FILED
ALAMANCE COUNTY, NC
HUGH WEBSTER
REGISTER OF DEEDS

FILED	Nov 16, 2017
AT	10:12:53 am
BOOK	03718
START PAGE	0441
END PAGE	0451
INSTRUMENT #	42445
EXCISE TAX	(None)

DF

STATE OF NORTH CAROLINA
ALAMANCE COUNTY

AMENDMENT OF CONSERVATION EASEMENT DEED AS RECORDED IN DEED BOOK 2049, PAGE 970

SPO File Number 01-AN
DMS Site ID 241
Mary's Creek
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 AMENDMENT OF CONSERVATION EASEMENT DEED, made this 21st day of June 2017, 2017, by and between **Lynette B. Dixon, widow, (Grantor),** whose mailing address is, 1682 Dixon-Lamb Lane, Graham, NC 27349, and the State of North Carolina whose mailing address is, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. ("**Grantee**"). The designations of 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:

THAT, WHEREAS, Edward L. Dixon, (now deceased), and wife, Lynette B. Dixon granted a 6.810+/- acre Deed of Conservation Easement to the State of North Carolina in an instrument dated March 17th, 2004, recorded in **Deed Book 2049, Page 970, of the Alamance County Registry** (the "**Deed**"). Deed is more particularly shown on a map of survey as recorded in **Plat Book 68, Page 226**, Alamance County Registry;

This amendment is intended to modify the previous deed of conservation easement as recorded on March 17th, 2004 in **Deed Book 2049, Page 970, of the Alamance County Registry** (the "**Deed**"). Deed is more particularly shown on a map of survey as recorded in Plat Book 68, Page 226, Alamance County Registry. Grantor and Grantee (collectively, the "**Parties**") have agreed to modify the original restrictions as set forth in the Deed to allow for the following recitals as stated and incorporated into this amendment and as shown on attached signed agreement shown as exhibit "**A**" and further illustrated on attached map exhibit "**B**";

11/26

WHEREAS, as provided on page 3, in Section III of the Deed, Grantor has submitted a request in writing to the Department of Environmental Quality, the Division of Mitigation Services, to amend the Deed. Grantor requests to remove a culverted crossing road and construct a ford crossing road (the "**Ford Crossing**") over and across the restricted areas in the Deed at a location identical to the current location of the culverted crossing road as shown in the Deed as recorded in Deed Book 2049, Page 970, and as agreed in the attached signed agreement shown as exhibit "**A**" and further illustrated on attached map exhibit "**B**";

WHEREAS, Grantor has requested to install a subgrade water line that traverses the Conservation Easement and which portion is wholly contained within the Ford Crossing to supply an additional cattle watering station (the "Watering Station") to be constructed on the Property due to the cattle being excluded from water access within the Conservation Easement;

WHEREAS, the Parties have mutually agreed to the request by Grantor and allow the removal of the culverted crossing and the subsequent construction of the ford crossing road; and the amendment of the Deed in accordance with the terms of Exhibit "**A**" as attached and further depicted on exhibit "**B**";

The effective date of this Amendment of the Conservation Easement as recorded in **Deed Book 2049, Page 970, of the Alamance County Registry**, shall be March 17, 2004, the date the Conservation Easement being modified by this document was recorded.

IN TESTIMONY, WHEREOF, the Grantor and Grantee have hereunto set their hand and seal, the day and year first above written.

Lynette B. Dixon (SEAL)
LYNETTE B. DIXON

NORTH CAROLINA
COUNTY OF Alamance

I, Dawn D. McPherson, a Notary Public in and for the County and State aforesaid, do hereby certify that Lynette B. Dixon, 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 21st day of June, 2017.

Dawn D. McPherson
Notary Public

My commission expires:

4-7-19

DAWN D McPHERSON
NOTARY PUBLIC
ALAMANCE COUNTY, NC
My Commission Expires 4-7-19

IN TESTIMONY, WHEREOF, the **STATE OF NORTH CAROLINA** has caused this instrument to be executed in its name by Tim Walton, Director, State Property Office, NC Department of Administration.

