

# Deep Creek Wetland Mitigation Bank

Yadkin County, North Carolina

June, 2002



# Table of Contents

<b>1</b>	<b>Mitigation Banking Agreement</b>
<b>2</b>	<b>Deep Creek Mitigation Plan</b>
<b>3</b>	<b>Property Survey and Legal Description</b>
<b>4</b>	<b>Map - Geographical Service Area</b>
<b>5</b>	<b>Construction Costs</b>
<b>6</b>	<b>Maintenance and Monitoring Costs</b>
<b>7</b>	<b>Form of Financial Assurance</b>
<b>8</b>	<b>Form of Preservation Mechanism</b>
<b>9</b>	<b>Subordination of Deed of Trust</b>
<b>10</b>	

**AGREEMENT TO ESTABLISH THE DEEP CREEK MITIGATION BANK  
IN YADKIN COUNTY, NORTH CAROLINA**

This Mitigation Banking Instrument (MBI) is made and entered into on the 18<sup>th</sup> day of February, 2002, by American Wetlands and Natural Resource Exchange Corporation, hereinafter Sponsor, and the U. S. Army Corps of Engineers (Corps), and each of the following agencies, upon its execution of this MBI, the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the North Carolina Wildlife Resources Commission (NCWRC), and the North Carolina Division of Water Quality (NCDWQ). The Corps, together with the State and Federal agencies that execute this MBI, are hereinafter collectively referred to as the Mitigation Bank Review Team (MBRT).

WHEREAS the purpose of this agreement is to establish a mitigation bank (Bank) providing compensatory mitigation for unavoidable wetland and stream impacts separately authorized by Section 404 Clean Water Act permits in appropriate circumstances; and

WHEREAS the Sponsor is the record owner of a perpetual easement for the purposes of creating wetlands habitat on a tract containing 70.745 acres located in Yadkin County, North Carolina, described in the Deep Creek Wetlands Mitigation Plan (Mitigation Plan), and as shown on the attached survey (Property).

WHEREAS the agencies comprising the Mitigation Bank Review Team (MBRT) agree that the Bank site is a suitable mitigation bank site, and that implementation of the Mitigation Plan is likely to result in net gains in wetland and stream functions at the Bank site, and have therefore approved the Mitigation Plan;

THEREFORE, it is mutually agreed among the parties to this agreement that the following provisions are adopted and will be implemented upon signature of this MBI.

*General Provisions*

1. The goal of the Bank is to restore, enhance, and create Bottomland Hardwood Wetland Forest (1996 NC DEHNR Field Guide) specifically, within the broader classification of Palustrine Forested Wetlands (Cowardin) and restore 5,540 linear feet of stream channel and replace their functions and values to compensate in appropriate circumstances for unavoidable wetland and stream impacts, authorized by Section 404 of the Clean Water Act permits in circumstances deemed appropriate by the Corps after consultation, through the permit review process, with members of the MBRT.

2. The Corps will ensure that use of credits from the Bank to offset wetland and stream impacts authorized by Clean Water Act permits will be in compliance with the Clean Water Act and implementing regulations, including but not limited to the 404(b)(1) Guidelines, the National Environmental Policy Act, and all other applicable Federal and State legislation, rules and regulations. This agreement has been drafted following the

guidelines set forth in the proposed "Federal Guidance for the Establishment, Use and the Operation of Mitigation Banks," 60 Fed. Reg. 58605, November 28, 1995 (Guidance).

3. The MBRT shall be chaired by the representative of the U.S. Army Corps of Engineers, Wilmington District. The MBRT shall review monitoring and accounting reports as described below. In addition, the MBRT will review proposals for remedial actions proposed by the Sponsor, or any of the agencies represented on the MBRT. The MBRT's role and responsibilities are more fully set forth in Sections II. C. 3 and 6 of the Guidance. The MBRT will work to reach consensus on its actions.

4. The Corps, after consultation with the appropriate Federal and State review agencies through the permit review process, shall make final decisions concerning the amount and type of compensatory mitigation to be required for unavoidable, permitted wetland and stream impacts, and whether or not the use of credits from the Bank is appropriate to offset those impacts. In the case of permit applications and compensatory mitigation required solely under the Section 401 Water Quality Certification rules of North Carolina, the N.C. Division of Water Quality (NCDWQ) will determine the amount of credits that can be withdrawn from the Bank.

5. The parties to this agreement understand that, where practicable, on-site, in-kind compensatory mitigation is preferred, unless use of the Bank is determined by the Corps to be environmentally preferable.

#### Mitigation Plan

6. The Deep Creek Wetlands Mitigation Bank site consists of 70.745 acres. The land has recently been in cultivation, formerly producing corn on an annual basis. Hydric soils on the site exist in one contiguous unit of 30.4 acres on the south portion of the site. Approximately, 12.1 additional acres of wetland creation is proposed, resulting in about 42.5 total acres of wetlands. There is approximately 4,526 linear feet of existing channelized and dredged stream channel that have been functionally reduced to linear drainage ditches. A more detailed description of the baseline conditions on the site is contained in the Mitigation Plan.

7. The Sponsor will perform work described on pages 5-12 of the Mitigation Plan, including planting, hydrologic and soil modifications. The purpose of the work, and the objective of the Bank, is to restore 30.4 acres of former wetlands to Headwater Forest Wetlands, create 12.1 acres of Headwater Forest Wetlands, and restore 5,540 linear feet of stream channel on the 70.745-acre site.

8. The Sponsors shall monitor the Bank Site as described on pages 16-17 of the Mitigation Plan, until such time as the MBRT determines that the success criteria described on pages 12-13 of the Mitigation Plan have been met.

9. The Sponsor is responsible for assuring the success of the restoration and creation activities at the Bank Site, and for the overall operation and management of the Bank until such time as the success criteria described on pages 12-13 of the Mitigation Plan have been met and the site has been transferred to a third party.

10. The Sponsor shall provide to each member of the MBRT the reports described on pages 16-17 of the Mitigation Plan.

11. The Corps shall review said reports, and may, at any time in its discretion, after consultation with the Sponsor and the MBRT, direct the Sponsor to take remedial action at the Bank site. All remedial action required by the Corps shall be designed to achieve the success criteria specified in paragraph 8 above. For all remedial actions required under this paragraph, the Corps and the Sponsor shall agree on a work schedule, and such remedial actions shall be monitored as described on pages 16-17 of the Mitigation Plan.

12. The Sponsor shall implement the remedial actions required by the Corps pursuant to Paragraph 11 above; provided that nothing herein shall affect any rights that the Sponsor may have to seek reconsideration or review by the Corps and/or the MBRT of the required remedial action.

13. In the event the Sponsor determines that remedial action may be necessary to achieve the required success criteria, it shall provide notice of such proposed remedial action to all members of the MBRT. No remedial actions shall be taken without the concurrence of the Corps, in consultation with the MBRT.

14. The members of the MBRT will be allowed reasonable access to the Property for the purposes of inspection of the Property and compliance monitoring of the Mitigation Plan.

#### *Use of Mitigation Credits*

15. The Geographical Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetland or other aquatic resources. The GSA for this Bank shall include the Yadkin River Basin, Hydrologic Unit 03040101 in North Carolina. Use of a Bank Site to compensate for impacts beyond the geographic service area may be considered by the Corps or the permitting agency on a case-by-case basis.

16. The Mitigation Plan is intended to result in the following forms, amounts and types, in acres, of compensatory mitigation:

<i>Restoration</i>	<i>30.4 acres</i>
<i>Creation</i>	<i>12.1 acres</i>
<i>Stream Restoration</i>	<i>5,540 linear feet</i>
<i>Total (wetlands)</i>	<i>42.5 acres</i>

All acres of restoration, creation, and enhancement will be Palustrine Forested Wetlands (Cowardin).

17. Successful implementation of the Mitigation Plan will result in the establishment of the following number of mitigation credits categorized by form and type:

<i>Restoration (1:1)</i>	<i>30.4 acres</i>	<i>30.4 credits</i>
<i>Creation (3:1)</i>	<i>12.1 acres</i>	<i>4.03 credits</i>
<i>Total Wetland Credits</i>	<i>42.5 acres</i>	<i>34.5 credits</i>
<i>Stream Restoration Credits</i>		<i>5,540 linear feet</i>

18. It is anticipated by the parties to this agreement that use of wetland mitigation credits shall be “in-kind;” that is, that Palustrine Forested Wetland (Cowardin) credits will be used to offset Palustrine Forested Wetland impacts.

19. It is anticipated by the parties that in most cases in which the Corps, after consultation with the MBRT, has determined that mitigation credits from the Bank may be used to offset wetland impacts authorized by Section 404 permits, for every one acre of impacts, two credits will be debited from the Bank. One of those credits must be a restoration credit; the remaining credit will be made up of any combination of restoration or creation, as selected by the Sponsor and approved by the Corps during its permit process. Deviations from this compensation ratio may be authorized by the Corps on a case-by-case basis where justified by considerations of functions of the wetlands impacted, the severity of the wetland impacts, whether the compensatory mitigation is in-kind, and the physical proximity of the wetland impacts to the Bank site, except that in all cases, a minimum of a one-to-one ratio of impact acres to restoration mitigation credits (acres) must be met. Five thousand five hundred and forty (5,540) linear feet of stream credits will be available for use as mitigation for stream impacts as authorized by the Corps on a case-by-case basis.

20. All decisions concerning the appropriateness of using credits from the Bank to offset impacts to waters and wetlands, as well as all decisions concerning the amount and type of such credits to be used to offset wetland and water impacts authorized by Department of the Army permits, shall be made by the Corps of Engineers, pursuant to Section 404 of the Clean Water Act and implementing regulations and guidance, after notice of any proposed use of the Bank to the members of the MBRT, and consultation with the members of the MBRT concerning such use. Notice to and consultation with the members of the MBRT shall be through the permit review process.

21. Fifteen percent (15%) of the Bank’s total credits shall be available for sale immediately upon completion of all of the following:

- a. Execution of this MBI by the Sponsor, the Corps, and other agencies eligible for membership in the MBRT who choose to execute this agreement;
- b. Approval of the final Mitigation Plan
- c. Delivery of the financial assurance described in paragraph 25 of this MBI;
- d. Recordation of the preservation mechanism described in paragraph 24 of this MBI, as well as a title opinion covering the property acceptable to the Corps;

Additionally, the Sponsor must complete the initial physical and biological improvements to the bank Site pursuant to the Mitigation Plan no later than the first full growing season following initial debiting of the Bank.

22. Subject to the Sponsor's continued satisfactory completion of all required success criteria and monitoring, additional mitigation credits will be available for sale by the Sponsor on the following schedule:

10% after first year,	if interim success measures are met	(25% of total)
10% after second year,	if interim success measures are met	(35% of total)
10% after third year,	if interim success measures are met	(45% of total)
15% after fourth year,	if interim success measures are met	(60% of total)
15% after fifth year,	if interim success measures are met	(75% of total)
and		
25% after fifth year once overall success criteria has been met		(100% of total)

The above schedule applies only to the extent that the Sponsor documents survival and growth of planted vegetation and attainment of wetland/stream hydrology as described under the success criteria in the monitoring section of the Mitigation Plan. The final 25% of credits will be available for sale only upon a determination by the MBRT of functional success as defined in the Mitigation Plan.

23. The Sponsor shall develop accounting procedures reasonably acceptable to the MBRT for maintaining accurate records of debits made from the Bank. Such procedures shall include the generation of a report by the Sponsor showing credits used at the time they are debited from the Bank, which the Sponsor shall provide within 30 days of the debit to each member of the MBRT. In addition, the Sponsor shall prepare an annual report, on each anniversary of the date of execution of this agreement, showing all credits used, and the balance of credits remaining, to each member of the MBRT, until such time as all of the credits have been utilized, or this agreement is otherwise terminated. All reports shall identify credits debited and remaining by type of credit (e.g., restoration, creation), and shall include for each reported debit the Corps Action ID number for the permit for which the credits were utilized.

Property Disposition

24. (a) The Sponsor currently holds a perpetual easement on the property. A copy of the Easement is attached. On March 12, 2002, the Board of Directors of the Piedmont Land Conservancy approved acceptance of a permanent easement on the property. A copy of the letter dated March 15, 2002 accepting easement is attached. The Sponsor shall grant a perpetual conservation easement, in the form attached hereto in Appendix G, to the Piedmont Land Conservancy. In the event that negotiations between the Sponsor and Piedmont Land Conservancy result in changes to the easement form attached as Appendix G, such changes must be approved by the MBRT. The Sponsor shall also deliver a title opinion reasonably acceptable the Corps covering the mitigation property. The property shall be free and clear of any encumbrances that would conflict with its use as a mitigation site, including but not limited to, any liens that have priority over the recorded preservation mechanism.

(b) NCDOT agrees to subordinate its existing First Lien Deed of Trust on the mitigation property, by executing and recording the form of Subordination attached hereto as Appendix H, at such time as Sponsor grants and records the perpetual conservation easement referred to in Paragraph 24(a).

(c) After the success criteria described in Paragraph 8 have been met and accepted by the MBRT, the sponsor may, in its discretion, transfer the Sponsor's underlying ownership interest in the property to the Piedmont Land Conservancy or others.

Financial Assurances

25. The Sponsor shall provide financial assurances as described in Appendix F (First Lien Deed of Trust, Promissory Note, Performance Bonds and Payment Bonds attached).

26. In the event that the Sponsor defaults on its obligations to perform construction activities called for in the Mitigation Plan, or to perform the monitoring and maintenance of stream and riparian restoration, NCDOT agrees to exercise its rights under the applicable performance and payment bonds to ensure, to the maximum extent possible consistent with the terms of the Mitigation Agreement entered into between NCDOT and the Sponsor on April 16, 2001 ("NCDOT Agreement") and the applicable performance and payment bonds, that the activities covered by the applicable bond are completed. Consistent with the NCDOT Agreement, NCDOT will require that the Sponsor maintain the applicable performance and payment bonds in an amount sufficient to cover the remaining construction and/or stream monitoring and maintenance activities, as the case may be, subject to periodic adjustment as provided in the NCDOT Agreement.

27. The parties acknowledge that NCDOT is under contract with the Sponsor to pay the Sponsor monies totaling \$75,000.00 for Sponsor's performance of monitoring, maintenance, remediation, and reporting for the wetlands restoration and creation called for in the Mitigation Plan. According to the NCDOT Agreement, a portion of the aforementioned funds will be paid to the Sponsor after the Sponsor successfully completes



the wetlands monitoring, maintenance, remediation and reporting for the previous year. In the event that the Sponsor defaults on its obligations to perform wetlands monitoring, maintenance, remediation and reporting activities called for in the Mitigation Plan, NCDOT agrees to ensure that the wetlands monitoring, maintenance, remediation and reporting activities called for by the Mitigation Plan are completed.

### Long-term Management

28. The Sponsor shall implement the long-term management measures described in the Mitigation Plan, following construction (grading, stabilization seeding, and planting).

### Miscellaneous

29. Any agency participant may terminate its participation in the MBRT with notice in writing to all other parties to this agreement. Termination shall be effective seven (7) days from placing said notices in the United States mail. Member withdrawal shall not affect any prior or future sale of credits and all remaining parties shall continue to implement and enforce the terms of this MBI. Except for termination as described above, this agreement may be modified only with the written agreement of all remaining parties to this agreement at the time of the modification.

30. Any delay or failure of Bank Sponsor shall not constitute a default hereunder if and to the extent that such delay or failure is primarily caused by any act, event or conditions beyond the Sponsor's reasonable control and significantly adversely affects its ability to perform its obligations hereunder including, without limitation: (i) acts of God, lightning, earthquake, fire, landslide, drought, hurricane, storm, flood, or interference by third parties; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition, or the interpretation or enforcement thereof; (iv) any order, judgment, action, inaction or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval. If the performance of the Bank Sponsor is affected by any such event, Bank Sponsor shall give written notice thereof to the MBRT as soon as is reasonably practicable. If such event occurs before the final availability of all credits for sale, the Sponsor shall take remedial action to restore the property to its condition prior to such event, in a manner sufficient to provide adequate mitigation to cover credits that were sold prior to such delay or failure to compensate for impacts to waters, including wetlands, authorized by Department of the Army permits. Such remedial action shall be taken by the Sponsor, only to the extent necessary and appropriate, as reasonably determined by the MBRT.

31. No third party shall be deemed a beneficiary hereof and no one except the signatories hereof, their successors and assigns, shall be entitled to seek enforcement hereof.

32. This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

33. In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MBI shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

34. This MBI shall be governed by and construed in accordance with the laws of North Carolina and the United States as appropriate.

35. This MBI may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

36. The terms and conditions of this MBI shall be binding upon, and inure to the benefit of the parties hereto and their respective successors.

37. This MBI may be executed in one or more counterparts, each of which will be considered an original, and all of which will be considered one and the same instrument.

38. All notices and required reports shall be sent by regular mail to each of the parties at their respective addresses, provided below:

*Sponsor:*

American Wetlands & Natural resource Exchange Corporation  
Attn: Lamar Beasley  
11876 Sunrise Valley Drive  
Suite 200  
Reston, VA 20191

*Corps:*

Ms. Jean Manuele  
U.S. Army Corps of Engineers  
Regulatory Division  
6S08 Falls of the Neuse road  
Suite 120  
Raleigh, NC 276165

***EPA:***

Ms. Kathy Matthews  
U.S. Environmental Protection Agency  
980 College Station Road  
Athens, Ga. 30605

***FWS:***

Ms. Marella Buncick  
U.S. Fish and Wildlife Service  
Asheville Field Office  
160 Zillicoa StreetPost  
Asheville, North Carolina 28801

***NRCS:***

Ms. Mary Combs  
State Conservationist  
Natural Resources Conservation Service  
4405 Bland Road  
Suite 20S  
Raleigh, NC 27609

***NCWRC:***

Mr. Frank McBride  
North Carolina Wildlife Resources Commission  
1721 Mail Service Center  
Raleigh, NC 27699-1721

***NCDWQ:***

Mr. John Dorney  
Division of Water Quality  
North Carolina Department of Environment and Natural Resources  
Parkview Building – Suite 250  
2321 Crabtree Blvd.  
Raleigh, NC 27604

***NCDOT:***

Mr. Gregory J. Thorpe, PhD  
Project Development and Environmental Analysis  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, NC 27699-1548

IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled "Agreement To Establish The ~~Fisher River~~ Mitigation Bank In ~~Surry~~ County, North Carolina":  
Deep Creek from 30 May 03 Yachin

U.S. Army Corps of Engineers.

By: Charles Ralston, Jr.  
Cor, USA

Date: 18 Feb 03

Sponsor:


By: J. James Beely

Date: January 21, 2003

See following page for additional Mitigation Review Team Members signatures.

See proceeding page for U.S. Army Corps of Engineers and Sponsor signatures.

U.S. Environmental Protection Agency

By:  \_\_\_\_\_

Date: 2/4/03

U.S. Fish and Wildlife Service:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Division of Water Quality:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Wildlife Resources Commission:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Department of Transportation  
(solely for purposes of Paragraphs 24(b), 26 and 27)

By: \_\_\_\_\_

Date: \_\_\_\_\_

MAR 18 2003

RALEIGH REGULATORY FIELD OFFICE

See proceeding page for U.S. Army Corps of Engineers and Sponsor signatures.

U.S. Environmental Protection Agency

By: \_\_\_\_\_

Date: \_\_\_\_\_

U.S. Fish and Wildlife Service:

By: Maile G. Zwick

Date: 3/14/03

N.C. Division of Water Quality:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Wildlife Resources Commission:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Department of Transportation  
(solely for purposes of Paragraphs 24(b), 26 and 27)

By: \_\_\_\_\_

Date: \_\_\_\_\_

See proceeding page for U.S. Army Corps of Engineers and Sponsor signatures.

**U.S. Environmental Protection Agency**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**U.S. Fish and Wildlife Service:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**N.C. Division of Water Quality:**

By: Cynthia B. Karoly

Date: Jan 22, 2003

**N.C. Wildlife Resources Commission:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**N.C. Department of Transportation**  
**(solely for purposes of Paragraphs 24(b), 26 and 27)**

By: \_\_\_\_\_

Date: \_\_\_\_\_

FEB 28 2003

See proceeding page for U.S. Army Corps of Engineers and Sponsor signatures. RALEIGH REGULATORY FIELD OFF

U.S. Environmental Protection Agency

By: \_\_\_\_\_

Date: \_\_\_\_\_

U.S. Fish and Wildlife Service:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Division of Water Quality:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Wildlife Resources Commission:

By: Maia Chambers

Date: 2-26-03

N.C. Department of Transportation  
(solely for purposes of Paragraphs 24(b), 26 and 27)

By: \_\_\_\_\_

Date: \_\_\_\_\_



See proceeding page for U.S. Army Corps of Engineers and Sponsor signatures.

U.S. Environmental Protection Agency

By: \_\_\_\_\_

Date: \_\_\_\_\_

U.S. Fish and Wildlife Service:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Division of Water Quality:

By: \_\_\_\_\_

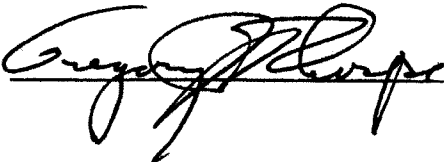
Date: \_\_\_\_\_

N.C. Wildlife Resources Commission:

By: \_\_\_\_\_

Date: \_\_\_\_\_

N.C. Department of Transportation  
(solely for purposes of Paragraphs 24(b), 26 and 27)

By: 

Date: 2 Oct 02

*List of Appendices*

*Appendix A:* Deep Creek Final Mitigation Plan;

*Appendix B:* Property Survey and Legal Description;

*Appendix C:* Map – Geographic Service Area;

*Appendix D:* Construction Costs;

*Appendix E:* Maintenance and Monitoring Costs;

*Appendix F:* Form of Financial Assurance;

*Appendix G:* Forms of Preservation Mechanism

*Appendix H:* Subordination of Deed of Trust

*Deep Creek Wetlands Mitigation Bank*

*Appendix A: Deep Creek Wetlands Mitigation Bank*

The following Mitigation Plan describes the Administrative, Technical, and Operational provisions of the project.

## *Deep Creek Wetland Mitigation Bank*

### *Mitigation Plan*

#### *A. Administrative Provisions*

The Deep Creek Wetland Mitigation Bank is proposed as a Private-Commercial Bank, which will be operated as a Debit Bank and will offer wetland and stream restoration credits, primarily for wetland and stream impacts by the North Carolina Department of Transportation in the upper Yadkin River basin (Cataloging Unit # 03040101). An easement is currently owned by American Wetlands and Natural Resources Exchange Corporation (American Wetlands). The wetland mitigation effort will involve approximately 42.5 acres, and approximately 5,540 linear feet of stream restoration within a larger tract of about 70.745 acres.

Easement ownership will remain with American Wetlands during the minimum five-year monitoring and maintenance period at which time the intent will be to transfer the easement to an acceptable land conservancy organization.

Discussions and meetings have been conducted with a number of resource agencies in the process of developing the Mitigation Plan. Representatives from the US Army Corps of Engineers (USACOE), USDA – Natural Resource Conservation Service, USDI – Fish and Wildlife Service, and NCDENR – Wildlife Resources Commission and Division of Water Quality, have visited the site.

#### *B. Technical Provisions*

##### *Location*

The Deep Creek Mitigation Bank is located along Deep Creek, a tributary of the Yadkin River in Forbush Township, Yadkin County, North Carolina. The property is located in Sub-basin 02, Hydrologic Unit 22. This is the highest priority Sub-basin as assigned by the North Carolina Wetlands Restoration Program and the second highest priority Hydrologic Unit within the Sub-basin.

