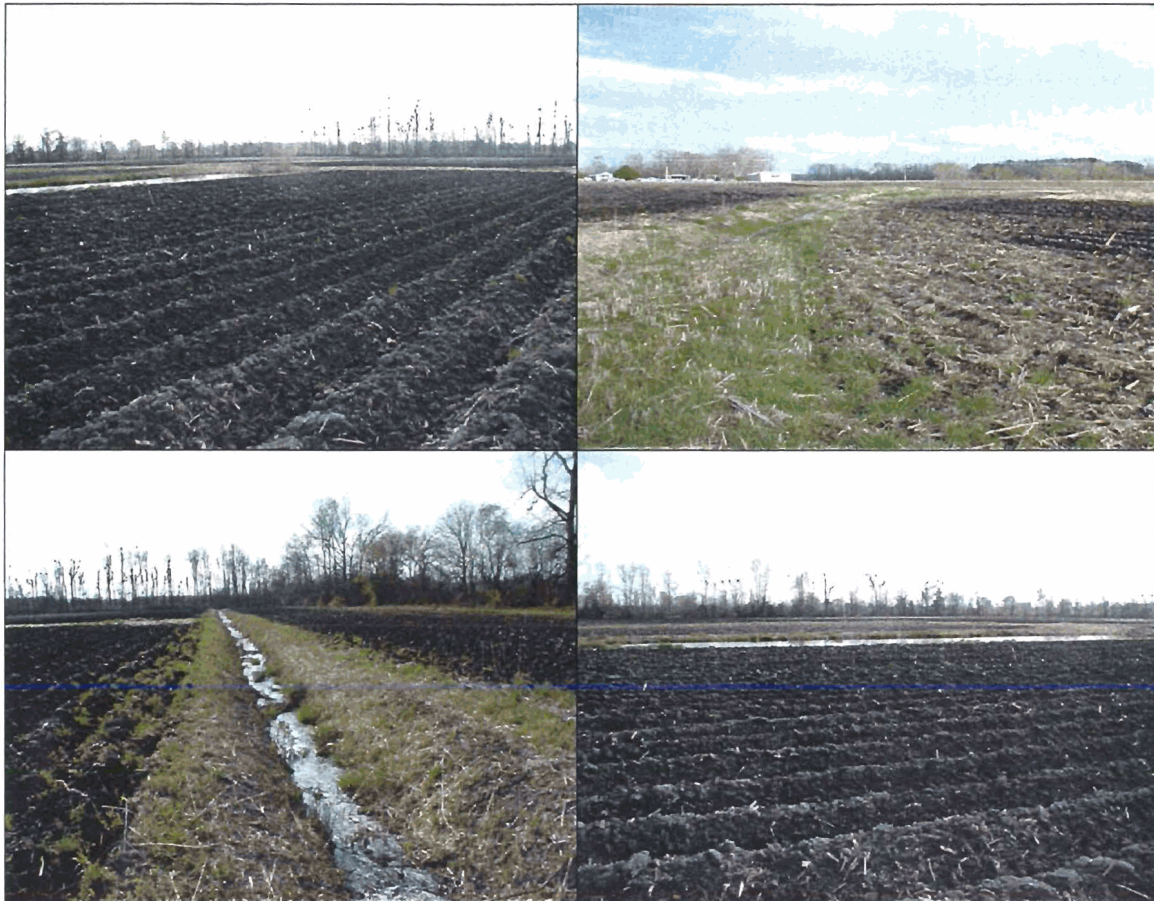


Alexander Wetland Mitigation Project

Mitigation Plan

December 2002



Submitted to:



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Executive Summary

The Alexander wetland mitigation site is located in Greene County, five miles east of the town of Snow Hill, North Carolina. Approximately 2,500 feet of ditches exist on the site and were used to promote drainage when the land was under agricultural production. The entire land parcel is approximately 28 acres in size and designated as prior converted wetlands.

Land-use for the Alexander site in the past has been row crop agriculture. Existing vegetation was inventoried on the property in April 2002. Vegetation in the field (along the ditches and ponds) consisted of elderberry (*Sambucus canadensis*), giant cane (*Arundinaria gigantea*), rush (*Juncus sp.*), goldenrod (*Solidago sp.*), jewelweed (*Impatiens capensis*), sedge (*Carex sp.*), tear-thumb (*Polygonum sagittatum*), blackberry (*Rubus spp.*), bulrush (*Scirpus spp.*), red maple saplings (*Acer rubrum*), and black cherry saplings (*Prunus serotina*). Cattail (*Typha latifolia*) was observed growing in several areas within the ditches, while black willow (*Salix nigra*) saplings were abundant around the pond closest to the road. An existing wetland system borders the site along the western edge. This area is wooded with tulip poplar (*Liriodendron tulipifera*), green ash (*Fraxinus pennsylvanica*), American elm (*Ulmus americana*), sweet bay (*Magnolia virginiana*), ironwood (*Carpinus caroliniana*), swamp chestnut oak (*Quercus michauxii*), willow oak (*Quercus phellos*), American holly (*Ilex opaca*), black cherry (*Prunus serotina*), and black willow. Considering this, the potential for restoration of a diverse native vegetation community exists at the site due to the close proximity of appropriate seed sources.

Water table monitoring data collected from May 2000 through October 2000 indicated that the site currently exhibits hydrologic conditions drier than jurisdictional wetland conditions. The ditches on the site transport surface and subsurface drainage from the project property and maintain soil conditions favorable for agricultural production. Examination of the available hydrology and soil data indicates that the site has good potential for the restoration of a productive wetland ecosystem.

The mitigation design for the Alexander property is to restore a “non-riverine wet hardwood forest”, as described by Schafale and Weakley, 1990. These systems exist as poorly drained interstream flats with fine-textured mineral soils, not associated with rivers or estuaries. Restoration will involve the filling of drainage ditches to raise the local water table and restore site hydrology. The restored wetland will tie-in with the existing wetland area along the western boundary of the site, such that a contiguous wetland system is formed. Total size of the restored wetland is approximately 18.5 acres, with approximately 2.4 acres of wetland creation proposed. The Bank Sponsor will also preserve 2.15 acres of on-site existing wetlands adjacent to the restoration area (see Figures 2.1 and 3.1). The area has been verified by survey and a plat will be recorded with the conservation easement (Appendix 7).

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1 Introduction

1.1 Project Description

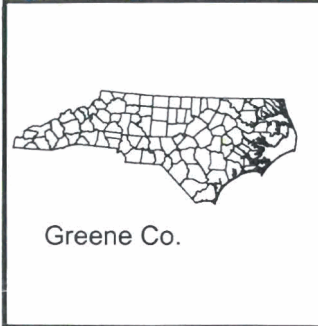
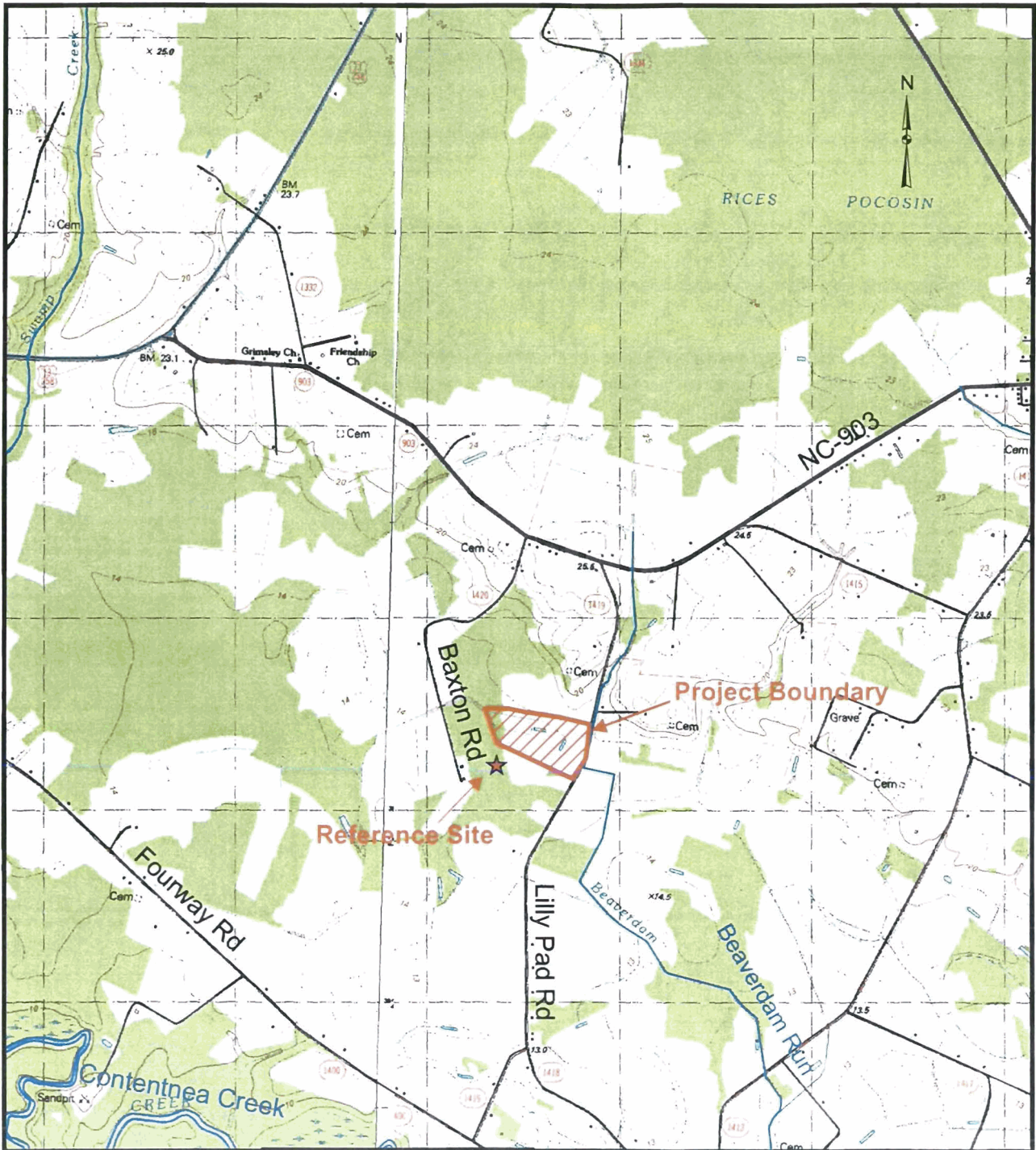
The Alexander wetland mitigation site is located in Greene County, approximately five miles east of the town of Snow Hill, North Carolina (see Figure 1.1). The site has a past history of agricultural use, consisting primarily of row crop agriculture. Approximately 2,500 feet of ditches exist on the site and were used to promote drainage when the land was under agricultural production. The ditches on the site drain to an unnamed tributary of Contentnea Creek, which forms the property boundary on the west side of the site (see Figure 2.1). The entire property is approximately 28 acres in size and designated as prior converted wetlands, with approximately 18.5 acres of drained hydric soils (see Figure 2.1 for hydric soil delineations).

Environmental Banc and Exchange, LLC (EBX) proposes to restore wetland functionality to the site for the purpose of fulfilling wetland mitigation requirements to the North Carolina Department of Transportation (NCDOT).

1.2 Study Area

The Alexander mitigation site is located in the Coastal Plain Physiographic Region near the Town of Snow Hill, North Carolina. This area is part of the Yorktown Formation, formed during the Tertiary Period. Topographic relief of the area is largely the result of dissection by Contentnea Creek and its tributaries (NRCS, 1980).

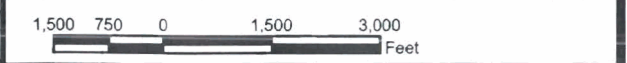
Local relief within the project site is approximately nine feet, with the highest location being the northeastern corner of the site near North Carolina State Road (NCSR) 1419 (Suggs Road), and the lowest elevation being the western side of the property adjacent to the existing wetland. The surrounding properties are primarily used for row crop agriculture or existing wetland areas.



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518 Plaza Boulevard
 Kinston, NC 28503

Figure 1.1
 Project Location
 Alexander Mitigation Site



2 Existing Conditions

2.1 Geology and Soils

The project site is located in the Coastal Plain of North Carolina. Soils series mapped on the site include the Johns, Kenansville, and Lumbee series (NRCS, 1980), as shown in Figure 2.1. On the low ridges and upland areas of the site, the Johns (Jo) and Kenansville (Ke) soil series are found (NRCS, 1980). Both of these series consist of well drained soils typically found on uplands, low ridges, and stream terraces. Permeability is moderately rapid for both soils. Lumbee (Lu) soils are found in the lower lying areas of the site. Lumbee soils are poorly drained soils found on smooth flat terraces. The Lumbee soils series typically have dark gray sandy loam surface layers with a gray sandy loam subsurface. Infiltration and permeability are moderate with the seasonal high water table at the surface. The NRCS categorizes the Lumbee soil series as an “A list” hydric soil (NRCS, 1995).

Hydric soils on the project property were delineated by Wetland and Natural Resource Consultants, Inc., (WNRC). The delineated areas of cleared hydric soil are shown in Figure 2.1. Total area of cleared hydric soils is approximately 18.5 acres. Only the areas of existing hydric soils are targeted for restoration.

Bore-hole tests were conducted in April 2002 to determine soil physical parameters. The test holes were dug primarily in low lying areas where restoration activities will occur. However, one test hole was augered on a knoll area that was higher in elevation. Although there was some variation between test hole profiles and soil survey descriptions, all test holes indicated presence of hydric soils with a depleted matrix in the A and/or B horizons of the soil profile, with the exception of the hole augered in the knoll area. Soil surface layers to a depth of 2 – 3 feet typically exhibited matrix values of 4 or less and chromas of 2 or less in the low lying auger holes, with a coarse gray sand layer found at 5 feet. The soil profile in the hole augered in the knoll area, found high values for hue and chroma, with observations of a bright orange layer ranging from 6 – 36 inches in depth. Most profiles consisted of a fine sandy loam textured surface layer, changing to sandy clay loam in the subsurface horizons. The water table was determined to be within 1 foot of the soil surface over most of the proposed restoration area on the day the bore hole test analyses (April 2, 2002) were conducted. At a depth of approximately 5 feet, a gray layer of saturated medium sand was found at most locations.

Augered holes were also used to measure saturated hydraulic conductivity using the method described by van Beers (1970). Saturated hydraulic conductivity measurements were conducted for hydrologic model inputs, and to evaluate the potential for preferential flow. Conductivities across the site ranged from 6 to 16 cm/hr, with a median value of 10 cm/hr. A saturated sand layer was found on the site at a depth below 1 foot from the soil surface. The highest conductivity measurements were determined near the eastern edge of the site where the property boundary is formed by NCSR 1419.

FIGURE 2.1
EXISTING CONDITIONS PLAN VIEW FOR
ALEXANDER SITE

PRELIMINARY PLANS
DO NOT USE FOR CONSTRUCTION

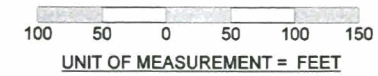
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Fax: 919-483-5490



"NOTE: WETLAND DATA FORMS FOR PRESERVATION PLOTS ARE PROVIDED IN APPENDIX 4."

LEGEND

- 490 --- EXISTING CONTOURS
- - - - - EXISTING WETLAND BOUNDARY
- - - - - HYDRIC SOIL BOUNDARY
- — — — — PROPERTY LINE
- — — — — FENCE LINE
- ~ ~ ~ ~ ~ TREE LINE
- — — — — TOP OF BANK
- — — — — TOP EDGE OF POND
- — — — — RIGHT-OF-WAY
- MONITORING WELL
- PROPERTY CORNER
- KE KENANSVILLE SOIL SERIES
- LU LUMBEE SOIL SERIES
- JC JOHNS SOIL SERIES



* ALL ELEVATIONS ARE RELATIVE TO AN ARBITRARY BENCHMARK OF 500 FEET.*



2.2 Climatic Conditions

Greene County, North Carolina has an average annual rainfall of approximately 49 inches (NRCS, 1980). In much of the Coastal Plain of North Carolina, approximately 36 inches of water are lost to evapotranspiration during an average year (Evans and Skaggs, 1985). Since average rainfall exceeds average evapotranspiration losses, the Coastal Plain of North Carolina experiences a moisture excess during most years, meaning that the excess water must leave a given site by groundwater flow, runoff, channelized surface flow, or deep seepage. Annual losses to deep seepage, or percolation of water to confined aquifer systems, is typically less than one inch of water for most Coastal Plain areas and are not a significant loss pathway for excess water. Although groundwater flow can be significant in some systems, most excess water is lost via shallow subsurface flow and surface flow.

