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BY: BECKI MCPHERSON
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BK: RB 852
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Stamps: $322.00

STATE OF NORTH CAROLINA

P.I.N. # 0177-40-0414

COUNTY OF COLUMBUS

TAX INFORMATION RECEIVED
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BY 5-8-2006

PREPARED BY: Lisa Glover
Assistant Attorney General
North Carolina Department of Justice

RETURN TO: North Carolina Department of Transportation
Office of Natural Environment
1598 Mail Service Center
Raleigh, NC 27699-1598

# GENERAL WARRANTY DEED, CONSERVATION EASEMENT, TEMPORARY CONSTRUCTION EASEMENT and PERMANENT ACCESS EASEMENT OF INGRESS AND EGRESS

This Deed, Conservation Easement, Temporary Construction Easement and Permanent Access Easement of Ingress and Egress is granted on this 27 day of FEBRUARY, 2006, by JAMES P. JONES, widower, having an address of P.O. Box 674, Tabor City, North Carolina, 28463 (hereinafter, "Grantor"), to THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, having an address of 1598 Mail Service Center, Raleigh, NC 27699-1598 (hereinafter, "NCDOT" or "Grantee").

The designation 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.

WHEREAS:

The Grantor is the sole owner in fee simple of certain real property located in Williams Township, Columbus County, North Carolina, and more particularly described in Deed Book 379, Page 799, of the Columbus County Registry, and described in Exhibit A, attached hereto and incorporated herein (hereinafter, the "Property").

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the streams that run through the Property; many of these species, which rely on the streams, are of great importance to the Grantor and the people of North Carolina.

The Grantor is willing to deed, in fee simple, 65.91 acres of the Property to Grantee (hereinafter, "Tract 1"), and to grant a perpetual Conservation Easement over 6.58 acres of the Property (hereinafter, "Tract 2" or the "Conservation Easement Area") to Grantee, 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 a Temporary Construction Easement and a Permanent Access Easement of Ingress and Egress (hereinafter, "Permanent Access Easement") to the Conservation Easement Area upon and along the Property as more particularly set forth hereinafter.

NOW, THEREFORE, in consideration of the sum of One Hundred Sixty-One Thousand Dollars ($161,000.00) and for other valuable considerations paid by the Grantee to the Grantor, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Grantor has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Williams Township, Columbus County, North Carolina and more particularly described as Tract 1 on a survey entitled "Mill Branch Site, Ecosystem Enhancement Program," prepared by Johnny W. Nobles and Associates, revised December 19, 2005 and recorded at Map Book 79, Page 96 of the Columbus County Registry (hereinafter, "the Survey");

Grantor further hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, in respect to all that certain lot or parcel of land situated in Williams Township, Columbus County, North Carolina and more particularly described as Tract 2 on the Survey; together with a Permanent Access Easement, labeled "45' Ingress & Egress Easement" on the Survey; and a Temporary Construction Easement as more particularly described below in Paragraph 4 and in Exhibit B.

The Survey, recorded at Map Book 79, Page 96 of the Columbus County Registry, supersedes and replaces an earlier survey, since revised, which was recorded at Map Book 78, Page 7 of the Columbus County Registry.

It is understood by all parties that a portion of the payment price for this Conservation Easement includes a previous payment of Fourteen Thousand dollars ($14,000.00) made to Grantor as a cost to cure for the loss of cattle access to the streams on the Conservation Easement Area. No further compensation is due Grantor for this loss of access. All subsequent references to the Conservation Easement shall include, where appropriate, reference to the Temporary Construction Easement and Permanent Access Easement.

## TERMS OF CONSERVATION EASEMENT, TEMPORARY CONSTRUCTION EASEMENT, AND PERMANENT ACCESS EASEMENT

The terms, conditions and restrictions of the Conservation Easement, Temporary Construction Easement, and Permanent Access Easement are as hereinafter set forth:

1. Purpose

The NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and who has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects.

