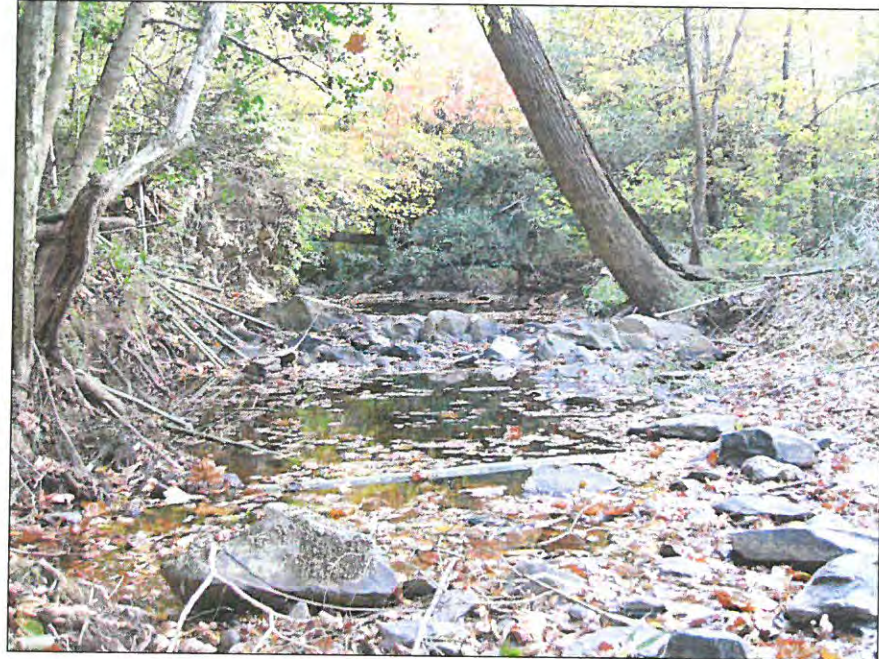


CLARKS CREEK STREAM PRESERVATION PROJECT

Montgomery County, NC
Yadkin River Basin
Cataloging Unit: 03040104
EEP Project Number: 000622



Prepared for:



*Final
8/6/08*

North Carolina Department of Environment and Natural Resources
Ecosystem Enhancement Program
1652 Mail Service Center
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Clarks Creek Stream Restoration Plan

DRAFT

Submitted
June 2009

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JUN 25 2009

NC ECOSYSTEM
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1. Executive Summary/Project Abstract

The Louis Berger Group, Inc. (Berger) will preserve the Clarks Creek Stream Preservation Site (Site) in Montgomery County, North Carolina to provide the North Carolina Ecosystem Enhancement Program (NCEEP) with approximately 1,690 stream mitigation units needed to compensate for projects occurring within the Yadkin-Pee Dee River basin. This Restoration Plan describes existing project site conditions and details the preservation process.

The Site provides high quality instream and riparian habitat for many aquatic and terrestrial species due to the mature canopy that shades the channel and the vegetated buffer that traps sediments. Piedmont/mountain bottomland forest (Schafale and Weakley, 1990) is the prevalent vegetative community currently found within the forested portions of the proposed easement boundaries, although inclusions of mesic mixed hardwood forest are common where the floodplains narrow and the hilly uplands are closer to the channel. Lands adjacent to the Site are primarily covered by contiguous forest communities; however, large fields utilized for pasture are present in several locations. A streamside riparian buffer zone of mature canopy trees has been retained through these agricultural areas and agricultural grasses border the upland side of this riparian zone.

Stream mitigation for the Site is to protect ecologically important streams in perpetuity, through the implementation of a conservation easement owned by the State of North Carolina. Stream mitigation will preserve the existing riparian corridor, aquatic habitat, and stream hydrology of the stable perennial stream channels by establishing a permanent conservation easement along 8,452 linear feet of stream. The easement protects a minimum 50-foot wide forested buffer along both sides of the creek and encompasses 24.5 acres of forested riparian habitat. Where necessary, the easement is protected by fencing to keep livestock out of the 50-foot buffer. The easement was recorded by Montgomery County and is held by NCEEP.

In addition to the preservation effort, several additional tasks were undertaken to improve the ecological functions on Site. Stands of invasive floral species were identified and removed from the Site. Native species were planted in order to re-establish native forest communities throughout the project area consistent with a Piedmont/mountain bottomland forest. Fencing was installed in the pasture areas to prevent cattle from entering the stream and to protect the existing forested areas and newly planted areas.

The goals of the project focus on the benefits obtained from preserving and restoring diverse areas of forested riparian ecosystems. These goals include:

- Increased wildlife habitat,
- Reducing overland sediment erosion and nutrient load, and
- Preservation of existing native species

To achieve the preservation goals, the Site has the combined objectives of:

- Establishment of a conservation easement around segments of geomorphically stable stream channel with intact forested buffer areas for purposes of preservation,
- The removal of livestock access through stream buffer fencing, and
- Improvement of existing vegetated streamside buffer areas through removal of invasive floral species and planting native species to re-establish native vegetative communities.

Successful completion of this project will benefit water quality within the Yadkin-Pee Dee River basin by reducing sediment input into the stream from erosion, moderating stream water temperatures by improving canopy coverage over the channel, and reducing non-point pollutant impacts by removing livestock access and restoring forested buffers. Wildlife habitat benefits will be achieved through the restoration and enhancement planting of the forest adjacent to the stream. The riparian area of the Site will provide habitat connectivity and a permanent forested corridor through agricultural areas between larger hardwood forests to the north and south of the Site.

2. Project Site Identification and Location

The Louis Berger Group, Inc. (Berger) will preserve the Clarks Creek Stream Preservation Site (Site) in Montgomery County, North Carolina to provide the North Carolina Ecosystem Enhancement Program (NCEEP) with approximately 1,690 stream mitigation units needed to compensate for projects occurring within the Yadkin-Pee Dee River basin. This number of units has increased since the original Technical Proposal, which stated that 1,569 stream mitigation units will be provided. This Restoration Plan describes existing project site conditions and details the preservation process. This report continues the regulatory review process through the NCEEP.

The Clarks Creek Stream Preservation Site consists of three reaches: two mainstem segments of Lick Fork and an unnamed tributary (UT) to Lick Fork (Figure 1). These waterways are tributaries to Clarks Creek, which then continue on to flow into the Pee Dee River. Reach 1 is the unnamed tributary to Lick Fork. This reach has approximately 3,773 linear feet of preservation. This tributary flows into the mainstem of Lick Fork (Reach 2), which will provide approximately 2,259 linear feet of preservation. Further downstream, Reach 3 will provide approximately 2,420 linear feet of preservation. Photographs of each reach can be found in Appendix 1. All reaches display perennial flow. North Carolina Division of Water Quality (NCDWQ) Stream Classification Forms can be found in Appendix 3. In total, the Site will provide 8,452 linear feet of preservation. At a 5:1 preservation ratio, the NCEEP will receive approximately 1,690 stream mitigation units from the Site. A total of 24.5 acres of riparian buffer is within a conservation easement.

2.1. Directions to the Project Site

From Raleigh: follow US-1 south. Take the US-501S / US-15S exit. Stay straight to go onto White Hill Road / US-15S / US-501S. Continue to follow US-15S/US-501S for approximately 10 miles. Stay straight to go onto NC-24W / NC-27S. Enter next roundabout and take second exit onto NC-24W / NC-27W. Follow NC-24W / NC-27W for approximately 33 miles. Turn left onto NC-109. After 3 miles, turn right onto NC-1134 (Wadeville Road). Memory Lane will be on your left. Turn down Memory Lane and park near the fence so as to not be in the way of the land owner's vehicles. From there, Lick Fork is downhill to the south.

2.2. USGS Hydrologic Unit Code and NCDWQ River Basin Designation

The approximately 24.5-acre Site is located in Montgomery County near the Town of Mount Gilead, in the Lake Tillery-Pee Dee River basin, USGS Hydrologic Unit Code (HUC) 03040104 (14 digit HUC: 03040104020020), of the Yadkin-Pee Dee River basin (Figure 1). The Yadkin-Pee Dee River basin is the second largest basin in North Carolina and covers approximately 7, 213 square miles, spanning 21 counties (NCDWQ, 2008). According to the NCDWQ Basinwide Assessment Report, water quality in HUC 03040104 appears to be stable between the 2001 and 2006 samplings. Of the 18 sites sampled, nine rated Excellent, five rated Good, two rated Good-Fair, and two rated Fair. Land use in this HUC is mostly forested, but with some areas utilized for agriculture and silviculture. The town of Troy is the largest urban area in the northeastern part of the HUC. The Carolina Slate Belt subcoregion dominates the northern part of the HUC. This ecoregion has some of the lowest water yielding geology in the state and because of this, streams tend to dry up in the summer. The Site is contained within a narrow portion of the Carolina Slate Belt geology (NCDWQ, 2007).

2.3. Project Vicinity

Located in Montgomery County, North Carolina, the Site is approximately 5 miles west of Lake Tillery and approximately 5 miles north of Mount Gilead off of NC 109.

2.4. Project Components and Structure

Reach 1 is naturally forested with a riparian buffer of greater than 50 feet in the upper section along the west bank (Figure 4). The east bank was open to cattle pasture and has been fenced historically, although the fencing is currently in disrepair and cattle are able to access the stream through gaps. The middle section of the reach flows through cow pasture for approximately 900 feet. The lower section is naturally forested with a riparian buffer of greater than 50 feet along the west bank, but has a 15 foot forested buffer along the east bank. The valley is broader and flatter than the other 2 reaches. Soils along this reach consist mostly of the Badin-Tarrus complex (485C2), 8 to 15 percent slopes, moderately eroded (Figure 3). The upper most portion of the reach consists of Herndon silt loam (130C) 15 to 25 percent slopes (USDA, 2001). Reach 1 is a first order stream and drains approximately 128 acres. In total this reach is 4,075 linear feet in length, but 3,773 feet will be counted towards preservation. In agreement with the landowner, two stream crossings (each 20 feet in length) were installed and an existing pond measuring 262 linear feet was kept. Approximately 9.88 acres of riparian buffer along Reach 1 will be in conservation easement.

The riparian buffer for Reach 2 is forested along the west bank for a width of approximately 15 feet before opening to a pasture (Figure 4). The east bank has no forest buffer along the most upstream 700 feet, but the downstream segment has a fully forested buffer greater than 50 feet in width. The valley for Reach 2 is steep along the west bank and is broader along the east bank. Soils along this reach consist of the Badin-Tarrus complex (475D), 25 to 50 percent slopes (Figure 3) (USDA, 2001). Reach 2 is a third order stream and drains approximately 4,016 acres. In total this reach is 2,279 linear feet; however, one stream crossing (20 feet in length) was installed for the landowner and therefore 2,259 linear feet will count towards preservation. Approximately 7.15 acres of riparian buffer along Reach 2 will be in conservation easement.

Reach 3 has a riparian forest along both sides of the stream greater than 50 feet (Figure 4). The valley for Reach 3 is relatively tight along both sides of the banks. Soils consist of Chenneby silt loam (4A), 0 to 2 percent slopes, frequently flooded (Figure 3) (USDA, 2001). This soil series is listed as hydric for Montgomery County. Reach 3 is a third order stream and drains approximately 4,654 acres. In total this reach is 2,440 linear feet; however, one at grade stream crossing (20 feet in length) was refurbished for the landowner and therefore 2,420 linear feet will count towards preservation. Approximately 7.47 acres of riparian buffer along Reach 3 will be in conservation easement.

3. Watershed Characterization

3.1. Drainage Area

The Clarks Creek Stream Preservation project has a total drainage area of approximately 4,654 acres (Figure 2). The watershed is mostly forested with increasing areas of agricultural practices. The UT to Lick Fork (Reach 1) drains approximately 128 acres. Reach 2 drains approximately 4,016 acres (Figure 2).

3.2. Surface Water Classification / Water Quality

According to NCDWQ's Basinwide Water Quality Plan, water quality is generally good compared to the other subbasins within the greater Yadkin-Pee Dee River basin. Of the monitored streams in 03040104, 74 percent are supporting aquatic life and 22 percent do not meet the standards required to support aquatic life. Issues to be noted include the inability of low flow streams to assimilate waste, impoundments resulting in low dissolved oxygen levels, runoff from agriculture operations, and areas of excellent water quality that have the potential to be reclassified as High Quality Water (HQW) to facilitate protecting water quality in the future (NCDWQ, 2008).