##### *Land Use*

The Deep Creek Mitigation Bank site consists of 70.745 acres. The land has most recently been in cultivation, with corn having been produced on an annual basis. Hydric soils on the site exist in one contiguous unit of 30.4 acres on the south portion of the site. There are 12.1 additional acres of wetland creation proposed, resulting in 42.5 total acres of wetlands. In addition, there are approximately 4,526 linear feet of existing channelized and dredged stream channel that have been functionally reduced to linear drainage ditches.

These channelized and dredged stream channels will be restored, resulting in approximately 5,540 linear feet of restoration.

These lands are classified as Prior Converted Wetlands, and this is supported by the ditching system that is in place. The original classification of the site was very likely swamp hardwood. These systems are more fully described in the vegetation section.

The land use in this portion of the County is primarily agricultural, with some rural, residential home sites located on the higher elevations on the drainage divides adjacent to State maintained roads. At the present time there are no zoning regulations in place pertaining to Forbush Township; however, there are Subdivision and Watershed Ordinances governing the development of subdivisions and other developments that might impact the overall conditions of the watershed. For example, no subdivision is permitted on lots less than 30,000 square feet unless authorized through a variance. The Watershed Ordinances governs storm water run-off, and other factors affecting water quality. Any development must be in compliance with these Ordinances. In discussions with the County Zoning and Planning Office, they indicated there was very little development in this Township. The landowner from which the Easement was acquired does not have any plans for development of his adjacent property at this time. Should his plans change in the future, the County Planning, Zoning, and Ordinances will apply. One adjacent landowner on the northwest portion of the property has indicated he intends to continue farming for the next few years, but it his long-term desire to plant the land in trees. In summary, with the existing County controls in place, the direction the County is heading with their land-use policies, and the known adjacent landowner objectives for the use of their properties, the risk from incompatible land use as affecting the wetlands mitigation bank are minimal.

### *Geomorphic Position*

The site occupies a broad flood plain and fluvial terrace position of about 730 feet in elevation. Soil parent material is fine-textured alluvium deposited by the Deep Creek-Yadkin River system. Elevation of the flood plain is about 2-4 feet above the base of the small, unnamed tributary that runs through the site. The proposed restoration area is nearly level (sloping at less than 1.0% toward Deep Creek) with little topographic variation.

### *Soil Characteristics*

Soils on the site are described in the following inventory:

*Wehadkee Series*

Poorly-drained, fine-loamy, mixed, thermic, Typic Fluvaquent

*Chewacla Series*

Somewhat poorly drained, fine-loamy, mixed, thermic Fluvaquentic Dystrochrept

The Wehadkee Series, a Hydric Soil, comprises about 30.4 acres of the site, and represents the potential wetland restoration area. The Chewacla Series is adjacent to the Wehadkee Series downstream and represents potential wetland creation area. Soils are better drained nearer to Deep Creek.

### *Site Hydrology*

Drainage on the site is to the north toward Deep Creek. Runoff from approximately 0.9 square mile in one tributary and 1.4 square mile in another, converges on site. This runoff and site precipitation provide input to surface and groundwater on-site. Two natural tributaries drain toward the site from the south. These tributaries have been dredged and channelized where they pass through the site toward Deep Creek, as part of agricultural site development. The broad, flat area of Wehadkee soils has been ditched to facilitate agricultural operations. The ditches are shallow and have partially filled-in, thus reducing their effectiveness. Wetland hydrology can be effectively restored by filling the drainage system and restoring the channelized streams to natural channel geometry. There is potential for at least 5,540 linear feet of stream restoration within the proposed mitigation area.

A water budget has been developed for the site which addresses inputs and outputs to and from the system and is described below in *Implementation Methods-Hydrology*.

The site will provide mitigation for impacts in Cataloging Unit #03040101, with the possibilities of negotiating to mitigate impacts in the adjoining Cataloging Units.

### *Vegetation*

The proposed mitigation portion of the site is dominantly agricultural fields, currently in corn stubble from the previous season. The channels and ditches on site have tree and shrub species along the banks. The open field portion is surrounded by bottomland hardwood forest on the west and south. Typical canopy species include water oak, willow oak, green ash, yellow-poplar, sycamore, red maple, elm, etc. Sub-canopy species include maple, alder, willow, silky dogwood, etc.

### *Habitat*

Existing site habitat is comprised of: (a) cover, nesting, and travel areas along ditches, (b) some open land feeding area, and (c) the large adjacent areas of bottomland hardwood forest.

Diversity on site is low and habitat is somewhat broken by the large open fields. Development of a bottomland hardwood system in the open field areas would result in a large contiguous swamp forest allowing greater connectivity to Deep Creek and habitat for bottomland species. Examples of species which would benefit from a large swamp forest

system include; Raccoon, Gray Fox, White-tailed Deer, Bobcat, Wood Ducks, and Wild Turkey.

### *Proposed Mitigation Types*

The intent of the mitigation effort is to develop a Palustrine Forested Wetland (Cowardin), Bottomland Hardwood Forest Wetland (NCDEHNR 1996 Field Guide Report No. 96-01). This will be done by restoring wetland hydrology to the hydric soil areas, as well as developing wetland hydrology in the near-hydric areas. The reference sites for this project are a suite of three areas immediately adjacent to the mitigation area (see site map for location). The reference areas are described below.

The following table lists the proposed mitigation components:

<i>Restoration</i> (1:1)	<i>30.4 acres</i>	<i>30.40 credits</i>
<i>Creation</i> (3:1)	<i>12.1 acres</i>	<i>4.03 credits</i>
<i>Stream Restoration</i>		<i>5,540 linear feet</i>
<b><i>TOTAL (Wetlands)</i></b>	<b><i>42.5 acres</i></b>	<b><i>34.43 credits</i></b>

### *Reference Site*

The reference site for the project is a suite of three areas immediately adjacent to the mitigation site (see accompanying map) which are also Palustrine Forested Wetlands (Cowardin), Headwater Forest Wetlands (NCDEHNR 1996 Field Guide Report No. 96-01). The areas have been visited by the USACOE and have been deemed to be acceptable. The reference areas are in a similar (slightly lower) geomorphic position and soil type and represent the target vegetative condition.

Vegetation at the reference site is dominantly old-growth bottomland hardwood species such as; Willow Oak (*Quercus phellos*), Water Oak (*Quercus nigra*), American Elm (*Ulmus Americana*), River Birch (*Betula nigra*), Tulip Poplar (*Liriodendron tulipifera*), and Green Ash (*Fraxinus pennsylvanica*)

It is apparent that the reference site has been, and will continue to be, wetter than the conditions at the restoration site. Level, arable land is a minor portion of the landscape in the foothill regions and is therefore in high demand as agricultural land. Nearly all of that type of land in the area has been drained and farmed in the past. Only those areas which are difficult to drain and farm were left out of production, such as these lower (approximately 1.0 foot lower than adjacent proposed site) and slightly concave areas which are saturated for a greater portion of the year. This presents a problem in finding a representative reference site and correlating reference site hydrology with a restoration site.

This is true of the proposed restoration site. It is likely that the original hydrology at the restoration site was not as wet as the reference site.

The elevation of each reference well was determined relative to the field area (proposed restoration area) immediately adjacent with a laser level. In each the difference was approximately 1.0 foot (lower in the reference area). All of the land in the area slopes toward the Deep Creek invert and therefore some of the restoration and creation area is actually lower in absolute elevation than the reference sites. The reference areas are more concave landscape components than the proposed restoration/creation areas. While it is true that the entire area slopes toward Deep Creek, rainfall is contained for longer periods of time in the depressional areas of the reference wetlands than on the uniformly sloping areas of the restoration/creation site. There is a small berm along the field edges as well that prevents surface water from flowing directly into the restoration/creation areas (fields) from the reference areas.

Wetland hydrology in the reference areas will be monitored with three groundwater monitoring devices (one in each area) identical to those used within the mitigation area (see device specifications included), which will continually record (at least daily) and store data on water levels. Data from the groundwater wells will be downloaded periodically and depths of saturation will be recorded during each quarterly visit. Well data will be verified by observation of water levels in hand dug auger holes at the time of data collection. This data will be presented, along with that from the mitigation site, to the MBRT in the annual report.

## *Implementation Methods*

### *Hydrology - Grading and Structural*

Restoration of wetland hydrology to the hydric soil (restoration) area of the site will be accomplished by reversing the effect of the existing drainage system and restoring the stream channels through the site, thereby returning near-original wetland hydrology to the restoration portion of the site. Existing ditches will be filled to grade and the dimension, pattern, and profile of the channelized streams will be altered to restore natural stream morphology to the channels. Refer to the *Stream Restoration* section below for additional information. Additionally, a subsurface, low-permeability trench will be constructed at the outlet end of the mitigation area (see Site Plan). This will retard horizontal movement of groundwater toward Deep Creek. The combination of; filling the ditches, raising the invert of the stream in its lower reaches, creating greater channel sinuosity (lowering longitudinal slope), lowering surface elevations in the northern portion of the site, and detaining groundwater outflow will develop wetland hydrology in the creation portion of the site.

Wetland hydrologic conditions will be created on site, within the 12.1-acre portion by; 1) lowering the land surface and 2) raising the elevation of the seasonal water table. In the northern portion of the site, where the soils are not hydric, there are indicators of seasonal saturation at depths greater than 12" from the surface. During the site evaluation, an area



was identified which has redoximorphic features (indicating seasonal saturation) at depths ranging from 12" to about 40". Through a combination of raising the level of seasonal saturation and lowering the ground surface, it is reasonable to expect that seasonal saturation can be developed within the upper 12" of the surface.

A portion of the area proposed for wetland creation will be graded to create a bank-full bench adjacent to the new stream channel. This grading will occur in the area of the deepest indicators of saturation (see grading plan in Stream Restoration Plan). This grading will result in a decreased separation between the land surface and the level of seasonal saturation in the soil. The invert of the stream channel will be raised in this area as well, thereby assisting in the re-hydration of adjacent zones. Additionally, a subsurface dam will be constructed by excavating a trench along the upslope side of the new access road and filling the trench with a compacted soil/bentonite mix. This will provide subsurface detention of groundwater upslope of the trench. The combination of lowering grade, raising the channel invert, and subsurface detention will provide seasonal saturation in the area proposed for creation of wetlands.

Raising the channel invert and creating a subsurface dam effectively raises the outlet for groundwater in the target area. The subsurface dam will extend downward to below water table elevations in the early growing season. Typically, the flow of groundwater in riparian areas, unless impeded by subsurface structures (rock vanes, etc.) is toward the channel invert and in the direction of the surface topography. That is, toward the channel and downstream at an average angle between perpendicular to the channel and parallel downstream. The subsurface trench/dam will intercept this flow and detain it so that the flow will back up behind the low-permeability wall and rise toward the land surface until it finds the new, higher outlet to the channel.

The depth to redoximorphic features is within 12" of the surface in the existing hydric soil areas and tapers to about 40" below grade in the non-hydric soils where the present invert of the channel is 4-6 feet below grade. This is known as geomorphology as the "dry edge effect". A channel of several feet below grade creates a hydrologic gradient in which the groundwater falls toward the channel invert from higher elevations further away from the stream, thereby draining the areas closer to the channel. If the invert is raised, that gradient is lowered and the elevation of seasonal saturation is raised in areas closer to the stream. The grading plan, stream restoration plan, and the subsurface dam design are coordinated to bring the expected seasonal high water table to within 12" of the new surface at all points along the creation area.

It is often useful to develop and analyze information relative to the dynamics of water in the natural system that is being altered. Ideally, that analysis would yield a conclusion that would indicate the desired hydrologic situation. In this case, the desired hydrologic conditions would support the target community of a Palustrine Forested Wetland and comprise at least jurisdictional hydrologic criteria. Unfortunately, a satisfactory model does not presently exist which absolutely predicts, in a natural system, the presence of saturated (within 12" of the land surface) or inundated conditions for the required consecutive number of days to create the desired wetland conditions. Controlled systems (structural inlet and outlet controls) are easier to model and predict than more natural systems. The plan for the Deep Creek site does not rely on structural outlet controls.

Typically, a review of known input and output parameters is presented to indicate that a surplus of water could be available in the system during the growing season and therefore, saturated conditions would be possible. At this site, hydric soils are present within the alluvial deposits adjacent to Deep Creek, indicating that reducing (hydric) conditions have been present in the past. The ditching of the site and testimony of local observers indicate that the wet conditions are contemporary and that, were it not for the present drainage system, seasonal saturated conditions would return. The hydric soils area is subject to occasional over-bank flooding from the channels within the site as well as from Deep Creek (which is often associated with flooding in the adjacent Yadkin river flood plain.

The hydric soil area on site is influenced by both surface and groundwater systems and can be considered a combination of Surface Water and Groundwater Wetlands (Novitzki 1979, 1989) which is amenable to wetland restoration. Carter (1986) discusses wetland water budgets in an often accepted formula:

$$P + SWI + GWI = ET + SWO + GWO + S$$

Where

P	=	Precipitation
SWI	=	Surface Water Inflow
GWI	=	Ground Water Inflow
ET	=	Evapotranspiration
SWO	=	Surface Water Outflow
GWO	=	Groundwater Outflow
S	=	Change in storage

Based on this formula, a spreadsheet has been developed for monthly variations in the various system inputs and outputs and is included for reference. The following is a summary of data and assumptions relative to the variables in the formula above:

#### Precipitation (P)

Data for precipitation were taken from the Soil Survey for Forsyth County, NC and are presented as average monthly figures.

#### Surface Water Inflow (SWI)

Surface Water Inflow is estimated to be that portion which runs off from the adjacent 1500-acre watershed. A conservative runoff coefficient ("c" factor) of 0.10 (10% of precipitation) is used. This is typical of forested conditions where little runoff is anticipated. Conservative figures are being used for inputs to the system where actual data (e.g. precipitation) is not available. The data assumes 10% of the monthly rainfall on the 1500-acre watershed runs off and is therefore available in the contiguous 42.5-acre restoration/creation portion of the site. Obviously, a significant portion of the runoff travels through the proposed site as channel flow. Therefore, a smaller portion of the total runoff is assumed to be available as input to the site hydrology. Ten percent (10%) of the SWI is assumed to contribute to site hydrology (1.3 inches per month).

### Ground Water Inflow (GWI)

Since there is no data relative to ground water inflow to the restoration site from the adjacent area, a conservative estimate is used here as well. It is reasonable to assume that a portion of the precipitation which infiltrates to ground water in the contributing watershed ultimately travels to the restoration site. Travel time and volume are not known, therefore a uniform rate of flow throughout the year is being used, based on 5% of annual precipitation in the watershed making it to the restoration area site via ground water. The contributing watershed is 1500 acres. Total annual precipitation is 44.2 inches (2.21 inches represents 5% of the total). That total amount of input equates to 78.0 inches in the contiguous 42.5-acre restoration/creation portion, or 6.5 inches per month.

### Evapotranspiration (ET)

PET data from NCSU Experiment Station Bulletin 396, "Weather and Climate in North Carolina" were used.

### Surface Water Outflow (SWO)

Surface Water Outflow is estimated to be 10% of the monthly precipitation on site, based on a "c" factor of 0.10 for forested (target community) conditions. The remainder of the site precipitation can be expected as input (above). A majority of the runoff (90% estimated) from the contributing watershed can be expected to travel through the site and leave as SWO. While the amount of surface water outflow will not be altered, the frequency of over-bank flooding will increase within the stream restoration area, thereby increasing the residence time for water in the restoration/creation system.

### Ground Water Outflow (GWO)

Loss of water in the form of ground water outflow is estimated from soil drainage rates. This rate is approximately the saturated hydraulic conductivity of the least permeable layer within the rooting zone, or soil solum (approximately the upper four feet). This can be estimated by using 5% of the permeability of the least permeable layer within these upper horizons. The permeability of the least permeable horizon in this profile is estimated at 0.06 in/hr. Thus 5% of that figure adjusted for 28, 30, and 31-day months gives the drainage figure used as GWO. As with surface outflow, the total amount of groundwater outflow will not change however, the elevation of seasonal saturation and residence time in the restoration/creation system will increase as a result of the stream restoration and subsurface dam construction.

### Change in Storage (S)

This figure indicates excess or deficiency in the water regime on a monthly basis (does not account for cumulative effects of surplus water from prior months). Excess water during the growing season, particularly in areas of hydric soils, implies that wetland hydrology is possible during that time.

Based on the data and the analysis as represented in the accompanying water balance spreadsheet, there is excess water in the system predicted in all months of the year. These

figures show actual excess on a monthly basis and do not account for cumulative effects of excess water from the earlier months. It appears reasonable to assume that wetland (hydric, reducing) conditions can exist at any time of the year, depending groundwater elevations. Groundwater elevations and surface water elevations will be raised throughout the site by reducing the outflow (blocking ditches), the stream restoration (raising stream channel invert) and subsurface detention of groundwater outflow. It is reasonable to assume that saturated conditions are possible several weeks in the growing season.

### *Stream Restoration*

The objectives of the stream mitigation project include: 1) the restoration of a meandering, self-maintaining stream channel that will not aggrade nor degrade over time utilizing natural channel design techniques. 2) Insure channel and stream bank stabilization by utilizing grade control structures, root wads, and native vegetation (on-site transplants, live stakes, and bare roots), in conjunction with the eradication of the current agricultural maintenance practices. 3) Improve and create bed form diversity (riffles, runs, pools, and glides) 4) Re-establish the historic active flood plain function and hydrology by matching the bankfull channel with the current flood plain elevation. 5) Re-establish the historic groundwater table elevation by raising the channel invert. 6) Re-establish a native forested riparian plant community and remove the existing invasive exotic species located on the site. 7) Create a diverse terrestrial and aquatic wildlife habitat area.

Based on the observed site conditions and gathered existing stream data, the channels located on site were physically altered and obliterated for the purpose of modifying the historic surface and groundwater hydrology. The site hydrology was modified to maximize productive cropland acreage and improve accessibility within the fertile alluvial flood plain. Relic channel sections observed south of the southern property line and outside of the active agricultural fields provided evidence that the site alteration has drastically affected site hydrology. These relic channel sections are no longer hydrologically connected to the existing channel network and are approximately 2 to 3 feet above the existing channel invert elevation.

The existing stream features, which transect the wetland mitigation site consist of historically channelized and dredged stream systems that have been functionally and characteristically reduced to linear drainage ditches. Dredging activities have lowered the historic channel invert (bottom of the channel) elevation, subsequently lowering the groundwater table and inducing channel degradation (head-cutting) on-site and throughout the upstream tributaries. The channels are also in an "incised" condition were flooding rarely or never engages the historic flood plain but are instead confined to the channel. The physical confinement of the stormwater flows within the straightened and incised stream channel perpetuates head-cutting and lateral channel extension due to the increased boundary shear stress and channel slope. Increase boundary shear stress beyond the channels' carrying capacity results in bank erosion, mass wasting, bed instability, and increased turbidity.

Because agricultural production was the primary objective on-site, the riparian areas are minimal and are not contiguous. The current riparian corridor rarely exceeds 25 feet in width from the edge of the existing stream channels. Channel sections throughout the site were periodically maintained based on field observations and interpretation of the available

site aerial photographs. The riparian zones are in specific areas cleared of all riparian vegetation and are periodically maintained probably for the purpose of clearing debris jams and dredging the channel bottom. Dominant tree species that were observed within the channel and riparian areas consisted primarily of box elder (*Acer negundo*), red maple (*Acer rubrum*), sycamore (*Platanus occidentalis*), green ash (*Fraxinus pennsylvanica*), black willow (*Salix nigra*), and flowering dogwood (*Cornus florida*).

For the purpose of the restoration design, the existing stream channels have been divided into three separate reaches based on the calculated drainage area. The channel originating at the southern most tip of the property will be identified as Reach 1 and will from this point forward be referred to as the South Fork. The channel originating at the southwestern property line will be identified as Reach 2 and 3 and will be referred to as the West Fork. Reach 3 originates at the confluence between the West and South Forks. Current channel lengths are 3,230 and 1,296 linear feet, respectively for a total length of 4,526 linear feet and the sinuosity is 1.06.

The restoration design for the Deep Creek Mitigation Site is based on natural channel design principals and techniques utilizing local reference reach data and existing channel conditions data. Reference data utilized to develop the restoration design include the North Carolina Rural Piedmont Regional Curve (SRI 2000), Mill Creek reference reach survey data (Jelenevsky *et. al.*), and existing site constraints. The typical proposed bankfull cross-sections for each channel reach are depicted in the Typical Cross-Section graphic. The cross-sections were design based on the aforementioned references and the drainage area.

The proposed stream design will restore a naturally meandering E/C type stream channel to a more appropriate location-centrally within the existing flood plain as depicted in the Stream Restoration Plan graphic. The implementation of the restoration design will result in a riffle-pool profile that will be reinforced utilizing in-stream grade control structures such as rock cross-vanes, J-hook vanes and root wads as depicted in Stream Restoration Structures graphic (Rosgen 2001). These structures will be subsequently vegetated with transplants and live stakes. Rock vanes will be installed at the head of every glide/riffle interface and root wads will be installed at every outside meander bend as determined by the designer during the construction phase to ensure stabilization of the stream channel grade and banks. Erosion control matting, temporary seeding, and live stakes will be utilized to reduce bank erosion immediately following completion of each section of channel and provide bank stabilization.

Following the completion of the pebble counts, bar sample and entrainment calculation, it was determined that the channel bed is actively degrading due to an increased discharge rate within an incised, partially denuded stream channel. The increased discharge rate results in a higher boundary shear stress which perpetuates channel degradation (head-cutting), and widening (lateral expansion).

To prevent the current channel degradation from occurring, the grade of the designed stream channels has been elevated so that the top of the restored channel banks will match the adjacent flood plain elevation. This should result in a flood return interval of approximately every 1.5 to 2 year, thereby, restoring the historically modified flood plain functions, which include flood attenuation, storage and biological treatment. This will also

prevent the current bank erosion from perpetuating by allowing the erosive stormwater flows that are greater than the carrying capacity of the channel to escape onto the flood plain. Typically straightening and incised stream channel experience higher boundary shear stresses resulting in unstable bed and banks. The channel adjustments, due to these conditions and increased slope related to the straightening of the channel include lateral channel extension, slumping, bank erosion, and bed instability. This design modification should avert and minimize the current problematic erosive forces observed within the existing incised channels.

The resulting restored stream channel will be approximately 5,540 linear feet, increasing the overall channel length by approximately 1,000 linear feet subsequently increasing the sinuosity to 1.5. This design is distinguished as a Priority I restoration.

### *Vegetation*

The majority of the wetland restoration and creation areas will be planted with seedlings of bottomland hardwood species that are typical of the reference wetlands and bottomland hardwood wetlands of the region. The species list below describes proposed typical species. Immediately after site construction is complete, the disturbed areas will be seeded according to the Sediment and Erosion Control Plan and the outer bends of the restored stream channel will be planted with live-stakes of riparian shrub species. If healthy, native transplants are available on site, these will be sporadically transplanted along the upper sections (top of bank) of the restored stream channel. Overall site planting of tree species will begin during the next appropriate planting season (fall/winter).

Woody tree species will be planted on an 8 x 8-foot spacing. Live-staked areas along the restored stream channel will be staked at 2'x2' to 3'x3' spacings.

