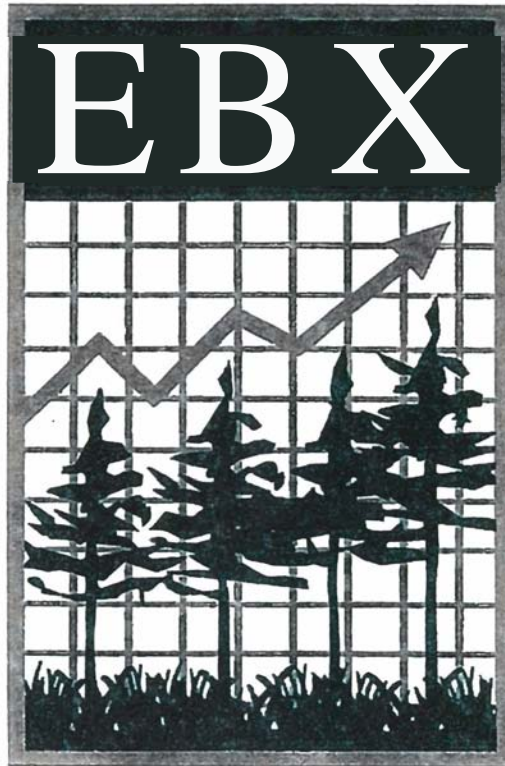


Neu-Con Umbrella Wetland and Stream Mitigation Bank  
Casey/King  
Site Specific Mitigation Plan



**Environmental Banc & Exchange, LLC**  
Managers, Bankers and Traders of Environmental Rights

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"Finding Environmental Solutions through Economic Incentives"

# Casey/King Wetland Mitigation Project

## Site Specific Mitigation Plan



Submitted by:



**Environmental Banc and Exchange, LLC**  
**10055 Red Run Boulevard, Suite 130**  
**Owings Mills, MD 21117**

Restoration Design Prepared by:



1152 Executive Circle  
Suite 100  
Cary, NC 27511

## Executive Summary

The Casey/King wetland mitigation site is located in Lenoir County, North Carolina approximately four (4) miles east of the City of Kinston. There are approximately 10,900 feet of ditches on the site that are currently used to promote drainage for improved agricultural production. The remnants of the altered Heath Branch form the main drainage channel (1,840 feet) and run through the center of the site, with several lateral ditches draining to the main. The entire site is approximately 81 acres in size and contains approximately 42 acres of drained hydric soils.

Land-use for the Casey-King site over the past 50 to 60 years has been row crop agriculture, and all of the acreage targeted for restoration has been designated Prior Converted Wetland ("PC") by the Natural Resource Conservation Service ("NRCS").

Monitoring data collected from May 2000 through February 2001 indicate that the site currently exhibits hydrologic conditions that are drier than natural wetland conditions. The ditches present on the site transport surface and subsurface drainage away from the site and keep soil conditions favorable for agricultural production. Examination of the available hydrology and soil data indicates that the site has excellent potential for the restoration of hydrologic conditions suitable for a productive wetland ecosystem.

Exclusive of the PC fields, the riparian areas found around the perimeter of the site contain desirable native vegetation, including sweet gum (*Liquidambar styraciflua*), red maple (*Acer rubrum*), loblolly pine (*Pinus taeda*), cherrybark oak (*Quercus pagoda*), swamp chestnut oak (*Quercus michauxii*) and sycamore (*Platanus occidentalis*). The small tree/shrub layer is dominated by wax myrtle (*Myrica cerifera*), sweetbay magnolia (*Magnolia virginiana*), giant cane (*Arundinaria gigantea*), flowering dogwood (*Cornus florida*), American holly (*Ilex opaca*), tag alder (*Alnus serrulata*), leucothoe (*Leucothoe axillaris*), and laurel (*Kalmia latifolia*). Due to the close proximity of appropriate seed sources there is excellent potential for restoration of a diverse native vegetated community.

The mitigation design for the Casey/King property will target two integrated wetland communities described by Schafale and Weakley, 1990 as "non-riverine wet hardwood forest" and "coastal plain small stream swamp". The majority of the site (25.5 acres) will target the non-riverine wet hardwood forest community, and a small portion of the site (2.5 acres) will target the coastal plain small stream swamp community.

Non-riverine wet hardwood forest communities are dominated by bottomland hardwood species that are found on flats not typically flooded by rivers or tides. These communities may grade to small stream swamps at the heads of drainages. Coastal plain small stream swamp communities exist as the floodplains of small blackwater streams in which separate fluvial features and associated vegetation are too small or poorly developed to distinguish. (Shafale and Weakley, 1990, page 203)

Restoration will involve the blocking and filling of drainage ditches to raise the local water table and restore site hydrology. Surface water flow will be routed from the southern end of the site through a series of saturated swamp flats connected by more narrow areas of shallow flow following multi-thread channels. At the northwestern corner of the site, several natural grade-control structures will be used to establish a step-pool system to connect the restored wetland area with the original channel of Heath Branch. The restored wetland system will be comprised of approximately 25.5 acres of non-riverine wet hardwood forest surrounding approximately 2.5 acres of coastal plain small steam swamp.



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# 1 Introduction

## 1.1 Project Description

The Casey/King wetland mitigation site is located in Lenoir County, approximately four miles east of the City of Kinston, NC (see Figure 1.1). The site has a past history of agricultural use, consisting primarily of row crops. All acreage targeted for restoration is currently designated as PC by the NRCS.

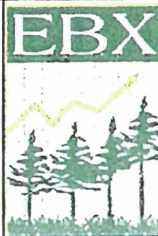
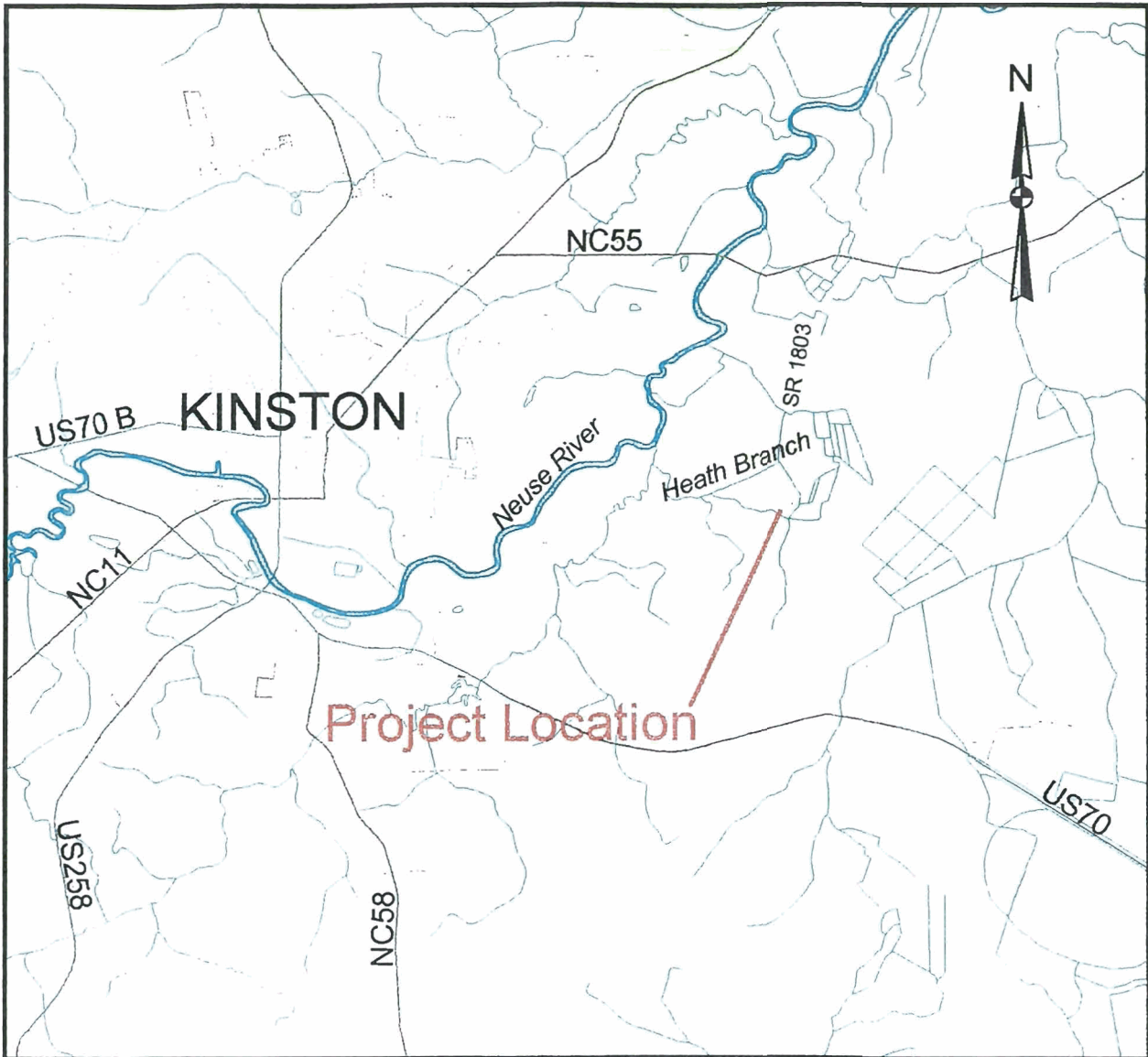
Approximately 10,900 feet of ditches exist on the site and are used to promote drainage for enhanced agricultural production. The remnants of the altered Heath Branch form the main drainage channel (1,840 feet) that runs through the center of the site, with several lateral ditches draining to the main (see Figure 2.1). The entire site is approximately 81 acres in size, with approximately 42 acres of drained hydric soils (AG&E Schnabel, 2000).

Environmental Banc and Exchange, LLC (EBX) proposes to restore the wetland functionality of the PC fields on a portion of the project site for the purpose of fulfilling wetland mitigation requirements of the North Carolina Department of Transportation.

## 1.2 Study Area

The Casey/King mitigation site is located in the Coastal Plain Physiographic Region near the City of Kinston, NC. This area is part of the Peedee Formation, formed during the Cretaceous Period. Topography relief of the area is largely the result of dissection by the Neuse River and its tributary streams (SCS, 1977).

Local relief within the project site is approximately 11 feet, with the highest location being the southeastern corner of the site, and the lowest location being the outlet of the remnants of Heath Branch at British Road (SR 1803) in the northwest corner of the site. The properties surrounding the project site are characterized primarily by agriculture and pine plantations.



Environmental Banc and Exchange  
 10055 Red Run Boulevard, Suite 130  
 Owings Mills, MD 21117

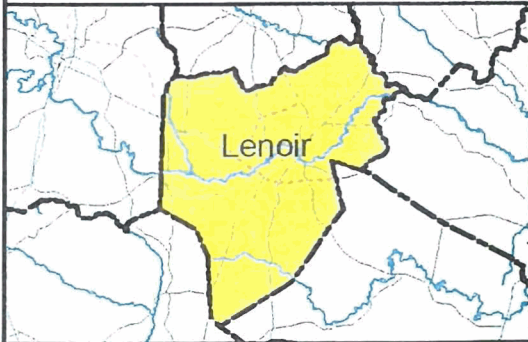
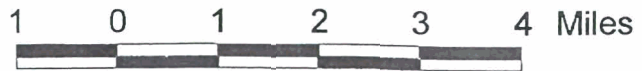


Figure 1.1  
 Location of Casey / King  
 Wetland Mitigation Site





## 2 Existing Conditions

### 2.1 Geology and Soils

The project site is located in the Coastal Plain of North Carolina. The soils series present on the site include Lenoir, Megget, Woodington and Grifton, all of which are listed as hydric soils by the NRCS (1995). The site also has pockets of Johns soils, which only has hydric inclusions. (SCS, 1977). Site relief is approximately 11 feet, with the highest location being the southeastern corner of the site, and the lowest location being the outlet of the remnants of Heath Branch at British Road in the northwest corner of the site (SR 1803).

On the higher terraces and upland areas of the site, the Lenoir and Grifton soil series are found. Both of these series consist of poorly to somewhat poorly drained soils typically found on uplands and stream terraces. Permeability is slow to moderate, and the NRCS anticipated un-drained seasonal high water table is within 10 inches of the soil surface.

In the lower areas and near the floodplain of Heath Branch, the Woodington, Megget, and Johns series are found. The Woodington series is found near the upstream end of the site and consists of poorly drained soils typically found on uplands and stream terraces. Permeability is moderately rapid and the NRCS anticipated un-drained seasonal high water table is within 12 inches of the soil surface.

The Megget series is found in the mid to lower areas of the site, adjacent to Heath Branch. The series consists of poorly drained soils on uplands and stream terraces. Permeability is slow and the seasonal high water table is at the surface.

The Johns series is found near the outlet of the remnants of Heath Branch at the lower end of the site. The series consists of moderately well drained and somewhat poorly drained soils on stream terraces. Permeability is moderate and the seasonal high water table is at a depth of approximately 18 inches. The acreage characterized by Johns soil is not being considered for restoration.

Bore hole tests were conducted during the spring of 2001 to verify soil information obtained from the Lenoir County soil survey. The test holes were dug primarily in low-lying areas where most of the restoration activities will occur. 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. Surface layers to a depth of 2 – 3 feet typically exhibited matrix values of 5 or less and chromas of 2 or less. Most profiles consisted of a sandy loam textured surface layer, changing to clay to sandy clay loam textures in the subsurface horizons. At a depth of approximately 5 feet, a layer of saturated sand to sandy clay loam textured sediments 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 the development of hydrologic model inputs, and to evaluate the potential for preferential flow. Conductivities across the site ranged from approximately 1 to 21 cm/hour, with a median of 7 cm/hour. The saturated sand layer found across the site at a depth of 4 – 5 feet appeared to be transporting the largest flux of water. The highest conductivity measurements occurred on the upstream side of the property (southwest corner) where preferential flow channels were found. However, no indication of preferential flow was found on the lower end of the site where the project work would end.

## **2.2 Hydrology**

### Climatic Conditions

Lenoir County, North Carolina has an average annual rainfall of 47.9 inches (SCS, 1977). 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, are typically less than 1 inch of water for most Coastal Plain areas and is not a significant loss pathway for excess water. Although groundwater flow can be significant in some systems, most excess water is lost via surface flow.

