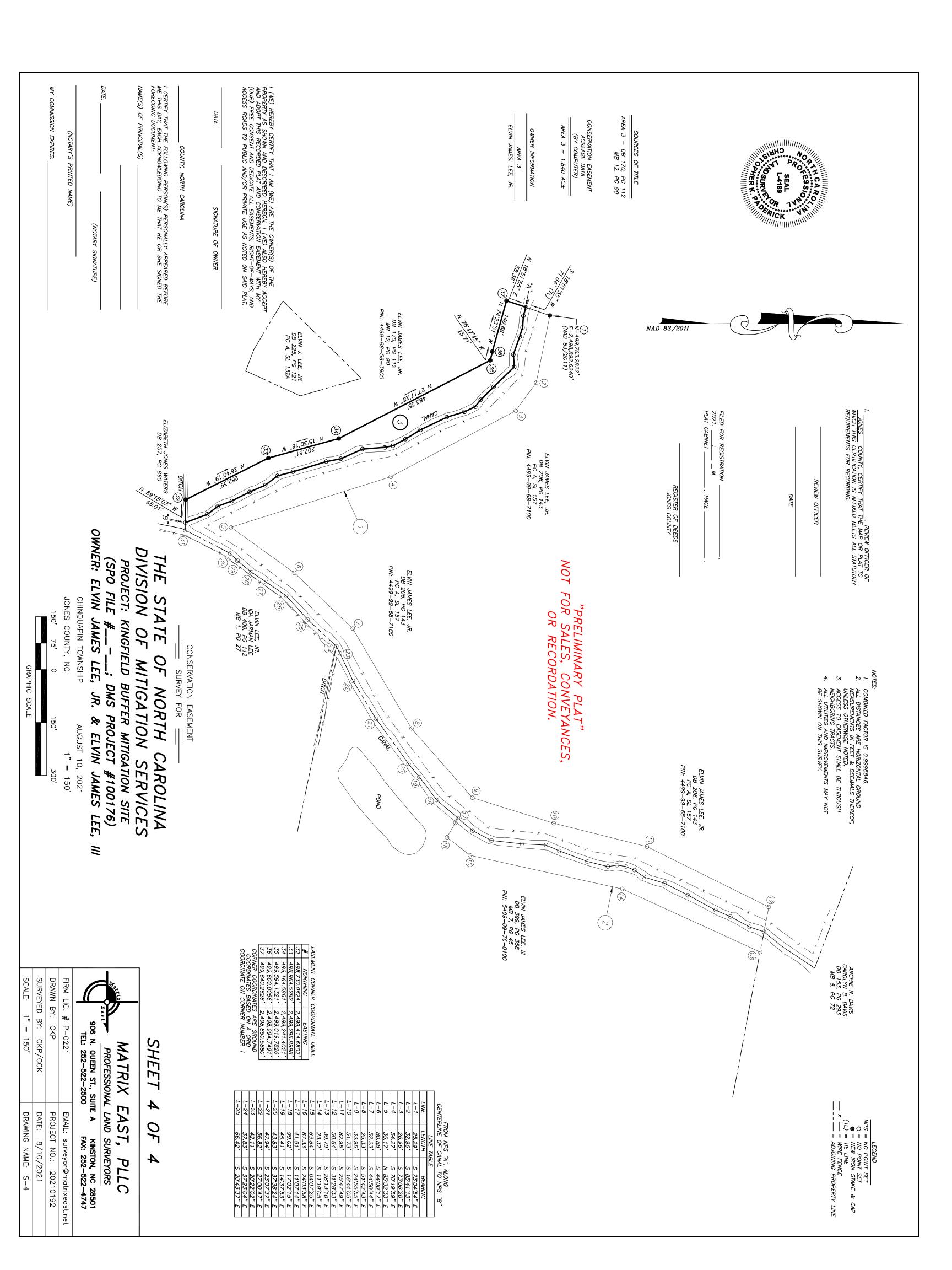
THENCE FROM THE POINT OF BEGINNING SO LOCATED AND RUNNING THE CENTERLINE OF SAID CANAL THE FOLLOWING COURSES; S 73°04'54" E 25.29 FEET TO A POINT; THENCE S 85°41'13" E 32.96 FEET TO A POINT; THENCE S 73°06'20" E 26.96 FEET TO A POINT; THENCE S 70°19'59" E 54.27 FEET TO A POINT; THENCE N 85°32'33" E 35.17 FEET TO A POINT; THENCE S 44°00'17" E 80.88 FEET TO A POINT; THENCE S 44°50'44" E 52.23 FEET TO A POINT; THENCE S 51°42'42" E 25.33 FEET TO A POINT: THENCE S 24°55'55" E 33.96 FEET TO A POINT: THENCE S 16°44'05" E 51.73 FEET TO A POINT; THENCE S 25°47'49" E 82.96 FEET TO A POINT; THENCE S 31°28'33" E 50.64 FEET TO A POINT; THENCE S 28°13'10" E 39.79 FEET TO A POINT; THENCE S 11°19'05" E 23.32 FEET TO A POINT; THENCE S 04°07'25" E 63.84 FEET TO A POINT; THENCE S 24°03'58" E 67.33 FEET TO A POINT; THENCE S 11°07'14" E 41.91 FEET TO A POINT; THENCE S 17°02'15" E 99.02' TO A POINT; THENCE S 14°37'53" E 45.41 FEET TO A POINT; THENCE S 37°38'24" E 43.83 FEET TO A POINT; THENCE S 23°07'37" E 47.94 FEET TO A POINT; THENCE S 27°00'47" E 56.82 FEET TO A POINT; THENCE S 20°22'02" E 42.11 FEET TO A POINT: THENCE S 37°23'04" E 37.83 FEET TO A POINT; THENCE S 20°43'37" E 66.42 FEET TO A POINT LOCATED AT THE INTERSECTION OF A DICTCH: THENCE ALONG THE CENTERLINE OF SAID DITCH N 89°18'07" W 65.01 FEET TO A NEW IRON STAKE AND CAP; THENCE LEAVING SAID DITCH AND RUNNING N 26°40'19" W 262.39 FEET TO AN NEW IRON STAKE AND CAP; THENCE N 15°30'16" W 207.61 FEET TO A NEW IRON STAKE AND CAP; THENCE N 27°17'28" W 483.35 FEET TO A NEW IRON STAKE AND CAP; THENCE N 76°47'25" W 25.71 FEET TO A NEW IRON STAKE AND CAP; THENCE N 74°23'51" W 149.68 FEET TO A NEW IRON STAKE AND CAP; THENCE N 18°51'55" E 58.36 FEET TO THE POINT AND PLACE OF BEGINNING;

CONTAINING 1.840 ACRES MORE OR LESS AND BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 170, PAGE 112, AS RECORDED IN THE JONES COUNTY REGISTER OF DEEDS OFFICE.









APPENDIX C

Signed Categorical Exclusion



June 11, 2021

Lin Xu North Carolina Department of Mitigation Services 217 W Jones St. Raleigh, NC 27603

Re: Kingfield Buffer Mitigation Site: NCDMS Contract #100176. Task 1 Deliverables

Mr. Xu,

Eco Terra is pleased to present you with the Environmental and Project Screening deliverables associated with Task 1 of our contract. Our package includes Stream Determination and Site Viability letters from NCDWR as well as categorical exclusion documentation. Our team has carried out proper coordination with the agencies associated with the following Acts.

