2011002054
MCDOWELL CO, NC FEE $49.00
STATE OF NC REAL ESTATE EXTX
$249.00
PRESENTED & RECORDED:
05-05-2011 11:27:41 AM
JANE B MCGEE
REGISTER OF DEEDS
BY: TONIA R HAMPTON
DEPUTY REGISTER OF DEEDS
BK: CRP 1045
PG: 620-630

WHE

STATE OF NORTH CAROLINA
McDOWELL COUNTY

CONSERVATION EASEMENT AND RIGHT OF ACCESS

$249.00 - Excise

SPO File Number 59-AD
EEP Site ID – 93876

Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 5 day of May, 2011, by **Donald Fred Coats and wife Elizabeth P. Coats**, ("**Grantor**"), whose mailing address is 744 Huntsville Road, Marion, NC 28752, 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 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

DEA 5/5/11
APPROVED TO RECORD
TAX DEPARTMENT

APPROVED BY CRA AUTHORIZED ADMINISTRATOR

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 Glenwood Township, McDowell County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 266 acres and being conveyed to the Grantor by deed as recorded in **Deed Book 675 at Page 734** of the McDowell County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access 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 said Easement and Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of the Neuse River 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 along with a general Right of Access, over described portions of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, such property being all of the tracts of land as identified as **Area A, Area B, and Area C** as shown on a plat of survey entitled "Conservation Easement Survey for the State of North Carolina Department of Administration, Ecosystem Enhancement Program, Goose Creek, SPO 059-AD, EEP ID 93876," and **recorded on 4-13-2011 in *Plat Book 20, Page 33* McDowell County Registry** The tract being more particularly described as follows:

The Conservation Easement Area (see "*Exhibit A*") consists of the following:

Area A – containing 17.30 +/- Acres, **Area B** – containing 4.09 +/- Acres, **Area C** – containing 11.14 +/- Acres,

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, 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:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. GRANTOR 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.

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 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, control of invasive and/or exotic species and removal of 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.

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. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress 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. Right of Access, Construction, and Inspection. The Grantee, its employees and agents, successors and assigns, receive a perpetual Right of Access to the Easement Area over the Property at reasonable times to undertake any activities to restore, construct, manage, maintain, enhance, and monitor the stream, wetland and any other 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, installation of stream crossings and structures, 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.

C. Signs. The Grantee shall be permitted to place signs on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the holder of the Conservation Easement.

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 costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions 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 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.

B. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

C. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown herein or to other addresses 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 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.

Grantor shall notify the U.S. Army Corps of Engineers at least 60 days in advance of any transfer of property interest. Such notification shall be addressed to:

General Counsel
US Army Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403

and

Ecosystem Enhancement Manager
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

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

F. This Conservation Easement and Right of Access 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. The U.S. Army Corps of Engineers must be notified at least 60 days in advance of any amendment to this Conservation Easement or transfer of property interest.

Such notification shall be addressed to the parties specified in D. above.

G. 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 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 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 Conservation 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.

Donald Fred Coats (SEAL)
Donald Fred Coats

Elizabeth P. Coats (SEAL)
Elizabeth P. Coats

STATE OF NORTH CAROLINA

COUNTY OF McDowell

CRP 1045 628

I, Fay B. Wright, a Notary Public in and for the County of McDowell and State aforesaid, do hereby certify that Donald Fred Coats, 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 5 day of May, 2011.

Fay B Wright
Fay B. Wright
Notary Public

My commission expires:

2-8-2014

FAY B. WRIGHT NOTARY PUBLIC NC MCDOWELL COUNTY

STATE OF NORTH CAROLINA

COUNTY OF McDowell

I, Fay B. Wright, a Notary Public in and for the County of McDowell and State aforesaid, do hereby certify that Elizabeth P Coats, 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 5 day of May, 2011.

Fay B Wright
Fay B. Wright
Notary Public

My commission expires:

2-8-2014

FAY B. WRIGHT NOTARY PUBLIC NC MCDOWELL COUNTY

"EXHIBIT A "

CRP 1045 629

Legal Description for Conservation Easement
On Tax Parcel ID # 1619.00-80-1305
As shown in McDowell County, North Carolina
Plat Book XXX Page XX