The NCDOT desires to restore, enhance or preserve approximately 5,152 linear feet of stream and to preserve, create or enhance approximately 38 acres of wetlands in Columbus County on Tract 1 and Tract 2 (hereinafter, the "Mitigation Project");

The NCDOT, under a Section 404 permit granted by the United States Army Corps of Engineers (hereinafter, "USACE"), must conduct certain off-site stream and wetland mitigation work to compensate for impacts to streams and wetlands resulting from road construction;

The Ecosystem Enhancement Program (hereinafter, "EEP") will be responsible for implementing the Mitigation Project, pursuant, generally, to the Mill Branch Final Stream and Wetland Restoration Plan (hereinafter, "the Restoration Plan"), dated January, 2005, prepared by Stantec Consulting Services, for the restoration, enhancement, preservation, and creation of the streams and wetlands, and kept on file with EEP;

The purposes of the Conservation Easement over the Conservation Easement Area are (1) to protect the mitigation activities performed by or on behalf of the NCDOT; (2) to preserve and protect the conservation values of the Conservation Easement Area, which include natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, and wetlands; and scenic resources of the Property; (3) to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; and,

(4) to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area.

The specific conservation values of the Conservation Easement Area and its current use and state of improvement are described in the Restoration Plan, which is acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Restoration Plan may be used by the Grantee to document any future changes in the use or character of the Conservation Easement Area in order to ensure the terms and conditions of this Conservation Easement are fulfilled. The Restoration Plan, however, is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Area if there is a controversy over its use. The Grantor and Grantee have copies of the Restoration Plan, and said report will remain on file with the EEP.

The Grantor intends that the conservation values of the Conservation Easement Area be preserved and maintained, and further, the Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity.

The conservation purposes of this Conservation Easement are recognized by the Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 *et seq.*, which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use," N.C.G.S. § 121-35(1); and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement," N.C.G.S. § 121-40.

The primary purpose of the Conservation Easement is to protect the mitigation activities within the Conservation Easement Area, including the restored, enhanced, and preserved stream areas. Except as specifically permitted herein, no activity that shall significantly impair the condition of the restored, enhanced or preserved stream areas on the Conservation Easement Area shall be permitted.

2. Grant of Conservation Easement; Duration

The Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement over Tract 2, which is an immediately vested interest in real property of the nature and character described herein. The Grantor agrees that it will not perform, nor knowingly allow others to perform, any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. The Grantor authorizes the Grantee to enforce these covenants in the manner described below.

The Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement

Area. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property.

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

3. Description of Conservation Easement Area

The Conservation Easement Area encompasses perennial streams, wetlands and surrounding land located on the Property, as more particularly depicted on the Survey. The Conservation Easement Area is labeled as Tract 2 on the Survey, and is comprised of 6.58 total acres.

4. Temporary Construction Easement; Permanent Access Easement

The Grantor hereby grants and conveys to the Grantee a Permanent Access Easement, located as depicted on the Survey, and a Temporary Construction Easement, located as depicted in Exhibit B, attached hereto and incorporated by reference, in order that NCDOT, or its authorized representatives, specifically including the EEP, may conduct the mitigation activities. The Permanent Access Easement is labeled as "45' Ingress & Egress Easement" on the Survey. The Temporary Construction Easement consists of Tracts 3, 4, and 5 as labeled on Exhibit B.

NCDOT and its authorized representatives, specifically including the EEP, shall have the right to place equipment and materials on the Temporary Construction Easement as necessary. The Temporary Construction Easement will be valid until the completion of the construction and monitoring of the Mitigation Project. Upon final approval by the USACE of the Mitigation Project, the Temporary Construction Easement will dissolve and no longer be a part of this Conservation Easement. NCDOT will return any land in the Temporary Construction Easement that is disturbed as a result of the mitigation activities to its pre-disturbance state, if requested by the Grantor, after completion of the mitigation activities and final approval by the USACE.