- *Water Supply Watershed*
The Clarks Creek Preservation Site is not located within a water supply watershed. Both Lick Fork and Clarks Creek are classified as C: freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife (NCDWQ, 2009). There are no high quality waters or outstanding resource waters listed within this subbasin.
- *Pollution Sources within the Subbasin*
Subbasin HUC 03040104 has eight minor facilities with NPDES permits to discharge wastewater into its waterways. Four of the eight are either located downstream of Clarks Creek or in different watersheds. One is along Little Mountain Creek and two are along Lake Tillery. The remaining discharger is located along Clarks Creek just north of the confluence with the Pee Dee River. There are also two minor and two major non-permitted NPDES dischargers within the HUC. One major non-permitted discharger is located along Clarks Creek between NC 73 and NC 27/24. However, downstream of the Site, along Clarks Creek, a benthic macroinvertebrate sampling site rated 'Good' and a fish community sample site rated 'Excellent' (NCDWQ, 2007).
- *303d-Listed Stream or Watershed*
In the HUC 03040104, the NCDWQ subbasin 03-07-10 lists two streams on the North Carolina 2006 final 303d list. Brown Creek from the mouth of Lick Creek to the Pee Dee River is listed as having impaired biological integrity and low dissolved oxygen. The potential source is agriculture. The second stream listed is the Pee Dee River from Norwood Dam to the mouth of Turkey Top Creek. The stream segment is listed as having low dissolved oxygen. The potential source includes hydromodification – dam release (NCDWQ, 2006). Both listed streams are downstream of the Site.
- *NCWRP Targeted Watershed*
The Clarks Creek Stream Preservation Site is located within an EEP targeted watershed (NCEEP, 2008).
- *Significant Natural Heritage Area*
A significant natural heritage area is an area that contains one or more threatened or endangered species or exemplifies a naturally occurring ecological community that exists within North Carolina. Within the NCDWQ Yadkin-Pee Dee River subbasin 03-07-10, the Natural Heritage Program has identified seven significant natural heritage areas (NCDENR, 2008):

- Roberdo Bog and Longleaf Pine Forest is located 2 miles north of the Site;
- Pee Dee National Wildlife Refuge is located 12 miles to the south of the Site;
- Grassy Islands/Smith Lake is located 13 miles to the southeast of the Site;
- Mountain Creek Corridor is located 15 miles to the southeast of the Site;
- Upper Brown Creek Swamp is located 17 miles to south of the Site;
- Pee Dee Skunk Cabbage Seep is located 12 miles to the south of the Site;
- and
- Savannah Church Diabase Dike is located 14 miles to the southeast of the Site

3.3. Physiography, Geology, and Soils

The Site is located within the Carolina Slate Belt ecoregion of the Piedmont physiographic province of North Carolina. The Carolina Slate Belt extends from southern Virginia, across the Carolinas, and into a small part of eastern Georgia. The mineral-rich metavolcanic and metasedimentary rocks with slaty cleavage tend to be finer-grained and less metamorphosed than other parts of the Piedmont (except for the Triassic Basins) and are somewhat less resistant to erosion. They therefore form areas of slightly lower elevations with wider valleys. In North Carolina, however, some parts of the region are more rugged and hilly, such as the Uwharrie Mountains, and other areas have hills and linear ridges. Trellised drainage patterns also occur in parts of the region. The volcanic-sedimentary rock formations include volcanic slates, basic and acid tuffs, breccias and flows that are interbedded. The volcanic rocks are intruded in some areas by granites. The Carolina Slate Belt has been an important region of mineral production and is thought to have potential for containing undiscovered deposits of gold and silver, as well as copper, lead, zinc, molybdenum, and tin. The volcanic slates are deeply weathered in places forming clay and shale, and soils generally have high silt contents. Georgeville and Herndon soils (fine, kaolinitic, thermic Typic Hapludults) are common. The more silty and silty clay soils of the Carolina Slate Belt contrast with the loam and sandy loam soils often found in other parts of the Piedmont. Streams tend to dry up and water yields to wells are low as this region contains some of the lowest water-yielding rock units in North Carolina (Griffith *et al.*, 2002).

3.4. Historical Land Use and Development Trends

As specified in the NCDWQ Basinwide Water Quality Plan, water quality in this subbasin is generally good compared to other subbasins within the greater Yadkin-Pee Dee River basin. This is a rural area with a few small towns. A large part of the northeast portion of the HUC is located within the Uwharrie National Forest. The land is mostly forested, but with some areas utilized for agriculture and silviculture. The town of Troy is the largest urban area. Land use in the southwestern part of the watershed is primarily a combination of forest and agriculture with smaller towns like Polkton and Ansonville. The town of Wadesboro is partially contained within this area (NCDWQ, 2008).

General biological health of the watershed appears to be in stable and good condition. A total of 18 biological monitoring sites were sampled in HUC 03040104 for basinwide assessment of water quality. Of those sites, nine rated Excellent, five Good, two Good-Fair, and two Fair. Of the six benthic sites sampled in 2006, three improved in bioclassification from 2001 results, one site declined, and two sites remained the same. Of the 11 fish sites sampled, four improved in bioclassification, three declined, and four remained the same (NCDWQ, 2008). Specifically

within the Clarks Creek watershed, the benthic sample site rated Good in 2006 and the fish sample site rated Excellent in 2004. Berger biologists conducted a benthic sampling on Site on April 23, 2008. Results of this survey can be found in Appendix 10.

NCDWQ biological and ambient data suggest the urban areas are having a minimal impact on water quality. Most impacts are coming from agricultural impacts in the southwestern part of the watershed, around Brown and Cedar Creeks. Land use change from 1992 to 2001 shows a significant increase towards pastures for the entire subbasin. The Town of Troy has increased in population from 2000 to 2005 by 19.6 percent. Montgomery County is predicted to increase in population by 21 percent by the year 2030. According to the NCDWQ, the remainder of the watershed offers many opportunities for protecting and conserving stream buffers and natural areas that will prevent stream degradation in the long term. Many of the streams in this area are rated Excellent (NCDWQ, 2008). Putting the Site into a conservation easement for preservation will help the watershed protect its water quality.

3.5. Endangered / Threatened Species

The US Fish and Wildlife Service (USFWS) listed four species for Montgomery County that are offered protection by the Endangered Species Act of 1973, as amended (USFWS, 2008). One additional endangered species was listed by the North Carolina Heritage Program (NCNHP, 2009). Species listed include: Eastern puma (*Puma concolor cougar*), red-cockaded woodpecker (*Picoides borealis*), Schweinitz's sunflower (*Helianthus schweinitzii*), smooth coneflower (*Echinacea laevigata*), and rough-leaf loosestrife (*Lysimachia asperulifolia*).

The project area is mostly riparian forests with some areas of open cattle pasture. Due to its mostly undisturbed nature, the area may provide habitat for several rare and protected flora and fauna species. Potential habitat for the Schweinitz's sunflower was identified during a survey conducted by Berger biologists in January 2008. During this survey, biologists did not identify potential habitat for the other listed species. Because this is a preservation project, there will be no earth moving disturbances. Invasive species treatments will be localized to the invasive plant itself. Therefore it was concluded that the proposed project will have no effect on the Schweinitz's sunflower.

The North Carolina Natural Heritage Data shapefile indicated two known populations of Schweinitz's sunflower within a mile radius of the project site and one known population of the red-cockaded woodpecker within a mile radius of the project site (NCDENR, 2009). The North Carolina Wildlife Resources Commission (NCWRC) has identified records for the federal species of concern and state endangered Carolina creekshell (*Villosa vaughaniana*) in Lick Fork (Letter dated January 1, 2008, found in Appendix 11). Since the project includes establishing native, forested buffers in riparian areas to improve terrestrial habitat and provide a travel corridor for wildlife species, the NCWRC does not anticipate the project to result in significant adverse impacts to aquatic and terrestrial wildlife resources. Berger submitted a request for threatened and endangered species letter to the USFWS during the preparation of the Categorical Exclusion for the Site on December 14, 2007 (Letter can be found in Appendix 11). No response was received from the USFWS; therefore, it can be assumed that there were no comments or concerns.

Habitat for these and other species would be restored through the implementation of this preservation effort. The expected ecological benefits and goals associated with the Clarks

Creek Site Preservation plan serve to meet the objectives consistent with resource protection detailed in the Yadkin-Pee Dee River Basinwide Water Quality Plan.

3.6. Cultural Resources

Berger conducted a cultural resources records review for the Site on January 15, 2008. The archaeological field work was conducted from January 16 through January 17, 2008. The official archaeological site inventory and National Register files at the North Carolina State Historic Preservation Office (SHPO) and the Office of State Archaeology (OSA) in Raleigh were reviewed for the presence of previously recorded archaeological sites and historical properties within the boundaries of the parcel that contains the Site and within a one mile radius of that location. No archaeological sites are located within a one mile radius of the Site. No architectural properties listed on the National Register of Historic Places, determined eligible, or under consideration, are located with one mile of the Site.

Fieldwork included a pedestrian reconnaissance of the Site. This was accomplished by walking the perimeter of the Site. The area was photographed and its topographic and vegetative characteristics noted. A total of three shovel tests were excavated within the boundaries of the Site. Shovel test 1 was excavated in a pasture along the stream channel. Shovel test 2 was excavated in a wooded area near the center of the Site. Shovel test 3 was excavated in a wooded area near the western margin of the Site. No isolated artifacts, archaeological sites, or cultural deposits were identified within the easement of the Site. Due to steep and rocky terrain, narrow floodplain, and the lack of artifacts observed on the ground surface or in the shovel tests no further cultural resources investigation was recommended.

A letter summarizing the findings of the cultural resources records review and the archaeological reconnaissance was submitted to the NC SHPO on January 24, 2008. A response letter, dated February 18, 2008, from the NC SHPO stated that "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." As a result, no further investigations were performed. Letters of coordination, including the NC SHPO concurrence, are provided in Appendix 11.

3.7. Potential Constraints

3.7.1. Property Ownership and Boundary

The Site is enrolled in a perpetual conservation easement held by the state of North Carolina. Documentation of this enrollment and the property boundary survey are provided in Appendix 12.

3.7.2. Site Access

The Site can be accessed from Memory Lane. A dirt road through the pasture area leads down to the stream. Areas requiring work can also be accessed through several other pastures. It is not anticipated that site access would act as a constraint.

3.7.3. Utilities

Based on a deed and title search there are no known utility right of ways that traverse the Site.

3.7.4. FEMA / Hydrologic Trespass

There is no stream work to be completed on the project site; therefore, FEMA coordination is not anticipated for this project.

4. Project Site Streams - Existing Conditions

The Clarks Creek Stream Preservation Site is comprised of two segments of the mainstem of Lick Fork and a segment on a UT to Lick Fork. All segments are tributaries to Clarks Creek. Lick Fork is characterized by a geomorphologically stable stream channel that spans an average of 35 feet with a cobble substrate. The UT to Lick Fork is also a stable channel that spans an average of 5 feet with a gravel substrate. Lick Fork and its UT currently provide high quality instream and riparian habitat for many aquatic and terrestrial species due to the mature canopy that shades the channel and the vegetated buffer that traps sediments (Appendix 1: Photos 1-6). Lands adjacent to the Site are primarily covered by contiguous forest communities; however, large agriculture fields are present in several locations adjacent to the creek. Land use within the 24.5-acre Site consists of two primary land uses: 18 acres of mesic mixed hardwood forest/piedmont bottomland forest/loblolly pines and 6.5 acres of pasture (Figure 4).

Since preservation is proposed for the Site no morphological surveys, such as longitudinal profiles or cross sections, to determine pattern dimension or profile were done on the channel. Channel classification, valley classification, discharge evaluation, bankfull verification, and channel evolution, were not performed as well.

4.1. Channel Stability Assessment

Because this project involves stream preservation only and subsequent BEHI or Sediment Export Estimates will not be performed, no initial evaluations were required. Accordingly, Table 6 will not be completed as it is not applicable for preservation either.

4.2. Vegetation Community Type(s) Descriptions and Disturbance History

The Clarks Creek Stream Preservation Site provides high quality instream and riparian habitat for many aquatic and terrestrial species due to the mature canopy that shades the channel and the vegetated buffer that traps sediments. Piedmont/mountain bottomland forest is the prevalent vegetative community currently found within the forested portions of the proposed easement boundaries, although inclusions of mesic mixed hardwood forest are common where the floodplains narrow and the hilly uplands are closer to the channel. The community matrix occurs over approximately 80 percent of the project's land area. Lands adjacent to the Site are primarily covered by contiguous forest communities; however, large fields utilized for pasture are present in several locations. A streamside riparian buffer zone of mature canopy trees has been retained through these agricultural areas, averaging approximately 15 feet in width. Agricultural grasses border the upland side of this riparian zone.

5. Reference Streams

Since preservation is proposed for the Site, a reference stream was not necessary.

6. Project Site Wetlands

Wetland scientists from Berger performed a wetland investigation on the Site in March 2007. The investigation was conducted in accordance with the procedures outlined in the *Corps of Engineers Wetland Delineation Manual* (Environmental Laboratory, 1987). No wetlands were identified within the project area of the Site; therefore, there is no wetland component to this project.

7. Reference Wetlands

This project is stream preservation only. There is no wetland component to this Site; therefore, reference wetlands are not necessary.

8. Project Site Restoration Plan

Stream mitigation for the Clarks Creek Stream Mitigation Site is to protect ecologically important streams in perpetuity, through the implementation of a conservation easement owned by the State of North Carolina. Stream mitigation will preserve the existing riparian corridor, aquatic habitat and stream hydrology of the stable perennial stream channels by establishing a permanent conservation easement along 8,452 linear feet of stream. The easement protects a minimum 50-foot wide forested buffer along both sides of the creek and encompasses 24.5 acres of forested riparian habitat. Where necessary the easement is protected by fencing to keep livestock out of the 50-foot buffer. The easement was recorded by Montgomery County and is held by NCEEP. The conservation easement is shown on all figures.

Stands of invasive floral species were identified in patchy distributions at various densities within the Site. These species include: multiflora rose (*Rosa multiflora*), Japanese honeysuckle (*Lonicera japonica*), Chinese privet (*Ligustrum sinense*), and bamboo (*Phyllostachys aurea*). Areas within the Site that were identified to contain invasive species is found on Figure 11. Control efforts were undertaken to eradicate these species within the Site. Invasive species plant material was removed above and below ground, including stems, branches, roots and rhizomes, using hand tools. The materials were disposed of on Site in natural areas to let the nutrients degrade back into the soil. All invasive plant control was done by chemical applications: either by cut/stump, basal barking, or foliar treating.

Native species were also planted in order to re-establish native forest communities throughout the project area. Even though the Site has a contiguous forest for most of the proposed reach, the conservation easement also incorporates areas of agricultural land where the riparian forest canopy is non-contiguous. In these areas, seedlings of native woody species were planted to ensure the success of the project. The planting scheme is consistent with a Piedmont/mountain bottomland forest. Species planted and abundance can be found on Table 7 in Section 11.0 of this report. Areas that were planted are shown on Figure 12.

Fencing in the pasture areas was installed to prevent cattle from entering the stream and to protect the existing forested areas and newly planted areas. Two types of fence were installed on Site. The downstream section of the UT to Lick Fork and the lower section of the east bank

of Mainstem 2 will be fenced with Department of Transportation (DOT) grade woven wire topped with a strand of barbed wire per the request of the landowner. The rest of the Site will be fenced with several strands of barbed wire. Areas that were fenced are shown on Figure 13.

8.1. Restoration Project Goals and Objectives

The goals of the project focus on the benefits obtained from preserving and restoring diverse areas of forested riparian ecosystems. These goals include:

- Increased wildlife habitat,
- Reducing overland sediment erosion and nutrient load, and
- Preservation of existing native species

The goals of the project focus on the benefits of preserving and restoring diverse areas of forested riparian ecosystem. Lick Fork is a tributary to Clarks Creek, which flows to the Pee Dee River, entering the river channel below Norwood Dam at Lake Tillery. This section of the Pee Dee River is classified as impaired by the State of North Carolina under the 2006 final 303(d) list of impaired streams due to low dissolved oxygen levels (NCDWQ, 2006). The project will benefit water quality in the Yadkin-Pee-Dee River Basin by removing livestock access and thus reducing non-point pollutant impacts from fecal coliform and sediment. Other benefits to water quality include moderating stream water temperatures by improving canopy coverage over the channel, reducing overland sediment erosion by restoring forested buffer, and reducing the influx of nutrients and exposure to fecal coliform.