### Site Hydrology

The presence of hydric soils over much of the project site, as well as the altered flow of Heath Branch, is evidence that the site historically supported a wetland ecosystem. The naturally wet conditions were confirmed by NRCS when the acreage was designated “prior converted wetland” or “PC”.

As is the case in much of the Coastal Plain of North Carolina, local drainage patterns have been altered over the past two centuries to promote agricultural production. Historically, Heath Branch was the main channel through the project site and had a drainage area of approximately 1 square mile. Based on verbal conversations with area landowners, the course of the stream was altered approximately 60 years ago. A dike was constructed immediately upstream of the project site, and a new channel was dug for the stream to route water more quickly downstream (see Figure 2.1). Under current conditions, the project site is the headwaters of a new system that begins as a large ditch that drains the agricultural fields on-site. The stream now has a drainage area of approximately 90 acres at the outlet of the project site.





Three (3) water table monitoring wells were installed within the boundaries of the project site to monitor water table depth. To provide a base for comparing pre- and post-restoration hydrology, the wells were located in areas where hydrology would likely be

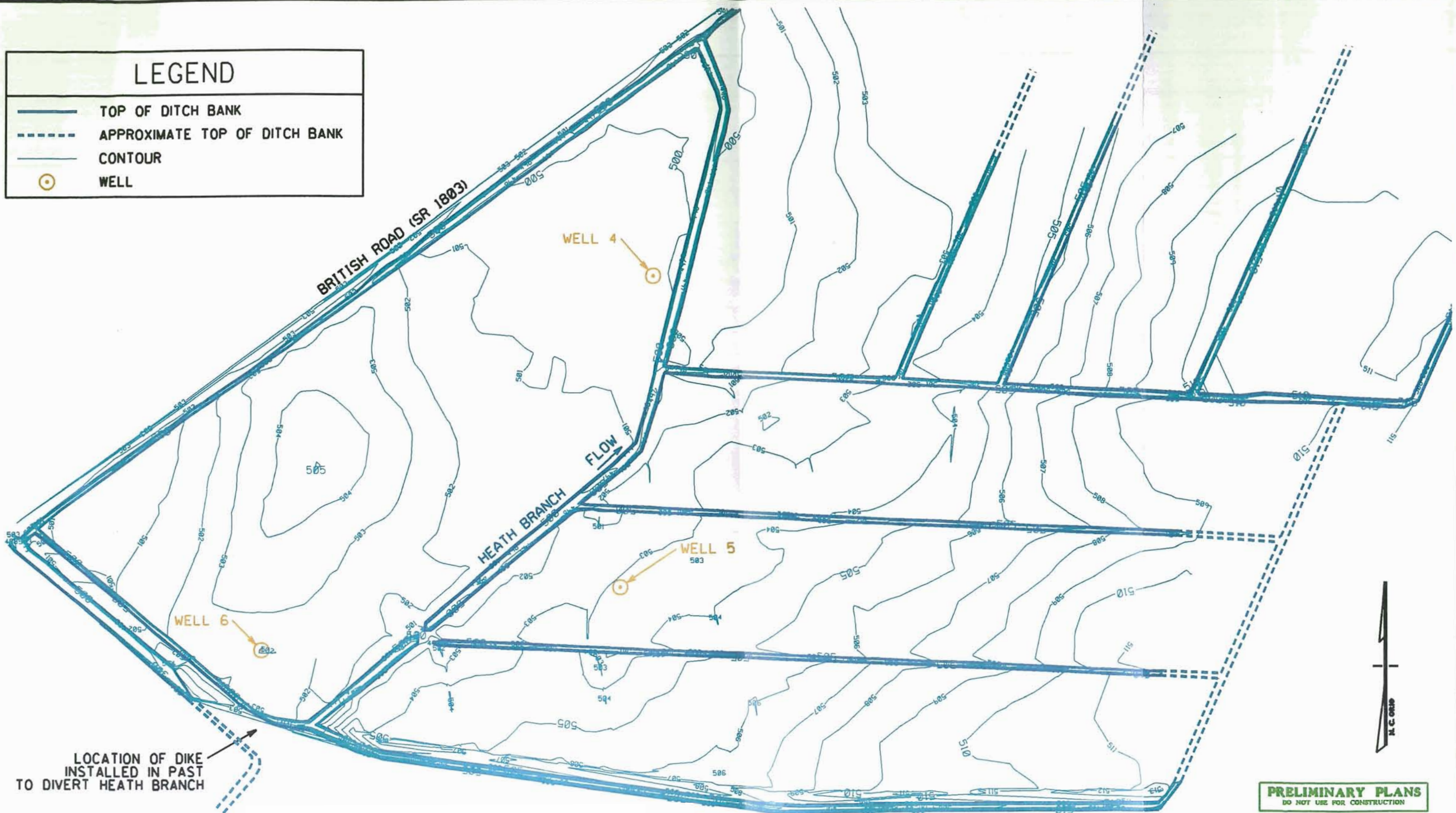
affected by the restoration efforts (locations shown in Figure 2.1). Water table data were collected from May 28, 2000 through February 2001, and the data from the project site was then analyzed to determine the current hydrologic condition of the site.

The growing season for Lenoir County is 238 days long, beginning on March 20 and ending November 12, as calculated from National Weather Service Wetlands Determination Tables (WETS) for Kinston 5SE, NC4684. To meet jurisdictional wetland criteria, the water table would need to remain within 12 inches of the soil surface for 12.5% of the growing season cumulatively (approximately 30 days), or 5% of the growing season continuously (approximately 12 days). For the period of monitoring data available, the longest consecutive number of days with the water table less than 12 inches deep during the growing season was 5 days (Well #6, 9/3/00 to 9/7/00 and 9/23/00 to 9/27/00). This would indicate that the hydrologic condition of the project site is currently drier than would be expected for a site meeting jurisdictional wetland hydrology criteria.



# LEGEND

-  TOP OF DITCH BANK
-  APPROXIMATE TOP OF DITCH BANK
-  CONTOUR
-  WELL



LOCATION OF DIKE  
INSTALLED IN PAST  
TO DIVERT HEATH BRANCH

CONTOUR INTERVAL = 1 FT  
SCALE 1" = 200 FT



**PRELIMINARY PLANS**  
DO NOT USE FOR CONSTRUCTION



EXISTING SITE TOPOGRAPHY AND FEATURES FOR THE CASEY/KING PROPERTY		DATE: 8/21/01
PREPARED FOR: ENVIRONMENTAL BANK & EXCHANGE, LLC	<b>BUCK</b> ENGINEERING	1152 EXECUTIVE CIRCLE SUITE 100 CARY, NC 27511
		FIGURE #: 2.1



Although rainfall over the monitoring period was less than the long-term average, it appears that even under average rainfall conditions, the site would not support wetland hydrology in its current condition. This is supported by the fact that although the month of September 2000 received 1.8 more inches of rain than average, the water table remained within 12 inches of the ground surface for only 3 – 5 consecutive days at the monitored locations. A thorough analysis of site hydrology is provided in Section 3.

### **2.3 Flooding Concerns**

There are few flooding concerns for the project site since most drainage originates within the site boundaries, and no off-site drainage patterns will be altered by the proposed restoration activities.

There is a drainage ditch that runs along the southern side of the site. It is likely that this ditch is providing some surface and subsurface drainage from the adjacent forested land owned by Weyerhaeuser. The project design ensures that drainage from the Weyerhaeuser property is not adversely impacted by restoration activities.

Several lateral ditches from the King property enter the project site on the northeast side. Thirteen acres of the King property have been purchased to avoid any hydrologic incursion issues that might be encountered during restoration activities. Surface and subsurface drainage functions of agricultural ditches on the King property will not be adversely impacted by project activities.

### **2.4 Biotic Resources**

Land-use for the Casey/King site over the past 50 to 60 years has been row crop agriculture. The remnants of Heath Branch and the lateral ditches contain cattail (*Typha latifolia*), sweet gum saplings (*Liquidambar styraciflua*), soft rush (*Juncus effusus*), and duck weed (*Lemna* spp. in deep pool areas). The ditches along the south and east property line are bordered by a woody riparian buffer consisting of sweet gum, red maple (*Acer rubrum*), loblolly pine (*Pinus taeda*), cherrybark oak (*Quercus pagoda*), swamp chestnut oak (*Quercus michauxii*) and sycamore (*Platanus occidentalis*). The small tree/shrub layer is dominated by wax myrtle (*Myrica cerifera*), sweetbay magnolia (*Magnolia virginiana*), giant cane (*Arundinaria gigantea*), flowering dogwood (*Cornus florida*), American holly (*Ilex opaca*), tag alder (*Alnus serrulata*), leucothoe (*Leucothoe axillaris*), and laurel (*Kalmia latifolia*). The vine stratum consists of green-briar (*Smilax* spp.) and honeysuckle (*Lonicera japonica*). These existing biotic resources will provide the seed source for a diverse native plant community on the restored site.

The NC Natural Heritage Program was contacted by Wetland and Natural Resource Consultants, Inc. in a letter dated October 9, 2000 to determine any possible issues that might emerge with respect to significant natural resources that would be adversely impacted from wetland and/or stream restoration practices on the project site. Four federally listed endangered species are known to exist near the site: bald eagle

(*Haliaeetus leucocephalus*); red cockaded woodpecker (*Picoides borealis*); American alligator (*Alligator mississippiensis*); and sensitive joint vetch (*Aeschynomene virginica*). It is anticipated that no adverse impact will occur from proposed restoration practices for the following reasons:

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 the project property.

American Alligator: No open water or suitable habitat will be impacted through restoration practices.

Sensitive Joint Vetch: No specimens were observed during site reviews by Wetland and Natural Resource Consultants, Inc. Agronomic applications of pesticides and defoliant have resulted in a community type that is tolerant to these chemicals.

In a reply letter dated November 13, 2000, the NC Natural Heritage Program issued a "No Effect" determination for the project site (see Appendix 2 for copies of the letter requesting a determination for the project site and the response from the NC Natural Heritage Program).

## **2.5 Cultural Resources**

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

### 3 Site Hydrology and Water Balance

#### 3.1 Site Hydrology

The presence of hydric soils over much 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. Historically, Heath Branch was the main channel through the project site and had a drainage area of approximately 1 sq. mi. Based on verbal conversations with area landowners, the course of the stream was altered approximately 60 years ago. A dike was constructed immediately upstream of the project site and a new channel was dug, which routed the water more quickly downstream. Under current conditions, the remnants of Heath Branch now begin on the project site as a large ditch that drains the agricultural fields on-site (Figure 2.1). The stream now has a drainage area of approximately 90 acres at the outlet of the project site.

During May 2000, three (3) water table monitoring wells were installed and maintained by Wetland and Natural Resource Consultants, Inc. to monitor water table depth on the project site. Water table data were collected from May 2000 through February 2001 and are shown in Figure 3.1. A brief period of missing data was experienced from October 1 through October 16. However, no significant rainfall occurred during this period, therefore no hydrograph peaks were missed.

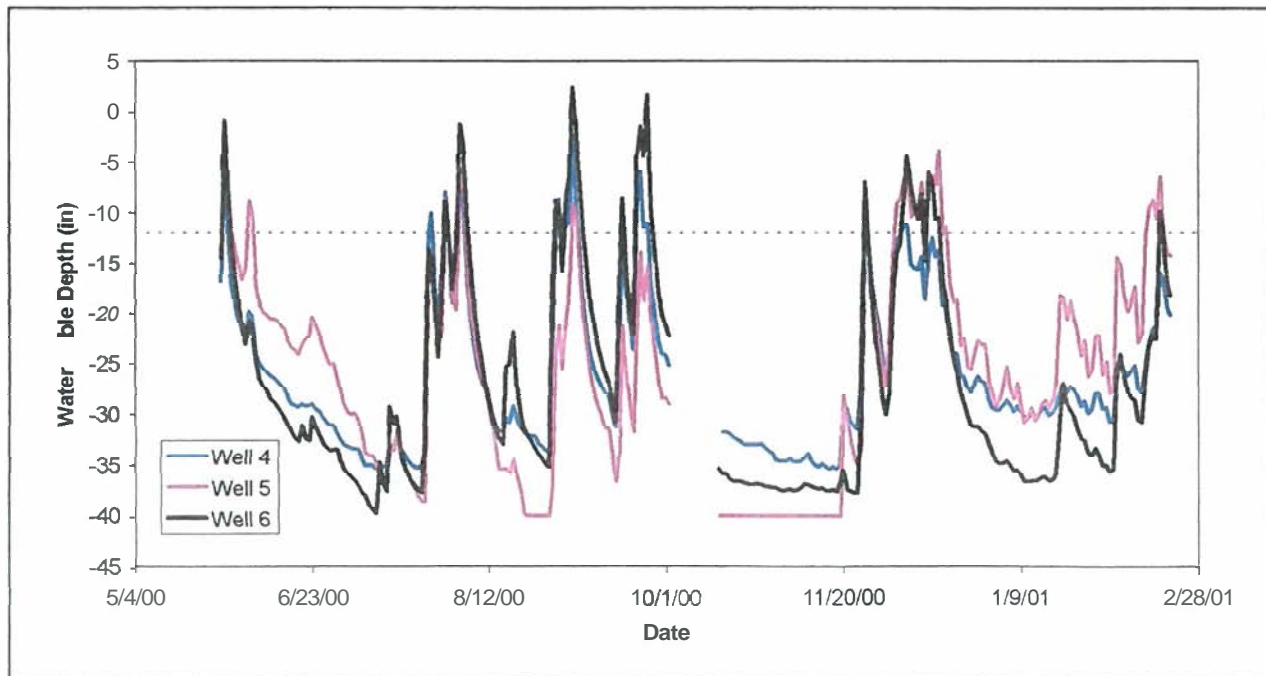


Figure 3.1 Water table data for three monitoring wells located on the project site.

Rainfall data were collected for the monitoring period to correlate climatic conditions with water table hydrology. Rainfall data were collected from the nearest automated weather station, located in Kinston, North Carolina, approximately five (5) miles southwest of the project site (Kinston 5 SE). Monthly precipitation amounts from January 2000 through February 2001 are compared with average monthly rainfall (NRCS, 1977) in Table 3.1. Drier than average conditions were experienced at the project site during the monitoring period.

Well data from the project site were analyzed to determine the current hydrologic state of the site. 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 times 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 3.2.