The NCDOT and its authorized representatives, including the USACE and the EEP, at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area through the Permanent Access Easement (1) to conduct and monitor the Mitigation Project; and (2) for the purpose of inspecting the Conservation Easement Area to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement.

The Permanent Access Easement and Conservation Easement Area will also serve as access to Tract 1, conveyed in fee simple through this instrument. The NCDOT and its authorized representatives, including the USACE and the EEP, may, at any time, utilize the Permanent Access Easement and the Conservation Easement Area in order to access Tract 1.

5. Rights and Responsibilities Retained by the Grantor

Subject to the terms and restrictions contained herein, the Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Conservation Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Conservation Easement Area, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the purposes of this Conservation Easement. Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God or other event over which it had no control. The Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

6. Right to Privacy

The Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on or to the Conservation Easement Area, although the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

7. Subdivision

The Conservation Easement Area may not be subdivided, partitioned nor conveyed from the Property, except in its current configuration as an entity or block of the Property.

8. Passive Recreational Use

The Grantor retains the right to engage in passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking, fishing, hunting or animal and plant observation as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below.

9. Permitted and Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation 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 Conservation Easement Area, and any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters is prohibited. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee.

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 changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT gives its prior written consent or unless otherwise expressly permitted herein.

B. *Agricultural, Grazing, and Horticultural Use and Fencing*

Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area without advance written permission from the NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area or within 100 feet of the streambank, whichever is greater, or result in or cause discharge or runoff directly into the Conservation Easement Area. Existing fences may be repaired and replaced. Grantee or its representatives, specifically including the EEP, may install fencing around the perimeter of the Conservation Easement Area.

C. *Silvicultural Use and Land Clearing*

There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except upon written approval of NCDOT. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with the purposes of this Conservation Easement. Removal of large live trees, or thinning of the forest or removal of brush for fire management, may be allowed in some cases provided that any such request is consistent with the purposes of this Conservation Easement and the Grantor obtains prior written approval from the NCDOT.

D. *Dumping and Storage*

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Conservation Easement Area is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored in the Conservation Easement Area.

E. *Mineral Use, Excavation, and 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 Conservation Easement Area, or on adjacent property if owned by the Grantor or his successors, which would cause erosion or siltation on the Conservation Easement Area.

F. *Industrial Use*

Industrial activities on the Conservation Easement Area are prohibited.

G. *Residential Use*

Residential use of the Conservation Easement Area is prohibited.

H. *Commercial Use*

Commercial activities in the Conservation Easement Area are prohibited.

I. *Construction, Roads and Road Building, Motorized Vehicles*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area. No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area except as allowed and described in the Restoration Plan. Motorized vehicles, including off-road vehicles, are prohibited in the Conservation Easement Area. However, the NCDOT expressly reserves the right to install, operate, and maintain structures or unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of reestablishing, protecting, and enhancing stream functional values, including those described in the Restoration Plan, for the Conservation Easement Area. All physical structures allowed under this paragraph in the Conservation Easement Area, but not necessary for maintenance of the stream mitigation activities, will be removed once the USACE has given final approval of the Mitigation Project. NCDOT will return any land in the Temporary Construction Easement and Access Easement that is disturbed as a result of the mitigation activities to its pre-disturbance state, if requested by the Grantor, after completion of the mitigation activities and final approval by the USACE.

Grantor is permitted to install stream crossings at the four locations labeled as "60' Future Stream Crossing" on the Survey. These crossings may be up to 60 (sixty) feet in width, including any associated clearing. Grantor must obtain prior written approval of the design and construction method for the stream crossings from Grantee before beginning any construction, and must minimize impacts to any fencing or vegetation in the Conservation Easement Area.

Nothing in this Conservation Easement relieves Grantor's responsibilities to obtain any needed environmental permits or authorizations necessary to construct the stream crossings.