The following is a table of proposed species from which plant material will be selected:

Tree Species

Liriodendron tulipifera	Yellow-Poplar
Ulmus Americana	American Elm
Celtis laevigata	Sugar-Berry
Fraxinus pennsylvanica	Green Ash
Quercus phellos	Willow Oak
Quercus nigra	Water Oak
Betula nigra	River Birch
Platanus occidentalis	Sycamore
Acer negundo	Box-elder
Populus heterophylla	Swamp Cottonwood
Quercus falcata	Cheery-bark Oak
Nyssa sylvatica	Black Gum

### Shrub Species (as transplants and live-stakes)

Rhododendron maximum	Rhododendron
Cephalanthus occidentalis	Buttonbush
Alnus serrulata	Smooth Alder
Salix discolor	Pussy Willow
Cornus amomum	Silky Dogwood
Asimina triloba	PawPaw
Salix sericea	Silky Willow
Sambucus canadensis	Elderberry
Salix nigra	Black Willow

### Herbaceous Species

Carex sp	Sedges
Juncus sp.	Rushes
Osmunda cinnamomea	Cinnamon Fern
Osmunda regalis	Royal Fern
Other herbaceous species as available.	

### Success Criteria

#### Vegetation

The success of the vegetative component will be based on the survival of canopy tree species for a five-year monitoring period. Monitoring will occur for five years or until success criteria is met, whichever is longer. Transect lines, with permanent markers will be established in the field for vegetative monitoring (representative of community types). All monitoring will occur along these observation lines throughout the monitoring period as long as they continue to be representative of the community. Any changes to the observation points will require the approval of the MBRT. Vegetative success will be predicated on a minimum mean density of 260, five-year old stems per acre surviving after five years, all of which will be from the target species list (planted or native) or as that additionally approved by the MBRT. No single species shall comprise more than 20 % of the surviving stems. By the end of the five-year monitoring period, vegetation in the proposed wetland areas must meet the criteria for hydrophytic vegetation as described in the 1987 Corps of Engineers Wetland Delineation Manual, specifically, more than 50% of the dominant species in all strata are OBL, FACW, or FAC as listed in "National List of Plant Species that Occur in Wetlands" – 1988 USF&W. The status of site vegetation, relative to this criteria, will be included in annual monitoring reports.

#### Hydrology

Hydrologic success criteria is somewhat problematic for two reasons; 1) there is little if any data (based on an extensive search of on-line sources, NC State University staff, other consultants, resources agencies) to establish hydroperiod specific to bottomland wetlands in the western Piedmont of North Carolina, and 2) the only available reference sites are

typically wetter than the target wetlands since those areas were more difficult to bring into, and keep in, cultivation than those which were successfully drained for agricultural use. Typically, the references are those areas which were cleared at one time and were ultimately abandoned due to wetness problems.

Although the consultants would like to base hydrologic success criteria on some known data from the target community, there appears to be inadequate data on which to base the criteria. Given this situation, and the fact that the impacts for which this mitigation is proposed are based on hydrologic criteria as described in the "Corps of Engineers Wetlands Manual", January, 1987 (Manual), the proposed criteria for hydrologic success is that described in the 1987 manual. The Manual states that "duration of inundation and/or soil saturation during the growing season is more influential on the plant community than frequency of inundation/saturation during the growing season.". Table 5 in the Manual outlines Hydrologic Zones in Nontidal Areas. The bottom limit for duration of saturation/inundation in wetlands in that table is 5% of the growing season. Generally, any duration of saturation/inundation above 12.5% of the growing season is considered to have wetland hydrology.

Since data are not available for the target community, the mid-point in the 5% - 12.5% range, or 8.75% of the growing season, is proposed as criteria for hydrologic success at this site. Growing season may be estimated as the average number of frost-free days. Data for Yadkin County is based on the climatic data presented in the Yadkin County Soil Survey. The average number of frost-free days in Yadkin County is 202. Given that, 8.75% of the growing season is 17.675 or 18 days. Saturation to within 12 inches of the surface for 18 or more contiguous days during the growing season will be considered successful hydrology for that year.

Long-term hydrologic success will be met when individual growing season success criteria (as described above) is achieved for all growing seasons (during the minimum five-year monitoring period) which are preceded by twelve-month periods of average (44.44 inches) or greater rainfall. In years of less than average rainfall, site hydrology data will be considered, case-by-case, relative to rainfall data and reference site hydrology data.

#### Stream Channel

Success criteria for stream stability will be met if, for the period of five years in conjunction with vegetation and wetland hydrology monitoring, the stream bedform features and cross-sections remain stable (i.e. the stream retains its enhanced Rosgen stream-type classification).

### *Phasing*

It is most efficient to do all construction (structural and grading) in a single phase since all outlets and ditches need to be blocked to effectively restore the entire area. Also, the material needed for the filling of ditches and dam construction will be obtained from the graded areas in the creation portion.



Each area of the site with common plant types should be planted in one operation so that desired habitat type may be encouraged and invasive species are minimized. The planting may be done in phases by plant types (e.g. Phase I -all woody material planted in late Fall or Winter; Phase II – all herbaceous material planted in Spring).

*Potential Scheduling (example)*

Project Begins	February, 2001
Detailed Site Survey (topography)	April, 2001
Concept Plan and Prospectus	June, 2001
Development of MBRT (preliminary)	August, 2001
Site Meeting with Agencies	August/Sept., 2001
Detailed Mitigation Plan	June, 2002
Develop MBI	June, 2002
Plan Approval by USCOE/NCDWQ	August, 2002
Contractor Selection	September, 2002
Construction Begins*	October, 2002
Grading and Structural Complete	December, 2002
Install Monitoring Devices/Monitoring Begins	December, 2002
Planting Begins (Phase I)	December, 2002
Planting Complete (Phase II)	May, 2003
Monitoring Phase	6/03 through 12/07

Construction Supervision will include:

- 1) Pre-construction/planting meeting with contractor.
- 2) Site supervision during installation.
- 3) Final inspection after all site work is complete, preparation of appropriate completion of work statement, preparation of as-built report and plan, and documentary photos and submission of that report to the MBRT for review within 30 days of completion.
- 4) Flagging of the mitigation site limits in the field, delineating between different treatment areas.

## *C. Operations Provisions*

### *Service Area*

The primary service area is the upper Yadkin River area (cataloging unit #03040101) with the possibility of negotiating the mitigation of impacts in adjoining cataloging units. The primary service area is in the northwestern Piedmont and foothills of North Carolina and includes portions of municipalities such as Winston-Salem, Yadkinville, Mount Airy, and North Wilkesboro, NC. Use of the bank for projects outside the primary service area may be proposed and considered on a case-by-case basis.

### *Wetland and Stream Types (debit)*

The bank will supply credits for impacts to Bottomland Hardwood Forest wetland types and stream channels. Wetland and stream impacts are common in this service area relative to road building, large retail and industrial site development, and watershed/water supply development.

### *Credit Release*

Fifteen percent (15%) of the Bank's total credits shall be available for sale immediately upon completion of all of the following:

- a. Execution of this MBI by the Sponsor, the Corps, and other agencies eligible for membership in the MBRT who choose to execute this agreement;
- b. Approval of the final Mitigation Plan;
- c. Delivery of the financial assurance described in paragraph 25 of this MBI;
- d. Recordation of the preservation mechanism described in paragraph 24 of this MBI, as well as a title opinion covering the property acceptable to the Corps;

Additionally, the Sponsor must complete the initial physical and biological improvements to the bank site pursuant to the Mitigation Plan no later than the first full growing season following initial debiting of the Bank.

Subject to the Sponsor's continued satisfactory completion of all required success criteria and monitoring, additional mitigation credits will be available for sale by the Sponsor on the following schedule:

10% after first year,	if interim success measures are met	(25% of total)
10% after second year,	if interim success measures are met	(35% of total)
10% after third year,	if interim success measures are met	(45% of total)

15% after fourth year,	if interim success measures are met	(60% of total)
15% after fifth year,	if interim success measures are met	(75% of total)
and		
25% after fifth year once overall success criteria has been met		(100% of total)

The above schedule applies only to the extent the Sponsor documents acceptable survival and growth of planted vegetation, attainment of acceptable wetland hydrology as described under the success criteria in the monitoring section of the mitigation plan. The final 25% of credits will be available for sale only upon a determination by the MBRT of functional success as defined in the mitigation plan.

Following the five-year monitoring period, the MBRT will meet to discuss final approval of the bank. The portion of the credit release schedule which is based on the end of the first, second, etc. successful year begins after all initial construction/restoration activities are complete. Some construction activities, relative to site repair, may follow during the five-year monitoring period.

### *Monitoring*

The project site and reference sites will be monitored for a period of at least five years (or until all success criteria are met) following initial construction of the project. This will involve observation of three basic parameters; 1) vegetation and 2) hydrology within the mitigation area and 3) stream channel stability within the restored reach.

Vegetative conditions will be evaluated relative to the number and type of living stems of canopy tree species and the wetland occurrence status of all plant community strata at standard sampling points within each restoration or creation unit.

Site hydrology will be evaluated during site visits as well. Groundwater monitoring devices have been installed throughout the restoration and proposed creation areas, as approved by the USACOE (see accompanying map), which will continually record (at least daily) and store data on water levels. These will be capacitance-type instruments, the data from which can be downloaded in the field (see example specifications sheet from Remote Data Systems, Inc. included). Daily water level data can be determined and presented for review. Any areas to be inundated, will be monitored with water depth indicators (graduated poles). Data from the groundwater wells will be downloaded periodically and depths of saturation and inundation will be recorded during each quarterly visit. Well data will be verified by observation of water levels in hand dug auger holes at the time of data collection. This data will be presented to the MBRT in the annual report.

Stream channel stability on the restored reach will be monitored on three years of a five-year post-construction monitoring period (i.e. 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> years) or until success criteria is met, whichever is the longer period of time. Channel stability will be monitored through the use of photo reference sites (longitudinal and lateral reference photos) and a reference reach monitoring the reach's cross-section and longitudinal profiles. If within any monitoring year, bank stabilization is not acceptable as determined by the Corps of Engineers, and remedial action as required by the Corps of Engineers is performed, the five-year monitoring of the affected portion of the stream will begin again. The bank

sponsor will coordinate any remediation activities with the Corps of Engineers, Raleigh Regulatory Branch Field Office Project Manager. A written summary report with monitoring data and representative photographs will be submitted to the Corps of Engineers within 60 days of completion of each monitoring event.

Site visits will be conducted quarterly by a Professional Soil Scientist or Biologist. These visits will be made at the end of each season (around March 1, June 1, September 1, and December 1). An annual report of conditions will be made to the MBRT at the end of each calendar year. This report will summarize observations from the quarterly visits. Visits may occur more often as needed (e.g. following severe weather conditions, etc.). Any damage or other site conditions which may jeopardize the long-term success of the project will be addressed as observed during the monitoring period. The conditions will be described, along with proposed solution, in a report to the MBRT as soon as possible.

The monitoring phase will begin at the start of site preparation, be carried out by the contractor, continue for a minimum of five (5) years or until success criteria are met and will include:

- 1) Preparation of as-built plans and report describing completed conditions and any modifications or variances from the original mitigation plan. This information will be prepared and submitted within 60 days of completion of site construction/planting and will include a detailed topographic survey by a Registered Land Surveyor, particularly in areas where grading or other modification to the land surface has occurred.
- 2) Quarterly inspections of vegetation from standard observation points including, early, mid, and late growing seasons. Site vegetation conditions along with documentary photos, will be summarized in the formal report for that calendar year (to be submitted within 60 days of the end of the year). Should the mid growing season site inspection indicate conditions which need to be corrected, this will be reported in a brief letter to the MBRT, along with the suggested remediation. This will allow time to obtain plant material and repair and re-plant the failed areas during that following winter or spring.
- 3) Quarterly inspections of the site to record elevation of inundation and saturation. Each site visit will document hydrologic conditions, including documentary photos. Data for each year will be submitted to the MBRT in the annual formal report, within 60 days following each calendar year. Should any significant change or damage occur on the site (e.g. as a result of severe weather) during the year, this will be reported as soon as possible, in order to develop a repair and restoration plan.
- 4) Monitoring present and future threats to the success of the plan, including any degrading factors such as depredation, trespassing, vandalism, or plant removal from destructive wildlife, domestic animals, and humans. If a potentially project threatening problem is observed, a contingency plan to rectify the problem will be submitted to the MBRT.

## *Contingency Planning*

A contingency plan will be developed as part of the preparation of the Mitigation Banking Instrument. Prior to release of credits, American Wetlands shall provide evidence of financial assurances for completion of construction, monitoring, and reporting to the USACOE. The financial assurance will be based on the cost of doing the mitigation work. Such work includes, but is not limited to; maintenance of hydrology monitoring devices, sediment and erosion control, grading, planting, undesirable species control, depredation control, human impact control, as-built surveys, and five-year monitoring. Grading estimates include a 20% re-grading contingency and the planting plan prescribes twice the required density of species required to meet the performance standard for survival of desired species. Should there be any additional needs for grading or planting, such needs will be provided for from the maintenance and monitoring funds being held by NCDOT.

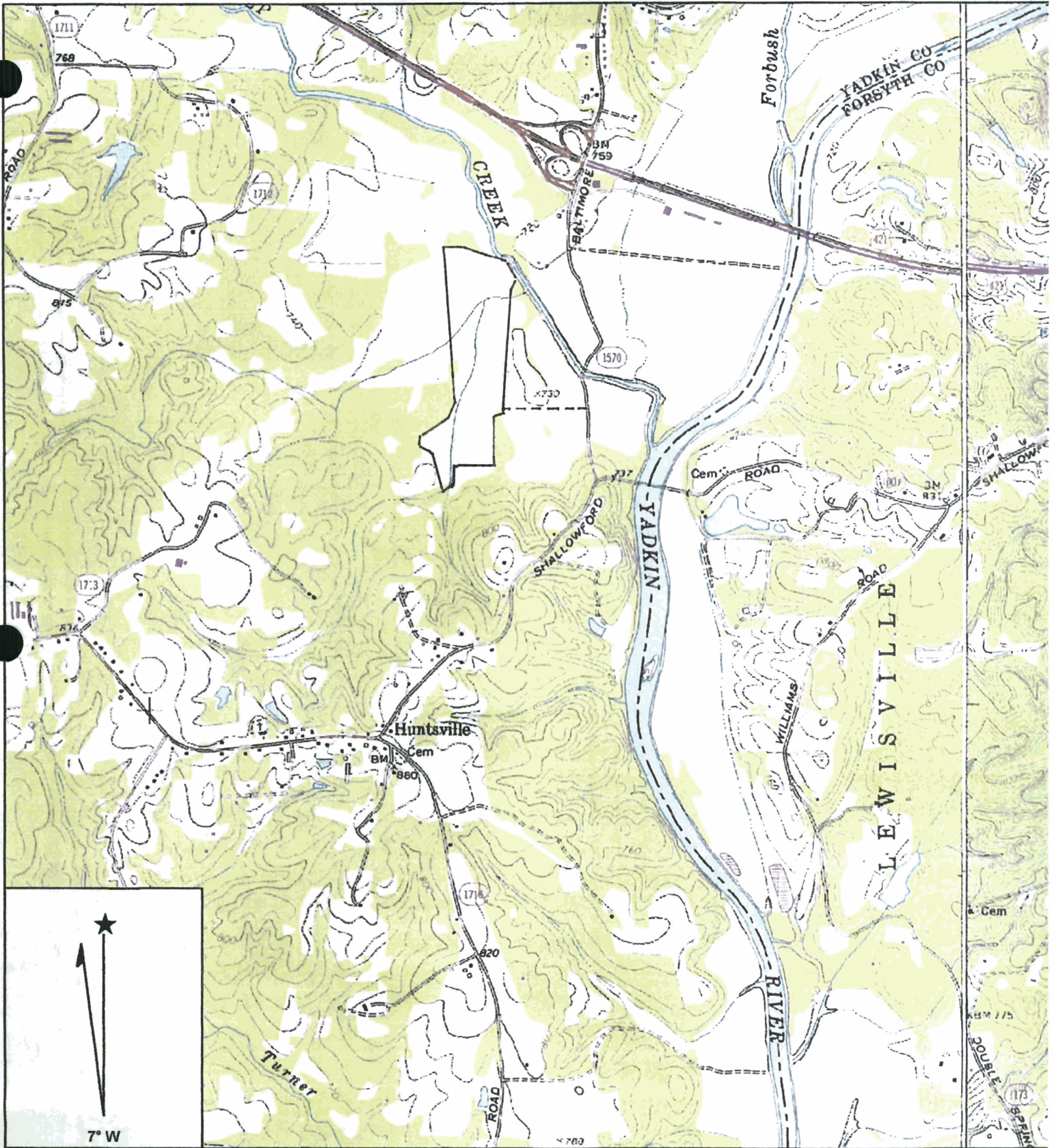
Work already complete includes; purchase of easement, boundary survey, topographic survey, purchase of monitoring devices, Phase I Environmental Site Analysis, Archaeological and Architectural review, Threatened and Endangered Species field surveys and file research, and preliminary grading and planting plans.

## *Financial Guarantees*

1. American Wetlands has provided NCDOT, and executed, a Promissory Note and an executed and recorded first lien Deed of Trust on the property in the amount of Five Hundred and Nineteen Thousand and Three Hundred and no/100 Dollars (\$519,300.00). The Deed of Trust was recorded upon the closing of the purchase of the easement on June 1, 2001.
2. Construction and Payment Bonds in the amount of Two Hundred and Seventy Eight Thousand Eight Hundred and no/100 Dollars (\$278,800.00) have been secured to cover the grading and planting costs of the wetlands portion of the project, which have been estimated to be significantly less than this amount.
3. A Performance Bond in the amount of One Million One Hundred and Forty Four Thousand and No/100 Dollars (\$1,144,000) and a Payment Bond in the amount of Three Hundred and Ninety Thousand and No/100 Dollars (\$390,000) have been secured to cover costs of performance and payment in the delivery of 5,540 linear feet of stream and riparian restoration
4. American Wetlands will require grading and planting contractors to provide additional performance and payment bonds in the amount of the actual costs of performing such work. This requirement of sub-contractors is required by American Wetlands' bonding company.
5. Monitoring, reporting, and any necessary maintenance will be paid from funds held by NCDOT for such purposes. These funds will be paid to American Wetlands after notification to NCDOT and the USACOE that all monitoring and maintenance work for the year has been accomplished, and NCDOT's approval of

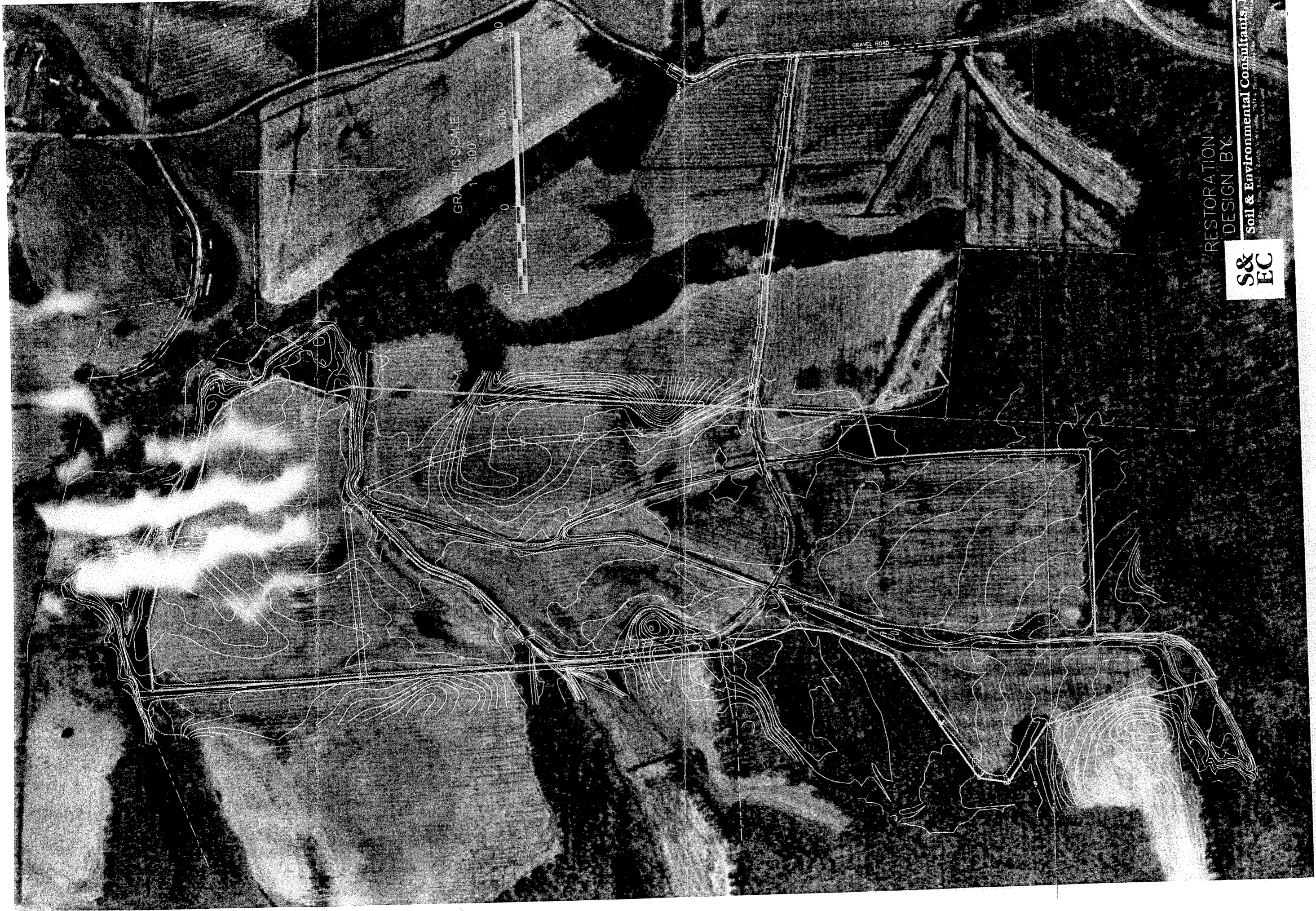
such monitoring and maintenance activities. This is a contractual requirement between American Wetlands and NCDOT.

6. American Wetlands has general liability insurance in the amount of \$1,000,000 for each occurrence, \$2,000,000 for the second occurrence, and \$1,000,000 environmental coverage. In addition, American Wetlands carries \$1,000,000 Directors/Officers insurance.
7. Also see Appendix F. of MBI.

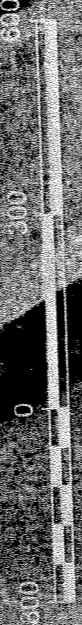


Name: FARMINGTON  
 Date: 6/20/2002  
 Scale: 1 inch equals 2000 feet

Location: 036° 05' 19.7" N 080° 31' 18.7" W  
 Caption: DEEP CREEK WETLAND MITIGATION PLAN  
 YADKIN COUNTY



GRAPHIC SCALE  
1" = 500'



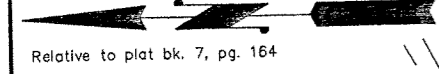
GRAVEL ROAD

RESTORATION  
DESIGN BY:

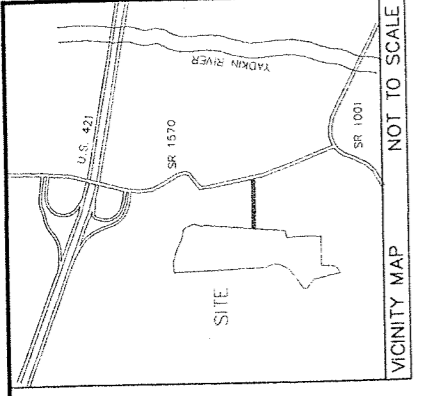


Soil & Environmental Consultants  
1000 ... ..  
... ..