The growing season for Lenoir County is 238 days long, beginning on March 20 and ending November 12, as calculated from National Weather Service Wetlands Determination Tables (WETS) for Kinston 5SE, NC4684. To meet jurisdictional wetland criteria, the water table would need to remain within 12 inches of the soil surface for 12.5% of the growing season cumulatively (approximately 30 days) or 5% of the growing season continuously (approximately 12 days). For the period of monitoring data available, the longest consecutive number of days with the water table less than 12 inches deep during the growing season was 5 days (Well #6, 9/3/00 to 9/7/00 and 9/23/00 to 9/27/00). This would indicate that the hydrologic condition of the project site is currently drier than would be expected for a site meeting jurisdictional wetland hydrology criteria.

Although rainfall over the monitoring period was less than the long-term average, it appears that even under average rainfall conditions, the site would not support wetland hydrology in its current condition. This is supported by the fact that although the month of September 2000 received 1.8 more inches of rain than average, the water table remained within 12 inches of the ground surface for only 3 – 5 consecutive days at the monitored locations.

### **3.2 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 v.5.1 was used to develop three (3) hydrologic simulation models to represent conditions at the locations of the three (3) monitoring wells. DRAINMOD is identified as an approved hydrologic tool for assessing wetland hydrology by the US 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.



**Table 3.1 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
January 2000	4.97	3.00	1.97
February 2000	1.96	3.50	-1.54
March 2000	2.95	3.50	-0.55
April 2000	3.07	3.20	-0.13
May 2000	2.10	3.60	-1.50
June 2000	3.19	4.60	-1.41
July 2000	4.39	7.10	-2.71
August 2000	4.87	5.80	-0.93
September 2000	6.59	4.80	1.79
October 2000	0.80	2.60	-1.80
November 2000	2.17	3.00	-0.83
December 2000	1.26	3.20	-1.94
January 2001	0.88	3.00	-2.12
February 2001	2.63	3.50	-0.87

**Table 3.2 Hydrologic parameters calculated for the project site.**

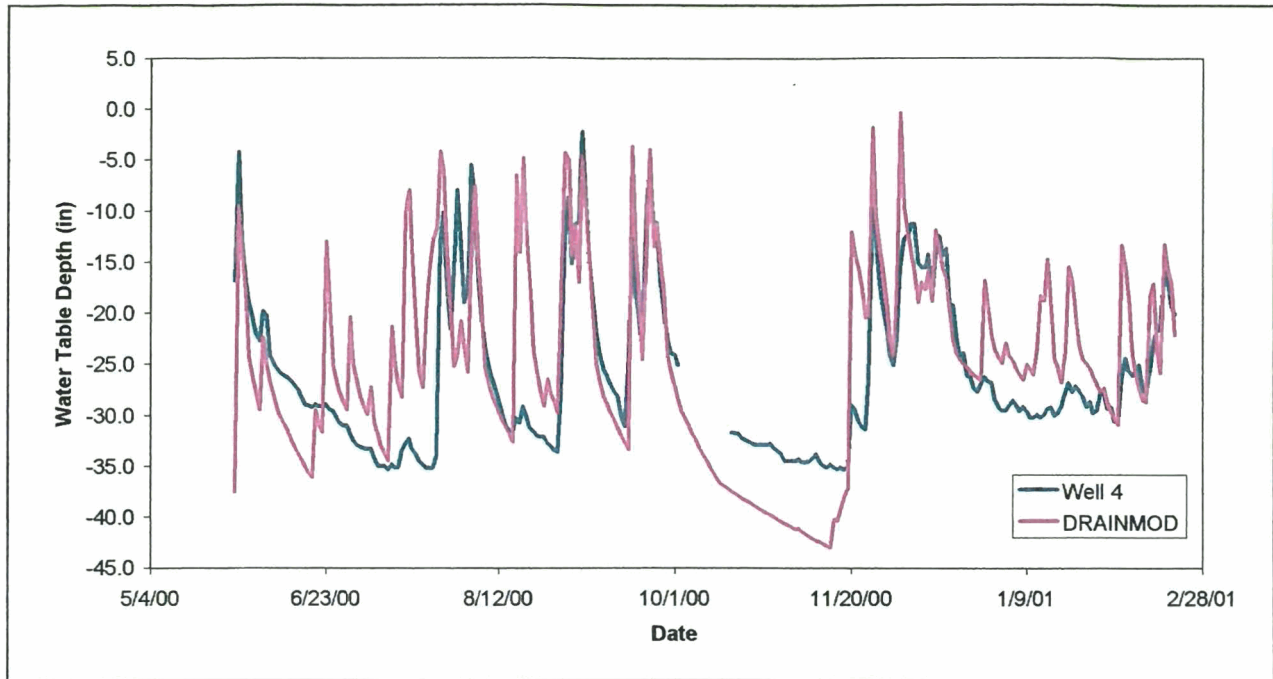
Well	Longest consecutive number of days with WT < 12 inches deep from 5/28/00 through 2/20/01 (period of record)	Longest consecutive number of days with WT < 12 inches deep from 5/28/00 through 11/8/00 (partial growing season)	Number of instances when WT < 12 inches deep from 5/28/00 through 11/8/00 (partial growing season)
Well #4	4	4	7
Well #5	8	3	5
Well #6	6	5	7

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, located in Kinston, North Carolina, approximately five (5) 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. Results of model simulations are compared with observed data in Figures 3.2 through 3.4. Model inputs are presented in Appendix 3.

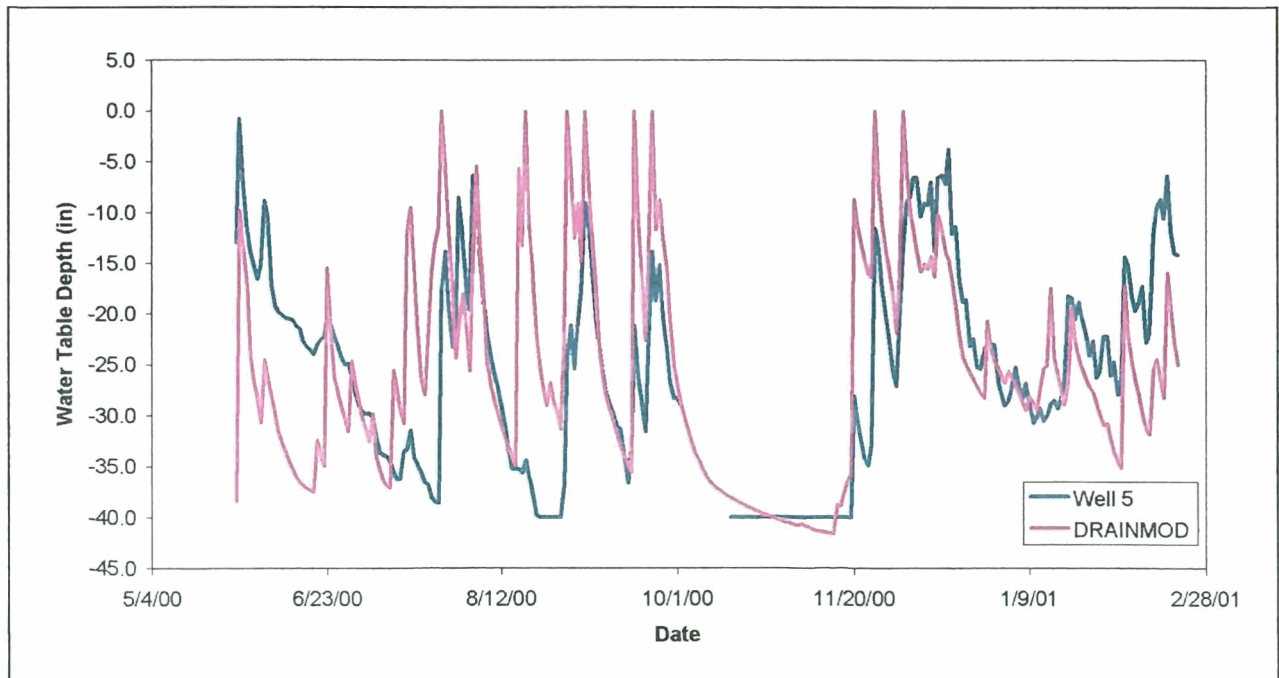
Trends in the observed data are well represented by the model simulations. Although hydrograph peaks between observed and simulated data do not match exactly, relative changes in water table hydrology as a result of precipitation events at different times of the year correlate well between observed and modeled data. Differences between observed and modeled results are most likely due to the lack of site-specific rainfall data.

To estimate existing long-term site hydrology, model simulations were run for 30 years of weather data collected from the automated weather station approximately five (5) miles from the project site. DRAINMOD allows for the analysis of wetland hydrology by calculating the longest consecutive number of days meeting wetland hydrology criteria within the growing season. Results from long-term simulations are presented in Figure 3.5. The data indicate that the location of Well 4 experiences the driest conditions on the site, followed by Well 5, with Well 6 experiencing the wettest conditions. These results would be expected since Well 4 is located the closest to the large drainage ditch and would experience the greatest drainage effect. Since Well 5 is located at a higher elevation and on a slightly greater slope than Well 6, the location of Well 5 would be expected to be drier than the location of Well 6. These data indicate that for the 30-year simulation period, none of the monitored locations would have met the wetland hydrology criteria (12.5% of the growing season cumulatively or 5% of the growing season consecutively).

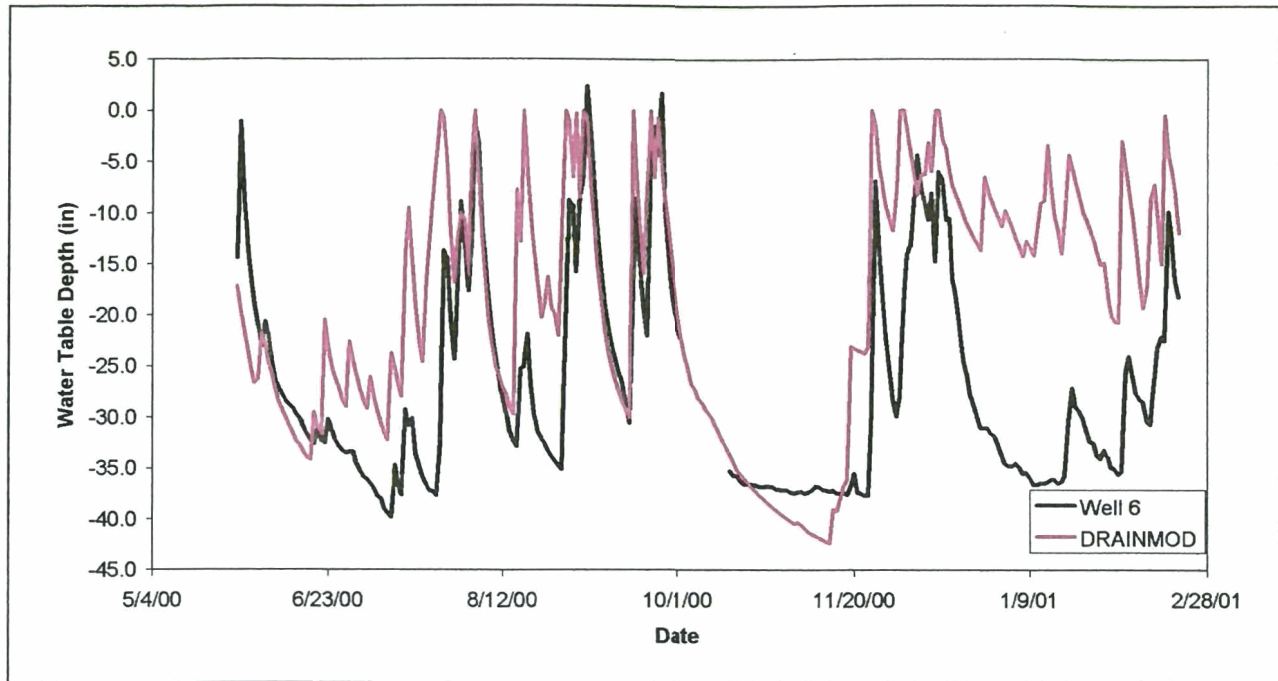
DRAINMOD computes daily water balance information and then outputs summaries that describe the loss pathways for rainfall over the model simulation period. Table 3.3 summarizes the average annual amount of rainfall, infiltration, drainage, runoff, and evapotranspiration estimated for the existing condition of the Casey/King 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 rain 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.



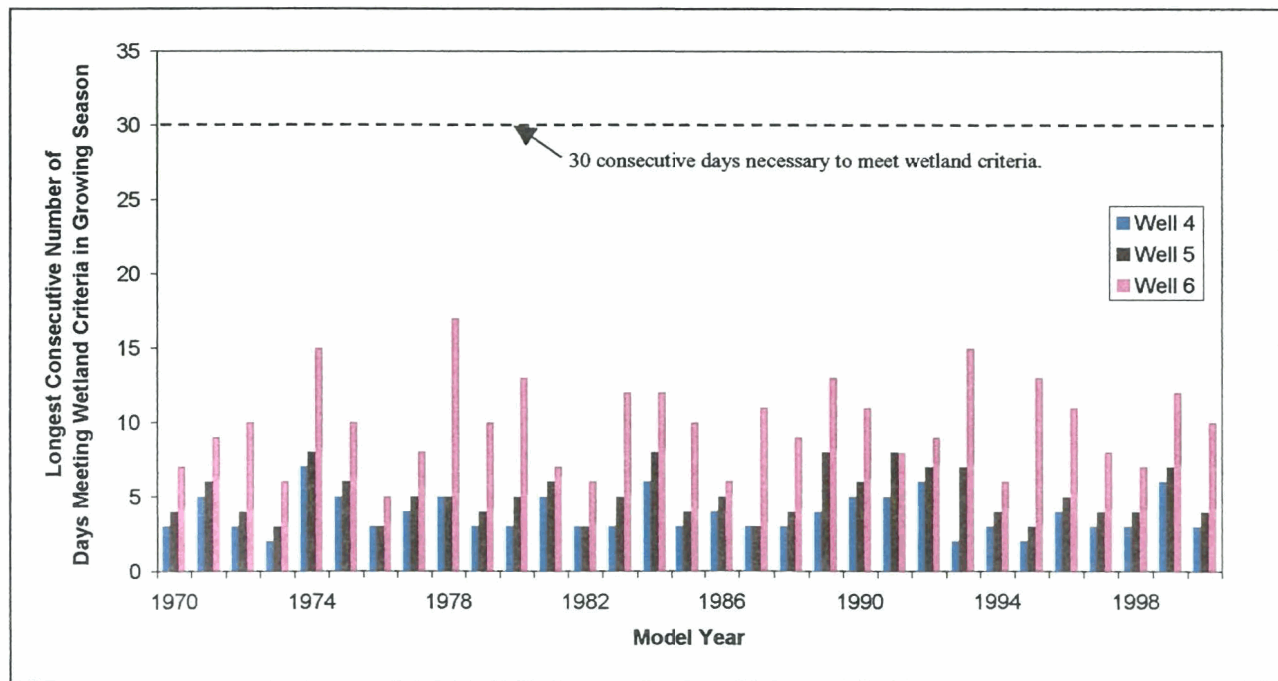
**Figure 3.2 Comparison between observed and simulated water table depths for Well 4.**



**Figure 3.3 Comparison between observed and simulated water table depths for Well 5.**



**Figure 3.4 Comparison between observed and simulated water table depths for Well 6.**



**Figure 3.5 Thirty (30) year model simulations showing the longest consecutive number of days meeting wetland criteria at each monitored location under existing conditions. Over the 30 year period, the site would not have met wetland hydrologic criteria in any years, based on simulation results.**



**Table 3.3 Water balance for the existing condition of the Casey/King site.**

<b>Hydrologic Parameter</b>	<b>Average Annual Amount over 30 Year Simulation Period (cm of water)</b>	<b>Average Annual Amount over 30 Year Simulation Period (% of rainfall)</b>
Precipitation	127.9	100.0
Infiltration	98.0	76.6
Drainage	33.8	26.4
Runoff	29.9	23.4
Evapotranspiration	64.2	50.2

## 4 Mitigation Plan

### 4.1 Overview

The mitigation design for the Casey/King site will target two integrated wetland communities described by Schafale and Weakley, 1990 as “non-riverine wet hardwood forest” and “coastal plain small stream swamp”. The majority of the site (25.5 acres) will target the non-riverine wet hardwood forest community, and a small portion of the site (2.5 acres) will target the coastal plain small stream swamp community.