J. *Signs*

No signs shall be permitted in the Conservation Easement Area except interpretive signs describing activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, and signs giving directions or prescribing rules and regulations for the use of the Conservation Easement Area, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable.

K. *Utilities*

The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements located in the Conservation Easement Area or affecting the Conservation Easement Area, the Grantor shall notify the NCDOT if right-of-way clearing or other work in the Conservation Easement Area is scheduled by the utility. Any such clearing should be in keeping with the intent of the Conservation Easement.

L. *Water Quality and Drainage Patterns*

The Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water quality or to any of the plants or habitats within the Conservation Easement Area, or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Conservation Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands or stream by the Grantor is prohibited. In addition, the Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Area by any means; polluting or discharging into waters, springs, seeps, or wetlands; or using pesticides or biocides in the Conservation Easement Area unless agreed to in writing by the NCDOT.

M. *NCDOT's Rights*

The NCDOT, on behalf of itself and its authorized representatives, specifically including the EEP, reserves the right to use the Conservation Easement Area and Temporary Construction Easement in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance stream or wetland functional values, and monitor the mitigation work, as described in the Restoration Plan, in order to mitigate for impacts to streams or wetlands resulting from road construction. These mitigation activities include, but are not limited to, construction of new stream channels; restoration/stabilization of existing stream channels; installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow; planting of trees, shrubs and herbaceous vegetation; and utilization of heavy equipment to grade, fill, and prepare the soil. The NCDOT further reserves

the right to monitor the results of the mitigation activities in perpetuity and to repair or restore any damage to the Conservation Easement Area occurring after initial completion of the construction associated with mitigation activities.

10. Ongoing Responsibilities of the Grantor

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

A. *Taxes*

The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

B. *Upkeep and Maintenance*

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kinds related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

C. *Liability and Indemnification*

The Grantor agrees to indemnify and hold the Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the intentional misconduct or negligence of the Grantee or their agents, in which case liability shall be apportioned accordingly.

11. Enforcement

The NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, the NCDOT shall give the Grantor written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the NCDOT may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantor to restore the Conservation Easement Area to its condition prior to the violation as restoration of the Conservation Easement Area may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the

NCDOT for all its expenses incurred in stopping and correcting the violation, including but not limited to court costs, attorneys' fees, and any other costs incurred with onsite remediation. If legal action is brought by the NCDOT and the court finds that no violation has occurred, each party shall bear its own costs. The failure of the NCDOT to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations.

12. Transfer of Easements

The Grantee shall have the right to transfer this Conservation Easement, Temporary Construction Easement, and Permanent Access Easement to the EEP, to any public agency, or to a private nonprofit organization that, at the time of transfer, is a qualified organization under §170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, the Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

13. Transfer of Property

The Grantor agrees to incorporate by reference the terms of this Conservation Easement, Temporary Construction Easement and Permanent Access Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Conservation Easement Area. Failure of the Grantor to comply with this section shall not impair the validity of this Conservation Easement, Temporary Construction Easement or Permanent Access Easement as to successor owners or limit their enforceability in any way, nor shall the Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easements

This Conservation Easement, Temporary Construction Easement and Permanent Access Easement may be amended by a written instrument executed by the Grantee and the Grantor. Any such amendment shall be consistent with the purpose of this Conservation Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

15. Procedure in the Event of Changed Conditions

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in the Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area for conservation purposes, the restrictions contained herein may only be extinguished by

judicial proceeding. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantor and Grantee in such action shall be paid out of the recovered proceeds. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's, interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

16. Procedure in the Event of Condemnation or Eminent Domain

Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to the Grantee and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

17. Interpretation

This Conservation Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

18. Perpetual Duration; Severability

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement, Temporary Construction Easement, and

Permanent Access Easement that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Conservation Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

19. Notices

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail to the parties respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To the Grantor:
James P. Jones
P.O. Box 674
Tabor City, NC 28463

