



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Division of Soil and Water Conservation

Patricia K. Harris
Director

October 30, 2015

Michael D. Willis, Chairman
Caldwell Soil and Water Conservation District
120 Hospital Avenue NE, Suite 2
Lenoir, NC 28645-4416

Dear Mr. Willis,

The N.C. Division of Soil and Water Conservation has agreed to accept the easement reassignments for the properties listed below from the N.C. Division of Mitigation Services (formerly Ecosystem Enhancement Program).

Grantor	Easement Book/Page	Recorded Date:	Easement Acres
David L. Aldridge	1754/1750	11/12/2010	0.66
Kathleen Cardwell	1720/276	8/13/2009	4.58
McChair LLC	1651/2052	8/20/2007	2.60
BB&T	1754/1761	11/12/2010	0.41

The easement reassignment will transfer the responsibility of monitoring and enforcement of the easement terms and conditions to the Division of Soil and Water Conservation. The division will not incur the costs of any required modifications of the easement area or the terms of the currently recorded easement to accommodate changes to the project scope. The division acknowledges and will abide by the Clean Water Management Trust Fund annual monitoring requirement and marking of the easement boundary. This will be completed with the assistance of the Caldwell Soil and Water Conservation District.

We are excited to partner on this project. Please let me know if you have any questions or need additional information.

Best Regards,

Patricia K. Harris, Director

MAILING ADDRESS
Division of Soil and Water Conservation
1614 Mail Service Center
Raleigh, NC 27699-1614

Telephone: 919-733-2302
Fax Number: 919-733-3559

LOCATION
Archdale Building
512 N. Salisbury Street, Suite 504
Raleigh, NC 27604

An Equal Opportunity Employer



Doc ID: 008090700010 Type: CRP
Recorded: 11/12/2010 at 03:24:23 PM
Fee Amt: \$44.00 Page 1 of 10
Revenue Tax: \$3.00
Workflow# 0000024119-0007
Caldwell County, NC
WAYNE L RASH Register of Deeds
BK **1754** PG **1761-1770**

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

CALDWELL COUNTY *✓ Correll Law Firm*
SPO File Number 14-am
EEP Site 237

Prepared by: Office of the Attorney General
Property Control Section
Return to: Blaine Rice, State Property Office
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 27 day of ~~April~~ ^{October}, 2010, by Branch Banking and Trust Company, (Grantor), to the State of North Carolina, (Grantee) whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

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

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

Whereas, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument;

41⁰⁰ 10 + 5⁰⁰ (CR)

3.00

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

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

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Lenoir Township, Caldwell County, North Carolina (the "Property"), and being more particularly described as those certain parcels of land as listed below:

PIN# 2737079737, 06243-1-29, DB 1090 Pg 41 Caldwell County Registry
PIN# 2737170831, 06243-1-30, DB 1090 Pg 41 Caldwell County Registry
PIN# 2737171703, 06243-1-31, DB 1090 Pg 41 Caldwell County Registry
PIN# 2737172851, 06243-1-32, DB 1090 Pg 41 Caldwell County Registry

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

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "EASEMENT AREA", for the benefit of the people of North Carolina, and being all of those tracts of land as identified as Tracts 4 and 6 containing approximately 6.87 acres as shown on a plat of survey entitled "Plat of survey for State of North Carolina" dated October 16, 2008, certified by Richard Current, PLS, L756, and recorded in Map Book 25, pages 214 and 215, and revised in Map Book 26 Pages 35 and 35 Caldwell County Registry. The tracts being more particularly described as follows and on "Exhibit A" attached and incorporated hereinto:

Tract 2- containing 0.41 +/- acres

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

DURATION OF EASEMENT

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

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

- A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for the management, maintenance, or stewardship purposes, and on existing trails, paths or roads.
- B. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

- C. Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.
- D. Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.
- E. Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.
- F. New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.
- G. Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.
- H. Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.
- I. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

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

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future conveyance of the remaining fee simple rights shall be subject to this Conservation Easement. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, such transfer is subject to the Grantee's right of ingress, egress, and regress over and across the Property to the Easement Area for the purposes set forth herein.

