WAKE COUNTY, NC 1805
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/10/2003 AT 16:22:52

BOOK:009904 PAGE:02762 - 02769

Instrument prepared by:	N.C. Wetlands Restoration Program and Raleigh City Attorney's Office
Brief Description for Index:	Chavis Park
Parcel Identifier:	
Mail after Recording to:	N.C. State Property Office 116 West Jones Street Raleigh, N.C. 27604-8003

92-AAAO

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

WAKE COUNTY

THIS CONSERVATION EASEMENT DEED, made this 7 day of November, 2002, by and between the City of Raleigh, a North Carolina municipal corporation, whose mailing address for purposes of this conveyance is Raleigh Parks and Recreation Department, P. O. Box 590, Raleigh, N.C. 27602, hereinafter referred to as the "Grantors", and the State of North Carolina, hereinafter referred to as "Grantee", whose mailing address is North Carolina State Property Office, 116 West Jones Street, Raleigh, NC 27603-8003. The designations Grantors and Grantee as used herein shall include the 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 Wetlands Restoration Program (as defined in N.C. Gen Stat. ∋ 143-214.8) within the Department of Environment and Natural Resources for the purposes

of acquiring, maintaining, restoring, enhancing, and creating 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 appropriate officials of the Wetlands Restoration Program in the Department of Environment and Natural Resources have approved acceptance of this instrument; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been duly approved by the Governor and Council of State by resolution adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February, 2000; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. ∋ 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantors own in fee simple certain real property situated, lying, and being in Wake County, North Carolina (the "Property"), and being that parcel conveyed to the Grantors by deed recorded in **Deed Book** 1712 **at Page** 410 of the Wake County Registry, North Carolina; and

WHEREAS, the Grantors own, operate and provide for the benefit and recreation of the general public, a public parks facility on the Property; and

WHEREAS, a certain portion or area of the Property lies along a watercourse and/or wetland (the "Protected Property") which is further described herein; and

WHEREAS, Grantee is willing to undertake a stream restoration and improvement project ("Stream Improvements") on the Protected Property; and

WHEREAS, Grantors are 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, and other good and valuable consideration, Grantors hereby unconditionally and irrevocably grant and convey 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 the Protected Property, hereafter referred to as the Easement Areas or Easement Area, for the benefit of the people of North Carolina, and being all of the land and area identified as "PROPOSED BUFFER/CONSERVATION EASEMENT AREA: 126.593.37 S.F. 2.906 ACRES" as shown on a survey plat entitled "EASEMENT EXHIBIT FOR KENTWOOD PARK PROPERTY BUFFER/CONSERVATION EASEMENT", dated May 20, 2002, certified by Watts B. Fearrington, Jr., R.L. S., and **recorded in Map Book** 2003 **, Page** 214 **,** Wake County Registry.

I. PURPOSES

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area and to provide for the maintenance and protection of such an area; to insure that the wetland/riparian area 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 Grantors, their successors, assigns, lessees, agents, and licensees.

III. EASEMENT AREAS; STREAM IMPROVEMENTS AND RESTORATION

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Areas and shall have the right of reasonable ingress and egress to the Easement Areas over the Grantors' Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Areas. 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 Areas and shall have the right of reasonable ingress and egress to the Easement Area over the Grantors' Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantors are complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

IV. RESTRICTED ACTIVITES; INSPECTIONS

The Easement Areas 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 Areas by the Grantors is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantors have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.
B. **Industrial Use.** Industrial activities in the Easement Area are prohibited.
C. **Residential Use.** Residential use of the Easement Area is prohibited.
D. **Commercial Use.** Commercial activities in the Easement Area are prohibited.

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

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

G. **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.

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

I. **Grading, Mineral Use, Excavation, Dredging.** (Excepting those specific stream improvement and restoration activities set forth in paragraph Section III. EASEMENT AREA; STREAM IMPROVEMENTS AND RESTORATION hereof, including maintenance of the same) there shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

J. **Water Quality and Drainage Patterns.** (Excepting those specific stream improvement and restoration activities set forth in Section III. EASEMENT AREA; STREAM IMPROVEMENTS AND RESTORATION hereof, including maintenance of the same) there shall be no diking, draining, dredging, channeling, filling, leveling, discharging, 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.