Relative to plat bk. 7, pg. 164



RESTORATION  
DESIGN BY:  
**S&EC**  
**Soil & Environmental Consultants, PA**  
1101 Raven Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 846-5900 • Fax: (919) 846-5467  
www.sandec.com

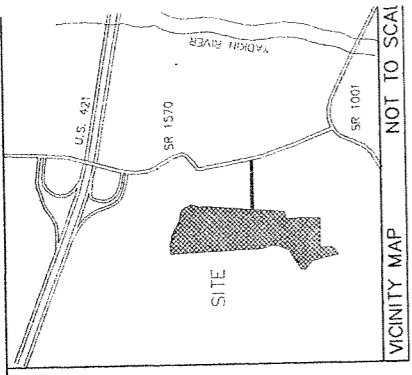
Designer	MO	Date	11-20-02
Drawn By	AM	Date	8-17-03
Checked By	PM	Job No.	8170
		Sheet No.	8170

AMERICAN WETLANDS

DEEP CREEK WETLAND MITIGATION PLAN  
YADKIN COUNTY, NC

TOPOGRAPHY

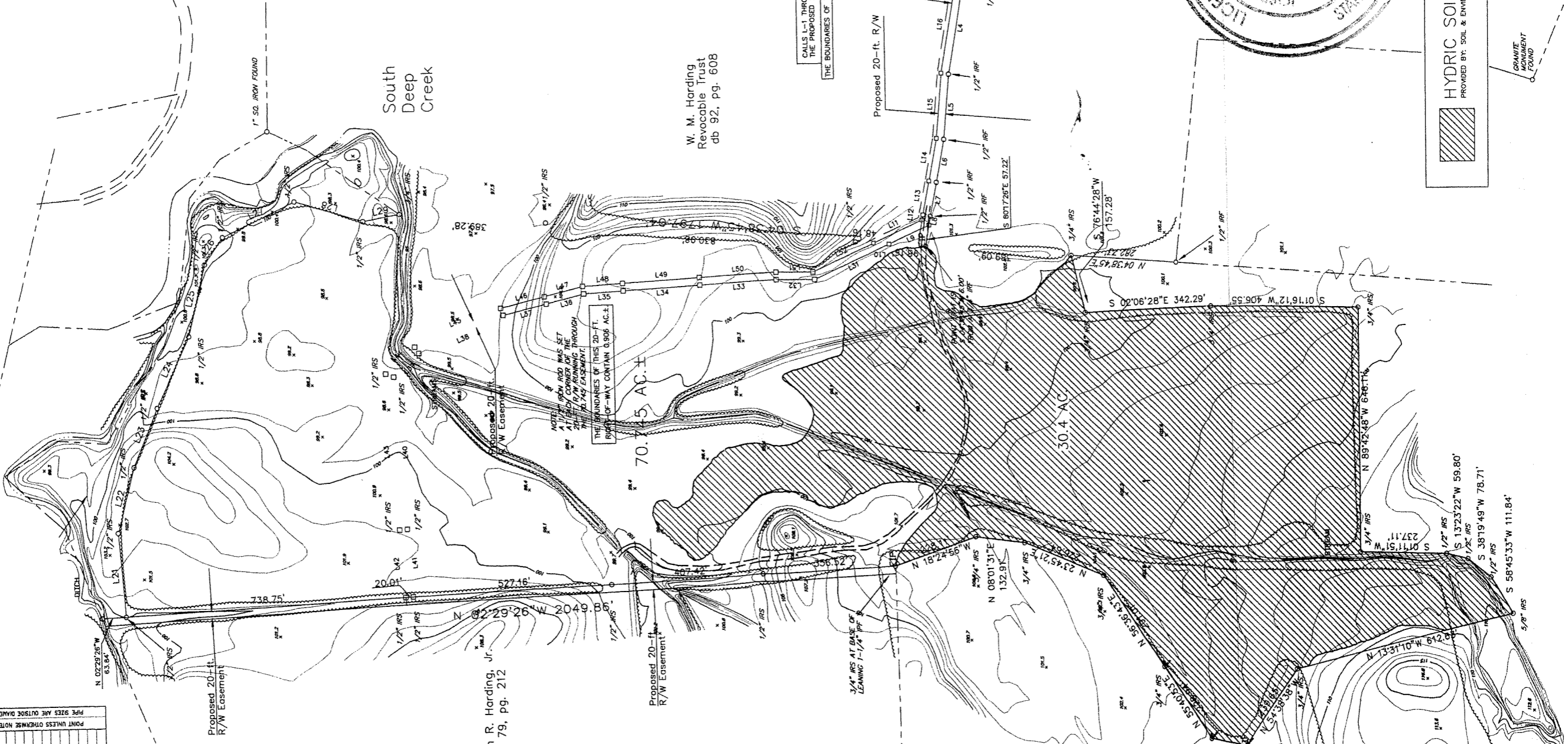
Sheet No.



Relative to plat bk. 7, pg. 164

NO.	DESCRIPTION
1	PIPE FOUND
2	PIPE SET
3	ROAD FOUND
4	ROAD SET
5	ROAD SPRING
6	UTILITY MARK
7	TY POLE
8	T.O.P. MARK
9	LENGTH

POINT SIZES ARE OUTSIDE DIAMETER  
PIPE SIZES ARE OUTSIDE DIAMETER



GRAPHIC SCALE  
1" = 300'



Course	Bearing	Distance
L1	N 79°17'05" W	141.83
L2	N 74°35'59" W	197.77
L3	N 80°13'25" W	250.12
L4	N 84°48'05" W	173.39
L5	N 79°02'02" W	317.75
L6	N 80°17'28" W	243.12
L7	N 84°13'48" W	117.91
L8	N 04°38'45" E	41.37
L9	S 24°15'46" E	143.48
L10	S 84°48'05" E	173.18
L11	S 79°02'02" E	114.73
L12	S 80°17'28" E	91.24
L13	S 84°13'48" E	173.18
L14	S 80°17'28" E	251.02
L15	S 79°02'02" E	182.74
L16	S 84°48'05" E	137.70
L17	S 01°44'29" E	20.18

Course	Bearing	Distance
L17	N 85°40'03" E	220.19
L18	N 74°35'21" E	177.97
L19	S 67°23'32" E	166.92
L20	S 64°54'37" E	204.48
L21	S 24°15'46" E	185.43
L22	S 25°17'42" E	209.87
L23	S 17°23'24" W	199.89
L24	S 10°09'50" E	96.07
L25	N 24°15'46" W	219.55
L26	N 01°04'56" E	109.82
L27	N 02°48'46" W	204.33
L28	N 03°21'30" W	103.75
L29	N 13°48'02" W	103.41
L30	N 13°50'54" W	118.27
L31	N 41°50'59" W	91.04
L32	S 86°05'28" W	402.69
L33	N 86°05'28" W	178.47
L34	S 86°05'28" E	177.84
L35	S 41°55'59" E	104.10
L36	S 33°07'00" E	249.30
L37	S 33°07'00" E	120.85
L38	S 33°07'00" E	105.82
L39	S 33°07'00" E	105.82
L40	S 02°46'47" E	210.12
L41	S 01°04'56" W	98.99
L42	S 24°15'46" E	178.84

William R. Harding, Jr.  
db 79, pg. 212

W. M. Harding  
Revocable Trust  
db 92, pg. 608

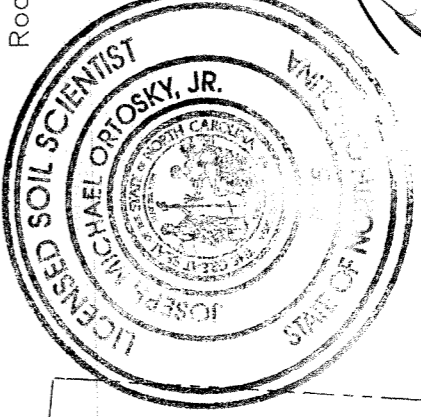
CALLS L-1 THROUGH L20 ARE FOR THE LINES AROUND THE PROPOSED 20-FT. RIGHT-OF-WAY.

THE BOUNDARIES OF THE 20-FT. RIGHT-OF-WAY CONTAIN 0.597 AC.±

THE BOUNDARIES OF THIS 20-FT. RIGHT-OF-WAY CONTAIN 0.908 AC.±

70.145 AC.±

30.4 AC.



HYDRIC SOILS 30.4 AC.  
PROVIDED BY: SOIL & ENVIRONMENTAL CONSULTANTS, PA

VERTICAL DATUM:  
ASSUMED

CONCRETE MONUMENT FOUND

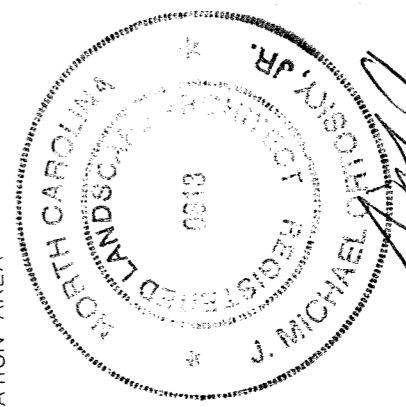
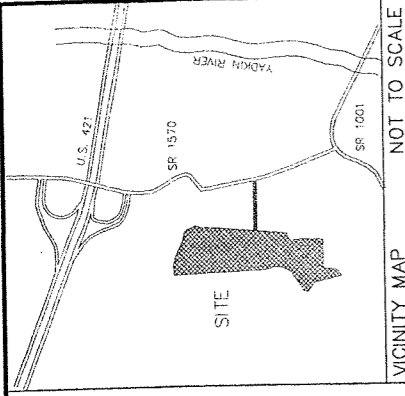
South Deep Creek

SR 1570  
Dinkins Bottom Road

*Handwritten signature*

8 MI. E-SE1/4 OF THE CENTER OF THE TOWN OF YADKINVILLE  
BASE MAP PROVIDED BY:  
Hollar & Associates, PA  
SURVEYORS  
104 NORTH JACKSON STREET PO BOX 656 YADKINVILLE, NC 27055  
335-679-8033 (FAX) 335-679-6604  
FIELD PERSONNEL:  
TREM MAN, TRS, MSH  
SERIAL: 81104  
LAST DAY ON JOB:  
Precision of Course:  
10000±

Relative to plot bk. 7, pg. 164



RESTORATION DESIGN BY:



Soil & Environmental Consultants, PA  
1010 Karen Judge Road - Raleigh, North Carolina 27614 • Phone (919) 846-5900 • Fax (919) 846-9467  
www.SandEC.com



PROPOSED CHANNEL CROSSING (SEE ENLARGEMENT)

NEW FARM ROAD ALIGNMENT

WETLAND CREATION AREA  
11.1 ACRES

WETLAND RESTORATION AREA  
30.4 ACRES

SR 1570  
Dinkins Bottom Road

South Deep Creek

EXISTING DITCHES AND CHANNELIZED STREAMS TO BE FILLED TO ADJACENT GRADE

LOW-PERMEABILITY SUBSURFACE DAM (SEE SECTION)

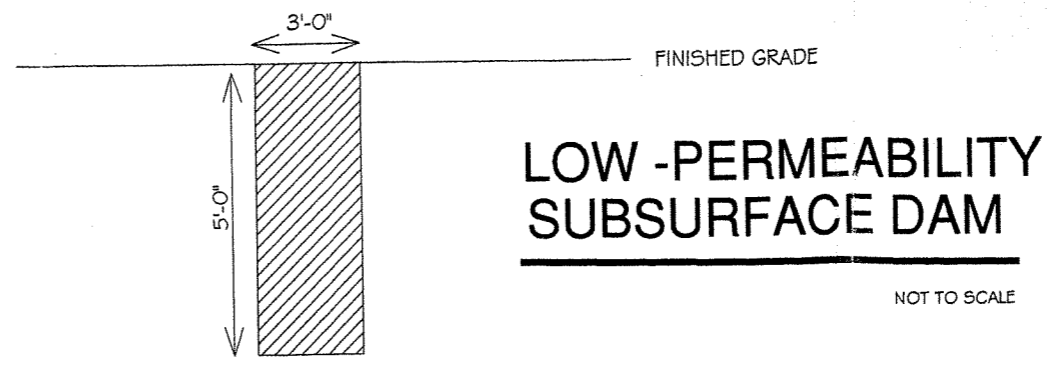
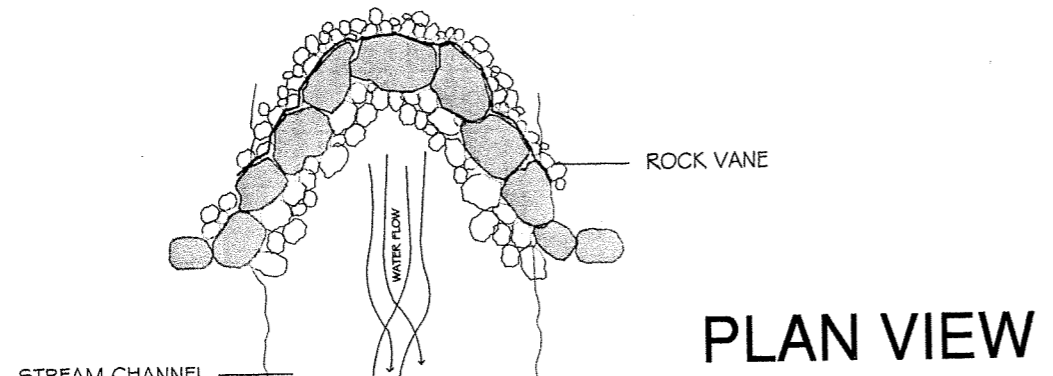
Developer	Scale	Date
Drawn By	1"=200'	05-17-02
Checked By	MM	Job No. 0170
	PN	

AMERICAN WETLANDS

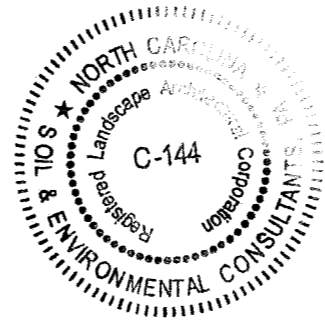
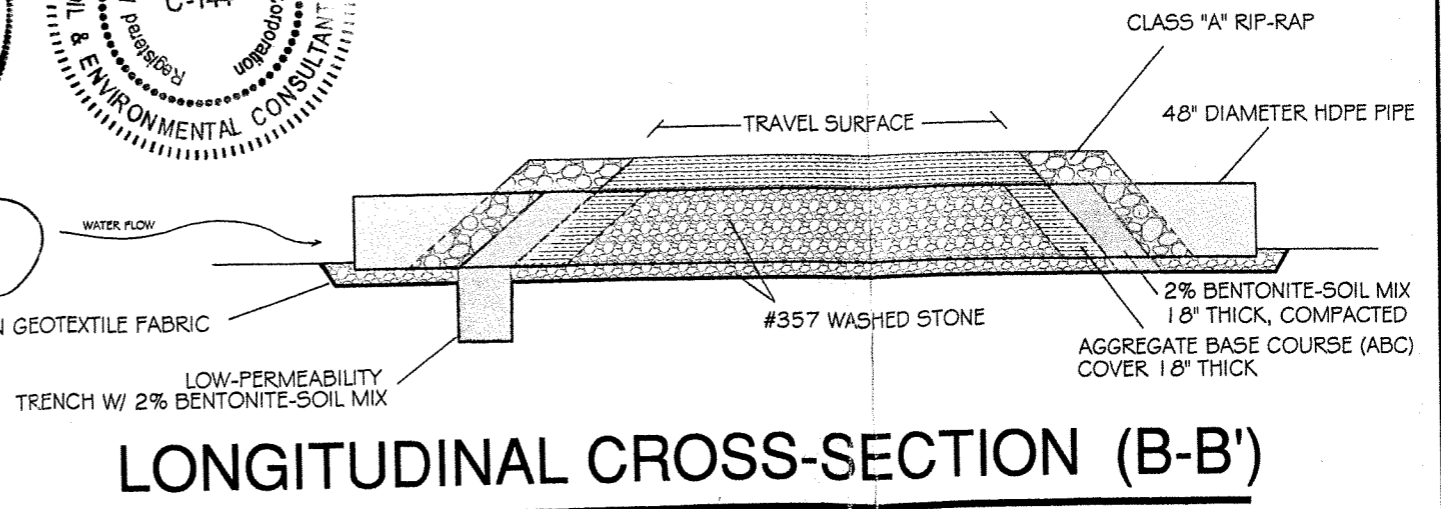
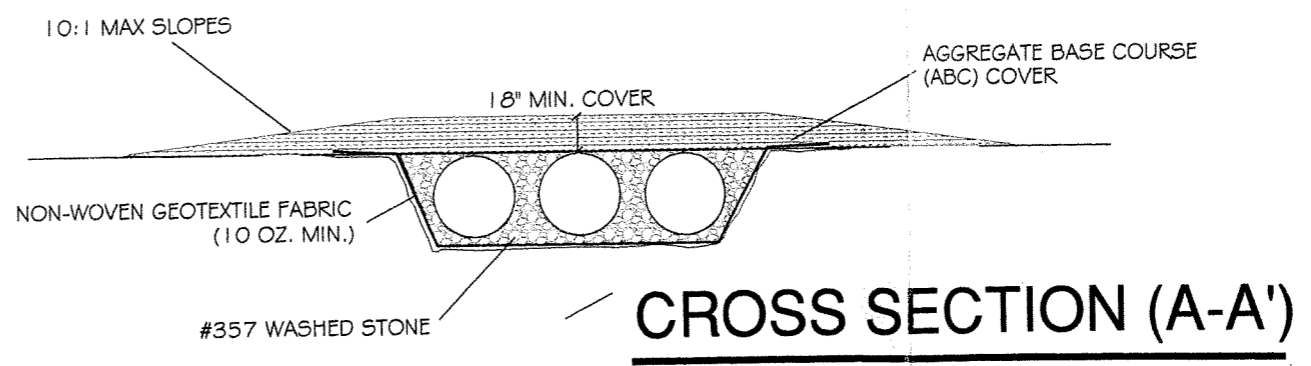
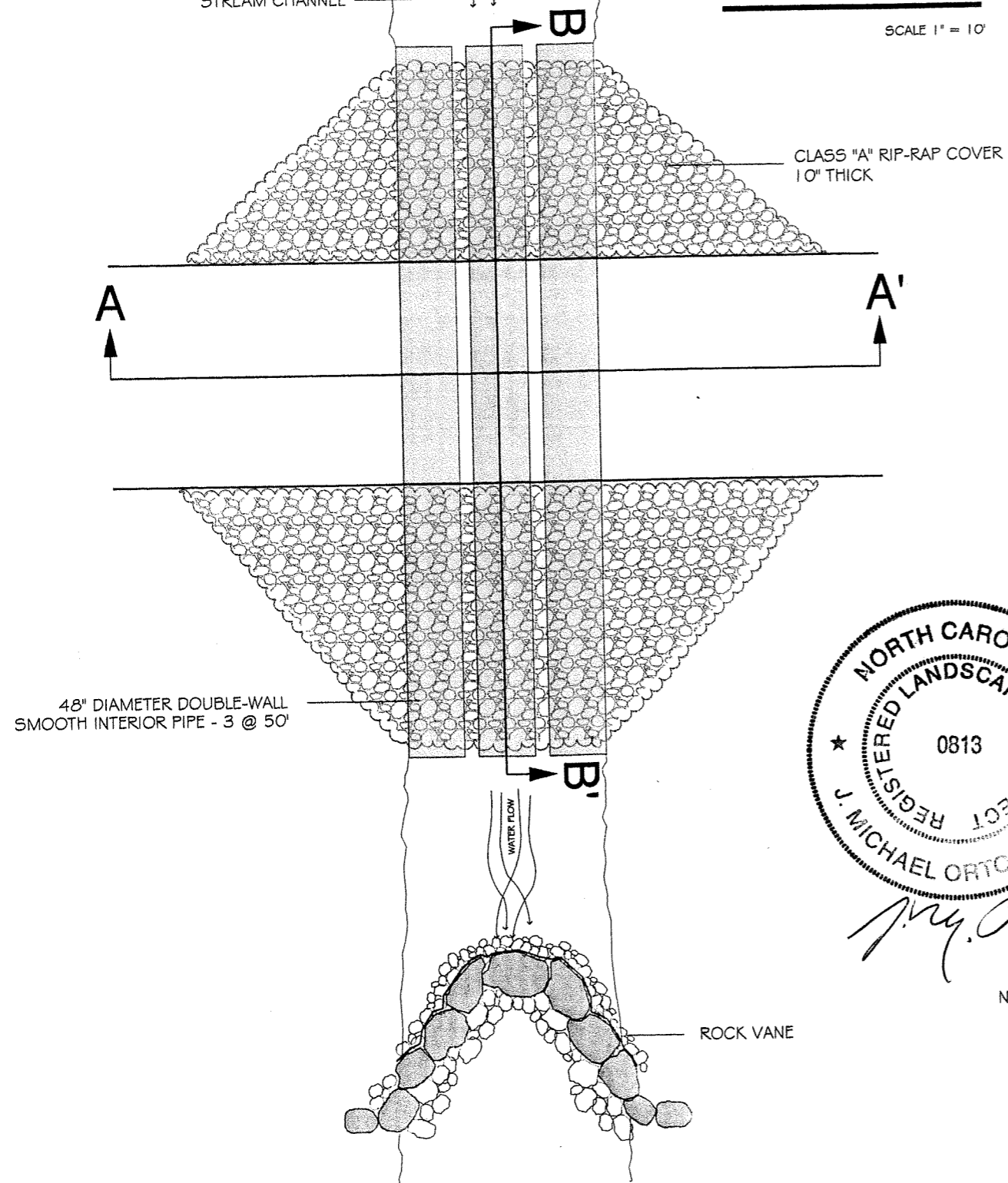
DEEP CREEK WETLAND MITIGATION PLAN  
YADKIN COUNTY, NC

PLAN VIEW

Sheet No.