- Categorical Exclusion Coordination Efforts
 - National Historic Preservation Act
 - o Endangered Species Act
 - Uniform Act
 - o CLCERA
 - Farmland Protection Policy Act

Sincerely,

Ted Griffith

Project Manager Ted@ecoterra.com

404-840-2697

Appendix A

Categorical Exclusion Form for Division of Mitigation Services Projects Version 2

Note: Only Appendix A should to be submitted (along with any supporting documentation) as the environmental document.

Part	1: General Project Information			
Project Name:	Kingfield Buffer Mitigation Site			
County Name:	Jones			
DMS Number:	100176			
Project Sponsor:	Eco Terra Partners, LLC			
Project Contact Name:	Ted Griffith			
Project Contact Address:				
	ect Contact E-mail: Ted@ecoterra.com			
DMS Project Manager:	Lin XU			
	Project Description			
Full Delivery Project to provide	de Riparian Buffer Mitigation Credits within Cataloging Unit			
(CU) 03020204 of the Neuse	River Basin.			
•				
	For Official Use Only			
Reviewed By:	Tor Ornolar Coc City			
neviewed by:				
7/28/2021	Lin Xu			
Date	DMS Project Manager			
Conditional Approved By:				
Conditional Approved By:				
D. C.	F. Ditt. Alexander			
Date	For Division Administrator			
	FHWA			
☐ Check this box if there are	outotanding issues			
Check this box if there are	outstanding issues			
Final Approval By:				
i mai Appiovai By.				
	Donald W Brew			
7-30-21	Vonald W Drew			
Date	For Division Administrator			
	FHWA			

Part 2: All Projects			
Regulation/Question	Response		
Coastal Zone Management Act (CZMA)			
Is the project located in a CAMA county?	☐ Yes ☒ No		
2. Does the project involve ground-disturbing activities within a CAMA Area of Environmental Concern (AEC)?	☐ Yes ☐ No ☒ N/A		
3. Has a CAMA permit been secured?	☐ Yes ☐ No ☑ N/A		
4. Has NCDCM agreed that the project is consistent with the NC Coastal Management Program?	☐ Yes ☐ No ☑ N/A		
Comprehensive Environmental Response, Compensation and Liability Act (C			
1. Is this a "full-delivery" project?			
2. Has the zoning/land use of the subject property and adjacent properties ever been designated as commercial or industrial?	☐ Yes ☒ No ☐ N/A		
3. As a result of a limited Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?	Yes No N/A		
4. As a result of a Phase I Site Assessment, are there known or potential hazardous waste sites within or adjacent to the project area?	☐ Yes ☐ No ☑ N/A		
5. As a result of a Phase II Site Assessment, are there known or potential hazardous waste sites within the project area?	☐ Yes ☐ No ☒ N/A		
6. Is there an approved hazardous mitigation plan?	☐ Yes ☐ No ☒ N/A		
National Historic Preservation Act (Section 106)			
1. Are there properties listed on, or eligible for listing on, the National Register of Historic Places in the project area?	☐ Yes ☒ No		
2. Does the project affect such properties and does the SHPO/THPO concur?	☐ Yes ☐ No ☒ N/A		
3. If the effects are adverse, have they been resolved?	☐ Yes ☐ No ☒ N/A		
Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uni	iform Act)		
1. Is this a "full-delivery" project?	X Yes		
2. Does the project require the acquisition of real estate?	X Yes □ No □ N/A		
3. Was the property acquisition completed prior to the intent to use federal funds?	☐ Yes ☒ No ☐ N/A		
 4. Has the owner of the property been informed: * prior to making an offer that the agency does not have condemnation authority; and * what the fair market value is believed to be? 	X Yes No N/A		

Part 3: Ground-Disturbing Activities	
Regulation/Question	Response
American Indian Religious Freedom Act (AIRFA)	
1. Is the project located in a county claimed as "territory" by the Eastern Band of	Yes
Cherokee Indians?	☑ No
2. Is the site of religious importance to American Indians?	Yes
	│
3. Is the project listed on, or eligible for listing on, the National Register of Historic	Yes
Places?	☐ No
	⊠ N/A
4. Have the effects of the project on this site been considered?	☐ Yes
	☐ No
	X N/A
Antiquities Act (AA)	
1. Is the project located on Federal lands?	Yes
	⊠ No
2. Will there be loss or destruction of historic or prehistoric ruins, monuments or objects	Yes
of antiquity?	□ No
2 Will a name it from the appropriate Forderel arrange by a provised 2	N/A N/A
3. Will a permit from the appropriate Federal agency be required?	Yes
	│
4. Has a permit been obtained?	Yes
4. Has a permit been obtained?	□ res
	N/A N/A
Archaeological Resources Protection Act (ARPA)	<u> </u>
1. Is the project located on federal or Indian lands (reservation)?	☐Yes
1. Is the project located on rederal or indian lands (reservation):	⊠ No
2. Will there be a loss or destruction of archaeological resources?	☐ Yes
·	☐ No
	X N/A
3. Will a permit from the appropriate Federal agency be required?	Yes
	☐ No
	⊠ N/A
4. Has a permit been obtained?	Yes
	□ No
Fredominand Opening Act (FOA)	N/A N/A
Endangered Species Act (ESA)	V Voc
1. Are federal Threatened and Endangered species and/or Designated Critical Habitat	X Yes □ No
listed for the county?	<u> </u>
2. Is Designated Critical Habitat or suitable habitat present for listed species?	Yes
	X No □ N/A
Are T&E species present or is the project being conducted in Designated Critical	Yes
Habitat?	□ res
Trabilat:	I NO I N/A
4. Is the project "likely to adversely affect" the specie and/or "likely to adversely modify"	Yes
Designated Critical Habitat?	□ No
	⊠ N/A
5. Does the USFWS/NOAA-Fisheries concur in the effects determination?	Yes
	□No
	⊠ N/A
6. Has the USFWS/NOAA-Fisheries rendered a "jeopardy" determination?	☐ Yes
	☐ No
	⊠ N/A

Executive Order 13007 (Indian Sacred Sites)	
1. Is the project located on Federal lands that are within a county claimed as "territory" by the EBCI?	☐ Yes Ⅺ No
2. Has the EBCI indicated that Indian sacred sites may be impacted by the proposed	Yes
project?	│
3. Have accommodations been made for access to and ceremonial use of Indian sacred	Yes
sites?	│
Farmland Protection Policy Act (FPPA)	Z 14// (
1. Will real estate be acquired?	X Yes
· ·	☐ No
2. Has NRCS determined that the project contains prime, unique, statewide or locally	X Yes
important farmland?	│
3. Has the completed Form AD-1006 been submitted to NRCS?	X Yes
	│
Fish and Wildlife Coordination Act (FWCA)	
1. Will the project impound, divert, channel deepen, or otherwise control/modify any	☐Yes
water body?	⊠ No
2. Have the USFWS and the NCWRC been consulted?	Yes
	│
Land and Water Conservation Fund Act (Section 6(f))	
1. Will the project require the conversion of such property to a use other than public,	☐ Yes
outdoor recreation?	⊠ No
2. Has the NPS approved of the conversion?	│
	X N/A
Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish	
1. Is the project located in an estuarine system?	☐ Yes
	⊠ No
2. Is suitable habitat present for EFH-protected species?	Yes
	│
3. Is sufficient design information available to make a determination of the effect of the	Yes
project on EFH?	☐ No
4. Will the project adversely affect EFH?	
4. Will the project adversely affect EFTT?	☐ No
	X N/A
5. Has consultation with NOAA-Fisheries occurred?	Yes
	│
Migratory Bird Treaty Act (MBTA)	
1. Does the USFWS have any recommendations with the project relative to the MBTA?	☐Yes
	X No
2. Have the USFWS recommendations been incorporated?	Yes
	│
Wilderness Act	
1. Is the project in a Wilderness area?	Yes
	X No
2. Has a special use permit and/or easement been obtained from the maintaining	Yes
federal agency?	│

Appendix D (Supporting Documents for Categorical Exclusion At-A-Glance)

Coastal Zone Management Act

✓ Provide scoping letter and document concurrence from NCDCM IF project in CAMA county (Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell & Washington).