2.3 Site Hydrology

The presence of hydric soils over most of the project site is evidence that the site historically supported a wetland ecosystem. As is the case in much of the Coastal Plain of North Carolina, local drainage patterns have been altered over the last two centuries to promote agricultural production. Two small excavation ponds were constructed on the site in the past. Two lateral ditches were also constructed across the low lying areas of the site to provide shallow subsurface drainage that lower the water table at the site, which is beneficial for agriculture production. These ditches drain to an existing wetland system and unnamed tributary of Contentnea Creek on the western side of the project property.

During February 2000, a well was installed and maintained by (WNRC) to manually monitor water table depth on the project site. The well was replaced by an automated recording well in May 2000. The wells were located in areas where hydrology would likely be affected by restoration efforts to provide information for comparing pre- and post-restoration hydrology (see Figure 2.1 for well locations). Water table data were collected from February 2000 through October 2000 and are shown in Figure 2.2.

Rainfall data collected for the hydrologic monitoring period were used to correlate climatic conditions with water table hydrology. Rainfall data were collected from the nearest automated weather station (UCAN: 14352), located in Snow Hill, North Carolina, approximately five miles southwest of the project site. Over the monitoring period, there were seven days in which rainfall data were missing from the Snow Hill weather station. Rainfall data from the next closest automated station located approximately 20 miles northeast of the project site in Greenville, North Carolina (Greenville 2, NC3638), were used to fill in these gaps in the Snow Hill data. Monthly precipitation amounts from March 2000 through October 2000 are compared with average monthly rainfall amounts for Greene County (NRCS, 1980) in Table 2.1. Drier than average conditions were experienced at the project site during the monitoring period.

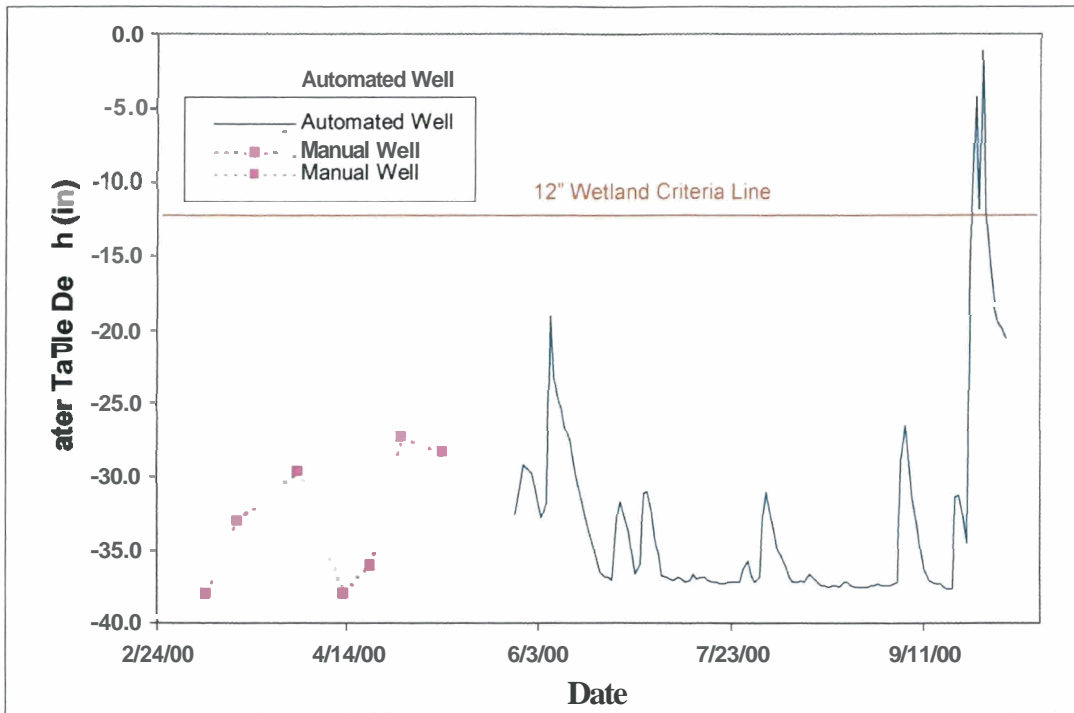


Figure 2.2. Water table data for the monitoring well located on the project site.

Well data from the project site were analyzed to determine the sites current hydrologic state. Data were used to determine 1) the longest number of days with the water table less than 12 inches deep during the monitoring period, 2) the longest number of days with the water table less than 12 inches deep during the growing season, and 3) the number of occurrences that the water table was less than 12 inches deep for at least 1 day during the growing season. Calculated values are presented in Table 2.2.

The growing season for Greene County is 242 days long, beginning on March 16 and ending November 13, as calculated from National Weather Service Wetlands Determination Tables (WETS) for the Greeneville 2, NC3638 station. To meet jurisdictional wetland criteria, the water table would need to remain within 12 inches of the soil surface for 5% of the growing season, or approximately 12 days. For the period of monitoring data available, the longest consecutive period with the water table less than 12 inches deep during the growing season was 4 days (Well #1, 9/24/00 to 9/27/00). This would indicate that the current hydrologic state of the project site is drier than would be expected for a site meeting jurisdictional wetland hydrology requirements.

Table 2.1 Comparison between monthly rainfall amounts for the project site and the long-term average.

Month/Year	Observed Monthly Precipitation (in)	Average Monthly Precipitation (in)	Deviation of Observed from Average
March 2000	3.21	3.86	-0.65
April 2000	5.16	3.33	1.83
May 2000	1.37	4.33	-2.96
June 2000	3.96	4.85	-0.89
July 2000	4.57	5.27	-0.70
August 2000	5.18	6.26	-1.08
September 2000	9.53	4.25	5.28
October 2000	0.16	3.01	-2.85
Sum	33.14	35.16	-2.02

Table 2.2 Hydrologic parameters calculated for the project site.

Well	Longest consecutive number of days with WT* < 12 inches deep from 3/8/00 through 10/2/00 (period of record)	Longest consecutive number of days with WT* < 12 inches deep from 3/16/00 through 10/2/00 (partial growing season)	Number of instances when WT* < 12 inches deep from 3/16/00 through 10/2/00 (partial growing season)
Monitoring Wells	4	4	1

* WT = water table

2.4 Hydrologic Modeling

To further investigate the current hydrologic status of the site and provide a means for evaluating proposed restoration plans, hydrologic models were developed to simulate site hydrology. DrainMod (version 5.1) was used to develop hydrologic simulation models to represent conditions at the automated monitoring well location. DrainMod is identified as an approved hydrologic tool for assessing wetland hydrology by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS, 1997). For more information on DrainMod and its application to high water table soils, the reader is referred to Skaggs, 1980.

Model parameters were selected based on field measurements and professional judgment of site conditions. Rainfall and air temperature information were collected from the nearest automated weather station (UCAN: 14352), located in Snow Hill, North Carolina, approximately five miles southwest of the project site. Field measured parameters were entered into the model and initial model simulations were compared with observed data

collected from the monitoring wells. To calibrate the model, parameters not measured in the field were adjusted within the limits typically encountered under similar soil and geomorphic conditions until model simulations most closely matched observed well data.

DrainMod computes daily water balance information and outputs summaries that describe the loss pathways for rainfall over the model simulation period. Table 2.3 summarizes the average annual amount of rainfall, infiltration, drainage, runoff, and evapotranspiration estimated for the existing condition of the Alexander property. Infiltration represents the amount of the water that percolates into the soil and is lost via drainage or runoff. Drainage is the loss of infiltrated water that travels through the soil profile and is discharged to the drainage ditches or to underlying aquifers. Runoff is water that flows overland and reaches the drainage ditches before infiltration. Evapotranspiration is water that is lost by the direct evaporation of water from the soil or through the transpiration of plants.

From the data provided, it is clear that a significant amount of the rainfall that falls on the site is lost via drainage and runoff to the field ditches. Restoration of the site will involve blocking the ditches and increasing the amount of surface storage available to pond water. In this way, the respective amounts of drainage and runoff are decreased and the excess water allows the water table to remain higher throughout the year, thus restoring wetland hydrology.

With the calibrated model, simulations were run to estimate the hydrologic conditions of the site in its existing condition. A location approximately 200 feet from the existing ditches was modeled to represent the average drainage conditions governing current site hydrology. Long-term model simulations were run for 30 years of weather data collected from an automated weather station located in Greenville, North Carolina (Greenville 2, NC3638) approximately 20 miles from the project site, since long-term data were not available from the Snow Hill automated weather station. DrainMod allows for the analysis of wetland hydrology by calculating the longest consecutive number of days meeting wetland hydrology criteria within the growing season. The DrainMod input files used to model the long-term simulations are presented in Appendix 3.

Jurisdictional wetland criteria (water table within 30 cm of the soil surface for 5% of the growing season) were not met in any of the 30 simulated years. These data indicated that the site, in its current condition, does not support wetland hydrology. This would be expected since the site has been in agricultural production for many years.

Table 2.3 Water balance for the existing condition of the Alexander site.

Hydrologic Parameter	Average Annual Amount over 30 Year Simulation Period (cm of water)	Average Annual Amount over 30 Year Simulation Period (% of rainfall)
Precipitation	124.1	100%
Drainage	44.0	35%
Runoff	20.1	16%
Evapotranspiration	60.0	49%

2.5 Flooding Concerns

There are no flooding or hydrologic trespass concerns for the project site. The existing elevation contours for the site, displayed in Figure 2.1, indicate that surface drainage flows to the middle of the site, where two existing small ponds are located. Existing drainage ditches originate near the middle of the site and flow to the west, draining to the existing wetland area along the western border of the property. This drainage pattern will not be altered – all drainage from the restored site will also drain to the existing wetland area avoiding any potential impacts to adjacent properties.

NCSR 1419 (Suggs Road) forms the eastern boundary of the site. There is a road-side ditch that parallels NCSR 1419 on the project property. This ditch is located on higher ground than the proposed restoration areas, and as such, drainage of the road-side ditch will not be impacted by the proposed restoration activities.

2.6 Biotic Resources

In the past, the land-use for the Alexander site has been row crop agriculture. During site investigations in April 2002, the site had been recently disked and as a result, the only standing vegetation was found along the ditch and pond banks, and around the wooded perimeter of the site. Vegetation along the ditch and pond banks consisted of elderberry (*Sambucus canadensis*), giant cane (*Arundinaria gigantea*), rush (*Juncus sp.*), goldenrod (*Solidago sp.*), jewelweed (*Impatiens capensis*), sedge (*Carex sp.*), tear-thumb (*Polygonum sagittatum*), blackberry (*Rubus spp.*), bulrush (*Scirpus spp.*), red maple saplings (*Acer rubrum*), and black cherry saplings (*Prunus serotina*). Cattail (*Typha latifolia*) was observed growing in several areas within the ditches, while black willow (*Salix nigra*) saplings were abundant around the pond closest to the road.

Vegetation within the existing wetland area along the western boundary of the site was also identified. The dominant tree canopy consisted of tulip poplar (*Liriodendron tulipifera*), and red maple (*Acer rubrum*), while species predominant in the understory consisted of green ash (*Fraxinus pennsylvanica*), American elm (*Ulmus americana*), and sweet bay (*Magnolia virginiana*). Other species observed in the wetland area included ironwood (*Carpinus caroliniana*), swamp chestnut oak (*Quercus michauxii*), willow oak

(*Quercus phellos*), American holly (*Ilex opaca*), black cherry (*Prunus serotina*), black willow, elderberry, wax myrtle (*Myrica cerifera*), possum haw (*Viburnum nudum*), and chinese privet (*Ligustrum sinense*). The herbaceous and vine strata included lizard's tail (*Saururus cernuus*), jewel weed, giant cane, netted chainfern (*Woodwardia areolata*), blackberry, poison ivy (*Toxicodendron radicans*), greenbrier (*Smilax spp.*), virginia creeper (*Parthenocissus quinquefolia*), trumpet creeper (*Campsis radicans*) and honeysuckle (*Lonicera japonica*).

The North Carolina Natural Heritage Program (NCNHP) was contacted by WNRC in a letter dated October 9, 2000 to determine any possible issues that might emerge with respect to significant natural resources from wetland restoration practices on the project site. In a reply letter dated November 14, 2000, the NCNHP issued a "No Effect" determination for the project site (see Appendix 2 for copies of the letters of communication between NCNHP and WNRC).

2.7 Cultural Resources

In a letter dated October 9, 2000, WNRC requested that the North Carolina Department of Cultural Resources (NCDCCR) review the project and comment on any possible impact to cultural resources within the project area. The NCDCCR determined, in a letter dated November 14, 2000, that there were no properties of architectural, historic, or archaeological significance which would be affected by the project (see Appendix 2 for a copy of the letter from the NCDCCR).

3 Mitigation Plan

3.1 Overview

The restoration design for the Alexander property is to restore a “non-riverine wet hardwood forest” system, as described by Schafale and Weakley (1990). These systems exist as poorly drained interstream flats with fine-textured mineral soils, not associated with rivers or estuaries. Restoration will involve the filling of the drainage ditches and ponds, and the restoration of natural topography to the site. This will have the effect of raising the local water table and increasing the surface storage of the site, restoring wetland hydrology to the site. At the downstream end (western side) of the site, the restored system will be connected with the existing wetland area to form a contiguous wetland system.

3.2 Hydrologic Restoration

Restoration of site hydrology will involve the filling of the drainage ditches and ponds to prevent excessive drainage, raising the water table and restoring wetland hydrology. The drainage ditch along the property boundary formed by NCSR 1419 (Suggs Road) will not be impacted by restoration activities. To provide the necessary fill material for the ditches and ponds, high areas of non-hydric soil will be graded down. The two existing lobes of non-hydric soil on the northwest and southwest portions of the site will be graded down to an elevation matching the existing areas of hydric soil. These graded non-hydric areas will then be covered with approximately 8 – 10 inches of hydric topsoil in order to expand the size of the wetland system. The filled in ponds will also be capped with hydric soil to restore these areas. The hydric soil used to cover these areas will be developed by shallow grading of elevated areas of hydric soil around the perimeter of the site.

The restored site will function as a “non-riverine wet hardwood forest”, and grade to the existing “Coastal Plain small stream swamp” system located along the western portion of the site. High water table conditions will be present across the site, with varying degrees of hydrologic wetness. Surface drainage from the site will flow toward the western border and discharge to the existing wetland system. The restored system will grade gradually into the existing wetland system, such that no control devices will be necessary. The restored and existing wetland areas will become one contiguous system. Design contours and the layout of the restored site are shown in Figure 3.1. Total restored acreage of wetland for the site is estimated at 18.5 acres, with approximately 2.4 acres of created wetland.

FIGURE 3.1
PROPOSED MITIGATION AREA FOR THE
ALEXANDER SITE

PROPOSED RESTORED WETLAND ACREAGE = 18.5
PROPOSED CREATED WETLAND ACREAGE = 2.43
PROPOSED PRESERVATION WETLAND ACREAGE = 2.15

PRELIMINARY PLANS
DO NOT USE FOR CONSTRUCTION

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Cary, North Carolina 27511
Phone: 919-483-5488
Fax: 919-483-5490



LEGEND

- 490 — PROPOSED CONTOURS
- — — EXISTING WETLAND BOUNDARY
- — — PROPERTY LINE
- — — FENCE LINE
- — — TREE LINE
- — — TOP OF BANK
- — — RIGHT-OF-WAY
- PROPERTY CORNER
- WETLAND RESTORATION AREA
- WETLAND CREATION AREA
- PRESERVATION AREA

100 50 0 50 100 150
UNIT OF MEASUREMENT = FEET

" ALL ELEVATIONS ARE RELATIVE TO AN ARBITRARY BENCHMARK OF 500 FEET."

3.3 Hydrologic Model Analyses

DrainMod simulations were developed to evaluate the current hydrologic status of the restoration site (Section 2.4) and to estimate the hydrologic conditions of the site under the proposed restoration practices. Model parameters which describe the depth of ditches and topographic surface storage were changed to values representative of the described restoration practices. Input files that described cropping conditions were modified to represent forested conditions.

Three (3) scenarios were simulated to evaluate the restored hydrologic conditions: 1) a location near the center of the site (elevation = 490 ft), 2) a location midway between the center of the site and the outer edge (elevation = 490.5 ft), and 3) a location near the outer edge of the restored site (elevation = 491 ft). These three locations were chosen to represent the range of hydrologic conditions expected over the restored sites, with wetter conditions near the center of the site with decreasing wetness moving toward the outer edge. Scenario 2 (midway between the center of the site and the outer edge) was chosen to approximate an average location across the restored site, since the majority of the restored acreage will be represented by these conditions. Thirty (30) year simulations were run following the procedure described in Section 2.4. The results of the simulations are presented in Figure 3.2, while DrainMod input files are provided in Appendix 3.