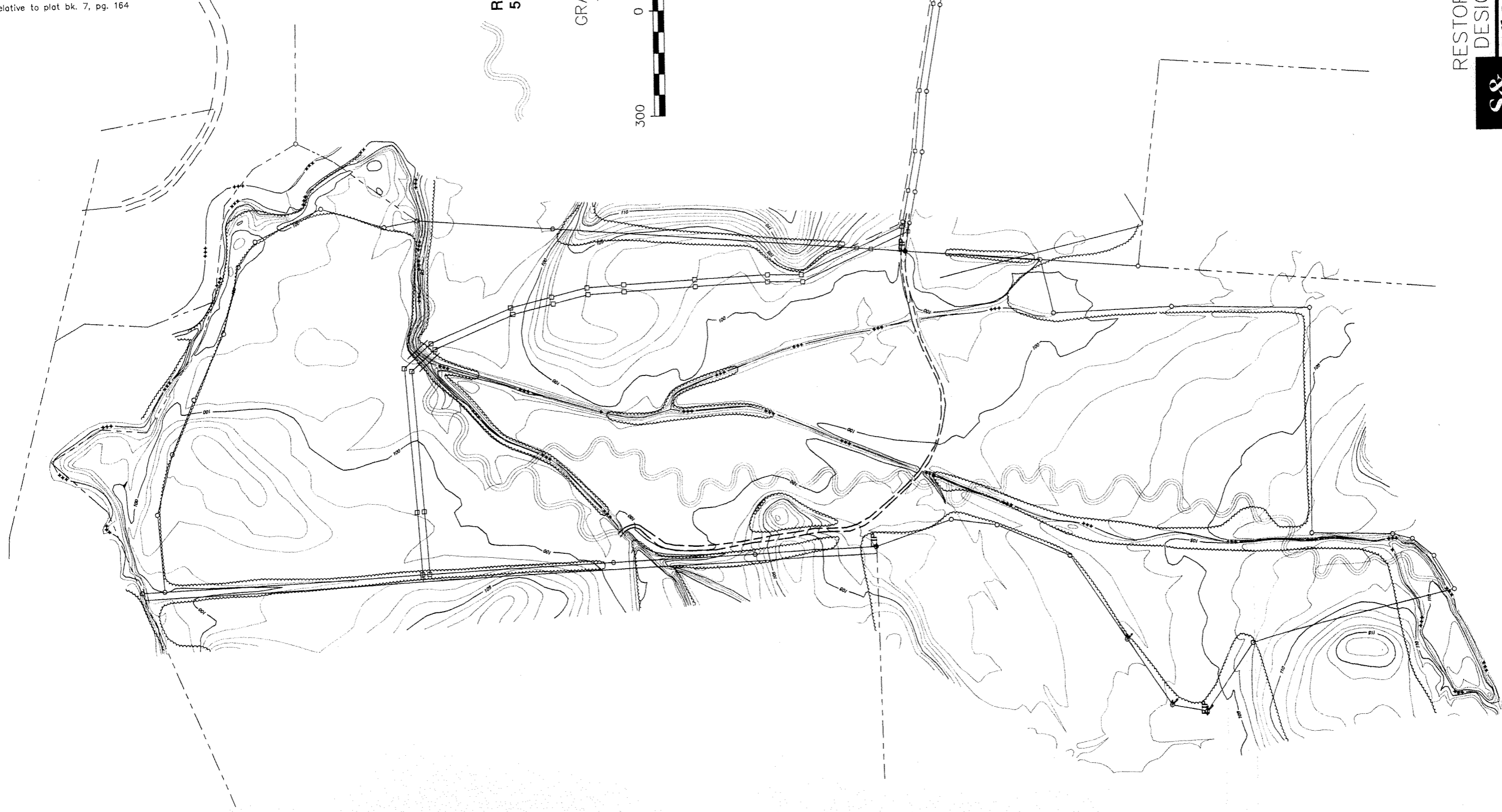
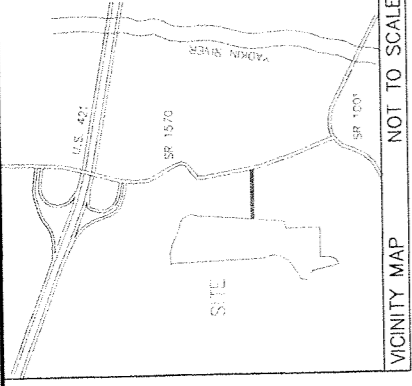
EXISTING MATERIAL-EXCAVATED, MIXED WITH BENTONITE @ 2% BY VOLUME, PLACED IN TRENCH AT 6" LIFTS, COMPACTED WITH HAND-OPERATED VIBRATORY COMPACTOR, RETURNED TO FINISHED GRADE.



*Michael Ortosky, Jr.*

RESTORATION DESIGN BY:  
**S&EC**  
**Soil & Environmental Consultants, PA**  
1100 Raven Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 946-5500 • Fax: (919) 946-9407  
www.sandec.com

Relative to plot bk. 7, pg. 164



RESTORED STREAM CHANNEL  
5,540 LINEAR FEET

GRAPHIC SCALE  
1" = 300'



RESTORATION  
DESIGN BY:



**Soil & Environmental Consultants, PA**  
11010 Raven Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 846-5900 • Fax: (919) 846-9467  
www.SandEC.com

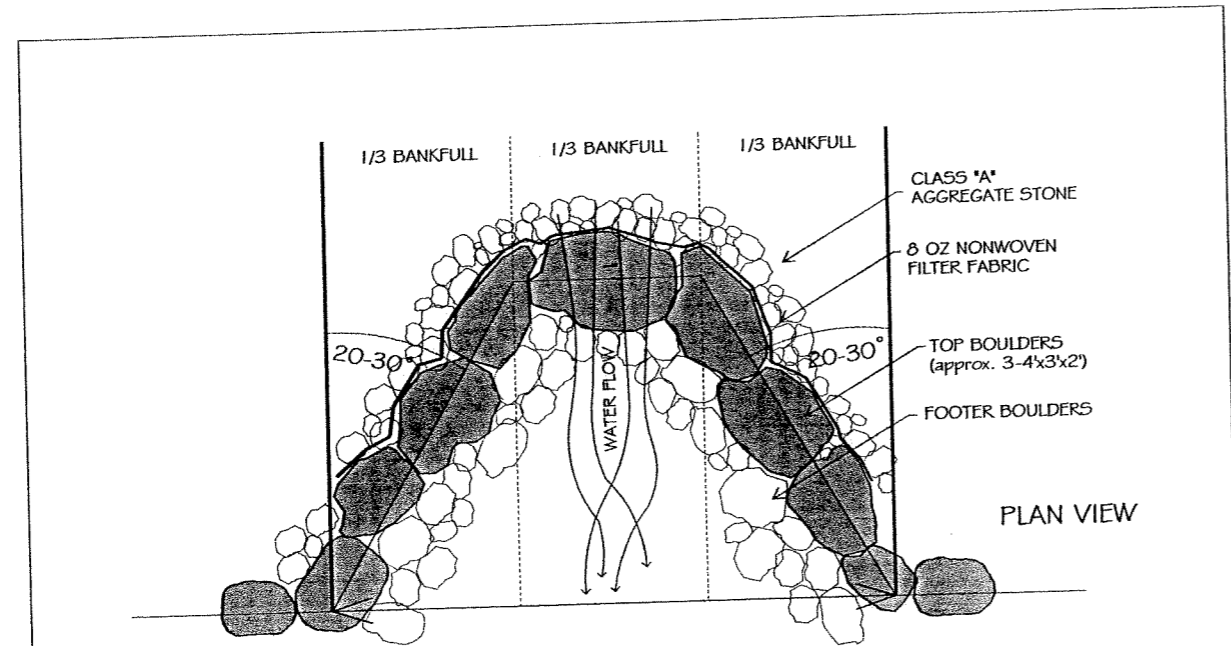
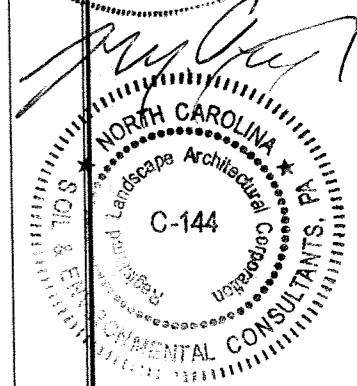
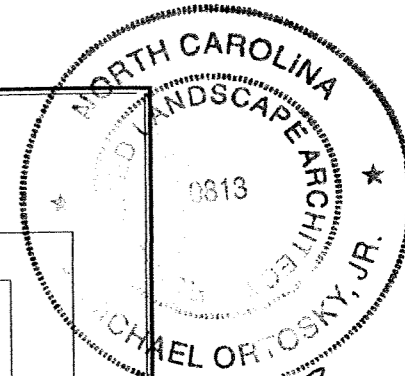
Designer	MS	Date	11-20-07
Drawn By	MM	Date	8-28-07
Checked By	PN	Job No.	8179

AMERICAN WETLANDS

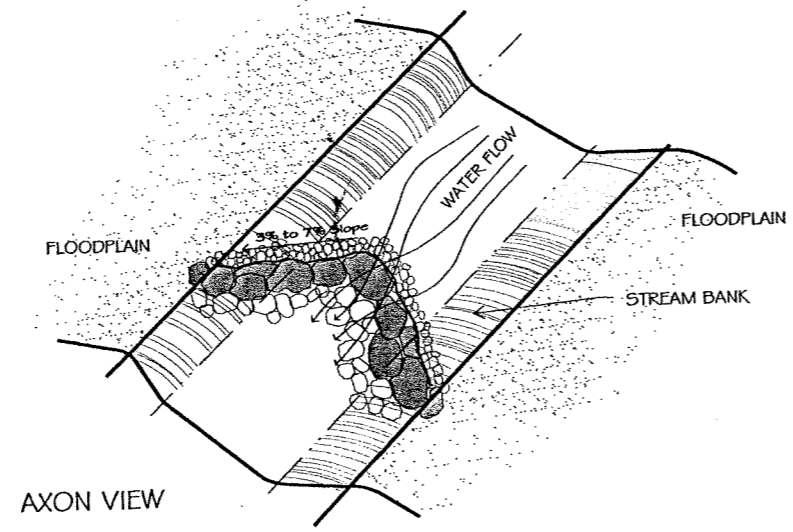
DEEP CREEK WETLAND MITIGATION PLAN  
YADKIN COUNTY, NC

PLAN VIEW

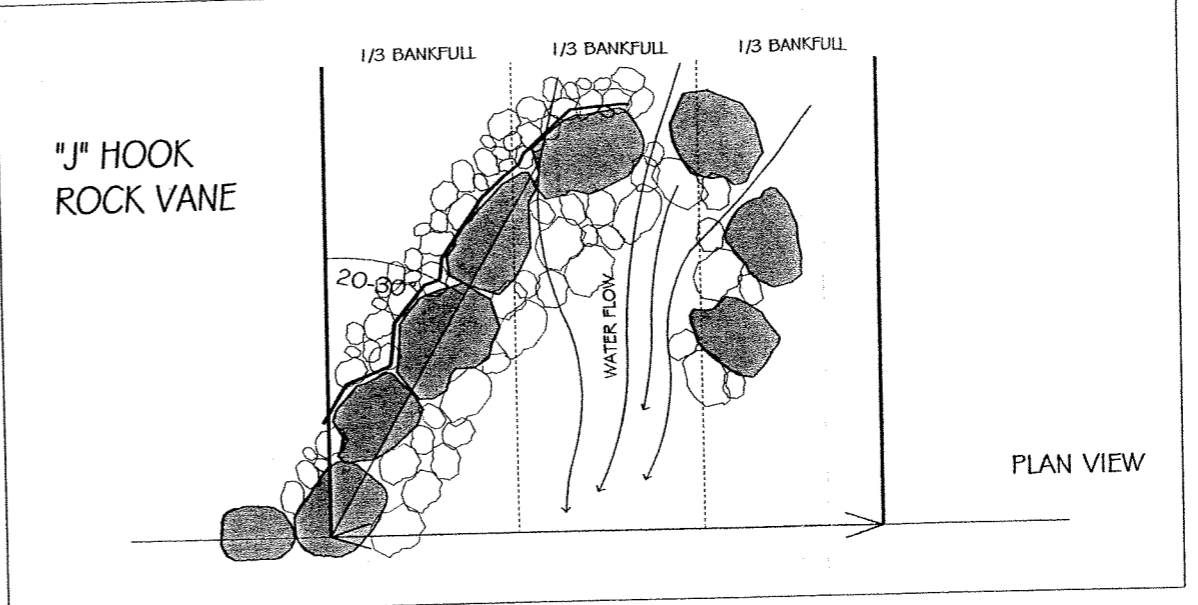
Sheet No.



TYPICAL ROCK VANE

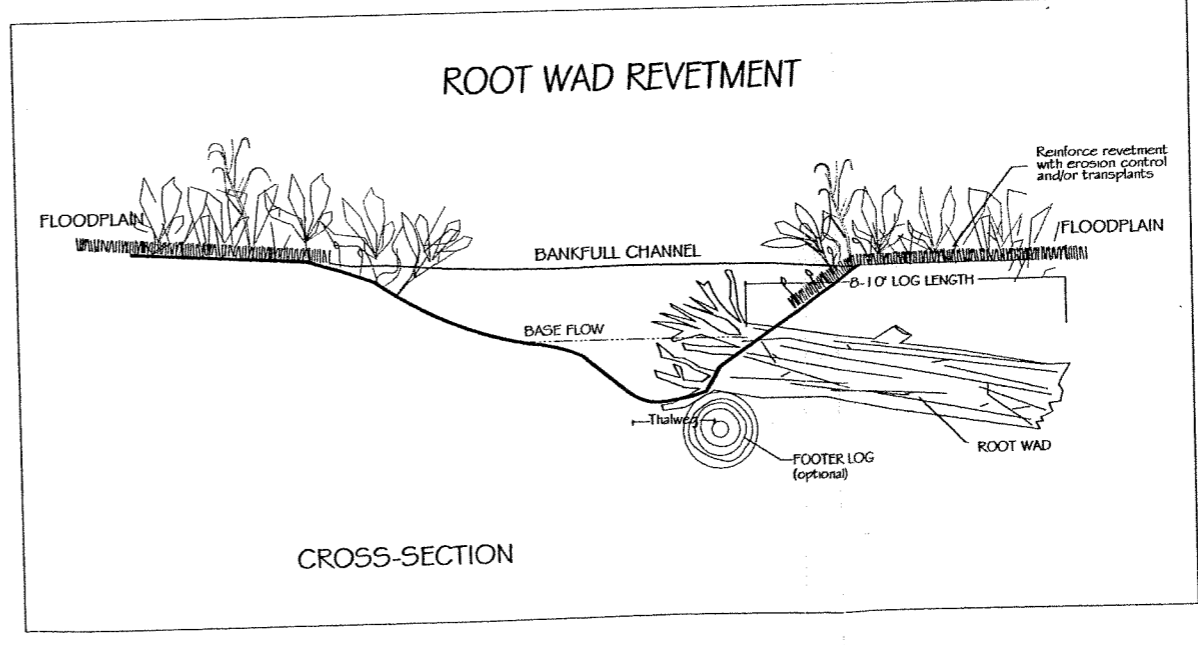


AXON VIEW



"J" HOOK ROCK VANE

PLAN VIEW



ROOT WAD REVETMENT

CROSS-SECTION

RESTORATION DESIGN BY:



**Soil & Environmental Consultants, PA**  
 11610 Raven Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 846-9900 • Fax: (919) 846-9467  
 www.SeaEC.com

No.	Revision	Date	By	Designer	Scale
				PAJ	
				MM	5-15-02
				MD	6170.01

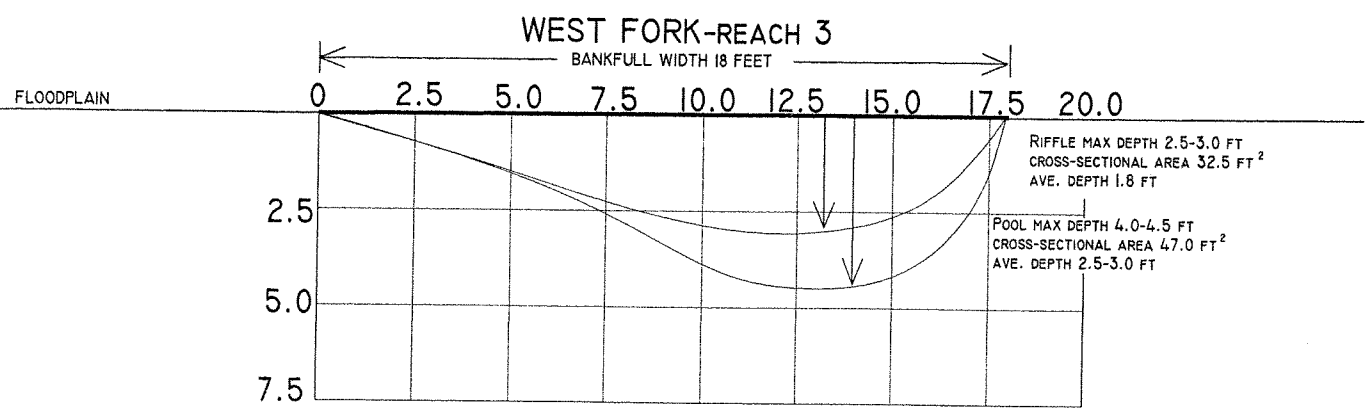
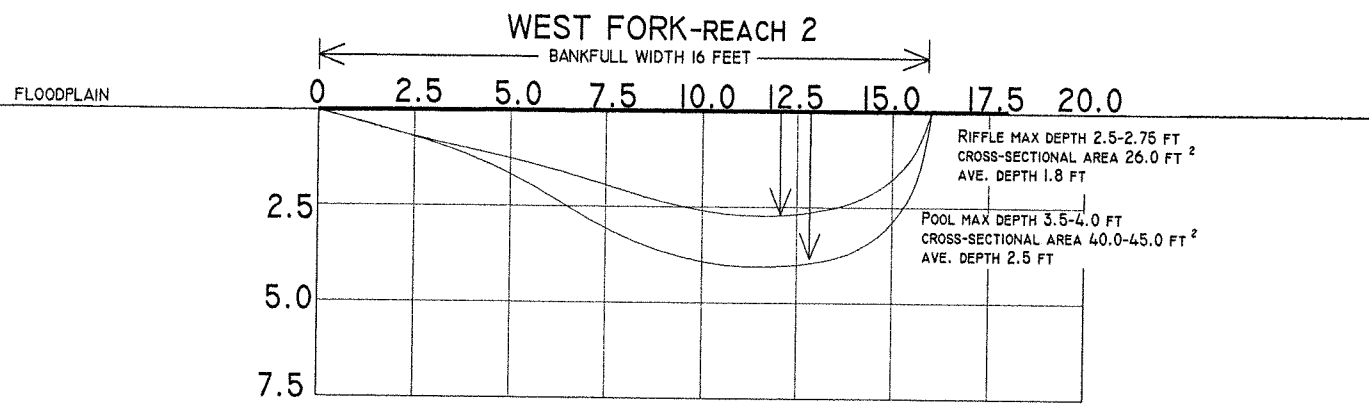
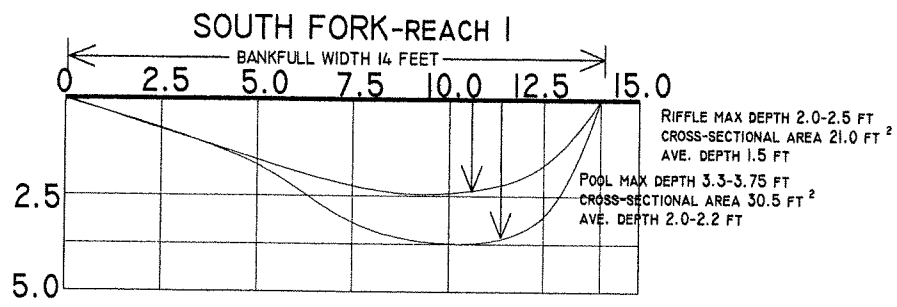
AMERICAN WETLANDS

DEEP CREEK STREAM RESTORATION  
 YADKIN COUNTY, NC

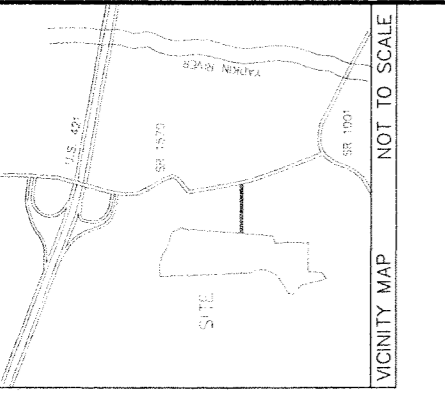
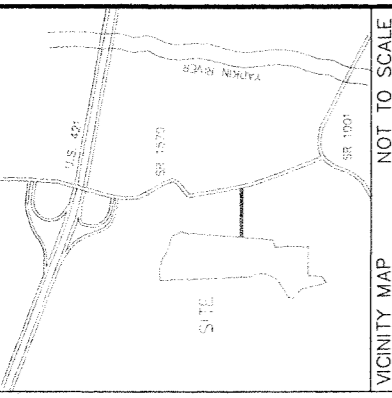
STRUCTURES

Sheet No.

AMERICAN WETLANDS  
 DEEP CREEK STREAM RESTORATION  
 WEST AND SOUTH FORK TYPICAL CROSS-SECTIONS



Relative to plot bk. 7, pg. 164



○ R REFERENCE SITE WELLS

○ MONITORING WELLS

RESTORED STREAM CHANNEL  
5,540 LINEAR FEET

GRAPHIC SCALE  
1" = 300'



RESTORATION  
DESIGN BY:



**Soil & Environmental Consultants, PA**  
11018 Barron Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 846-5900 • Fax: (919) 846-9467  
www.SandEC.com

AMERICAN WETLANDS

DEEP CREEK WETLAND MITIGATION PLAN  
YADKIN COUNTY, NC

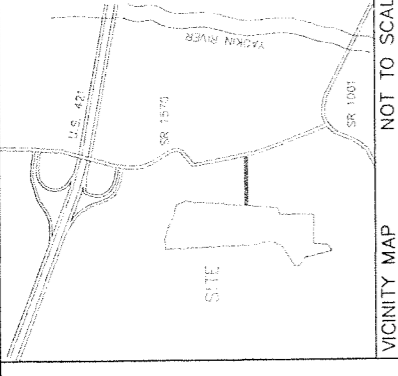
REFERENCE SITE AND  
SITE MONITORING WELLS

Sheet No.

Designer	Scale
Drawn By	Date
Checked By	Job No.
	PN



Relative to plat bk. 7, pg. 164



## MITIGATION TYPES

- WETLAND RESTORATION AREA  
30.4 ACRES
- WETLAND CREATION AREA  
12.1 ACRES
- RESTORED STREAM CHANNEL  
5,540 LINEAR FEET

RESTORATION  
DESIGN BY:



**Soil & Environmental Consultants, PA**  
1100 Raven Ridge Road • Raleigh, North Carolina 27614 • Phone: (919) 846-5900 • Fax: (919) 846-9467  
www.secinc.com

Scale  
1"=300'

Designer	MS	Date
Drawn By	MM	8-28-02
Checked By	PK	Job No. 6170

AMERICAN WETLANDS

DEEP CREEK WETLAND MITIGATION PLAN  
YADKIN COUNTY, NC

MITIGATION TYPES

Sheet No.

MONTH	ET	GWO	SWO	TOTAL LOSS	P	SWI	GWI	TOTAL GAIN	S
JAN	0.9	2.23	0.37	3.5	3.7	1.3	6.5	11.5	8
FEB	1.4	2.01	0.35	3.76	3.5	1.3	6.5	11.3	7.54
MAR	2.2	2.23	0.4	4.83	4	1.3	6.5	11.8	6.97
APR	3.3	2.16	0.36	5.82	3.6	1.3	6.5	11.4	5.58
MAY	4.3	2.23	0.4	6.93	4	1.3	6.5	11.8	4.87
JUN	4.8	2.16	0.36	7.32	3.6	1.3	6.5	11.4	4.08
JUL	4.7	2.23	0.46	7.39	4.6	1.3	6.5	12.4	5.01
AUG	4	2.23	0.43	6.66	4.3	1.3	6.5	12.1	5.44
SEP	3.3	2.16	0.36	5.82	3.6	1.3	6.5	11.4	5.58
OCT	1.9	2.23	0.31	4.44	3.1	1.3	6.5	10.9	6.46
NOV	1.2	2.16	0.28	3.64	2.8	1.3	6.5	10.6	6.96
DEC	0.7	2.23	0.34	3.27	3.4	1.3	6.5	11.2	7.93
TOTAL	32.7	26.26	4.42	63.38	44.2	15.6	78	137.8	74.42

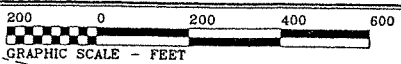
## *Deep Creek Wetlands Mitigation Bank*

### *Appendix B: Property Survey and Legal Description*

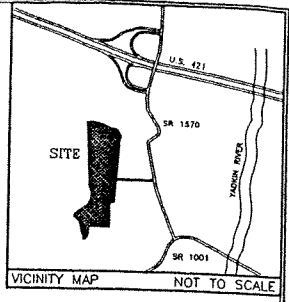
The property survey and legal description are attached. The project site is in Yadkin County, North Carolina, and is located south of US Highway 421, approximately 2,000 feet west of the Yadkin River, west of Dinkins Bottom Road. The proposed Bank is located in sub-basin 02, Hydrologic Unit 11 in the Yadkin River Basin, USGS Cataloging Unit #03040101.

