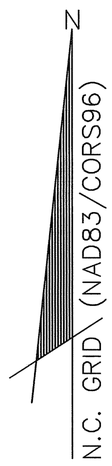
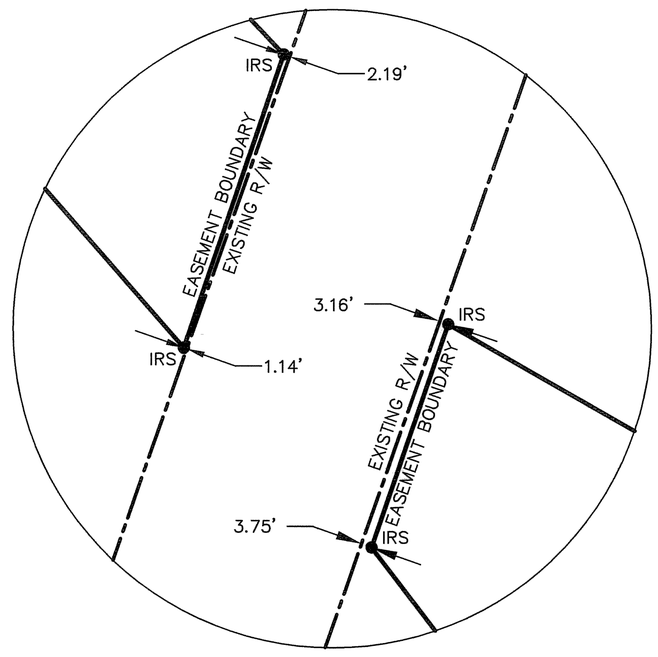
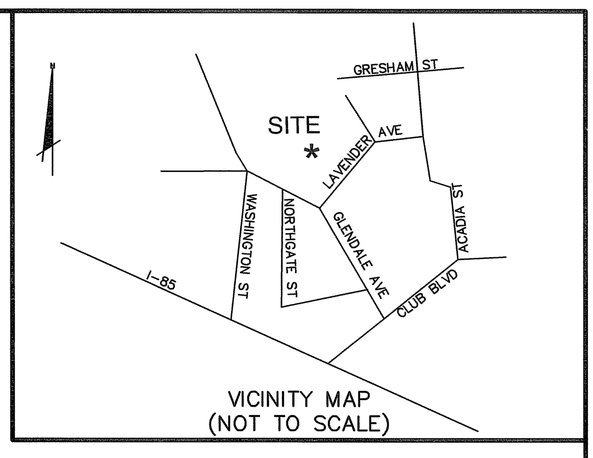




INSET A
NOT TO SCALE



VICINITY MAP
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TOTAL AREA	328,435 SQ FT	7.54 ACRES

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L20	S21°05'32"E	67.08
L21	S18°42'23"E	68.57
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L37	N83°52'55"E	62.02
L38	N17°52'45"W	47.99

CERTIFICATE OF OWNERSHIP AND DEDICATION

THE UNDERSIGNED OWNER(S) HEREBY CERTIFIES THAT THE LAND SHOWN HEREON IS LOCATED WITHIN THE SUBDIVISION – REGULATION JURISDICTION OF DURHAM COUNTY AND HEREBY FREELY DEDICATES ALL RIGHTS–OF–WAY, EASEMENT, STREETS RECREATION AREA, OPEN SPACE, COMMON AREA, UTILITIES AND OTHER IMPROVEMENTS TO PUBLIC OR PRIVATE COMMON USE AS NOTED ON THIS PLAT, AND FURTHER ASSUMES FULL RESPONSIBILITY FOR THE MAINTENANCE AND CONTROL OF SAID IMPROVEMENTS UNTIL THEY ARE ACCEPTED FOR MAINTENANCE AND CONTROL BY AN APPROPRIATE PUBLIC BODY OR BY AN INCORPORATED NEIGHBORHOOD OR HOMEOWNERS ASSOCIATION OR SIMILAR LEGAL ENTITY.

OWNER DATE 10/25/07

OWNER DATE 3/6/08

I, RANDY S. RAMBEAU, SR., PLS L–2520, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM INFORMATION SHOWN IN DEED BOOKS REFERENCED ON MAP AND MAP BOOKS REFERENCED ON MAP; THAT ANY LINES NOT ACTUALLY SURVEYED APPEAR AS BROKEN LINES AND WERE PLOTTED FROM INFORMATION AS NOTED ON THE PLAT; THAT THE RATIO OF PRECISION AS CALCULATED IS BETTER THAN 1:10,000; THAT THE AREA IS COMPUTED BY COORDINATE METHOD; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47–30 AS AMENDED.
WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS THE 23rd DAY OF OCTOBER A.D.,2007.

RANDY S. RAMBEAU, SR. L–2520
PROFESSIONAL LAND SURVEYOR

NORTH CAROLINA PROFESSIONAL SEAL L-2520 LAND SURVEYOR RANDY S. RAMBEAU SR.

I, RANDY S. RAMBEAU, SR., PLS L–2520 CERTIFY THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT–ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION;

DATE 10/23/07

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

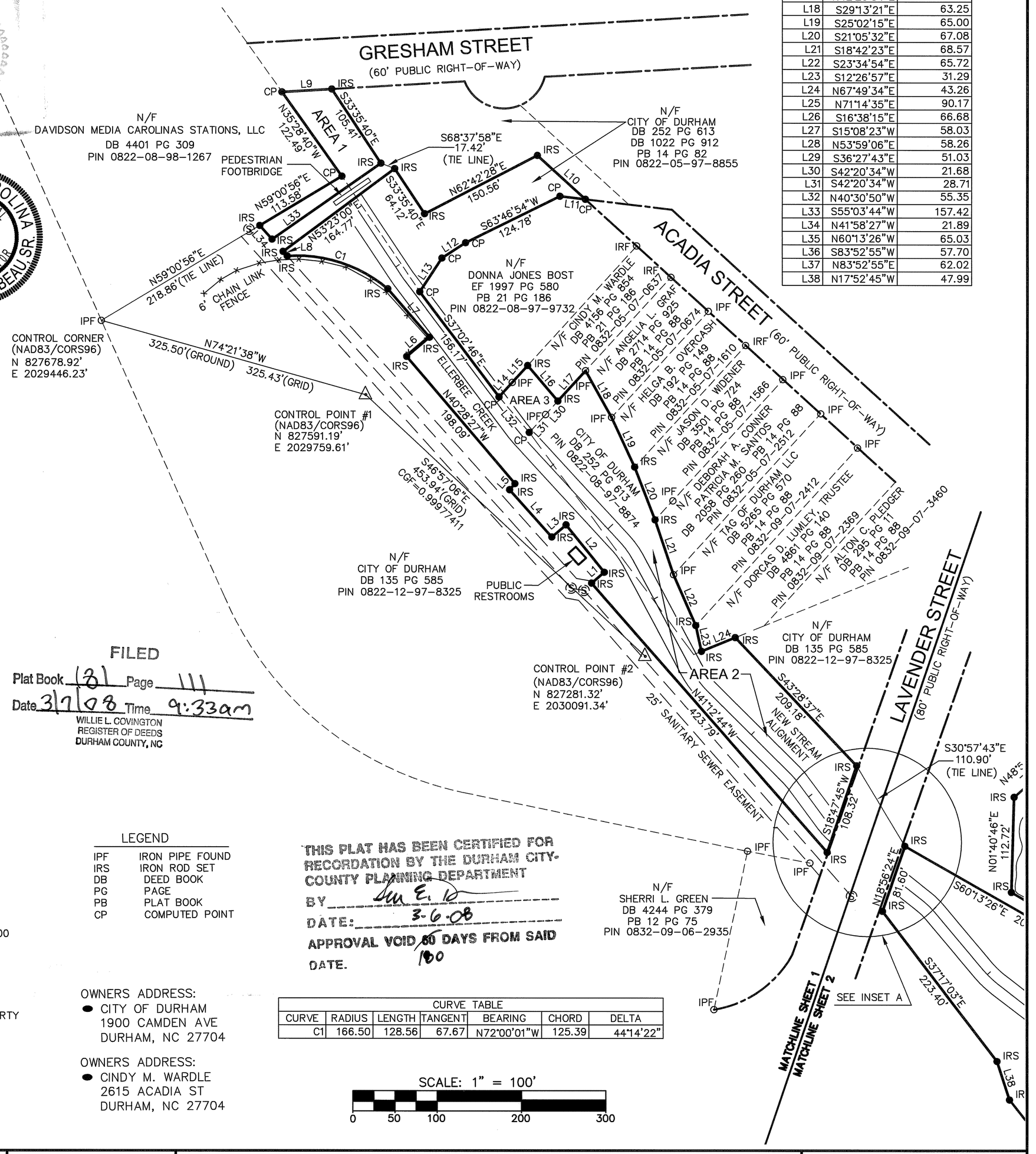
I, Judy F Hasford, REVIEW OFFICER OF Durham COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