STATE OF NORTH CAROLINA

By: Tim Walton (SEAL)
Tim Walton, Director

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, R. Michael Moser, a Notary Public in and for the aforesaid County of Wake and the State of North Carolina, do certify that Tim Walton, personally came before me this day and acknowledged that he is Director, State Property Office, Department of Administration, State of North Carolina, and that by authority duly given and as the act of the State, has signed the foregoing instrument.

IN WITNESS, WHEREOF, I have hereunto set my hand and Notarial Seal, this the 11th day of October, 2017.

R. Michael Moser
Notary Public

Print name: R. Michael Moser

My Commission Expires: 9/30/22

R. Michael Moser
NOTARY
PUBLIC
Wake County, NC

EXHIBIT A
(next seven pages)

AGREEMENT TO AMEND CONSERVATION EASEMENT

THIS AGREEMENT TO AMEND CONSERVATION EASEMENT, and the attached CONDITIONAL LICENSE OF INGRESS AND EGRESS TO IMPACT THE CONSERVATION EASEMENT (this "Agreement") is made and entered into as of this, the 6 day of January 2017, by and between the following parties, **LYNETTE B. DIXON ("Owner")**; the State of North Carolina, by and through the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY (including the DIVISION OF MITIGATION SERVICES, formerly known as the ECOSYSTEM ENHANCEMENT PROGRAM, and the OFFICE OF LAND AND WATER STEWARDSHIP) (collectively, "DEQ")**. Collectively, the "State of North Carolina" and "DEQ," are referred to as the "State." "Owner," and the "State" are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

WHEREAS, Lynette Dixon owns that real property containing 179.56 acres, more or less, in Newlin Township, Alamance County, North Carolina, which property is more particularly described in Deed Book 294, Page 221 and Deed Book 320, page 253, save and except 1.00 acre conveyed out in Deed Book 357, page 377 and 1.00 acre conveyed out in Deed Book 426, page 284 of the Alamance County Registry (the "Property");

WHEREAS, Owner previously granted to the State a conservation easement and access rights over the Property in a Conservation Easement recorded in Book 2049, Page 970, Alamance County Registry (the "Conservation Easement Agreement"), which easement is more particularly shown on a map recorded in Plat Book 68, Page 226, Alamance County Registry (the "Map");

WHEREAS, Owner has requested to amend the Conservation Easement Agreement to permit Owner to remove a culverted crossing road and construct a ford crossing road (the "Ford Crossing") over and across the Conservation Easement at a location identical to the current location of the culverted crossing road which is the location contemplated in the Conservation Easement Agreement and depicted on the Map;

WHEREAS, Owner has requested to install a subgrade water line that traverses the Conservation Easement and which portion is wholly contained within the Ford Crossing in order to supply an additional cattle watering station (the "Watering Station") to be constructed on the Property as a result of the cattle being excluded from water access within the Conservation Easement. Any references to the Ford Crossing in this Agreement shall include the subgrade watering line to the Watering Station; and

WHEREAS, the State has agreed to permit the removal of the culverted crossing and the subsequent construction of the ford crossing road and the amendment of the Conservation Easement Agreement in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to the Parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the State and Owner agree as follows:

1. The State shall grant Owner a conditional license to enter and impact the easement, as found in Exhibit A.

2. The design of the Ford Crossing shall adhere to all appropriate standards for construction provided by the Natural Resources Conservation Service of the United States Department of Agriculture ("NRCS"), attached in Exhibit B. All work on the Ford Crossing shall be completed in accordance with the NRCS Standards. The Ford Crossing shall be installed in a manner such that base flow will not impeded by the invert elevation of the crossing.

3. Owner shall be responsible for obtaining all necessary permits in connection with the construction of the Ford Crossing. All work performed on the Ford Crossing shall be performed in a good, safe and workmanlike manner and shall be performed in strict compliance with this Agreement and all governmental laws, regulations and requirements. Owner agrees to provide advance notice such that DEQ may provide on-site supervision during construction activities within the Conservation Easement. This paragraph shall survive the expiration or early termination of this Agreement for any reason.