LEGEND	
1/2" IRON PIPE FOUND	1/2" IRON PIPE SET
3/4" IRON PIPE FOUND	3/4" IRON PIPE SET
1" IRON PIPE FOUND	1" IRON PIPE SET
1 1/2" IRON PIPE FOUND	1 1/2" IRON PIPE SET
2" IRON PIPE FOUND	2" IRON PIPE SET
3" IRON PIPE FOUND	3" IRON PIPE SET
4" IRON PIPE FOUND	4" IRON PIPE SET
6" IRON PIPE FOUND	6" IRON PIPE SET
8" IRON PIPE FOUND	8" IRON PIPE SET
10" IRON PIPE FOUND	10" IRON PIPE SET
12" IRON PIPE FOUND	12" IRON PIPE SET
14" IRON PIPE FOUND	14" IRON PIPE SET
16" IRON PIPE FOUND	16" IRON PIPE SET
18" IRON PIPE FOUND	18" IRON PIPE SET
20" IRON PIPE FOUND	20" IRON PIPE SET
24" IRON PIPE FOUND	24" IRON PIPE SET
30" IRON PIPE FOUND	30" IRON PIPE SET
36" IRON PIPE FOUND	36" IRON PIPE SET
42" IRON PIPE FOUND	42" IRON PIPE SET
48" IRON PIPE FOUND	48" IRON PIPE SET
54" IRON PIPE FOUND	54" IRON PIPE SET
60" IRON PIPE FOUND	60" IRON PIPE SET
66" IRON PIPE FOUND	66" IRON PIPE SET
72" IRON PIPE FOUND	72" IRON PIPE SET
78" IRON PIPE FOUND	78" IRON PIPE SET
84" IRON PIPE FOUND	84" IRON PIPE SET
90" IRON PIPE FOUND	90" IRON PIPE SET
96" IRON PIPE FOUND	96" IRON PIPE SET
102" IRON PIPE FOUND	102" IRON PIPE SET
108" IRON PIPE FOUND	108" IRON PIPE SET
114" IRON PIPE FOUND	114" IRON PIPE SET
120" IRON PIPE FOUND	120" IRON PIPE SET
126" IRON PIPE FOUND	126" IRON PIPE SET
132" IRON PIPE FOUND	132" IRON PIPE SET
138" IRON PIPE FOUND	138" IRON PIPE SET
144" IRON PIPE FOUND	144" IRON PIPE SET
150" IRON PIPE FOUND	150" IRON PIPE SET
156" IRON PIPE FOUND	156" IRON PIPE SET
162" IRON PIPE FOUND	162" IRON PIPE SET
168" IRON PIPE FOUND	168" IRON PIPE SET
174" IRON PIPE FOUND	174" IRON PIPE SET
180" IRON PIPE FOUND	180" IRON PIPE SET
186" IRON PIPE FOUND	186" IRON PIPE SET
192" IRON PIPE FOUND	192" IRON PIPE SET
198" IRON PIPE FOUND	198" IRON PIPE SET
204" IRON PIPE FOUND	204" IRON PIPE SET
210" IRON PIPE FOUND	210" IRON PIPE SET
216" IRON PIPE FOUND	216" IRON PIPE SET
222" IRON PIPE FOUND	222" IRON PIPE SET
228" IRON PIPE FOUND	228" IRON PIPE SET
234" IRON PIPE FOUND	234" IRON PIPE SET
240" IRON PIPE FOUND	240" IRON PIPE SET
246" IRON PIPE FOUND	246" IRON PIPE SET
252" IRON PIPE FOUND	252" IRON PIPE SET
258" IRON PIPE FOUND	258" IRON PIPE SET
264" IRON PIPE FOUND	264" IRON PIPE SET
270" IRON PIPE FOUND	270" IRON PIPE SET
276" IRON PIPE FOUND	276" IRON PIPE SET
282" IRON PIPE FOUND	282" IRON PIPE SET
288" IRON PIPE FOUND	288" IRON PIPE SET
294" IRON PIPE FOUND	294" IRON PIPE SET
300" IRON PIPE FOUND	300" IRON PIPE SET

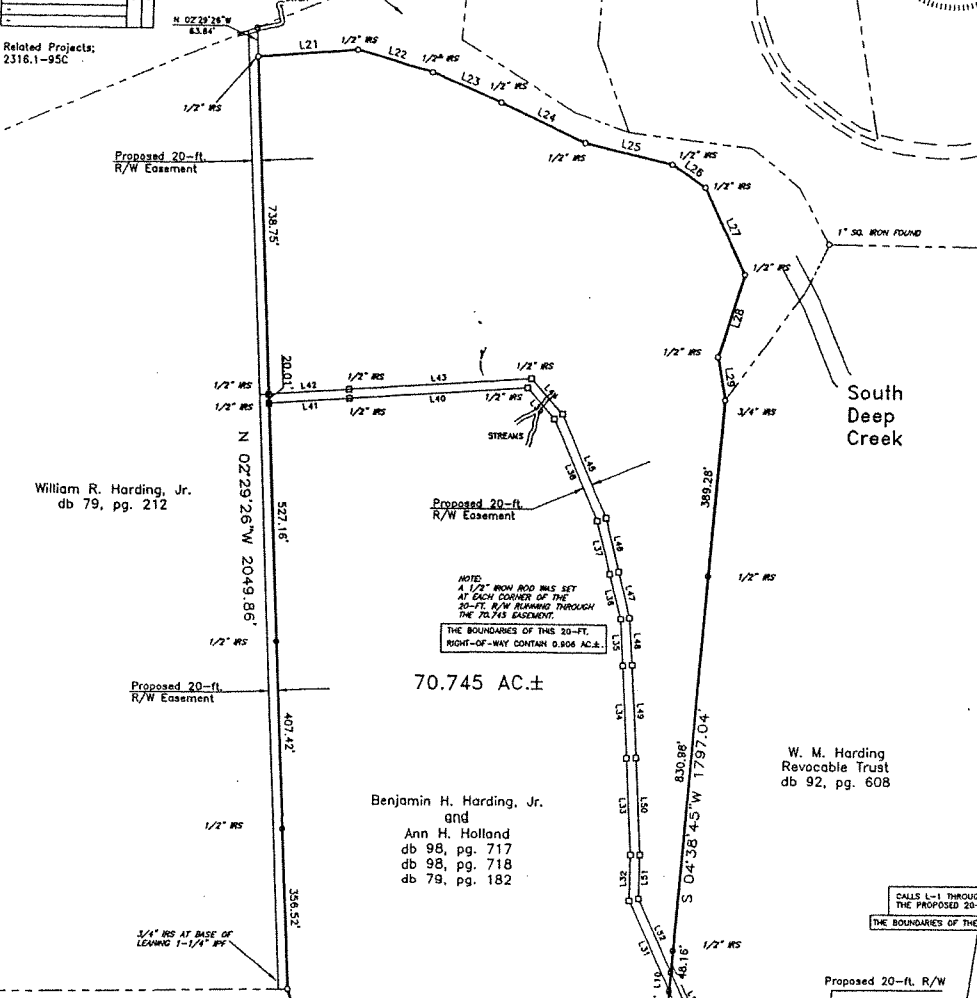
Benjamin H. Harding, Jr.  
and  
Ann H. Holland  
db 98, pg. 717  
db 98, pg. 718  
db 79, pg. 182



Reduce to Plot No. 7, pg. 164



Related Projects:  
2316.1-95C



I certify that this survey is of a proposed easement boundary and is an exception to the definition of a subdivision.  
This \_\_\_\_ day of \_\_\_\_\_ 2001.  
Mark K. Hollar, PL#-2840

I, Mark K. Hollar certify that this plat was drawn under my supervision from an actual survey made under my supervision; that the procedure of closure is at least 1 part to 10,000; and that this plat was prepared in accordance with G. S. 47-30 as amended. Witness my original signature, license number and seal.  
This 17th day of MAY 2001.  
Mark K. Hollar, PL#-2840

**REVIEW OFFICER**  
I, \_\_\_\_\_ Review Officer of Yadkin County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.  
\_\_\_\_\_  
Review Officer

**CERTIFICATION OF APPROVAL OF PLANNING BOARD**  
I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision regulations of Yadkin County, North Carolina, with the exception of such variance, if any, as are noted in the minutes of the Planning Board and recorded on the plat and that it has been approved by the Yadkin County Planning Board at their regular meeting of \_\_\_\_\_ for recording in the Office of the Yadkin County Register of Deeds.

Course	Bearing	Distance
L1	N 79°17'05\"	143.88
L2	N 82°05'12\"	137.99
L3	N 78°35'50\"	157.79
L4	N 80°15'25\"	130.32
L5	N 84°48'05\"	133.37
L6	N 70°02'05\"	115.28
L7	N 76°48'04\"	61.02
L8	N 80°17'28\"	21.75
L9	N 21°45'45\"	117.01
L10	N 24°15'40\"	123.28
L11	S 24°15'40\"	123.28
L12	S 80°15'25\"	130.32
L13	S 78°48'27\"	61.42
L14	S 84°48'05\"	115.28
L15	S 80°15'25\"	253.02
L16	S 78°35'50\"	197.70
L17	S 85°03'10\"	182.74
L18	S 01°41'30\"	20.48
L19	S 01°41'30\"	20.48

Course	Bearing	Distance
L21	N 85°40'03\"	220.18
L22	S 74°33'21\"	177.37
L23	S 74°33'21\"	188.92
L24	S 81°34'37\"	208.48
L25	S 78°00'01\"	155.70
L26	S 35°14'07\"	55.33
L27	S 78°00'01\"	209.87
L28	S 79°23'34\"	187.02
L29	S 10°00'50\"	98.02

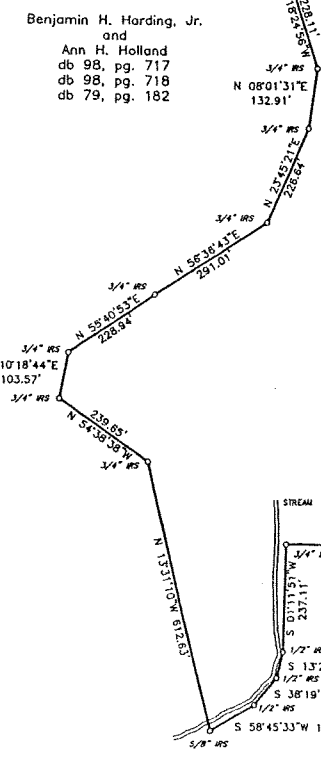
70.745 AC ±

Benjamin H. Harding, Jr.  
and  
Ann H. Holland  
db 98, pg. 717  
db 98, pg. 718  
db 79, pg. 182

W. M. Harding  
Revocable Trust  
db 92, pg. 608

CALLS L-1 THROUGH L-20 ARE FOR THE LINKS AROUND THE PROPOSED 20-FT. RIGHT-OF-WAY.  
THE BOUNDARIES OF THE 20-FT. RIGHT-OF-WAY CONTAIN 0.587 AC ±.

South Deep Creek



Benjamin H. Harding, Jr.  
and  
Ann H. Holland  
db 98, pg. 717  
db 98, pg. 718  
db 79, pg. 182

Yadkin County  
db 392, pg. 518  
plat bk. 7, pg. 164

Hickory Ridge Associates  
of Yadkin, L.L.C.  
parcel two of  
db 447, pg. 423

Benjamin H. Harding, Jr.  
and  
Ann H. Holland  
db 98, pg. 717  
db 98, pg. 718  
db 79, pg. 182

SR 1570  
Dinkins  
Bottom  
Road

**Plat of Survey for**  
Proposed Conservation Easement  
for  
Benjamin H. Harding, Jr.  
and  
Ann H. Holland  
YADKIN CO., NC  
FORBUSH TWP.

PANEL IDENTIFIER NUMBER(S)	PANEL NUMBER
5845(00)	86 8693

APPROX. LOCATION  
1/4 M. E.-S.W. OF THE CENTER OF THE TOWN OF YADKINVILLE

**Hollar & Associates, PA**  
SURVEYORS  
104 NORTH JACKSON STREET PO BOX 854 YADKINVILLE, NC 27055  
336-878-8033 (FAX) 336-879-8804

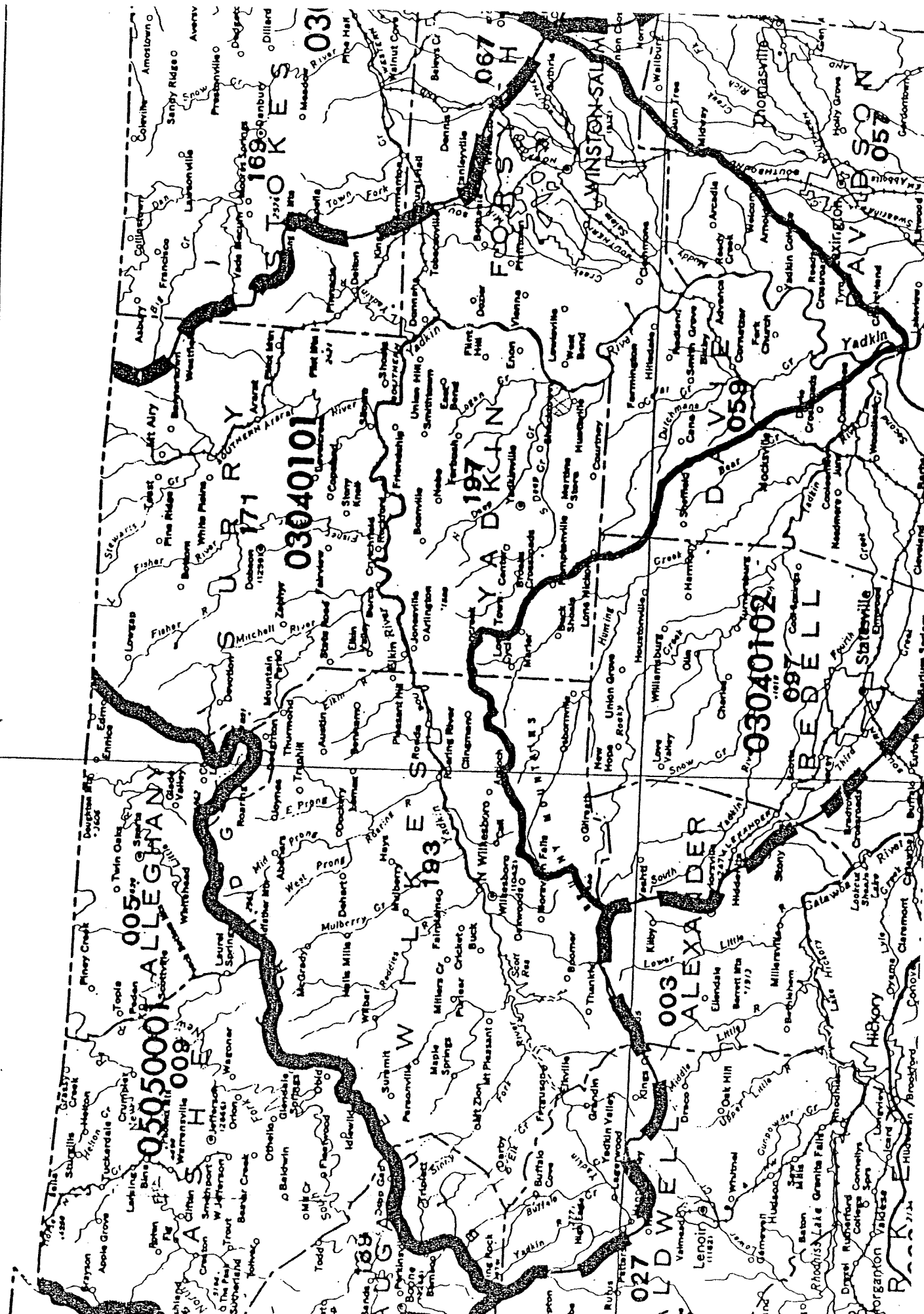
PROJECT: 3258.1-01C  
DRAWING NO.: 3258P1.DWG  
SHEET NO.: 1 of 1

## *Deep Creek Wetlands Mitigation Bank*

### *Appendix C: Map – Geographic Service Area*

The primary service area is the upper Yadkin River area (cataloging unit #03040101) with the possibility of negotiating the mitigation of impacts in adjoining cataloging units. The primary service area is the northwestern Piedmont and foothills of North Carolina and includes portions of municipalities such as Winston Salem, Yadkinville, Mount Airy, and North Wilkesboro, NC. Use of the bank for projects outside the primary service area may be proposed and considered on a case-by-case basis.

81°



## *Deep Creek Wetlands Mitigation Bank*

### *Appendix D: Construction Costs*

Final costs of construction and planting will be determined through a competitive process and the ability of the contractor to provide sufficient performance bonding. The estimates that follow are more than sufficient to cover actual costs based on the Mitigation Plan and estimates furnished by the consultants. They are:

#### Wetlands Restoration

Construction	- Includes all earth movement, filling ditches and grading	-	\$ 118,800
Planting	- Includes planting and seeding of the site twice	-	<u>160,000</u>
	Sub-Total		\$ 278,800

#### Stream and Riparian Restoration

Construction	- Includes all earth movement, relocation of stream channel and structures	-	\$ 350,000
Planting	- Includes planting and seeding	-	<u>40,000</u>
	Sub-Total		<u>\$ 390,000</u>
	Total	-	\$ 668,800

## *Deep Creek Wetlands Mitigation Bank*

### *Appendix E: Maintenance and Monitoring Costs*

Based on the Mitigation Plan, the estimated costs for maintenance and monitoring for wetlands restoration through the year 2006 are \$75,000. This does not include the costs of purchase and installation of monitoring devices, which occurred in August 2001, or the costs for reading and recording data beginning at this time. These costs take into consideration that the construction estimates are higher in order to provide for any modifications that might be needed following the first year of construction, and that planting and seeding costs reflect enough to plant and seed the site twice should there be a need.

The estimated costs for maintenance and monitoring of the stream and riparian restoration through the year 2006 are \$120,000.



*Deep Creek Wetlands Mitigation Bank*

*Appendix F: Form of Financial Assurance*

American Wetlands and Natural Resources Exchange Corporation (Sponsor) has provided North Carolina Department of Transportation (NCDOT), and executed, a Promissory Note and an executed and recorded first lien Deed of Trust on the property in the amount of Five Hundred and Nineteen Thousand and Three Hundred and No/100 Dollars (\$519,300.00). The Deed of Trust was recorded upon closing of the purchase of the easement on June 1, 2001.

Construction and Payment Bonds in the amount of Two Hundred and Seventy-Eight Thousand Eight Hundred and No/100 Dollars (\$278,800.00) have been secured to cover the cost of grading and planting of the wetlands. The actual costs are estimated to be significantly less than projected in the bonding level. Copies of the Performance and Payment Bonds are attached.

In addition, a Performance Bond in the amount of One Million One hundred and Forty Four Thousand and No/100 Dollars (\$1,144,000), and a Payment Bond in the amount Three Hundred and Ninety Thousand Dollars and No/100 Dollars (\$390,000) have been secured to cover the cost of performance and payment in the delivery of 5,540 linear feet of stream and riparian restoration. Copies of the Performance and Payment bonds are attached.

Maintenance and monitoring costs for the wetlands restoration, and creation will be paid from funds held by NCDOT for such purposes. These funds will be paid to the Sponsor after notification to NCDOT and the USACOE that all monitoring and maintenance work for the year has been accomplished, and NCDOT's approval of such monitoring and maintenance activities. These funds are to be released annually over the next five years upon meeting the conditions set forth above. This is a contractual requirement between the Sponsor and NCDOT.

The Performance and Payment Bonds as described above, for stream and riparian restoration provide financial assurances that the needed monitoring, and maintenance work will be performed, are attached.

Much of the work to be covered by financial assurances has already been completed. This includes site design; topographic and boundary surveys; purchase of the easement; purchase and installation of hydrology monitoring devices; and preparation of the erosion control plan. The Performance Bond covers more than the actual cost of grading and planting of the wetlands restoration area.

The Sponsor has general liability insurance in the amount of \$1,000,000 for each occurrence, \$2,000,000 for subsequent occurrences, and \$1,000,000 of environmental coverage. In addition, the Sponsor carries \$1,000,000 of Director/Officers liability insurance.

**FILE COPY** of recorded document

RB 526 P 0164

FILED  
TASMIN COUNTY, NC  
NUMBER \_\_\_\_\_

2001 JUN 11 P 2:54

MARY J. MADISON  
REGISTER OF DEEDS

Recording Time, Book and Page

SATISFACTION: The debt secured by the within Deed of Trust together with the note(s) secured thereby has been satisfied in full.

This the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Lot No.: \_\_\_\_\_ Parcel Identifier No. \_\_\_\_\_ Verified by \_\_\_\_\_  
County on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_

Mail after recording to: North Carolina Department of Transportation, Project Analysis & Environmental Analysis Branch, Room 462, Trans. Building, P.O. Box 25201, Raleigh, NC 27611 - Attn: Beth Harmon

Prepared By: Alan G. Dexter, Parker Poe Adams & Bernstein, L.L.P., Three First Union Center, 401 S. Tryon St., Ste. 3000, Charlotte, NC 28202

Brief Description For The Index:

Harding Site

**NORTH CAROLINA DEED OF TRUST**

THIS DEED OF TRUST is made this 1 day of June, 2001, by and between:

GRANTOR	TRUSTEE	BENEFICIARY
<p>AMERICAN WETLANDS &amp; NATURAL RESOURCES EXCHANGE CORPORATION, a Colorado corporation</p> <p>Address: 9625 Surveyor Ct Suite 350 Manassas, VA 20110</p>	<p>FRED LAMAR ASSISTANT ATTORNEY GENERAL c/o NC DOT HIGHWAY BUILDING 1 SOUTH WILMINGTON ROAD RALEIGH, NC 27699</p> <p>Address:</p>	<p>NORTH CAROLINA DEPARTMENT OF TRANSPORTATION</p> <p>Address: Project Analysis &amp; Environmental Analysis Branch Room 462, Trans. Building P.O. Box 25201 Raleigh, NC 27611</p>

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor, Trustee and Beneficiary 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, That whereas Beneficiary has paid Grantor and Grantor is indebted to Beneficiary in the principal sum of Five Hundred Nineteen Thousand, Three Hundred and No/100 Dollars (\$519,300.00) as evidenced by a Promissory Note of even date herewith, pursuant to the Mitigation Agreement entered into between Grantor and Beneficiary on the 16 day of April, 2001 (the "Contract").

NOW, THEREFORE, as security for Grantor's indebtedness, Grantor's performance of the obligations under the Contract, and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given, granted and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs or successors, and assigns, the parcel(s) of land situated in the City of N/A, Forbush Township, Yadkin County, North Carolina (the "Premises"), and more particularly described as follows:

*See EXHIBIT A, attached hereto and incorporated herein by this reference.*

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances hereunto belonging, to said Trustee, heirs, successors, and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

If the Grantor shall pay the Note secured hereby or fulfill all of its obligations under the terms of the Contract for the Contract's duration, together with any future amendments or extensions, then this conveyance shall be null and void and may be canceled of record at the request and expense of Grantor and the Note shall be marked satisfied by Beneficiary. If, however, there shall be any material default under any of the terms, obligations or conditions of the Contract or this Deed of Trust, that is not cured within the time period provided in the Note or Contract, then it shall be lawful for and the duty of Trustee, upon request of Beneficiary, to sell the land herein conveyed at public auction for cash, after giving notice of hearing as to commencement of foreclosure proceedings and obtaining such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. Any foreclosure on the Premises will reduce Grantor's liability under the Contract, Note and this Deed of Trust by \$519,300.

The Trustee's commission upon foreclosure, or the commencement of foreclosure without completion, shall be based on Trustee's actual time and expenses incurred at reasonable and normal hourly rates without regard to any statutory presumptions. The Trustee's commission shall also be based upon attorney's fees upon foreclosure, or the commencement of foreclosure without completion, based on the attorney's actual time and expenses incurred at reasonable and normal hourly rates without regard to any statutory presumptions.