3-7-08 Judy F Hasford
REVIEW OFFICER

NORTH CAROLINA, _____ COUNTY
THIS INSTRUMENT IS DULY RECORDED AND VERIFIED THIS_____ DAY OF _____,A.D. 2007, AT _____ O'CLOCK IN MAP BOOK/SLIDE CABINET _____,PAGE/SLIDE _____.

REGISTER OF DEEDS

FILED
Plat Book 83 Page 111
Date 3/7/08 Time 9:33am
WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, NC



NOTES:

1. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
2. AREA BY COORDINATE COMPUTATION.
3. PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS & RIGHTS OF WAY OF RECORD.
4. SURVEY IS BASED ON PHYSICAL EVIDENCE AND EXISTING MONUMENTATION FOUND DURING THE SURVEY.
5. R.O.P. 1/10,000 +
6. THE NC GRID COORDINATES SHOWN ON THIS PLAT WERE DERIVED BY REAL TIME KINEMATIC GPS OBSERVATIONS USING 1 TRIMBLE 5700 RECEIVER. THE COORDINATES WERE COMPUTED USING NCGS VRS SOFTWARE.
7. THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE "AE", AREA SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD ACCORDING TO FIRM MAP 3720083200 J, WITH AN EFFECTIVE DATE OF MAY 2, 2006. BASE FLOOD ELEVATIONS FOR THIS PROPERTY VARY BETWEEN 310 AND 312 FEET.
8. THIS SURVEY CREATES THE BOUNDARIES FOR A CONSERVATION EASEMENT ONLY. THE LAND PARCELS AND THEIR BOUNDARIES AFFECTED BY THIS CONSERVATION EASEMENT ARE NOT CHANGED BY THIS PLAT.
9. 5/8" REBAR WITH CONSERVATION EASEMENT CAPS SET AT ALL NEW CORNERS.

LEGEND

IPF	IRON PIPE FOUND
IRS	IRON ROD SET
DB	DEED BOOK
PG	PAGE
PB	PLAT BOOK
CP	COMPUTED POINT

THIS PLAT HAS BEEN CERTIFIED FOR RECORDATION BY THE DURHAM CITY-COUNTY PLANNING DEPARTMENT
BY _____
DATE: 3-6-08
APPROVAL VOID ~~60~~ 180 DAYS FROM SAID DATE.

OWNERS ADDRESS:
- CITY OF DURHAM
  1900 CAMDEN AVE
  DURHAM, NC 27704

OWNERS ADDRESS:
- CINDY M. WARDLE
  2615 ACADIA ST
  DURHAM, NC 27704

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	BEARING	CHORD	DELTA
C1	166.50	128.56	67.67	N72°00'01"W	125.39	44°14'22"

SCALE: 1" = 100'
0 50 100 200 300

McKIM&CREED
200 MacKenan Court, Suite 200
Cary, North Carolina 27511
Phone: (919)233–8091, Fax: (919)233–8031
Internet Site: http://www.mckimcreed.com