These simulations indicate that a range of hydrologic conditions will be imposed across the restored site. Scenario 2 (midway between the center of the site and the outer edge) can be assumed to represent average conditions across the site, with the majority of the restored acreage on the site being represented by this hydrologic scenario. The remaining two scenarios represent areas of increased and decreased wetness, such as low lying depressions and areas of higher elevation near the edge of the site, respectively. It is important to note that the hydrology of the targeted restored wetland system (non-riverine wet hardwood forest) is highly variable across a given site, supporting the ecological and functional diversity that makes these systems so valuable. All modeled scenarios for the restored site met jurisdictional wetland criteria, indicating that wetland hydrology would be restored to the site under the proposed restoration practices.

Table 3.3 Percent of growing season experiencing saturated or inundated conditions for the three modeled scenarios.

Modeled Scenario	Percent of Growing Season Experiencing Continuous Saturated or Inundated Conditions Under Average Conditions
Center of the restored site	12%
Mid-way between center and outer edge of restored site (average conditions)	9%
Outer edge of restored site	7%

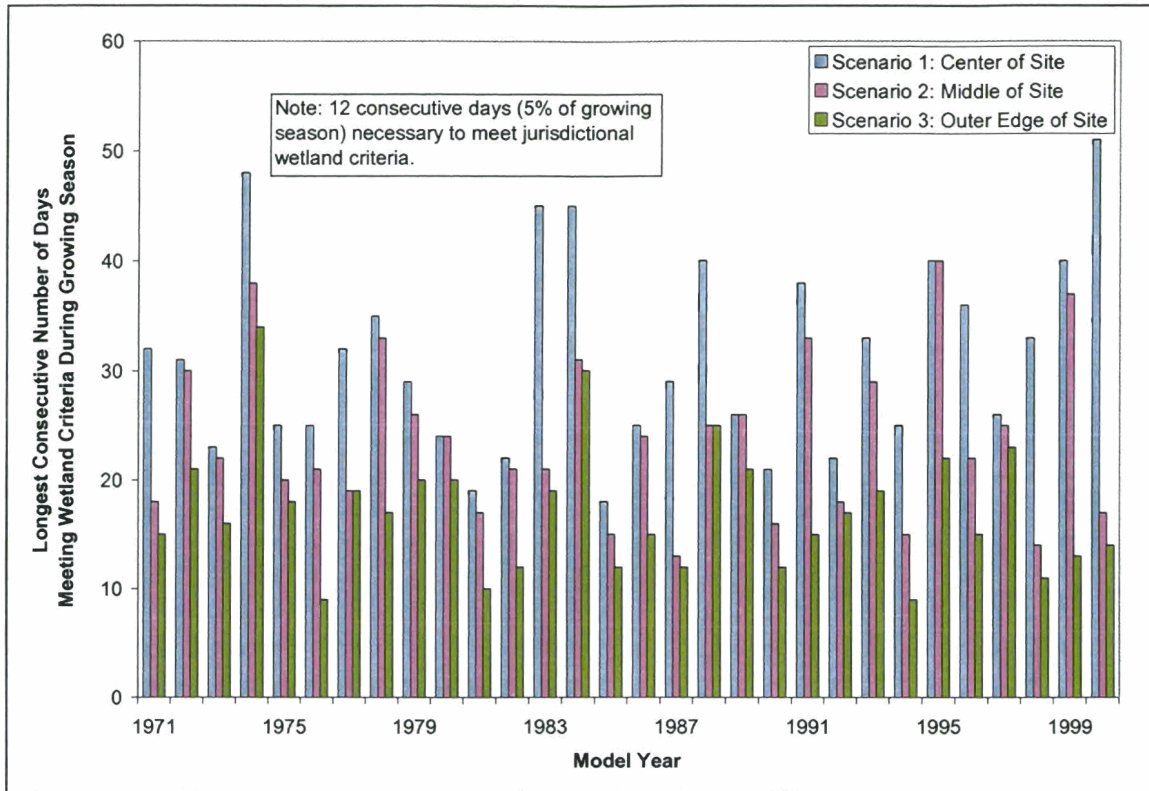


Figure 3.2 Thirty (30) year model simulations showing the longest consecutive number of days meeting wetland criteria at three locations under proposed restoration practices.

3.4 Vegetation Plan

The design of the proposed restored project area will most closely resemble the “non-riverine wet hardwood forest” described by Schafale and Weakley (1990). Trees to be planted include willow oak (*Quercus phellos*), swamp chestnut oak (*Quercus michauxii*), laurel oak (*Quercus laurifolia*), overcup oak (*Quercus lyrata*), blackgum (*Nyssa sylvatica*), and swamp blackgum (*Nyssa biflora*). Overcup oak and swamp blackgum will be planted in the wettest areas.

The permanent seed mixture will be composed of Virginia wild rye (*Elymus virginicus*), switch grass (*Panicum virgatum*), and fox sedge (*Carex vulpinoidea*).

Species selected for non-riverine restoration are considered to be weakly to moderately tolerant of flooding. Weakly tolerant species are able to survive and grow on sites in which soil is saturated for relatively short periods during the growing season. Moderately tolerant species are able to survive on soils that are saturated or flooded for several months during the growing season. Flood tolerant species are able to survive on sites in which the soil is saturated or flooded for long indefinite periods during the growing season (Wetlands Reserve Program (WRP) Technical Note VN-RS-4.1).

The occurrence of small hummocks, variations in soil texture, and microtopography will result in a heterogeneous plant community with varying hydroperiods. This community type is known to grade into Small Stream Swamps at their headwaters.

The plant community types listed above are derived from Schafale and Weakley (1990). Species selection generally follows tolerances cited in WRP Technical Note VN-RS-4.1. These documents, in combination, suggest a high probability that the selected plants will survive on the hydrologically restored fields of the Alexander site and will replicate the targeted natural system.

Prior to planting, the mitigation area will be inspected for proper elevation and soil suitability. The site will be inspected at the completion of planting to determine that proper planting methods were used; including spacing, species composition, and density.

3.5 Soils

Existing soils targeted for restoration are hydric (Lumbee series). Areas targeted for wetland creation are mapped as the Kenansville series. These non-hydric areas will be graded and then capped with a layer of hydric topsoil approximately 8 – 10 inches deep to reach design grades.

Samples of topsoil from the site will be collected and tested to determine soil fertility and chemical properties. If necessary, soil amendments (fertilizer, lime, etc.) will be applied at rates appropriate for the target vegetation. Since the land has been in agricultural production for a number of years, it is likely that soil fertility amendments will not be necessary.

Disking and tillage practices commonly used in agriculture will be used to break the plow pan and reduce compaction of the soil caused by years of agricultural production. Tillage practices will also be used to remove any field crowns, thus restoring a more natural topography to the site.

On-Site Preservation

3.6

The Bank Sponsor will preserve 2.15 acres of on-site existing wetlands adjacent to the restoration area (see Figure 3.1). The area will be verified by survey and a plat will be recorded with a conservation easement (Appendix 7) in the Greene County Land Records. The easement is will be held by the North Carolina Wildlife Habitat Foundation. The format of the conservation easement in Appendix 7 is subject to the approval of the Corps counsel prior to recordation.

4 Success Criteria

Factors considered in establishing hydrologic success criteria include the site specific water budget (see Section 3.3 and Figure 3.2), soil types (see Section 3.5), and target wetland systems (see Section 3.1), as well as pertinent scientific literature, such as the quantifiable requirements referenced in documents developed for the purpose of wetland delineation, specifically the *1987 Corps of Engineers Wetlands Delineation Manual* (USACE, 1987).

Several examples of performance standards are discussed in the WRP Technical Note entitled *Examples of Performance Standards for Wetland Creation and Restoration in Section 404 Permits and an Approach to Developing Performance Standards* (WG-RS-3.3), dated January 1999. Specific and measurable success criteria for plant density within the Neu-Con Wetland and Stream Mitigation Umbrella Bank sites are based on the recommendations found in the WRP Technical Note and correspondence from MBRT members (EPA, June 15, 2001 and USFWS, December 19, 2000).

The proposed success criteria "... refer to practicably measurable or observable attributes that reflect compensatory mitigation objectives", which are consistent with the cited Technical Note (page 12).

4.1 Wetland Hydrologic Success Criteria

~~The targeted success criteria for the Alexander wetland mitigation site will be inundation or saturation within 12 inches of the surface continuously for 9% (22 days) of the growing season. If the restored site is inundated or saturated within 12 inches of the surface continuously for less than 9% (22 days) of the growing season but greater than or equal to 5% (12 days) of the growing season, then the credits will be approved and released consistent with the terms of the Mitigation Banking Instrument and applicable on a case by case basis as deemed appropriate by the permitting agencies.~~

~~The day counts are based on the growing season for Greene County, which is 242 days long, beginning on March 16 and ending November 13, as calculated from National Weather Service Wetlands Determination Tables (WETS) for Greenville, North Carolina (Greenville 2, NC3638).~~

Hydrology will be monitored through the use of monitoring wells during each growing season for the first five years of hydrologic monitoring, or until success criteria have been met, whichever occurs later. To meet the hydrologic success criteria, the monitoring data must show that for each normal year within the monitoring period, the site has been inundated or saturated within 12 inches of the soil surface for a minimum of 7% of the growing season (17 consecutive days). WETS tables for the Greenville 2, NC3638 station will be utilized to determine normal precipitation. If the restored site is inundated or saturated within 12 inches of the soil surface for less than 7% of the growing season (17 consecutive days), but the post-restoration monitoring data reflects that the site meets

applicable Corps criteria for wetlands, then the Corps and the MBRT may consider the site for mitigation of in-kind impacts on a case-by-case basis.

If a normal year precipitation does not occur during the first five years of monitoring to meet success criteria, the bank sponsor will continue to monitor hydrology on the site until it documents that the site has been inundated or saturated as described above. In the alternative, and at the Corps' and MBRT's discretion, a site may be found to meet the hydrologic success criteria on the basis of comparison of monitoring data taken from the mitigation site, with monitoring data taken from an established reference site that was approved by the Corps and the MBRT. The Corps and the MBRT retain the discretion to find that the hydrologic success criteria are met if such monitoring data from the mitigation site and the reference site are substantially the same. This finding by the Corps and the MBRT may be made during years with or without normal rainfall.

In the event there are years of normal precipitation during the monitoring period, and the data for those years does not show that the site has been inundated or saturated as described above during the normal precipitation year, the Corps and the MBRT may require remedial action. The bank sponsor shall perform such required remedial action and continue to monitor hydrology on the site until it displays that the site has been inundated or saturated as described above.

4.2 Wetland Vegetative Success Criteria

~~The interim measure of vegetative success for the Alexander Wetland Mitigation Plan will be the survival of at least 320 3-year old planted trees per acre at the end of year three of the monitoring period. The final vegetative success criteria will be the survival of 260 5-year old planted trees per acre at the end of year five of the monitoring period. In addition, for the five year monitoring period, the presence of volunteer facultative softwood species such as red maple, sweet gum, and loblolly pine will be limited to less than 10% each of the total number of trees utilized to determine success. These trees may contribute more than 10% of the total trees on the site, but they will not constitute more than 10% each of the 260 trees per acre.~~

The interim measure of vegetative success for the Alexander Mitigation Plan will be the survival of at least 320 3-year old planted trees per acre at the end of year three of the monitoring period. The final vegetative success criteria will be the survival of 260 5-year old planted trees per acre at the end of year five of the monitoring period.

Up to 20% of the site species composition may be comprised of invaders. Remedial action may be required should these species (i.e. Loblolly Pine [*Pinus taeda*], Red Maple [*Acer rubrum*], Sweet Gum [*Liquidambar straciflua*]) present a problem and/or exceed the 20% composition. Beneficial plant species regeneration should be noted within the monitoring reports.

A listing of preferred canopy species to be planted on the site provided in Section 3.4.

4.3 Reference Site

If the rainfall data for any given year during the monitoring period is not normal, and if the desired hydrology for the Alexander site is not on a trajectory to achieve success, then the reference wetland data can be assessed to determine if there is a positive correlation between the underperformance of the restoration site and the natural hydrology of the reference site. Reference wetland information is provided in Section 6 of this plan.

~~In order to determine if the rainfall is normal for a given year, rainfall amounts will be tallied using data from the Greenville, North Carolina (Greenville 2, NC3638 WETS Station), with supplemental data taken from Snow Hill, North Carolina. The Snow Hill station is closer to the mitigation site, however this station has experienced periods of data collection failure in the past.~~

The procedure described in Section 4.1 will be used to determine if normal rainfall has not occurred in any given year.

5 Monitoring Plan

An as-built report will be submitted to the MBRT within 60 days of the planting completion and well installation. The report will include elevations, photographs, well and sampling plot locations, and a description of initial species composition by community type. The report will also include a list of the species planted and the associated densities.

The monitoring program will be implemented to document system development and progress toward achieving the success criteria referenced in Section 4. Both hydrology and vegetation will be assessed to determine the success of the mitigation. The monitoring program will be undertaken for 5 years or until the final success criteria are achieved, whichever is longer.

Monitoring Reports will be completed on the schedule found in the approved EBX-Neuse I Mitigation Banking Instrument (MBI) at Section V Maintenance and Monitoring of the Bank:

~~EBXN ISponsor~~ agrees to perform all necessary work to monitor the Bank and to demonstrate compliance with the ~~Performance~~-Success Criteria established in this Banking Instrument and the Site Specific Mitigation Plan(s). Members of the MBRT may conduct, at their own expense and in coordination with other Federal and State resource agencies, field investigations to determine the functions and values of the Bank. The MBRT's best professional judgment shall be used to determine wetland, upland and habitat functions and values. Reports resulting from such investigations will be promptly provided to ~~EBXN ISponsor~~ and its designated agents. The Sponsor may conduct field investigations at its own expense to determine the functions and values of the Bank. Reports resulting from such investigations will be promptly provided to members of the MBRT.

A. **Monitoring Reports.**

1. The Sponsor shall submit to each member of the MBRT, an annual report describing the condition of the Bank Site... in relation to the site specific Success Criteria. The report... will be prepared between July 1 and November 15 and shall include vegetation and hydrologic data.... The report... will indicate the dates at which all information in the report was collected. Monitoring reports will be submitted on or before November 30th of each monitoring year and shall contain the following:

~~The Sponsor shall submit to each member of the MBRT, an annual report describing the condition of Bank and relating the conditions of the~~

~~Bank to the Site Specific Performance Criteria. The report will be prepared between July 1 and November 15 and shall include hydrologic data collected during the early growing season. The report will indicate the dates at which all information in the report was collected. The report will be submitted on or before November 30th and shall contain the following:~~

(a) U.S. Geological Survey map showing locations of the Bank Sites;

(b) A detailed narrative summarizing the condition of the Bank Sites and all regular maintenance activities;

(c) Appropriate topographic maps (e.g., 1-2 foot-contour intervals) showing location of sampling plots, permanent photo points, location of transects, etc.;

(d) Digital photos showing views of the Bank Sites taken from fixed-point stations from a height of approximately five to six feet. Permanent markers shall be established to ensure that the same locations (and view directions) on the site are monitored in each monitoring period;

(e) Hydrologic information, as specified in each Site Specific Mitigation Plan[;]

(f) Vegetation Data, as specified in each Site Specific Mitigation Plan[;]

(g) Soils Data (if required)...[;]

(h) Identify any invasion by undesirable plant species. Quantify the extent of invasion of undesirable plants by either stem counts, percent cover, or area, whichever is appropriate[;]

(i) Describe and/or quantify damage done by animals[;]

(j) Wildlife observations: For casual observations, record the date of observation, number of individuals, presence of juveniles and use of the site by wildlife[; and]

[(k) Reference wetland hydrology data.]

2. Reports shall be required for each phase of the Bank following the end of the first growing season after planting and in accordance with the following schedule:

~~Once during first year after completion of construction (Year 1)~~
~~Once during second year after construction completion (Year 2)~~
~~Once during third year after construction completion (Year 3)~~
~~Once during fourth year after construction completion (Year 4)~~
~~Once during fifth year after construction completion (Year 5)~~

- ~~(a) — A U.S. Geological Survey map showing locations of the Bank Sites;~~
- ~~(b) — A detailed narrative summarizing the condition of the Bank Sites and all regular maintenance activities;~~
- ~~(c) — Appropriate topographic maps (e.g., 1-2-foot contour intervals) showing location of sampling plots, permanent photo points, location of transects, etc.;~~
- ~~(d) — Digital photos showing views of the Bank Sites taken from fixed point stations from a height of approximately five to six feet. Permanent markers shall be established to ensure that the same locations (and view directions) on the site are monitored in each monitoring period;~~
- ~~(e) — Hydrologic information, as specified in each Site Specific Mitigation Plan.~~
- ~~(f) — Vegetation Data, as specified in each Site Specific Mitigation Plan.~~
- ~~(g) — Identify any invasion by undesirable species. Quantify the extent of invasion of undesirable plants by either stem counts, percent cover, or area, whichever is appropriate. Describe and/or quantify damage done by animals.~~
- ~~(h) — Wildlife observations: For casual observations, record the date of observation, number of individuals, presence of juveniles and use of the site by wildlife.~~

~~2. — Reports shall be required for each phase of the Bank following the end of the first growing season after planting and in accordance with the following schedule:~~

~~Once during first year after completion of construction (Year 1)~~
~~Once during second year after construction completion (Year 2)~~
~~Once during third year after construction completion (Year 3)~~
~~Once during fourth year after construction completion (Year 4)~~

~~Once during fifth year after construction completion (Year 5)~~

B. Remedial Actions.

In the event the Bank or a specific phase of the Bank fails to achieve the ~~Performance-Success~~ Criteria specified in the Site Specific Mitigation Plans, the Sponsor shall develop necessary adaptive management plans and/or implement appropriate remedial actions for the Bank for that phase in coordination with the MBRT. The MBRT shall review the reports described above, and may, at any time, after consultation with the Sponsor and the MBRT, direct the Sponsor to take remedial action at the Bank site. Remedial action required by the Corps shall be designed to achieve the ~~Performance-Success~~ Criteria specified in the Site Specific Mitigation Plans, and shall include a work schedule and monitoring criteria that will take into account physical and climactic conditions. ~~EBXN-Sponsor~~ shall implement any remedial measures required pursuant to this paragraph.