And the said Grantor does hereby covenant and agree with Trustee as follows:

RB526 P0166

1. **INSURANCE.** Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payment as long as the obligations under the Note or Contract remain unfulfilled. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at its option, may purchase such insurance. All proceeds from any insurance so maintained shall be applied to the repair or reconstruction of any improvements located upon the Property.

2. **TAXES, ASSESSMENTS, CHARGES.** Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due. If Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust.

3. **ASSIGNMENT OF RENTS AND PROFITS.** Grantor assigns to Beneficiary, in the event of default and completion of foreclosure, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary.

4. **PARTIAL RELEASE.** Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, Contract, and this Deed of Trust.

5. **WASTE.** The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. **CONDEMNATION.** In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary.

7. **WARRANTIES.** Grantor covenants with Trustee and Beneficiary that he is seized of the Premises <sup>an easement in</sup> ~~the~~ Premises ~~XXXXXXX~~, has the right to convey the same easement, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

See EXHIBIT B, attached hereto and incorporated herein by this reference.

8. **SUBSTITUTION OF TRUSTEE.** Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the Beneficiary desires to replace said Trustee, then the Beneficiary may appoint, in writing, a trustee to take the place of the Trustee, and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

9. [RESERVED]

10. [RESERVED]

11. **INDEMNITY.** If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense reasonably incurred.

12. **WAIVERS.** Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Contract, Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

13. **CIVIL ACTION.** In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee, based on said attorney's actual time incurred at reasonable and normal hourly rates without regard to any statutory presumption, shall be paid by the Beneficiary.

14. **PRIOR LIENS.** Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. [RESERVED]

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed under seal, the day and year first above written.

RR 526 P 0168

GRANTOR:

AMERICAN WETLANDS & NATURAL RESOURCES EXCHANGE CORPORATION, a Colorado corporation

By: J. Lynn Beaulieu  
Its: PRESIDENT



ACCEPTED BY:

STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: John B. Williamson, Jr. John B. Williamson, Jr. MANAGER OF RIGHT OF WAY

ATTEST:

Tammy B. Denning SECRETARY TO THE BOARD OF TRANSPORTATION AND CUSTODIAN OF THE SEAL OF THE DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM:

ROY COOPER  
Attorney General

[Signature] Assistant  
Attorney General

NORTH CAROLINA WAKE COUNTY

This the 6<sup>th</sup> day of JUNE, 2001, personally appeared before me, JOE G. CREECH, Notary Public of said County and State, TAMMY B. DENNING, who being by me duly sworn, says that s/he knows the Seal of the Department of Transportation and is acquainted with John B. Williamson, Jr., who is manager of Right-of-Way of the Division of Highways of said Department, and that s/he, the said TAMMY B. DENNING, is the Secretary to the Board of Transportation and Custodian of the Seal of the Department of Transportation, and saw said Manager of Right of Way sign the foregoing instrument, and that she, the said Secretary to the Board of Transportation and Custodian of the Seal of the Department of Transportation, affixed said seal to said instrument and signed her name in attestation of the execution thereof in the presence of said Manager of Right of Way.

WITNESS my hand and Notarial Seal, the 6<sup>th</sup> day of JUNE, 2001.

[Signature] NOTARY PUBLIC

My Commission Expires: SEPTEMBER 8, 2002



RB526 P0169

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

I, D. Barrett Burge, a Notary Public for the above State and County, hereby certify that J. Lamar Beasley personally came before me this day and acknowledged that he/~~she~~ is President of AMERICAN WETLANDS & NATURAL RESOURCES EXCHANGE CORPORATION, a Colorado corporation, and that he/~~she~~ as President, being authorized to do so, executed the foregoing on behalf of corporation.

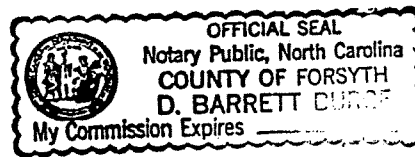
WITNESS my hand and official seal, this the 1 day of June, 2001.

My commission Expires: Dec. 28, 2002

D. Barrett Burge

[NOTARY SEAL]

Notary Public



NORTH CAROLINA, YADKIN COUNTY

The foregoing certificate of Joe D. Creech Jr.  
Barrett Burge certified to be correct.

Mary J. Madison  
Register of Deeds

By Mary J. Madison  
Deputy Ass't Register of Deeds

+ W.

## EXHIBIT A

RB526 P0170

(A-20297E; 5845 00 86 8693) BEING a perpetual right and easement for the construction, operation, monitoring, and maintenance of wetlands by the American Wetlands and Natural Resources Exchange Corporation, Grantee herein, or by its agents, successors and assigns, said wetlands easement to encumber the lands of described below:

BEING LOCATED in Forbush Township, Yadkin County, North Carolina, and being that tract of real property containing 70.745 acres, more or less, shown as "70.745 AC. ±" on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description.

TOGETHER WITH the following:

(1) a non-exclusive utility easement and a non-exclusive right of way easement of ingress, egress and regress twenty (20) feet in width to be appurtenant to and to run with that tract of real property containing 70.745 acres, more or less, shown as "70.745 AC. ±" on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description, said easement being more particularly described as follows:

(A-20296 RW over A-20184;5855 00 08 4202) Being that non-exclusive utility easement and that non-exclusive right of way easement of ingress, egress and regress over and across that way 20 feet in width shown as "Proposed 20-ft. R/W" on that plat of survey entitled "Plat of Survey for Benjamin H. Harding, Jr. Ann H. Holland" as recorded in Plat Book 8 at page 429 of the Yadkin County Registry, which plat is incorporated herein by reference.

(2) a temporary construction easement ten (10) feet in width said easement being more particularly described as follows:

(A-20296 TCE over A-20184;5855 00 08 4202) Being that temporary construction easement shown as "Proposed 10-ft. Temporary Construction Easement" on that plat of survey entitled "Plat of Survey for Benjamin H. Harding, Jr. Ann H. Holland" as recorded in Plat Book 8 at page 429 of the Yadkin County Registry, which plat is incorporated herein by reference. This temporary construction easement shall terminate upon the completion of the construction of the said roadway.



RB526 P0171

SUBJECT TO AND RESERVING HOWEVER a non-exclusive utility easement and a non-exclusive right of way easement of ingress, egress and regress to be appurtenant to and to run with that tract described in that deed from the United States of America to B. H. Harding and wife Blanche B. Harding recorded in Book 79, at Page 182 Yadkin County Registry, to which reference is made for a more complete description (save and except that tract described in deed recorded in Book 497, Page 206 Yadkin County Registry to which reference is made for a more complete description) and to be appurtenant to and to run with that tract described in that deed from the United States of America to William R. Harding and wife Marian N. Harding recorded in Book 79, at Page 212 Yadkin County Registry, to which reference is made for a more complete description (save and except those tracts described in deeds recorded in Book 78, Page 322 and Book 270, Page 654 Yadkin County Registry to which reference is made for a more complete description) over and across that way 20 feet in width, described as follows:

(A-20297 RW over; 5845 00 86 8693)

Being that non-exclusive utility easement and that non-exclusive right of way easement of ingress, egress and regress over and across that way 20 feet in width shown as "Proposed 20-ft. R/W Easement" over and within that 70.745 acre tract, more or less, on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description,

**COPY**

**PROMISSORY NOTE**

\$519,300

Yadkin County, N.C.  
June 1, 2001

FOR VALUE RECEIVED the undersigned maker ("Maker") of this Promissory Note ("Note"), jointly and severally, promises pay to the North Carolina Department of Transportation ("NCDOT") or order, the principal sum of Five Hundred Nineteen Thousand and Three Hundred and No/ 100 DOLLARS (\$519,300). This Note is made pursuant to a certain contract with NCDOT dated the 16 day of April 2001 to provide wetland mitigation credits to NCDOT (the "Mitigation Contract"). Accordingly, the principal shall be due and payable on demand within 30 days of written notice to Maker, except as follows:

If American Wetlands & Natural Resources Exchange Corporation (Maker) shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Mitigation Contract (including any modification thereof) then the demand shall be void; otherwise to have full force and effect.

In the event a default in the Maker's performance under the Mitigation Contract or default under the terms of any instrument securing this Note, and such default is not cured according to the terms of the Mitigation Contract, the holder may without further notice, declare the principal sum at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time.

This Note is secured by Deed of Trust dated June 1, 2001 recorded on June 1, 2001 in the Yadkin County Register of Deeds and executed by American Wetlands & Natural Resources Exchange Corporation, with respect to the following property:

See attached Exhibit A.

This shall be non-recourse as to the Maker. At the option of the Maker, the sole remedy of the holder for any breaches of the obligations evidenced by this Note may be against the property alone as is described in the Deed of Trust and not against any other asset(s) of the Maker. The failure of holder to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

The Note shall be governed and construed in accordance with the laws of the State of North Carolina.

IN TESTIMONY WHEREOF, each corporate maker has caused this instrument to be executed in its corporate name by its \_\_\_\_\_ President, all by order of its Board of Directors first duly given, the day and year first above written.

AMERICAN WETLANDS & NATURAL  
RESOURCE EXCHANGE CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_

*J. James Bealy*  
PRESIDENT

**SECTION 307 FORM OF PERFORMANCE BOND**

Date of Contract: March 29, 2001

Date of Execution: March 29, 2001

Name of Principal: American Wetlands & Natural Resource Exchange Corp.  
(Contractor)

Name of Surety: Hartford Fire Insurance

Name of Contracting Body: North Carolina Dept. of Transportation

Amount of Bond: \$278,800

Project: Harding Site preparation and planting

(Site Preparation and Site Planting costs only, per Section 4B)

**KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.**

**THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:**

**NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements for the Site Preparation and Site Planting costs of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications the Site Preparation and Site Planting costs of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.**

1

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in 2 counterparts.

Witness: Sue Allison

American Wetlands & Natural Resource Exchange  
Contractor: (Trade or Corporate Corp.  
Name)

PARTNERSHIP  
(Proprietorship or Partnership)

By: J. Lamar Beasley  
J. Lamar Beasley

Attest: (Corporation)

Title: President  
(Owner, Partner, or Corp.  
Pres. or Vice Pres. only)

By: Troy Metterson

Title: Corp. Secretary  
(Corp. Sec. or Asst. Sec.  
only)

(Corporate Seal)

Hartford Fire Insurance  
(Surety Company)

Witness:

Douglas A. Crow Jr.

By: Frank C. Roddey, Jr.  
Title: Frank C. Roddey, Jr.  
(Attorney in Fact)

Countersigned:

John Anderson  
John Anderson

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Thomas Rutherford, Inc.  
6230 Fairview Road, Ste. 300

Charlotte, NC 28213

Name and Address-Surety Agency

Hartford Fire Insurance  
8711 University E. Dr.

Charlotte, NC 28213

Surety Company Name and N.C.  
Regional or Branch Office Address

Hartford, Connecticut

**POWER OF ATTORNEY**

Know all men by these Presents, That HARTFORD FIRE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, does hereby make, constitute and appoint

*Thomas D. Rutherford, Jr., George B. Wilson, III  
Frank C. Roddey, Jr., Patricia L. Lewis  
of  
Alexandra, Virginia*

its true and lawful Attorney(s)-in-Fact, with full power and authority to each of said Attorney(s)-in-Fact, in their separate capacity if more than one is named above, to sign, execute and acknowledge any and all bonds and undertakings and other writings obligatory in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states and municipalities, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed, and to bind HARTFORD FIRE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of HARTFORD FIRE INSURANCE COMPANY and sealed and attested by one other of such Officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, ("the Company") as amended by the Board of Directors at a meeting duly called and held on May 13, 1999, as follows:

**ARTICLE IV**

**SECTION 8.** The President or any Vice-President or Assistant Vice President acting with any Secretary or Assistant Secretary, shall have power and authority to appoint, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more resident Vice President, resident Assistant Secretaries and Attorneys-in-Fact and at any time to remove any such resident Vice-President, Resident Assistant Secretary, or Attorney-in-Fact, and revoke the power and authority given to him.

**SECTION 11.** Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company thereto any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested by one other of such Officers.

Resolved, that the signatures of such Officers and the seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

In Witness Whereof, HARTFORD FIRE INSURANCE COMPANY has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 14th day of May, 1999.

Attest:

HARTFORD FIRE INSURANCE COMPANY

*Paul A. Bergenholtz*



*R. Post*

Paul A. Bergenholtz, Assistant Secretary

Robert L. Post, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.

On this 14th day of May, A.D. 1999, before me personally came Robert L. Post, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice-President of HARTFORD FIRE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.



*Jean H. Wozniak*

Jean H. Wozniak  
Notary Public  
My Commission Expires June 30, 2004

I, the undersigned, Assistant Vice President of HARTFORD FIRE INSURANCE COMPANY, a Connecticut Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore, that Article Article IV, Sections 8 and 11 of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Hartford. Dated the 29th day of March 2001.



*J. Dennis Lane*

J. Dennis Lane, Assistant Vice President

**SECTION 308 FORM OF PAYMENT BOND**

Date of Contract: March 29, 2001

Date of Execution: March 29, 2001

Name of Principal: Americian Wetlands & Natural Resource Exchange Corp.  
(Contractor)

Name of Surety: Hartford Fire Insurnace

Name of Contracting Body: North Carolina Dept of Transportation

Amount of Bond: \$278,800

Project: Harding Site prepartion and planting

(Site Preparation and Site Planting costs only, per Section 4B)

**KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.**

**THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:**

**NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the Site Preparation and Site Planting costs work provided for in said contract, and any and all duly authorized modifications of the Site Preparation and Site Planting costs of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.**

**IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.**

Executed in 2 counterparts.

Witness: Sue Allixon American Wetlands & Natural Resource Exchange  
Contractor: (Trade or Corporate Name) Corp.

PARTNERSHIP  
(Proprietorship or Partnership)

By: J. Lamar Beasley  
J. Lamar Beasley

Attest: (Corporation) Title: President  
(Owner, Partner, or Corp. Pres. Or Vice Pres. Only)

Pres. or Vice Pres. only)

By: Tony Matteson

Title: Corporate Secretary  
(Corp. Sec. or Asst.  
Sec. only)

(Corporate Seal)

Hartford Fire Insurance  
(Surety Company)

By: Frank C. Roddey, Jr.

Title: Frank C. Roddey, Jr.  
(Attorney in Fact)

Witness:

Douglas A. Croive, Jr.

Countersigned:

John Anderson

(Surety Corporate Seal)

John Anderson  
(N.C. Licensed Resident Agent)

Thomas Rutherford, Inc.

6230 Fairview Road, Suite 300

Charlotte, NC 28210

Name and Address-Surety Agency

Hartford Fidelity and Bonding  
8711 University E. Dr.

Charlotte, NC 28213

Surety Company Name and N.C.  
Regional or Branch Office Address



Hartford, Connecticut

**POWER OF ATTORNEY**

Know all men by these Presents, That HARTFORD FIRE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, does hereby make, constitute and appoint

*Thomas D. Rutherford, Jr., George B. Wilson, III  
Frank C. Roddey, Jr., Patricia L. Lewis  
of  
Alexandra, Virginia*

its true and lawful Attorney(s)-in-Fact, with full power and authority to each of said Attorney(s)-in-Fact, in their separate capacity if more than one is named above, to sign, execute and acknowledge any and all bonds and undertakings and other writings obligatory in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states and municipalities, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed, and to bind HARTFORD FIRE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of HARTFORD FIRE INSURANCE COMPANY and sealed and attested by one other of such Officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, ("the Company") as amended by the Board of Directors at a meeting duly called and held on May 13, 1999, as follows:

**ARTICLE IV**

**SECTION 8.** The President or any Vice-President or Assistant Vice President acting with any Secretary or Assistant Secretary, shall have power and authority to appoint, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more resident Vice President, resident Assistant Secretaries and Attorneys-in-Fact and at any time to remove any such resident Vice-President, Resident Assistant Secretary, or Attorney-in-Fact, and revoke the power and authority given to him.

**SECTION 11.** Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company thereto any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested by one other of such Officers.

Resolved, that the signatures of such Officers and the seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

In Witness Whereof, HARTFORD FIRE INSURANCE COMPANY has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 14th day of May, 1999.

Attest:

HARTFORD FIRE INSURANCE COMPANY

*Paul A. Bergenholtz*



*R. Post*

Paul A. Bergenholtz, Assistant Secretary

Robert L. Post, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.

On this 14th day of May, A.D. 1999, before me personally came Robert L. Post, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice-President of HARTFORD FIRE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.



*Jean H. Wozniak*

Jean H. Wozniak  
Notary Public  
My Commission Expires June 30, 2004

I, the undersigned, Assistant Vice President of HARTFORD FIRE INSURANCE COMPANY, a Connecticut Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore, that Article Article IV, Sections 8 and 11 of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Hartford. Dated the 29th day of March 2001.



*J. Dennis Lane*

J. Dennis Lane, Assistant Vice President

**SECTION 307 FORM OF PERFORMANCE BOND**

Date of Contract: March 15, 2002

Date of Execution: March 15, 2002

Name of Principal: American Wetlands & Natural Resources Exchange Corporation  
(Contractor)

Name of Surety: Hartford Fire Insurance Company

Name of Contracting Body: North Carolina Department of Transportation

Amount of Bond: One Million One Hundred and forty-four thousand dollars (\$1,144,000)

Project: Supplement #1 of the Harding Site

**KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents.**

**THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:**

**NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.**

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument their several seals on the date indicated above, the name and corporate seal of each corporation being hereto affixed and these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

Executed in 2 counterpart

Witness: [Signature] American Wetlands & Natural Resources Exchange Corporation  
Contractor: (Trade or Corporation Name)

PARTNERSHIP  
(Proprietorship or Partnership)

By: [Signature]

Attest: (Corporation)

Title: PRESIDENT - PARTNER  
(Owner, Partner, or President or Vice President only)

By: [Signature]

Title: CORP. SECRETARY  
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

Hartford Fire Insurance Company  
(Surety Company)

Witness: [Signature]

By: [Signature]

Title: Frank C. Roddey, Jr.  
(Attorney in Fact)

Countersigned:

[Signature]  
Ray Garruto

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)  
Thomas Rutherford, Inc.  
6230 Fairview Road, Suite 300  
Charlotte, NC 28213

Name and Address-Surety Agency

Hartford Fire Insurance Company  
8711 University East Dr.

Charlotte, NC 28213

Surety Company Name and N.C. Regional or Branch Office Address

# HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut

## POWER OF ATTORNEY

Know all men by these Presents, That HARTFORD FIRE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, does hereby make, constitute and appoint

*Thomas D. Rutherford, Jr., George B. Wilson, III  
Frank C. Roddey, Jr., Patricia L. Lewis  
of  
Alexandra, Virginia*

its true and lawful Attorney(s)-in-Fact, with full power and authority to each of said Attorney(s)-in-Fact, in their separate capacity if more than one is named above, to sign, execute and acknowledge any and all bonds and undertakings and other writings obligatory in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states and municipalities, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed, and to bind HARTFORD FIRE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of HARTFORD FIRE INSURANCE COMPANY and sealed and attested by one other of such Officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, ("the Company") as amended by the Board of Directors at a meeting duly called and held on May 13, 1999, as follows:

### ARTICLE IV

SECTION 8. The President or any Vice-President or Assistant Vice President acting with any Secretary or Assistant Secretary, shall have power and authority to appoint, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more resident Vice President, resident Assistant Secretaries and Attorneys-in-Fact and at any time to remove any such resident Vice-President, Resident Assistant Secretary, or Attorney-in-Fact, and revoke the power and authority given to him.

SECTION 11. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company thereto any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested by one other of such Officers.

Resolved, that the signatures of such Officers and the seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power, so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

In Witness Whereof, HARTFORD FIRE INSURANCE COMPANY has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 14th day of May, 1999

Attest:

HARTFORD FIRE INSURANCE COMPANY

*Paul A. Bergenholz*



*Robert L. Post*

Paul A. Bergenholz, Assistant Secretary

Robert L. Post, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.

On this 14th day of May, A.D. 1999, before me personally came Robert L. Post, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice-President of HARTFORD FIRE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.



*Jean H. Wozniak*

Jean H. Wozniak  
Notary Public  
My Commission Expires June 30, 2004

CERTIFICATE

I, the undersigned, Assistant Vice President of HARTFORD FIRE INSURANCE COMPANY, a Connecticut Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore, that Article Article IV, Sections 8 and 11 of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Hartford. Dated the 15th day of May 2002.



*J. Dennis Lane*

J. Dennis Lane, Assistant Vice President

**SECTION 308 FORM OF PAYMENT BOND**

Date of Contract: March 15, 2002

Date of Execution: March 15, 2002

Name of Principal: American Wetlands & Natural Resource Exchange Corporation  
(Contractor)

Name of Surety: Hartford Fire Insurance Company

Name of Contracting Body: North Carolina Department of Transportation

Amount of Bond: Three Hundred and Ninety-thousand dollars (\$390,000.00)

Project: Supplement #1 of the Harding Site construction

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above name are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modification to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to the authority of its governing body.

Executed in \_\_\_\_\_ 2 \_\_\_\_\_ counterparts.

Witness: [Signature] American Wetlands & Natural Resource Exchange Corporation  
Contractor: (Trade or Corporate Name)

PARTNERSHIP  
(Proprietorship or Partnership)

Attest: (Corporation)

By: [Signature]  
Title: PRESIDENT - PARTNER  
(Owner, Partner, or Corp.)

Pres. or Vice Pres. only

By: Tony Mattson

Title: CORP. SECRETARY  
(Corp. Sec. or Asst.  
Sec. only)

(Corporate Seal)

Hartford Fire Insurance Company  
(Surety Company)

Witness:  
[Signature]

By: [Signature]  
Title: Frank C. Roddey, Jr.  
(Attorney in Fact)

Countersigned:  
[Signature]

(Surety Corporate Seal)

Ray Garruto  
(N.C. Licensed Resident Agent)

Thomas Rutherford, Inc.

6230 Fairview Road, Suite 300

Charlotte, NC 28213

**Name and Address-Surety Agency**  
Hartford Fire Insurance Company  
8711 University East Dr.

Charlotte, NC 28213

**Surety Company Name and N.C.  
Regional or Branch Office Address**



# HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut

## POWER OF ATTORNEY

Know all men by these Presents, That HARTFORD FIRE INSURANCE COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, does hereby make, constitute and appoint

*Thomas D. Rutherford, Jr., George B. Wilson, III  
Frank C. Roddey, Jr., Patricia L. Lewis  
of  
Alexandra, Virginia*

its true and lawful Attorney(s)-in-Fact, with full power and authority to each of said Attorney(s)-in-Fact, in their separate capacity if more than one is named above, to sign, execute and acknowledge any and all bonds and undertakings and other writings obligatory in the nature thereof on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states and municipalities, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed, and to bind HARTFORD FIRE INSURANCE COMPANY thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of HARTFORD FIRE INSURANCE COMPANY and sealed and attested by one other of such Officers, and hereby ratifies and confirms all that its said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by authority of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, ("the Company") as amended by the Board of Directors at a meeting duly called and held on May 13, 1999, as follows:

### ARTICLE IV

SECTION 8. The President or any Vice-President or Assistant Vice President acting with any Secretary or Assistant Secretary, shall have power and authority to appoint, for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more resident Vice President, resident Assistant Secretaries and Attorneys-in-Fact and at any time to remove any such resident Vice-President, Resident Assistant Secretary, or Attorney-in-Fact, and revoke the power and authority given to him.