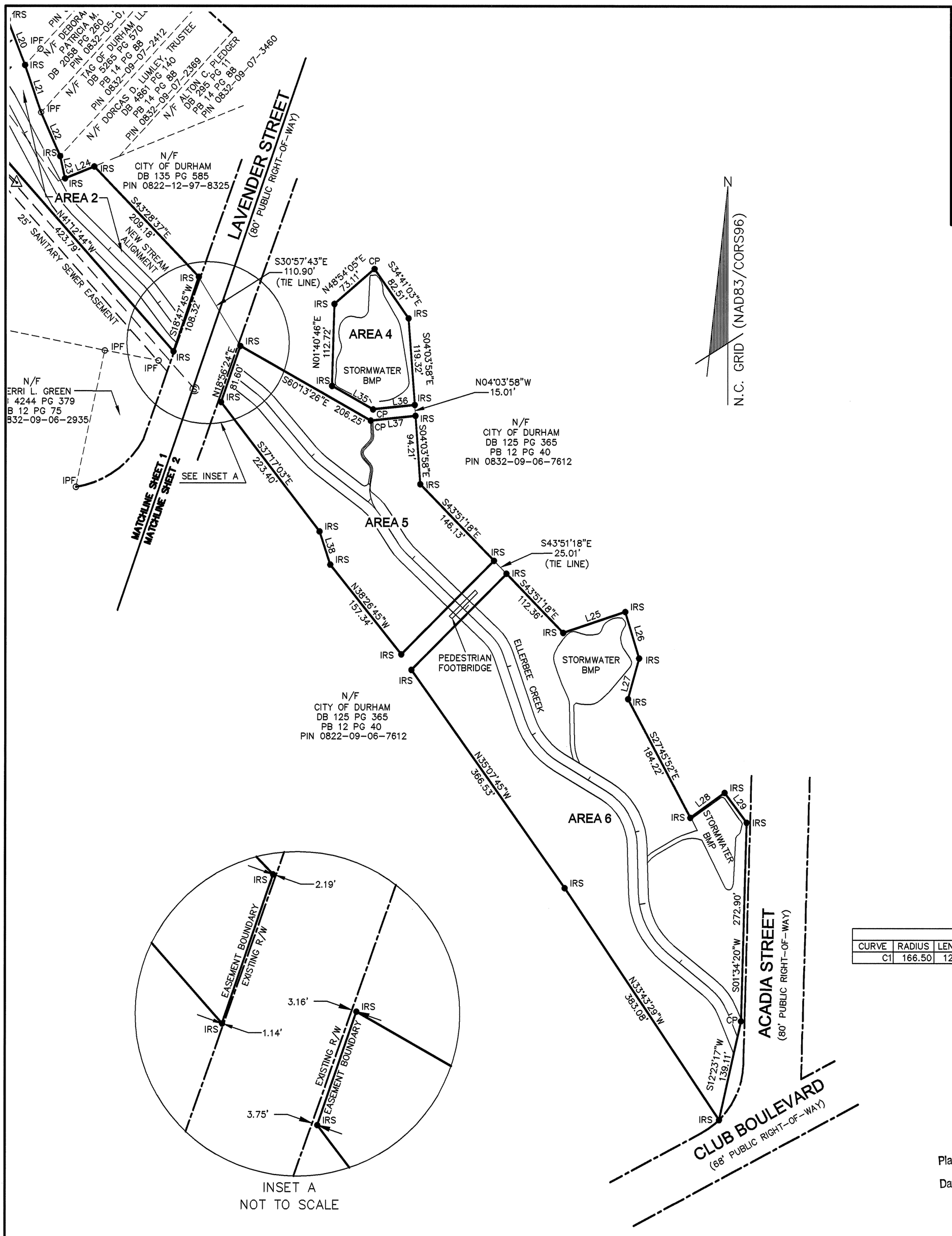
DATE: _____

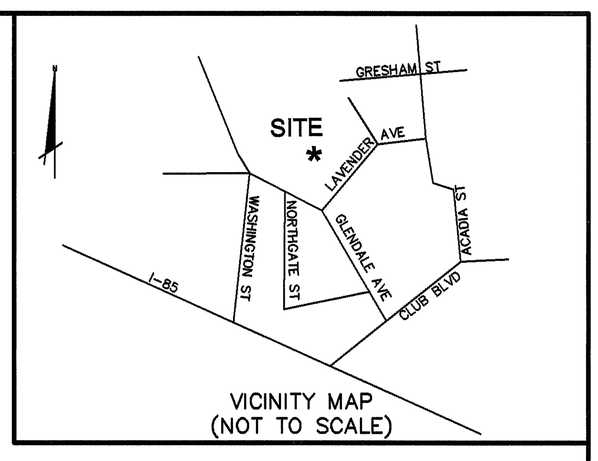
CONSERVATION EASEMENT SURVEY
OF
ELLERBEE CREEK RESTORATION
FOR
ECOSYSTEM ENHANCEMENT PROGRAM

DATE: OCTOBER 8, 2007 SCALE: 1" = 100'
DURHAM TOWNSHIP DURHAM COUNTY NORTH CAROLINA

PROJECT # : 1205–0005
PROJ. SVYR : RSR,SR.
DRAWN BY : DSC
FIELD BK. :
COMP. FILE : VE101–12050005.dwg
SHEET # : 1 OF 2

DWG. # : R.1.2.7.736





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INSET A
NOT TO SCALE

FILED
Plat Book 181 Page 113
Date 3/7/08 Time 9:33am
WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, NC

LEGEND

IPF	IRON PIPE FOUND
IRS	IRON ROD SET
DB	DEED BOOK
PG	PAGE
PB	PLAT BOOK
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OWNERS ADDRESS:
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SCALE: 1" = 100'
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McKIM & CREED
200 MacKenan Court, Suite 200
Cary, North Carolina 27511
Phone: (919)233-8091, Fax: (919)233-8031
Internet Site: http://www.mckimcreed.com

NORTH CAROLINA PROFESSIONAL SEAL L-2520 LAND SURVEYOR RANDY S. RAMBEAU, SR.
DATE: 10/23/07

CONSERVATION EASEMENT SURVEY
OF

ELLERBEE CREEK RESTORATION

FOR

ECOSYSTEM ENHANCEMENT PROGRAM

DATE: OCTOBER 8, 2007 SCALE: 1" = 100'
DURHAM TOWNSHIP DURHAM COUNTY NORTH CAROLINA

PROJECT # : 1205-0005
PROJ. SVYR : RSR,SR.
DRAWN BY : DSC
FIELD BK. :
COMP. FILE : VE101-12050005.dwg
SHEET # : 2 OF 2

DWG. # : R.1.2.7.736

2008013702

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2008 APR 07 01:13:27 PM
BK:5919 PG:113-129 FEE:$59.00

INSTRUMENT # 2008013702

[NOTE OF CORRECTED INSTRUMENT: This is a recording of a Corrected Conservation Easement. The original conservation easement was recorded at Book 5890, Page 778 of the Durham County Register of Deeds without the referenced "Exhibit A." This corrected original conservation easement is recorded with the referenced "Exhibit A." The person signing this statement of explanation is the attorney who drafted the original instrument.]

Signature : _____
Printed Name : Fred Lamar
Title : Senior Assistant City Attorney
City of Durham

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

DURHAM COUNTY
SPO File Number 32-aah
Return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 6TH day of March, 2008, by the City of Durham, ("**Grantor**"), to the State of North Carolina, ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring,

enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

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

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Durham County, North Carolina (the "**Protected Property**"), and being more particularly described as that certain parcels of land identified as PIN# 0832-09-6-7612, 0822-12-97-8325, and 0822-05-97-8855 being conveyed to the Grantor by deed as recorded in **Deed Book 125 at Page 365, Deed Book 135 at page 585, and Deed Book 252 at Page 613** of the Durham County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Protected Property, thereby restricting and limiting the use of the included areas of the Protected Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such easement. This Conservation Easement shall be for the protection and benefit of the waters of **Ellerbe Creek.**

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, to have and to hold

forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a described area of the Protected Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tracts of land containing 7.48 +/- acres as shown on a plat of survey entitled "Conservation Easement Survey of Ellerbe Creek Restoration for Ecosystem Enhancement Program" dated October 8, 2007, certified by Randy S. Rambeau, Sr., PLS, and **recorded in Map Book** 181, **Page** 111, Durham County Registry; provided, however, that if the restoration project described hereinbelow is not substantially completed within three (3) years from the date first written above, this easement will cease and determine. The tracts being more particularly described as follows:

Area 1 – containing 0.18 +/- acres
Area 2 – containing 2.06 +/- acres
Area 4 – containing 0.38 +/- acres
Area 5 – containing 1.51 +/- acres
Area 6 – containing 3.35 +/- acres

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes.

RESTORATION PROJECT

By acceptance of this easement, Grantee acknowledges that it has informed Grantor of Grantee's intention to construct and implement certain stream restoration and stormwater wetlands improvements within the Easement Area (hereinafter, "Restoration Project") pursuant to the final construction plans entitled, "Construction Drawings for Ellerbe Creek (Northgate Park) Stream Restoration Project," dated May 2007, including all revision dates, prepared by URS Corporation – North Carolina, and associated specifications (hereinafter "Restoration Project Plans and Specs"). The Restoration Project Plans and Specs can be found in the offices of the EEP located at 2728 Capital Boulevard Raleigh, NC, 27604 and the City of Durham Public Works Department, Stormwater Services, 101 City Hall Plaza, Durham, NC 27701.

To achieve the purposes of the Conservation Easement, the following conditions and restrictions are set forth:

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 Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Pursuant to, and consistent with, a "Letter of Understanding" between the EEP and the Grantor dated March 6, 2008, and attached hereto as Exhibit A, Grantor retains the right to maintain and repair, including the sole financial responsibility, for the stormwater best management practices (i.e., "Stormwater BMP" areas) shown in areas 4 and 6 on Sheet # 2 of 2 of the plat dated October 8, 2007 and entitled "Conservation Easement Survey of Ellerbe Creek Restoration for Ecosystem Enhancement Program" recorded in Plat Book 181, Page 111 the Durham County Registry (hereinafter, "Restoration Plat"). Exhibit A includes a detailed Stormwater BMP maintenance and repair plan entitled, "Ellerbe Creek Stream Restoration Project Northgate Park – Stormwater Wetland Maintenance and Repair Plan." The Stormwater BMP maintenance and repair obligation of Grantor shall not take effect until after completion of the Restoration Project and transfer of maintenance responsibilities to the City of Durham pursuant to Exhibit A.

Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses for the general public, including but not limited to hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles for recreational uses in the Easement Area is prohibited.

B. Educational Uses. The Grantor reserves the right to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

C. Vegetative Cutting. Except as related to the removal of diseased or damaged trees and vegetation that obstructs, destabilizes or renders unsafe the Easement Area, or except as necessary to control invasive and/or exotic species, or except as necessary to provide for the other expressly allowed uses in the conservation easement, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement

Area is prohibited. All vegetative cutting shall be done in a manner that maintains the integrity of the Conservation Easement.

D. Industrial, Residential and Commercial Uses. All are prohibited in the Easement Area.

E. Agricultural Use. All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. New Construction/Existing Improvements. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. Roads and Trails. There shall be no construction of roads, trails, walkways, or asphalt or concrete paving in the Easement Area except with prior written permission from EEP or its successors or as otherwise indicated on the Restoration Plat.

H. Signs. No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

I. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns except within the designated Stormwater Best Management Practices (BMP) areas shown in Areas 4 and 6 on the plat dated October 8, 2007 and entitled "Conservation Easement Survey of Ellerbe Creek for the Ecosystem Enhancement Program" recorded in Plat Book 181, Page 111 of the Durham County Registry. In addition, any activity by the Grantor diverting, causing, allowing or permitting the diversion of surface or underground water into, within or out of the Easement Area excepted as noted above in this paragraph is not allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future division of the remaining fee simple rights shall be subject to this Conservation Easement

M. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

N. **Disturbance of Natural Features**. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species is prohibited.

III. GRANTEE RESERVED USES

The Grantee, authorized representatives of the Grantee and their successors or assigns 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 Protected Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with a long-term management plan. These activities include actions necessary to implement the Restoration Project pursuant to the Restoration Plans, including 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 Area and shall have the right of reasonable ingress and egress to the Easement Area over the protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee and authorized representatives of the Grantee shall provide prior notification to the Grantor of the construction schedule for the Restoration Project including but not limited to any bid opening, award, notice to proceed and pre-construction meetings. The easement rights granted herein do not include or establish for the public any access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1619.

IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, Grantor's their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The Grantor shall have one hundred-eighty (180) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after one hundred-eighty (180) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, or Grantor's successors or assigns for any injury or change in the Easement Area caused by third parties, or resulting from acts of God or causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, or Grantor's successors or assigns where Grantor or its successors or assigns have not complied with the terms of this Easement, shall be borne by Grantor.

These costs shall include, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

V. MISCELLANEOUS

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

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

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

F. This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Protected Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

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

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the City has caused this instrument to be signed in its name by its Mayor, and attested by its Deputy City Clerk and its corporate seal to be affixed, all by order of its City Council.

CITY OF DURHAM

By: _____
WILLIAM V. BELL, MAYOR

ATTEST:

Linda E. Bratcher
Deputy City Clerk

NORTH CAROLINA – DURHAM COUNTY

I, a Notary Public in and for the County and State aforesaid, certify that Linda E. Bratcher personally appeared before me this day, and acknowledged that she is Deputy City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Deed was signed in its corporate name by its Mayor, WILLIAM V. BELL, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6th day of March, 2008.

Tonette Amos
Notary Public

TONETTE AMOS NOTARY PUBLIC DURHAM COUNTY, NC

My Commission Expires 7-17-2012.

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
ECOSYSTEM ENHANCEMENT PROGRAM
1652 Mail Service Center
Raleigh, North Carolina 27699-1652

March 6, 2008

Mr. Paul Wiebke, Assistant Manager
Stormwater Services
City of Durham
101 City Hall Plaza
Durham North Carolina 27701

Reference: **Stormwater Wetland BMPs - Letter of Understanding**
Ellerbe Creek (Northgate Park) Stream Restoration

Dear Paul:

The NC Ecosystem Enhancement Program (NCEEP) and the City of Durham have entered into an option (dated April 19, 2005) for a restoration project on Ellerbe Creek within Northgate Park in Durham NC. The stream restoration design includes the construction of three stormwater wetland BMPs. The purpose of this letter of understanding is to clarify said responsibilities of the NCEEP and the City of Durham related to the stormwater BMPs. Details for maintenance and repair responsibilities are contained in the attached *Stormwater Wetland Repair and Maintenance Plan* agreement.

The NCEEP will be responsible for the financial costs of design and construction associated with stormwater BMPs. The NCEEP will also be responsible for all costs associated with monitoring and maintaining the physical and biological aspects of the constructed stormwater BMPs during the initial one-year warranty period that begins upon acceptance of BMP construction by NCEEP and the NC State Construction Office, with review by the City of Durham. NCEEP will also provide the City with electronic copies of the construction As-Built plans and will coordinate with the City on any repairs, if needed, conducted during the warranty period.

The City of Durham will assume maintenance and repair responsibility after the initial one-year warranty period and once both parties agree that the basic conditions of the attached agreement have been met. The City will follow guidelines outlined in the City's most current version of the *Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham* and also in the North Carolina Division of Water Quality (DWQ) *Stormwater Best Management Practices Manual (July 2007)* to monitor, maintain, and repair (as necessary) the stormwater BMPs to function properly as designed.

In summary, this letter establishes a clear understanding of financial and management responsibilities of NCEEP and the City of Durham related to the stormwater wetland BMPs component of the stream restoration project.

With Best Regards,

Suzanne Klimek
Director of Operations

Cc: Perry Sugg - EEP Project Manager
Marion Patrick – State Property Office

Attachment

Agreed to and accepted by:_____

Name/Title (print): Patrick M. Baker City Manager

Date: 3/6/08

Attest: Linda E. Bratcher
Deputy City Clerk
3-6-08

CITY OF DURHAM
NORTH CAROLINA

Ellerbe Creek Stream Restoration Project
Northgate Park

Stormwater Wetland Maintenance and Repair Plan

Introduction

The North Carolina Department of Environment and Natural Resources Ecosystem Enhancement Program (EEP) is conducting a stream restoration project on Ellerbe Creek within Northgate Park in Durham, NC. Northgate Park is owned by the City of Durham (City). As part of the restoration plan, EEP is also constructing three stormwater wetland BMPs (hereinafter "BMPs") within the park.

This document provides additional clarification and guidance to the City of Durham for BMP maintenance and repair related to restrictions set forth in the Conservation Easement document (hereinafter "Easement") to be executed and shown as "Stormwater BMPs" labeled in the Conservation Easement survey plat (hereinafter "Survey"), both to be recorded with Durham County.

Purpose

The purpose of this Plan is to outline maintenance and repair responsibilities and requirements for the three stormwater wetland BMPs constructed by EEP as part of EEP's stream restoration project.

Stormwater Wetland BMP Responsibility

EEP will be responsible for BMP maintenance & repair on the stormwater wetlands during the initial construction warranty period. The warranty period will last one year beginning upon completion and acceptance of the BMP structures by the State Construction Office. Prior to acceptance of the BMP structures by the State Construction Office, EEP and the City will jointly assess the stormwater wetland BMP's for compliance with the approved construction drawings and specifications.

Sixty days prior to the end of the warranty period, the City of Durham and EEP will jointly assess the stormwater wetland BMPs to ensure the stormwater wetland BMPs are functioning as designed. The City of Durham shall provide written comments concerning the assessment of the stormwater wetland BMPs within 10 business days of each joint assessment. EEP will provide the City of Durham the as-built drawings prior to the initial joint assessment, as well as any revised as-built drawings, if applicable.