To NCDOT:
Office of Natural Environment
1598 Mail Service Center
Raleigh, NC 27699-1598

With a copy to:
Ecosystem Enhancement Program
1652 Mail Service Center
Raleigh, NC 27699-1652

In any provision of this Conservation Easement in which the Grantor is required to provide advance notice to the Grantee of any activity on the Property, such notice shall be given not less than thirty days prior to the planned commencement of the activity. If the Grantee's approval is required, such approval shall be deemed withheld unless the Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If the Grantor has received no response after said 30 days, the Grantor may send a second written notice to the Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Grantor's Title Warranty

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, Temporary Construction Easement and Permanent Access Easement; that the Conservation Easement Area, Temporary Construction Easement and Permanent Access Easement are free and clear of any and all encumbrances, except easements and leases of record

or in effect by prescriptive rights as of the date hereto; and that there is legal access to the Property; and the Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed.

21. Subsequent Liens

No provisions of this Conservation Easement should be construed as impairing the ability of the Grantor to use the Conservation Easement Area as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

22. Subsequent Easements/Restrictions

The grant of any easements or use restrictions that might diminish or impair the conservation values of the Conservation Easement Area are prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement.

23. Grantor's Environmental Warranty

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee, nor shall the Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement, Temporary Construction Easement and Permanent Access Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easements.

25. Recording

The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Columbus County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

26. Merger

The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD this Conservation Easement, Temporary Construction Easement and Permanent Access Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

James P. Jones (Seal)
James P. Jones

NORTH CAROLINA
Columbus COUNTY

I, T.M. Clark, a Notary Public of Cumberland County, North Carolina do hereby certify that James P. Jones, widower personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 27 day of February, 2006.

T.M. CLARK NOTARY PUBLIC CUMBERLAND COUNTY, NC

T M Clark
Notary Public (SEAL)
My commission expires: 11-02-09

NORTH CAROLINA COLUMBUS COUNTY
The foregoing or annexed certificate(s) of
T. M. Clark
Notar(y) (ies) Public (has) (have) been verified to have a Signature, seal or stamp, and an expiration date This Instrument and this certificate are duly registered at the Date and time and in the book and page shown on the First page thereof
Lawrence H. Whitehead
Register of Deeds
By: Rebecca M. Pope
Asst./Deputy Register of Deeds

Rev. Jim Hill

Accepted:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

By: A.D. Allison, II
Assistant Manager, Right of Way Branch

NORTH CAROLINA
Wake COUNTY

I, Latham P. Hodges, a Notary Public of Cumberland County, North Carolina do hereby certify that A.D. Allison, II personally came before me this day and acknowledged that he is the Assistant Manager of the Right of Way Branch of the North Carolina Department of Transportation, an agency of the State of North Carolina, and that by authority duly given he executed the foregoing instrument.

Witness my hand and official stamp or seal this the 7th day of March, 2006.

LATHAM P. HODGES NOTARY PUBLIC CUMBERLAND CO., N.C.

Latham P. Hodges
Notary Public (SEAL)
My commission expires: 12-13-2008

# EXHIBIT A

From the instrument recorded at Deed Book 379, Page799:

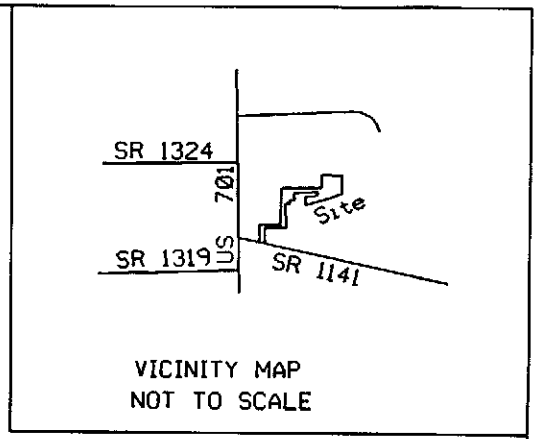
FIRST PARCEL: Beginning at an iron stake, near Lebanon Church, Smith and G.C. Hinson's corner and runs thence with an agreed line between Smith and G. C. Hinson North 23 degrees and 45 minutes East 25.42 chains to an old stake in a branch; thence South 84 degrees and 40 minutes East 14 chains and 70 links to a stake; thence with an old marked line North 24 degrees and 30 minutes East 19 chains and 43 links to an old stake and pointers; thence South 84 degrees and 45 minutes East 2 chains and 19 links to an old marked stake and pointers; thence continue the same bearing crossing the old Mill Pond and with an old marked line 47 chains and 56 links to an old stake and pointers in Mill Branch; thence North 8 degrees West with an old marked line 10 chains and 27 links to a stake in Beaver Dam Swamp; thence South 51 degrees and 21 minutes East with an old marked line 11 chains and 37 links to a stake in Beaver Dam Swamp, near the run; thence with old marked line South 20 degrees West 30 chains and 5 links to a stake in Currie's line; thence North 55 degrees and 21 minutes West 2 chains and 7 links to a stake; thence South 73 degrees West 1 chain and 17 links to an old lightwood stump; thence with an old marked line North 52 degrees and 30 minutes West 16 chains and 90 links to a stake and pointers; thence South 38 degrees and 30 minutes West 3 chains and 58 links to a stake; thence South 21 degrees West 34 chains and 40 links to a stake by a cart path, Smith and Blackman's corner; thence South 86 degrees West with an old marked line 28 chains and 23 links to a stake, pine and gum pointers, Smith and W. B. Hardin's corner; thence North 18 degrees and 20 minutes West 5 chains and 75 links to a stake; thence North 75 degrees West 16 chains and 70 links to the point of beginning, containing 262.5 acres, more or less. The above tract being the same lands conveyed by David Smith and wife, Emiline C. Smith by deed dated 9th June, 1934, recorded in Book 148, Page 486, Columbus County Registry.

