FILED in ROWAN County, NC
on Oct 13 2003 at 03:08:49 PM
by: Bobbie M. Earnhardt
Register of Deeds
BOOK 990 PAGE 98

32

NORTH CAROLINA
ROWAN COUNTY

CONSERVATION EASEMENT
and
EASEMENT OF INGRESS AND EGRESS

THIS CONSERVATION EASEMENT and EASEMENT OF INGRESS AND EGRESS, made this 19 day of September, 2003, by and between **Mark E. Helms and wife Christine Carol Helms,** hereinafter called the "Grantor(s)", and the **North Carolina Department of Transportation,** hereinafter called the "Grantee", provides the following:

WITNESSETH

WHEREAS, the Grantor owns in fee simple approximately 50.80 acre(s) of land situated in Litaker Township of ROWAN County as more particularly described in Deed Book 665, page 134 and Deed Book 786, page 002, of the ROWAN County Registry, and also a permanent nonexclusive Right of Way Easement recorded in Deed Book 801, page 026 of the ROWAN County Registry, North Carolina, hereinafter this land and Easement is referred to as the "Property";

WHEREAS, the Grantee is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects; is authorized by the laws of the State of North Carolina to accept, hold and administer conservation easements; possesses the authority to accept and is willing to accept this Conservation Easement from the Grantor under the terms and conditions hereinafter described;

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over approximately 9.513 acres of the Property, thereby restricting and limiting the use of land within the Conservation Easement area to the terms and conditions and for the purposes hereinafter set forth, and to further grant the right of ingress and egress to the Conservation Easement area over, upon and along the Property as more particularly set forth hereinafter;

Access is provided by means of a local traffic road designated as SR 1243, Daughtery Road, and by virtue of a 30' (thirty feet) access easement as depicted on Exhibit A and also is further described in Deed Book 801 at page 026 of the ROWAN County Registry.

WHEREAS, the Grantor consents to the Grantee assigning this Conservation Easement over the designated portion of the Property to another state agency whose purpose is consistent with this Conservation Easement or to a non-profit corporation whose purposes are consistent with this Conservation Easement.

WHEREAS, the Grantee, under Section 404 permits granted by the U.S. Army Corps of Engineers (USACE), must conduct certain off-site wetland mitigation for impacts to wetlands resulting from the construction of transportation projects;

Dot Pay

29785

NOW THEREFORE, in consideration of the sum of $ 75,850.00 dollars and other valuable considerations to the Grantor in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantor situated in ROWAN County, North Carolina, as described in Exhibit A (map) and Exhibit B (metes and bounds description). Together with a perpetual right of ingress and egress over and upon the Grantors roads and paths, or other access ways acceptable to the Grantors, on the Property having been described above in the ROWAN County Registry as an Easement of Ingress and Egress to and from the Conservation Easement hereinabove described.

The purposes of this Conservation Easement are to provide environmental protection for surface waters, to provide restoration and enhancement of wetland, stream, and riparian habitat for the benefit of fish and wildlife, to protect the conservation values of the easement area designated on the Property and to maintain permanently the dominant woodland, scenic and natural character of the easement area. To achieve these purposes, the parties hereto agree to the conditions and restrictions set forth herein and it shall be so held, maintained, and used therefore.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Grantee or its successors and/or assigns against Grantor(s), Grantor's personal representatives, heirs, devisees, successors and assigns, lessees, agents and licensees.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the designated easement area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this easement area.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder.

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

B. Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use (landscaping) of the easement area is prohibited.

C. Silvicultural Use and Land Clearing. There may be no destruction or cutting of trees or plants on the Easement Area, except upon approval of the Grantee. The gathering of firewood in the Easement Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement.

D. Hunting and Fishing. Grantor expressly reserves the right to hunt and fish on the Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal/trout habitat or other conservation values of the Easement Area.

E. 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 Easement Area is prohibited.

F. Mineral Use, Excavation, Dredging. There shall be no 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 Easement Area nor shall there be any activities conducted on the Easement Area or on adjacent property if owned by the Grantor and his successors which would cause erosion or siltation on the Easement Area.

G. Water Quality and Drainage Pattern. There shall be no activities conducted in the Easement Area that would be detrimental to water purity or to any of the plants or habitats within the Easement Area. There shall be no activities that would alter natural water levels, drainage, sedimentation and/or flow in or over the Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetland or stream is prohibited. The Grantee maintains the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing wetland and stream functional values for the Easement Area.