Once the City and EEP are in agreement that these conditions are met and the BMPs are free of existing maintenance needs, as outlined in the Table 1.0 below, and are clear of any construction warranty work, EEP will transfer responsibility to the City of Durham. The City of Durham will assume responsibility for maintenance and repair of the BMPs within the Easement at this time.

Stormwater Wetland BMP Maintenance & Repair

The City will follow guidelines and requirements outlined in the City's most current version of the *Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham* and also in the North Carolina Division of Water Quality (DWQ) *Stormwater Best Management Practices Manual (July 2007)* to monitor, maintain, and repair (as necessary) the stormwater BMPs to function properly as designed.

Specifically, maintenance and repair activities shall be performed as necessary as follows. Any problems that are found shall be repaired as soon as possible.

Table 1.0
Maintenance and Repair for Stormwater Wetlands

BMP element:	Potential problem:	How to remediate the problem:
The entire BMP	Trash/debris is present.	Remove the trash/debris.
The perimeter of the wetland	Areas of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully, and then plant a ground cover and water until it is established. Provide lime and a one-time fertilizer application.
	Vegetation is too short or too long.	Maintain vegetation at a height of approximately six inches.
The inlet device: pipe or swale	The pipe is clogged (if applicable).	Unclog the pipe. Dispose of the sediment offsite.
	The pipe is cracked or otherwise damaged (if applicable).	Replace the pipe.
	Erosion is occurring in the swale (if applicable).	Regrade the swale if necessary to smooth it over and provide erosion control devices such as reinforced turf matting or riprap to avoid future problems with erosion.

(Table 1.0, continued)

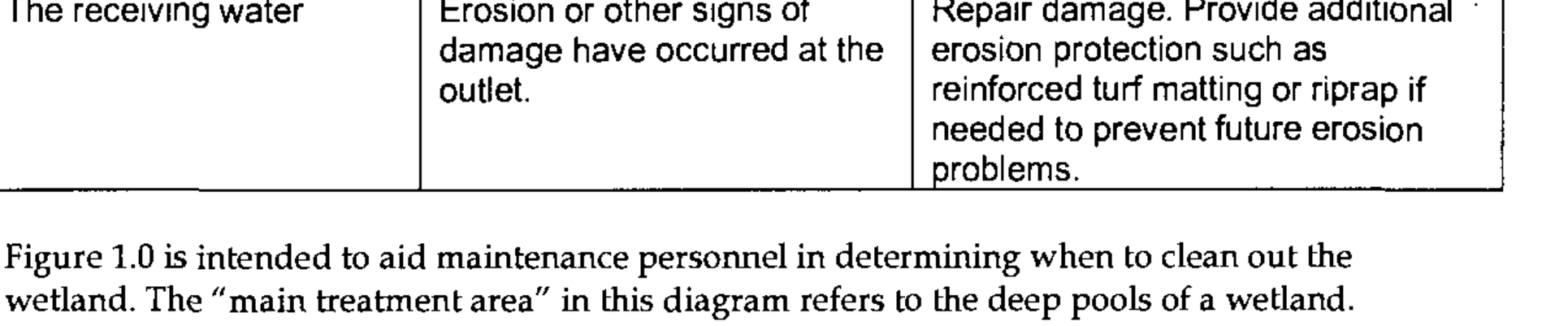
BMP element:	Potential problem:	How to remediate the problem:
The forebay	Sediment has accumulated and reduced the depth to 75% of the original design depth (see diagram below).	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
	Erosion has occurred.	Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.
	Non-native, invasive plants are present.	Remove the plants, preferably by hand. If a pesticide is used, wipe it on the plants rather than spraying.
The deep pool, shallow water and shallow land areas	Algal growth covers over 50% of the deep pool and shallow water areas.	Consult a professional to remove and control the algal growth.
	Cattails, or other invasive plants, cover 50% of the deep pool and shallow water areas.	Remove the plants by wiping them with pesticide (do not spray) – consult a professional.
	Shallow land remains flooded more than 5 days after a storm event.	Unclog the outlet device immediately.
	Plants are dead, diseased or dying.	Determine the source of the problem: soils, hydrology, disease, etc. Remedy the problem and replace plants. Provide a onetime fertilizer application to establish the ground cover if a soil test indicates it is necessary.
	Best professional practices show that pruning is needed to maintain optimal plant health.	Prune according to best professional practices.
	Sediment has accumulated and reduced the depth to 75% of the original design depth of the deep pools (see diagram below).	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.

(Table 1.0, continued)

BMP element:	Potential problem:	How to remediate the problem:
The embankment	An annual inspection shows that the embankment needs repair.	Make all needed repairs.
	Evidence of muskrat or beaver activity is present.	Use traps to remove muskrats and consult a professional to remove beavers.
The micropool	Sediment has accumulated and reduced the depth to 75% of the original design depth (see diagram below).	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
	Nonnative, invasive plants are growing in the micropool.	Remove the plants, preferably by hand. If a pesticide is used, wipe it on the plants rather than spraying.
The outlet device	Clogging has occurred.	Clean out the outlet device. Dispose of the sediment offsite.
	The outlet device is damaged	Repair or replace the outlet device.
The receiving water	Erosion or other signs of damage have occurred at the outlet.	Repair damage. Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.

Figure 1.0 is intended to aid maintenance personnel in determining when to clean out the wetland. The "main treatment area" in this diagram refers to the deep pools of a wetland.

Figure 1.0
Profile of a Stormwater Wetland



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording and/or cancellation.

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Document No.: 2008013702
EASE 17 PGS $59.00

Recorder: APRIL J WILLIAMS

2008013702

2008009060

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Willie L. Covington
DURHAM COUNTY, NC
2008 MAR 07 09:33:10 AM
BK:5890 PG:778-788 FEE:$41.00

INSTRUMENT # 2008009060

STATE OF NORTH CAROLINA

DURHAM COUNTY
SPO File Number 32-aah
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED, made this 6th day of March, 2008, by the City of Durham, ("**Grantor**"), to the State of North Carolina, ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

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

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Durham County, North Carolina (the "**Protected Property**"), and being more particularly described as that certain parcels of land identified as PIN# 0832-09-6-7612, 0822-12-97-8325, and 0822-05-97-8855 being conveyed to the Grantor by deed as recorded in **Deed Book 125 at Page 365, Deed Book 135 at page 585, and Deed Book 252 at Page 613** of the Durham County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Protected Property, thereby restricting and limiting the use of the included areas of the Protected Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such easement. This Conservation Easement shall be for the protection and benefit of the waters of **Ellerbe Creek.**

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, to have and to hold forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a described area of the Protected Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tracts of land containing 7.48 +/- acres as shown on a plat of survey entitled "Conservation Easement Survey of Ellerbe Creek Restoration for Ecosystem Enhancement Program" dated October 8, 2007, certified by Randy S. Rambeau, Sr., PLS, and **recorded in Map Book** 181 **, Page** 111 , Durham County Registry; provided, however, that if the restoration project described hereinbelow is not substantially completed within three (3) years from the date first written above, this easement will cease and determine. The tracts being more particularly described as follows:

Area 1 – containing 0.18 +/- acres
Area 2 – containing 2.06 +/- acres
Area 4 – containing 0.38 +/- acres
Area 5 – containing 1.51 +/- acres
Area 6 – containing 3.35 +/- acres

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes.