5.1 Hydrology

The hydrologic success criterion is defined in section 4.1.

In order to determine if the criteria is achieved, two (2) manual and one (1) automated groundwater-monitoring station will be installed at the mitigation site and monitored year-round.

Ground water monitoring stations will follow the USACE standard methods found in WRP Technical Notes ERDC TN-WRAP-00-02, July 2000.

In order to determine if the rainfall is normal for the given year, rainfall amounts will be tallied using data obtained from the Greenville 2, NC3638 WETS Station.

5.2 Vegetation

The vegetation success criteria is defined in Section 4.2.

Successful restoration of the vegetation on a wetland mitigation site is dependent upon hydrologic restoration, active planting of preferred canopy species, and volunteer regeneration of the native plant community.

In order to determine if the criteria are achieved, 0.1 acre vegetation-monitoring stations will be installed on 2% of the restoration site, for a total of 4 vegetation monitoring stations. Vegetation monitoring will occur in the spring after leaf-out has occurred. Individual plot data for woody species will be provided. Permanent plots for the sampling

of planted species shall be randomly located in each of the target communities. The enumeration of the density of planted species will equal the number of remaining stems in the plot divided by the plot area (in acres). Individual seedlings will be marked such that they can be found in succeeding monitoring years. Mortality will be determined from the difference between the previous year's living planted seedlings and the current year's living planted seedlings.

6 Reference Wetland

The target wetland system for the Alexander mitigation site is a “non-riverine wet hardwood forest” (See Section 3.4, Vegetation Plan). At one time, these types of wetland systems may have comprised more than one quarter of the swamp-lands in the coastal plain of North Carolina (Schafale and Weakley, 1990). However, these wetland communities are easily drained and make excellent farmland. Therefore, reference sites that are an “exact match” for the target wetland system are very difficult to locate. Every effort has been made to identify a reference site that will accurately reflect the hydrology of the target wetland system.

The reference site search was based on soils associations, landscape position, natural hydrology, proximity to the mitigation site and existing data. The Alexander site is dominated by the Lumbee soil series, which are found within the Johns-Kenansville-Lumbee associations (NRCS, 1980). After reviewing approximately ten potential sites in the project vicinity, an existing wetland area adjacent to the project site along the ~~southern~~ western boundary was selected as the “best” hydrologic reference site for the Alexander Mitigation Plan (see Figure 1.1 for location of the reference site in relation to the mitigation site). Evaluation of reference wetland sites was conducted by ~~WNRC~~ agents of the sponsor during July 2002.

6.1 Reference Site Selection

Hydrology, soils, vegetation and landscape position were evaluated to determine the suitability of potential reference wetland sites. To be suitable a site has to be dominated by soils that are found in the same or similar landscape position (topographical and spatial) as those found on the mitigation site. Additionally, the reference site needs to have the same approximate natural hydrology as the targeted mitigation site. The reference site needs to be available for monitoring for the same duration as the mitigation site and should be in relatively close proximity to the mitigation site.

6.2 Hydrology

The proposed reference site was traversed for the purpose of identifying those areas that have reference “natural” hydrology similar to the target wetland type. The target wetland would be saturated for moderate duration, with moderate being defined as approximately ~~9%~~ 7% of the growing season (see Section 3.3). Existing wetlands on the reference site exhibit a dominance of wetland species on hydric soils that have both primary and secondary indicators of hydrology (1987 Wetland Delineation Manual). Field indicators of hydrology (1987 Wetland Delineation Manual) were characterized and catalogued for the wetland area (see Appendix 4).

~~A groundwater monitoring station was established within the proposed reference site during July 2002.~~ A groundwater monitoring station will be installed in the proposed reference site in the spring of 2003 concurrent with the installation of stations within the

reference area. The station ~~was~~ will be installed to the standards identified in Section 5.1 of the Mitigation Plan.

6.3 Soils

Soils from the reference site were generally characterized to ensure that they are representative of the soils found on the mitigation site. The reference site is characterized primarily by Lumbee soils, which are poorly drained soils typically found on uplands and stream terraces. This is the same soil series that is found on the mitigation site. Permeability is moderate, and the NRCS anticipated un-drained seasonal high water table is at or near the soil surface. Soil conditions were documented and forms are presented in Appendix 4.

6.4 Vegetation

The presence and dominance of hydrophytic vegetation was documented during onsite evaluations. The canopy and sub-canopy are dominated by hydrophytic species. Specific species documented during onsite evaluations are presented in Appendix 4.

6.5 Landscape Position

The reference site is directly adjacent to the Alexander mitigation site, therefore landscape position of the reference site and mitigation site are virtually the same. Climactic conditions will be the same for both locations. In the NRCS Soil Survey for Greene County, both locations are mapped as part of the same contiguous unit of Lumbee soils.

7 Administrative and Regulatory

HUC Service Area

7.1

The site will serve impacts in HUC 03020203. (See Appendix 5)

Credit Release for Wetland Restoration

7.2

The schedule of credit availability will be dictated by the provisions of IV E.1(a) of the New-Conn MBI. It provides as follows:

1. Schedule of Credit Availability:

- a. Advance Credits: Fifteen percent (15%) of the projected credit total for each site (other than preservation acreage) shall be available for advance sale and debiting, provided the following minimum requirements have been satisfied with regard to the Bank: (i) the Banking Instrument has been approved; (ii) the Site Specific Mitigation Plan has been approved; and (iii) a conservation easement is placed on a Bank Site or on approved phase of a Bank Site; and (iv) appropriate financial assurances of a type and amount acceptable to the Corps and the MBRT have been established. Initial physical and biological improvements necessary to achieve projected credits available for advance sale shall be initiated no later than the first year following initial debiting from the Bank.

For preservation acreage, the projected credit total shall be available for sale and debiting provided the restoration requirements have been met and the following minimum requirements have been satisfied with regard to the Bank: (i) the Banking instrument is executed and the Site Specific Mitigation Plan has been approved by the MBRT; (ii) credits are established consistent with Section I.F.3 and the Site Specific Mitigation Plan; (iii) a conservation easement is placed on the Bank Site or approved phase of a Bank Site that generates the preservation credits; and (iv) appropriate financial assurances of a type and amount acceptable to the Corps and the MBRT have been established, only if such preservation acreage is used in conjunction with restoration, creation or enhancement acreage and such financial assurance is necessary for the restoration, creation and enhancement acreage.

b. Credit Release Schedule:

- 10% after first year, if interim success measures are met (total 25%)
- 10% after second year; if interim success measures are met (total 35%)
- 10% after third year; if interim success measures are met (total 45%)
- 15% after fourth year; if interim success measures are met (total 60%)

-15% after fifth year; if Success Criteria are met (total 75%); and
-25% after fifth year, if Bank Site or an approved phase of a Bank Site
meets the overall objectives and Success Criteria set forth in Site Specific
Mitigation Plan (total 100%).

If the monitoring period suggests that progress for the Success Criteria is being met, then the credits shall be released consistent with the above schedule. The MBRT shall review and make its determination with respect to the Success Criteria within 60 days after receipt of the Sponsor's report. If one or more Success Criteria is not being met, then the Sponsor will evaluate opportunities for adaptive management or remedial bio-engineering. Adaptive management may include, but not be limited to, installation of additional plant material, supplementation of the vegetative community, control of undesirable invasive exotic species, control of herbivores, modification of hydrologic regime, or possible revision of Success Criteria based on reference site data or literature.

2. Compliance with Success Criteria:

Except as provided in Section IV.E.1.a, each unit of credit release as referenced in Section III.E.1.b above shall be accepted into the Bank (available for debit) and the appropriate transaction recorded as described in Section III.G upon delivery of the Annual Monitoring Report. If one or more Success Criteria is not being met, then the Sponsor will evaluate opportunities for adaptive management or remedial bio-engineering as deemed appropriate by MBRT.

Credit Release for Stream Restoration

7.3

The schedule of credit availability will be dictated by the provisions of IV E.1(a) of the Neu-Con MBI, which provides, in part, that the MBRT will determine the credit release schedule.

Credit Ratios

7.4

The credit ratios for the Alexander site, as stated in the Neu-Con MBI, are as follows:

“The credit composition formula and procedures provided herein are designed to ensure that there is no net loss of wetlands due to the use of this Bank. Credits will be evaluated using the following standard:

		<u>Ratio</u>
<u>Restoration Acres</u>	<u>= R</u>	<u>(1:1)</u>
<u>Creation Acres</u>	<u>= C</u>	<u>(3:1)</u>
<u>Enhancement Acres</u>	<u>= E</u>	<u>(2:1)</u>
<u>Preservation Acres</u>	<u>= P</u>	<u>(5:1)</u>

Stream restoration credits will be assessed as specified by MBRT.”

A total of 18.5 acres of restoration and 2.4 acres of creation are proposed, and therefore 19.3 credits are proposed to be generated for the wetland restoration and creation acreage. A total of 2.15 acres of on-site preservation is proposed and therefore a total of 0.72 credits are proposed to be generated from the preservation acreage. A total of 20.02 credits will be generated from 23.05 acres of the Alexander site.

Table 7-1 Wetland Credit Chart

<u>Credit</u>		<u>Wetlands</u>	
<u>Type</u>	<u>Ratio</u>	<u>Acres</u>	<u>Credits</u>
<u>Restored Wetlands</u>	<u>1:1</u>	<u>18.5</u>	<u>18.5</u>
<u>Preserved Wetlands</u>	<u>5:1</u>	<u>2.15</u>	<u>0.72</u>
<u>Created Wetlands</u>	<u>3:1</u>	<u>2.4</u>	<u>0.8</u>
<u>Total</u>	<u>---</u>	<u>23.05</u>	<u>20.02</u>

Credit Accounting

7.5

Credit accounting will follow the procedures set forth in Section G of the Neu-Con MBI, as follows: (See Appendix 6 for Credit Accounting Ledger)

A. Crediting/Debiting and Accounting Procedures

1. Each credit for compensatory wetland mitigation shall be comprised of acreage consistent with the terms of Section I.F. of this Banking Instrument. Each credit for stream mitigation shall be consistent with the MBRT guidelines. Areas that are available for stream restoration crediting may be considered separately from the area available for wetlands mitigation crediting. Applicants may purchase credits from the Bank to compensate for unavoidable wetland or stream impacts caused by projects authorized by the Corps or by any North Carolina agency when the permitting agency determines that compensatory mitigation is necessary or appropriate and that the Bank is appropriate for use.

2. Sponsor will establish and maintain an accounting system which documents the activity of the accounts and the location of the credits used from the Bank. As part of this accounting system, Sponsor will record the sale of credits used to compensate for impacts to wetlands and the sale of credits used to compensate for impacts to streams. A ledger will be submitted to identify the location of the actual wetland

acreage or stream footage associated with the credits. Statements will be generated each time an approved debit/credit transaction occurs and at the end of each season in which restoration and/or creation occurs. Sponsor will furnish copies of all statements generated from an approved debit/credit transaction to each member of the MBRT. Sponsor also will compile an annual report on activity in the Bank and distribute a copy of such report to each member of the MBRT.

Conservation Easement

7.6

Consistent with Section III G of the Neu-Con MBI, a conservation easement will be placed over the preservation, restoration, enhancement, or creation acreage in its entirety, in perpetuity, prior to the release of any credits from the site. The easement will be recorded in the chain of title and will be held by a qualified land trust, non-profit organization or government entity. A copy of a sample Conservation Easement is attached (see Appendix 7). Consistent with Section III G.2, to the extent a conservation easement is placed on acreage that is approved for credit release and the Bank Sponsor determines that such acreage will not be debited or used, such acreage may be released from the preservation requirement upon written notice to and approval from the MBRT.

The North Carolina Wildlife Habitat Foundation will be the easement holder for the Alexander mitigation site.

Financial Assurances

7.7

The financial assurances shall be consistent with the provisions set forth in III.F of the Neu-Con MBI. It provides as follows:

F. Financial Assurance Requirements:

1. ...The sponsor will provide financial assurance in a form and amount acceptable to the Corps and the MBRT. The financial assurance shall be sufficient to cover the cost of the following in the event of Sponsor default or Bank failure at sites from which credits have been debited, where wetlands or streams are being restored, created or enhanced:
 - a. Actions necessary for the debited, pre-sold wetland areas, streams and riparian corridor (exclusive of preservation acreage) in accordance with the Banking Instrument and Site Specific Mitigation Plans. These shall include costs of site design, topographic and boundary surveys, manipulation of site hydrology, monitoring well installation, grading, planting, as-built surveys, and an amount deemed appropriate by the MBRT to cover potential remedial actions in the event Success Criteria are not met.

- b. Maintenance of completed wetland areas, streams and riparian corridor (exclusive of preservation acreage) in accordance with the Banking Instrument and Site Specific Mitigation Plans, including sediment control, control of the undesirable plant species, maintenance of hydrologic control structures and maintenance of monitoring wells.
- c. Monitoring and reporting as required by Section V of this Banking Instrument.

2. Upon completion of the Bank or any site or segment thereof:

a. Financial assurance required by this Section III.F. may be reduced for the Bank or for any completed phase upon demonstration by the Sponsor, to the satisfaction of the Corps and the MBRT, that the Bank, site or any approved phase of a Bank Site has satisfied the Success Criteria;

b. Financial assurance required by this Section III.F. may be further reduced or eliminated for the Bank or for an approved phase of a Bank Site when Sponsor demonstrates, to the satisfaction of the Corps and the MBRT, that the Bank, segment or site is self-sustaining in its ability to maintain compliance with the Success Criteria.

EBXN-I attaches hereto in Appendix 8, financial assurances that exceed the requirements set forth in III.F of the Neu-Con MBI.

Title

7.8

A title opinion for the sale of real property that constitutes the Alexander mitigation site is attached as Appendix 9.

8 References

Evans, R. O. and R. W. Skaggs. 1985. Agricultural water management for Coastal Plain soils. Published by the North Carolina Agricultural Extension Service. Paper AG-355.

Skaggs, R. W. 1980. DRAINMOD Reference Report: Methods for design and evaluation of drainage-water management systems for soils with high water tables. U. S. Department of Agriculture, Soil Conservation Service. 329 pp.

United States Army Corp of Engineers. 1987. Corp of Engineers Wetland Delineation Manual. Technical Report Y-87-1. US Army Corp of Engineers, Waterways Experiment Station.

United States Department of Agriculture, Natural Resources Conservation Service (NRCS). 1980. Soil Survey of Greene County, North Carolina.

United States Department of Agriculture, Natural Resources Conservation Service (NRCS), Soil Survey Division. 1995. Hydric Soils of North Carolina.

United States Department of Agriculture, Natural Resources Conservation Service (NRCS). 1997. Part 650, Chapter 19 of the NRCS Engineering Field Handbook: Hydrology Tools for Wetland Determination.

van Beers, W. F. J. 1970. The auger-hole method: a field measurement of hydraulic conductivity of soil below the water table. Rev. ed. ILRI Bulletin 1, Wageningen, 32 p.

Appendix 1:

Photographs of the Project Site



Figure A1. Aerial photograph of Alexander site.