To achieve the preservation goals, the Site has the combined objectives of:

- Establishment of a conservation easement around segments of geomorphically stable stream channel with intact forested buffer areas for purposes of preservation,
- The removal of livestock access through stream buffer fencing, and
- Improvement of existing vegetated streamside buffer areas through removal of invasive floral species and planting native species to re-establish native vegetative communities.

Berger had secured conservation easements for approximately 24.5 acres of riparian corridor contiguous to a UT to Lick Fork and the mainstem of Lick Fork. Berger has also removed invasive floral species and planted native species to re-establish native forest communities throughout the project area. Successful completion of this project will benefit water quality within the Yadkin-Pee Dee River basin by reducing sediment input into the stream from erosion, moderating stream water temperatures by improving canopy coverage over the channel, and reducing non-point pollutant impacts by removing livestock access and restoring forested buffer. Wildlife habitat benefits will be achieved through the enhancement planting of the forest adjacent to the stream. The riparian area of the Site will provide habitat connectivity and a permanent forested corridor through agricultural areas between larger hardwood forests to the north and south of the Site.

8.1.1. Designed Channel Classification and/ or Wetland Type

Since mitigation consists of 100 percent preservation, no channel design is proposed for this project. In addition, no wetlands were identified nor are any proposed on Site.

8.1.2. Target Wetland Communities / Buffer Communities

In the areas on Site of agricultural land where the riparian forest canopy is non-contiguous, seedlings of native woody species will be planted. The goal of the planting scheme will be to establish a riparian forest community consistent with a Piedmont/mountain bottomland forest.

8.2. Sediment Transport Analysis

Since mitigation consists of 100 percent preservation, no channel design is proposed for this project and therefore a sediment transport analysis is not necessary.

8.3. HEC-RAS Analysis

Since mitigation consists of 100 percent preservation, no channel design is proposed for this project and therefore a HEC-RAS analysis is not necessary.

8.4. Stormwater Best Management Practices

There are no structures or impervious areas located on the Site. Land use on Site is either forested or cattle pasture. Under existing conditions, stormwater migrates across the Site in the form of overland flow into the stream system. This will not be impacted by proposed conditions. In addition, the areas of cattle pasture were planted. These planted areas will slow the migration of stormwater and increase infiltration rates thus reducing the negative effects of stormwater.

8.5. Hydrological Modifications (for wetland restoration or enhancement)

No wetlands were identified on Site; therefore, hydrological modifications are not necessary.

8.6. Soil Restoration

Since mitigation consists of 100 percent preservation, no soil restoration is proposed for this project.

8.7. Natural Plant Community Restoration

8.7.1. Narrative of Plant Community Restoration

As mentioned above, native species were planted in order to re-establish native forests communities throughout the project area. Even though the Site has a contiguous forest for most of the proposed reach, the conservation easement also incorporates areas of agricultural land where the riparian forest canopy is non-contiguous. In these areas, native woody species were planted to ensure the success of the project. The planting scheme is consistent with a Piedmont/mountain bottomland forest. Areas that were planted are shown on Figure 12.

8.7.2. Seeding Plan Summary for Vegetation Communities and Zones

No seeding was proposed for this project.

8.7.3. Planting Plan Summary for Vegetation Communities and Zones

As mentioned above, species planted are consistent with the surrounding forest community, which is a piedmont/mountain bottomland forest. Planting was divided into two zones: Zone 1 and Zone 2. Zone 1 is the area of cattle pasture along the streams where the riparian forest canopy is non-contiguous. This zone, 6.38 acres in size, was planted with bare root hardwood species at a density of approximately 313 species per acre. Zone 2 is the area along the stream banks. This zone, 1.54 acres in size was planted with live stakes at a density of approximately 1300 species per acre. Species were planted at a high density to ensure success. Seedlings were planted in a naturalized pattern to avoid created rows and monotypic stands. Planting zones are shown on Figure 12. Table 8 found in Section 11 details the species planted.

8.7.4. Narrative of invasive species management

Stands of invasive floral species were identified in patchy distributions at various densities within the Site. These species include: multiflora rose (*Rosa multiflora*), Japanese honeysuckle (*Lonicera japonica*), Chinese privet (*Ligustrum sinense*), and bamboo (*Phyllostachys aurea*). Areas within the Site that were identified to contain invasive species are found on Figure 11. Control efforts were undertaken to eradicate these species within the project area. Invasive species plant material was removed above and below ground, including stems, branches, roots and rhizomes, using hand tools. The materials were disposed of on Site in natural areas to let the nutrients degrade back into the soil. All invasive plant control was done by chemical applications: either by cut/stump, basal barking, or foliar treating.

9. Performance Criteria

Tree species were installed at an initial density of 313 trees per acre of hardwoods and 1300 trees per acre of livestakes. The establishment of species follows the *Stream Mitigation Guidelines* (USACE, 2003). Once planted, the riparian corridor will be similar to, and contiguous with, the existing surrounding forest communities.

10. Preliminary Monitoring

Berger will be responsible for the success of the project. Since the mitigation project involves 100 percent preservation of stream and associated riparian corridor, annual monitoring of the Site is not proposed as it is not required for this type of project (USACE, 2003). Berger will provide sufficient documentation to EEP to satisfy USACE's monitoring requirements outlined in the *Stream Mitigation Guidelines*. These monitoring activities will entail the following:

- Post-project documentation will reflect results of the invasive species eradication, native species planting, and fence installation as well as photo-documentation. These data will be reported to illustrate the success of the planting efforts.
- Berger will obtain photographs of the preserved stream and riparian corridor to document conditions. A photograph location map illustrating the location at which the photographs were taken will be provided along with a description of each photo point.

This effort will include one documentation event. The photographs and photograph location information will be provided in report format, which will include a description of existing

conditions. All photographs and any GPS points associated with the photograph locations will be provided electronically.

11. References

- Environmental Laboratory, 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, US Army Engineer Waterways Experiment Station, Vicksburg, MS.
- Griffith, G.E. Omernik, J.M., Comstock, J.A., Schafale, M.P., McNab, W.H., Lenat, D.R., MacPherson, T.F. 2002. Ecoregions of North Carolina (map scale 1:1,500,000). U.S. EPA. Corvallis, OR.
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12. Tables

Table 1: Project Components Clarks Creek Stream Preservation Project EEP Project No. 000622				
Reach ID	Existing Feet (linear feet)	Restoration Level	Buffer Area (acres)	Comment
Reach 1 (UT to Lick Fork)	3773	Preservation (5:1 ratio)	9.88	
Reach 2 (Mainstem Upstream)	2259	Preservation (5:1 ratio)	7.15	
Reach 3 (Mainstem Downstream)	2420	Preservation (5:1 ratio)	7.47	

Table 2: Project Activity and Reporting History Clarks Creek Stream Preservation Project EEP Project No. 000622		
Activity or Report	Data Collection Complete	Completion or Delivery
Technical Proposal	March 2007	April 2007
Categorical Exclusion	January 2008	January 2008
Final Design – Construction Plans	NA (Preservation)	NA (Preservation)
Invasive Species Eradication	April 2008	October 2008
Native Species Planting	March 2009	April 2009
Fencing Installation	June 2009	TBD
One-time Monitoring Documentation	TBD	TBD

Table 3: Project Contact Table Clarks Creek Stream Preservation Project EEP Project No. 000622	
Designer	The Louis Berger Group, Inc. 1001 Wade Avenue, Suite 400 Raleigh, NC 27605
Primary Project Design POC	Michael O'Rourke (919) 866-4421
Invasive Species Eradication Contractor	Invasive Plant Control PO Box 50556 Nashville, TN 37205
Invasive Species Eradication Contractor POC	Lee Patrick (615) 812-5313

Table 3: Project Contact Table Clarks Creek Stream Preservation Project EEP Project No. 000622	
Fencing Contractor	TBD
Fencing Contractor POC	TBD
Planting Contractor	Superior Forestry Services, Inc. 36462 Highway 27 Tilley, AR 72679
Planting Contract POC	John Foley (870) 496-2442
Nursery Stock Suppliers	Division of Forest Resources – Claridge Nursery (919) 731-7988 and Mellow Marsh Farms (919) 742-1200
Monitoring Performers	The Louis Berger Group, Inc. 1001 Wade Avenue, Suite 400 Raleigh, NC 27605

Table 4: Project Attribute Table Clarks Creek Stream Preservation Project EEP Project No. 000622			
Project County	Montgomery County		
Physiographic Region	Piedmont		
Ecoregion	Carolina Slate Belt		
Project River Basin	Yadkin-Pee Dee River		
USGS HUC for Project (14 digit)	03040104020020		
NCDWQ Sub-basin for Project	03-07-10		
Within extent of EEP Watershed Plan?	No		
WRC Class (Warm, Cool, Cold)	Warmwater		
% of project easement fenced or demarcated	Approximately 80% of the easement is fenced		
Beaver activity observed during design phase?	No		
Restoration (Preservation) Component Attribute Table			
	UT to Lick Fork	Lick Fork (Mainstem Upstream)	Lick Fork (Mainstem 2 Downstream)
Drainage Area	128 acres	4016 acres	4654 acres
Stream order	1st	3rd	3rd
Preserved length (feet)	3,773	2,259	2,420
Perennial or Intermittent	Perennial	Perennial	Perennial
Watershed type (Rural, Urban, Developing, etc)	Rural	Rural	Rural
Watershed LULC Distribution (e.g.)			
Residential	10 %	10%	10%

Table 4: Project Attribute Table Clarks Creek Stream Preservation Project EEP Project No. 000622			
Ag-Row Crop	0%	0%	0%
Ag-Livestock	40%	20%	20%
Forested	50%	70%	70%
Watershed Impervious cover (%)	<5%	<5%	<5%
NCDWQ AU/Index number	13-16-4	13-16-4	13-16-4
NCDWQ classification	C	C	C
303d listed?	No	No	No
Upstream of a 303d listed segment?	No	No	No
Reasons for 303d listing or stressor	N/A	N/A	N/A
Total acreage of easement	9.88	7.15	7.47
Total vegetated acreage within the easement	4.05	5.06	7.47
Total planted acreage as part of restoration	5.83	2.09	0
Rosgen classification of existing	B4, B5c	C3, C4	C3c-, C4c-
Rosgen classification of As-built	NA	NA	NA
Valley type	NA	NA	NA
Valley slope	NA	NA	NA
Valley side slope range (e.g. 2-3%)	NA	NA	NA
Valley toe slope range (e.g. 2-3%)	NA	NA	NA
Cowardin classification	NA	NA	NA
Trout waters designation	NA	NA	NA
Species of concern, endangered, etc.? (Y/N)	No	No	No
Dominant soil series and characteristics			
Series	Badin-Tarrus Complex	Badin-Tarrus Complex	Chenneby silt loam
Depth	U	U	U
Clay %	U	U	U
K	U	U	U
T	U	U	U

Note: N/A is used for items that do not apply, "-" is used for items that are unavailable, "U" is used for items that are unknown and "NA" is used for items that are not applicable due to the fact that the mitigation project is stream preservation only.
 Note 2: Lick Fork (upstream) ignores the short stream reach that lies in the bed of the former farm pond as it is not captured in the conservation easement.

Table 5 – Morphological Design Table Clarks Creek Stream Preservation Project EEP Project No. 000622
*Table 5 is not applicable since mitigation consists of 100 percent preservation. No stream channel design is proposed and therefore a morphological design table is not necessary for this project.

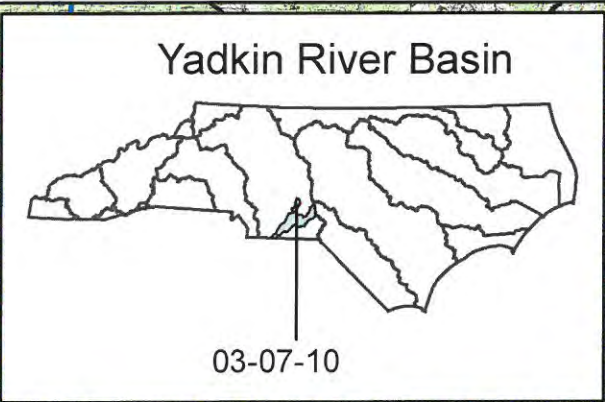
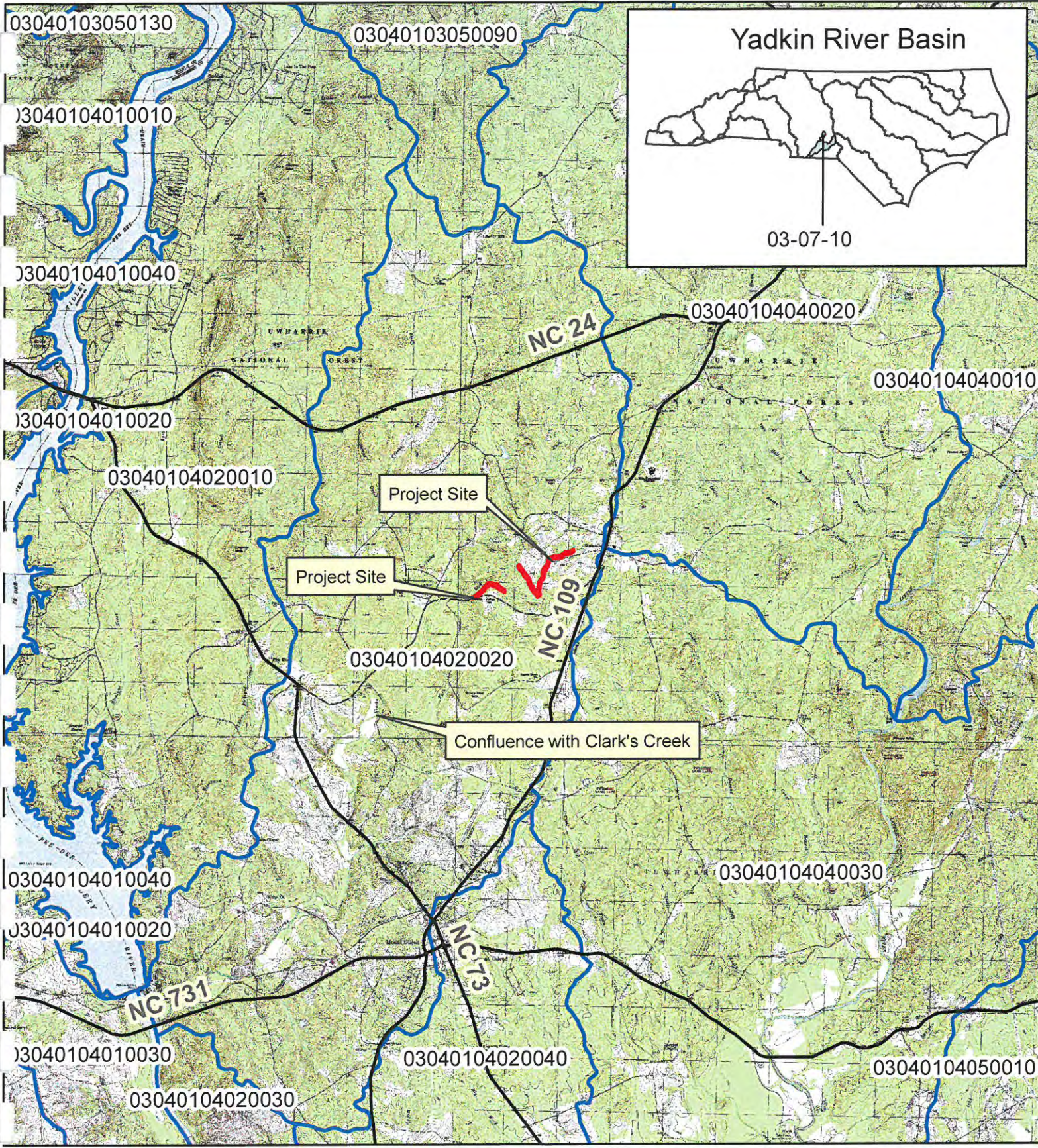
Table 6: BEHI and Sediment Export Estimates for Project Site Streams Clarks Creek Stream Preservation Project EEP Project No. 000622
*Table 6 is not applicable since mitigation consists of 100 percent preservation.