RESTORATION PROJECT

By acceptance of this easement, Grantee acknowledges that it has informed Grantor of Grantee's intention to construct and implement certain stream restoration and stormwater wetlands improvements within the Easement Area (hereinafter, "Restoration Project") pursuant to the final construction plans entitled, "Construction Drawings for Ellerbe Creek (Northgate Park) Stream Restoration Project," dated May 2007, including all revision dates, prepared by URS Corporation – North Carolina, and associated specifications (hereinafter "Restoration Project Plans and Specs"). The Restoration Project Plans and Specs can be found in the offices of the EEP located at 2728 Capital Boulevard Raleigh, NC, 27604 and the City of Durham Public Works Department, Stormwater Services, 101 City Hall Plaza, Durham, NC 27701.

To achieve the purposes of the Conservation Easement, the following conditions and restrictions are set forth:

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 Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Pursuant to,

and consistent with, a "Letter of Understanding" between the EEP and the Grantor dated March 6, 2008, and attached hereto as Exhibit A, Grantor retains the right to maintain and repair, including the sole financial responsibility, for the stormwater best management practices (i.e., "Stormwater BMP" areas) shown in areas 4 and 6 on Sheet # 2 of 2 of the plat dated October 8, 2007 and entitled "Conservation Easement Survey of Ellerbe Creek Restoration for Ecosystem Enhancement Program" recorded in Plat Book 181, Page 111 the Durham County Registry (hereinafter, "Restoration Plat"). Exhibit A includes a detailed Stormwater BMP maintenance and repair plan entitled, "Ellerbe Creek Stream Restoration Project Northgate Park – Stormwater Wetland Maintenance and Repair Plan." The Stormwater BMP maintenance and repair obligation of Grantor shall not take effect until after completion of the Restoration Project and transfer of maintenance responsibilities to the City of Durham pursuant to Exhibit A.

Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses for the general public, including but not limited to hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles for recreational uses in the Easement Area is prohibited.

B. Educational Uses. The Grantor reserves the right to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

C. Vegetative Cutting. Except as related to the removal of diseased or damaged trees and vegetation that obstructs, destabilizes or renders unsafe the Easement Area, or except as necessary to control invasive and/or exotic species, or except as necessary to provide for the other expressly allowed uses in the conservation easement, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited. All vegetative cutting shall be done in a manner that maintains the integrity of the Conservation Easement.

D. Industrial, Residential and Commercial Uses. All are prohibited in the Easement Area.

E. Agricultural Use. All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. New Construction/Existing Improvements. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. Roads and Trails. There shall be no construction of roads, trails, walkways, or asphalt or concrete paving in the Easement Area except with prior written permission from EEP or its successors or as otherwise indicated on the Restoration Plat.

H. Signs. No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

I. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns except within the designated Stormwater Best Management Practices (BMP) areas shown in Areas 4 and 6 on the plat dated October 8, 2007 and entitled "Conservation Easement Survey of Ellerbe Creek for the Ecosystem Enhancement Program" recorded in Plat Book 181, Page 111 of the Durham County Registry. In addition, any activity by the Grantor diverting, causing, allowing or permitting the diversion of surface or underground water into, within or out of the Easement Area excepted as noted above in this paragraph is not allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future division of the remaining fee simple rights shall be subject to this Conservation Easement

M. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

N. **Disturbance of Natural Features**. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species is prohibited.

III. GRANTEE RESERVED USES

The Grantee, authorized representatives of the Grantee and their successors or assigns 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 Protected Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with a long-term management plan. These activities include actions necessary to implement the Restoration Project pursuant to the Restoration Plans, including 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 Area and shall have the right of reasonable ingress and egress to the Easement Area over the protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee and authorized representatives of the Grantee shall provide prior notification to the Grantor of the construction schedule for the Restoration Project including but not limited to any bid opening, award, notice to proceed and pre-construction meetings. The easement rights granted herein do not include or establish for the public any access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1619.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such

areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, Grantor's their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The Grantor shall have one hundred-eighty (180) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after one hundred-eighty (180) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, or Grantor's successors or assigns for any injury or change in the Easement Area caused by third parties, or resulting from acts of God or causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, or Grantor's successors or assigns where Grantor or its successors or assigns have not complied with the terms of this Easement, shall be borne by Grantor. These costs shall include, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

V. MISCELLANEOUS

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

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

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

F. This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Protected Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

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

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the City has caused this instrument to be signed in its name by its Mayor, and attested by its Deputy City Clerk and its corporate seal to be affixed, all by order of its City Council.

CITY OF DURHAM

By: _____
WILLIAM V. BELL, MAYOR

ATTEST:

_____
Deputy City Clerk

NORTH CAROLINA – DURHAM COUNTY

I, a Notary Public in and for the County and State aforesaid, certify that Linda E. Bratcher personally appeared before me this day, and acknowledged that she is Deputy City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Deed was signed in its corporate name by its Mayor, WILLIAM V. BELL, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6th day of March, 2008.

_____
Notary Public

My Commission Expires 7-17-2012.

WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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CITY OF DURHAM
Department of Public Works
Stormwater Services Division
101 City Hall Plaza | Durham, NC 27701
919.560.4326 | F 919.560.4312

www.durhamnc.gov

October 28, 2009

Mr. Bill Gilmore, Director, N.C. Ecosystem Enhancement Program
Mr. Marc Recktenwald, Watershed Planning and Project Implementation
N.C. Ecosystem Enhancement Program
2728 Capital Blvd., Suite 1H 103
Raleigh, NC 27604

Dear Mr Gilmore and Mr. Recktenwald:

This letter is in reference to the Ellerbe Creek Stream Restoration Project located in Northgate Park in Durham. We have been working with Perry Sugg on this project and he has been very helpful as we have worked through many issues since the inception of the project. We are grateful that we have such a good working relationship with NCEEP and have benefitted from several projects located in the City of Durham.

The Ellerbe Creek Stream Restoration Project is at the planting stage of the project. Citizens from the Northgate Park neighborhood have brought concerns to us, our City Council and City Manager. We realize that this is a late stage to bring these issues forward; however, we feel that they are issues that need to be addressed.

Concern #1: The stream restoration is located within a heavily used public park and public safety is paramount. Clear sight lines across the park are important . To achieve this, the planting plan for the Stream Restoration Project needs to consider the Crime Prevention through Environmental Design (CPTED) principles. With this in mind, we request the following changes to the planting plan:

A. Move the following shrubs/multi-stem trees to conservation easement area north of Lavender (see attached map) or substitute with "shorter" shrubs in parentheses below. CPTED design principles call for shrubs less than 3 ft in height to preserve sightlines.

Shrubs:

Streamside: Black Willow (Substitute more Elderberry and Silky Dogwood)
Inner Floodplain: Buttonbush, Decicuous Holly, Possumhaw (Substitute more Steeplebush and/or add Ilex verticillata)
Outer Floodplain: Flowering Dogwood, Spicebush (Substitute more Red Chokeberry and/or add River Oats, Prairie Dropseed, low bush blueberry.)

B. If the above relocation or substitution cannot be accommodated, we request that the sightlines shown in dashed pink on the attached map be keep clear of the tall

shrubs listed above for a corridor width of 150 ft across the stream.

Concern #2: The existing conservation easement encompasses a cleared area in the Park that is actively used for recreation such as soccer. We request that the area (shown in red on the attached map) as well as two other smaller areas shown in red be swapped out with the area on the map shown in green.