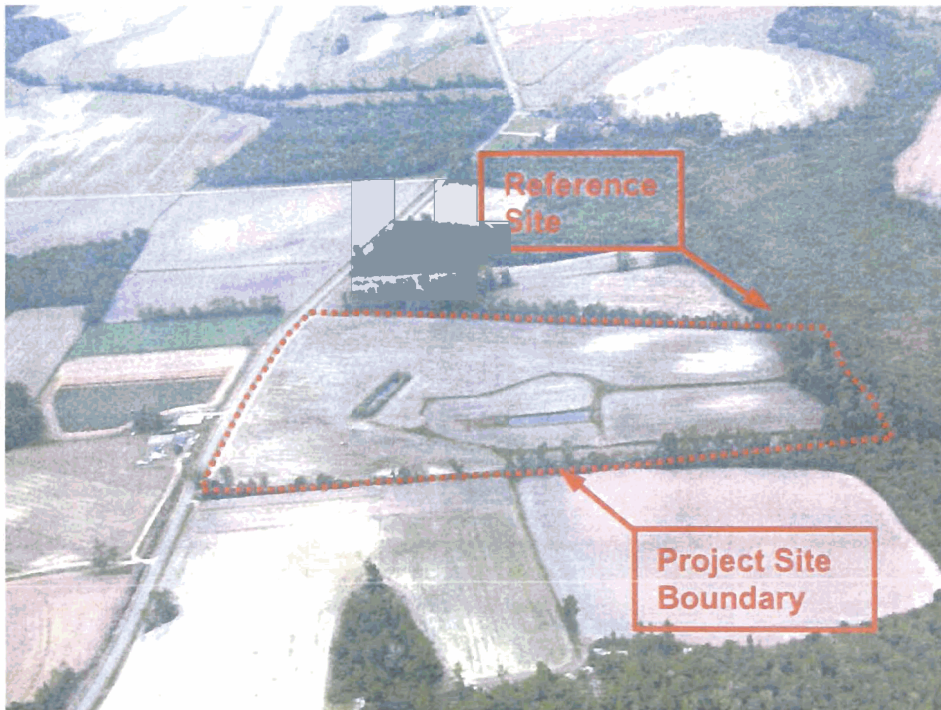


Figure A2. Aerial photograph of Alexander site.



Figure A3. Existing ground at the Alexander site under row crop production.



Figure A4. Existing ground near SR 1419, looking at the site from the northeast corner.



Figure A5. Existing agricultural drainage ditch looking downstream.



Figure A6. Distant view of existing agricultural drainage ditches on the mitigation property.



Figure A7. Existing pond edge and surrounding vegetation.



Figure A8. Adjacent wetland and unnamed tributary to Contentnea Creek (preservation area). Restored wetland will connect with this system.



Figure A9. Reference wetland vegetation.



Figure A10. Reference wetland soils.



Figure A11. Wetland preservation area near boundary between restoration and preservation areas.

Appendix 2:

Letters from the North Carolina Natural
Heritage Program and North Carolina Department
of Cultural Resources



North Carolina Department of Cultural Resources
State Historic Preservation Office

David L. S. Brook, Administrator

James B. Hunt Jr., Governor
 Betty Ray McCain, Secretary

Division of Archives and History
 Jeffrey J. Crow, Director

November 14, 2000

Chris Huysman
 Wetland and Natural Resource Consultants
 720 South Main Avenue
 Newton, North Carolina 28658

Re: Neu-Con Wetland Mitigation and Stream Restoration Sites,
 Ham/Dixon Site, Greene County, ER 01-7977

Dear Mr. Huysman:

Thank you for your letter of October 9, 2000, concerning the above project.

We have conducted a review of the project and are aware of no properties of architectural, historic, or archaeological significance which would be affected by the project. Therefore, we have no comment on the project as currently proposed.

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

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, Environmental Review Coordinator, at 919/733-4763.

Sincerely,

David Brook
 Deputy State Historic Preservation Officer

DB:kgc

	Location	Mailing Address	Telephone/Fax
ADMINISTRATION	507 N. Blount St., Raleigh NC	4617 Mail Service Center, Raleigh NC 27699-4617	(919) 733-4763 • 733-8653
ARCHAEOLOGY	421 N. Blount St., Raleigh NC	4619 Mail Service Center, Raleigh NC 27699-4619	(919) 733-7342 • 715-2671
RESTORATION	515 N. Blount St., Raleigh NC	4613 Mail Service Center, Raleigh NC 27699-4613	(919) 733-6547 • 715-4801
SURVEY & PLANNING	515 N. Blount St., Raleigh NC	4618 Mail Service Center, Raleigh NC 27699-4618	(919) 733-6545 • 715-4801

October 9, 2000

NC Natural Heritage Program
NC Division of Parks and Recreation
Attn: Mr. Stephen Hall
1615 Mail Service Center
Raleigh, North Carolina 27699-1615

Re: Request for Protected Species Review and Comment
Neu-Con Wetland Mitigation and Stream Restoration Sites

Dear Mr. Hall:

The purpose of this letter is to request review and comment on any possible issues that might emerge with respect to significant natural resources from wetland and/or stream restoration projects conducted on the attached sites (USGS site maps with approximate property lines enclosed).

The Neu-Con Wetland Mitigation and Stream Restoration Bank has been developed for the purpose of providing in-kind mitigation for unavoidable wetland impacts. The bank has been approved by the Army Corps of Engineers and will result in the protection of up to 1000 acres of our states valuable wetland resources in the distinct geographic area of the Neuse River and Contentnea Creek. Wetland restoration sites were selected based on their high probability to restore forested wetlands where they have ceased to exist. Preservation sites were selected based on their functional value to contain and treat storm flows and their ecological value as exemplary wetland types.

The "Marston", "Valentine", and "Wooten" sites are currently designated as preservation sites. High quality bottom land hardwood forests and cypress gum swamps will be protected in perpetuity through a conservation easement. All of the sites have demonstrable evidence of historic logging some 60 years ago. The protective easement will allow these sites to once again achieve climax communities. Of note, the Wooten and Valentine sites support Bald Cypress in excess of 10 feet in circumference above the buttress. These sites are strategically located adjacent to Contentnea Creek, the Neuse River and the Trent River.

The "Ham/Dixon", "Casey/Hunter", and "Webb" sites are slated for restoration. Currently all of these properties support row crops and are designated as Prior Converted Wetlands through the Farm Bill of 1996. These sites have been actively farmed since the 1960's on a rotation of corn, soybeans, and cotton. The application of defoliant has resulted in little plant diversity in the regularly maintained ditches. Through our

discussions with farmers we have learned that the ditches are mowed to the ground level approximately once every 3 years and that the historic application of defoliants was greater than it is today.

Conceptual mitigation plans call for the back-filling of agricultural ditches for the purpose of restoring historic wetland hydrology and native plant communities to areas where they have ceased to exist. No mass grading is proposed; we propose only minimal grading and as such do not anticipate any conflict with any protected species.

All mitigation sites will be protected through a conservation easement. These easements will not encompass any structures. The easements on the preservation sites will maintain the current ecological state of the site. Please forward any conceptual protection mechanisms or verbiage germane to your expertise that you would like for us to consider as an amendment to the easement.

We believe that it is appropriate to reach a "No Effect" determination for each of the listed species as no adverse impact will occur from the proposed restoration efforts. These determinations are supported by the following facts specific to each listed species in the vicinity of the proposed mitigation sites:

Bald Eagle:

No nesting trees will be lost through the restoration of forests on agricultural lands. No open water will be impacted by the proposed project.

Red Cockaded Woodpecker:

No foraging or nesting habitat will be lost through the restoration of forests on agricultural lands. No forest suitable for this species lies within portions of these properties that will be protected through conservation easements.

American Alligator:

Preservation sites are suitable habitat for this species. These habitats will be maintained through the forthcoming conservation easements.

Sensitive Joint Vetch:

No specimens were observed during our review of the sites. Intensive agronomic applications of pesticides and defoliants has resulted in a community type that is tolerant to these chemicals.

We wish to obtain your concurrence that no impact assessment or additional studies are needed. Your correspondence will be forwarded to the North Carolina Department of Transportation for consideration as part of our due diligence for each mitigation site. Our due diligence for the project will consist of a site map, a description of the species and its preferred habitat, and a conclusion that there will be no effect on federally protected species.

We thank you in advance for your timely response and cooperation. Please feel free to contact us with any questions that you may have concerning the extent of site disturbance associated with these projects.

We have reviewed the federal list of species for the counties in which the mitigation sites fall; we have excluded marine species from our reviews. We are currently evaluating the sites for federally protected species through encompassing surveys of the sites. We have not completed our reviews and will present our findings when studies are completed.

Sincerely,

Chris Huysman



NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

DIVISION OF PARKS AND RECREATION

November 13, 2000

JAMES B. HUNT JR.
GOVERNOR

BILL HOLMAN
SECRETARY

DR. PHILIP K. MCKNELLY
DIRECTOR

Mr. Chris Huysman
Wetland and Natural Resource Consultants
720 South Main Ave.
Newton, NC 28658

Subject: Neu-con Wetland Mitigation and Stream Restoration Sites

Dear Mr. Huysman:

The Natural Heritage Program has no record of rare species at any of the indicated sites. The reasons for determination of no effect on the four federally listed species indicated seem appropriate. We encourage consideration, in addition, of effects on state listed and rare species. Rare aquatic species (Neuse River waterdog *Necturus lewisii*) are known from the Neuse River adjacent to the Valentine Site and Wooten Site, and from the Trent River downstream from the Marston Site. These species are likely to benefit from any improvement in water quality resulting from wetland mitigation. No rare terrestrial species are known on any of these sites or within a mile of them.

The Natural Heritage Program supports the use of preservation as a mitigation strategy where relatively intact, natural wetland communities are present. We also support having restoration sites contiguous to existing natural systems rather than isolated. Several of the areas indicated appear to be good candidates. The Valentine Site adjoins a Natural Heritage Priority Area known as Jolly Old Field Natural Area, known for high quality natural communities. This site is not protected. The Marston and Wooten sites also adjoin large floodplains with relatively intact forested wetlands.

Sincerely,

Michael P. Schafale
Natural Heritage Program

MPS/mps



1615 MAIL SERVICE CENTER, RALEIGH, NORTH CAROLINA 27689-1615
PHONE 919-733-4181 FAX 919-715-3085

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER - 50% RECYCLED/10% POST-CONSUMER PAPER

Appendix 3:

DrainMod Input Files Used to Model
the Existing Condition and the Proposed
Restoration Practices of the Project Site

DRAINMOD .SIN File Used to Model the Existing Conditions of the Alexander Site

Based on Portsmouth soil series

2418

.3655000	.0	
.3535000	-1.0	
.3410000	-3.0	
.3325000	-10.0	
.3270000	-20.0	
.3205000	-30.0	
.3155000	-40.0	
.3105000	-50.0	
.3035000	-70.0	
.3000000	-80.0	
.2930000	-100.0	
.2825000	-150.0	
.2740000	-200.0	
.2650000	-250.0	
.2555000	-300.0	
.2450000	-350.0	
.2330000	-400.0	
.2200000	-450.0	
.2085000	-500.0	
.1900000	-600.0	
.1790000	-700.0	
.1675000	-900.0	
.1650000	-1000.0	
.1500000	-1500.0	
.0000	.0000	.8000
10.0000	.0858	.3000
20.0000	.2080	.1000
30.0000	.4280	.0500
40.0000	.6004	.0120
50.0000	.9295	.0080
60.0000	1.7000	.0050
80.0000	2.5244	.0030
100.0000	3.5624	.0000
120.0000	4.5505	.0000
140.0000	6.0340	.0000
160.0000	6.3131	.0000
180.0000	7.5069	.0000
200.0000	9.8179	.0000
220.0000	11.1522	.0000
240.0000	13.4866	.0000
250.0000	18.6537	.0000
1000.0000	100.0000	.0000
6		
.00	.00	.00
50.00	1.20	.75
100.00	6.50	1.20
150.00	10.00	1.50
200.00	12.00	1.50
500.00	15.00	1.50

Appendix 4:

Reference Wetland Evaluation Forms
provided by Wetland and Natural Resource Consultants, Inc.

Delineation Performed by: Wetland and Natural Resource Consultants, Inc.
 11 South College Ave, Suite 203
 PO Box 224
 Newton, NC 28658
 Office Phone: (828) 465-3035 Fax: (828) 465-3050

WETLAND DATA FORM
ROUTINE WETLAND DETERMINATION
 (1987 COE Wetlands Delineation Manual)

Project/Site: **Alexander Preservation Site** Date: **12-17-2002**
 Applicant/Owner: **EBX Neuse I, LLC** County: **Green**
 Investigator: **Chris Huysman** State: **NC**

Do normal circumstances exist on the site? **Yes** Community ID: **Wetland**
 Is the site significantly disturbed? **no** Transit ID: _____
 (Atypical situation)
 Is the area a potential problem area? **no** No Plot ID: **Plot 1 (20'radius)**
 (If needed, explain on reverse.)

VEGETATION

1. <u>Aundinaria gigantea</u>	<u>herb</u>	<u>FACW</u>	9. _____	_____
2. <u>Woodwardia aereolata</u>	<u>herb</u>	<u>OBL</u>	10. _____	_____
3. <u>Lonicera japonica</u>	<u>vine</u>	<u>FAC-</u>	11. _____	_____
4. <u>Smilax rotundifolia</u>	<u>vine</u>	<u>FAC</u>	12. _____	_____
5. <u>Toxicodendron radicans.</u>	<u>vine</u>	<u>FAC</u>	13. _____	_____
6. <u>Liquidambar styraciflua</u>	<u>tree</u>	<u>FAC+</u>	14. _____	_____
7. <u>Acer rubrum</u>	<u>tree</u>	<u>FAC</u>	15. _____	_____
8. <u>Quercus michauxii</u>	<u>tree</u>	<u>FACW-</u>	16. _____	_____

Percent of dominant species that are OBL, FACW or FAC (excluding FAC-): **88%**

Remarks: **Field egde at topographical break between Lumbee and Paxville soils.**

HYDROLOGY

- Recorded Data (describe in remarks)
- Stream, Lake or Tide Gauge
- Aerial Photographs
- Other
- No Recorded Data Available

Field Observations:

Depth of Surface Water: _____(in.)

Depth to Free Water in Pit: **12**(in.)

Depth to Saturated Soil: **12**(in.)

Wetland Hydrology Indicators:

Primary Indicators:

- Inundated
- Saturated in Upper 12 Inches
- Water Marks
- Drift Lines
- Sediment Deposits
- Drainage Patterns in Wetlands

Secondary Indicators: (2 or more required)

- Oxidized Root Channels in
Upper 12 Inches
- Water-Stained Leaves
- Local Soil Survey Data
- FAC Neutral Test
- Other (explain in remarks)

Remarks: _____

SOILS

Map Unit Name
(Series and Phase): **Paxville**

Drainage Class: **very poorly drained**
Field Observations: _____
Confirm Mapped Type? **Green Soil Survey**

Taxonomy (Subgroup): **Typic Umbraquults**

Profile Description:

Depth (ins.)	Horizon	Matrix Color (Munsell Moist)	Mottle Colors (Munsell Moist)	Mottle Abundance/Contrast	Texture, Concretions, Structure etc.
0-8	Ap	10YR 2/1	_____	_____	loam
8-16	A12	10YR 3/1	_____	_____	sandy loam
16+	B1g	10YR 4/1	_____	_____	fine sandy loam
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Hydric Soil Indicators:

- | | |
|---|---|
| <input type="checkbox"/> Histosol | <input type="checkbox"/> Concretions |
| <input type="checkbox"/> Histic Epipedon | <input checked="" type="checkbox"/> High Organic Content in Surface Layer in Sandy Soil |
| <input checked="" type="checkbox"/> Sulfidic Odor | <input type="checkbox"/> Organic Streaking in Sandy Soils |
| <input type="checkbox"/> Aquic Moisture Regime | <input checked="" type="checkbox"/> Listed on Local Hydric Soils List ** |
| <input type="checkbox"/> Reducing Conditions | <input checked="" type="checkbox"/> Listed on National Hydric Soils List |
| <input checked="" type="checkbox"/> Gleyed or Low-Chroma Colors | <input type="checkbox"/> Other (explain in remarks) |

Remarks: _____

Wetland Determination
(yes or no)

Hydrophytic Vegetation Present? **Yes**
Wetland Hydrology Present? **Yes**
Hydric Soils Present? **Yes**

Is This Sampling Point Within a Wetland? **Yes**

Remarks: _____

Delineation Performed by: Wetland and Natural Resource Consultants, Inc.
 11 South College Ave, Suite 203
 PO Box 224
 Newton, NC 28658
 Office Phone: (828) 465-3035 Fax: (828) 465-3050

WETLAND DATA FORM
ROUTINE WETLAND DETERMINATION
 (1987 COE Wetlands Delineation Manual)

Project/Site: **Alexander Preservation Site** Date: **12-17-2002**
 Applicant/Owner: **EBX Neuse I, LLC** County: **Green**
 Investigator: **Chris Huysman** State: **NC**

Do normal circumstances exist on the site? **Yes** Community ID: **Wetland**
 Is the site significantly disturbed? **no** Transit ID: _____
 (Atypical situation)
 Is the area a potential problem area? **no** No Plot ID: **Plot 2 (20'radius)**
 (If needed, explain on reverse.)