Non-riverine wet hardwood forest communities are dominated by bottomland hardwood species that are found on flats not typically flooded by rivers or tides. These communities may grade to small stream swamps at the heads of drainages (Shafale and Weakley, page 203). Coastal plain small stream swamp communities exist as the floodplains of small blackwater streams in which separate fluvial features and associated vegetation are too small or poorly developed to distinguish.

The hydrology of a non-riverine wet hardwood forest community is typically palustrine, seasonally saturated or flooded by high water tables, poor drainage and perhaps by sheet flow from adjacent pocosins (Shafale and Weakley, page 203). The non-riverine wet hardwood forest wetland community is appropriate for the landscape position and geomorphic setting of the Casey site.

The hydrology of a coastal plain small stream community is palustrine, intermittently, temporarily, or seasonally flooded. Flows tend to be highly variable, with floods of short duration, and periods of very low flow. The coastal plain small stream swamp wetland community is appropriate for the watershed size and the geomorphologic setting of the site.

Restoration of the site will involve the filling of drainage ditches and topographic manipulation to raise the local water table and restore site hydrology. Surface water flow will be routed from the upstream end of the site through a series of saturated swamp flats connected by more narrow areas of shallow flow following multi-thread channels. At the downstream end of the site, natural grade control structures will be used to create a step-pool section of channel to connect flow from the restored wetland to the existing channel of the remnants of Heath Branch.

### 4.2 Hydrologic Restoration

Restoration of site hydrology will involve the filling of drainage ditches and the reestablishment of more natural drainage patterns to raise the water table on-site and restore wetland hydrology. For design purposes, the restoration has been divided into four (4) Wetness Zones shown in Figure 4.1 and Figure 4.2. Design contours are shown in Figure 4.3. Wetness increases from Zone 1 to Zone 4.

Wetness Zone 1 indicates areas that meet jurisdictional wetland criteria (water table within 12 inches of the soil surface for 12.5% of the growing season cumulatively or 5% of the growing season consecutively), but are drier than other zones. Ponded water is uncommon and during the drier summer months the water table will likely drop below 12 inches deep for a period of time. Average water table depth during the growing season is approximately 12 inches.

Wetness Zone 2 indicates areas that will meet wetland criteria throughout much of the growing season. Ponded water is common in the winter months, but only occurs for brief periods of time during the driest summer months. Average water table depth during the growing season is 4 inches.

Wetness Zone 3 indicates areas that will be saturated to the ground surface for a significant portion of the growing season. Ponded and flowing water will be common throughout the year, but flow may cease for periods of time during the driest summer months. Average water table depth is 0 inches.

Wetness Zone 4 represents areas of constant shallow inundation or saturation and constitutes only a small portion of the restoration acreage since areas of constant inundation are uncommon in small blackwater systems. These areas are included in the design to act as depositional areas that will reduce sediment loadings as the system adjusts after the restoration has been completed. It is expected that over time these areas will fill with organics and sediment and become more like Wetness Zone 3. But for a period of years after the restoration has been completed these areas will provide diversity of ecologic habitat. The respective sizes of each zone are presented in Table 4.1. Total restored acreage of wetland for the site is estimated at 28 acres.

A non-riverine wet hardwood forest community will comprise the majority of the site (25.5 acres) and will surround a coastal plain small stream swamp community (2.5 acres). Wetness Zones 1 and 2 will comprise the non-riverine hardwood forest community, and Wetness Zones 3 and 4 will comprise the coastal plain small stream swamp community.

**Table 4.1 Estimated restored acreage of wetland by wetness zone.**

Zone	Size (acres)	Size (% of total acreage)
Zone 1	11.6	41%
Zone 2	13.9	44%
Zone 3	2.0	12%
Zone 4	0.5	3%
<b>Total</b>	<b>28</b>	<b>100%</b>

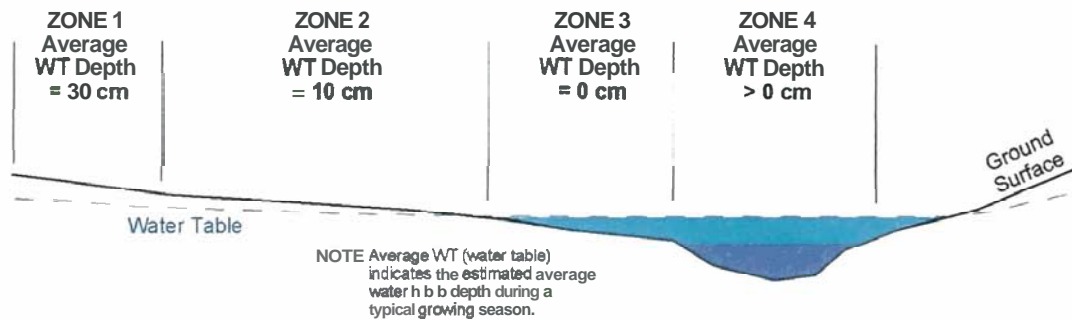
The drainage ditch along the south side of the property will be left at least partially open to accommodate drainage from the adjacent Weyhauser property. Water from this ditch will flow into the head of the remnants of Heath Branch and will be the initiation point for the hydrologic restoration efforts. The entire length of the on-site remnants of Heath Branch will be partially or completely filled. Some areas of Heath Branch will be only partially filled in order to create diversity of wetland habitats ranging from partially saturated conditions to areas of nearly constant inundation.

At the head of the remnants of Heath Branch, the existing ditch will be filled and the area around it sculpted to create a shallow swampy area consisting primarily of Wetness Zones 2 and 3. Excess water from this area will flow down gradient via a combination of sheet flow and minimally defined flow-through multiple thread channels typical of a small blackwater system. This flow path is indicated by the contiguous area of Wetness Zone 3 that extends throughout the restoration area (Figure 4.2) and connects the larger areas of Wetness Zone 2.

Due to the elevation of the southeast corner of the project site and the need for drainage of adjacent properties, it is unlikely that wetland hydrology could be restored to this corner of the property. Therefore, the drainage ditches that originate in the southeast corner will be left open on the higher ground and will be connected with the existing ditch along the eastern side of the site. Blocking of these ditches will begin approximately half way between the upslope portion of the ditch and the confluence with the remnants of Heath Branch. At this point, shallow flow distribution ditches (less than 1 foot deep) will be constructed parallel to the contour of the slope and connected with the existing ditches (see Figure 4.3). Drainage from the upslope areas will fill these distribution ditches, and the overflow and saturated conditions will help to raise the water table on the sloped portions of the site (primarily in Wetness Zone 1).

At the end of the restoration project, a step-pool section of channel will be constructed to reconnect the northwest corner of the restoration area with the existing Heath Branch drainage (see Figure 4.3). Four (4) rock cross vane structures will be used in series to drop water from the wetland area back to the existing channel. A short levee will also be constructed near the southwest corner of the site to block the possible flow of surface water to the drainage ditches along British Road.

**CROSS-SECTION THROUGH RESTORATION AREA**



**VEGETATION SELECTION FOR ZONES 1 AND 2**

*willow oak (Quercus phellos)*  
*swamp chestnut oak (Quercus michauxii)*  
*laurel oak (Quercus laurifolia)*  
*blackgum (Nyssa sylvatica)*  
*sycamore (Platanus occidentalis)*

*soft rush (Juncus effusus)*  
*wool grass (Scirpus cyperinus)*  
*panic grasses (Panicum spp.)*  
*sedge (Carex spp.)*  
*switch grass (Panicum virgatum)*

**VEGETATION SELECTION FOR ZONES 3 AND 4**

*bald cypress (Taxodium distichum)*  
*willow oak (Quercus phellos)*  
*swamp chestnut oak (Quercus michauxii)*  
*laurel oak (Quercus laurifolia)*  
*overcup oak (Quercus laurifolia)*  
*sycamore (Platanus occidentalis)*  
*blackgum (Nyssa biflora)*

*soft rush (Juncus effusus)*  
*wool grass (Scirpus cyperinus)*  
*panic grasses (Panicum spp.)*  
*burreed (Sparganium americanum)*  
*arrow-arum (Peltandra virginica)*  
*pickerelweed (Pontederia cordata)*  
*arrow-head (Sagittaria latifolia)*  
*lizard-tail (Saururus cernuus)*  
*sedge (Carex spp.)*  
*switch grass (Panicum virgatum)*












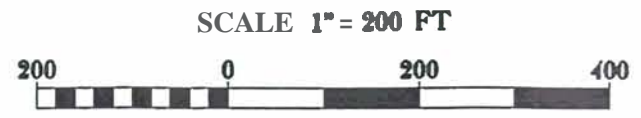
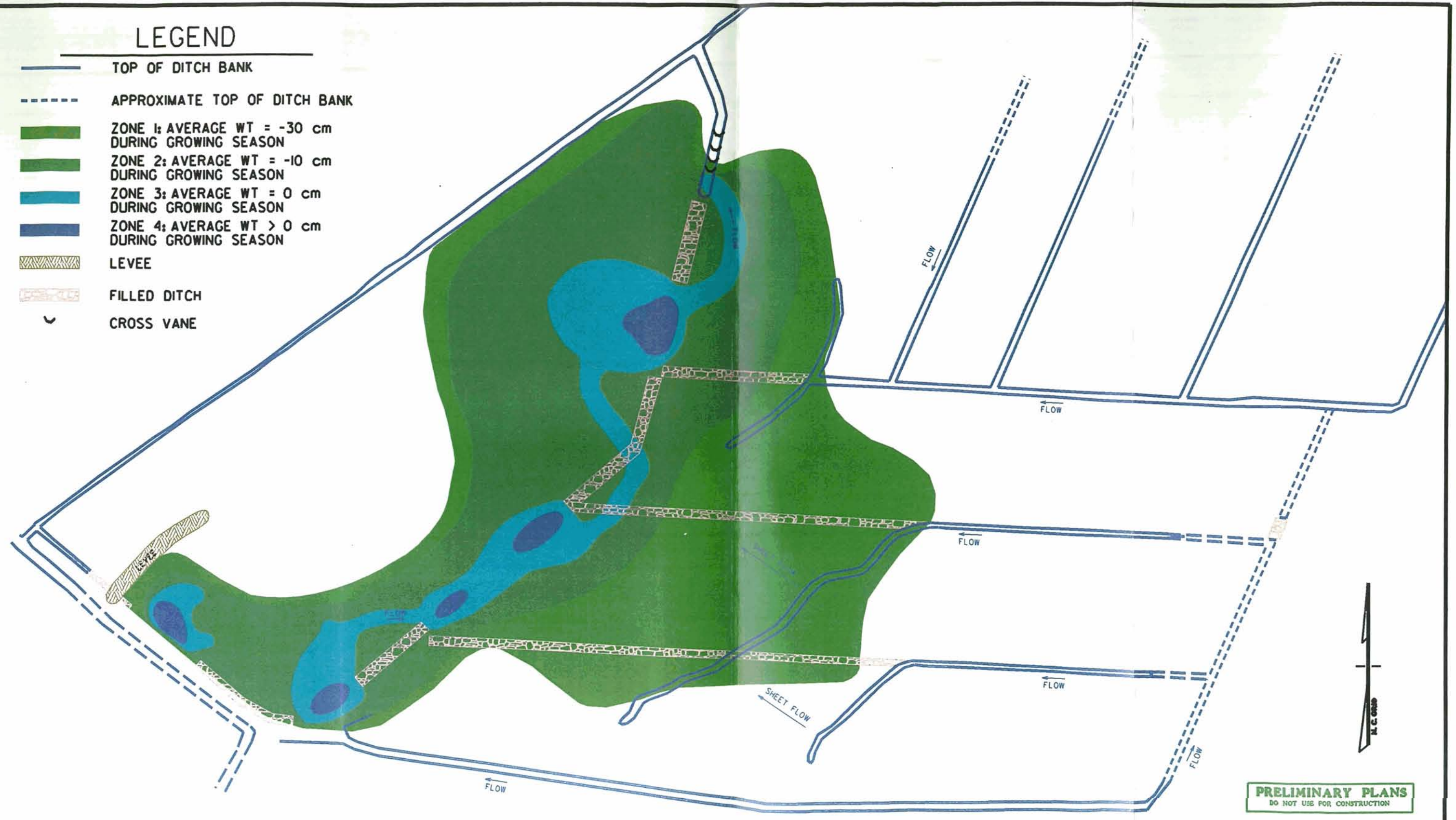
Environmental Banc and Exchange  
 10055 Red Run Boulevard, Suite 100  
 Owings Mills, MD 21117