Table 7 – Planting Summary for Vegetative Communities and Zones Clarks Creek Stream Preservation Project EEP Project No. 000622					
Plant Community	Species	Common Name	Root	Caliper & Height	Number of Plants
Zone 1 (6.38 acres)	<i>Quercus alba</i>	White Oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Quercus laurifolia</i>	Laurel Oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Quercus virginiana</i>	Live Oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Quercus pagoda</i>	Cherry Bark Oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Quercus michauxii</i>	Swamp Chestnut Oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Quercus phellos</i>	Willow oak	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	400
	<i>Diospyros virginiana</i>	Persimmon	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	200
	<i>Betula nigra</i>	River Birch	Bare root	min. 1/4 in. root collar 1.0 to 2.0 ft. high	400
Subtotals				Quantity Planted	2,000
Zone 2 (1.54 acres)	<i>Cornus amomum</i>	Silky Dogwood	Live Stake	min. 1/2 diameter 2.0 to 3.0 ft. in length	1,000
	<i>Salix nigra</i>	Black Willow	Live Stake	min. 1/2 diameter 2.0 to 3.0 ft. in length	1,000
Subtotals				Quantity Planted	2,000

Table 8 – Seeding Summary for Permanent Vegetation per Community Type or Planting Zone Clarks Creek Stream Preservation Project EEP Project No. 000622	
*Table 8 is not applicable since no seeding was necessary as part of this project.	

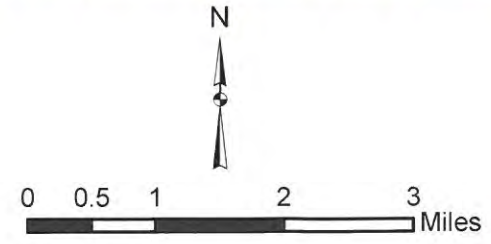
Table 9 – Planting Summary for Temporary Sediment and Erosion Control Seed Mix per Community Type or Planting Zone Clarks Creek Stream Preservation Project EEP Project No. 000622	
*Table 9 is not applicable since no temporary sediment and erosion control seed mix was necessary as part of this project.	



13. Figures

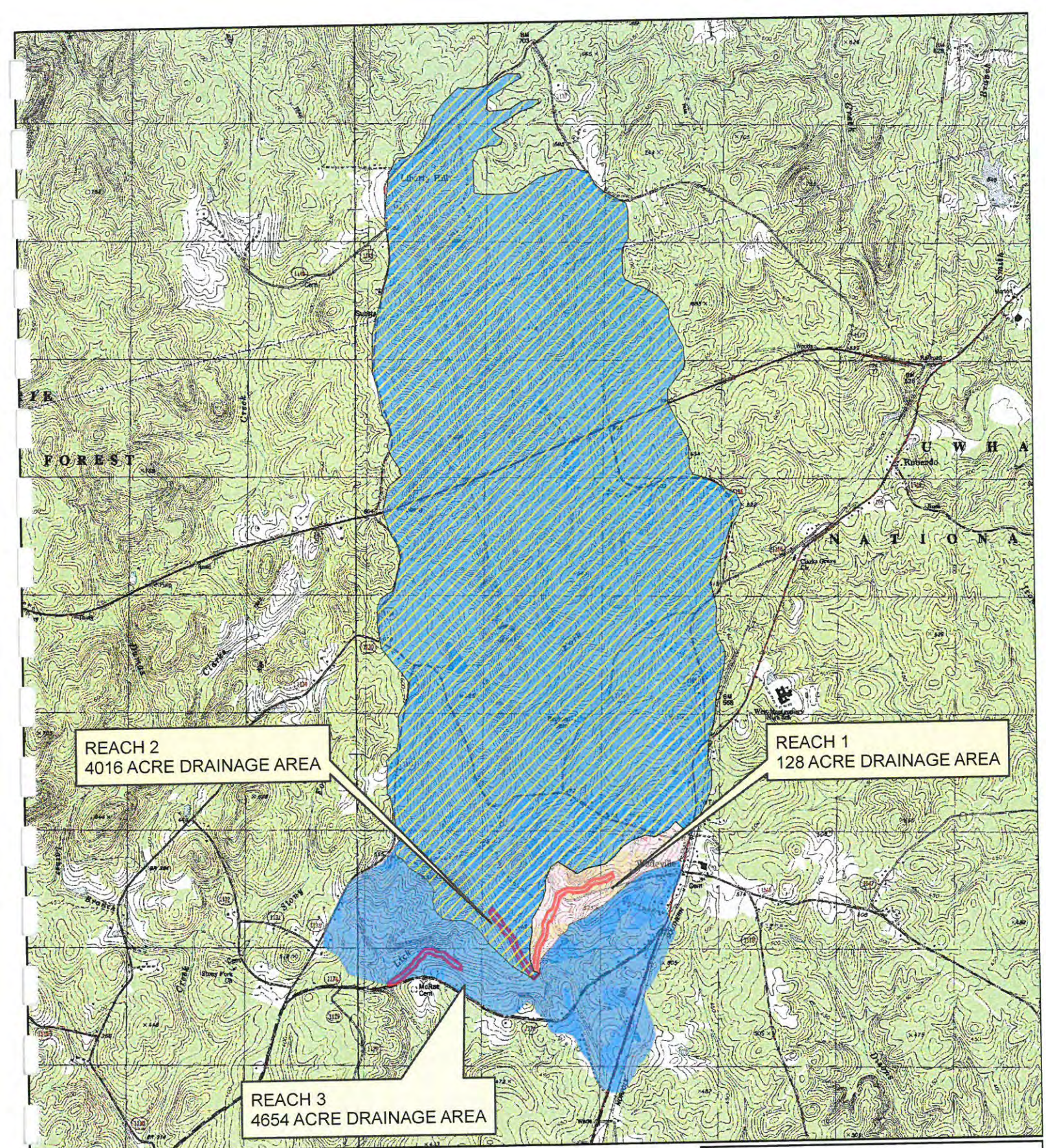


Legend
 Easement Boundary
 HUC 14 Digit Boundary

Source: USGS Topographic Quads:
 Troy, Mt. Gilead E, Mt. Gilead W, and
 Morrow Mountain, NC



	North Carolina Ecosystem Enhancement Program
	Clarks Creek Stream Preservation (Lick Fork -Tributary to Clarks Creek) EEP Project # 000622
Project Site Vicinity Map	
	THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605
Figure 1 June 2009	



REACH 2
4016 ACRE DRAINAGE AREA

REACH 1
128 ACRE DRAINAGE AREA

REACH 3
4654 ACRE DRAINAGE AREA

Legend

Easement Boundary

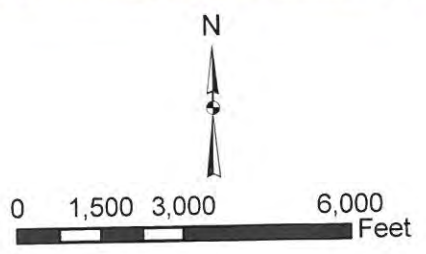
Drainage Area

1

2

3

Source: USGS Topographic Quad, Troy, NC



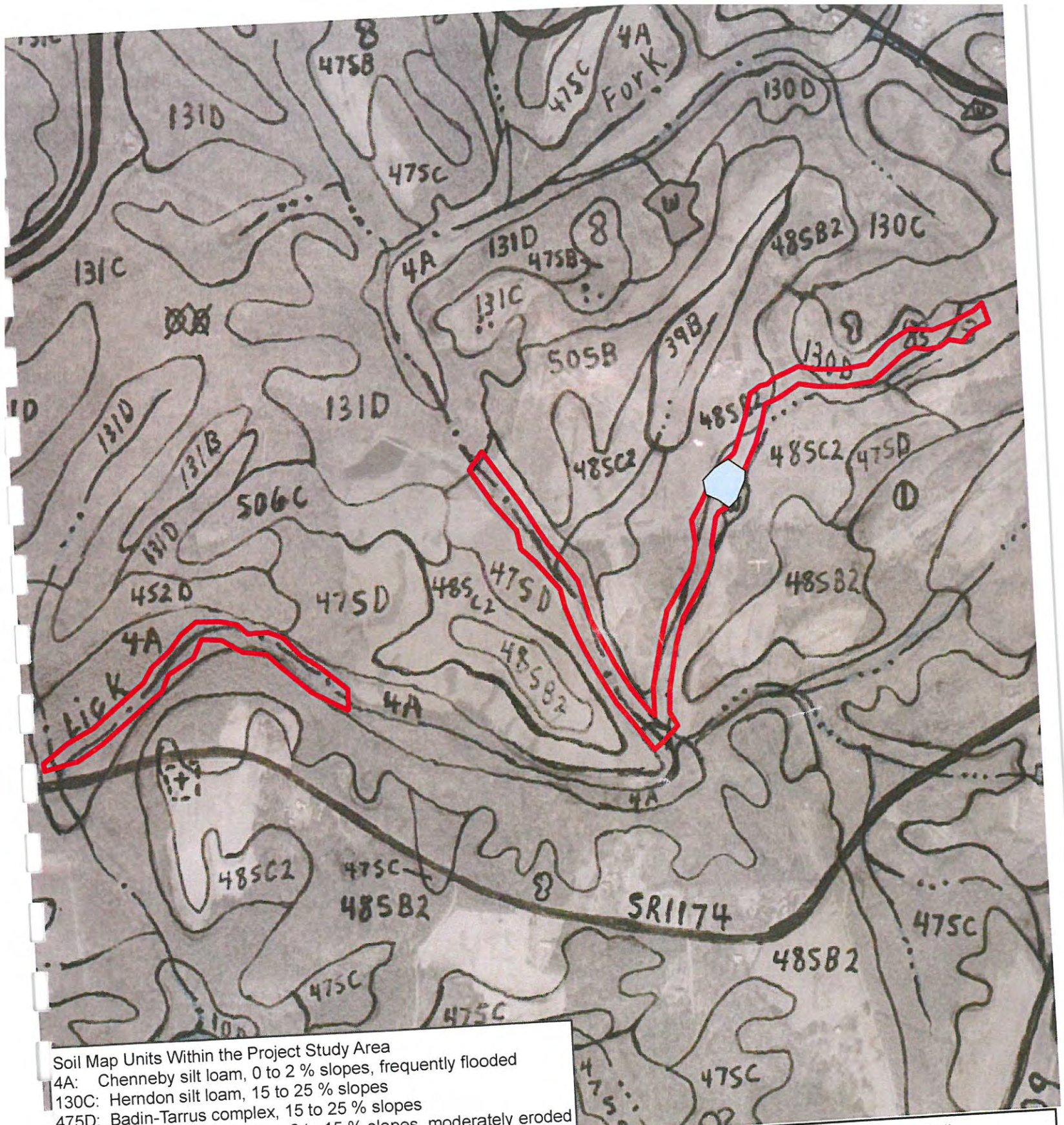
North Carolina
Ecosystem Enhancement Program

Clarks Creek Stream Preservation
(Lick Fork -Tributary to Clarks Creek)
EEP Project # 000622

Project Site Watershed Map

THE LOUIS BERGER GROUP
1001 Wade Avenue, Suite 400
Raleigh, NC 27605

Figure 2
June 2009



Soil Map Units Within the Project Study Area
 4A: Chenneby silt loam, 0 to 2 % slopes, frequently flooded
 130C: Herndon silt loam, 15 to 25 % slopes
 475D: Badin-Tarrus complex, 15 to 25 % slopes
 485C2: Badin-Tarrus complex, 8 to 15 % slopes, moderately eroded