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

✓ Document that there are no known or potential hazardous waste sites through a Limited Phase I Site Assessment report, such as an EDM report. **IF** sites are present, provide additional screening documentation or work with DMS/FHWA.

National Historic Preservation Act (Section 106)

- ✓ Provide scoping letter and document concurrence from SHPO.
- ✓ Provide scoping letter and document concurrence from ECBI IF located in ECBI County (Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes & Yancey)

Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)

✓ Document through signed Option Agreement or landowner letter as evidence that all project landowners were informed of fair market value of their property and notified that the land could not be acquired through eminent domain.

American Indian Religious Freedom Act (AIRFA)

✓ Provide scoping letter and document concurrence from three federally recognized Cherokee tribes **IF** located in ECBI County.

Antiquities Act (AA)

✓ Provide scoping letter and document concurrence from SHPO **IF** project located on federal lands. May require permit based on consultation.

Archaeological Resources Protection Act (ARPA)

✓ Provide scoping letter and document concurrence from SHPO IF project located on federal lands or Indian lands. May require permit based on consultation.

Endangered Species Act (ESA)

- ✓ Provide a species list and effect determinations, evaluate for critical habitat
- ✓ Provide scoping letter and document concurrence from USF&W and NOAA (if applicable)
- ✓ For sites under the Raleigh USF&W field office jurisdiction, follow the 9-step on-line process and provide Self Certification letter, species conclusion table, and email receipt.

Executive Order 13007 (Indian Sacred Sites)

✓ Provide scoping letter and document concurrence from three federally recognized Cherokee tribes **IF** located in ECBI County.

Farmland Protection Policy Act (FPPA)

✓ Provide documentation of completed NRCS form AD-1006, with assistance from NRCS. Fish and Wildlife Coordination Act (FWCA)

✓ Provide scoping letter and document concurrence from USF&W and NCWRC, if project will affect any water body.

Land and Water Conservation Fund Act (Section 6(f))

✓ Provide scoping letter and document concurrence from NPS IF project will convert recreation lands

Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat)

- ✓ Provide scoping letter and document concurrence from NCDMF **IF** project is in estuarine system. Migratory Bird Treaty Act (MBTA)
- ✓ Provide scoping letter to USF&W to identify any recommendations relative to MBTA Wilderness Act
 - ✓ Provide permit or easement IF project is in a Wilderness area

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Kingfield Buffer Mitigation Site Kingfield Buffer Mitigation Site Trenton, NC 28585

Inquiry Number: 6396141.18s

March 08, 2021

The EDR Radius Map™ Report



6 Armstrong Road, 4th floor Shelton, CT 06484 Toll Free: 800.352.0050 www.edrnet.com

TABLE OF CONTENTS

SECTION	PAGE
Executive Summary	ES1
Overview Map.	2
Detail Map.	3
Map Findings Summary	. 4
Map Findings.	. 8
Orphan Summary.	. 10
Government Records Searched/Data Currency Tracking.	GR-1
GEOCHECK ADDENDUM	r

GeoCheck - Not Requested

Thank you for your business.Please contact EDR at 1-800-352-0050 with any questions or comments.

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EXECUTIVE SUMMARY

A search of available environmental records was conducted by Environmental Data Resources, Inc (EDR). The report was designed to assist parties seeking to meet the search requirements of EPA's Standards and Practices for All Appropriate Inquiries (40 CFR Part 312), the ASTM Standard Practice for Environmental Site Assessments (E 1527-13), the ASTM Standard Practice for Environmental Site Assessments for Forestland or Rural Property (E 2247-16), the ASTM Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process (E 1528-14) or custom requirements developed for the evaluation of environmental risk associated with a parcel of real estate.

TARGET PROPERTY INFORMATION

ADDRESS

KINGFIELD BUFFER MITIGATION SITE TRENTON, NC 28585

COORDINATES

Latitude (North): 35.1105360 - 35° 6' 37.92" Longitude (West): 77.3293500 - 77° 19' 45.66"

Universal Tranverse Mercator: Zone 18 UTM X (Meters): 287704.3 UTM Y (Meters): 3887586.2

Elevation: 35 ft. above sea level

USGS TOPOGRAPHIC MAP ASSOCIATED WITH TARGET PROPERTY

Target Property Map: 5944988 TRENTON, NC

Version Date: 2013

North Map: 5944932 COVE CITY, NC

Version Date: 2013

AERIAL PHOTOGRAPHY IN THIS REPORT

Portions of Photo from: 20140706 Source: USDA

MAPPED SITES SUMMARY

Target Property Address: KINGFIELD BUFFER MITIGATION SITE TRENTON, NC 28585

Click on Map ID to see full detail.

MAP				RELATIVE	DIST (ft. & mi.)
ID	SITE NAME	ADDRESS	DATABASE ACRONYMS	ELEVATION	DIRECTION
1	ANDRE DIXON	125 GIBBS LANE	SHWS, IMD	Higher	3462, 0.656, West

TARGET PROPERTY SEARCH RESULTS

The target property was not listed in any of the databases searched by EDR.

DATABASES WITH NO MAPPED SITES

No mapped sites were found in EDR's search of available ("reasonably ascertainable ") government records either on the target property or within the search radius around the target property for the following databases:

STANDARD ENVIRONMENTAL RECORDS

Federal NPL site list NPL Proposed NPL NPL LIENS	. Proposed National Priority List Sites			
Federal Delisted NPL site lis	st			
Delisted NPL	National Priority List Deletions			
Federal CERCLIS list				
	Federal Facility Site Information listing Superfund Enterprise Management System			
Federal CERCLIS NFRAP site list				
SEMS-ARCHIVE	Superfund Enterprise Management System Archive			
Federal RCRA CORRACTS facilities list				
CORRACTS	. Corrective Action Report			
Federal RCRA non-CORRACTS TSD facilities list				
RCRA-TSDF	RCRA - Treatment, Storage and Disposal			
Federal RCRA generators list				

Federal institutional controls / engineering controls registries

RCRA-LQG______RCRA - Large Quantity Generators RCRA-SQG______RCRA - Small Quantity Generators

LUCIS.....Land Use Control Information System

Generators)

US ENG CONTROLS..... Engineering Controls Sites List US INST CONTROLS...... Institutional Controls Sites List