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

L. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights program, cluster development arrangement, or otherwise.

M. **No Motorized Vehicles.** (Excepting those specific stream improvement and restoration activities set forth in Section III. EASEMENT AREA; STREAM IMPROVEMENTS AND RESTORATION hereof, including maintenance of the same), use of motorized vehicles or equipment on the Easement Area is prohibited.

N. **Inspections.** 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 Grantor's property, at reasonable times for the purpose of inspecting said property to assess compliance with the terms, conditions, restrictions and purposes of this Conservation Easement.

O. **Variances.** The Grantors may request permission to vary from the above restrictions for good cause shown, provided such request is consistent with the purposes of the Conservation Easement. The Grantor shall not vary from the

restrictions without first obtaining written approval from the Wetlands Restoration Program whose mailing address is 1619 Mail Service Center, Raleigh, N.C. 27699-1619.

V. RESERVED USES

The Grantors expressly reserve the following rights, privileges and incidents of fee ownership or the Easement Area, as follows:

A. Parks and Recreational Uses. The Grantors may continue to use the Easement Area for passive recreational purposes as part of a City Parks facility, such uses including pedestrian access, nature studies and hiking, and as a visual and natural amenity to the public park. Such uses shall include the right to maintain, repair and use those improvements and facilities in existence on the date of this instrument, such as bridges, walkways and other facilities for users of the public park.

B. Utility Purposes. Subject to all regulatory requirements and approvals, the Grantor may use the Easement Area for needed public utility and infrastructure improvements; provided such future uses are undertaken in a manner which minimizes any harm or disruption to the conservation value of the Easement Area or to the Grantee's Stream Improvement Project.

C. Educational Uses. The Grantors reserve the right to provide for passive educational uses of the property, with rights of public access to the Easement Area for such purposes, and including organized educational activities such as site visits, studies, and observations.

***D.* Drainageway Maintenance.** Following completion of the Grantee's Stream Improvement Project on the Easement Area, the Grantors shall be responsible for maintenance and repair, as necessary and appropriate for stormwater management, water quality preservation, erosion control, safety, parks and recreation, environmental protection and conservation purposes, as long as such activities do not negatively impact either the Grantee's Stream Improvement Project or the Easement Area, thereby resulting in a change in the designed pattern, dimension or profile of the stream, or in the vegetated buffer within the Easement Area.

VI. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantors have violated or are 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 Grantors.

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.

VII. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. ∋ 143-214.8 et seq., 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.

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

AND the Grantors covenant with the Grantee that the title is marketable and free and clear of all defects and encumbrances arising during the period Grantors were seized of the property, and that Grantors will warrant and defend the title against the lawful claims of all persons claiming by, through, or under the Grantors subject only to the exceptions, if any, hereinafter stated.

Subject to easements, encumbrances, and restrictions of record, if any.

IN TESTIMONY WHEREOF, the Grantors has hereunto executed the foregoing by authority of its City Council, with the official seal affixed, the day and year first above written.

CITY OF RALEIGH, NORTH CAROLINA

By:_____
Mayor

ATTEST:

_____
Gail G. Smith
City Clerk

(AFFIX SEAL)

NORTH CAROLINA

COUNTY OF WAKE

This is to certify that on the 7 day of November, 2002, before me personally came Gail G. Smith, with whom I am personally acquainted, who being by me duly sworn, says that she is the City Clerk and Treasurer and Charles C. Meeker is the Mayor of the City of Raleigh, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and Treasurer and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official seal this the 7 day of November, 2002.

(SEAL)

PAMELA INCE NOTARY *** PUBLIC WAKE COUNTY, NC

Pamela Ince
Notary Public

My Commission Expires: 9-13-06