Legend

- Easement Boundary
- Pond

data source:
 Tomery Soil and Water Conservation
 Tomery County, NC



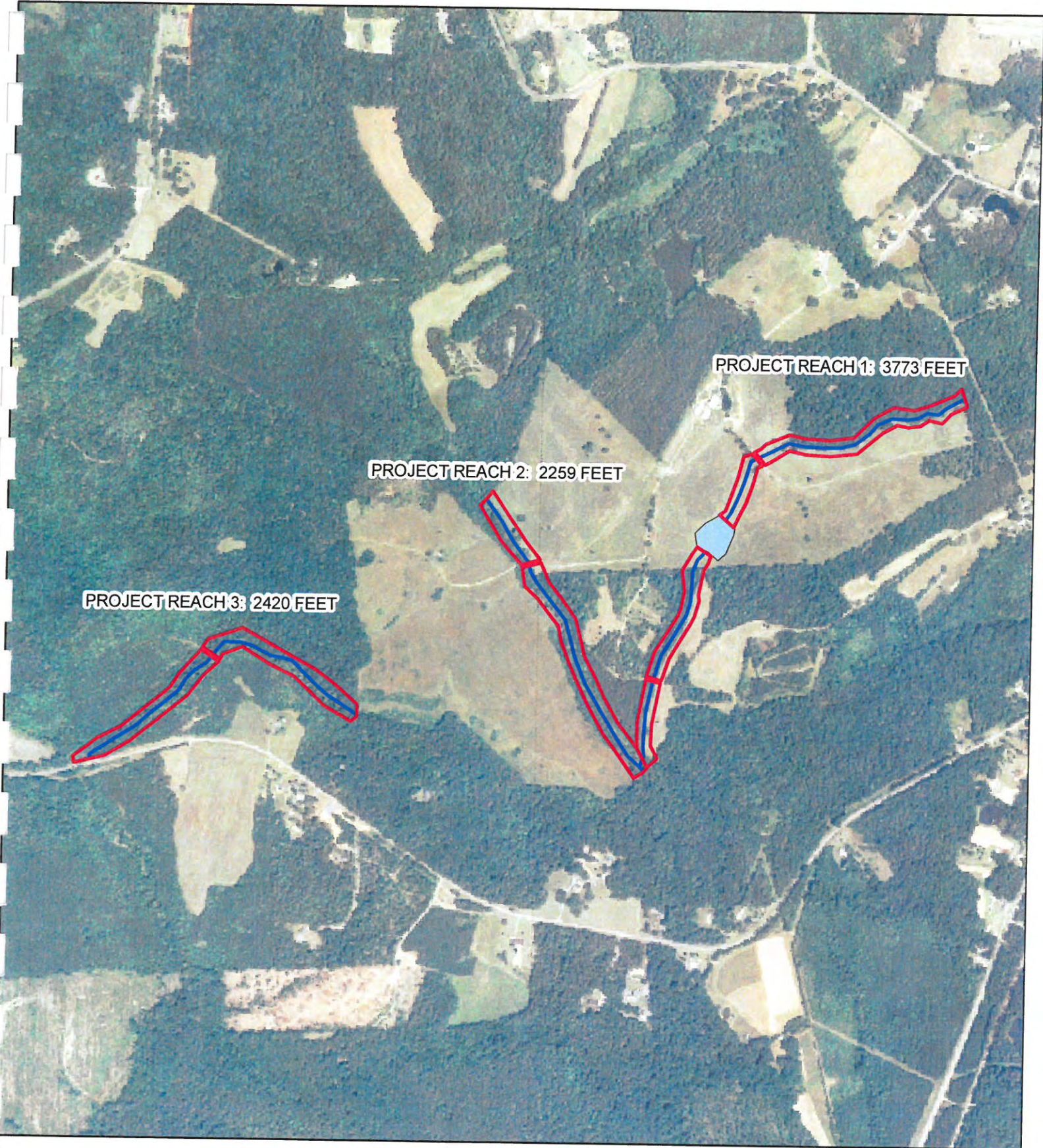
NOT TO SCALE


 North Carolina
 Ecosystem Enhancement Program





Clarks Creek Stream Preservation
 (Lick Fork -Tributary to Clarks Creek)
 EEP Project # 000622

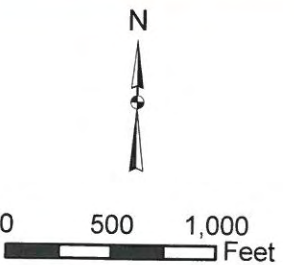
Project Site NRCS Soil Survey Map

<div style="display: flex; align-items: center; border: 1px solid black;"> <div style="font-size: small;"> <p>THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605</p> </div> </div>	Figure 3 June 2009
--	------------------------------



Legend

-  Easement Boundary
-  Project Stream Reaches
-  Cattle Crossings* Not included in Mitigation footage
-  Existing Pond * Not included in Mitigation footage





	North Carolina Ecosystem Enhancement Program	
	Clarks Creek Stream Preservation (Lick Fork -Tributary to Clarks Creek) EEP Project # 000622	
Project Site Hydrological Features Map		
	THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605	Figure 4 June 2009

Figure 5: Project Site Wetland Delineation Map

Not applicable to this project. Figure not produced.

Figure 6: Reference Site Vicinity Map

Not applicable to this project. Figure not produced.

Figure 7: Reference Site Watershed Map

Not applicable to this project. Figure not produced.

Figure 8: Reference Site NRCS Soil Survey Map

Not applicable to this project. Figure not produced.




Figure 9: Reference Site Wetland Determination Sample Locations with Gauge Locations

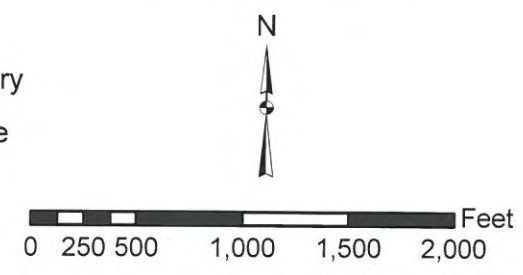
Not applicable to this project. Figure not produced



Figure 10: Reference Site Vegetative Communities Map

Not applicable to this project. Figure not produced.







- Legend**
-  Easement Boundary
 -  Exotic Species Site
 -  Pond





	North Carolina Ecosystem Enhancement Program	
	Clarks Creek Stream Preservation (Lick Fork -Tributary to Clarks Creek) EEP Project # 000622	
Project Site Exotic Species Eradication Sites		
	THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605	Figure 11 June 2009

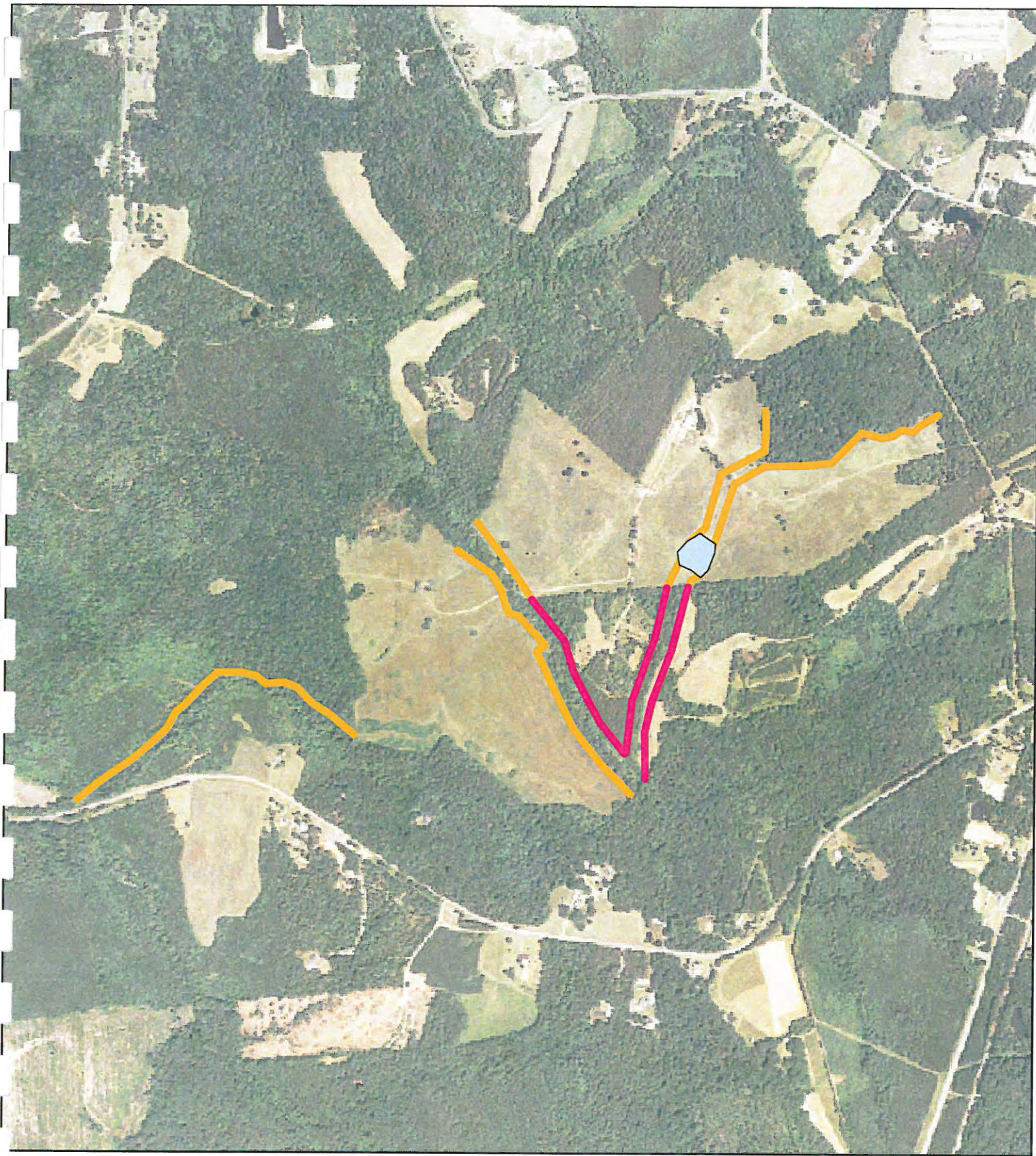


Legend

-  Easement Boundary
-  Pond
- Planting Zones**
-  1
-  2





	North Carolina Ecosystem Enhancement Program	
	Clarks Creek Stream Preservation (Lick Fork -Tributary to Clarks Creek) EEP Project # 000622	
Project Site Planting Plan		
	THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605	Figure 12 June 2009



- Legend**
- Williams Fencing
 - McRae Fencing
 - Pond



 <p>North Carolina Ecosystem Enhancement Program</p>	
<p>Clarks Creek Stream Preservation (Lick Fork -Tributary to Clarks Creek) EEP Project # 000622</p>	
<p>Project Site Fencing Map</p>	
 <p>THE LOUIS BERGER GROUP 1001 Wade Avenue, Suite 400 Raleigh, NC 27605</p>	<p>Figure 13 June 2009</p>

14. Appendices

APPENDIX 1
PROJECT SITE PHOTOGRAPHS



Photo 1: UT to Lick Fork (Reach 1), downstream forested section. View looking downstream.



Photo 2: UT to Lick Fork (Reach 1), upstream cattle pasture. View looking upstream.



Photo 3: Lick Fork Mainstem (Reach 2). View looking upstream.



Photo 4: Lick Fork Mainstem (Reach 2). View looking downstream.



Photo 5: Lick Fork Mainstem (Reach 3). View looking upstream.



Photo 6: Lick Fork Mainstem (Reach 3). View looking downstream.

APPENDIX 2

**PROJECT SITE USACE ROUTINE WETLAND DELINEATION
DATA FORMS**

(N/A – No Wetlands are associated with this project)

APPENDIX 3

PROJECT SITE NCDWQ STREAM CLASSIFICATION FORMS

North Carolina Division of Water Quality – Stream Identification Form; Version 3.1

Date: 3/28/07	Project: Clarks Creek Proj. McRae Property	Latitude:
Evaluator: T. Johnson	Site: Reach 1	Longitude:
Total Points: <i>Stream is at least intermittent if ≥ 19 or perennial if ≥ 30</i>	County: Montgomery Co.	Other e.g. Quad Name: Troy

A. Geomorphology (Subtotal = 14.5)

	Absent	Weak	Moderate	Strong
1 ^a . Continuous bed and bank	0	1	2	3
2. Sinuosity	0	1	2	3
3. In-channel structure: riffle-pool sequence	0	1	2	3
4. Soil texture or stream substrate sorting	0	1	2	3
5. Active/relic floodplain	0	1	2	3
6. Depositional bars or benches	0	1	2	3
7. Braided channel	0	1	2	3
8. Recent alluvial deposits	0	1	2	3
9 ^a . Natural levees	0	1	2	3
10. Headcuts	0	1	2	3
11. Grade controls	0	0.5	1	1.5
12. Natural valley or drainageway	0	0.5	1	1.5
13. Second or greater order channel on existing USGS or NRCS map or other documented evidence.	No = 0		Yes = 3	

^a Man-made ditches are not rated; see discussions in manual

B. Hydrology (Subtotal = 9.5)

14. Groundwater flow/discharge	0	1	2	3
15. Water in channel and > 48 hrs since rain, or Water in channel -- dry or growing season	0	1	2	3
16. Leaf litter	1.5	1	0.5	0
17. Sediment on plants or debris	0	0.5	1	1.5
18. Organic debris lines or piles (Wrack lines)	0	0.5	1	1.5
19. Hydric soils (redoximorphic features) present?	No = 0		Yes = 1.5	

C. Biology (Subtotal = 8.5)

20 ^b . Fibrous roots in channel	3	2	1	0
21 ^b . Rooted plants in channel	3	2	1	0
22. Crayfish	0	0.5	1	1.5
23. Bivalves	0	1	2	3
24. Fish	0	0.5	1	1.5
25. Amphibians	0	0.5	1	1.5
26. Macrobenthos (note diversity and abundance)	0	0.5	1	1.5
27. Filamentous algae; periphyton	0	1	2	3
28. Iron oxidizing bacteria/fungus.	0	0.5	1	1.5
29 ^b . Wetland plants in streambed	FAC = 0.5; FACW = 0.75; OBL = 1.5 SAV = 2.0; Other = 0			

^b Items 20 and 21 focus on the presence of upland plants. Item 29 focuses on the presence of aquatic or wetland plants.

Notes: (use back side of this form for additional notes.)