Federal ERNS list

ERNS..... Emergency Response Notification System

State- and tribal - equivalent NPL

NC HSDS..... Hazardous Substance Disposal Site

State and tribal landfill and/or solid waste disposal site lists

SWF/LF..... List of Solid Waste Facilities

DEBRIS_____Solid Waste Active Disaster Debris Sites Listing

OLI......Old Landfill Inventory

LCID...... Land-Clearing and Inert Debris (LCID) Landfill Notifications

State and tribal leaking storage tank lists

LUST...... Regional UST Database

LAST.....Leaking Aboveground Storage Tanks

INDIAN LUST Leaking Underground Storage Tanks on Indian Land LUST TRUST State Trust Fund Database

State and tribal registered storage tank lists

FEMA UST...... Underground Storage Tank Listing

UST..... Petroleum Underground Storage Tank Database

AST..... AST Database

INDIAN UST...... Underground Storage Tanks on Indian Land

State and tribal institutional control / engineering control registries

State and tribal voluntary cleanup sites

VCP......Responsible Party Voluntary Action Sites

INDIAN VCP..... Voluntary Cleanup Priority Listing

State and tribal Brownfields sites

BROWNFIELDS..... Brownfields Projects Inventory

ADDITIONAL ENVIRONMENTAL RECORDS

Local Brownfield lists

US BROWNFIELDS..... A Listing of Brownfields Sites

Local Lists of Landfill / Solid Waste Disposal Sites

SWRCY...... Recycling Center Listing

HIST LF..... Solid Waste Facility Listing

INDIAN ODI...... Report on the Status of Open Dumps on Indian Lands

ODI...... Open Dump Inventory

DEBRIS REGION 9..... Torres Martinez Reservation Illegal Dump Site Locations

IHS OPEN DUMPS..... Open Dumps on Indian Land

Local Lists of Hazardous waste / Contaminated Sites

US HIST CDL...... Delisted National Clandestine Laboratory Register US CDL...... National Clandestine Laboratory Register

Local Land Records

LIENS 2..... CERCLA Lien Information

Records of Emergency Release Reports

HMIRS_____ Hazardous Materials Information Reporting System

SPILLS...... Spills Incident Listing

Other Ascertainable Records

RCRA NonGen / NLR...... RCRA - Non Generators / No Longer Regulated

FUDS Formerly Used Defense Sites DOD Department of Defense Sites

SCRD DRYCLEANERS...... State Coalition for Remediation of Drycleaners Listing

US FIN ASSUR_____ Financial Assurance Information

EPA WATCH LIST..... EPA WATCH LIST

TSCA...... Toxic Substances Control Act

TRIS...... Toxic Chemical Release Inventory System

RAATS......RCRA Administrative Action Tracking System

ICIS...... Integrated Compliance Information System

FTTS______FIFRA/ TSCA Tracking System - FIFRA (Federal Insecticide, Fungicide, & Rodenticide

Act)/TSCA (Toxic Substances Control Act)

MLTS...... Material Licensing Tracking System COAL ASH DOE...... Steam-Electric Plant Operation Data

COAL ASH EPA..... Coal Combustion Residues Surface Impoundments List

PCB TRANSFORMER...... PCB Transformer Registration Database

RADINFO...... Radiation Information Database

HIST FTTS..... FIFRA/TSCA Tracking System Administrative Case Listing

DOT OPS..... Incident and Accident Data

CONSENT..... Superfund (CERCLA) Consent Decrees

INDIAN RESERV.....Indian Reservations

FUSRAP..... Formerly Utilized Sites Remedial Action Program

UMTRA..... Uranium Mill Tailings Sites

LEAD SMELTERS..... Lead Smelter Sites

US AIRS...... Aerometric Information Retrieval System Facility Subsystem

US MINES..... Mines Master Index File ABANDONED MINES..... Abandoned Mines

FINDS..... Facility Index System/Facility Registry System

UXO..... Unexploded Ordnance Sites

ECHO Enforcement & Compliance History Information
DOCKET HWC Hazardous Waste Compliance Docket Listing

FUELS PROGRAM...... EPA Fuels Program Registered Listing AIRS...... Air Quality Permit Listing

ASBESTOS..... ASBESTÓS

COAL ASH...... Coal Ash Disposal Sites

DRYCLEANERS..... Drycleaning Sites

Financial Assurance Financial Assurance Information Listing NPDES NPDES Facility Location Listing UIC Underground Injection Wells Listing AOP Animal Operation Permits Listing SEPT HAULERS Permitted Septage Haulers Listing CCB Coal Ash Structural Fills (CCB) Listing

MINES MRDS...... Mineral Resources Data System

PCSRP...... Petroleum-Contaminated Soil Remediation Permits

EDR HIGH RISK HISTORICAL RECORDS

EDR Exclusive Records

EDR MGP	EDR Proprietary Manufactured Gas Plants
EDR Hist Auto	EDR Exclusive Historical Auto Stations
EDR Hist Cleaner	EDR Exclusive Historical Cleaners

EDR RECOVERED GOVERNMENT ARCHIVES

Exclusive Recovered Govt. Archives

RGA HWS	Recovered Government Archive State Hazardous Waste Facilities List
RGA LF	Recovered Government Archive Solid Waste Facilities List
RGA LUST	Recovered Government Archive Leaking Underground Storage Tank

SURROUNDING SITES: SEARCH RESULTS

Surrounding sites were identified in the following databases.

Elevations have been determined from the USGS Digital Elevation Model and should be evaluated on a relative (not an absolute) basis. Relative elevation information between sites of close proximity should be field verified. Sites with an elevation equal to or higher than the target property have been differentiated below from sites with an elevation lower than the target property.

Page numbers and map identification numbers refer to the EDR Radius Map report where detailed data on individual sites can be reviewed.

Sites listed in bold italics are in multiple databases.

Unmappable (orphan) sites are not considered in the foregoing analysis.

STANDARD ENVIRONMENTAL RECORDS

State- and tribal - equivalent CERCLIS

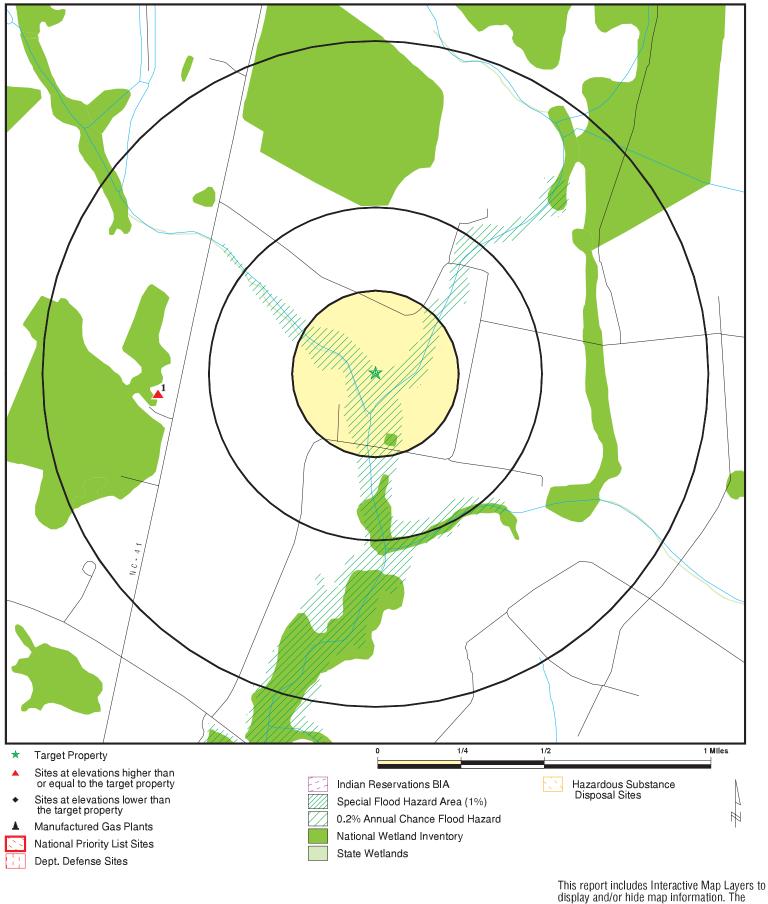
SHWS: The State Hazardous Waste Sites records are the states' equivalent to CERCLIS. These sites may or may not already be listed on the federal CERCLIS list. Priority sites planned for cleanup using state funds (state equivalent of Superfund) are identified along with sites where cleanup will be paid for by potentially responsible parties. The data come from the Department of Environment & Natural Resources' Inactive Hazardous Sites Program.