SECTION 11. Attorneys-in-Fact shall have power and authority, subject to the terms and limitations of the power of attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company thereto any and all bonds and undertakings, and other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by an Executive Officer and sealed and attested by one other of such Officers.

Resolved, that the signatures of such Officers and the seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power, so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

In Witness Whereof, HARTFORD FIRE INSURANCE COMPANY has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this 14th day of May, 1999

Attest:

HARTFORD FIRE INSURANCE COMPANY

*Paul A. Bergenholtz*



*R. Post*

Paul A. Bergenholtz, Assistant Secretary

Robert L. Post, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.

On this 14th day of May, A.D. 1999, before me personally came Robert L. Post, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice-President of HARTFORD FIRE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } SS.



*Jean H. Wozniak*

Jean H. Wozniak  
Notary Public  
My Commission Expires June 30, 2004

CERTIFICATE

I, the undersigned, Assistant Vice President of HARTFORD FIRE INSURANCE COMPANY, a Connecticut Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore, that Article Article IV, Sections 8 and 11 of the By-Laws of HARTFORD FIRE INSURANCE COMPANY, set forth in the Power of Attorney, are now in force.

Signed and sealed at the City of Hartford. Dated the 15<sup>th</sup> day of March 2002.



*J. Dennis Lane*

J. Dennis Lane, Assistant Vice President

*Deep Creek Wetlands Mitigation Bank*

*Appendix G: Forms of Preservation Mechanism*

See following Perpetual Easement, Piedmont Land Conservancy acceptance letter, and Draft Perpetual Conservation Easement.

**EASEMENT AGREEMENT (“AGREEMENT”)  
BETWEEN  
BENJAMIN H. HARDING, JR. AND WIFE BEIRNE M. HARDING  
AND ANN H. HOLLAND AND HUSBAND DENNIS HOLLAND  
AND  
AMERICAN WETLANDS AND NATURAL RESOURCES EXCHANGE  
CORPORATION  
FOR  
CREATION, OPERATION, MONITORING AND MAINTENANCE OF  
WETLANDS HABITAT**

This Agreement is made the 1st day of June 2001, by and between Benjamin H. Harding, Jr. and wife, Beirne M. Harding and Ann H. Holland and husband, Dennis Holland (“Grantors”), and American Wetlands and Natural Resources Exchange Corporation, a Colorado corporation (“American Wetlands”).

WHEREAS, American Wetlands wishes to construct, operate, monitor and maintain in accordance with plans to be developed and approved by the U.S. Army Corps of Engineers (“the Corps”) 70.745 acres of wetlands habitat on Grantors’ real property located in Forbush Township, Yadkin County, North Carolina (the “Wetlands Project”).

WHEREAS, American Wetlands wishes to operate the Wetlands Project as a “wetlands bank”, or similar entity in order to create and sell credits to persons who must satisfy requirements of Section 404 permits issued by the Corps to mitigate impacts resulting from construction and similar activities that disturb jurisdictional wetlands in the vicinity of the Wetlands Project, and

WHEREAS, Grantors are prepared to grant to American Wetlands, on terms and conditions set forth herein, a perpetual easement in the said property where no such easements currently exist, and to ensure that any existing easements are not in conflict and would permit American Wetlands to have non-exclusive access to and from, construct, operate monitor and maintain the Wetlands Project, in total in accordance with the Corps-approved design plan.

NOW, THEREFORE, it is agreed as follows:

1. For the consideration described in the Option Agreement, dated February 7, 2000, between the parties and other good and valuable consideration, Grantors, for themselves, and their heirs, successors, and assigns, hereby grant and convey to American Wetlands a perpetual non-exclusive easement on and across those portions of Grantors’ property described on Exhibit “A” attached hereto and incorporated herein by reference and consisting of 70.745 acres (“the Wetlands Easement Acreage”); to have non-exclusive access over that easement

described in paragraph 6 herein, to and from, and to construct, operate, monitor, and maintain wetlands habitat and the "Wetlands Project".

2. Grantors expressly warrant and represent that they are the exclusive fee simple owners of the Wetlands Easement Acreage, and that the Wetlands Easement Acreage is free from any and all encumbrances, claims, demands, mortgages, liens, and liabilities, excepting those of record as of the date of execution of this Agreement. Grantors further warrant and represent that they will assign any riparian water rights they might hold, and will not take any action to divert or to put to other uses water necessary for the non-exclusive access to and from, or the construction, operation, monitoring, and maintenance of the Wetlands Project.

3. American Wetlands shall be entitled to improve, excavate, fill, ditch, tunnel, plant, revegetate, or otherwise alter the Wetlands Easement Acreage, as may be necessary, for the creation, operation, and maintenance of the Wetlands Project thereon, as long as the same is done in accordance with the Corps-approved design plan and in compliance with all applicable statutes, ordinances, case law, and regulations. Grantors will permit American Wetlands to construct over that easement described in Paragraph 6 herein non-exclusive access to or upon to Wetlands Easement Acreage as may be necessary to create the Wetlands Project, and from time to time as may be necessary to operate, monitor, and maintain the Wetlands Project. The cost of the construction of this access shall be the sole responsibility of American Wetlands. This access shall allow American Wetlands permanent non-exclusive access for ingress, egress and regress from Dinkins Bottom Road to the Wetlands Easement Acreage over that easement described in Paragraph 6 herein.

4. American Wetlands and its contractors and subcontractors shall conduct all of their activities in connection with construction of the Wetlands Project so as to minimize to the extent practicable, disturbance to Grantors' property and ecosystem thereon. Notwithstanding anything to the contrary herein, American Wetlands shall not construct any buildings, structures or roads on the Wetlands Easement Acreage or elsewhere on Grantors' property, except the three (3) monitoring sites, without the prior written consent of Grantors. The location of all buildings, structures or roads shall be agreed upon between the parties and shall be specified by the parties in writing. American Wetlands shall ensure that all of Grantors' property not utilized for the Wetlands Project, including without limitation, all approaches to the Wetlands Easement Acreage, are restored, or otherwise left in a manner satisfactory to Grantors, following construction of the Wetlands Project.

5. American Wetlands shall have no right to and shall not use any portion of the Wetlands Easement Acreage for any purpose other than creation, operation, monitoring, and maintenance of wetlands habitat thereon.

6. Grantors shall provide non-exclusive access for American Wetlands and its contractors and subcontractors to or across Grantors' property as may be necessary for construction, operation, monitoring and maintenance of the Wetlands Project. The location and condition of this access shall be as is described in the Right-of-Way Easement Agreement as is set forth in Record Book 521, Page 441, Yadkin County Registry and Grantors convey to

Grantee, its successors and assigns, the non-exclusive utility easement and the non-exclusive right-of-way easement of ingress, egress and regress (including the 10 foot temporary construction easement) described in Record Book 521, Page 441. Access and monitoring shall include the installation, operation, and maintenance of up to three (3) water monitoring sites each of approximately three feet by three feet in size (3' x 3') in the adjacent hardwood bottom, and access by foot to take necessary occasional measurements. The precise location of the monitoring sites will be agreed upon between the parties.

7. American Wetlands agrees to construct a farm road across the Wetlands Acreage to replace the existing farm road across the Wetland Acreage. The farm road to be constructed by American Wetlands shall:

- a. run over and across that way 20 feet in width shown as "Proposed 20-ft. R/W Easement" over and within that 70.745 acre tract, more or less, on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description;
- b. be constructed to the same standards and width as the existing farm road;
- c. provide either culverts or bridges, at the option of American Wetlands, to cross any ditches or streams over which the road runs.

American Wetlands shall complete the construction of said road and culverts and bridges no later than the date upon which the existing farm road across the Wetlands Acreage becomes unuseable as the result of the construction of the wetlands.

Upon the completion of the construction of the farm road and bridges or culverts, American Wetlands shall have no obligation for any maintenance of either the farm road, the bridges or the culverts.

8. Grantors shall reasonably cooperate with American Wetlands and its contractors and subcontractors in the construction, operation, monitoring, and maintenance of the Wetlands Project. Grantors reserve the right to enter upon and use the Wetlands Easement Acreage, insofar as not inconsistent with American Wetlands' use thereof for the Wetlands Project, and consistent with the Corps-approved activities on such Wetland Projects.

9. American Wetlands shall require each of its contractors and subcontractors to indemnify and hold harmless Grantors, and any and all persons or other entities related to or affiliated in any way with Grantors, from and against any and all claims, demands, losses, expenses, and liabilities whatsoever, arising in whole or in part from the presence or actions of said contractor or subcontractor on Grantors' property; provided, however that American Wetlands shall have no obligation to indemnify Grantors or any other person with respect to

any claim, demand, loss, expense, or liability resulting in whole or in part from reckless or intentionally wrongful acts or omissions by Grantors or anyone acting on Grantors' behalf.

10. American Wetlands shall carry and retain in force, liability insurance in the amount of not less than \$1.0 million, covering claims, demands, or liabilities asserted in any way with Grantors, resulting from or related to construction, operation, monitoring, or maintenance of the Wetlands Project. American Wetlands shall maintain all workman's compensation insurance as required by law, and shall cause its contractors and subcontractors to do the same.

11. American Wetlands may assign all or any part of its rights or obligations under this Agreement.

**GRANTEES  
AMERICAN WETLANDS AND NATURAL  
RESOURCES EXCHANGE CORPORATION**

BY: *J. Amy Beasley*  
Title *PRESIDENT*

**GRANTORS**

*Benjamin H. Harding, Jr.* (SEAL)  
Benjamin H. Harding, Jr.

*Beirne M. Harding* (SEAL)  
Beirne M. Harding

*Ann H. Holland* (SEAL)  
Ann H. Holland

*Dennis Holland* (SEAL)  
Dennis Holland

STATE OF NORTH CAROLINA  
COUNTY OF YADKIN

On this 1<sup>st</sup> day of June, 2001, personally appeared before me, the undersigned officer, a Notary Public in and for said County and State, **J. LAMAR BEASLEY**, who acknowledged himself/~~herself~~ to be the President of American Wetlands & Natural Resources Exchange Corporation, a Colorado corporation, and that he/~~she~~ as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as President thereof.

In Witness Whereof, I hereunto set my hand and official seal.

Geraldine H. Brandon  
Notary Public

My Commission Expires: 4-13-03







**EXHIBIT "A"**  
**TO**

**EASEMENT AGREEMENT BETWEEN BENJAMIN H. HARDING, JR. AND WIFE BEIRNE M. HARDING AND ANN H. HOLLAND AND HUSBAND DENNIS HOLLAND AND AMERICAN WETLANDS AND NATURAL RESOURCES EXCHANGE CORPORATION FOR CREATION, OPERATION, MONITORING AND MAINTENANCE OF WETLANDS HABITAT**

(A-20297E; 5845 00 86 8693) BEING a perpetual right and easement for the construction, operation, monitoring, and maintenance of wetlands by the American Wetlands and Natural Resources Exchange Corporation, Grantee herein, or by its agents, successors and assigns, said wetlands easement to encumber the lands of described below:

BEING LOCATED in Forbush Township, Yadkin County, North Carolina, and being that tract of real property containing 70.745 acres, more or less, shown as "70.745 AC.  $\pm$ " on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description.

TOGETHER WITH the following:

(1) a non-exclusive utility easement and a non-exclusive right of way easement of ingress, egress and regress twenty (20) feet in width to be appurtenant to and to run with that tract of real property containing 70.745 acres, more or less, shown as "70.745 AC.  $\pm$ " on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description, said easement being more particularly described as follows:

(A-20296 RW over A-20184;5855 00 08 4202) Being that non-exclusive utility easement and that non-exclusive right of way easement of ingress, egress and regress over and across that way 20 feet in width shown as "Proposed 20-ft. R/W" on that plat of survey entitled "Plat of Survey for Benjamin H. Harding, Jr. Ann H. Holland" as recorded in Plat Book 8 at page 429 of the Yadkin County Registry, which plat is incorporated herein by reference.

(2) a temporary construction easement ten (10) feet in width said easement being more particularly described as follows:

(A-20296 TCE over A-20184;5855 00 08 4202) Being that temporary construction easement shown as "Proposed 10-ft. Temporary Construction Easement" on that plat of survey entitled "Plat of Survey for Benjamin H. Harding, Jr. Ann H. Holland" as recorded in Plat Book 8 at page 429 of the Yadkin County Registry, which plat is incorporated herein by reference. This temporary construction easement shall terminate upon the completion of the construction of a wetlands habitat on 70.745 acres of Grantors' real property described above (the "Wetlands Project") or two (2) years from the date of this Agreement, whichever shall first occur.

**SUBJECT TO AND RESERVING HOWEVER** a non-exclusive utility easement and a non-exclusive right of way easement of ingress, egress and regress to be appurtenant to and to run with that tract described in that deed from the United States of America to B. H. Harding and wife Blanche B. Harding recorded in Book 79, at Page 182 Yadkin County Registry, to which reference is made for a more complete description (save and except that tract described in deed recorded in Book 497, Page 206 Yadkin County Registry to which reference is made for a more complete description) and to be appurtenant to and to run with that tract described in that deed from the United States of America to William R. Harding and wife Marian N. Harding recorded in Book 79, at Page 212 Yadkin County Registry, to which reference is made for a more complete description (save and except those tracts described in deeds recorded in Book 78, Page 322 and Book 270, Page 654 Yadkin County Registry to which reference is made for a more complete description) over and across that way 20 feet in width, described as follows:

(A-20297 RW over; 5845 00 86 8693)

Being that non-exclusive utility easement and that non-exclusive right of way easement of ingress, egress and regress over and across that way 20 feet in width shown as "Proposed 20-ft. R/W Easement" over and within that 70.745 acre tract, more or less, on that plat of survey entitled "Plat of Survey for Proposed Conservation Easement for Benjamin H. Harding, Jr. and Ann H. Holland recorded in Plat Book 8, Page 448 Yadkin County Registry, to which reference is made for a more complete description,



Lamar Beasley  
American Wetlands  
9625 Surveyor Court, Suite 330  
Manassas, VA 20110

March 15, 2002

Dear Lamar:

I am pleased to report to you, that at the March 12, 2002 Board of Directors meeting of the Piedmont Land Conservancy (PLC), the following actions were taken regarding the two proposed projects submitted by American Wetlands for consideration: (1) The Board approved accepting an easement on the 100-acre Ring Tract located along the Fisher River in Surry County with the understanding that it is the intent of American Wetlands to donate this parcel in fee-simple to the Conservancy at the end of the designated monitoring period, when the mitigation project has been deemed a success by the Army Corps of Engineers; and (2) the Board of Directors approved accepting an easement on the 70.745-acre Harding Tract located along Deep Creek, a tributary of the Yadkin River, in Yadkin County. The approval of these two projects was contingent upon the following conditions:

- 1) American Wetlands would provide a list of references to the Piedmont Land Conservancy which cite previous projects completed by the organization and our check of these references is satisfactory;
- 2) American Wetlands will agree in writing to donate the Ring Tract to PLC and make a [REDACTED] contribution to the Stewardship Endowment Fund to provide support for the long-term monitoring and management responsibilities the Conservancy incurs by accepting these two projects; and
- 3) American Wetlands will cover any remaining transactional costs associated with project.

We are excited to have this opportunity to work with American Wetlands on these projects. Please call us at your convenience to discuss any questions that you may have regarding the above contingencies and the next steps in the process.

Sincerely,

A handwritten signature in cursive script that reads "Palmer S. McIntyre".

Palmer Smith McIntyre  
Executive Director

**PERMANENT CONSERVATION EASEMENT  
(Deep Creek – Yadkin County)**

THIS CONSERVATION EASEMENT (“Conservation Easement”) made this \_\_\_ day of \_\_\_\_\_, 200\_ by and between **AMERICAN WETLANDS & NATURAL RESOURCE EXCHANGE CORPORATION**, (“**Grantor**”) and the **PIEDMONT LAND CONSERVANCY** (“**Grantee**”).

The designation Grantor and Grantee as used herein shall include said parties, their successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

**RECITALS**

WHEREAS, Grantor owns a permanent easement upon the real property situated, lying and being in Yadkin County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein (“**Property**”);

WHEREAS, Grantee is a nonprofit corporation or trust whose purpose is the conservation of property, and is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35;

WHEREAS, Grantor and Grantee recognize the conservation, scenic, natural, or aesthetic value of the Property, which includes the following natural communities: Palustrine Forested Wetlands consisting of a bottomland hardwood forest, associated buffers and uplands through succession from an agriculture community (former agriculture fields) to a Mesic Mixed Hardwood Forest. The purpose of this Conservation Easement is to (i) maintain wetland and/or riparian resources and other natural values of the Property after the creation and restoration of the wetlands by Grantor, and (ii) prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition after Grantor has created and restored the wetland and/or riparian resources of the Property.

WHEREAS, the preservation of the Property is required by the Mitigation Banking Instrument for the Deep Creek Wetlands Mitigation Bank. The Mitigation Bank is intended to be used to compensate for unavoidable stream and/or wetland impacts authorized by permits issued by the Department of the Army and 401 Water Quality Certifications issued by the North Carolina Division of Water Quality. Grantor and Grantee agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Wilmington District (collectively, the “**Third-party**”, to include any successor agencies), and that these rights are in addition to, and do not limit, the rights of the parties to the Mitigation Banking Instrument.

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Grantor hereby unconditionally and irrevocably 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 the Property described on Exhibit A, together with the right to preserve and protect the conservation values thereof, as follows:

**ARTICLE I.**

## DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This Conservation Easement is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's successors and assigns, lessees, agents and licensees.

## ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purpose of this Conservation Easement is prohibited. Once Grantor has created and restored the wetland and/or riparian resources of the Property, then the Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.

B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line pier landing, dock or any other temporary or permanent structure or facility on or above the Property.

C. Industrial, Commercial and Residential Use. Industrial and/or commercial activities, including any right of passage used in conjunction with commercial or industrial activity, are prohibited on the Property. Residential use of the Property is prohibited.

D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, and horticultural use of the Property is prohibited.

E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the Property.

F. Signage. No signs shall be permitted on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property, signs giving directions or proscribing rules and regulations for the use of the Property and/or signs identifying the Grantor as owner of the Property and Grantee as the holder of Conservation Easement on the Property.

G. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property is prohibited.

H. 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,

and no change in the topography of the land in any manner on the Property, except to restore natural topography or drainage patterns.

I. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

J. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

K. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt-bikes, all-terrain vehicles, cars and trucks is prohibited.

Notwithstanding anything contained herein to the contrary, so long as Grantor is creating, restoring, maintaining or preserving wetland and/or riparian resources in a manner acceptable to the U.S. Corps of Engineers as set forth in the Mitigation Banking Instrument approved by the Third-party, the obligations set forth in this Conservation Easement shall not restrict the actions of the Grantor or its authorized representatives, successors and assigns.

### ARTICLE III. GRANTOR'S RESEVERED RIGHTS

The Grantor expressly reserves for himself, his personal representatives, heirs, successors or assigns, the right to continue the use of the Property for all purposes not inconsistent with the Mitigation Banking Instrument and this Conservation Easement, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress, the right to hunt, fish, and hike on the Property, the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement.

### ARTICLE IV. GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors and assigns, and the Third-party, shall have the right to enter the Property at all reasonable times for the purpose of inspecting said Property to determine if the Grantor, or his personal representatives, heirs, successors, or assigns, is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee shall also have the right to enter and go upon the Property for purposes of making scientific or educational observations and studies, and taking samples. The easement rights granted herein do not include public access rights.

Notwithstanding the foregoing, the Grantee shall have no right to interfere with the Grantor's creation, restoration, maintenance or preservation of wetlands and/or riparian resources pursuant to the

Mitigation Banking Instrument.

ARTICLE V.  
ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Conservation Easement by the Grantor, its agents, successors, or assigns, which comes to the attention of the Grantee, the Grantee or the Third-party may institute a suit to enjoin such violation and if necessary, to require the restoration of the Property to its prior condition at the Grantor's expense.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control or as a result of the creation, maintenance or restoration of wetlands and/or riparian resources, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Grantor's lessees or invitees; or from any prudent action taken in good faith by 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.

ARTICLE VI.  
MISCELLANEOUS

A. Title. The Grantor warrants, covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to make, declare and impose the aforesaid Conservation Easement; the Property is free and clear of any and all encumbrances, except the described easements leases, restrictions, and rights of way of record set forth in Exhibit B attached hereto, and that Grantor will warrant and defend title to the same against the claims of all persons claiming through Grantor.

B. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Property. The Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger or the fee and easement interests in the Property or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the Third-party.

C. Assignment. 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 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.



D. Entire Agreement and Severability. 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 void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

TO HAVE AND TO HOLD, the said rights and easements perpetually unto Grantee for the aforesaid purposes.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

**GRANTOR:** AMERICAN WETLANDS & NATURAL RESOURCE EXCHANGE CORPORATION

By: \_\_\_\_\_  
J. Lamar Beasley  
Its: President

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

I, \_\_\_\_\_, a Notary Public for the above State and County, hereby certify that J. Lamar Beasley personally came before me this day and acknowledged that he is President of AMERICAN WETLANDS & NATURAL RESOURCE EXCHANGE CORPORATION, a Colorado corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_

[Notary Seal]  
Notary Public

**GRANTEE:**

**PIEDMONT LAND CONSERVANCY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the above State and County, hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ of the **PIEDMONT LAND CONSERVANCY**, a \_\_\_\_\_, and that he, being authorized to do so, executed the foregoing on behalf of the \_\_\_\_\_.

**WITNESS** my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
My commission expires:

\_\_\_\_\_  
[Notary Seal]  
Notary Public

**Exhibit A**

**Legal Description**

**Exhibit B**

1. Restrictions contained in the Quitclaim Deed by the United States Department of Agriculture Farmers Home Administration recorded in Book 467, Page 1036, Surry County Registry that prevents development or activities that may damage the wetland or riparian habitat along Fisher River and Big Branch Creek.
2. All matters affecting the Property shown on the plat recorded in Plat Book 11, Page 109 of the Surry County Registry.
3. Easement to the North Carolina Department of Transportation recorded in Book 685, Page 474, Surry County Registry.
4. All matters which are reflected on the survey entitled "SURVEY FOR AMERICAN WETLANDS & NATURAL RESOURCE EXCHANGE CORPORATION" prepared by Paul Rex Walker (L. 3493) on March 22, 2001.
5. Deed of Trust to Trustee for the North Carolina Department of Transportation recorded in Book 811, Page 195, Surry County Registry.

*Deep Creek Mitigation Bank*

*Appendix H: Subordination of Deed of Trust*

STATE OF NORTH CAROLINA

**SUBORDINATION OF DEED OF TRUST**

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

**THIS SUBORDINATION OF DEED OF TRUST** (the "Subordination") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by **FRED LAMAR, Esq.** as Trustee under Deed of Trust from **AMERICAN WETLANDS & NATURAL RESOURCES EXCHANGE CORPORATION** ("Grantor") recorded June 1, 2001 in Book 526 , Page 164 , Yadkin County Registry ("NCDOT Deed of Trust").

For valuable consideration, the receipt of which is hereby acknowledged, Trustee agrees that from and after the date hereof, the NCDOT Deed of Trust shall be subordinate to the Perpetual Conservation Easement from Grantor to Piedmont Land Conservancy recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Yadkin County Registry ("Easement"), such that a foreclosure of the NCDOT Deed of Trust shall not affect the priority, operation or continued validity of the Easement.

**IN WITNESS WHEREOF**, Trustee has executed this Subordination under seal for the purposes set forth above.

**TRUSTEE:**

\_\_\_\_\_(SEAL)  
Fred Lamar

STATE OF NORTH CAROLINA

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

I, \_\_\_\_\_, a Notary Public for the County and State aforesaid, certify that Fred Lamar, Trustee personally came before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[NOTARY SEAL]