**Figure 4.1**  
**Diagram of Restoration**  
**Wetness Zones**



# LEGEND

-  TOP OF DITCH BANK
-  APPROXIMATE TOP OF DITCH BANK
-  ZONE 1: AVERAGE WT = -30 cm DURING GROWING SEASON
-  ZONE 2: AVERAGE WT = -10 cm DURING GROWING SEASON
-  ZONE 3: AVERAGE WT = 0 cm DURING GROWING SEASON
-  ZONE 4: AVERAGE WT > 0 cm DURING GROWING SEASON
-  LEVEE
-  FILLED DITCH
-  CROSS VANE






**PRELIMINARY PLANS**  
DO NOT USE FOR CONSTRUCTION

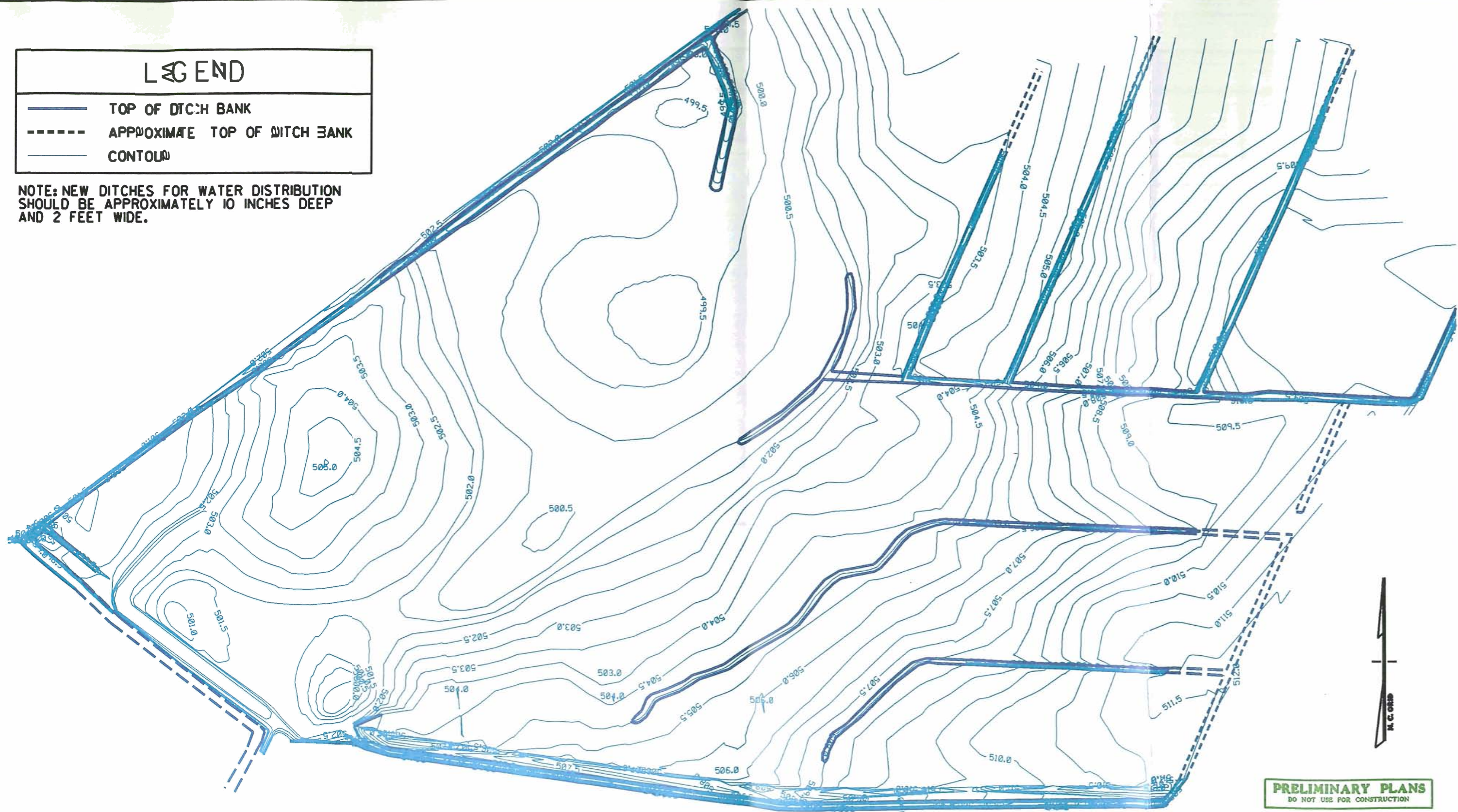
PROPOSED WETLAND RESTORATION DESIGN FOR THE CASEY/KING PROPERTY		DATE: 8/15/01
PREPARED FOR: ENVIRONMENTAL BANC & EXCHANGE, LLC	 1152 EXECUTIVE CIRCLE SUITE 100 CARY, NC 27511	FIGURE #: 4.2



# LEGEND

-  TOP OF DITCH BANK
-  APPROXIMATE TOP OF DITCH BANK
-  CONTOUR

NOTE: NEW DITCHES FOR WATER DISTRIBUTION SHOULD BE APPROXIMATELY 10 INCHES DEEP AND 2 FEET WIDE.



CONTOUR INTERVAL = 0.5 FT  
SCALE 1" = 200 FT



**PRELIMINARY PLANS**  
DO NOT USE FOR CONSTRUCTION

DESIGN CONTOURS FOR CASEY/KING MITIGATION SITE		DATE: 8/21/01
PREPARED FOR: ENVIRONMENTAL BANK & EXCHANGE, LLC	<b>BUCK</b> ENGINEERING 1152 EXECUTIVE CIRCLE SUITE 100 CARY, NC 27511	FIGURE #: 4.3



### 4.3 Hydrologic Model Analyses

The DRAINMOD simulations developed to evaluate the current hydrologic status of the restoration site (Section 3.2) were used to estimate the hydrologic conditions of the site under the proposed restoration practices. Model parameters which describe the depth of drainage ditches and surface storage were changed to values representative of the described restoration practices. For example, drain depths were reduced to approximately 4 inches to represent the restored flow pattern of shallow sheet flow and multiple thread channels. Thirty (30) year simulations were run again following the procedure described in Section 3.2. Results are presented in Figure 4.4. Model input files used to evaluate the proposed restoration practices are presented in Appendix 3.

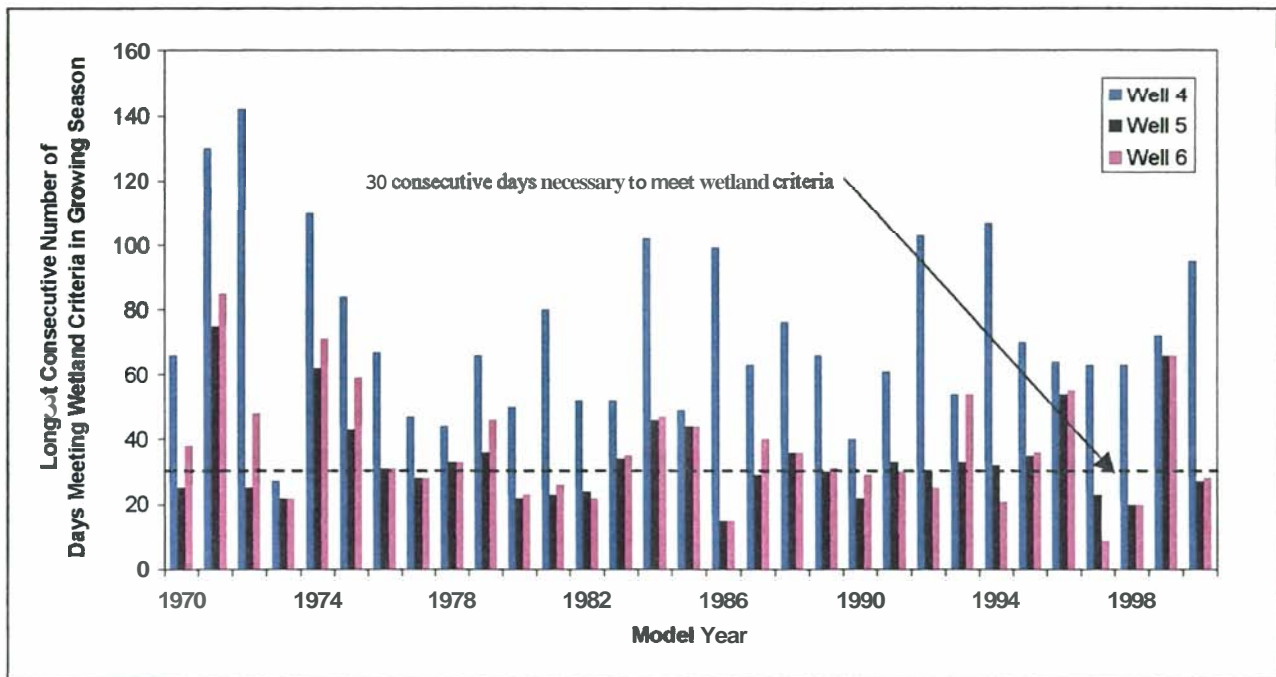


Figure 4.4 Thirty (30) year model simulations showing the longest consecutive number of days meeting wetland criteria at each monitored location under proposed restoration practices.

At each of the monitored locations, model simulations predict that wetland hydrology will be restored. In order to meet wetland hydrologic criteria for this simulation, a site must have a water table within 12 inches of the soil surface for 12.5% of the growing season cumulatively or 5% of the growing season consecutively in most years (50% period of recurrence, or 50% of years).

The driest of the three monitored locations under proposed restoration practices will be the location of Well 5, near the transition area between wetness Zones 1 and 2, which is predicted to meet wetland hydrologic criteria in 63% of years. The wettest location will

be that of Well 4, which will be located near a transition area between Wetness Zones 3 and 4. This location is predicted to meet wetland criteria in 99% of years. The location of Well 6, within wetness Zone 2, falls in between in terms of the degree of wetness, with wetland criteria met in 66% of years. Since all areas are predicted to meet wetland hydrologic criteria in greater than 50% of years, wetland hydrology will be restored to the site.

#### 4.4 Vegetation Plan

The site design will target a wetland system comprised of a coastal plain small stream swamp community surrounded by a larger non-riverine wet hardwood forest as described by Schafale and Weakley, 1990.

The planting areas will coincide with the four (4) wetness zones described in Section 3.2. The trees to be planted in Wetness Zones 1 & 2 will include willow oak (*Quercus phellos*), swamp chestnut oak (*Quercus michauxii*), laurel oak (*Quercus laurifolia*), blackgum (*Nyssa sylvatica*), and sycamore (*Platanus occidentalis*). Permanent seed mixture will be applied in all four wetness zones, and will consist of soft rush (*Juncus effusus*), wool grass (*Scirpus cyperinus*), panic grasses (*Panicum* spp.), switch grass (*Panicum virgatum*), and sedges (*Carex* spp.).

Wetness Zones 3 and 4 will be planted with similar vegetation as wetness Zones 1 and 2. However tree species including bald cypress (*Taxodium distichum*), swamp blackgum (*Nyssa biflora*), and overcup oak (*Quercus lyrata*) will be planted in place of black gum. Herbaceous plants to be seeded will include burreed (*Sparganium americanum*), arrow-arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), arrow-head (*Sagittaria latifolia*), and lizard-tail (*Saururus cernuus*). The deeper ponded areas of Wetness Zone 4 will be left to re-colonize naturally. As the trees mature, the herbaceous communities will become less prominent and may eventually be replaced or shaded out.

Species selected for non-riverine hardwood forest 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. (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 type of community is known to grade into coastal plain small stream swamp communities at their headwaters.

The plant community types listed above are derived from *the Classification of the Natural Communities of North Carolina*, Schafale and Weakley, 1990. Species selections for each of the zones presented in Section 4.2 generally follows tolerances

cited in WRP Technical Note VN-RS-4.1 *Species Match Ensures Conversion of Wet Agricultural Fields to Bottomland Hardwood Wetlands*, March 1997. These documents, in combination, suggest a high probability that the selected plants will survive on the hydrologically restored fields of the Casey/King site and will replicate the targeted natural systems.

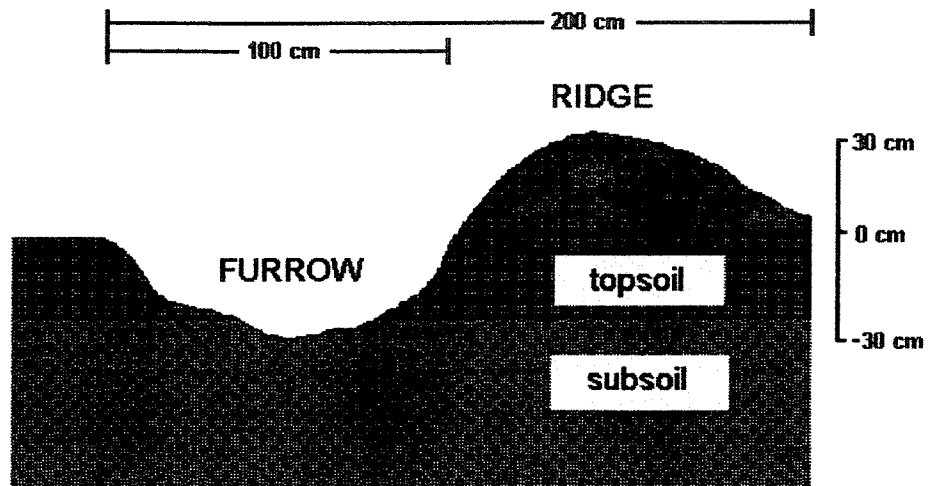
Prior to planting, the mitigation area will be inspected for proper elevation and soil suitability. Permanent vegetation sampling plots of 0.05 acres and photograph stations will be established adjacent to groundwater monitoring stations. The site will be inspected at the completion of planting to determine that proper planting methods were used, including spacing, species composition, and density.