A review of the SHWS list, as provided by EDR, and dated 11/02/2020 has revealed that there is 1 SHWS site within approximately 1 mile of the target property.

Equal/Higher Elevation	Address	Direction / Distance	Map ID	Page
ANDRE DIXON	125 GIBBS LANE	W 1/2 - 1 (0.656 mi.)	1	8
Facility Id: NONCD0001270				

There were no unmapped sites in this report.

OVERVIEW MAP - 6396141.18S



display and/or hide map information. The legend includes only those icons for the default map view.

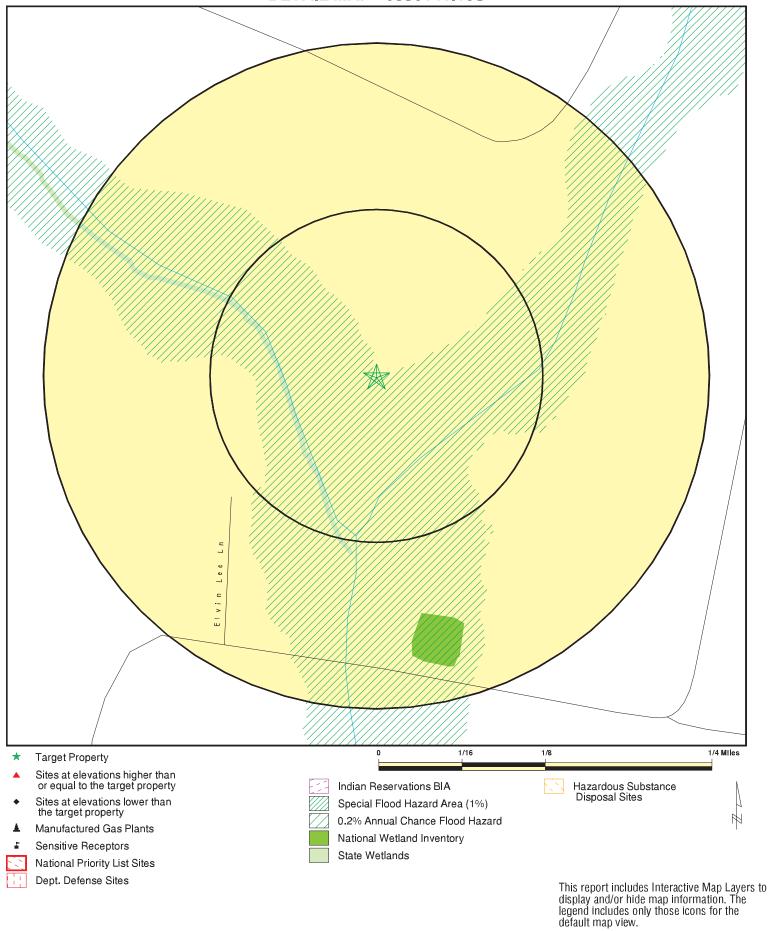
SITE NAME: Kingfield Buffer Mitigation Site ADDRESS: Kingfield Buffer Mitigation Site

Trenton NC 28585 LAT/LONG: 35.110536 / 77.32935 CLIENT: Eco Terra Management, CONTACT: Jamey Oshaughnessey INQUIRY #: 6396141.18s Eco Terra Management, LLC

DATE: March 08, 2021 4:24 pm

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DETAIL MAP - 6396141.18S



SITE NAME: Kingfield Buffer Mitigation Site

Trenton NC 28585

35.110536 / 77.32935

Kingfield Buffer Mitigation Site

ADDRESS:

LAT/LONG:

March 08, 2021 4:25 pm Copyright © 2021 EDR, Inc. © 2015 TomTom Rel. 2015.

Eco Terra Management, LLC

CLIENT: Eco Terra Management, CONTACT: Jamey Oshaughnessey INQUIRY #: 6396141.18s

DATE:

Endangered Species Act (ESA)

Species Conclusions Table

Project Name: Kingfield Buffer Mitigation Site

Date: 3/29/2021

Side Note: 1) In-water work is being avoided which should be noted in this watershed in which there are listed aquatic species. 2) Stringent sediment

and erosion controls will be in place.

Species / Resource Name	Conclusion	ESA Section 7 / Eagle Act Determination	Notes / Documentation
Northern Long-eared Bat Myotis septentrionalis	No suitable habitat	No effect	There are no trees, caves, or any other crevices that would provide roosting habitat.
Red-cockaded Woodpecker <i>Picoides</i> <i>borealis</i>	No suitable habitat	No effect	The Action Area does not consist of any fire-dependent open, mature, od southern pine forests or foraging grounds needed to support this species.
American Alligator Alligator mississippiensis	No suitable habitat	No effect	The Action Area has insufficient habitat, lack of open water, and lack of nesting / foragin areas.
Neuse River Waterdog Necturus lewisi	No suitable habitat	MANLAA	No gravel, bedrock, cover, and stream flow does not support suitable habitat for the Neuse-River Waterdog. Project should provide beneficial affects to downstream water quality and hydrology.
Carolina Madtom Noturus furiosus	No suitable habitat	No effect	Suitable substrate not present, stream flow not suitable, water quality not supportive.
Critical Habitat	No critical habitat present	No effect	n/a
Bald Eagle	Unlikely to disturb nesting bald eagles	No Eagle Act Permit Required	Project is more the 660 feet from any potential or known bald eagle nest or any roosting/nesting trees.
Northern Long-eared Bat	No suitable habitat	No effect	No tree cutting or tree removal will occur.

Acknowledgement: I agree that the above information about my proposed project is true. I used all of the provided resources to make an informed decision about impacts in the immediate and surrounding areas.