VEGETATION

1. <u>Pluchea foetida</u>	herb	OBL	9. <u>Quercus michauxii</u>	tree	FACW-
2. <u>Woodwardia aereolata</u>	herb	OBL	10. <u>Acer rubrum</u>	tree	FAC
3. <u>Lonicera japonica</u>	vine	FAC-	11. <u>Liriodendron tulipifera</u>	tree	FAC
4. <u>Smilax rotundifolia</u>	vine	FAC	12. _____	_____	
5. <u>Toxicodendron radicans</u>	vine	FAC	13. _____	_____	
6. <u>Alnus rugosa</u>	shrub	FACW	14. _____	_____	
7. <u>Arundinaria gigantea</u>	herb	FACW	15. _____	_____	
8. <u>Liquidambar styraciflua</u>	tree	FAC+	16. _____	_____	

Percent of dominant species that are OBL, FACW or FAC (excluding FAC-): **80%**

Remarks: **Field egde at topographical break between Lumbee and Paxville soils.**

HYDROLOGY

- Recorded Data (describe in remarks)
- Stream, Lake or Tide Gauge
- Aerial Photographs
- Other
- No Recorded Data Available

Field Observations:

Depth of Surface Water: _____ (in.)

Depth to Free Water in Pit: **13**(in.)

Depth to Saturated Soil: **13**(in.)

Wetland Hydrology Indicators:

Primary Indicators:

- Inundated
- Saturated in Upper 12 Inches
- Water Marks
- Drift Lines
- Sediment Deposits
- Drainage Patterns in Wetlands

Secondary Indicators: (2 or more required)

- Oxidized Root Channels in Upper 12 Inches
- Water-Stained Leaves
- Local Soil Survey Data
- FAC Neutral Test
- Other (explain in remarks)

Remarks: _____

SOILS

Map Unit Name

(Series and Phase): **Paxville**

Drainage Class: **very poorly drained**

Field Observations: _____

Taxonomy (Subgroup): **Typic Umbraquults**

Confirm Mapped Type? **Green Soil Survey**

Profile Description:

Depth (ins.)	Horizon	Matrix Color (Munsell Moist)	Mottle Colors (Munsell Moist)	Mottle Abundance/Contrast	Texture, Concretions, Structure etc.
0-6	Ap	10YR 2/1	_____	_____	loam
6-14	A12	10YR 3/1	_____	_____	sandy loam
14+	B1g	10YR 4/1	_____	_____	sandy loam
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Hydric Soil Indicators:

- | | |
|---|---|
| <input type="checkbox"/> Histosol | <input type="checkbox"/> Concretions |
| <input type="checkbox"/> Histic Epipedon | <input checked="" type="checkbox"/> High Organic Content in Surface Layer in Sandy Soil |
| <input checked="" type="checkbox"/> Sulfidic Odor | <input type="checkbox"/> Organic Streaking in Sandy Soils |
| <input type="checkbox"/> Aquic Moisture Regime | <input checked="" type="checkbox"/> Listed on Local Hydric Soils List ** |
| <input type="checkbox"/> Reducing Conditions | <input checked="" type="checkbox"/> Listed on National Hydric Soils List |
| <input checked="" type="checkbox"/> Gleyed or Low-Chroma Colors | <input type="checkbox"/> Other (explain in remarks) |

Remarks: _____

Wetland Determination

(yes or no)

Hydrophytic Vegetation Present? **Yes**

Wetland Hydrology Present? **Yes**

Hydric Soils Present? **Yes**

Is This Sampling Point Within a Wetland? **Yes**

Remarks: _____

Delineation Performed by: Wetland and Natural Resource Consultants, Inc.
 11 South College Ave, Suite 203
 PO Box 224
 Newton, NC 28658
 Office Phone: (828) 465-3035 Fax: (828) 465-3050

WETLAND DATA FORM
ROUTINE WETLAND DETERMINATION
 (1987 COE Wetlands Delineation Manual)

Project/Site: **Alexander Preservation Site** Date: **12-17-2002**
 Applicant/Owner: **EBX Neuse I, LLC** County: **Green**
 Investigator: **Chris Huysman** State: **NC**

Do normal circumstances exist on the site? **Yes** Community ID: **Wetland**
 Is the site significantly disturbed? **no** Transit ID: _____
 (Atypical situation)
 Is the area a potential problem area? **no** No Plot ID: **Plot 3 (20'radius)**
 (If needed, explain on reverse.)

VEGETATION

1. <u>Aundinaria gigantea</u>	herb	FACW	9. _____	_____
2. <u>Woodwardia aereolata</u>	herb	OBL	10. _____	_____
3. <u>Lonicera japonica</u>	vine	FAC-	11. _____	_____
4. <u>Quercus michauxii</u>	tree	FACW-	12. _____	_____
5. <u>Quercus nigra</u>	tree	FAC	13. _____	_____
6. <u>Quercus phellos</u>	tree	FACW-	14. _____	_____
7. _____	_____	_____	15. _____	_____
8. _____	_____	_____	16. _____	_____

Percent of dominant species that are OBL, FACW or FAC (excluding FAC-): **100%**

Remarks: **Field egde at topographical break between Lumbee and Paxville soils.**

HYDROLOGY

- Recorded Data (describe in remarks)
- Stream, Lake or Tide Gauge
- Aerial Photographs
- Other
- No Recorded Data Available

Field Observations:

Depth of Surface Water: _____(in.)

Depth to Free Water in Pit: **15**(in.)

Depth to Saturated Soil: **15**(in.)

Wetland Hydrology Indicators:

Primary Indicators:

- Inundated
- Saturated in Upper 12 Inches
- Water Marks
- Drift Lines
- Sediment Deposits
- Drainage Patterns in Wetlands

Secondary Indicators: (2 or more required)

- Oxidized Root Channels in Upper 12 Inches
- Water-Stained Leaves
- Local Soil Survey Data
- FAC Neutral Test
- Other (explain in remarks)

Remarks: _____

SOILS

Map Unit Name
(Series and Phase): **Paxville**

Drainage Class: **very poorly drained**
 Field Observations: _____
 Confirm Mapped Type? **Green Soil Survey**

Taxonomy (Subgroup): **Typic Umbraquults**

Profile Description:

<u>Depth</u> (ins.)	<u>Horizon</u>	<u>Matrix Color</u> (Munsell Moist)	<u>Mottle Colors</u> (Munsell Moist)	<u>Mottle</u> Abundance/Contrast	<u>Texture, Concretions,</u> <u>Structure etc.</u>
<u>0-5</u>	<u>Ap</u>	<u>10YR 2/1</u>	_____	_____	<u>loam</u>
<u>5-11</u>	<u>A12</u>	<u>10YR 3/1</u>	_____	_____	<u>loam</u>
<u>11+</u>	<u>B1g</u>	<u>10YR 4/1</u>	_____	_____	<u>fine sandy loam</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Hydric Soil Indicators:

- | | |
|---|---|
| <input type="checkbox"/> Histosol | <input type="checkbox"/> Concretions |
| <input type="checkbox"/> Histic Epipedon | <input checked="" type="checkbox"/> High Organic Content in Surface Layer in Sandy Soil |
| <input checked="" type="checkbox"/> Sulfidic Odor | <input type="checkbox"/> Organic Streaking in Sandy Soils |
| <input type="checkbox"/> Aquic Moisture Regime | <input checked="" type="checkbox"/> Listed on Local Hydric Soils List ** |
| <input type="checkbox"/> Reducing Conditions | <input checked="" type="checkbox"/> Listed on National Hydric Soils List |
| <input checked="" type="checkbox"/> Gleyed or Low-Chroma Colors | <input type="checkbox"/> Other (explain in remarks) |

Remarks: _____

Wetland Determination
(yes or no)

Hydrophytic Vegetation Present? **Yes**
 Wetland Hydrology Present? **Yes**
 Hydric Soils Present? **Yes**

Is This Sampling Point Within a Wetland? **Yes**

Remarks: _____

Delineation Performed by: Wetland and Natural Resource Consultants, Inc.
11 South College Ave, Suite 203
PO Box 224
Newton, NC 28658
Office Phone: (828) 465-3035 Fax: (828) 465-3050

WETLAND DATA FORM
ROUTINE WETLAND DETERMINATION

(1987 COE Wetlands Delineation Manual)

Project/Site: **Alexander Preservation Site**

Date: **12-17-2002**

Applicant/Owner: **EBX Neuse I, LLC**

County: **Green**

Investigator: **Chris Huysman**

State: **NC**

Do normal circumstances exist on the site? **Yes**

Community ID: **Wetland**

Is the site significantly disturbed? **no**

Transit ID: _____

(Atypical situation)

Is the area a potential problem area? **no** No

Plot ID: **Plot 4 (20' radius)**

(If needed, explain on reverse.)

VEGETATION

1. <i>Aundinaria gigantea</i>	herb	FACW	9. _____	_____
2. <i>Smilax rotundifoli</i>	vine	FAC	10. _____	_____
3. <i>Lonicera japonica</i>	vine	FAC-	11. _____	_____
4. <i>Toxicodendron radicans</i>	vine	FAC	12. _____	_____
5. <i>Campsis radicans</i>	vine	FAC	13. _____	_____
6. <i>Ilex opaca</i>	shrub	FAC-	14. _____	_____
7. <i>Acer rubrum</i>	tree	FAC	15. _____	_____
8. <i>Liquidambar styraciflua</i>	tree	FAC+	16. _____	_____

Percent of dominant species that are OBL, FACW or FAC (excluding FAC-): **75%**

Remarks: **Field egde at topographical break between Lumbee and Paxville soils.**

HYDROLOGY

- Recorded Data (describe in remarks)
- Stream, Lake or Tide Gauge
- Aerial Photographs
- Other
- No Recorded Data Available

Field Observations:

Depth of Surface Water: _____ (in.)

Depth to Free Water in Pit: **13**(in.)

Depth to Saturated Soil: **13**(in.)

Wetland Hydrology Indicators:

Primary Indicators:

- Inundated
- Saturated in Upper 12 Inches
- Water Marks
- Drift Lines
- Sediment Deposits
- Drainage Patterns in Wetlands

Secondary Indicators: (2 or more required)

- Oxidized Root Channels in Upper 12 Inches
- Water-Stained Leaves
- Local Soil Survey Data
- FAC Neutral Test
- Other (explain in remarks)

Remarks: _____

SOILS

Map Unit Name
(Series and Phase): **Paxville**

Drainage Class: **very poorly drained**

Field Observations: _____

Taxonomy (Subgroup): **Typic Umbraquults**

Confirm Mapped Type? **Green Soil Survey**

Profile Description:

Depth (ins.)	Horizon	Matrix Color (Munsell Moist)	Mottle Colors (Munsell Moist)	Mottle Abundance/Contrast	Texture, Concretions, Structure etc.
0-9	Ap	10YR 2/1	_____	_____	loam
9-14	A12	10YR 3/1	_____	_____	sandy loam
14+	B1g	10YR 4/1	_____	_____	sandy clay loam
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Hydric Soil Indicators:

- | | |
|---|---|
| <input type="checkbox"/> Histosol | <input type="checkbox"/> Concretions |
| <input type="checkbox"/> Histic Epipedon | <input checked="" type="checkbox"/> High Organic Content in Surface Layer in Sandy Soil |
| <input checked="" type="checkbox"/> Sulfidic Odor | <input type="checkbox"/> Organic Streaking in Sandy Soils |
| <input type="checkbox"/> Aquic Moisture Regime | <input checked="" type="checkbox"/> Listed on Local Hydric Soils List ** |
| <input type="checkbox"/> Reducing Conditions | <input checked="" type="checkbox"/> Listed on National Hydric Soils List |
| <input checked="" type="checkbox"/> Gleyed or Low-Chroma Colors | <input type="checkbox"/> Other (explain in remarks) |

Remarks: _____

Wetland Determination

(yes or no)

Hydrophytic Vegetation Present? **Yes**

Wetland Hydrology Present? **Yes**

Hydric Soils Present? **Yes**

Is This Sampling Point Within a Wetland? **Yes**

Remarks: _____

Appendix 5:

Hydrologic Unit Code Service Area Map

Appendix 6:

Credit Accounting Ledger Sheet

Appendix 7:

Sample Conservation Easement

**DRAWN BY AND AFTER
RECORDING RETURN TO:**

**NORTH CAROLINA
_____ COUNTY**

THIS CONSERVATION EASEMENT (“Conservation Easement”) made this ____ day of _____, 2002, by and between _____, with an address of (“Grantor”) and _____ with an address of _____ (“Grantee”).

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

RECITALS

WHEREAS, Grantor owns in fee simple approximately _____ (_____) acres of certain real property situate, lying and being in _____ County, North Carolina, and more particularly as the Conservation Easement Area and Access Easement Area on the plat recorded in Map _____, Page _____ in the Lenoir County, North Carolina Registry of Deeds Exhibit A (the “Property”);

WHEREAS, Grantor and Grantee recognize the conservation value of the Property in its present state as a scenic, natural and rural area that has not been subject to significant development and as a significant area that provides a “relatively natural habitat for fish, wildlife, or plants or similar ecosystem” as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code;

WHEREAS, Grantor and Grantee further recognize the conservation and open space value of the Property in its present state, the preservation of which (a) is pursuant to local, state and federal government policy and will provide for scenic enjoyment of the general public and (b) will yield significant public benefit;

WHEREAS, pursuant to the Mitigation Agreement between North Carolina Department of Transportation (“NCDOT”) and EBX-Neuse I, LLC, EBX-Neuse I, LLC paid Grantor to restrict land use on the Property consistent with this Conservation Easement and EBX-Neuse I in turn will be using the Property to mitigate unavoidable stream and wetlands impacts detailed in one or more permits (the “Permits”) which may be issued hereafter by the United States Army Corps of Engineers, Wilmington District (the “Corps”) for Wetland and / or Stream impacts by the North Carolina Department of Transportation (“NCDOT”), and

WHEREAS, Grantor has agreed to grant and convey a perpetual conservation easement over the Property, thereby restricting and limiting the use of the Property on the terms and conditions and for the purposes hereinafter set forth;

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein 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 fully transferable Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property together with the right to preserve and protect the conservation values thereof, as follows:

ARTICLE I.
PURPOSES

The purposes of this Conservation Easement are to preserve and protect the conservation values of the Property and the natural character of the Property. To achieve these purposes, the parties hereto agree to the conditions and restrictions set forth hereunder.

ARTICLE II.
DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This Conservation Easement is an easement in gross, runs with the land, is fully assignable, and is enforceable by Grantee, its successors or assigns, against Grantor, Grantor's personal representatives, heirs, executors, successors and assigns, lessees, agents, invitees and licensees.

ARTICLE III.
PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. 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 unless otherwise authorized by the Corps:

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 and Residential Use. 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. Residential use of the Property is prohibited.

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

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

E. Silvicultural Use and Land Clearing. There may be no destruction or cutting of trees or plants on the Property, except to control insects and disease or except as otherwise provided herein.

F. Signage. Display of billboards, signs or advertisements is prohibited on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property or other permitted use of the Property and/or signs identifying the Grantor as owner of the Property and Grantee as the holder of a 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 activities conducted on the Property that would be detrimental to water purity or any of the plants or habitats within the Property or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property, or cause soil degradation or erosion.

J. Subdivision. Subdivision, partitioning, or dividing the Property is prohibited.

K. Vegetative Cutting. Cutting, removal, mowing, burning, harming or destruction of vegetation on the Property is prohibited except: (1) in instances where such activities are deemed necessary for the health and safety of nearby residents or the general public, but only if such activities are approved by the Grantee, (2) when considered necessary for the continued maintenance of wetland functions as approved by the Grantee, or (3) mowing existing paths or roadways.

ARTICLE IV.

GRANTOR'S ADDITIONAL RESERVED RIGHTS

The Grantor and its personal representatives, heirs, executors, successors and assigns hereby reserves the right to quiet enjoyment of the Property, the rights to ingress and egress to the Property, the right to continue such uses as exist as of the date of this grant not inconsistent with this Conservation Easement and as shown on the survey recorded in Map Book _____, Page _____ of the County Registry and the right to sell, transfer, gift or otherwise convey the Property in whole or in part, provided such sale, transfer, gift or conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement and written notice is provided to Grantee in accordance with the provisions herein below.

It is expressly understood and agreed that Grantor, including but not limited to its licensees, guests, employees, representatives, successors, heirs and assigns, retains the right and privilege, which rights and privileges shall not be abridged and/or restricted by any conservation activities by Grantee, its successors, heirs and assigns pursuant to this agreement, to continue as shown on the survey recorded in Map Book _____, Page ____ of the _____ County Registry wildlife activities presently enjoyed on the property, specifically hunting, fishing, trapping and hiking. Furthermore, it is understood and agreed that Grantor has established certain means of ingress, egress, and regress on and through the property and certain other improvements for purposes of hunting, fishing, trapping and hiking (i.e., deer stands, etc.) to permit Grantor to enjoy these wildlife activities. Accordingly, Grantor, including but not limited to its licensees, guests, employees, representatives, successors, heirs and assigns, shall remain entitled to maintain these means of egress, ingress, and regress, and certain other improvements, in their present condition without regard to the other terms and conditions contained herein.