H. Quiet Enjoyment. The Grantor, for himself, his successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Easement Area, the right to ingress and egress to the Easement Area and all adjacent property of the Grantor, the right to continue such uses as exist as of the date of this grant not inconsistent with this Conservation Easement and the right to sell, transfer, gift or otherwise convey the Easement Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the Grantee in accordance with the provisions herein below.

ARTICLE III. ENFORCEMENT & REMEDIES

A. The Grantee has the right to prevent any action or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement. Upon any breach of the terms of this Conservation Easement by Grantor or by a third party, which comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have thirty (30) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly 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 including the right to require that the land be restored promptly to the condition required by this Conservation Easement. The Grantee shall have the power and authority, consistent with its statutory authority, to institute and maintain any suits and proceedings as the Grantee may deem advisable in its judgement; (a) to prevent any impairment of the Property by any 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. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies without prior notice to Grantor, but shall call the Grantor to leave a voice message and shall exercise within two business days an effort to notify the Grantor and explain the action undertaken.

B. The Grantor reserves the right to take action against the Grantee for use of the Easement Area in a way that is inconsistent with the purpose of this Conservation Easement.

C. Nothing contained herein shall be construed to entitle the Grantor to bring any action against Grantee for any injury or change in the Property resulting from causes beyond the Grantee's control, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes, in accordance hereunder.

D. The Grantee may enter the Grantor's adjoining property only for the purposes set forth in this agreement and only in accordance with the Easement for Ingress and Egress described hereinabove. The Grantee will attempt to notify the Grantor before entering the Property.

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

ARTICLE IV. PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever. However, the public has the right to view the Property from adjacent publicly accessible areas.

ARTICLE V. EXHIBIT, DOCUMENTATION AND TITLE

A. Legal Description and Exhibits. The attached Exhibit A (map) and Exhibit B (metes and bounds description) are incorporated in and made a part of this instrument by reference.

B. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances, except easements of record and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for himself, his heirs, successors and assigns, to notify the Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, for himself, his heirs, successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

(1) The Grantee, for themselves, and their successors and assigns agree that this Conservation Easement shall be held exclusively for conservation purposes.

(2) The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenant and agree, that in the event they transfer or assign this Conservation Easement they hold under the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) and Section 2031 of the Internal Revenue Code, and the Trust and the State 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

(3) The Grantor agrees to pay any real estate taxes or other assessments levied on the Property.

C. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

D. Entire Agreement. 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 this 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.

E. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed to have been denied unless, within ninety (90) days after receipt of notice, a written notice of approval has been mailed to the party requesting consent.

F. Amendments. Grantor and Grantee are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendment(s) shall be effective upon recording in the public records of ROWAN County North Carolina.

G. Recording. The Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of ROWAN County, North Carolina, and may re-record it at any time as may be required to preserve the rights under this Conservation Easement.

TO HAVE AND TO HOLD the aforesaid easements unto the **NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,** 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, successor and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor hereto has set Grantor's hand and seal and the Grantee by authority duly given, has hereunto caused these presents to be executed by its representatives and their seals affixed, affixed, as of the dates shown below, to be effective upon the date of recordation in the public records of ROWAN County, North Carolina.

GRANTOR(S): Mark E. Helms (Seal) Christine Carol Helms (Seal)

Mark E. Helms **Christine Carol Helms**

GRANTEE:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

OCT 10 2003 (Seal)

~~Executive Director~~
ASS'T MANAGER OF RIGHT OF WAY

SEAL-STAMP
NORTH CAROLINA
Rowan COUNTY

I, Gail Davis a Notary Public of Rowan County do hereby certify that MARK E. HELMS and wife CHRISTINE CAROL HELMS, Grantor(s), personally appeared before me this acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 14th day of Oct, 2003.

My commission expires 12-16-2006

Gail Davis
Signature of Notary Public

NOTARY PUBLIC SEAL ROWAN COUNTY, NC

NORTH CAROLINA: ROWAN COUNTY
The foregoing certificate of Gail Davis N.P. of Rowan Co N.C.
is certified to be correct.
Filed for registration this 13 day of October 2003
Bobbie M. Earnhardt, *Register of Deeds*
By Ginger Fagan
~~Assistant~~, *Deputy*