4. Work on the Ford Crossing shall commence no later than February 1, 2017, shall be performed with due diligence and shall be completed no later than July 31, 2017.

5. All work on the Ford Crossing shall be performed within the footprint of the existing crossing, as permitted under Attachment A. In no event shall Owner permit any work to be performed outside of the footprint of the existing crossing or permit the storage or staging of any materials within any other part of the Conservation Easement. This paragraph shall survive the expiration or early termination of this Agreement for any reason.

6. Owner shall be responsible for all costs of constructing the Ford Crossing and Watering Station. Upon notice that Owner is prepared to start construction, DEQ will cause the amount of $ 7,500 to be tendered to Owner, provided that the initial delivery of materials has already occurred. Upon completion of the Ford Crossing and approval by DEQ, DEQ will cause the amount of $ 7,500 to be tendered to Owner no later than 5:00 p.m. Eastern time on a date thirty (30) business days after DEQ's approval of completion. No further payments shall be made beyond the combined $15,000 amount stated above. Approval shall be made at DEQ's sole discretion, provided the Ford Crossing is constructed in accordance with this Agreement. DEQ is executing this Agreement for the sole purpose of acknowledging payment eligibility under this Agreement. All applications for payment by Owner shall be sent solely to DEQ.

7. Owner agrees to the addition of the following conditions to the Conservation Easement under item II.O:

i. Livestock shall be excluded from the Crossing at all times, except when livestock are being moved from one pasture to another through the Crossing. When livestock are being moved through the Crossing, livestock shall not be permitted to linger or remain in the stream any longer than is reasonably necessary.

ii. Access gates to the Crossing shall remain closed except when necessary to satisfy the purpose of moving livestock or traversing the stream.

iii. Owner is responsible for all maintenance of the Crossing and any watering stations. Any significant alterations to the crossings integrity or elevation must be done in consultation with DEQ. DEQ, its employees and agents, successors or assigns, reserve the right to repair the Crossing, at its sole discretion, and to recover the cost of such repairs from Owner, her successors or assigns, if such repairs are deemed by DEQ to be necessary to maintain stream stability and integrity. Owner reserves the right to permanently abandon the Crossing upon notice to DEQ and to thus allow the Crossing to resume its natural structure. Such abandonment must be recorded with the Register of Deeds.

8. If the construction, maintenance or repair of the Ford Crossing adversely affects the restoration site within the Conservation Easement or otherwise destabilizes the restored area within the Conservation Easement, Owner shall take such actions as are reasonably necessary or as required by DEQ, in its sole discretion, to correct the Ford Crossing in a manner to minimize or prevent such adverse effect. Notwithstanding anything to the contrary in this Agreement, if at any time DEQ determines, in its sole discretion, that Owner's work within the Conservation Easement endangers the Conservation Easement or impairs any natural or restorative functions within the Conservation Easement, then DEQ may initiate corrective measures to prevent or mitigate any impending effect on the Conservation Easement. This paragraph shall survive the expiration or early termination of this Agreement for any reason.

9. Owner agrees at all times to indemnify and hold harmless the State of North Carolina, including DEQ and its agents, employees, patrons and visitors from any loss, liability, claims, suits, costs and expenses, including reasonable attorneys' fees, arising from any injury to person or damage to property resulting from the exercise of the rights granted to Owner in this Agreement, excluding any injury to persons or damage to property to the extent caused by the negligence or willful misconduct of the State of North Carolina, including DEQ. This paragraph shall survive the expiration or early termination of this Agreement for any reason.

10. This Agreement shall remain in effect until the recordation of the amended Conservation Easement. This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and the amendment of the Conservation Easement and supersedes all prior or contemporaneous discussions, negotiations, or understandings relating to the subject matter of this Agreement.

