FILED
EDGECOMBE COUNTY NC
03/22/2006 9:33 AM
JUDY W. COLE
Register Of Deeds
KP
Register/Deputy/Asst.

STATE OF NORTH CAROLINA

EDGECOMBE COUNTY
SPO File Number 033-N
After recording return to:
State Property Office (EEP)
1321 Mail Service Center
Raleigh, NC 27699-1321

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT, made this 2nd day of February, 2006, by and between Redevelopment Commission of the Town of Tarboro, NC, Grantor, and the State of North Carolina, Grantee, whose mailing address is State of North Carolina State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

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

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

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

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all

parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

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

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Tarboro No.1 Township, Edgecombe County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land containing 5.81 +/- acres (PIN Number 4738.08-78-6132) and being conveyed to the Grantor by deed recorded in **Deed Book 762 at Page 85 and Deed Book 574 at Page 540** of the Edgecombe County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

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 portion of the Protected Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being all of the tract of land as identified as 0.17 +/- acres as shown on a plat of survey entitled "Conservation Easement The Town of Tarboro" (Property now or formerly The Redevelopment Commission of the Town of Tarboro) dated November 28, 2005, certified by William Tyson Robbins II, PLS, L-4192, Joyner-Keeny & Associates and **recorded in Map Book** 8, **Page** 294, Edgecombe County Registry. The tract being more particularly described as follows in "Exhibit A" attached and incorporated hereinto.

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contributes 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:

II. 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.

III. RESERVED USES AND RESTRICTED ACTIVITES

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 hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.

B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies, and observations.

C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area by the Grantor shall be limited to the extent necessary for the protection, well-being and safety of Grantor, and Grantor's property, and for the protection, well-being and safety of the general public, including property and the proper functioning of the Easement Area.

D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.

E. **Residential Use.** Residential use of the Easement Area is prohibited.

F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.

G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.

H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area.

I. **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 Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.

J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.

K. **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 in the Easement Area.

L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities,

or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.

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

O. **Utilities.** Through, over, under and across the Easement Area, the following conditions shall apply:

1) All existing utility easements and facilities are exempt from the requirements described below.
2) Pipeline and utility line construction will be minimized to the greatest extent practicable.
3) All disturbed facilities; features and vegetation will be restored to their original condition. Due to the environmental sensitivity of the Easement Area, disturbed and removed vegetation in access areas, staging areas, constructed areas, excluding the permanent utility easement, will be replaced with herbaceous species such that the Easement Area achieves a rapid recovery from the disturbance. The permanent utility easement will be re-vegetated with suitable grass vegetation.
4) Corridor and clearing width for crossings and parallel construction, if required,
will be limited to the minimum necessary to construct the needed facilities, subject to line size, equipment size and work zone. The temporary construction easements will be re-vegetated with native herbaceous species at the completion of construction.
5) Utility construction will minimize the disturbance of structures used for grade control, habitat and bank stabilization. If disturbance occurs in order to provide service, the structure will be restored to its original condition.
6) Permanent utility easement corridors will be minimized to the greatest extent practicable and are normally limited to thirty (30) feet in width depending upon pipeline size and depth. Exceptions, at the sole discretion of the Grantor to this limit are allowed in the usual cases of work to be done on very deeply buried utilities.
7) Vegetative clearing and general construction disturbance will be minimized to the greatest extent practicable.
8) Crossings will be perpendicular whenever possible.

9) Crossings will be accomplished by drilling, boring and jacking methods where practicable. When crossings must be constructed using open trench excavation, temporary discharge of excavated or fill material will be minimized in both quantity and duration to the greatest extent practicable as determined by the Grantor.

10) Erosion control devices shall be utilized to contain all disturbed materials and will conform to State requirements. Crossing of the waterway, wetland or other water feature will be accomplished in a timely manner such that environmental and flooding impact is minimized.

11) Depth of underground construction shall be to a sufficient depth to avoid future exposure due to scouring wherever possible.

12) Utilities constructed parallel to stream corridors will be a minimum of twenty (20) feet horizontally from the top of stream bank unless explicit exception is granted. The area between the utility and 20 feet wide area from the top of stream bank shall remain undisturbed except at crossings.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Protected Property at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation except within permanent utility easements, 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 subterraneous water flow. All grading and filling operations and use of heavy equipment in and across the permanent utility easements will require prior approval of the utility in order to ensure no damage is done to the utility facilities. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Protected Property at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement.

See attached letter of intent dated January 26, 2005 from the North Carolina Ecosystem Enhancement Program is to be used as "Exhibit B" to this conservation easement when recorded. This letter addresses maintenance, expenses and responsibilities.