Area A: 3.94 Acres

Beginning at corner 1, being a 5/8" rebar set with EEP cap. Thence with the boundary of the conservation easement area the following courses and distances:
(1) S 66°16'14" E a distance of 177.34 feet to a 5/8" rebar set with EEP cap (corner 2).
(2) N 74°54'15" E a distance of 190.32 feet to a 5/8" rebar set with EEP cap (corner 3).
(3) S 17°17'06" E a distance of 401.57 feet to a 5/8" rebar set with EEP cap (corner 4).
(4) S 66°24'47" E a distance of 297.41 feet to a 5/8" rebar set with EEP cap (corner 5).
(5) S 06°16'40" E a distance of 46.90 feet to a 5/8" rebar set with EEP cap (corner 6).
(6) S 42°01'21" W a distance of 42.84 feet to a 5/8" rebar set with EEP cap (corner7).
(7) N 86°09'46" W a distance of 404.00 feet to a 5/8" rebar set with EEP cap (corner 8), being located N 14°25'49" E a distance of 45.78 feet from a 1/2" rebar found on the southern boundary line of Deed Book: 675 Page: 734.
(8) N 14°25'49" E a distance of 107.89 feet to a 1/2" rebar found (corner 9).
(9) N 07°10'45" W a distance of 78.59 feet to a nail found in 12" maple tree (corner 10).
(10) N 80°03'25" W a distance of 116.89 feet to a 1/2" rebar found (corner 11).
(11) N 41°50'56" W a distance of 169.37 feet to a 1/2" rebar found (corner 12).
(12) N 33°44'19" W a distance of 110.59 feet to a 1/2" rebar found (corner 13).
(13) S 88°54'01" W a distance of 28.90 feet to a 5/8" rebar set with EEP cap (corner 14).
(14) N 02°23'51" W a distance of 125.73 feet to a calculated point (not set) in branch (corner 15).
(15) N 08°56'56" W a distance of 30.18 feet to the point of beginning.

Area B: 15.98 Acres

Beginning at corner 16, being a 5/8" rebar set with EEP cap. Thence with the boundary of the conservation easement area the following courses and distances:
(1) N 68°37'08" E a distance of 925.15 feet to a 1/2" iron pipe found on the northern boundary line of Deed Book: 675 Page: 734 (corner 17).
(2) N 61°32'36" E a distance of 327.81 feet to a 5/8" rebar set with EEP cap (corner 18); passing a 1" iron pipe found at a distance of 317.81 feet.
(3) N 75°18'07" E a distance of 1252.99 feet to an angle iron found (corner 19), passing a 1" iron pipe found at a distance of 10 feet.
(4) S 01°59'35" W a distance of 181.81 feet to a 5/8" rebar set with EEP cap (corner 20).
(5) S 62°30'06" W a distance of 996.61 feet to a 5/8" rebar set with EEP cap (corner 21).
(6) S 75°54'17" W a distance of 1183.95 feet to a 5/8" rebar set with EEP cap (corner 22).
(7) N 80°36'21" W a distance of 246.28 feet to a 5/8" rebar set with EEP cap (corner 23).
(8) N 45°31'32" W a distance of 112.19 feet to the point of beginning.

Area C: 11.14 Acres

Beginning at corner 24, being a 5/8" rebar set with EEP cap. Said corner being S 59°56'09" E 282.96 feet from a 1/2" iron pipe found on the boundary line of Deed Book: 675 Page: 734. Thence with the boundary of the conservation easement area the following courses and distances:

(1) N 49°54'12" E a distance of 981.37 feet to a 5/8" rebar set with EEP cap (corner 25).
(2) N 20°04'02" E a distance of 302.64 feet to a 5/8" rebar set with EEP cap (corner 26).
(3) N 42°01'46" E a distance of 383.16 feet to a 5/8" rebar set with EEP cap (corner 27).
(4) S 63°06'41" E a distance of 88.09 feet to a 5/8" rebar set with EEP cap (corner 28), being located S 82°47'44" W a distance of 501.79 feet from a railroad spike found on the eastern boundary line of Deed Book: 675 Page: 734.
(5) S 16°26'33" W a distance of 534.49 feet to a 5/8" rebar set with EEP cap (corner 29).
(6) S 33°57'41" W a distance of 602.48 feet to a 5/8" rebar set with EEP cap (corner 30).
(7) S 55°26'22" E a distance of 323.74 feet to a 5/8" rebar set with EEP cap (corner 31).
(8) S 35°38'06" W a distance of 176.64 feet to a 5/8" rebar set with EEP cap (corner 32).
(9) N 53°53'02" W a distance of 500.29 feet to a 5/8" rebar set with EEP cap (corner 33).
(10) S 47°53'59" W a distance of 562.06 feet to a 5/8" rebar set with EEP cap (corner 34).
(11) N 09°39'28" W a distance of 264.11 feet to the point of beginning.

Total Conservation Easement Area: 31.06 Acres

JANE B MCGEE
Register of Deeds

Mcdowell County
Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail jmcgeemcdowell@titlesearcher.com

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Filed For Registration: 05/05/2011 11:27:41 AM

Book: CRP 1045 Page: 620-630

Document No.: 2011002054
DEED 11 PGS 298.00

Recorder: TONIA R HAMPTON

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State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 05TH day of MAY 2011.

JANE B MCGEE, REGISTER OF DEEDS

Tonia R Hampton

By: _____
DEPUTY REGISTER OF DEEDS

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DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.