Signature /Title	Date
	3/30/2021
Scott J Frederick / Environmental Scientist	



@ 8:53 AM (2 hours ago)



Matthews, Kathryn H to me, Leigh -

Hi Jamey,

I couldn't tell if you wanted a written response on this one, but I do want to give you my thoughts on this. As you know, the site is about one mile or so upstream of known occurrences of Neuse River waterdog (NRWD), which is proposed for listing as threatened. Critical habitat for NRWD is proposed for the Trent River downstream. Your package states that there isn't suitable habitat on the site, but it's not clear if there is suitable habitat closer to the site in Musselshell Creek. We are concerned about potential downstream impacts from sedimentation and erosion, so in this case, I would make a "may affect, not likely to adversely affect determination" (MANLAA) rather than "no effect." Like the Colonial Farms site, another good reason to make a MANLAA determination is that the project should provide beneficial affects to downstream water quality and hydrology, so a beneficial effect to the NRWD is expected.

Finally, the name of the site indicates that perhaps the only work is buffer planting. If that is true, I would be sure to put that info in the species conclusions table. It is good to point out, where possible, that in-water work is being avoided in watersheds with listed aquatic species. I appreciate the info about stringent sediment and erosion controls also. As I said before, you are welcome to change the row sizes on the species conclusions table to fit in whatever info you need, or you can provide a separate page with a narrative that includes information on the work being conducted. Many consultants provide a narrative page to describe construction methods, avoidance and minimization measures, etc. That is appropriate and helpful especially for projects that are in the same 10-digit watershed as a listed or proposed species. More info is always helpful for these reviews.

I hope this is helpful.

Please note that I am teleworking almost exclusively. Email is the best way to reach me. Thanks,

Kathy Matthews Fish and Wildlife Biologist U.S. Fish and Wildlife Service 551-F Pylon Drive Raleigh, NC 27606 919-856-4520, x. 27

From: Mann, Leigh on behalf of Raleigh, FW4 raleigh@fws.gov>

Sent: Monday, April 12, 2021 11:05 AM

To: Matthews, Kathryn H < kathryn matthews@fws.gov>

Subject: DUE DATE: APRIL 29, 2021 Fw: [EXTERNAL] Online Project Review Request Letter I Kingfield Buffer Mitigation Site



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh Field Office P.O. Box 33726 Raleigh, NC 27636-3726

	Date:
	Self-Certification Letter
Project Name	

Dear Applicant:

Thank you for using the U.S. Fish and Wildlife Service (Service) Raleigh Ecological Services online project review process. By printing this letter in conjunction with your project review package, you are certifying that you have completed the online project review process for the project named above in accordance with all instructions provided, using the best available information to reach your conclusions. This letter, and the enclosed project review package, completes the review of your project in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c, 54 Stat. 250), as amended (Eagle Act). This letter also provides information for your project review under the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321-4347, 83 Stat. 852), as amended. A copy of this letter and the project review package must be submitted to this office for this certification to be valid. This letter and the project review package will be maintained in our records.

The species conclusions table in the enclosed project review package summarizes your ESA and Eagle Act conclusions. Based on your analysis, mark all the determinations that apply:

"no effect" determinations for proposed/listed species and/or proposed/designated critical habitat; and/or

"may affect, not likely to adversely affect" determinations for proposed/listed species and/or proposed/designated critical habitat; and/or

"may affect, likely to adversely affect" determination for the Northern longeared bat (Myotis septentrionalis) and relying on the findings of the January 5, 2016, Programmatic Biological Opinion for the Final 4(d) Rule on the Northern long-eared bat;

"no Eagle Act permit required" determinations for eagles.

Applicant Page 2

We certify that use of the online project review process in strict accordance with the instructions provided as documented in the enclosed project review package results in reaching the appropriate determinations. Therefore, we concur with the "no effect" or "not likely to adversely affect" determinations for proposed and listed species and proposed and designated critical habitat: the "may affect" determination for Northern long-eared bat; and/or the "no Eagle Act permit required" determinations for eagles. Additional coordination with this office is not needed. Candidate species are not legally protected pursuant to the ESA. However, the Service encourages consideration of these species by avoiding adverse impacts to them. Please contact this office for additional coordination if your project action area contains candidate species. Should project plans change or if additional information on the distribution of proposed or listed species, proposed or designated critical habitat, or bald eagles becomes available, this determination may be reconsidered. This certification letter is valid for 1 year. Information about the online project review process including instructions, species information, and other information regarding project reviews within North Carolina is available at our website http://www.fws.gov/raleigh/pp.html. If you have any questions, you can write to us at Raleigh@fws.gov or please contact Leigh Mann of this office at 919-856-4520, ext. 10.

Sincerely,

/s/Pete Benjamin

Pete Benjamin Field Supervisor Raleigh Ecological Services

Enclosures - project review package



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Raleigh Ecological Services Field Office Post Office Box 33726 Raleigh, NC 27636-3726 Phone: (919) 856-4520 Fax: (919) 856-4556

In Reply Refer To: March 29, 2021

Consultation Code: 04EN2000-2021-SLI-0921

Event Code: 04EN2000-2021-E-02021

Project Name: Kingfield Buffer Mitigation Site

Subject: List of threatened and endangered species that may occur in your proposed project

location or may be affected by your proposed project

To Whom It May Concern:

The species list generated pursuant to the information you provided identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

Section 7 of the Act requires that all federal agencies (or their designated non-federal representative), in consultation with the Service, insure that any action federally authorized, funded, or carried out by such agencies is not likely to jeopardize the continued existence of any federally-listed endangered or threatened species. A biological assessment or evaluation may be prepared to fulfill that requirement and in determining whether additional consultation with the Service is necessary. In addition to the federally-protected species list, information on the species' life histories and habitats and information on completing a biological assessment or

evaluation and can be found on our web page at http://www.fws.gov/raleigh. Please check the web site often for updated information or changes

If your project contains suitable habitat for any of the federally-listed species known to be present within the county where your project occurs, the proposed action has the potential to adversely affect those species. As such, we recommend that surveys be conducted to determine the species' presence or absence within the project area. The use of North Carolina Natural Heritage program data should not be substituted for actual field surveys.

If you determine that the proposed action may affect (i.e., likely to adversely affect or not likely to adversely affect) a federally-protected species, you should notify this office with your determination, the results of your surveys, survey methodologies, and an analysis of the effects of the action on listed species, including consideration of direct, indirect, and cumulative effects, before conducting any activities that might affect the species. If you determine that the proposed action will have no effect (i.e., no beneficial or adverse, direct or indirect effect) on federally listed species, then you are not required to contact our office for concurrence (unless an Environmental Impact Statement is prepared). However, you should maintain a complete record of the assessment, including steps leading to your determination of effect, the qualified personnel conducting the assessment, habitat conditions, site photographs, and any other related articles.

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (http://www.fws.gov/windenergy/) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm; http://www.towerkill.com; and http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

Not all Threatened and Endangered Species that occur in North Carolina are subject to section 7 consultation with the U.S Fish and Wildlife Service. Atlantic and shortnose sturgeon, sea turtles, when in the water, and certain marine mammals are under purview of the National Marine Fisheries Service. If your project occurs in marine, estuarine, or coastal river systems you should also contact the National Marine Fisheries Service, http://www.nmfs.noaa.gov/

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office. If you have any questions or comments, please contact John Ellis of this office at john_ellis@fws.gov.