#### **4.5 Soils**

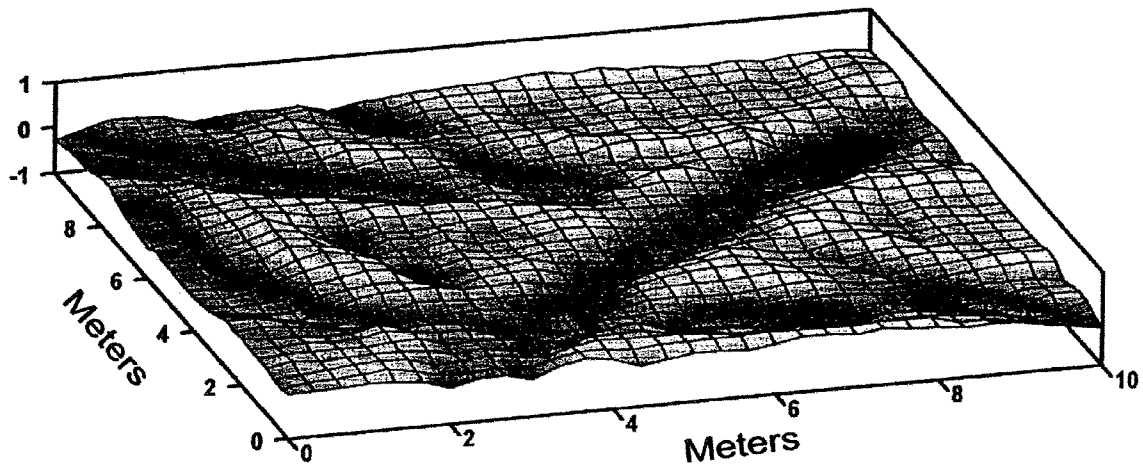
Existing hydric soils within the restoration area are the Megget, Woodington, Lenoir, and Grifton series. Johns soils are also present onsite, and although this soil series has hydric inclusions, it will not be targeted for restoration. Samples of topsoil from the site will be collected and tested to 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 will be high and amendments will not be necessary.

The introduction of microtopography will be used to restore the natural series of mounds and furrows that are common to natural forested wetland sites. In order to improve drainage and increase agricultural production, farmed wetland soils are often graded to a smooth surface and crowned to enhance runoff (Lilly, 1981). Microtopography contributes to the properties of forest soils and to the diversity and patterns of plant communities (Lutz, 1940; Stephens, 1956; Bratton, 1976; Ehrnfeld, 1995). The introduction of microtopography also increases surface storage on the site, reducing runoff and erosion and enhancing infiltration.

Microtopography will be established using the procedures described by Scherrer, 2000. Equipment used will leave a furrow approximately 100 cm wide and 30 cm deep, and a corresponding mound approximately 100 cm wide and 30 cm high (See Figure 4.5). The equipment will be run in parallel lines approximately 25 feet apart, and then over the same area in figure "8" patterns to create a random pattern of interconnected and isolated furrows and ridges, as shown in Figure 4.6.



**Figure 4.5 Cross-section of microtopography to be restored on the restoration site.**



**Figure 4.6 Typical pattern of created microtopography restored by following the procedure described in Section 4.5 (from Scherrer, 2000).**



## 5 Success Criteria

For purposes of this document, “success criteria” shall be used interchangeably with “performance criteria”. Factors considered in establishing hydrologic success criteria include the site specific water budget (See Section 4-3 and Figure 4-4), soil types (See Section 4-5), the target wetland systems (See Section 4-1), 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*.

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).

Such criteria are consistent with the cited Technical Note (page 12) because the success criteria “... refer to practically measurable or observable attributes that reflect compensatory mitigation objectives”.

### 5.2 Hydrologic Success Criteria

The hydrologic success criteria for the Casey/King Mitigation Plan will be to restore the water table at the site so that it will remain within 12 inches of the soil surface for at least 12.5% of the growing season cumulatively (approximately 30 days) or at least 5% of the growing season continuously (approximately 12 days). The day counts are based on the growing season for Lenoir County, which is 238 days long, beginning on March 20 and ending November 12, as calculated from National Weather Service Wetlands Determination Tables (WETS) for Kinston 5SE, NC4684.

### 5.3 Vegetative Success Criteria

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

#### 5.4 Reference Site

If the rainfall data for any given year during the monitoring period is not normal, and if the desired hydrology for the Casey/King site is not on a trajectory to achieve success, then the reference wetland data can be accessed to determine if there is a positive correlation between the underperformance of the restoration site and the natural hydrology of the reference site. For each day of the growing season that the reading from the groundwater monitoring wells on the Casey/King site are higher than or within 10% of the readings from the groundwater monitoring wells on the reference site, the success criteria will have been achieved.

In order to determine if the rainfall is normal for a given year, rainfall amounts will be tallied using data obtained from the National Oceanic and Atmospheric Administration (NOAA) rain gauge station located at the Kinston Regional Jetport and other official stations within a 20-mile radius of the site.

## 6 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 5. 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-I agrees to perform all necessary work to monitor the Bank and to demonstrate compliance with the Performance 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- I 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.

**D. Monitoring Reports.**

1. 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) 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 feet-contour intervals) showing location of sampling plots, permanent photo points, location of transacts, 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)

- E. Remedial Actions:** In the event the Bank or a specific phase of the Bank fails to achieve the Performance 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 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-I shall implement any remedial measures required pursuant to this paragraph.

## 6.1 Hydrology

The hydrologic success criterion is defined in section 5.2.

In order to determine if the criteria is achieved, three (3) manual groundwater-monitoring stations will be installed at the mitigation site and monitored year-round.

Ground water monitoring stations installed after September 2001 will follow the USACE standard methods found in WRP Technical Notes ERDC TN-WRAP-00-02, July 2000 as per MBRT recommendations (Stations installed prior to September 2001 were installed following Technical Note HY-IA3.1, August 1993).

In order to determine if the rainfall is normal for the given year, rainfall amounts will be tallied using data obtained from the National Oceanic and Atmospheric Administration (NOAA) rain gauge station located at the Kinston Regional Jetport and other official stations within a 20-mile radius of the site.

## **6.2 Vegetation**

The vegetation success criteria is defined in Section 5.3.

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, three vegetation-monitoring stations will be installed; one for Wetness Zone 1, one for Wetness Zone 2 and one for Wetness Zones 3 and 4, as defined in Section 4.2 of this document. The monitoring reports will be consistent with the Neu-Con MBI, as referenced above. At the end of the first growing season, species composition, density, and survival will be evaluated. For each subsequent year, until the final success criteria is achieved, the sites will be evaluated between July and November.

## **7 Reference Wetland**

### **7.1 Overview**

The target wetland system for the Casey/King Mitigation Site is a combination of nonriverine wet hardwood forest and coastal plain small stream swamp communities (See Section 4.4, Vegetation Plan). At one time, these types of wetland system may have comprised more than one quarter of the swamp-lands in the coastal plain (Schafale and Weakley, 1990). However, both of these wetland communities are easily drained and make excellent farmland. Consequently, in HU 03020202 very few of these wetland communities still exist in their natural condition, but every effort has been made to identify a reference site that will, at the very least, 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 Casey/King site is dominated by the Grifton and Meggett soils series, which are typically found within the Norfolk-Goldsboro and Rains-Lynchburg associations (Soil Survey of Lenoir County, NC). During the regional site search it was confirmed that many of the areas characterized by the Grifton and Meggett soil series had either been converted to pine plantation or were being used for agricultural production. Of the four potential reference sites closest to the Casey/King site, the Webb Farm was the only site with a Grifton-Meggett soils association.

None of the four available reference sites had a diverse, mature native plant community; however, in its current condition, the Webb Farm does support some hardwood species in

the sub-canopy that are also found in the non-riverine wet hardwood forest community, including, willow oak, swamp chestnut, blackgum and sycamore.

Since the Casey/King Mitigation Plan includes an aggressive planting mix that exceeds both the hardwood stem and species count typically found in naturally regenerated systems in this region, it would be difficult, if not impossible, to find any natural system that faithfully replicated the prescribed plant mix in the Casey/King Mitigation Plan.

After reviewing dozens of potential sites, the Webb Farm was selected as the “best” hydrologic reference site for the Casey/King Mitigation Plan. Portions of the Webb Farm were previously evaluated for suitability as a mitigation site under the Neu-Con MBI. Hydrologic modeling evaluations were performed to determine if the agricultural fields within the site were suitable for wetland restoration. The findings showed that the natural hydrology of the agricultural fields had been significantly altered and negatively impacted. However, the forested areas of the Webb Farm have been relatively unaffected by the agricultural production, so portions of these timberlands have been identified as a suitable reference hydrology site for a non-riverine wet hardwood forest and coastal plain small stream swamp.

## **7.2 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.

### **7.2.1 Hydrology**

The Webb Farm was traversed for the purpose of identifying those areas that have “natural” hydrology similar to the Casey/King site post-restoration. Preliminary investigations indicated that the forested portions of the reference site were outside of the surface and sub-surface drainage effects of the agricultural fields. Surface drainage effects were determined to occur in any portion of the forest that was significantly bedded for the purpose of planting pines. However, pedestrian inspections within the forested areas did identify wetlands that were not affected by surface drainage.

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). These wetlands vary in size from 0.05 acres to approximately 0.5 acres.



Groundwater monitoring stations will be established in reference plots where the Corps has confirmed the wetland delineation. The stations will be installed to the standards identified in Section 6 of the Mitigation Plan. The groundwater monitoring stations will be 0.05 acres in size or approximately 50 feet x 50 feet.

### **7.2.2 Soils**

Soils from the selected wetland areas were generally characterized to ensure that they are representative of the Grifton and Meggett soils found on the Casey Site. The soils will be further evaluated for hydrology utilizing pertinent NRCS guidelines. The reference areas are comprised primarily of Grifton and Meggett soils, which are poorly to somewhat poorly drained soils typically found on uplands and stream terraces. Permeability is slow to moderate, and the NRCS anticipated un-drained seasonal high water table is within 10 inches of the soil surface. Two (2) wetland-monitoring stations will be established on reference plots approximately 50 feet by 50 feet. Field indicators of hydrology (1987 Wetland Delineation Manual) will be characterized and catalogued for each station.

### **7.2.3 Vegetation**

The site was traversed to identify and confirm the presence of hydrophytic vegetation within the sub-canopy. These areas contained species typical of non-riverine hardwood forests, including; swamp chestnut oak, willow oak, blackgum, red maple and sycamore.

The reference plot for the coastal plain small stream swamp will be located adjacent to a small, poorly developed fluvial feature in close proximity to the non-riverine reference plot. The feature is identified on the Lenoir County Soil Survey as an intermittent stream. The tree species are similar to the wet hardwood forest yet also contain wetter species such as swamp tupelo.

### **7.2.4 Landscape Position**

The Webb Farm has approximately the same geology as the Casey/King site. Climactic conditions are expected to be the same, and the Webb Farm and Casey/King site are "flats" that are seasonally saturated and flooded by sheet-flow from adjacent areas. In the NRCS Soil Surveys for Lenoir and Jones Counties, the sites are mapped as having Grifton and Meggett soils in similar landscape position.

Wetland hydrology will be restored at the Casey/King Site in four wetness zones within varying topographical zones. The driest portions represent non-riverine wet hardwood forests and the wettest portions represent a small stream swamp system. All non-riverine wet hardwood forest restoration areas are greater than 75 linear feet from surface and sub-surface drainages. These restored areas of the Casey/King site are expected to be saturated for periods of up to several months during the growing season.

One wetland monitoring station will be on the non-riverine reference plot that is 4-6 feet above the relic floodplain of Rattlesnake Branch and at least 75 feet from established surface drains.

The other wetland monitoring station will be on the reference plot for the coastal small stream swamp that will be located adjacent to small, poorly developed fluvial features in close proximity to the non-riverine reference plot.

### **7.2.5 Proposed Reference Site Treatment**

Clearing of vegetation at the selected groundwater monitoring stations will help replicate the hydrology of a successional non-riverine wet hardwood forest and coastal plain small stream swamp. The proposed treatment will allow for documentation of the successional character of the target communities. Clearing pines from the monitoring stations will remove the evapotranspiration effect on the groundwater table and will promote natural conditions characteristic of hardwood flats.

The wetland hydrology of the reference site is expected to have a positive correlation to the mitigation site. The wetland monitoring stations will be replanted at the same time as the mitigation site with the same plant composition. This too should provide an accurate indicator of the relative success or failure of the plant community at the mitigation site.

### **7.2.6 Reference Site and Monitoring Plan**

The corners of the reference site and the groundwater and wetland monitoring stations will be located utilizing global positioning technology. Both the reference site and the station will be clearly delineated in the field. All wetland delineation data will be submitted to the USACE for their review. Monitoring will follow the protocol identified in Section 6.

## **8 Administrative and Regulatory**

### **8.1 HUC Service Area**

The site will serve impacts in HUC 03020202. (See Appendix 5)

### **8.2 Credit Release**

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

### (b) Credit Release Schedule:

- 10% after first year, if physical and biological improvements have been initiated (total 25%);
- 10% after second year; if interim success measures are or are projected to be met (total 35%);
- 10% after third year; if interim success measures are or are projected to be met (total 45%);
- 15% after fourth year; if interim success measures are or are projected to be met (total 60%);
- 15% after fifth year, if Performance Criteria is met (total 75%);
- 25% after fifth year, if a Bank Site or an approved phase of a Bank Site meets the overall objectives set forth in Site Specific Mitigation Plan (total 100%).

If the monitoring period suggests that progress for the Performance 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 Performance Criteria within 30 days after receipt of the EBXN-I report. If one or more Performance Criteria is not being met, then the EBXN-I 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 Performance 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 the delivery of the Annual Monitoring Report. If one or more Performance Criteria is not being met, then the EBXN-I will evaluate opportunities for adaptive management or remedial bio-engineering as deemed appropriate by the MBRT.

### **8.3 Credit Accounting**

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)

#### **G. 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. EBXN-I 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, EBXN-I 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. EBXN-I will furnish copies of all statements generated from an approved debit/credit transaction to each member of the MBRT. EBXN-I also will compile an annual report on activity in the Bank and distribute a copy of such report to each member of the MBRT.

### **8.4 Conservation Easement**

Consistent with Section III G of the Neu-Con MBI, a conservation easement will be placed over the preservation 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 Deed of 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.

## **8.5 Financial Assurances**

In the event of default or failure to achieve success criteria at the Casey/King site, EBXN-I is required to provide financial assurances consistent with Section IV.E.1 of the Neu-Con MBI, which shall include the following:

- 1) the costs of site design, topographic and boundary surveys, construction of hydrologic control structures, monitoring well installation, grading, planting, and as-built survey;
- 2) the costs of maintenance, including sediment control, control of undesirable plant species, maintenance of hydrologic control structures and maintenance of monitoring wells; and
- 3) the costs of monitoring and reports.