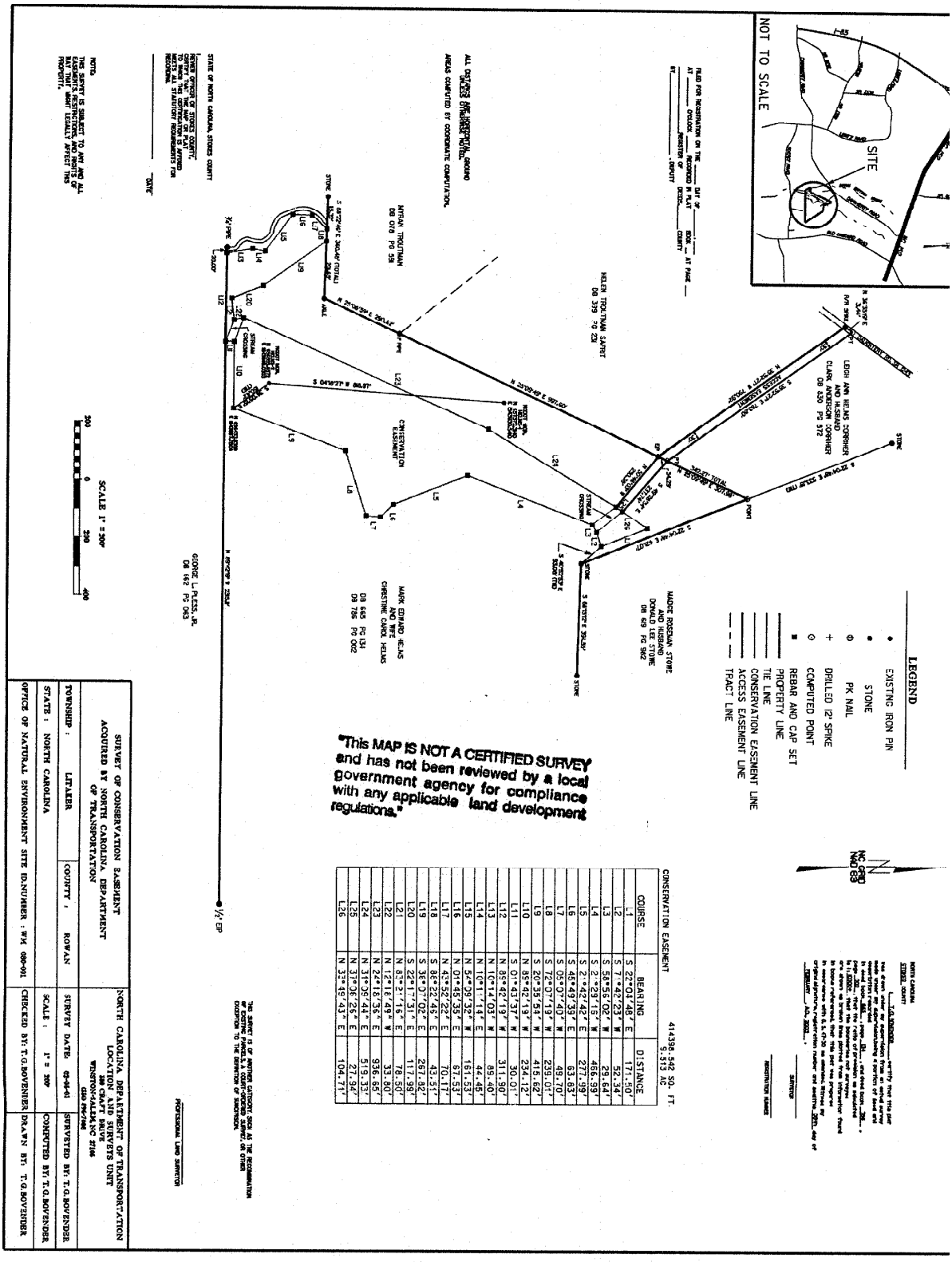
Exhibit "B"

