SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made this 8th day of May 2007, by and among Mr. Glenn D. Wellborn and wife, Sylvia G. Wellborn ("the Wellborns") and the State of North Carolina, through the Department of Environment and Natural Resources, Ecosystem Enhancement Program, ("the State"). These parties are collectively referred to as the "Settling Parties."

WHEREAS, the State, acting through the Department of Environment and Natural Resources entered into an agreement with the Wellborns on April 23, 2003 for the donation of a conservation easement on 2.5859 acres of a tract of land owned by the Wellborns and identified as Parcel F as shown on a plat of survey entitled "Plat of Big Warrior Creek Restoration Project - East Sections prepared for State of North Carolina" dated March 6, 2003 certified by Jeffery L. Caison, PLS L-4403 and recorded in Map Book 9, Page 592, Wilkes County Registry (hereinafter "the Property" or "their Property"). The Conservation Easement was recorded in Deed Book 912, Page 216, Wilkes County Registry. The purpose of the easement acquisition was for a stream and buffer restoration project along Big Warrior Creek (hereinafter "the Project"); and

WHEREAS, there have arisen certain disputes and controversies between the parties, regarding or arising from the construction of the Project; and

WHEREAS, the Project resulted in the creek bed being moved into an open field approximately 55 feet northward of its original location; and

WHEREAS, the topography and landscaping of the Property has not been completely restored to its original condition after construction of the Project and;

WHEREAS, there are certain areas of the Property outside the Conservation Easement Area that are no longer suitable for farming; and

WHEREAS, the Wellborns' access to approximately .013 acres of their Property has been limited to a greater degree than originally anticipated as a result of the re-meandering of the creek; and

WHEREAS, the Wellborns have incurred additional damages to their Property as a result of construction of the project; and

WHEREAS, the Settling Parties are desirous of resolving all claims and any and all of their disputes which have risen or may arise concerning, or in any way associated with, or arising out of, the Project;

NOW, THEREFORE, the Settling Parties, in consideration of the covenants herein contemplated, stipulate and agree as follows:

1. Within thirty (30) days upon full and final execution of this Agreement, the State will pay the Wellborns the sum of $10,000.00 in full and final settlement of all claims between the Wellborns and the State.

2. In consideration for the payment recited above and the following mutual promises, each of the Settling Parties, on their behalf as well as any of their officials, officers, directors, employees, subsidiaries, affiliates, successors, assigns, agents, representatives, and all those claiming by, under, or through them, hereby releases and forever discharges each and every other party hereto, as well as any of their officials, officers, directors, employees, subsidiaries, affiliates, successors, assigns, agents, attorneys, sureties, insurers and representatives from all claims, demands and causes of action, whether known or unknown, that the party now has or may hereafter acquire arising out of or in any way related to the design or construction of the Project. These mutual releases include but are not limited to releases of any claims filed by the parties with the Department of Environment and Natural Resources, Ecosystem Enhancement Program, either directly or on their behalf as well as any claims that have been or could be asserted in other independent actions of any kind or nature relating to the design or construction of the Project, whether based upon contract or tort, statute or rule, law or equity, to the end that the Settling Parties shall be forever barred from asserting same.

3. This Agreement constitutes the entire agreement between the Settling Parties, except as provided in paragraph 4 below, and there are no understandings, verbal or otherwise, regarding this settlement except as set forth herein. Except for the undertaking described herein, all obligations of the Settling Parties to each other relative to the Project merge in the payment and receipt of the sums recited in Paragraph 1 of this Agreement. Each party shall be responsible for its own attorney's fees, collections costs, court costs, or any other costs associated with the dispute.

4. Notwithstanding paragraph 2 above, this Agreement in no way affects or supersedes the above-referenced conservation easement granted to EEP by the Wellborns or the stream and buffer restoration project along Big Warrior Creek on the Wellborns property in Wilkes County. The parties hereby acknowledge and agree that the State will continue to have access to the Property for monitoring and maintenance purposes.

5. Each party understands and agrees that this Agreement is a compromise settlement of disputed claims and is intended merely to terminate any and all claims and avoid litigation between the parties to this Agreement. Neither execution of the Settlement Agreement nor the payment of any amounts thereunder constitutes an admission of liability by any party.

6. The parties hereby acknowledge that the individuals executing this Settlement Agreement are authorized to execute it and bind themselves and any of their respective institutions to the terms contained herein, and that each signer has read this Agreement, conferred with legal counsel, fully understands its contents, and consents to the settlement of its claim on the terms set forth herein.

7. This Settlement Agreement is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have executed this Settlement Agreement and Mutual Release as of the day and year herein above written.

Glenn D. Wellborn (SEAL)
Glenn D. Wellborn

Sylvia G. Wellborn (SEAL)
Sylvia G. Wellborn

NORTH CAROLINA COUNTY OF Wake

I, Marion B. Patrick, a Notary Public in and for the County and State aforesaid, do hereby certify that Glenn D. Wellborn and Sylvia G. Wellborn personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 8th day of May, 2007.

MARION B. PATRICK NOTARY PUBLIC WAKE COUNTY, N.C.

Marion B. Patrick
Notary Public

My commission expires:

8/10/09

STATE OF NORTH CAROLINA,
through the Department of Environment
and Natural Resources,
Ecosystem Enhancement Program

By: _____

Its: _____

STATE OF NORTH CAROLINA,
Department of Justice,
Office of the Attorney General,
Attorney for NC DENR, EEP

_____
Ann W. Matthews
Assistant Attorney General

Approved:

_____
Donald R. Teeter
Special Deputy Attorney General