Attachment(s):

• Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Raleigh Ecological Services Field Office Post Office Box 33726 Raleigh, NC 27636-3726 (919) 856-4520

Project Summary

Consultation Code: 04EN2000-2021-SLI-0921 Event Code: 04EN2000-2021-E-02021

Project Name: Kingfield Buffer Mitigation Site

Project Type: LAND - RESTORATION / ENHANCEMENT

Project Description: Kingfield Buffer Mitigation Site is a riparian buffer restoration site in

Jones county. The objective of the project is to restore native trees adjacent to the stream to help with nutrient filtration, flood events, and

overall water quality improvements.

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@35.111076749999995,-77.33091955822248,14z



Counties: Jones County, North Carolina

Endangered Species Act Species

There is a total of 5 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

1. <u>NOAA Fisheries</u>, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Birds	
NAME	STATUS
Red-cockaded Woodpecker <i>Picoides borealis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7614	Endangered
Reptiles NAME	STATUS
American Alligator <i>Alligator mississippiensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/776	Similarity of Appearance (Threatened)

Amphibians

NAME STATUS

Neuse River Waterdog Necturus lewisi

Proposed

There is **proposed** critical habitat for this species. The location of the critical habitat is not available.

Threatened

Species profile: https://ecos.fws.gov/ecp/species/6772

Fishes

NAME STATUS

Carolina Madtom *Noturus furiosus*

Proposed

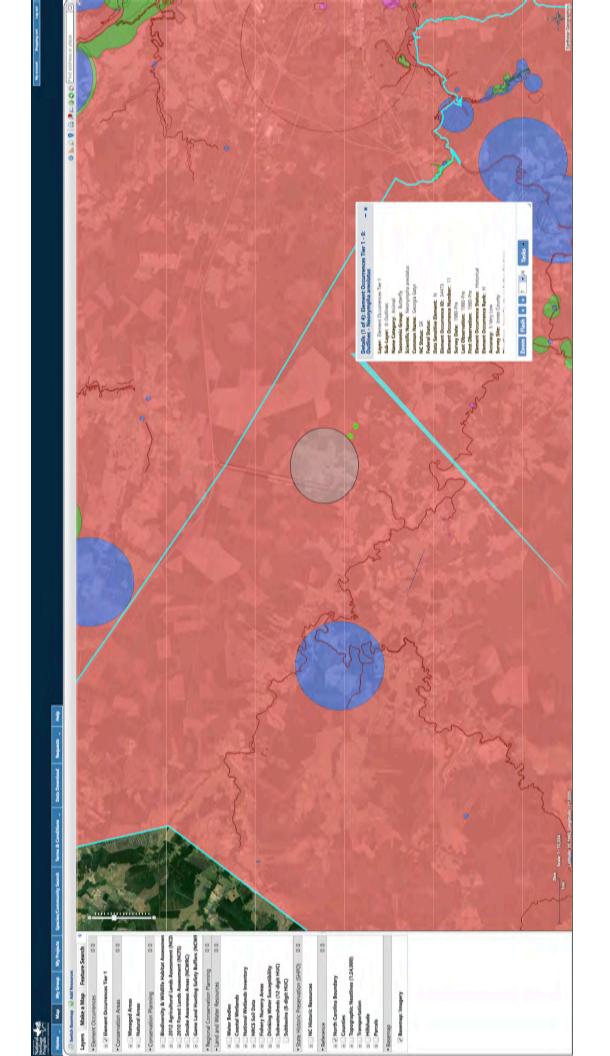
There is **proposed** critical habitat for this species. The location of the critical habitat is not available.

Endangered

Species profile: https://ecos.fws.gov/ecp/species/528

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



Farmland Protection Policy Act (FPPA)



United States Department of Agriculture

Natural Resources
Conservation Service

March 10, 2021

North Carolina State Office

4407 Bland Rd. Suite 117 Raleigh North Carolina 27609 Voice (704) 680-3541 Fax (844) 325-2156 Jamey O'Shaughnessey
Environmental Associate
Eco Terra Management LLC
1117 Peachtree Walk NE; Suite 126

Atlanta, GA 30309

Dear Jamey O'Shaughnessey;

The following information is in response to your request soliciting comments regarding the Proposed Kingfield Buffer Mitigation Site in Jones County, NC.

Projects are subject to Farmland Protection Policy Act (FPPA) requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency.

For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. Farmland means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide of local importance.

"Farmland" does not include land already in or committed to urban development or water storage. Farmland ``already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as ``urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a ``tint overprint" on the USGS topographical maps, or as ``urbanbuilt-up" on the USDA Important Farmland Maps. See over for more information.

The area in question does not include land classified as Prime Farmland. In accordance with the Code of Federal Regulations 7CFR 658, Farmland Protection Policy Act, the AD-1006 was initiated. NRCS Completed Parts II, IV, V of the form and returned for completion by the requesting agency.

If you have any questions, please feel free to call me at (704) 680-3541 office or (704) 754-6734 cell.

Sincerely,

Kristin L May

Acting State Soil Scientist

Kristin L May

CC:

Petra Volinski, supervisory soil conservationist, NRCS, New Bern, NC

The Natural Resources Conservation Service is an agency of the Department of Agriculture's Farm Production and Conservation (FPAC).

An Equal Opportunity Provider, Employer, and Lender

F	U.S. Departmen			ATING				
PART I (To be completed by Federal Agency)		Date Of Land Evaluation Request						
Name of Project		Federal A	Agency Involved	<u>·</u> 				
Proposed Land Use		County a						
PART II (To be completed by NRCS)		Date Red	quest Received	Ву	Person Completing Form:			
Does the site contain Prime, Unique, Statew	vide or Local Important Farmland			Acres Irrigated Average		Average	Farm Size	
(If no, the FPPA does not apply - do not con	omplete additional parts of this form)							
Major Crop(s)	Farmable Land In Govt. Jurisdiction			Amount of Farmland As Defined in FPPA			PPA	
	Acres: %	Acres: %			Acres: %			
Name of Land Evaluation System Used	Name of State or Local S	Name of State or Local Site Assessment System Date Land Evaluation Returned by NRCS					RCS	
PART III (To be completed by Federal Ager	ncv)			Alternative Site Rating				
A. Total Acres To Be Converted Directly				Site A	Site B	Site C	Site D	
B. Total Acres To Be Converted Indirectly								
C. Total Acres In Site								
PART IV (To be completed by NRCS) Land	d Evaluation Information							
, , , , , , , , , , , , , , , , , , , ,								
A. Total Acres Prime And Unique Farmland	Increase to the Comment of							
B. Total Acres Statewide Important or Local C. Percentage Of Farmland in County Or Local	·							
D. Percentage Of Farmland in Govt. Jurisdic		vo Valuo						
		ve value						
PART V (To be completed by NRCS) Land Relative Value of Farmland To Be Co		s)						
PART VI (To be completed by Federal Age			Maximum	Site A	Site B	Site C	Site D	
(Criteria are explained in 7 CFR 658.5 b. For 1. Area In Non-urban Use	Corridor project use form NRCS-	CPA-106)	Points (15)					
Area in Non-urban Use Perimeter In Non-urban Use			(10)					
			(20)					
Percent Of Site Being Farmed Protection Provided By State and Local (Covernment		(20)					
Protection Provided By State and Local (Distance From Urban Built up Area	Jovernment		(15)					
Distance From Urban Built-up Area Distance To Urban Support Services			(15)					
Size Of Present Farm Unit Compared To	Ανατασα		(10)					
Creation Of Non-farmable Farmland	Average		(10)					
Availability Of Farm Support Services			(5)					
10. On-Farm Investments			(20)					
11. Effects Of Conversion On Farm Support	Services		(10)					
12. Compatibility With Existing Agricultural U			(10)					
TOTAL SITE ASSESSMENT POINTS			160					
PART VII (To be completed by Federal A	gency)							
Relative Value Of Farmland (From Part V)	g,,		100					
Total Site Assessment (From Part VI above or local site assessment)		160						
TOTAL POINTS (Total of above 2 lines)		260						
,			Was A Local Site Assessment Used?					
Site Selected:	Date Of Selection		YES	s 🗌	NO 🗌			
Reason For Selection: Name of Federal agency representative comp	oleting this form:				ח	ate:		

