DENR CONTRACT NO.: D06083

11-066.001

STATE OF NORTH CAROLINA
COUNTY OF WAKE

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made this the 18th day of January, 2005, by and between the NORTH CAROLINA WILDLIFE RESOURCES COMMISSION (hereinafter "WRC") AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ECOSYSTEM ENHANCEMENT PROGRAM (hereinafter "EEP"),

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual promises, obligations and benefits hereunder exchanged and obtained, WRC and EEP mutually covenant and agree as follows:

Purpose:

EEP and WRC have common goals in the protection, enhancement and conservation of wildlife and fishery resources in North Carolina, and in the protection of plant and animal habitats throughout the State. The purpose of this Memorandum of Agreement (hereinafter "MOA") is to establish an understanding between EEP and WRC for the management and protection of the State-owned property purchased from Progress Energy by EEP in December 2004, being approximately 2,600 acres in Madison and Buncombe Counties, and referred to as the **Sandy Mush Tract** (hereinafter "Tract").

Background:

The Tract was purchased as compensatory mitigation for unavoidable losses in wetland and stream functions associated with NC DOT road improvements in the area. Restrictions in the deed of the Tract to the State provide for the protection of riparian buffers within 300' of the top of all stream banks as well as all wetlands on the Tract. Although some of the riparian area on the Tract is in very good condition, the majority of the streams on the Tract need to be restored or enhanced. There are three significant natural heritage areas on the Tract known as Turkey Creek Gorge, Sandy Mush Creek, and Alexander Cliffs and Slopes. These areas are not included in the restoration or enhancement activity. These three areas will be managed for the protection of the rare species or natural communities living there. Detailed reports listing the rare fish, animals and plants on the site are available from EEP or the Natural Heritage Program. Restoration and enhancement activities on the Tract will take place in several phases, with the first phase scheduled to begin on site in the winter of 2006.

Agreement:

Although the upland portions of the Tract are not subject to the deed restrictions, the entire Tract shall be managed for conservation purposes. Protection of intermittent streams and the uplands, as well as managing the entire Tract for natural resource values, is necessary to maintain and enhance the ecosystem benefits and maximize mitigation credits.

Proposed activities on the Tract by the N.C. Audubon Society, Quail Unlimited, and other interest groups will only be allowed if the activities are consistent with the goals of both EEP and WRC and the required ecosystem protections and benefits.

The parties to this MOA agree that there will be no sale by or through either of them or use of the uplands on the Tract for non-conservation purpose.

EEP Responsibilities:

- To restore and enhance certain streams on the Tract for the benefit and protection of water quality.
- To request that the NC Dept. of Administration allocate the entire Tract to WRC for management.

WRC Responsibilities:

- To protect the entire Tract for conservation purposes, either as non-game or endangered species habitat or as game land.
- To prohibit any use of the property that would result in degradation of springs, seeps, streams or wetlands on the Tract.
- To allow EEP, its contractors and assigns, reasonable access across the Tract to the restoration and enhancement sites, and allow them to carry out all necessary restoration and enhancement activities on the Tract.
- To coordinate with EEP to restrict hunting activities, if necessary, during periods of fieldwork to protect EEP, its contractors and assigns.
- To provide an annual monitoring report describing the general conditions of the streams, wetlands and upland areas on the Tract as required by the regulatory agencies. No other monitoring reports describing the restored or enhanced stream characteristics will be required unless EEP agrees to provide funding for the additional reports.

This document sets forth the entire agreement between EEP and WRC, and supplants any and all earlier agreements between the parties regarding use of this property.

All conflicts arising from the implementation of the MOA which cannot be resolved by senior staff of the two agencies shall be finally resolved by the EEP and WRC Directors.

No amendments to this MOA may be made except by mutual agreement in writing by the parties.

Termination for Cause

If either party fails to perform or comply with any condition of this agreement and such failure should continue more than 30-days after written notice from the other party, and if the non-compliant party should not within 30-days commence to cure the failure with due diligence, the aggrieved party may terminate this MOA on written notice to the non-compliant party, termination to be effective not less than 15 days from the date of the written termination notice.

The effective date of this MOA is the date of the last signature below.

1/06/06
Date

Richard B. Hamilton
Richard Hamilton, Director
NC Wildlife Resources Commission

1/18/06
Date

for William G. Ross, Secretary
Department of Environment and Natural Resources