ARTICLE V. **GRANTEE'S RIGHTS**

Grantee is granted the right to preserve and protect in perpetuity the existing condition of the Property. Consistent with these rights, Grantee may monitor the Property to ensure compliance with the terms of the Agreement to ensure that the existing conditions of the Property have not been altered. Grantee is also granted the right to enter the Property for the purposes of implementing and monitoring the Property and otherwise monitoring compliance with the term of this Agreement.

ARTICLE VI. **ENFORCEMENT AND REMEDIES**

A. Upon any breach of the terms of this Conservation Easement by Grantor, its agents, personal representatives, heirs, executors, successors, or assigns, which comes to the attention of the Grantee, the Grantee may notify the Grantor in writing of such breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to promptly correct the conditions constituting such breach. If the breach remains uncured after thirty (30) days; the Grantee may exercise any, or all, or none of the following remedies:

1. Institute suits to enjoin any breach or enforce any covenant by temporary and/or permanent injunctions either prohibitive or mandatory and/or to recover any damages from injury to any conservation values protected by this Conservation Easement, including damages for the loss of scenic; aesthetic, historic or environmental values and attorneys fees if Grantee prevails; and
2. Require that the land be restored promptly to the condition required by this Conservation Easement.

B. The Grantee has the right, but not the obligation, to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement. Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies without prior notice to Grantor, but shall exercise reasonable efforts to notify Grantor.

C. No failure on the part of 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.

D. 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, 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.

E. It is agreed by the parties hereto that the covenants, conditions, terms and restrictions contained herein shall be binding upon the parties, their personal representatives, heirs, executors, successors and assigns and shall continue as a servitude running in perpetuity with the Property. It is expressly understood and agreed that Grantee shall have the absolute right, from time to time, to assign, sell, transfer or encumber its right, title and interest in and to this Conservation Easement and/or the Property, in whole or in part, as to all or part of the Property, to any person or entity without the consent of Grantor.

**ARTICLE VII.
PUBLIC ACCESS**

The making and imposition of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever.

**ARTICLE VIII.
EXHIBIT, DOCUMENTATION AND TITLE**

A. Legal Description. Exhibit A, identifying the Property, is attached hereto and made a part hereof by reference.

B. Title. Grantor covenants and represents that Grantor is the sole owner of and is seized of the Property in fee simple and has good right to make, declare and impose the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances, except easements, leases, restrictions, rights of way, if any, and government regulations of record.

ARTICLE IX.
MISCELLANEOUS

A. Subsequent Transfers. Grantor, for itself and his personal representatives, heirs, executors, successors and assigns regarding the Property, further declares that the matters set forth in this Conservation Easement shall run with the land comprising the Property and be binding thereon, without the necessity to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

1. Grantor, for itself, his personal representatives, heirs, executors, successors and assigns, declares that this Conservation Easement is established exclusively for conservation purposes, as defined in 26 U.S.C. Section 170(h)(4)(a).
2. Grantor declares that the terms of this Conservation Easement shall survive any merger of 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 written approval of the Grantee and the Corps.

C. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. § 121-34 et seq., which authorizes the creation of conservation easements for purposes including the conservation purposes of this Conservation Easement, including such purposes as are defined in 26 U.S.C. Section 170(h)(4)(A).

D. Recording. Grantee or Grantor shall record this instrument and any amendment hereto or assignment of Grantee's rights hereunder in the Registry of _____ County, North Carolina and may re-record it at any time as may be required to preserve its right under this Conservation Easement.

E. Hazardous Waste. The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or hazardous or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property.

F. Notices. Any notices given under this Conservation Easement shall be in writing and shall be delivered by depositing same in the U.S. Mail, certified, return receipt requested, postage prepaid and addressed to the parties as set forth above, or to such other addresses any such party may establish in writing to the others, pursuant to this notice provision.

G. Amendments. This Easement may be amended only by a writing, signed by Grantor and Grantee, subject to approval of the Corps, and any such amendment(s) shall be effective upon recording of such writing in the Registry of _____ County, North Carolina.

H. Severability. Should any provision of this Conservation Easement be declared by any tribunal of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and

said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be a part of this Conservation Easement.

I. Governing Law. This Conservation Easement shall be governed by and construed in accordance with the laws of the State of North Carolina.

J. Headings. The headings contained in this Conservation Easement are for reference purposes only and shall not affect the meaning or interpretation hereof.

K. Access Easement. In addition to the easement and other rights and privileges granted by Grantor to Grantee and its successors and assigns pursuant to Article V of this Agreement, Grantor hereby grants and conveys to Grantee and its successors and assigns a perpetual, non-exclusive easement in, over and upon the area designated in Exhibit C for the purpose of entering upon and using all or any portion of the Property to the limited extent necessary to perform and enjoy the obligations imposed upon, and the benefits granted to, Grantee and its successors and assigns with respect to the Property as provided in Article V of this Agreement (the "Access Easement"). Grantee agrees that in the event Grantee enters upon and/or uses all or any portion of the Adjacent Property pursuant to the Access Easement, it shall do so in a manner that minimizes, to the extent reasonably possible, the interference with Grantor's use and enjoyment of the Adjacent Property, and after any such entry and/or use, it shall restore any portion of the Adjacent Property disturbed by Grantee to its condition prior to such entry and/or use or as near thereto as is reasonably practicable, or to such other condition as may be agreed upon by Grantor and Grantee.

L. Eminent Domain. If the whole or any part of, or any interest in, the Property be acquired or condemned by eminent domain or like power for any public or quasi-public use or purpose, then this Conservation Easement shall be subject to the applicable statutory and common law authorities regarding the condemnation, but only as to the part of the Property or interest in the Property so taken. All damages awarded for the acquisition or condemnation of the Property, or any part or interest therein, shall become the sole and absolute property of the owner of the interest in land acquired or condemned by eminent domain at the time of consideration.

TO HAVE AND TO HOLD unto _____, its successors and assigns forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's personal representatives, heirs, executors, successors and assigns, and shall continue as a servitude in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantor and Grantee hereto have set their hand and seals and caused these presents to be executed in their respective names by authority duly given, and, to the extent required, their corporate seal affixed, the day and year above first written.

GRANTOR:

(CORPORATE SEAL)

By: _____

GRANTEE:

(CORPORATE SEAL)

By: _____

ATTEST:

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he is Secretary of _____, and that by authority duly given and as an act of _____, the foregoing instrument was signed by _____, its President, attested by himself as Secretary, and sealed with the common seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and notaries seal this _____ day of _____, 200__.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA, COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he is Secretary of _____, and that by authority duly given and as an act of _____, the foregoing instrument was signed by _____, its President, attested by himself as Secretary, and sealed with the common seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and notaries seal this _____ day of _____, 200__.

Notary Public

My commission expires: _____

Appendix 8:

Financial Assurances

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond #53SB103291475

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
EBX-Neuse I, LLC
10055 Red Run Blvd, Suite 130
Owings Mills, MD 21117

SURETY (Name and Principal Place of Business):
Travelers Casualty & Surety Company of America
Hartford, Connecticut 06183-9062

OWNER (Name and Address):
North Carolina Department of Transportation
Room 462 Transportation Building
P O Box 25201
Raleigh, NC 27611

CONSTRUCTION CONTRACT

Date:

Amount: \$6,742,296.00

Description (Name and Location): Neu-Con Mitigation Project - Performance Agreement
with North Carolina Department of Transportation

BOND

Date (Not earlier than Construction Contract Date): October 5, 2000

Amount: \$6,742,296.00

Modifications to this Bond:

[X] None

[] See Page 3

CONTRACTOR AS PRINCIPAL

Company: EBX-Neuse I, LLC (Corporate Seal)

SURETY
Company: Travelers Casualty & Surety Company of America (Corporate Seal)

Signature: [Handwritten Signature]
Name and Title: [Handwritten Title]

Signature: [Handwritten Signature]
Name and Title: Alex G. Roddey, Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:
BB&T Givens & Williams Insurance Services
3975 Fair Ridge Drive, #110
Fairfax, VA 22033
Phone: 703-352-2222

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract; and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
Hartford, Connecticut 06183-9062
TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS
Naperville, Illinois 60563-8458

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, a corporation duly organized under the laws of the State of Illinois, and having its principal office in the City of Naperville, County of DuPage, State of Illinois, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Patrick A. Givens, Sidney H. Williams, III, Ernest DeConti, Jr., Phillip A. Colclough, Jr., Alex G. Roddey or Dorothy J. Outlaw * *

of Fairfax, VA, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated the following instrument(s):

by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto

and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

NOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOIED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and attested by such facsimile signature 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, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS have caused this instrument to be signed by their Senior Vice President, and their corporate seals to be hereto affixed this 21st day of September, 1999.

STATE OF CONNECTICUT

JSS. Hartford

COUNTY OF HARTFORD

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS



George W. Thompson

By _____

George W. Thompson
Senior Vice President

On this 21st day of September, 1999 before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.



Marie C Tetreault

My commission expires June 30, 2001 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Assistant Secretary of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, stock corporations of the State of Connecticut, and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, stock corporation of the State of Illinois, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 5th day of October, 2000.



Brian Hoffman

By _____

Brian Hoffman
Assistant Secretary, Bond

General Agreement Of Indemnity

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
Hartford, Connecticut 06183

This General Agreement of Indemnity ("Agreement") is entered into by the undersigned ("Indemnitor") and Travelers Casualty and Surety Company of America ("Company"), witnesseth:

WHEREAS, in the transaction of business, certain Bonds have heretofore been and may hereafter be required by, for, or on behalf of the Indemnitor or any one or more of the parties included in the designation Indemnitor. Application has been made and will hereafter be made to the Company to execute such Bonds. As a prerequisite to the execution of such Bonds, the Company requires complete indemnification.

NOW, THEREFORE, as an inducement to the Company and in consideration of the execution and delivery by the Company of one or more Bonds, and for other good and valuable consideration, the Indemnitors do, for themselves, their heirs, executors, administrators and assigns, jointly and severally agree with the Company as follows:

1. **Definitions:** "Bond" Any and all contractual obligations which have been or will be undertaken by the Company on behalf of or at the request of Indemnitor, including renewals and extensions. "Company" Travelers Casualty and Surety Company of America, its affiliated companies, successors, assigns, parents and subsidiaries whether now existing or formed hereafter. "Indemnitor" Any one, or combination of any or all of the entities or individuals set forth below. "Corporate Indemnitors" are defined as the entity named below and their successors, assigns, subsidiaries, parents, affiliates, partnerships, joint ventures, or as co-venturer with others, whether now existing or formed hereafter. "Contract" An agreement of the Indemnitor for which the Company executes a Bond, procures a Bond, or has guaranteed performance. "Default" Any of the following shall constitute a Default: (a) a declaration of Contract default by the obligee or entity for whom a Contract is performed; (b) actual breach or abandonment of any Contract; (c) a breach of any provision of this Agreement; (d) failure to make payment of a properly due and owing bill in connection with any Contract; (e) the establishment by the Company in good faith of a reserve; (f) improper diversion of Contract funds or Indemnitor assets to the detriment of Contract obligations; (g) any Indemnitor becomes the subject of any proceeding or agreement of bankruptcy, receivership, insolvency, creditor assignment or actually becomes insolvent; (h) Indemnitor dies, becomes legally incompetent, is imprisoned, is convicted of a felony, or disappears and cannot be located; (i) any representation furnished to the Company by or on behalf of the Indemnitor proves to have been materially false or misleading when made.
2. **Payment of Premium:** The Indemnitor shall pay to the Company all premiums for every Bond executed and all renewals and extensions thereof, until the Company is discharged and fully released in writing from each such Bond.
3. **Indemnification and Hold Harmless:** The Indemnitor shall exonerate, indemnify and save the Company harmless from and against every claim, loss, damage, demand, liability, cost, charge, suit, judgment, attorney's fee, and expense which the Company incurs in consequence of having executed, or procured the execution of such Bonds. Expense includes the cost of procuring or attempting to procure release from liability, or in bringing suit to enforce this Agreement against any Indemnitor.
4. **Claim Settlement:** The Company shall have the right, in its sole discretion, to determine for itself and the Indemnitor whether any claim or suit brought against the Company or the Indemnitor upon any such Bond shall be paid, compromised, settled, defended or appealed, and its decision shall be binding and conclusive upon the Indemnitor. An itemized statement thereof sworn to by an employee of the Company or a copy of the voucher of payment shall be prima facie evidence of the propriety and existence of Indemnitor's liability. The Company shall be entitled to reimbursement for any and all payments made by it under the belief it was necessary or expedient to make such payments.
5. **Collateral Security:** Indemnitor agrees to pay the Company, upon demand, an amount sufficient to discharge any claim or demand made against the Company on any Bond. Indemnitor further agrees to pay the Company, upon demand, an amount equal to the value of improperly diverted Indemnitor assets or Contract Funds. These sums may be used by the Company to pay such claim or be held by the Company as collateral security against any loss, claim, liability or unpaid premium on any Bond. The Company shall have no duty to invest, or provide interest on the deposit.
6. **Remedies:** In the event of a Default, Indemnitor assigns, conveys, and transfers to the Company all of the rights and interest growing in any manner out of the Contracts and assigns all right, title, and interest of all of Indemnitor's plant, tools, vehicles, machinery, equipment and materials, to be effective as of the date of such Contracts. In addition, in the event of a Default, the Company shall have a right at its sole discretion to:
 - (a) Take possession of the work under any Contract and to complete said Contract, or cause, or consent, to the completion thereof;
 - (b) Take possession of the Indemnitor's equipment, tools, machinery, vehicles, materials, office equipment, books, records, documents, and supplies at the site of the work or elsewhere and utilize them for the completion of the work under the Contracts without payment for such use;
 - (c) Assert or prosecute any right or claim in the name of the Indemnitor and to settle any such right or claim as the Company sees fit;

- (d) Execute in the name of the Indemnitor any instruments deemed necessary or desirable by the Company to: (a) provide the Company with title to assets, (b) take immediate possession of Contract funds whether earned or unearned, (c) collect such sums as may be due Indemnitor and to endorse in the name of the Indemnitor, and (d) collect on any negotiable instruments;
 - (e) Take possession of the Indemnitor's rights, title and interest in and to all Contracts, subcontracts let and insurance policies in connection therewith;
 - (f) Be subrogated to all the rights, remedies, properties, funds, securities and receivables of the Indemnitor on said Contract or any other contract of Indemnitor and have the right to offset losses on any Contract or Bond against proceeds, funds, or property due from another contract or Bond.
7. **Joint and Several Liability:** The obligations of each Indemnitor hereunder are joint and several. The Company is authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement shall not bar or prejudice actions against or affect the liability of the others.
 8. **Decline Execution:** The Company has the right to refuse to provide any Bond, including final Bonds where the Company provided a bid bond, without incurring any liability whatsoever to Indemnitor.
 9. **Trust Fund:** All payments due, received for or on account of any Contract shall be held in trust as trust funds by Indemnitor for the benefit and payment of all obligations for which the Company as beneficiary may be liable under any Bond issued by the Company. Company may open a trust account or accounts with a bank for the deposit of the trust funds. Upon demand, Indemnitor shall deposit therein all trust funds received. Withdrawals from such trust accounts shall require the express consent of the Company.
 10. **Books, Records and Credit:** Indemnitor shall furnish, and the Company shall have the right to free access at reasonable times to all the books, records, documents, and accounts of Indemnitor for the purpose of examining and copying them. Indemnitor expressly authorizes Company access to its credit records for underwriting purposes as well as, upon the establishment of a reserve, debt collection.
 11. **Attorney in Fact:** Indemnitor constitutes, appoints and designates the Company as their attorney in fact with the right, but not the obligation, to exercise all rights of the Indemnitor assigned or granted to the Company and to execute and deliver any other assignments or documents deemed necessary by the Company to exercise its rights under this Agreement in the name of the Indemnitor.
 12. **Security Interest:** As security, the Indemnitor hereby grants to Company a security interest in all of its equipment, machinery, vehicles, tools, and material, as well as sums due or to become due in connection with any contract. This Agreement shall constitute a Security Agreement and a Financing Statement for the benefit of the Company in accordance with the Uniform Commercial Code and all similar statutes and may be filed by the Company without notice to perfect the security interest granted herein. The Company may add schedules or other documents to this Agreement as necessary. The security interests are effective as of the date of each Contract for that Contract.
 13. **Termination:** This is a continuing Agreement which remains in full force and effect until terminated. The sole method available to an Indemnitor to terminate its participation in this Agreement is by giving written notice to the Company of the Indemnitor's intent to terminate. The "Termination Date" shall be 30 days after the Company receives such notice. The obligation and liability of the particular Indemnitor giving such notice shall be limited to Bonds furnished before the Termination Date.
 14. **Other Sureties:** If the Company procures the execution of Bonds by other sureties, executes Bonds with cosureties or obtains reinsurance, the provisions of this Agreement inure to the benefit of such other surety, cosurety or reinsurer.
 15. **Nature of Rights:** If any provision or portion of this Agreement shall be unenforceable, this Agreement shall not be void, but shall be construed and enforced with the same effect as though such provision or portion were omitted. Assent or refusal to assent to changes in any Contract or Bond by the Company shall not affect the obligations of the Indemnitor to the Company. The Company's rights under this Agreement are in addition to all other rights of the Company however derived. The rights and remedies afforded to the Company by the terms of this Agreement can only be modified by a rider in writing to this Agreement signed by an authorized representative of the Company. If any Indemnitor fails to execute or improperly executes this Agreement, such failure shall not affect the obligations of any Indemnitor. The failure to sign or the improper execution of a Bond shall not affect the Company's rights under this Agreement.
 16. Addendum 1 attached regarding Limited Individual Indemnity Rider.