Sketch:

Reaches 2 + 3 display obvious perennial characteristics
 Benthos observed:
 diptera, caddisflies, mayfly, isopods,
 amphipods, midges, leeches

APPENDIX 4

REFERENCE SITE PHOTOGRAPHS

(N/A – A reference site was not necessary for this project)

APPENDIX 5

**REFERENCE SITE USACE ROUTINE WETLAND
DETERMINATION DATA FORMS**

(N/A – A reference site was not necessary for this project)

APPENDIX 6

REFERENCE SITE NCDWQ STREAM CLASSIFICATION FORMS

(N/A – A reference site was not necessary for this project)

APPENDIX 7

HYDROLOGIC GAUGE DATA SUMMARY, GROUNDWATER AND RAINFALL INFORMATION

(N/A – This data was not necessary for this project)

APPENDIX 8

HEC-RAS Analysis

(N/A – This data was not necessary for this project)

APPENDIX 9

EEP FLOODPLAIN REQUIREMENTS CHECKLIST

(N/A – This checklist was not necessary for this project)

APPENDIX 10

**LICK FORK AND UT TO LICK FORK BENTHOS SURVEY
RESULTS**

BENTHIC MACROINVERTEBRATES COLLECTED FROM MONTGOMER CO., NC, CLARKS CREEK
MITIGATION, 4/23/08.

SPECIES	T.V.	F.F.G.	Sta. 1	Sta. 2	Sta. 3	Sta. 4	Sta. 5	Sta. 6	Sta. 7
NEMATODA	6								1
MOLLUSCA									
Bivalvia									
Veneroidea									
Sphaeriidae	*8	FC							
<i>Pisidium sp.</i>	6.5	FC	5					1	1
Gastropoda									
Mesogastropoda									
Hydrobiidae	*8	SC							
<i>Amnicola sp.</i>	5.2	SC	1						
Basommatophora									
Ancyliidae		SC							
<i>Ferrissia rivularis</i>	*6	SC	3						
Physidae									
<i>Physella sp.</i>	8.8	CG	11					3	2
Planorbidae	*6	SC							
<i>Menetus dilatatus</i>	8.2	SC	10	2					
ANNELIDA									
Oligochaeta	*10	CG							
Tubificida									
Enchytraeidae	9.8	CG				2			
Naididae	*8	CG	1			3			
Tubificidae w.o.h.c.	7.1	CG	3	1		1			
Lumbriculida									
Lumbriculidae	7	CG		1			1		
ARTHROPODA									
Arachnoidea									
Acariformes	5.5								
Hygrobatidae	5.5								
<i>Atractides sp.</i>	5.5			1					
Crustacea									
Ostracoda						4			
Cladocera									
Daphnidae									
<i>Ceriodaphnia sp.</i>					540	2			
Isopoda									
Asellidae		SH							
<i>Caecidotea sp.</i>	9.1	CG			60	1	14		
Amphipoda		CG							
Crangonyctidae									
<i>Crangonyx sp.</i>	7.9	CG	1		18	1	8		
Decapoda									
Cambaridae	7.5								
<i>Cambarus sp.</i>	7.6	CG		2				2	1
Insecta									
Collembola			2						
Ephemeroptera									
Baetidae		CG					1		

BENTHIC MACROINVERTEBRATES COLLECTED FROM MONTGOMER CO., NC, CLARKS CREEK
MITIGATION, 4/23/08.

SPECIES	T.V.	F.F.G.	Sta. 1	Sta. 2	Sta. 3	Sta. 4	Sta. 5	Sta. 6	Sta. 7
<i>Acentrella sp.</i>	4							1	1
<i>Plauditus sp.</i>		CG		32				36	
Caenidae		CG							
<i>Caenis sp.</i>	7.4	CG						2	
Ephemerellidae		SC							
<i>Attenella sp.</i>			1	1				2	5
Isonychiidae		FC							
<i>Isonychia sp.</i>	3.5	FC		2					
Leptophlebiidae		CG							1
Plecoptera									
Capniidae		SH						1	
Capniidae/Leuctridae									2
Chloroperlidae		P							
<i>Haploperla brevis</i>	1			1				1	
Leuctridae		SH							
<i>Leuctra sp.</i>	2.5	SH	1						
Nemouridae		SH							
<i>Amphinemura sp.</i>	3.3	SH			1			2	1
Perlidae		P						2	
<i>Perlesta placida sp. gp.</i>	4.7	P	1	20	3		1	23	35
Perlidae/Perlodidae				11					1
Perlodidae		P							
<i>Isoperla sp.</i>		P		1					
Taeniopterygidae		SH							
<i>Taeniopteryx sp.</i>	5.4	SH		1					
Hemiptera									
Corixidae	9	PI			1	1			
Gerridae		P							
<i>Trepobates sp.</i>		P	1						
Megaloptera									
Corydalidae		P							
<i>Nigronia serricornis</i>	5	P		1					1
Coleoptera									
Curculionidae									1
Dryopidae									
<i>Helichus basalis</i>		SC						1	3
Dytiscidae		P	1						
<i>Hydroporus sp.</i>	8.6	PI	6	1			1		1
Elmidae		CG							
<i>Dubiraphia sp.</i>	5.9	SC	1						
<i>Dubiraphia vittata</i>	4.1	SC	1						
<i>Optioservus sp.</i>	2.4	SC		7				2	2
<i>Optioservus ovalis</i>	2.4	SC		1					
<i>Oulimnius latiusculus</i>	1.8	CG		10					
<i>Stenelmis sp.</i>	5.1	SC		12				2	4
Psephenidae		SC							
<i>Psephenus herricki</i>	2.4	SC	1	2				1	
Diptera									

BENTHIC MACROINVERTEBRATES COLLECTED FROM MONTGOMER CO., NC, CLARKS CREEK
MITIGATION, 4/23/08.

SPECIES	T.V.	F.F.G.	Sta. 1	Sta. 2	Sta. 3	Sta. 4	Sta. 5	Sta. 6	Sta. 7
Ceratopogonidae		P	3					2	1
Chironomidae									
<i>Chironomus sp.</i>	9.6	CG	101	19	24	110	144	13	21
<i>Chaetocladius sp.</i>		CG		1		1		2	4
<i>Conchapelopia sp.</i>	8.4	P						1	3
<i>Constempellina sp.</i>		CG		3					
<i>Corynoneura sp.</i>	6	CG	6	4	1			2	2
<i>Cricotopus sp.</i>		CG		11	2	3		46	26
<i>Dicrotendipes simpsoni</i>	10		1						
<i>Diplocladius cultriger</i>	7.4	CG	1						
<i>Hydrobaenus sp.</i>	9.5	SC	16	48				3	8
<i>Hydrobaenus pilipes</i>			2	3	2				
<i>Labrundinia sp.</i>	5.9	P		1					
<i>Limnophyes sp.</i>	7.4	CG	1	3					1
<i>Microtendipes pedellus gp.</i>	5.5	CG	1						4
<i>Orthocladius sp.</i>		CG						1	1
<i>Parachaetocladius sp.</i>	0	CG		17	1			2	3
<i>Parakiefferiella sp.</i>	5.4	CG						1	
<i>Parametrioctonus sp.</i>	3.7	CG		15	6			38	32
<i>Potthastia longimana</i>	6.5	CG	2	5				3	9
<i>Procladius sp.</i>	9.1	P	3		1	1	1		
<i>Psectrocladius sp.</i>	3.6	SH	1						
<i>Rheotanytarsus exiguus gp.</i>	5.9			1				2	6
<i>Tanytarsus sp.</i>	6.8	FC	6	10				1	
<i>Thienemanniella xena</i>	5.9	CG		3	1				12
<i>Tribelos jucundum</i>	6.3		2						2
<i>Tvetenia paucunca</i>	3.7	CG		8				18	
<i>Zavrelimyia sp.</i>	9.1	P			5	14	31		12
Culicidae		FC			1				
Empididae	7.6	P							2
Ephydriidae		PI				31	2		
Psychodidae		CG				4			
<i>Psychoda sp.</i>	9.6	CG				22	1	1	
Simuliidae		FC							
<i>Simulium sp.</i>	6	FC	1		2	1			
Tabanidae		PI							
<i>Chrysops sp.</i>	6.7	PI		1				2	
Tipulidae		SH							1
<i>Antocha sp.</i>	4.3	CG							
<i>Tipula sp.</i>	7.3	SH		2					1
TOTAL NO. OF ORGANISMS			198	265	669	202	205	220	214
TOTAL N. OF TAXA			33	38	17	17	11	33	37
EPT			3	8	2	0	1	9	7
NCBI -Assigned density values			7.85	5.24	7.78	9.13	8.97	5.76	6.35

APPENDIX 11
AGENCY CORESPONDENCE



THE LOUIS BERGER GROUP, INC.

1001 Wade Ave. Raleigh, North Carolina 27605
Tel (919) 866-4400 Fax (919) 755-3502 www.louisberger.com

Dale Suiter
US Fish and Wildlife Service
Raleigh Field Office
P.O. Box 33726
Raleigh, NC 27636

December 14, 2007

Subject: EEP Stream Preservation Project in Montgomery County,
Yadkin River Basin 03040104

Dear Mr. Suiter,

The Clarks Creek Stream Mitigation Site has been identified for the purpose of providing in-kind mitigation for unavoidable stream impacts. The 19 acre site is partially an agricultural property that has been subject to grazing cattle, and the remainder is already in riparian buffer. Preservation goals for this site include the restoration of 50 foot riparian buffers on both sides of portions of Clarks Creek and its tributaries. Anticipated benefits are enhanced wildlife habitats, improved water quality and improved flood storage along Clarks Creek. The 7,844 linear foot stream preservation will also include the planting of native species along the expanded riparian buffer and treatment of invasive plant species.

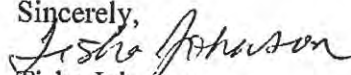
We have already obtained an updated species list for Montgomery County from your web site (<http://nc-es.fws.gov/es/countyfr.html>). The threatened or endangered species are:

Eastern puma	<i>Puma concolor cougar</i>	Historic
Red-Cockaded woodpecker	<i>Picoides borealis</i>	Current
Schweinitz's sunflower	<i>Helianthus schweinitzii</i>	Current
Smooth Coneflower	<i>Echinacea laevigata</i>	Historic

We are requesting that you please provide any known information for each species in the county. The USFWS will be contacted if suitable habitat for any listed species is found or if we determine that the project may affect one or more federally listed species or designated critical habitat.

Please provide comments on any possible issues that might emerge with respect to endangered species, migratory birds or other trust resources from this stream preservation project. A USGS map showing the approximate property lines is enclosed.

If we have not heard from you in 30 days we will assume that our species list is correct, that you do not have any comments regarding associated laws, and that you do not have any information relevant to this project at the current time. We thank you in advance for your timely response and cooperation.

Sincerely,

Tisha Johnson
Environmental Scientist
cc: Michael O'Rourke (Berger)



☒ North Carolina Wildlife Resources Commission ☒

Fred A. Harris, Interim Executive Director

1 January 1008

Ms. Tisha Johnson
Louis Berger Group, Inc.
1001 Wade Ave.
Raleigh, NC 27605

Subject: EEP Stream Mitigation Project – Clark's Creek, Montgomery County, North Carolina.

Dear Ms. Johnson:

Biologists with the North Carolina Wildlife Resources Commission have reviewed the subject document. Our comments are provided in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d) and North Carolina General Statutes (G.S. 113-131 et seq.).

The proposed project includes reconstruction of 50-foot buffers on either side of a section of Clark's Creek and its tributaries. Activities include fencing out cattle, replanting the buffer with native species, and invasive plant species treatment. Based on the topographic map included with the document, it appears the work will be performed along Lick Fork, a tributary to Clark's Creek in the Yadkin-Pee Dee River basin.

There are records for the federal species of concern and state endangered Carolina creekshell (*Villosa vughaniana*) in Lick Fork. Also, there are records for federal and state endangered red-cockaded woodpecker (*Picoides borealis*) near the site. Riparian buffer restoration projects often improve water quality and aquatic habitat. We recommend establishing native, forested buffers in riparian areas to improve terrestrial habitat and provide a travel corridor for wildlife species. Provided measures are taken to minimize erosion and sedimentation from construction/restoration activities, we do not anticipate the project to result in significant adverse impacts to aquatic and terrestrial wildlife resources.

Thank you for the opportunity to review this project. If you require further assistance, please contact our office at (336) 449-7625.

Sincerely,

Shari L. Bryant
Piedmont Region Coordinator
Habitat Conservation Program

Mailing Address: Division of Inland Fisheries • 1721 Mail Service Center • Raleigh, NC 27699-1721
Telephone: (919) 707-0220 • **Fax:** (919) 707-0028



North Carolina Department of Cultural Resources
State Historic Preservation Office

Peter B. Sandbeck, Administrator

Michael F. Easley, Governor
Lisbeth C. Evans, Secretary
Jeffrey J. Crow, Deputy Secretary

Office of Archives and History
Division of Historical Resources
David Brook, Director

February 12, 2008

Michael O'Rourke
The Louis Berger Group, Inc.
1001 Wade Avenue
Raleigh, NC 27605

Re: Clarks Creek Stream Mitigation, Montgomery County, ER 08-0448

Dear Mr. O'Rourke:

Thank you for your letter of January 24, 2008, concerning the above project.

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, please contact Renee Gledhill-Earley, environmental review coordinator, at 919-807-6579. In all future communication concerning this project, please cite the above-referenced tracking number.

Sincerely,


Peter Sandbeck

APPENDIX 12
CONSERVATION EASEMENT DOCUMENTATION

I, JON ERIC DAVIS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION, FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, (DEED DESCRIPTION RECORDED IN BOOK SEE, PAGE PLAT.) THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK SEE, PAGE PLAT, THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS 19 DAY OF SEPTEMBER, A.D. 2009.

JON ERIC DAVIS
 JON ERIC DAVIS, L-3464 SEAL

I, JON ERIC DAVIS, PROFESSIONAL LAND SURVEYOR, L-3464 CERTIFY TO ONE OR MORE OF THE FOLLOWING:
 (1) THAT THIS PLAT IS A SURVEY OF ANOTHER CATEGORY SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY OF OTHER EXCEPTIONS TO THE OPERATION OF A SUBDIVISION.