STEPS IN THE PROCESSING THE FARMLAND AND CONVERSION IMPACT RATING FORM

- Step 1 Federal agencies (or Federally funded projects) involved in proposed projects that may convert farmland, as defined in the Farmland Protection Policy Act (FPPA) to nonagricultural uses, will initially complete Parts I and III of the form. For Corridor type projects, the Federal agency shall use form NRCS-CPA-106 in place of form AD-1006. The Land Evaluation and Site Assessment (LESA) process may also be accessed by visiting the FPPA website, http://fppa.nrcs.usda.gov/lesa/.
- Step 2 Originator (Federal Agency) will send one original copy of the form together with appropriate scaled maps indicating location(s)of project site(s), to the Natural Resources Conservation Service (NRCS) local Field Office or USDA Service Center and retain a copy for their files. (NRCS has offices in most counties in the U.S. The USDA Office Information Locator may be found at http://offices.usda.gov/scripts/ndISAPI.dll/oip_public/USA_map, or the offices can usually be found in the Phone Book under U.S. Government, Department of Agriculture. A list of field offices is available from the NRCS State Conservationist and State Office in each State.)
- Step 3 NRCS will, within 10 working days after receipt of the completed form, make a determination as to whether the site(s) of the proposed project contains prime, unique, statewide or local important farmland. (When a site visit or land evaluation system design is needed, NRCS will respond within 30 working days.
- Step 4 For sites where farmland covered by the FPPA will be converted by the proposed project, NRCS will complete Parts II, IV and V of the form.
- Step 5 NRCS will return the original copy of the form to the Federal agency involved in the project, and retain a file copy for NRCS records.
- Step 6 The Federal agency involved in the proposed project will complete Parts VI and VII of the form and return the form with the final selected site to the servicing NRCS office.
- Step 7 The Federal agency providing financial or technical assistance to the proposed project will make a determination as to whether the proposed conversion is consistent with the FPPA

INSTRUCTIONS FOR COMPLETING THE FARMLAND CONVERSION IMPACT RATING FORM

(For Federal Agency)

Part I: When completing the "County and State" questions, list all the local governments that are responsible for local land use controls where site(s) are to be evaluated.

Part III: When completing item B (Total Acres To Be Converted Indirectly), include the following:

- 1. Acres not being directly converted but that would no longer be capable of being farmed after the conversion, because the conversion would restrict access to them or other major change in the ability to use the land for agriculture.
- 2. Acres planned to receive services from an infrastructure project as indicated in the project justification (e.g. highways, utilities planned build out capacity) that will cause a direct conversion.

Part VI: Do not complete Part VI using the standard format if a State or Local site assessment is used. With local and NRCS assistance, use the local Land Evaluation and Site Assessment (LESA).

- 1. Assign the maximum points for each site assessment criterion as shown in § 658.5(b) of CFR. In cases of corridor-type project such as transportation, power line and flood control, criteria #5 and #6 will not apply and will, be weighted zero, however, criterion #8 will be weighted a maximum of 25 points and criterion #11 a maximum of 25 points.
- 2. Federal agencies may assign relative weights among the 12 site assessment criteria other than those shown on the FPPA rule after submitting individual agency FPPA policy for review and comment to NRCS. In all cases where other weights are assigned, relative adjustments must be made to maintain the maximum total points at 160. For project sites where the total points equal or exceed 160, consider alternative actions, as appropriate, that could reduce adverse impacts (e.g. Alternative Sites, Modifications or Mitigation).

Part VII: In computing the "Total Site Assessment Points" where a State or local site assessment is used and the total maximum number of points is other than 160, convert the site assessment points to a base of 160. Example: if the Site Assessment maximum is 200 points, and the alternative Site "A" is rated 180 points:

 $\frac{\text{Total points assigned Site A}}{\text{Maximum points possible}} = \frac{180}{200} \text{ X } 160 = 144 \text{ points for Site A}$

For assistance in completing this form or FPPA process, contact the local NRCS Field Office or USDA Service Center.

NRCS employees, consult the FPPA Manual and/or policy for additional instructions to complete the AD-1006 form.

National Historic Preservation Act (Section 106) NC SHPO Coordination



North Carolina Department of Natural and Cultural Resources

State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Roy Cooper Secretary D. Reid Wilson

January 28, 2021

Jamey O'Shaughnessey Eco Terra Management, LLC 1117 Peachtree Walk Northeast, Suite 126 Atlanta, Georgia 30309 jamey@ecoterra.com

Re: Kingfield buffer mitigation site, Kingfield Road, Trenton, Jones County, ER 21-0145

Dear Ms. O'Shauhgnessey:

Thank you for your email of December 24, 2020, regarding the above-referenced undertaking. We have reviewed the submittal and offer the following comments.

We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

Ramona Bartos, Deputy

State Historic Preservation Officer

Zence Bledhill-Earley

Uniform Relocation Assistance and Real Property Acquisition Polices Act (Uniform Act)



March 8, 2021

Elvin J. Lee Jr. PO Box 213 Trenton, NC 28585

Re: Kingfield Buffer Mitigation Site: Division of Mitigation Services Project in Jones County

Dear Elvin,

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Buyer herby notifies Seller that: (i) Buyer believes that the fair market value of the Mitigation Values of the Mitigation Property is an amount equal to the Purchase Price; and (ii) Buyer does not have the power of eminent domain.

The purpose of this letter is to notify you that Eco Terra Partners, LLC and The State of North Carolina, in offering to purchase your property in Jones county, North Carolina, does not have the power to acquire it by eminent domain. Also, Eco Terra Partners, LLC's offer to purchase your property is based on what we believe to be its fair market value.

Sincerely,

Jamey O'Shaughnessey

Assistant Project Manager Jamey@ecoterra.com

W: 984-222-5116



March 8, 2021

Elvin J. Lee III PO Box 213 Trenton, NC 28585

Re: Kingfield Buffer Mitigation Site: Division of Mitigation Services Project in Jones County

Dear James,

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Buyer herby notifies Seller that: (i) Buyer believes that the fair market value of the Mitigation Values of the Mitigation Property is an amount equal to the Purchase Price; and (ii) Buyer does not have the power of eminent domain.

The purpose of this letter is to notify you that Eco Terra Partners, LLC and The State of North Carolina, in offering to purchase your property in Jones county, North Carolina, does not have the power to acquire it by eminent domain. Also, Eco Terra Partners, LLC's offer to purchase your property is based on what we believe to be its fair market value.

Sincerely,

Jamey O'Shaughnessey

Assistant Project Manager Jamey@ecoterra.com W: 984-222-5116