WE HAVE READ THIS INDEMNITY AGREEMENT CAREFULLY. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OUR OBLIGATIONS AS ABOVE SET FORTH.

IN TESTIMONY HEREOF, the Indemnitors have hereunto set their hands and fixed their seals this _____ day of _____.

IMPORTANT:

1. PRINT OR TYPE NAMES UNDER EACH SIGNATURE.
2. EACH INDEMNITOR'S SIGNATURE MUST BE ACKNOWLEDGED BY A NOTARY WHO IS NOT AN EMPLOYEE OR FAMILY MEMBER OF AN INDEMNITOR.
3. EACH PERSONAL INDEMNITOR MUST PROVIDE A RESIDENTIAL ADDRESS AND SOCIAL SECURITY NUMBER AND EACH CORPORATION INDEMNITOR MUST PROVIDE AN ADDRESS AND TELEPHONE NUMBER.
4. CORPORATIONS MUST BE ATTESTED TO BY A DULY AUTHORIZED CORPORATE OFFICER.

CORPORATE or PARTNERSHIP INDEMNITORS

Attest R. Dixon
 Print Name R. Dixon H. HARVEY JR
 And Title CEO

By George W. Kelly (Seal)
 Print Company Name BBX-NEUSE, I LLC
 Officer/Partner's Name George W. Kelly
 Title Member
 Phone # and Address 10055 Red Run Blvd., Suite 130, Owings Mills, MD 21117-4860

Attest R. Dixon Harvey
 Print Name R. Dixon H. HARVEY JR
 And Title CEO

By George W. Kelly (Seal)
 Print Company Name Environmental Bank & Exchange, LLC
 Officer/Partner's Name George W. Kelly
 Title Member
 Phone # and Address 10055 Red Run Blvd., Suite 130, Owings Mills, MD 21117-4860

Attest Ely J. Perry III
 Print Name Ely J. Perry III
 And Title

By Ely J. Perry III (Seal)
 Print Company Name Perry Wetlands, LLC
 Officer/Partner's Name Ely J. Perry, III
 Title Member Manager
 Phone # and Address 518 Plaza Boulevard, Kinston, NC 28503

Attest Ely J. Perry III
 Print Name Ely J. Perry III
 And Title

By Ely J. Perry III (Seal)
 Print Company Name Perry's, Inc.
 Officer/Partner's Name Ely J. Perry, III
 Title Member President
 Phone # and Address 518 Plaza Boulevard, Kinston, NC 28503

Attest _____
 Print Name _____
 And Title _____

By _____ (Seal)
 Print Company Name _____
 Officer/Partner's Name _____
 Title _____
 Phone # and Address _____

INDIVIDUAL INDEMNITORS (Including Sole Proprietorships)

Attest _____
 Print Name _____

By _____
 Print Name _____
 SS # _____
 Address _____

Attest _____
 Print Name _____

By _____
 Print Name _____
 SS # _____
 Address _____

Attest _____
 Print Name _____

By _____
 Print Name _____

SS #
Address

Attest
Print
Name

By
Print Name

SS #
Address

Attest
Print
Name

By
Print Name

SS #
Address

Attest
Print
Name

By
Print Name

SS #
Address

ACKNOWLEDGMENTS

State of Maryland, County of Baltimore, On this 4th day of October
in the year 2000, before me personally appeared George W. Kelly personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

Signature

Seal

State of North Carolina, County of Lenoir, On this 12th day of October
in the year 2000, before me personally appeared Ely J. Perry III personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

My Commission Expires: 4-17-05

Signature

Seal

State of North Carolina, County of Lenoir, On this 12th day of October
in the year 2000, before me personally appeared Ely J. Perry, Sr. personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

My Commission Expires: 4-17-05

Signature

Seal

State of _____, County of _____, On this _____ day of _____
in the year _____, before me personally appeared _____ personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

Signature

Seal

State of _____, County of _____, On this _____ day of _____
in the year _____, before me personally appeared _____ personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

Signature

Seal

State of _____, County of _____, On this _____ day of _____
in the year _____, before me personally appeared _____ personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

Signature _____

Seal

State of _____, County of _____, On this _____ day of _____
in the year _____, before me personally appeared _____ personally known or
proven to me to be the person whose name is subscribed to the instrument herein and acknowledged to me all that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which
the person acted, executed the instrument.
Witness my hand and official seal

Signature _____

Seal

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, EBX-Neuse I, LLC, as Principal, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, licensed to do business in the State of Connecticut, as Surety, are held and firmly bound unto North Carolina Department of Transportation (Obligee), in the penal sum of Three Hundred Seventeen Thousand, Three Hundred Thirty Four & (\$ 317,334.00) Dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, the Principal and Surety do bind themselves, their heirs, executors, administrators, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the above bounden Principal has entered into a certain written Contract with the above named Obligee, effective the ___ day of ___, and terminating the ___ day of ___ for Neu-Con Mitigation Project - Monitoring Agreement with North Carolina Department of Transportation and more fully described in said Contract, a copy of which is attached, which Agreement is made a part hereof and incorporated herein by reference, except that nothing said therein shall alter, enlarge, expand or otherwise modify the term of the bond as set out below.

NOW, THEREFORE, if Principal, its executors, administrators, successors and assigns shall promptly and faithfully perform the Contract, according to the terms, stipulations or conditions thereof, then this obligation shall become null and void, otherwise to remain in full force and effect. This bond is executed by the Surety and accepted by the Obligee subject to the following express condition:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from April 1, 2000, until December 31, 2007, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

Sealed with our seals and dated this 5th day of October, 2000.

EBX-Neuse I, LLC (Principal) (Seal)

By: George W. Kelly, Managing member (Title)

(Witness)

Travelers Casualty and Surety Company of America Alex G. Roddey, (Attorney-in-Fact)

(Attest)

Agreed and acknowledged this ___ day of _____

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
Hartford, Connecticut 06183-9062
TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS
Naperville, Illinois 60563-8458

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, a corporation duly organized under the laws of the State of Illinois, and having its principal office in the City of Naperville, County of DuPage, State of Illinois, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Patrick A. Givens, Sidney H. Williams, III, Ernest DeConti, Jr., Philip A. Colclough, Jr., Alex G. Roddey or Dorothy J. Outlaw * *

of Fairfax, VA, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated the following instrument(s):

by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto

and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, which Resolution is now in full force and effect:

VOIED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and ratified by such facsimile signature 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, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS have caused this instrument to be signed by their Senior Vice President, and their corporate seals to be hereto affixed this 21st day of September, 1999.

STATE OF CONNECTICUT
)SS. Hartford
COUNTY OF HARTFORD

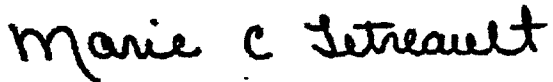
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
TRAVELERS CASUALTY AND SURETY COMPANY
FARMINGTON CASUALTY COMPANY
TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS



By 
George W. Thompson
Senior Vice President

On this 21st day of September, 1999 before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY, FARMINGTON CASUALTY COMPANY and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.



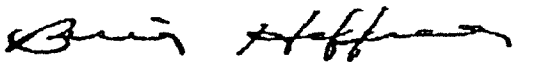

My commission expires June 30, 2001 Notary Public
Marie C. Tetreault

CERTIFICATE

I, the undersigned, Assistant Secretary of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, stock corporations of the State of Connecticut, and TRAVELERS CASUALTY AND SURETY COMPANY OF ILLINOIS, stock corporation of the State of Illinois, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this 5th day of October, 2000.



By 
Brian Hoffman
Assistant Secretary, Bond

Appendix 9:

Title

ORIGINAL

JENNIE M. ALEXANDER
(SAME AS JENNIE MURPHY PARKER)
and husband,
JIMMY ALEXANDER

TO

EBX Neuse I, LLC

D E E D

Filed for registration on the 9th
day of Jan 2001 at 12:40 o'clock
in Book No. 529 Page 267

Nancy Murphy
Register of Deeds, Greene County

ELY J. PERRY (1896-1968)
WARREN S. PERRY
DAN E. PERRY
BARBARA S. PERRY
JAMES S. PERRY

ELIZABETH PERRY WORTHINGTON

ATTORNEYS AT LAW
KINSTON, NC

12:40
1-9

120.00
10.00

Book 0529 Page 0267

GREENE COUNTY NC 01/09/2001 \$120.00



Real Estate Excise Tax

Filed for registration on the 9th day of Jan 2001 at 12:40 o'clock in Book No. 529 Page 267 Nancy Murphy Register of Deeds, Greene County

Excise Tax

Recording Time, Book and Page

Tax Lot No. Parcel Identifier No. Verified by County on the day of 19 by

Mail after recording to Dan E. Perry, P.O. Drawer 1475, Kinston, NC 28503-1475

This instrument was prepared by Dan E. Perry, Attorney

Brief description for the Index 27.70 Acres, Olds Township

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 9th day of January, 2001, by and between

GRANTOR

GRANTEE

JENNIE M. ALEXANDER (being the same as Jennie Murphy Parker) and husband, S. RUDOLPH ALEXANDER

EBX Neuse I, LLC

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

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Olds Township, Greene County, North Carolina and more particularly described as follows:

BEING all that parcel of land consisting of 27.70 acres, more or less, as depicted on a Survey entitled "SURVEY FOR E.B.X. NEUSE I, L.I.C. OF THE ALEXANDER TRACT" prepared by The East Group, Anthony J. Hamm, Professional Land Surveyor L-3754, dated January 3, 2001, which survey is recorded in Plat Cabinet 26, Page 81, Greene County Registry, and is incorporated herein for a more perfect description by metes and bounds. It being the same property described in Will of Herbert E. Murphy in Estate File Number 72 E 20 in the Greene County Clerk's Office.

IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE GRANTEE HEREIN THAT NO TOBACCO ALLOTMENT WILL BE INCLUDED IN THIS CONVEYANCE.

Book 0529 Page 0268

The property hereinabove described was acquired by Grantor by instrument recorded in Will in File No. 72 E. 20, Greene County Clerk's Office.

A map showing the above described property is recorded in Plat Book page.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor 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:

All valid and enforceable easements, rights-of-way, and restrictions of record, if any, and all 2000 ad valorem taxes.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

(Corporate Name)

By: President

ATTEST: Secretary (Corporate Seal)

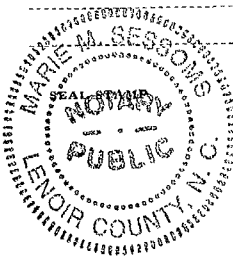
USE BLACK INK ONLY

Jennie M. Alexander (SEAL)

S. Rudolph Alexander (SEAL)

(SEAL)

(SEAL)



NORTH CAROLINA, Lenoir County.

I, a Notary Public of the County and State aforesaid, certify that Jennie M. Alexander and S. Rudolph Alexander Grantor,

personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 9th day of January, 2001.

My commission expires: 5/20/2002 Marie M. Sessoms Notary Public

SEAL-STAMP

NORTH CAROLINA, County.

I, a Notary Public of the County and State aforesaid, certify that personally came before me this day and acknowledged that he is Secretary of a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by as its Secretary. Witness my hand and official stamp or seal, this day of 19

My commission expires: Notary Public

The foregoing Certificate(s) of Marie M. Sessoms, Notary Public of Lenoir County, N.C.

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REGISTER OF DEEDS FOR GREENE COUNTY Deputy/Assistant - Register of Deeds



Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company
P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

OWNER'S POLICY

To The Insured:

ENCLOSED IS YOUR OWNER'S POLICY OF TITLE INSURANCE; OR, AN ENDORSEMENT TO THE POLICY PREVIOUSLY ISSUED TO YOU.

The policy and all endorsements provide valuable title protection on the property which is described in Schedule A. **YOU SHOULD KEEP THE POLICY AND ALL ENDORSEMENTS IN A SAFE PLACE.**

Investors Title Insurance Company is a publicly held North Carolina corporation, and we are dedicated to providing title protection for those who acquire real estate or loan money on real estate.

THANK YOU FOR GIVING INVESTORS TITLE THE OPPORTUNITY TO PROVIDE THIS COVERAGE.

Sincerely,

W. Morris Fine
President



Investors Title Insurance Company

POLICY OF TITLE INSURANCE COINSURANCE CONTRACT

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, INVESTORS TITLE INSURANCE COMPANY, a North Carolina corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, Investors Title Insurance Company has caused this Policy to be signed and sealed, to be valid when Schedule A is countersigned by an authorized officer or agent of the Company.

David A. Beuytor

Secretary



W. Thomas Jone

President

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue

any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

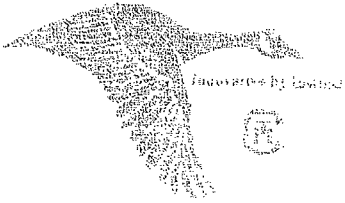
(i) To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

(ii) Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.



INVESTORS TITLE INSURANCE COMPANY

A Stock Company
P.O. Drawer 2687

Chapel Hill, North Carolina 27515-2687

OWNER'S POLICY OF TITLE INSURANCE

SCHEDULE A

Policy Number 200101960GV Policy Date 01/09/2001 Time 12:40.00 PM

Amount of Insurance

1. Name of Insured EBX NEUSE I, LLC

2. The estate or interest in the land which is covered by this policy is:
FEE SIMPLE

3. Title to the estate or interest in the land is vested in the Insured.

4. The land herein described is encumbered by the following mortgage and assignments, if any:
N/A

and the mortgages, if any, shown in Schedule B hereof.

5. The land referred to in this Policy is in the
State of NC County of GREENE
and described as follows:

BEING ALL THAT PARCEL OF LAND CONSISTING OF 27.70 ACRES, MORE OR LESS, AS DEPICTED ON A SURVEY ENTITLED "SURVEY FOR E.B.X. NEUSE I, L.L.C. OF THE ALEXANDER TRACT" PREPARED BY THE EAST GROUP, ANTHONY J. HAMM, PROFESSIONAL LAND SURVEYOR L-3754, DATED JANUARY 3, 2001, WHICH SURVEY IS RECORDED IN PLAT CABINET 26, PAGE 81, GREENE COUNTY REGISTRY, AND IS INCORPORATED HEREIN FOR A MORE PERFECT DESCRIPTION BY METES AND BOUNDS. IT BEING THE SAME PROPERTY DESCRIBED IN WILL OF HERBERT E. MURPHY IN ESTATE FILE NUMBER 72 E 20 IN THE GREENE COUNTY CLERK'S OFFICE.

IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE GRANTEE HEREIN THAT NO TOBACCO ALLOTMENT WILL BE INCLUDED IN THIS CONVEYANCE.

SCHEDULE B

Issued through the Office of:
Investors Title Insurance Company
313 West Second St.
P.O. Drawer 7205
Greenville, NC 27835-7205
Tel. (800)949-4842 (252)758-5745
Fax (800)659-3023 (252)758-6919

Karen M. Forbes
Authorized Countersignature

INVESTORS TITLE INSURANCE COMPANY*A Stock Company*

P.O. Drawer 2687

Chapel Hill, North Carolina 27515-2687

Policy No. 200101960GV

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

I. The lien of the security instrument reflected in Item 4, Schedule A, if any be shown.

II. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.

III.

1. *Taxes for the year 2001, and subsequent years, not yet due and payable.*
2. *Subject to matters shown on Plat Cabinet 26 , Slide 81.*
3. *Encroachments, overlaps, boundary line disputes, variations or shortages in area or content, roads, streams, ways or easements or claims of easements, riparian rights and title to filled in land, and any other matters which would be disclosed by an accurate survey of the premises.*
4. *Subject to crop allotments withheld by grantor.*

CONDITIONS AND STIPULATIONS (Continued)

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,
(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPOINTMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in setting any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of

the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Company's Rights Against Non-Insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.


All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Investors Title Insurance Company, P.O. Drawer 2687, Chapel Hill, North Carolina 27515-2687.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

Owner's Policy of Title Insurance

 **Investors Title
Insurance Company**
A Stock Company

P. O. Drawer 2687
Chapel Hill
North Carolina 27515-2687
(919) 968-2200

EXCLUSIONS FROM COVERAGE (cont'd)

3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.