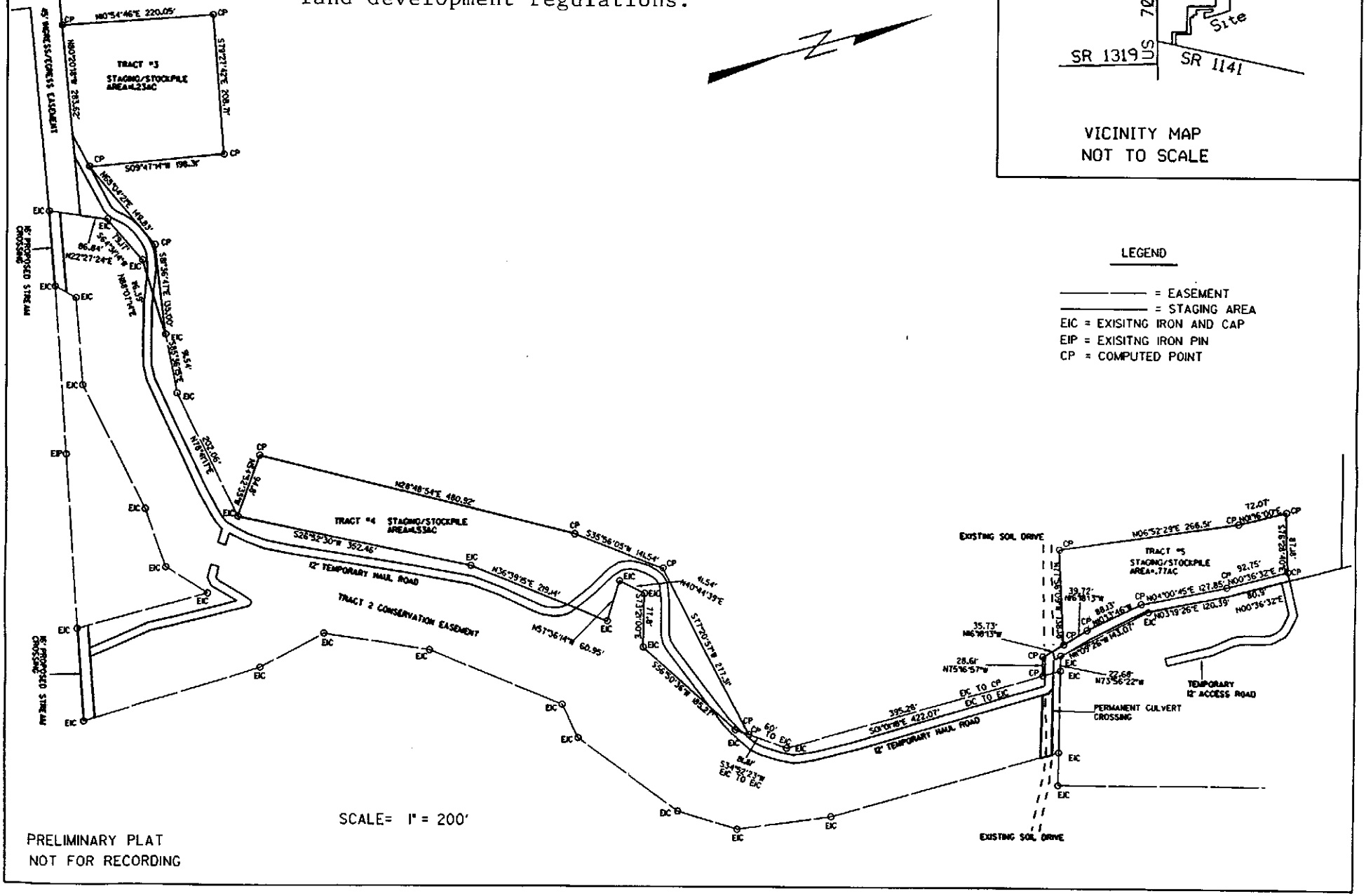
SECOND PARCEL: Beginning at an iron stake, near Lebanon Church, Lewis Smith and G. C. Hinson's corner, and runs thence South 24 degrees and 30 minutes West 50 links to an iron stake in the edge of the public road leading from Lebanon Church to Mollie; thence with the North edge of said road North 50 degrees East 1 chain and 76 links to an iron stake in the North or East margin of said road; thence with G. C. Hinson's line North 17 degrees East 1 chain and 5 links to an iron stake in Lewis Smith's (formerly) Seth L. Smith's line; thence with the line between Lewis Smith and G. C. Hinson North 74 degrees and 30 minutes West 1 chain and 56 links to the point of beginning, containing a fractional part of an acre. Said parcel being the same as conveyed by G. C. Hinson and wife, Daisy Hinson, to Lewis Smith by deed dated May, 1941, recorded in Book 159, Page 175, Columbus County Registry.

THIRD PARCEL: Beginning at a stake in Colon White's line in the edge of a ditch, it also being J. K. Harper's corner, and runs South 24-1/2 degrees West 20 chains and 37 links to a stake and pine pointers; thence North 13-1/2 degrees East 20 chains and 4 links to a stake, formerly in A. W. Buffkin's yard; thence North 61-1/2 degrees West 2 chains to a stake; thence North 5 degrees East 1 chain and 5 links to a stake in a line of the Lebanon Church lot; thence South 50-1/2 degrees East 3 chains and 75 links to a stake, Amos Sellers corner; thence South 77 degrees East 2 chains and 59 links to the beginning, containing 4-1/4 acres. Being the same as conveyed by Claude Gore, et al, to Lewis Smith by deed dated 5 June, 1941, recorded in Book 160, Page 442, Columbus County Registry.

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.




PRELIMINARY PLAT
NOT FOR RECORDING