STATE PROJECT	: 34464.4.2
FA #	: N/A
I. D. #	: R-2559 WM
COUNTY	: ROWAN

CONSERVATION EASEMENT TRACT I

COMMENCING at a point lying 93.08 feet north 40° 52' 53" east from a northern property corner of the Grantor(s) same being a common property corner between the Grantor(s) and Madge Roseman Stowe and husband Donald Lee Stowe now or formerly; thence south 71° 42' 23" west 52.34 feet; thence south 58° 56' 02" west 29.64 feet; thence south 21° 29' 16" west 466.99 feet; thence south 21° 42' 42" east 277.99 feet; thence south 45° 49' 39" east 63.83 feet; thence south 05° 07' 40" west 49.70 feet; thence south 72° 07' 19" west 239.01 feet; thence south 20° 35' 54" west 415.62 feet' thence north 89° 42' 19" west 234.12 feet; thence south 01° 43' 37" west 30.01 feet; thence north 89° 42' 19" west 311.90 feet; thence north 10° 14' 03" west 89.40 feet; thence north 10° 11'14" east 44.45 feet; thence north 54° 09' 32" west 161.53 feet; thence north 01° 45' 35" east 67.53 feet; thence north 43° 52' 22" east 70.17 feet; thence south 88° 22' 46" east 43.51 feet; thence south 36° 07' 02" east 267.82; thence south 22° 17' 31" east 117.99 feet; thence north 83° 21' 16" east 78.50 feet; thence north 12° 18' 49" west 33.80 feet; thence north 24° 18' 36" east 936.65 feet; thence north 31° 09' 44" east 519.33 feet; thence north 37° 06' 26" east 27.94 feet; thence north 33° 49' 43" east 104.71 feet; thence south 22° 04' 48" east 171.50 feet to the point of commencement.

Exhibit "A"


NOT TO SCALE
SITE
I-85
LEGEND
EXISTING IRON PIN
STONE
PK NAIL
DRILLED 12" SPIKE
COMPUTED POINT
REBAR AND CAP SET
PROPERTY LINE
TIE LINE
CONSERVATION EASEMENT LINE
ACCESS EASEMENT LINE
TRACT LINE
NAD 1983
"This MAP IS NOT A CERTIFIED SURVEY and has not been reviewed by a local government agency for compliance with any applicable land development regulations."
SCALE 1" = 200'
200 0 200 400
MADGE ROSEMAN STONE AND HUSBAND DONALD LEE STONE DB 459 PG 982
LEIGH ANN HELMS DORRIER AND HUSBAND CLARK ANDERSON DORRIER DB 630 PG 572
HELEN TROUTMAN SAPRET DB 339 PG 224
NYGAN TROUTMAN DB 676 PG 159
CONSERVATION EASEMENT
MARK EDWARD HELMS AND WIFE CHRISTINE CAROL HELMS DB 545 PG 134 DB 726 PG 002
GEORGE L. PLESS, JR. DB 662 PG 043
414396.542 SQ. FT.
9.513 AC
CONSERVATION EASEMENT
COURSE | BEARING | DISTANCE
L1 | S 22°04'48" E | 171.50'
L2 | S 7°42'23" W | 52.34'
L3 | S 58°56'02" W | 29.64'
L4 | S 2°29'15" W | 466.99'
L5 | S 2°42'42" E | 277.99'
L6 | S 45°49'39" E | 63.63'
L7 | S 05°07'40" W | 49.70'
L8 | S 72°07'19" W | 239.01'
L9 | S 20°35'54" W | 415.62'
L10 | N 85°42'19" W | 234.12'
L11 | S 01°43'37" W | 30.01'
L12 | N 85°42'19" W | 311.90'
L13 | N 10°14'03" W | 89.40'
L14 | N 10°11'14" E | 44.45'
L15 | N 5°09'32" W | 161.53'
L16 | N 01°45'35" E | 87.53'
L17 | N 43°52'22" E | 70.17'
L18 | S 88°22'45" E | 43.51'
L19 | S 35°37'02" E | 267.62'
L20 | S 22°11'37" E | 117.99'
L21 | S 45°21'16" E | 78.50'
L22 | N 42°18'49" E | 33.50'
L23 | N 24°18'35" E | 936.65'
L24 | N 31°39'44" E | 519.33'
L25 | N 31°38'25" E | 27.94'
L26 | N 33°49'43" E | 104.71'
THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.
PROFESSIONAL LAND SURVEYOR
SURVEY OF CONSERVATION EASEMENT
ACQUIRED BY NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
LOCATION AND SURVEYS UNIT
300 CRAFT DRIVE
WINSTON-SALEM, NC 27106
(336) 896-2044
TOWNSHIP : LITAKER
COUNTY : ROWAN
STATE : NORTH CAROLINA
SURVEY DATE: 05-04-01
SCALE : 1" = 200'
SURVEYED BY: T.G.BOVENDER
COMPUTED BY: T.G.BOVENDER
CHECKED BY: T.G.BOVENDER
DRAWN BY: T.G.BOVENDER
OFFICE OF NATURAL ENVIRONMENT SITE ID-NUMBER : WM 090-001

7