EBXN-I attaches hereto in Appendix 8, financial assurances that exceed the requirements set forth in IV.E.1 of the Neu-Con MBI.

Consistent with Section IV.E.1 of the Neu-Con MBI, the financial assurances may be reduced for any completed phase of work that satisfies, to the satisfaction of the MBRT, success criteria or where it is demonstrated that the site is self-sustaining in its ability to maintain compliance with the performance criteria.

## **8.6 Title**

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



## 9 References

- AG&E Schnabel. December 14, 2000. Phase 1 Investigation and Preliminary Analysis Wetland Mitigation, Casey Property, Lenoir County, North Carolina. *A report submitted to Environmental Banc and Exchange, LLC.*
- Bratton, S. P. 1976. Resource division in an understory herb community: responses to temporal and microtopographic gradients. *The American Naturalist* 110 (974):679-693.
- Ehrnfield, J. G. 1995. Microsite differences in surface substrate characteristics in *Chamaecyparis* swamps of the New Jersey pinelands. *Wetlands* 15(2):183-189.
- 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.
- Lilly, J. P. 1981. The blackened soils of North Carolina: Their characteristics and management for agriculture. North Carolina Agricultural Research Service Technical Bulletin No. 270.
- Lutz, H. J. 1940. Disturbance of forest soil resulting from the uprooting of trees. Yale University School of Forestry Bulletin No. 45.
- Scherrer, E. 2000. Using microtopography to restore wetland plant communities in Eastern North Carolina. MS Thesis, Forestry Department, North Carolina State University.
- Stephens, E. P. 1956. The uprooting of trees: a forest process. *Soil Science Society of America Proceedings* 20:113-116.
- U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), Soil Survey Division. 1995. *Hydric Soils of North Carolina.*
- U.S. Department of Agriculture, Soil Conservation Service (SCS). 1977. *Soil Survey of Lenoir County, North Carolina.*
- 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. Heath Branch near upstream end of site.



Figure A2. Heath Branch near upstream end of site, looking downstream.





Figure A3. Outlet of Heath Branch at the end of the project site, looking upstream.



Figure A4. Road culvert under British Road (SR 1803) at end of project site





Figure A5. Heath Branch near upstream end of site, looking downstream.



Figure A6. Lateral ditch from King property, looking downstream towards Heath Branch.



**Appendix 2:**

LETTERS FROM THE  
NC NATURAL HERITAGE PROGRAM AND  
NC 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,  
Casey Hunter Site, Lenoir County, ER 01-7976

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



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 27699-1615  
PHONE 919-733-4181 FAX 919-715-3085

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

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 defoliant 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 defoliant 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



**Appendix 3:**

**DRAINMOD INPUT FILES USED TO MODEL  
THE EXISTING CONDITION AND THE PROPOSED  
RESTORATION PRACTICES OF THE PROJECT SITE**





# DRAINMOD .GEN File Used to Simulate the Restored Hydrology at the Location of Well 6.

```
*** Job Title ***
EBX Casey/King Mitigation Site - Well 6
Kinston Weather Data - May 2000 to Feb 20001
*** Printout and Input Control ***
3 101 D:\drainmod\outputs
*** Climate ***
1 D:\DRAINMOD\INPUTS\EBX-CASEYK70TO01.RAI
1 D:\DRAINMOD\INPUTS\EBX-CASEYK70TO01.TEM
1970 1 2001 12 3537 77 0
2.01 2.32 2.10 1.72 1.23 1.00 .86 .82 .92 1.05 1.22 1.44
*** Drainage System Design ***
1
10.00 160.33 6100.00 2.00 2.50 2.00 4.40 .00
0 2.000000E-02 10000.000000
0 130.000000 10.000000 1.000000E-04
0 0.000000E+00 0.000000E+00 0.000000E+00 0.000000E+00
200.00 2.00 .00
1120 1120 1120 1120 1120 1120 1120 1120 1120 1120 1120
*** Soils ***
215.00 2.00
30.5 00 70.3 00 140.2 00 215.1 00 0. .00
99 .00
*** Trafficability ***
4 1 5 1 820 3.9 1.2 2.0
12321232 820 3.9 1.2 2.0
*** Crop ***
.190
410 818 30.00
410 818
11
1 1 3.00 416 3.00 5 4 4.00 517 15.00 6 1 25.00 620 30.00 718 30.00 820 20.00
924 10.00 925 3.00 1231 3.00
*** Wastewater Irrigation ***
0 1 1 10 1 6
00 00 00 00
7.00000 1.00000 .40 .40 .40 .40 .40 .40 .40 .40 .40 .40
WET *** Wetlands Information ***
1
87 313
30.0 28
COM *** Combo Drainage Weir Settings ***
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
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0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
0 0 0 .0
FPE *** Fixed Avg Daily PET for the month(cm) ***
.00 .00 .00 .00 .00 .00 .00 .00 .00 .00 .00 .00
MRA *** Monthly Ranking ***
0
FAC *** Daily PET Factors ***
0
STM *** Soil Temperature ***
ZA ZB TKA TKB TB TLAG TSNOW TMELT CDEG CICE
.000 .000 .000 .000 .0 .0 .0 .0 .0 .0
Initial Soil Temperature
0
Initial snow depth(m) & density(kg/m3)
.00 .00
Freezing characteristic curve
0
```

**Appendix 4:**

**WETLAND DATA FORMS FOR REFERENCE AREAS**

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: Webb Reference Site  
Applicant/Owner: EBX  
Investigator: Chris Huysman

Date: May 2001  
County: Lenoir  
State: NC

Do normal circumstances exist on the site? Pine pl. Community ID: Non-riverine Wet Hardwood  
Is the site significantly disturbed? no Transit ID: vicinity of megett and grifton  
(Atypical situation)  
Is the area a potential problem area? no No Plot ID: 35°10'37"N 77°31'00"W  
(If needed, explain on reverse.)

**VEGETATION**

1. <u><i>Pinus Taeda</i></u>	<u>tree</u>	<u>FAC</u>	9. <u><i>Cephalanthus occ.</i></u>	<u>shrub</u>	<u>OBL</u>
2. <u><i>Acer rubrum</i></u>	<u>tree</u>	<u>FAC-FACW</u>	10. <u><i>Juncus effusus</i></u>	<u>herb</u>	<u>FACW</u>
3. <u><i>Nyssa sylvatica.</i></u>	<u>tree</u>	<u>OBL</u>	11. <u><i>Boehmeria cylindr.</i></u>	<u>herb</u>	<u>FACW+</u>
4. <u><i>Platanus occident</i></u>	<u>tree</u>	<u>FACW</u>	12. <u><i>Ludwigia spp</i></u>	<u>herb</u>	<u>FACW+</u>
5. <u><i>Populuss deltoides</i></u>	<u>tree</u>	<u>FAC+</u>	13. <u><i>Woodwardia aer</i></u>	<u>herb</u>	<u>OBL</u>
6. <u><i>Quercus michauxii</i></u>	<u>tree</u>	<u>FACW-</u>	14. <u><i>Salix nigra</i></u>	<u>shrub</u>	<u>OBL</u>
7. <u><i>Q .phellos</i></u>	<u>tree</u>	<u>FACW</u>	15. <u><i>Campsis radicans</i></u>	<u>herb</u>	<u>FAC</u>
8. <u><i>Cornus amomum</i></u>	<u>shrub</u>	<u>FACW+</u>	16. <u><i>Impatiens capensis</i></u>	<u>herb</u>	<u>FACW</u>

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

Remarks: near boundary of megett and grifton 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: 0(in.)

Depth to Free Water in Pit: 10(in.)

Depth to Saturated Soil: 10(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: low area near soils boundary



SOILS

Map Unit Name  
(Series and Phase): Meggett / Grifton

Drainage Class: Poorly drained  
Field Observations: \_\_\_\_\_

Taxonomy (Subgroup): Typic Albaqualf / Ochraqualf

Confirm Mapped Type? Lenoir County Soil Survey

Profile Description:

Depth (ins.)	Horizon	Matrix Color (Munsell Moist)	Mottle Colors (Munsell Moist)	Mottle Abundance/Contrast	Texture, Concretions, Structure etc.
0-9	<b>A</b>	<b>10YR4/1</b>	_____	_____	<b>Sandy Loam</b>
9-12	<b>A2</b>	<b>10YR5/2</b>	_____	_____	<b>Sandy Loam</b>
12-17	<b>B</b>	<b>10YR6/1</b>	<b>10YR5/6</b>	<b>few</b>	<b>Sandy Clay Loam</b>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Hydric Soil Indicators:

- |   |  |
|---|--|
| <input type="checkbox"/> Histosol                               | <input type="checkbox"/> Concretions   |
| <input type="checkbox"/> Histic Epipedon                        | <input 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 checked="" type="checkbox"/> Aquic Moisture Regime       | <input checked="" type="checkbox"/> Listed on Local Hydric Soils List **     |
| <input checked="" 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

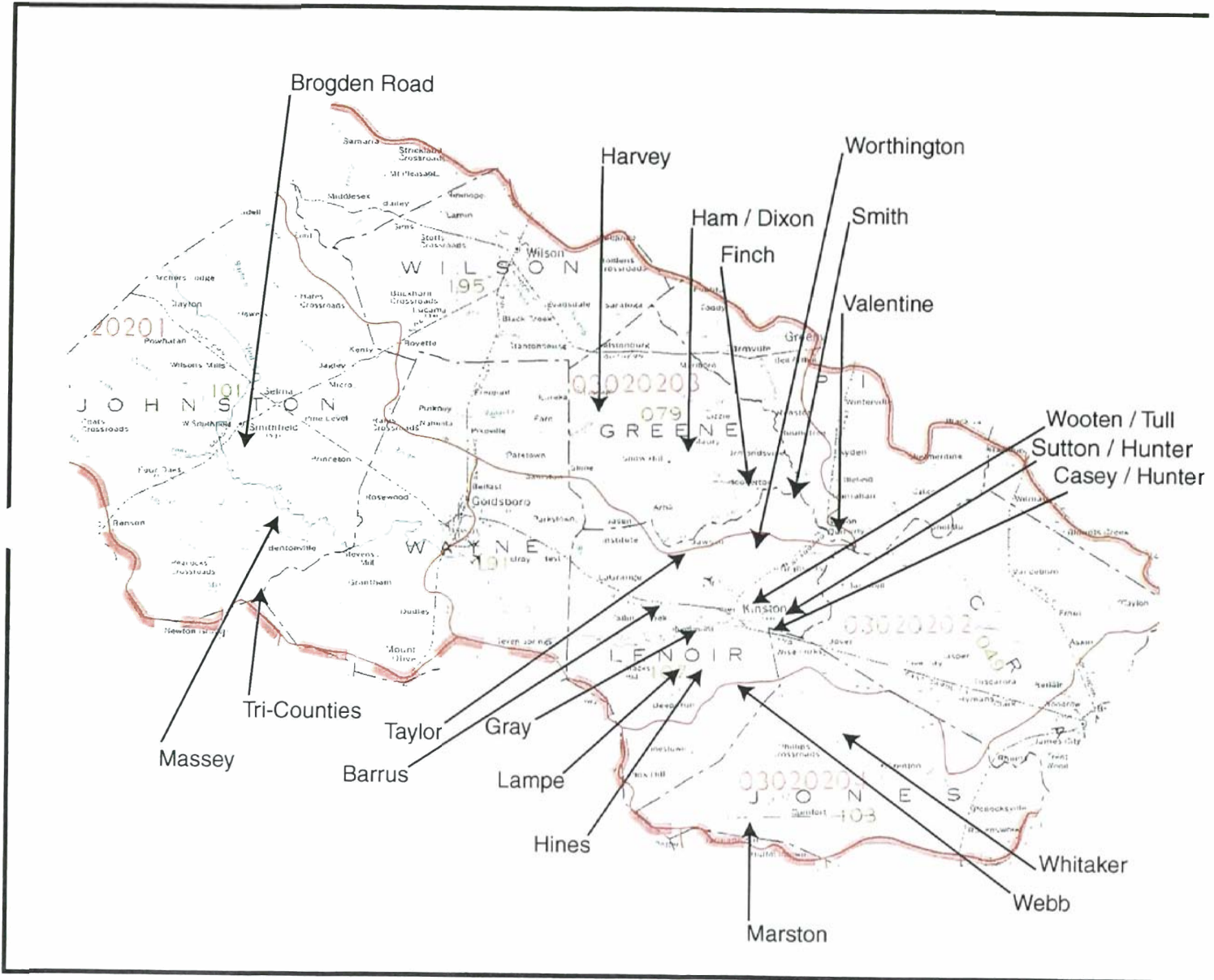
Is This Sampling Point Within a Wetland? YES

Remarks: Computer generated dataform compiled from field notes.

**Appendix 5:**

**HYDROLOGIC UNIT CODE SERVICE AREA MAP**

TABLE 1



**Appendix 6:**

**CREDIT ACCOUNTING LEDGER SHEET**



**Appendix 7:**

**SAMPLE CONSERVATION EASEMENT**

PREPARED BY AND AFTER  
RECORDING RETURN TO:

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

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT (this "Agreement") is made this day of \_\_\_\_\_, 2001, by and between \_\_\_\_\_, with an address of ("Grantor"), and \_\_\_\_\_, a \_\_\_\_\_, with an address of \_\_\_\_\_ ("Grantee").

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

RECITALS

WHEREAS, Grantor owns in fee simple approximately \_\_\_\_\_ (\_\_\_\_\_) acres of real property situate, lying and being in \_\_\_\_\_ County, \_\_\_\_\_, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Grantor and Grantee recognize the conservation and open space 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, Grantor and Grantee recognize that the conservation and open space value of the Property may be enhanced by certain remedial or restorative actions;

WHEREAS, one or more federal, state and/or local governmental or quasi-governmental agencies and authorities (individually, a "Governmental Authority" and collectively, the "Governmental Authorities"), including but not limited to the United States Army Corps of Engineers (the "Corps"), has approved or may hereafter from time to time approve the use of all or any portion of the Property to mitigate the impact of certain development activities (e.g., the unavoidable impact of such activities on streams and wetlands), as the same has been or may hereafter from time to time be detailed in one or more licenses, approvals, consents and/or permits (individually, a "Permit" and collectively, the "Permits") issued or hereafter from time to time issued by one or more Governmental Authorities; and



WHEREAS, Grantor has agreed to grant and convey a perpetual conservation easement in, over and upon 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 are 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, in, over and upon the Property, together with the right to preserve and protect the conservation and open space values thereof, as follows:

ARTICLE I.  
PURPOSES

The purposes of the conservation easement hereby granted by Grantor to Grantee (the "Conservation Easement") are to preserve and protect the conservation and open space value 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 below.