11. This Agreement may be terminated at any time, with or without cause, by DEQ, or Owner with 10 days notice.

12. **NOTICES.** Except as otherwise expressly provided in this Agreement, all notices, requests, demands or other communications provided for, permitted or required by this Agreement shall be deemed validly given if in writing and delivered by commercial courier, facsimile or email, registered or certified mail, return receipt requested or commercial overnight delivery service to the applicable address set forth below (or to any other address the party to be notified may have designated to the sender by notice properly given under this section). [Any notice given by facsimile or e-mail must also be sent by commercial overnight delivery service for the delivery of such notice to be validly given.] Such notices shall be deemed received (a) when delivered or when

delivery is refused as indicated on the courier's records (if sent by courier or commercial overnight delivery service); (b) on the same business day after the notice was sent by facsimile or e-mail; or (c) two (2) business days after the date postmarked when sent by mail. Notices shall be addressed as follows:

If to Owner:
Lynette B. Dixon
1682 Dixon Lamb Ln
Graham, NC 27253
Phone: (336) 376-6588

If to DEQ:
Ed Hajnos, Land and Water Stewardship Director
NC Department of Environmental Quality
Office of Land and Water Stewardship
1606 Mail Service Center, Raleigh
North Carolina 27699
Email: Edward.Hajnos@ncdenr.gov

With copies to:
NC Department of Environmental Quality
Division of Mitigation Services
1652 Mail Service Center, Raleigh
North Carolina 27699-1652
Attn: Tim Baumgartner, Deputy Director of Operations
Email: tim.baumgartner@ncdenr.gov

NC Department of Environmental Quality
Office of the General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Attn: Douglas Ansel, Assistant General Counsel
Email: Douglas.Ansel@ncdenr.gov

13. This Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, assignees, and successors of the respective parties; provided, this Agreement may not be assigned by Owner without the prior written consent of DEQ, at its sole discretion.

14. **PARTIAL INVALIDITY.** In the event that any part or provision of this Agreement shall be determined to be invalid or unenforceable, the remaining parts and provisions of this Agreement which can be separated from the invalid, unenforceable parts or provisions shall continue in full force and effect.

15. **AUTHORITY TO ENTER AGREEMENT.** The Parties, including each Party's signatory below, each acknowledge and affirm that they have the authority to enter this Agreement on behalf of the company or entity for which they are signing.

16. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first above written.

Lynette B. Dixon

LYNETTE B. DIXON

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF MITIGATION SERVICES

By: _____

Print Name: Tim Baumgartner

Title: Deputy Director of Operations

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF LAND AND WATER STEWARDSHIP

By: _____

Print Name: Edward A. Hajnos

Title: Stewardship Program Coordinator

5

EXHIBIT A

CONDITIONAL LICENSE OF INGRESS AND EGRESS TO IMPACT THE CONSERVATION EASEMENT

1. This license hereby adopts any and all definitions, terms and conditions contained within the above Agreement.

2. The State hereby grants to Owner a conditional license to enter upon the Conservation Easement to construct a new ford crossing road over and across the Conservation Easement at the location shown on the recorded Map, together with associated cattle exclusion fencing and gates at the Ford Crossing, all in accordance with the above Agreement. The initial and continued effectiveness of the license granted in this exhibit shall be conditioned upon the satisfaction, in DEQ's sole discretion, of all conditions and requirements set forth in the above Agreement.

3. Actions undertaken by Owner in reliance on, and in conformance with, this license and the above Agreement shall not be deemed to be violations of items II or III of the Conservation Easement.

4. This license shall terminate upon the completion of the Ford Crossing, or at the discretion of the State for any reason, with or without cause.

Lynette B. Dixon
LYNETTE B. DIXON

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF MITIGATION SERVICES

By: _____

Print Name: Tim Baumgartner

Title: Deputy Director of Operations

6

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF LAND AND WATER STEWARDSHIP

By: _____

Print Name: Edward A. Higgins

Title: Stewardship Program Coordinator

7

EXHIBIT B

"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."