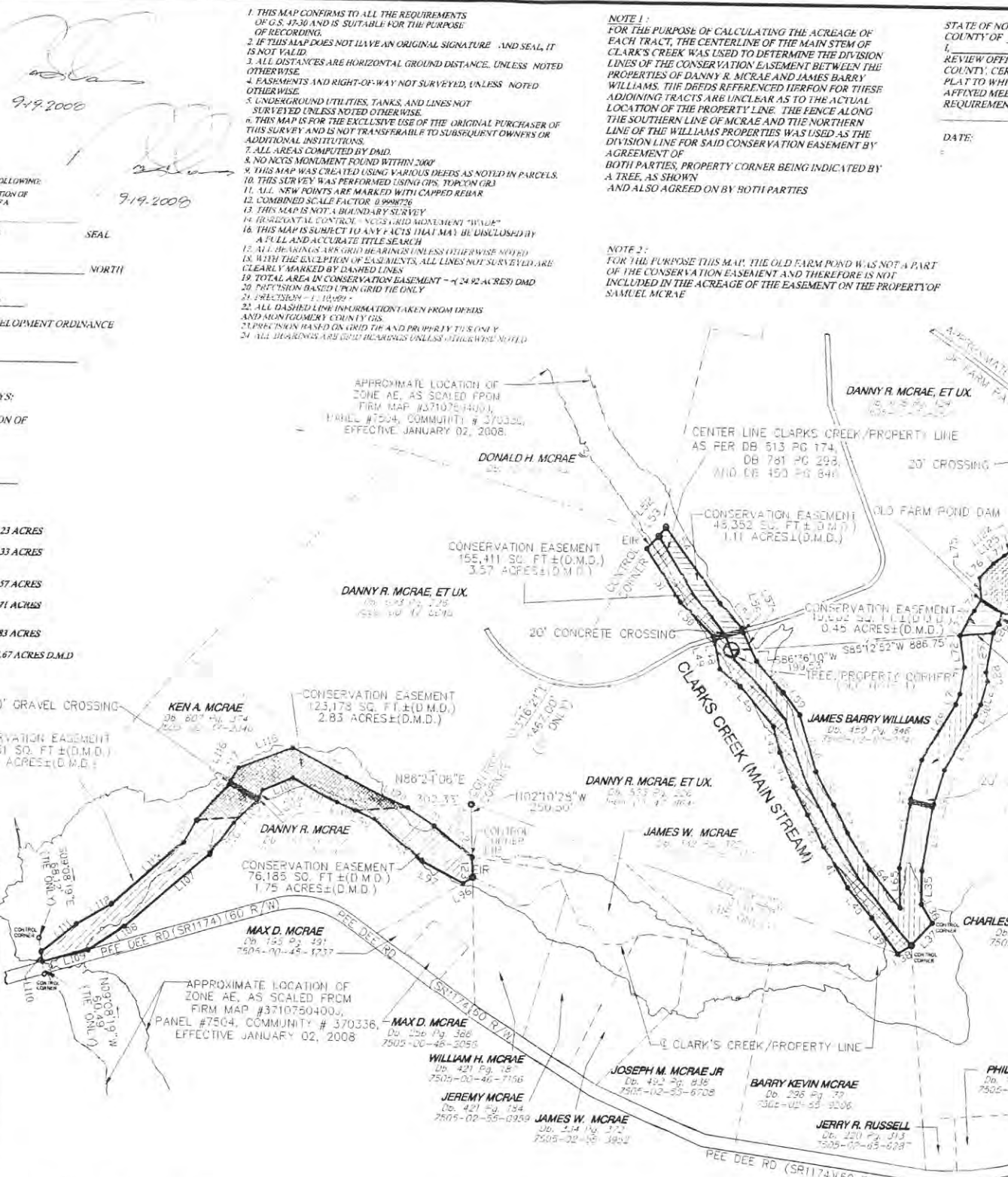
APPROVAL FOR RECORDATION
 APPROVAL BY THE PLANNING DEPARTMENT OF NORTH CAROLINA
 ON THE _____ DAY OF _____, 20____
 PURSUANT TO THE _____ DEVELOPMENT ORDINANCE

PLANNING DIRECTOR
 STATEMENT NO APPROVAL IS REQUIRED BY NCDOT DIVISION OF HIGHWAYS
 THIS PLAT DOES NOT REQUIRE CERTIFICATE OF APPROVAL BY THE DIVISION OF HIGHWAYS AS PROVIDED IN G.S. 116-102.6 SUBSECTION (G).

SIGNED
 PLANNING DIRECTOR

- LEGEND**
- TO BE CONVEYED BY JAMES WILLIAMS, DB 450 PG 846 ± 6.23 ACRES
 - TO BE CONVEYED BY DANNY MCRAE, DB 608 PG 124 ± 7.33 ACRES
 - TO BE CONVEYED BY DANNY MCRAE, DB 523 PG 226 ± 3.57 ACRES
 - TO BE CONVEYED BY DANNY MCRAE, DB 361 P 452 ± 4.71 ACRES
 - TO BE CONVEYED BY KEN A. MCRAE, DB 607 P 374 ± 2.83 ACRES
 - TOTAL ACREAGE OF CONSERVATION EASEMENT ± 24.67 ACRES D.M.D.
 - EXISTING FARM POND 1.34 ACRES
 - EXISTING IRON REBAR
 - NEW IRON REBAR
 - SURVEY CONTROL
 - NCGS MONUMENT
 - PROPERTY LINE NOT SURVEYED
 - TREE/PROPERTY CORNER
 - 20' CONCRETE CROSSING

LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	105.84	S10°53'12"E	L64	237.34	S40°07'22"E
L2	124.52	N63°27'54"E	L65	188.12	N62°03'11"W
L3	97.71	N61°25'56"W	L66	313.96	S08°27'27"W
L4	91.40	N61°25'56"W	L67	29.53	S01°18'24"E
L5	76.01	S5°30'28"W	L68	187.42	N1°18'24"E
L6	80.38	S87°26'48"W	L69	307.32	N29°48'25"E
L7	32.12	N60°53'28"W	L70	53.66	N21°28'23"E
L8	112.19	S57°58'24"W	L71	132.62	N07°28'08"E
L9	247.55	S48°31'12"W	L72	151.80	N08°36'54"W
L10	176.67	S01°14'00"W	L73	137.09	N27°55'24"E
L11	108.02	N02°39'24"W	L74	40.82	N11°12'28"E
L12	129.49	N81°22'39"W	L75	103.25	S06°12'28"E
L13	162.04	S56°10'49"W	L76	34.10	S47°49'23"W
L14	191.66	S2°28'18"W	L77	23.66	S10°18'41"W
L15	22.94	S64°40'20"W	L78	92.47	N31°48'43"E
L16	35.87	S67°42'38"W	L79	156.00	N17°05'02"E
L17	119.33	S1°12'51"W	L80	59.06	N11°14'46"E
L18	130.33	S1°12'51"W	L81	43.15	S5°47'23"W
L19	116.89	S04°19'20"W	L82	38.40	S51°07'41"W
L20	78.25	S21°15'24"W	L83	51.88	N67°41'17"E
L21	24.46	S02°43'17"E	L84	14.97	N47°42'16"E
L22	137.37	S02°43'17"E	L85	166.78	N28°58'12"E
L23	60.04	S50°33'48"W	L86	126.19	S01°02'35"E
L24	81.25	S74°12'12"E	L87	172.50	S88°52'32"E
L25	44.25	S10°36'26"W	L88	168.41	N01°21'31"E
L26	49.55	S30°47'32"W	L89	207.20	N47°44'09"E
L27	187.24	S29°07'18"W	L90	168.78	N28°58'12"E
L28	44.25	S10°36'26"W	L91	113.45	S03°41'11"E
L29	119.84	S10°36'26"W	L92	182.27	N63°00'18"E
L30	26.01	S25°17'06"W	L93	181.48	N64°30'28"E
L31	25.02	S10°36'26"W	L94	70.86	N46°44'27"E
L32	168.48	S10°04'19"W	L95	59.00	N67°33'30"E
L33	15.26	S14°22'31"W	L96	215.37	N66°43'01"W
L34	301.76	S08°42'40"W	L97	303.65	N47°38'12"W
L35	157.49	S08°42'40"W	L98	38.08	N66°28'13"W
L36	102.54	S11°00'42"E	L99	25.20	S11°44'33"E
L37	144.30	S45°56'35"W	L100	235.77	N66°28'13"W
L38	75.27	N97°24'01"E	L101	192.45	N67°12'01"E
L39	210.22	N17°08'11"W	L102	40.82	N20°55'20"E
L40	186.53	N39°31'40"W	L103	20.15	S39°49'41"E
L41	22.94	N11°12'51"W	L104	49.41	S44°08'31"E
L42	164.35	N55°17'25"W	L105	182.82	S36°21'14"W
L43	192.24	N26°51'42"W	L106	528.35	S41°42'19"W
L44	371.45	N2°11'30"W	L107	334.32	S55°52'46"W
L45	106.77	N17°24'21"W	L108	326.44	S79°41'58"W
L46	249.15	N48°28'37"W	L109	347.76	S03°08'15"E
L47	292.44	N49°18'38"W	L110	213.65	N57°19'14"E
L48	137.04	N11°12'51"W	L111	142.85	N50°13'54"E
L49	24.25	S17°11'55"E	L112	445.59	N48°13'15"E
L50	245.82	S44°51'38"W	L113	118.74	N24°20'11"E
L51	297.33	N03°37'42"W	L114	225.04	S40°28'34"W
L52	81.06	N46°09'49"E	L115	20.17	S25°53'44"W
L53	53.86	N37°00'43"E	L116	69.24	S21°32'47"W
L54	118.44	N32°14'14"W	L117	292.83	N62°31'47"E
L55	161.28	S41°18'33"E	L118	267.39	S67°30'38"W
L56	50.47	S1°09'45"E	L119	152.71	N52°24'53"E
L57	148.40	S25°36'04"E	L120	151.44	S57°43'58"E
L58	98.31	S40°14'19"W	L121	94.77	S40°28'08"E
L59	133.49	S17°52'38"E	L122	52.73	S51°32'02"W
L60	278.94	S16°11'24"E	L123	41.29	S52°04'10"W
L61	116.74	S29°12'58"E			
L62	150.92	S27°07'10"E			
L63	99.76	S17°46'48"E			

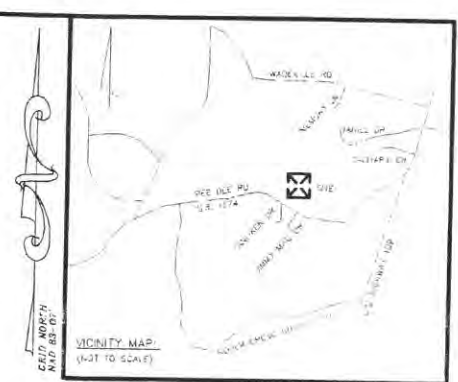


1. THIS MAP CONFORMS TO ALL THE REQUIREMENTS OF G.S. 47-30 AND IS SUITABLE FOR THE PURPOSE OF RECORDING.
2. IF THIS MAP DOES NOT HAVE AN ORIGINAL SIGNATURE AND SEAL, IT IS NOT VALID.
3. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCE, UNLESS NOTED OTHERWISE.
4. EASEMENTS AND RIGHT-OF-WAY NOT SURVEYED, UNLESS NOTED OTHERWISE.
5. UNDERGROUND UTILITIES, TANKS, AND LINES NOT SURVEYED UNLESS NOTED OTHERWISE.
6. THIS MAP IS FOR THE EXCLUSIVE USE OF THE ORIGINAL PURCHASER OF THIS SURVEY AND IS NOT TRANSFERABLE TO SUBSEQUENT OWNERS OR ADDITIONAL INSTITUTIONS.
7. ALL AREAS COMPUTED BY D.M.D.
8. NO NCGS MONUMENT FOUND WITHIN 200'
9. THIS MAP WAS CREATED USING VARIOUS DEEDS AS NOTED IN PARCELS.
10. THIS SURVEY WAS PERFORMED USING GPS, TOPCON GR3
11. ALL NEW POINTS ARE MARKED WITH CAPPED REBAR
12. COMBINED SCALE FACTOR 1.998726
13. THIS MAP IS NOT A BOUNDARY SURVEY
14. HORIZONTAL CONTROL - NCGS GRID MOVEMENT "WIDE"
15. THIS MAP IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH
16. ALL BEARINGS ARE GRID BEARINGS UNLESS OTHERWISE NOTED
17. WITH THE EXCEPTION OF EASEMENTS, ALL LINES NOT SURVEYED ARE CLEARLY MARKED BY DASHED LINES
18. TOTAL AREA IN CONSERVATION EASEMENT - 24.67 ACRES D.M.D.
19. CONSERVATION EASEMENT IS THE ONLY
20. PRECISION BASED OPEN GRID THE ONLY
21. PRECISION - 1:10,000
22. ALL DASHED LINE INFORMATION TAKEN FROM DEEDS AND MONTGOMERY COUNTY GIS
23. THIS SURVEY WAS PERFORMED ON GRID TIE AND PROPERTY TIE USING A TREE, AS SHOWN
24. ALL BEARINGS AND DISTANCES UNLESS OTHERWISE NOTED

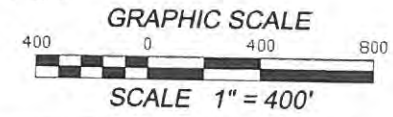
NOTE 1:
 FOR THE PURPOSE OF CALCULATING THE ACREAGE OF EACH TRACT, THE CENTERLINE OF THE MAIN STEM OF CLARK'S CREEK WAS USED TO DETERMINE THE DIVISION LINES OF THE CONSERVATION EASEMENT BETWEEN THE PROPERTIES OF DANNY R. MCRAE AND JAMES BARRY WILLIAMS. THE DEEDS REFERENCED HEREON FOR THESE ADJOINING TRACTS ARE UNCLEAR AS TO THE ACTUAL LOCATION OF THE PROPERTY LINE. THE FENCE ALONG THE SOUTHERN LINE OF MCRAE AND THE NORTHERN LINE OF THE WILLIAMS PROPERTIES WAS USED AS THE DIVISION LINE FOR SAID CONSERVATION EASEMENT BY AGREEMENT OF BOTH PARTIES, PROPERTY CORNER BEING INDICATED BY A TREE, AS SHOWN AND ALSO AGREED ON BY BOTH PARTIES

NOTE 2:
 FOR THE PURPOSE THIS MAP, THE OLD FARM POND WAS NOT A PART OF THE CONSERVATION EASEMENT AND THEREFORE IS NOT INCLUDED IN THE ACREAGE OF THE EASEMENT ON THE PROPERTY OF SAMUEL MCRAE

STATE OF NORTH CAROLINA
 COUNTY OF _____
 REVIEW OFFICER OF _____
 CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.
 DATE: _____ REVIEW OFFICER