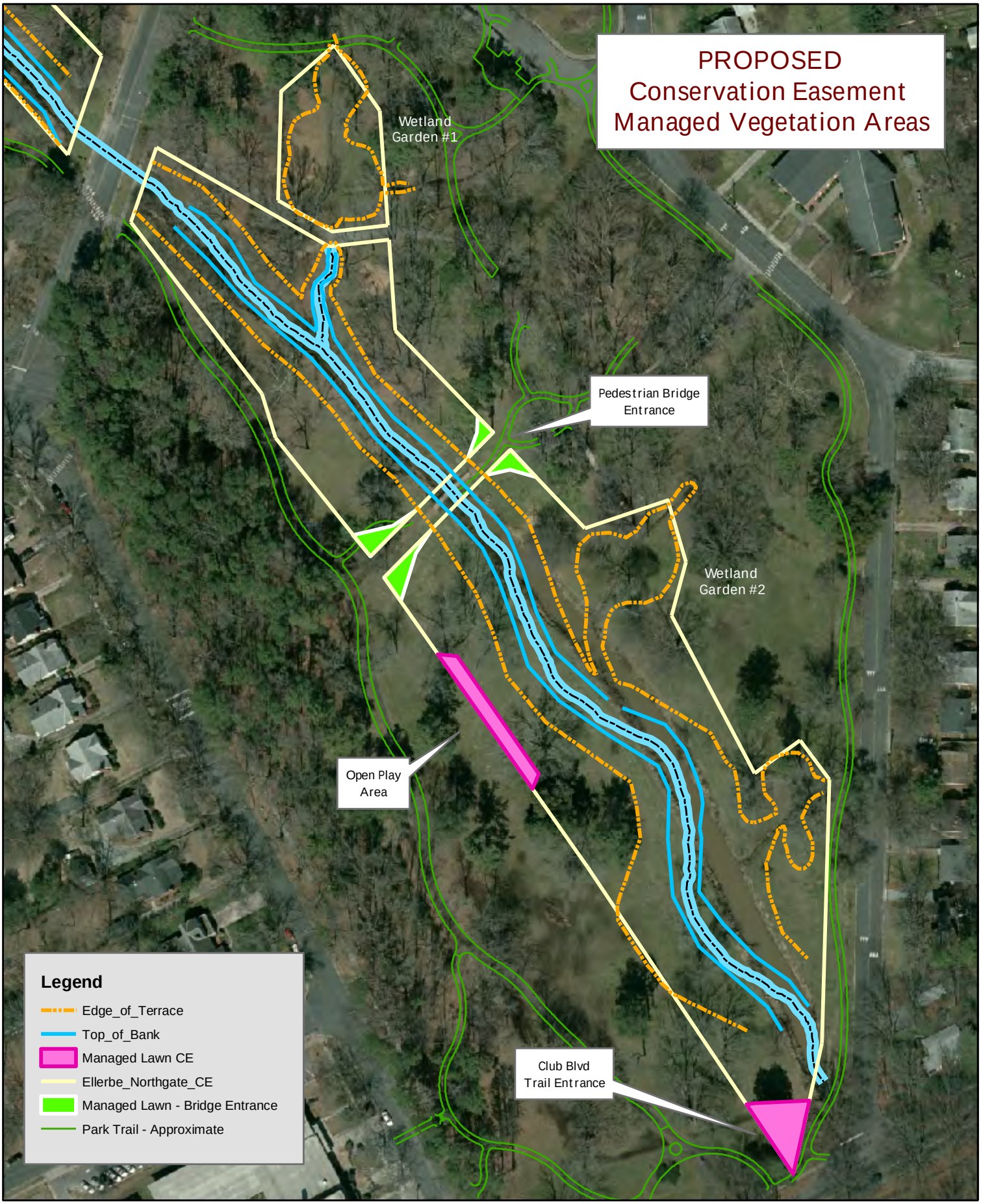
The City of Durham is willing to bear the cost of the changes since the planting order has already been placed and to provide for the cost of the new survey required for the revised conservation easement.

Please feel free to call me at 560-4326 if you have any questions or need any additional information. Thank you for your time and consideration of this matter.

Sincerely,

Paul Wiebke, PE
Assistance Stormwater Manager, Engineering and Stormwater Division

c: Kathryn Kalb, PE, Director of Public Works
Ed Venable, PE, Manager, Engineering and Stormwater Division
Sandra Wilbur, PE, Engineering and Stormwater Division
Perry Sugg, PG, NCEEP



NOTE: A 12-foot clearance zone is allowed between maintained park trails and the outer planted buffer.

0 62.5 125 250 Feet

Ellerbe Creek - Northgate Park
Durham NC

EEP #272

wpsugg - nov2009

MEMORANDUM

To: Paul Wiebke, Assistant Stormwater Manager
City of Durham Engineering & Stormwater Division

From: Bill Gilmore, EEP Director WDG
Marc Recktenwald, EEP WPPI Director

Cc: Stephanie Horton, EEP Property Protection Supervisor
Perry Sugg, EEP Project Manager

Subject: Conservation Easement Vegetation Planting Revisions
EEP Stream Restoration #272
Ellerbe Creek Northgate Park – Durham, NC

Date: November 16, 2009

This memo is in response to the City of Durham's letter to Mr. Bill Gilmore dated October 28, 2009 concerning the referenced stream restoration project. In this letter, the City requested specific planting plan revisions for the riparian buffer within the conservation easement. The City of Durham had granted the conservation easement to the State in March 2008 for the stream restoration project. As you are aware, the construction was completed and accepted in May 2009 and buffer planting had been delayed until this fall. These requested revisions arose out of concern recently expressed to the City by local citizens in the neighborhood.

The City has requested that the buffer plantings be designed to minimize obstruction of sight lines in the park across the planted buffer area (Concern #1) and also to keep certain areas cleared for open play areas (Concern #2). In order to responsibly respond to the request, EEP staff evaluated potential impacts to the State's investment, requirements of regulatory agencies, and the mitigation credits generated, all within the context of maintaining a reasonable balance with community needs. The planting contractor had pre-ordered the plants and worked with EEP to find substitutions based on plant availability and without incurring excess costs. After careful consideration of the City's proposed revisions and our evaluation, EEP has agreed to make revisions to the buffer consistent with those proposed in the City's letter, but with minor modifications to preserve the integrity and investment of the stream restoration for the State.

Concern #1 – Sight Lines

Changes to the planting plan were made where possible and consistent with the outlined requests in paragraph A of the letter. Specific revisions are described below:

Streamside: Live stakes were installed along the stream per the plan in April 2009. Species included a mix of silky dogwood, silky willow, elderberry, and ninebark. At EEP's request, the planting contractor had substituted a mix of these species in lieu of black willows, which were specified in the original plan. The construction contractor did install a few black willows around two specific structures that required some reworking during construction and after the initial live stake installation.

Inner Floodplain (Bench): EEP reduced the quantities by half for both buttonbush (50) and Ilex decidua (61) planted in this zone and relocated the majority of those planted in the area upstream of Lavender Avenue. Additionally, some of the Buttonbush were added to the wetlands to replace lost plants in this area. EEP replaced these shrubs with a combination of steeplebush (40), Ilex verticillata (60), red chokeberry and canopy tree species (sycamore, hornbeam, willow oak).

Outer Floodplain (Park Terrace): EEP removed Spicebush from this zone and reduced overall quantities (50). Spicebush was planted upstream of Lavender Avenue with a minor component on the floodplain bench. Flowering dogwood was not planted (nursery was out of stock). Downstream of Lavender Avenue, EEP substituted coral berry (111), steeplebush (100), red chokeberry and some redbud (+/-35).