Any areas of the Property damaged as a result of Grantee's activities will be restored, at the expense of the Grantee, as near as possible to the condition that existed prior to such damage.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times to undertake any activities

to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. 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 subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

The Grantee shall not engage in activities that result in elevation of the flood plain as defined on the date of this Conservation Easement.

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 Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

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

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Ecosystem Enhancement Program (formerly the Wetlands Restoration Program.)

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

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

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected 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 Protected Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

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

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

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent 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,

Grantor:

Connie Connor

Connie Connor, Executive Director
Redevelopment Commission of the Town of Tarboro, NC

NORTH CAROLINA
COUNTY OF NASH

I, Beverly Best, a Notary Public in and for the County and State aforesaid, do hereby certify that Connie Connor, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 2nd day of February, 2006.

Beverly Best
Notary Public

My commission expires:

July 4, 2009

BEVERLY BEST
MY COMMISSION EXPIRES
JULY
4
2009
NASH COUNTY, NC
NOTARY PUBLIC

"Exhibit A"

Redevelopment Commission TOT 3B

Said 0.17 acre parcel being more fully described as follows:

BEGINNING AT A POINT, said point being N 17°36'10" W 156.51' from control disk #5 thence N 19°11'31" E, 180.77 feet to a point; thence S 30°16'59" E, 80.49 feet to a point; thence S 18°26'13" W, 61.30 feet to a point; thence S 61°53'35" W, 91.41 feet to a point; to the **POINT OF BEGINNING**.

DESCRIPTION of a 0.17 acre parcel of land located in the Township No. 1, County of Edgecombe, State of North Carolina in accordance with a plan entitled Conservation Easement Redevelopment Commission of Town of Tarboro, NC Ecosystem Enhancement Program dated November 28, 2005 and containing 7457 square feet or 0.17 acres of land, more or less.

Exhibit B (Conservation Easement)

Ecosystem Enhancement PROGRAM

RECEIVED JAN 23 2006

January 26, 2005

Ms. Connie Connor
Executive Director
Housing Authority of Tarboro, NC
947 Simmons Street
Tarboro, NC 27886

Dear Ms. Connor:

This letter is to follow up on the December 7, 2004, meeting at the Tarboro Public Works Director's office between representatives of the Town of Tarboro, Edgecombe County School Board, Tarboro Housing Authority, NC State Property Office and NC Ecosystem Enhancement Program (NCEEP). This meeting was to discuss the proposed East Tarboro Canal stream restoration project, a portion of which crosses the Tarboro Housing Authority's property at the corner of Wooten and Wilson Streets. Although not specifically requested by you, the NC Ecosystem Enhancement Program (NCEEP) is hereby providing a letter of understanding that states the financial responsibilities of all parties involved. The purpose of this letter is to clarify said responsibilities of the NCEEP and the Tarboro Housing Authority related to the stream restoration project.

The NCEEP will be responsible for 100% of the design, land acquisition, and construction costs associated with stream restoration. The NCEEP will also be responsible for all costs associated with monitoring and maintaining the physical and biological aspects of the constructed project for a period of five years from completion. In the event that maintenance is required, it may involve such examples as repairing man-made structures designed for stream stability and replanting vegetation is areas where survival is low.

The Tarboro Housing Authority holds no responsibility to maintain the project during or after the five-year monitoring/maintenance period following construction. The intent of the project is to create a naturally self-sustaining aquatic system with no long-term need for maintenance. The restored stream system and vegetated areas included in the easement area will be subject to the provisions and restrictions of the conservation easement and the state and federal laws associated with the Clean Water Act that are applicable to the waters of the United States of America.

Exhibit B (continued)

The design drawing with depicted limits of construction presented at the December 7 meeting and to be used as an exhibit with the option agreement, does represent the limits of the easement. The easement boundaries will be determined more precisely as the project design is developed, at which time, the Tarboro Housing Authority and the NCEEP will agree on the exact locations of the easement, which will then be surveyed and described by a Professional Land Surveyor (cost to be incurred by the NCEEP).

It is our hope that this letter establishes a clear understanding of financial responsibilities related to the stream restoration project and the conservation easement. Please contact Jeff Schaffer, if you have any questions at (919) 715-1952 or via email at Jeff.Schaffer@ncmail.net.

Sincerely,

Suzanne Klimek
Director of Operations

cc: Jeff Schaffer – EEP Project Manager
Marion Patrick - State Property Office

44.00 m - top front