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

N. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. Ingress, Egress, Regress and Inspection. The Grantee, its employees and agents, successors and assigns, receive the perpetual right of general ingress, egress, and regress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the

Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. **Inspection.** The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring, any cost incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any cost of restoration necessitated by Grantor's acts or omission in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. **No Waiver.** Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

V. MISCELLANEOUS

A. This instrument and **Exhibit B** (revised letter to landowner from NCEEP) attached hereto set forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussion, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

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

C. Grantor shall notify Grantee in writing of the name and address and any party to whom Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. The Grantor and Grantee agree that the term of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

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

VI. QUIET ENJOYMENT

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

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

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

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

Branch Bank and Trust

Pat Vines (SEAL)
AV President, Branch Banking and Trust

Attest: _____
Secretary

(Corporate Seal)

NORTH CAROLINA

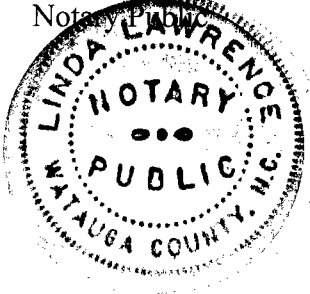
Watauga COUNTY

I, Linda Lawrence a Notary Public of the County and State aforesaid, certify that Pat Vines personally came before me this day and acknowledged that he is President of Branch Banking and Trust, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing was signed in its name by its President, sealed with its corporate seal and was attested by _____ as its Secretary.

Witness my hand and official stamp or seal, this 27th day of October, 2010.

Linda Lawrence

Notary Public



my commission expires 9-02-2011

"Exhibit A"

Lots
Subdivisions
Land Surveys
Topographical Maps

CURRENT SURVEYING AND MAPPING, P.A.
1353 Brushy Mountain Road
Wilkesboro, N.C. 28697
Richard C. Current, Reg. No. L-756
North Wilkesboro
(336) 838-3395
FAX (336) 838-1021



State of North Carolina TRACT # 2 Aldridge & Sons Nursery
Lenoir Township, Caldwell County, N.C.
October 16, 2008

A certain tract or parcel of land containing 0.41 Acre lying in Lenoir Township, Caldwell County, N.C. and being more particularly described as follows:

Beginning on a point in Lower Creek, said point being the Northwest corner of Tract # 2 and the Southwest corner of Tract # 1 of the State of North Carolina recorded in Plat Bk. 25, Pg. 214 in the Caldwell County Registry, thence from the TRUE POINT OF BEGINNING and leaving Lower Creek and with the center of the branch the next two (2) calls and distances North 66 degrees 49 minutes 54 seconds East 185.24 feet to a point, thence North 73 degrees 14 minutes 04 seconds East 231.66 feet to a point, thence leaving said branch South 13 degrees 44 minutes 22 seconds West 65.34 feet to a capped 5/8" rebar, thence South 87 degrees 08 minutes 54 seconds West 75.45 feet to a capped 5/8" rebar, thence South 69 degrees 08 minutes 26 seconds West 122.21 feet to a capped 5/8" rebar, thence South 51 degrees 40 minutes 45 seconds West 30.10 feet to a capped 5/8" rebar, thence South 74 degrees 30 minutes 28 seconds West 81.97 feet to a capped 5/8" rebar, thence South 80 degrees 06 minutes 14 seconds West passing through a capped 5/8" rebar at 45.35 feet a total distance of 98.15 feet to a point in Lower Creek, thence with said creek North 23 degrees 18 minutes 30 seconds East 31.00 feet to the point of Beginning. Containing 0.41 Acre by Coordinate Computation. Actual field survey done under the direction and supervision of Richard C. Current, Reg. No. L-756. This description is subject to all Notes on the plat of Survey for the State of North Carolina (Job # C0819A) dtd October 16, 2008 prepared by Current Surveying & Mapping, P.A.