ARTICLE II.  
DURATION OF EASEMENT

The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land comprising the Property, is fully assignable, and is enforceable by Assignee, its successors or assigns, against Grantor and Grantor's personal representatives, heirs, executors, successors, 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 the 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 and open space value of the Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder, unless otherwise expressly authorized pursuant to a Plan (as defined in Paragraph V hereunder):

A. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited unless the Corps shall give its prior written consent or as otherwise permitted herein.

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, except with the prior written consent and written approval of the Corps. 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 activities, 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 as may be authorized by the Corps, 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 and open space value of the Property or other permitted use of the Property and/or signs identifying 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. Except as otherwise authorized by the Corps, 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.

Except as otherwise authorized by the Corps, diking, dredging, alteration, draining, filling or removal of wetland is prohibited. Notwithstanding the above, Grantor reserves the right, but not the obligation, to undertake such activities as are designed to maintain, protect or restore natural drainage patterns or wetland values.

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

K. Vegetative Cutting. Cutting, removal, mowing, 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 Grantee, (2) when considered necessary for the continued maintenance of wetland functions, or (3) as otherwise authorized by the Corps.

ARTICLE IV.  
GRANTOR'S ADDITIONAL RESERVED RIGHTS

Grantor and its personal representatives, heirs, executors, successors and assigns hereby reserve the right to quiet enjoyment of the Property, the rights to ingress and egress to the Property, the right to grant access to the Property to implement any Plan and ensure continued adherence to any Plan, the right to continue such uses as exist as of the date of this grant not inconsistent with the Conservation Easement or this Agreement 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 Agreement and written notice is provided to Grantee in accordance with the provisions set forth below.

ARTICLE V.  
GRANTEE'S RIGHTS

Grantee has submitted and/or may hereafter from time to time submit to one or more Governmental Authorities one or more plans intended to enhance, restore, preserve and protect the conservation and open space values of all or any part of the Property and the natural character of all or any part of the Property. Grantee is hereby granted the right, but not the obligation, to develop one or more plans of the type described above, together with the right to implement any and all such plans, at Grantee's expense, and the right to use the Property for educational, scientific and charitable purposes consistent with the conservation purposes set forth in this Agreement (including, but not limited to, construction and maintenance of fences, interpretative walkways and nature trails and supervised field trips). Upon written request by Grantee, Grantor shall execute and deliver such applications and other documents and take such other actions as Grantee may reasonably require in connection with Grantee's efforts to obtain approval of any such plan by the applicable Governmental Authorities. All such plans now or approved by any applicable Governmental Authority are herein referred to individually as a "Plan" and collectively as the "Plans." Grantee is granted the right, but not the obligation, to identify, create, preserve and protect in perpetuity the existing condition of the Property or such other condition of the Property as may be required by any Plan. Grantee is also granted the right to enter the Property at any time and from time to time for purposes of implementing and monitoring all Plans and otherwise monitoring compliance with the terms of this Agreement.

ARTICLE VI.  
ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Agreement by Grantor, its agents, personal representatives, heirs, executors, successors, or assigns, which comes to the attention of Grantee, Grantee may notify Grantor in writing of such breach. 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, Grantee may exercise any or all, or none, of the following remedies:

1. Institute one or more 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 or open space value protected by the 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 Property be restored promptly to the condition required by this Agreement.

B. Grantee has the right, but not the obligation, to prevent any activity on or use of the Property that is inconsistent with the purposes of the Conservation Easement and this Agreement. 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 or open space value of the Property, 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, condition or provision hereof shall discharge or invalidate such covenant, condition or provision, or any other covenant, condition or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

D. Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Grantor's lessees, contractors, agents, representatives, licensees 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 respective 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, to and under this Agreement, the 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. As an alternative to an assignment, sale or transfer by Grantee of its right, title and interest in, to and under this Agreement, the Conservation Easement and/or the Property, in whole or in part, as to all or a part of the Property, to any person or entity (individually, a "New Grantee" and collectively, the "New Grantees"), Grantor agrees that it shall, upon written request by Grantee, grant to one or more New Grantees designated by Grantee in such written request, a new conservation easement on the same terms and conditions set forth herein, with respect to all or any portion of the Property (as designated by Grantee in the aforementioned written request), and upon the recordation of any such new conservation easement in the appropriate public records,

this Agreement and the Conservation Easement herein granted shall be terminated with respect to so much of the Property as is subjected to such new conservation easement.

ARTICLE VII.  
PUBLIC ACCESS

The granting, making and imposition of the Conservation Easement as herein provided 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. Plans. Grantor acknowledges that any Plan attached hereto and made a part hereof as Exhibit B accurately establishes the uses, and conservation and open space values and condition of the Property, or so much thereof as is specified therein, as of the date hereof. With respect to any Plan hereafter approved by any Governmental Authority, Grantor and Grantee shall execute, deliver and cause to be recorded in the appropriate public records a supplement to this Agreement that sets forth such Plan in its entirety and adds such Plan to Exhibit B hereto, and the execution of any such supplement by Grantor shall constitute an acknowledgement by Grantor that the Plan referred to therein accurately establishes the uses, and conservation and open space values and condition of the Property, or so much thereof as is specified therein, as of the date thereof. Exhibit B, if any, attached to this Agreement as of the date hereof is made a part hereof by reference. Any Exhibit B attached to any supplement to this Agreement that is recorded as provided above, shall be made a part of this Agreement by reference. Notwithstanding anything contained herein to the contrary, in no event shall any Plan approved after the date of this Agreement be inconsistent or conflict with any previously approved Plan or with the purposes set forth in Article I of this Agreement.

C. Title. Grantor covenants and represents that Grantor is the sole owner of and is seized of the Property in fee simple and has the right to grant, make, declare and impose the Conservation Easement; and 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 its personal representatives, heirs, executors, successors and assigns regarding the Property, further declares that the Conservation Easement and the other covenants, conditions, restrictions, limitations and agreements set forth herein shall run with the land comprising the Property and be binding thereon, without the necessity of making specific reference to this Agreement or the Conservation Easement in any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

1. Grantor, for itself and its personal representatives, heirs, executors, successors and assigns, declares that the 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 Agreement and the 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.

C. Construction of Terms. This Agreement and the Conservation Easement shall be construed to promote the purposes of the enabling statute of the jurisdiction in which the Property is located, which authorizes the creation of conservation easements for purposes including the conservation purposes of the Conservation Easement, including such purposes as are defined in 26 U.S.C. Section 170(h)(4)(A).

D. Recording. Grantee or Grantor may record this instrument and any amendment or supplement hereto or any assignment of Grantee's rights hereunder or thereunder in the applicable public records of the jurisdiction in which the Property is located, and Grantee or Grantor may re-record this instrument and any amendment or supplement hereto or any assignment of Grantee's rights hereunder or thereunder at any time as may be required to preserve its rights under this Agreement.

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 Agreement 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 Agreement may be amended only by a writing, signed by Grantor and Grantee, and any such amendment(s) shall be effective upon recording of such writing in the applicable public records of the jurisdiction in which the Property is located.

H. Severability. Should any part, term or provision of this Agreement 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 Agreement.

I. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located.

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



TO HAVE AND TO HOLD unto Grantee, 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 hands 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:

By: \_\_\_\_\_ (SEAL)

GRANTEE:

By: \_\_\_\_\_ (SEAL)

**BUYER'S NOTARY ACKNOWLEDGEMENT:**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2001, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_ in and for the County aforesaid, personally appeared Joseph P. Carroll, Jr., known to me or satisfactorily proven to be the Managing Director of Environmental Banc & Exchange, LLC, a Maryland limited liability company, the Buyer named herein, and that he executed the foregoing Agreement in my presence on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires: \_\_\_\_\_ Notary Public

**SELLER'S NOTARY ACKNOWLEDGEMENT:**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY that on this \_\_ day of \_\_\_\_\_, 2001, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_ in and for the County aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the Seller named herein and he executed the foregoing Agreement in my presence.

WITNESS my hand and Notarial Seal.

My commission expires: \_\_\_\_\_ Notary Public

**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:

None  See Page 3

**CONTRACTOR AS PRINCIPAL**  
Company: (Corporate Seal)  
EBX-Neuse I, LLC

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

Signature: *George W. Kelly*  
Name and Title: *Managing Member*

Signature: *Alex G. Roddey*  
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., 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:**

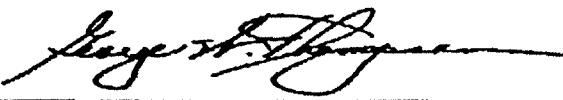
VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or 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

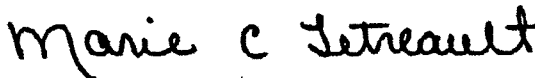


By 

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

## 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 EBX-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  
 Print Name R. Dixon H. HARVEY JR  
 And Title CEO

By George W. Kelly (Seal)  
 Print Company Name Environmental Banc & 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  
 And Title

By Ely J. Perry III (Seal)  
 Print Company Name Perry Wet Lands, 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  
 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 EJP-3  
 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  
 Name

By \_\_\_\_\_  
 Print Name  
 SS #  
 Address

Attest \_\_\_\_\_  
 Print Name  
 Name

By \_\_\_\_\_  
 Print Name  
 SS #  
 Address

Attest \_\_\_\_\_  
 Print Name  
 Name

By \_\_\_\_\_  
 Print Name

Attest \_\_\_\_\_  
 Print Name

SS # \_\_\_\_\_  
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Attest \_\_\_\_\_  
 Print Name

SS # \_\_\_\_\_  
 Address \_\_\_\_\_  
 By \_\_\_\_\_  
 Print Name  
 SS # \_\_\_\_\_  
 Address \_\_\_\_\_

ACKNOWLEDGMENTS

State of Maryland, County of Baltimore, On this 4<sup>th</sup> 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: [Signature] Seal

State of North Carolina, County of Lenoir, On this 12<sup>th</sup> 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

Signature: [Signature] Seal

*My Commission Expires: 4-17-05*

State of North Carolina, County of Lenoir, On this 12<sup>th</sup> 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

Signature: [Signature] Seal

*My Commission Expires: 4-17-05*

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  
Alex G. Roddey, (Attorney-in-Fact)

[Signature]  
(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:**

**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 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*  
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.

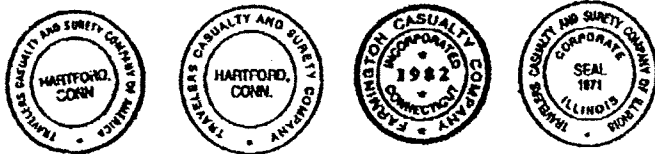


*Marie C Tetreault*  
My commission expires June 30, 2001 Notary Public  
Marie C. Tetreault

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.



By *Brian Hoffman*  
Brian Hoffman  
Assistant Secretary, Bond

**Appendix 9:**

TITLE

SEP 13 01 03:31a

**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 200100325GV Policy Date 01/19/2001 Time 04:25 PM

Amount of Insurance \$37,320.00

1. Name of Insured E B X 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 LENOIR  
and described as follows:

BEING ALL OF TRACT 8B AS DEPICTED ON THAT MAP FOR RECORD ENTITLED "SURVEY FOR E.B.X. NEUSE I, L.L.C. OF THE CASEY TRACT & PORTION OF KING TRACT", PREPARED BY THE EAST GROUP, AND DATED JANUARY 4, 2001. SAID MAP IS RECORDED AT PLAT CABINET 7, PAGE 131, LENOIR COUNTY REGISTRY, AND IS INCORPORATED HEREIN BY REFERENCE FOR A MORE PARTICULAR DESCRIPTION.

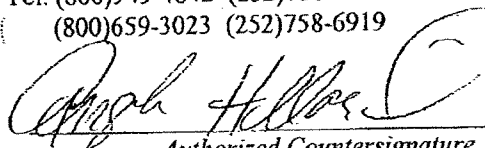
SCHEDULE B

**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

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  
(800)659-3023 (252)758-6919

  
\_\_\_\_\_  
Authorized Countersignature



# INVESTORS TITLE INSURANCE COMPANY

*A Stock Company*

P.O. Drawer 2687

Chapel Hill, North Carolina 27515-2687

Policy No. 200100325GV

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. *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.*



# 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. Bemyton*  
Secretary



*W. Morris 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, 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 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.

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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. TERMINATION, 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. PROPORTIONMENT.**

A 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



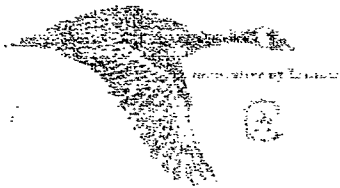
Investors Title  
Insurance Company

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.



# 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 200100323GV Policy Date 01/18/2001 Time 03:07 PM

Amount of Insurance \$143,325.00

1. Name of Insured E B X NEUSE I, L L C

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 *LENOIR*  
and described as follows:

*BEING ALL OF TRACT 9 AS DEPICTED ON THAT MAP FOR RECORD ENTITLED "SURVEY FOR E.B.X. NEUSE I, L.L.C. OF THE CASEY TRACT & PORTION OF KING TRACT", PREPARED BY THE EAST GROUP, AND DATED JANUARY 4, 2001. SAID MAP IS RECORDED AT PLAT CABINET 7, PAGE 131, LENOIR COUNTY REGISTRY, AND IS INCORPORATED HEREIN BY REFERENCE FOR A MORE PARTICULAR DESCRIPTION.*

### SCHEDULE B

#### *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

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  
(800)659-3023 (252)758-6919

\_\_\_\_\_  
*Authorized Countersignature*



INVESTORS TITLE INSURANCE COMPANY

*A Stock Company*

P.O. Drawer 2687

Chapel Hill, North Carolina 27515-2687

Policy No. 200100323GV

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. 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.



# 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 Jive*  
President

## 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.

**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. TERMINATION, 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. PROPORTIONMENT.**

If a 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 to be 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.

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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 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.