- DEED REFERENCES**
- DEED BOOK 107, PAGE 146
 - DEED BOOK 523, PAGE 226
 - DEED BOOK 513, PAGE 174
 - DEED BOOK 523, PAGE 226
 - DEED BOOK 450, PAGE 846
 - DEED BOOK 470, PAGE 706
 - DEED BOOK 194, PAGE 027
 - DEED BOOK 168, PAGE 415
 - DEED BOOK 220, PAGE 313
 - DEED BOOK 230, PAGE 072
 - DEED BOOK 192, PAGE 636
 - DEED BOOK 374, PAGE 374
 - DEED BOOK 421, PAGE 184
 - DEED BOOK 421, PAGE 187
 - DEED BOOK 256, PAGE 386
 - DEED BOOK 195, PAGE 497
 - DEED BOOK 561, PAGE 452
 - DEED BOOK 607, PAGE 374



OWNERSHIP AND DEDICATION:
 THE UNDERSIGNED HEREBY ACKNOWLEDGE(S) THIS PLAT AND ALLOTMENT TO BE FREE ACT AND DEED AND HEREBY DEDICATE(S) TO THE PUBLIC USE AS STREETS, PARKS, DRAINAGEWAYS AND OPEN SPACE, AND EASEMENTS FOREVER ALL AREA SO SHOWN OR INDICATED ON SAID PLAT, AND AUTHORIZES MONTGOMERY COUNTY TO RECORD THIS PLAT IN THE OFFICE OF THE REGISTER OF DEEDS OF MONTGOMERY COUNTY, NORTH CAROLINA

SIGNED Ken A. McRae DATE 1-19-09
 KEN A. MCRAE
 SIGNED James Barry Williams DATE 1-05-09
 JAMES BARRY WILLIAMS
 SIGNED Danny R. McRae Sandra H. McRae DATE 1-19-09
 DANNY R. MCRAE SANDRA H. MCRAE

OWNERS:
 KEN A. MCRAE
 179 FAIRWAY SHORES ROAD
 MOUNT GILEAD, NC 27306
 JAMES BARRY WILLIAMS
 142 ZACHARY DRIVE
 MOUNT GILEAD, NC 27306
 P.H. 910-572-8578
 DANNY R. AND SANDRA H. MCRAE
 395 FAIRWAY SHORES ROAD
 MOUNT GILEAD, NC 27306
 P.H. 910-572-7907

SSEPI
 ENGINEERING GROUP
 1025 WADE AVENUE
 RALEIGH, NORTH CAROLINA 27605
 TEL: 919-789-9077
 FAX: 919-789-9601

SR08 006 00	File No.	CONSERVATION EASEMENT FOR			
Job No.	File No.	DANNY R. MCRAE, KEN A. MCRAE, JAMES BARRY WILLIAMS			
Scales	1" = 400'				
Hor.	NAD 83(2007)				
Vert.	N/A				
		MOUNT GILEAD TOWNSHIP, NEAR MOUNT GILEAD, MONTGOMERY COUNTY, NORTH CAROLINA			
SEPI ENG.	AC	JD	9/18/2008	Sheet	Of
Surveyed By	Designed By	Drawn By	Project-Engr	Approved By	Date
					1 1

631 153
2-10-09 1-54-09
State of North Carolina
Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MONTGOMERY COUNTY

SPO File Number

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 CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 6th day of February, 2009, by **Ken Alexander McRae and wife, Christy C. McRae**, ("Grantor"), whose mailing address is 179 Fairway Shores Road, Mount Gilead, NC 27306, 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 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the 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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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. This MOA recognizes that the 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 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, Grantor owns in fee simple certain real property situated, lying, and being in Mount Gilead Township, Montgomery County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 9.66 taxable acres and being conveyed to the Grantor by deed as recorded in **Deed Book 607 at Page 374 (being described as 11 ¼ acres in deed)** of the Montgomery County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Clarks Creek (Main Stream).

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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tract of land as identified as containing 2.83 acres, as shown on a plat of survey entitled "Conservation Easement Survey for Danny R. McRae, Ken A. McRae, James Barry Williams" dated September 19, 2008, certified by Jon Eric Davis, L-3464, and **recorded** in Plat Cabinet E, Slide 150-A, Montgomery County Registry.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the 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 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 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. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The 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 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. 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 Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the 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.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the 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 Easement Area may be allowed.

I. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. **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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. **Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

N. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. **Ingress, Egress and Inspection.** The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement

Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

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 subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, 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 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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 Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are 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, their successors or assigns, for any injury or change in the 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, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their

successors or assigns, 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.

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.

V. 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. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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.

VI. 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 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 Easement Area, and the right of quiet enjoyment of the 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 said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are 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 day and year first above written.

Ken Alexander McRae (SEAL)
Ken Alexander McRae

Christy C. McRae (SEAL)
Christy C. McRae

NORTH CAROLINA
COUNTY OF MONTGOMERY

I, *Sara E. Perez*, a Notary Public in and for the County and State aforesaid, do hereby certify that **Ken Alexander McRae and wife, Christy C. McRae**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 30 day of January 2009

Sara E. Perez Notary Public

My commission expires: 4/26/2011

(SEAL)



Book 631 Page 160
Date 2-6-09 Time 1:54 PM
Register Of Deeds Montgomery

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MONTGOMERY COUNTY

SPO File Number

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 CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 6th day of February, 2009, by **Danny R. McRae and wife, Soundra H. McRae**, ("Grantor"), whose mailing address is 395 Fairway Shores Road, Mount Gilead, NC 27306, 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 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the 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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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. This MOA recognizes that the 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 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, Grantor owns in fee simple certain real property situated, lying, and being in Mount Gilead Township, Montgomery County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 38.16 taxable acres and being conveyed to the Grantor by deed as recorded in **Deed Book 561 at Page 452** ("**Tract No. One**" and "**Tract No. Three**" containing 22 6/10 acres each) of the Montgomery County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Clarks Creek (Main Stream).

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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tract of land as identified as containing 2.96 acres and 1.75 acres, as shown on a plat of survey entitled "Conservation Easement Survey for Danny R. McRae, Ken A. McRae, James Barry Williams" dated September 19, 2008, certified by Jon Eric Davis, L-3464, and **recorded** in Plat Cabinet E, Slide 150-A, Montgomery County Registry.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the 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 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 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. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The 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 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. 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 Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the 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.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the 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 Easement Area may be allowed.

I. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. **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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. **Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

N. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. **Ingress, Egress and Inspection.** The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement

Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

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 subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, 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 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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 Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are 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, their successors or assigns, for any injury or change in the 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, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their

successors or assigns, 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.

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.

V. 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. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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.

VI. 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 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 Easement Area, and the right of quiet enjoyment of the Easement Area.

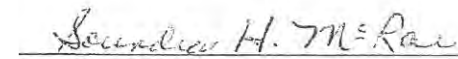
TO HAVE AND TO HOLD the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are 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 day and year first above written.



Danny R. McRae (SEAL)



Soundra H. McRae (SEAL)

NORTH CAROLINA

COUNTY OF MONTGOMERY

I, Sara E. Perez, a Notary Public in and for the County and State aforesaid, do hereby certify that **Danny R. McRae and wife, Soundra H. McRae**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6th day of ~~November, 2008.~~ February 2009



Notary Public

My commission expires: 4/26/2011

(SEAL)



Book 631 Page 167
Date 2/6/09 Time 1:54pm
Register Of Deeds Montgomery

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MONTGOMERY COUNTY

SPO File Number

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 CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 6th day of February, 2009, by **Danny R. McRae and wife, Soundra H. McRae (aka Sondra H. McRae)**, ("Grantor"), whose mailing address is 395 Fairway Shores Road, Mount Gilead, NC 27306, 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 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the 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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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. This MOA recognizes that the 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 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, Grantor owns in fee simple certain real property situated, lying, and being in Mount Gilead Township, Montgomery County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 104.13 taxable acres and being conveyed to the Grantor by deed as recorded in **Deed Book 608 at Page 124** (**described as containing 97.1 acres**) of the Montgomery County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Clarks Creek (Main Stream) and Bullard Branch.

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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tract of land as identified as containing 1.11 acres, 0.45 acres and 5.77 acres, as shown on a plat of survey entitled "Conservation Easement Survey for Danny R. McRae, Ken A. McRae, James Barry Williams" dated September 19, 2008, certified by Jon Eric Davis, L-3464, and recorded in Plat Cabinet E, Slide 150-A, Montgomery County Registry.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the 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 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 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. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The 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 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. 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 Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the 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.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the 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 Easement Area may be allowed.

I. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. **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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. **Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

N. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. **Ingress, Egress and Inspection.** The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement

Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

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 subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, 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 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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 Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are 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, their successors or assigns, for any injury or change in the 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, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their

successors or assigns, 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.

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.

V. 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. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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.

VI. 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 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 Easement Area, and the right of quiet enjoyment of the Easement Area.

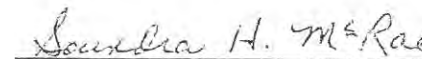
TO HAVE AND TO HOLD the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are 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 day and year first above written.



Danny R. McRae (SEAL)




Soundra H. McRae (SEAL)

NORTH CAROLINA

COUNTY OF MONTGOMERY

I, Sara E. Perez, a Notary Public in and for the County and State aforesaid, do hereby certify that **Danny R. McRae and wife, Soundra H. McRae**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

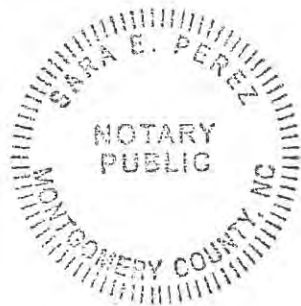
IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6 day of ~~November, 2008.~~ February 2009



Notary Public

My commission expires: 4/26/2011

(SEAL)



Book 631, Page 174
Date 2-6-09 Time 1:54 pm
Register Of Deeds Montgomery

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MONTGOMERY COUNTY

SPO File Number

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 CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 6th day of February, 2009, by **Danny R. McRae & Soundra H. McRae Revocable Living Trust Dated January 19, 2004**, ("Grantor"), whose mailing address is 395 Fairway Shores Road, Mount Gilead, NC 27306, 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 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the 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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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. This MOA recognizes that the 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 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, Grantor owns in fee simple certain real property situated, lying, and being in Mount Gilead Township, Montgomery County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 93.99 taxable acres and being conveyed to the Grantor by deed as recorded in **Deed Book 523 at Page 226 (being those 4 tracts of land as described in said deed, LESS 2.92 acres conveyed by deed in Book 190 Page 403, LESS 3.2 acres conveyed by deed in Book 184 Page 740)** of the Montgomery County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Clarks Creek (Main Stream).

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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tract of land as identified as containing 3.57 acres, as shown on a plat of survey entitled "Conservation Easement Survey for Danny R. McRae, Ken A. McRae, James Barry Williams" dated September 19, 2008, certified by Jon Eric Davis, L-3464, and recorded in Plat Cabinet E, Slide 150-A, Montgomery County Registry.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the 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 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 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. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The 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 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. 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 Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the 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.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the 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 Easement Area may be allowed.

I. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. **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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. **Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

N. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. **Ingress, Egress and Inspection.** The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement

Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

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 subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, 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 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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 Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are 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, their successors or assigns, for any injury or change in the 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, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their

successors or assigns, 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.

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.

V. 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. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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.

VI. QUIET ENJOYMENT

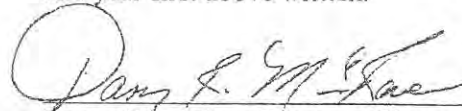
Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not

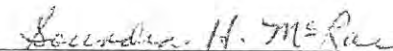
inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

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 said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are 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 day and year first above written.

 (SEAL)
Danny R. McRae, Trustee of Danny R. McRae & Soundra
H. McRae Revocable Living Trust Dated January 19, 2004

 (SEAL)
Soundra H. McRae, Trustee of Danny R. McRae & Soundra
H. McRae Revocable Living Trust Dated January 19, 2004

NORTH CAROLINA
COUNTY OF MONTGOMERY

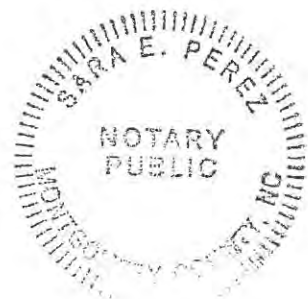
I, Sara E. Perez, a Notary Public in and for the County and State aforesaid, do hereby certify that **Danny R. McRae and Soundra H. McRae, Trustees of Danny R. McRae & Soundra H. McRae Revocable Living Trust Dated January 19, 2004**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6 day of ~~November, 2008.~~ February 2009


Notary Public

My commission expires: 4/20/2011

(SEAL)



Book 631 Page 186
Date 2-6-09 Time 1:54pm
Register Of Deeds Montgomery

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MONTGOMERY COUNTY

SPO File Number

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 CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 6th day of February, 2009, by **James Barry Williams and wife, Wanda W. Williams**, ("Grantor"), whose mailing address is 142 Zachary Drive, Mount Gilead, NC 27306, 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 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the 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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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. This MOA recognizes that the 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 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, Grantor owns in fee simple certain real property situated, lying, and being in Mount Gilead Township, Montgomery County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 86.08 taxable acres and being conveyed to the Grantor by deed as recorded in **Deed Book 450 at Page 846 (being those 5 tracts of land as described in said deed, LESS 0.43 acres conveyed by deed in Book 151 Page 105)** of the Montgomery County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Clarks Creek (Main Stream) and Bullard Branch.

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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tract of land as identified as containing 6.23 acres, as shown on a plat of survey entitled "Conservation Easement Survey for Danny R. McRae, Ken A. McRae, James Barry Williams" dated September 19, 2008, certified by Jon Eric Davis, L-3464, and recorded in Plat Cabinet E, Slide 150-A, Montgomery County Registry.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the 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 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 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. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The 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 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. 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 Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the 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.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving

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L. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. **Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

N. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

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C. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the 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, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their

successors or assigns, 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.

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.

V. 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.

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C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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.

VI. 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 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 Easement Area, and the right of quiet enjoyment of the 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 said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are 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 day and year first above written.

James Barry Williams (SEAL)
James Barry Williams

Wanda Williams (SEAL)
Wanda W. Williams

NORTH CAROLINA
COUNTY OF MONTGOMERY

I, Sara E. Perez, a Notary Public in and for the County and State aforesaid, do hereby certify that **James Barry Williams and wife, Wanda W. Williams**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6th day of ~~November, 2008.~~ February, 2009

Sara E. Perez
Notary Public

My commission expires: 4/24/2011

(SEAL)