Concern #2 – Open Areas

EEP will make the changes listed below to allow specific areas within the defined easement boundaries to be managed as open parkland (i.e., mowed at the discretion of the City) with no planted trees or shrubs. EEP will be marking the easement boundary and these areas with posted signs within the next few months. EEP will not be revising the easement boundaries or requesting a swap of land area to make up for the lost vegetated buffer areas. The attached map shows the managed open areas, which are consistent with the City's request. At the discretion of the City, the open areas defined herein can be managed as grassed lawn with regular mowing.

Open Play Area: EEP will allow the outer 15 feet of the easement in this area to be kept as open parkland with active mowing. This distance is the most we can give in order to maintain a manageable forested buffer without impacting stream/buffer credits.

Pedestrian Bridge Entrance: Where the maintained trail enters the easement area, site triangles can be maintained as open parkland on either side of the trail entrance as marked on the attached map.

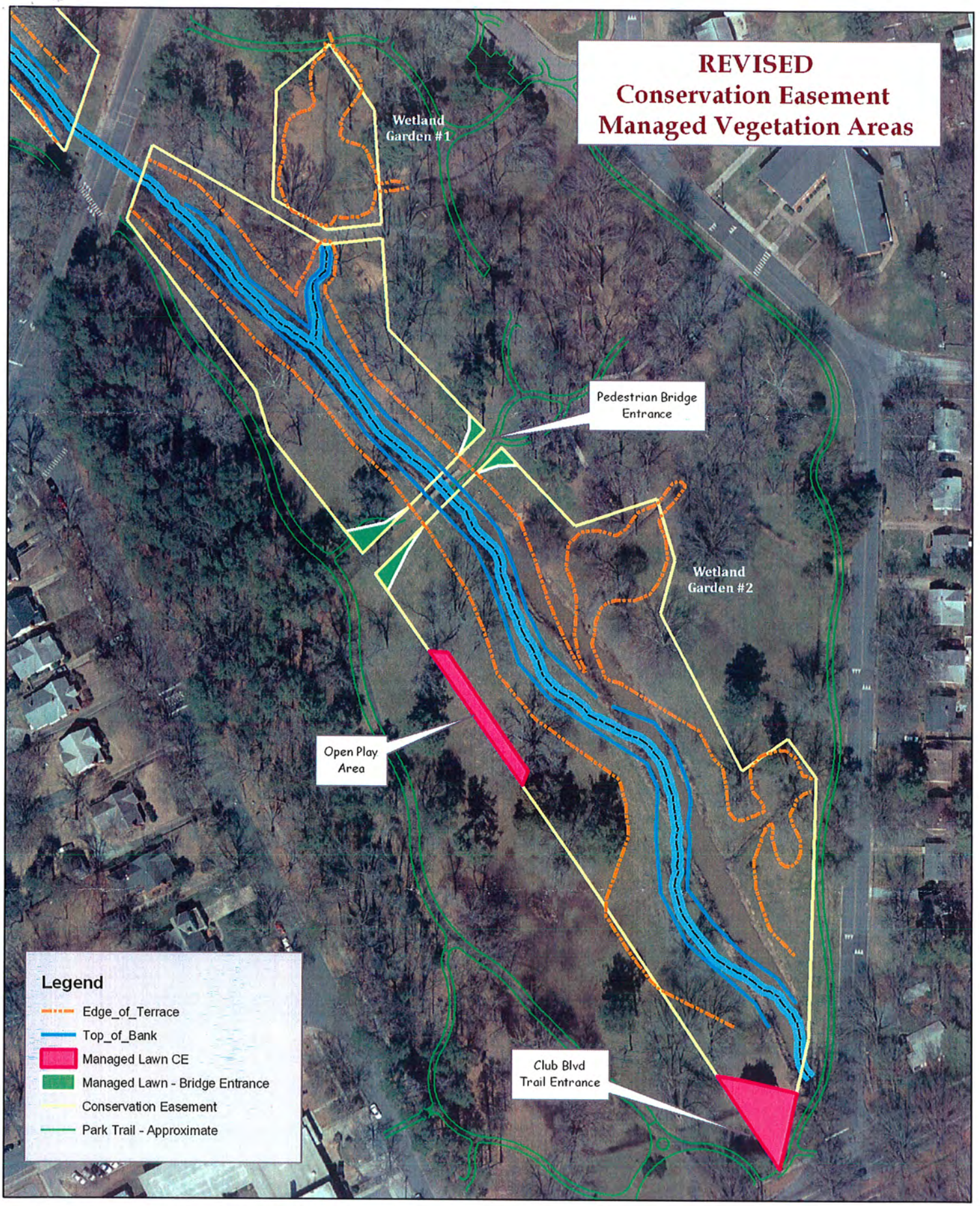
Club Blvd Trail Entrance: Where the maintained trail enters the park from the street, a site triangle as shown on map can be kept as open or landscaped parkland.

Trails along Easement Boundary: Areas where maintained park trails are adjacent to the easement line, a clearance zone of 12 feet between the maintained trail and the planted buffer can be maintained as open area (i.e., mowed) to prevent encroachment of vegetation into the trail.

The riparian forest zone is designed to provide a functional natural riparian forest community along both sides of the stream. This zone, planted with a variety of native plants (trees, shrubs, and native grasses) will eventually culminate as a mature riparian forest along the stream. EEP will be monitoring and managing the vegetation over the next five years for both growth success and for the presence of aggressive invasive plant species.

We trust the City finds these revisions enacted by EEP to be an acceptable balance suitable to the City and the local citizenry. We look forward to furthering our cooperative relationship on the many restoration projects, current and future, in and around the City of Durham. For further questions or comments, please feel free to contact Perry Sugg at (919) 715-1359 or Stephanie Horton at (919) 715-1263 to discuss this at your convenience.

wps



NOTE: A 12-foot clearance zone is allowed between maintained park trails and the outer planted buffer.

0 62.5 125 250 Feet

Ellerbe Creek - Northgate Park
Durham NC
EEP #272

wpsugg - nov2009

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CITY OF DURHAM
Department of Public Works
Stormwater Services Division
101 City Hall Plaza | Durham, NC 27701
919.560.4326 | F 919.560.4312

www.durhamnc.gov

January 20, 2010

Mr. Bill Gilmore, Director, N.C. Ecosystem Enhancement Program
Mr. Marc Recktenwald, Watershed Planning and Project Implementation
N.C. Ecosystem Enhancement Program
2728 Capital Blvd., Suite 1H 103
Raleigh, NC 27604

Dear Mr Gilmore and Mr. Recktenwald:

This letter is in reference to the NCEEP Ellerbe Creek Stream Restoration Project at Northgate Park in Durham, NC. Our stormwater staff has been working closely with Perry Sugg on this project since its inception. Mr. Sugg has been very helpful as we have worked through many issues on this project. Perry's willingness to work with stormwater staff to find solutions is very much appreciated.

We would like to express our gratitude to Perry Sugg for his work in facilitating a compromise to take into consideration the interests of the citizens of the City of Durham. Perry is always responsive, providing information or solutions to situations that come up on this restoration project or any of the other NCEEP restoration projects within the City of Durham.

Please feel free to call me at 560-4326 if you have any questions or need any additional information.

Sincerely,

Paul Wiebke

Paul Wiebke, PE
Assistance Stormwater Manager
Engineering and Stormwater Division

c: Kathryn Kalb, PE, Director of Public Works
Ed Venable, PE, Manager, Engineering and Stormwater Division
Sandra Wilbur, PE, Engineering and Stormwater Division
Perry Sugg, PG, NCEEP