BOOK 2447 PAGE 150

FILED
JOHNSTON COUNTY
CRAIG OLIVE
REGISTER OF DEEDS

Johnston County, North Carolina
CRAIG OLIVE Register of Deeds
The following certificate(s) of
LLOYD W JOHNSTON JR

notary/notaries public
is/are certified to be correct.
Donna S Stallings
Deputy - ~~Assistant~~ - Register of Deeds

FILED	May 08, 2003
AT	12:15:00 pm
BOOK	02447
START PAGE	0150
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INSTRUMENT #	26766

CONSERVATION EASEMENT

THIS INSTRUMENT DRAWN BY Lloyd Johnston Jr. CHECKED BY M. E. R.

RETURN TO: Most Law Firm

NORTH CAROLINA
COUNTY OF Johnston
TAX MAP AND LOT 15I08057K
15I08007

STATE HIGHWAY PROJECT: 8.T311004
F. A. PROJECT: NHS-70(45)
ID NUMBER: R-2552WM
PARCEL NUMBER: 705WM
ROUTE: SR 1501

THIS CONSERVATION EASEMENT, made this the 27th day of March, 20 03 by and between **Michael Todd Moore 4301 Swift Creek Road, Smithfield, NC 27577** Hereinafter called the Grantor(s) and by the North Carolina Department of Transportation, 1548 MAIL SERVICE CENTER RALEIGH NC 27699-1548, hereinafter called the "NCDOT", provides the following:

WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain real property in Smithfield Township of Johnston County, North Carolina, as more particularly described in Book 1494, Pages 441 of the Johnston County Registry, North Carolina, which land is hereinafter referred to as the Property;

WHEREAS, 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;

WHEREAS, the NCDOT desires to restore 84.20 acres of wetland in Johnston County on the said Property:

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over 84.20 acres of the Property (the Conservation Easement Area), 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.

WHEREAS, the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 et. seq., 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;

WHEREAS, the USACE has reviewed and approved the use of the Conservation Easement on the Property to mitigate for the wetland impacts,

WHEREAS, the purposes of this Conservation Easement are to protect the mitigation activities performed by the NCDOT, to preserve and protect the conservation values of the Conservation Easement Area, to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes, and to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area designated on the Property as hereinafter described.

County: Johnston **Project: 8.T311004** **Parcel: 705WM**

NOW THEREFORE, in consideration of the sum of $ **691,619.00** (Six hundred ninety-one thousand, six hundred and nineteen dollars) and other valuable considerations to the Grantor in hand paid by the NCDOT, the receipt of which is Hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the NCDOT and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantor situated in Johnston County, North Carolina, as described in **Exhibit A**, and hereinafter referred to as the "Conservation Easement Area".

For a plat of the above described Conservation Easement, please see plat titled Land Division Plat for Michael Todd Moore recorded in Plat Book 61, Page 316 (Tract 2) of the Johnston County Registry.

It is understood and agreed that of the total amount of $691,619.00 paid for this Conservation Easement, $20,000 was previously paid for an Option on said Conservation Easement area, said Option being recorded in Deed Book 2361, Page 617, Johnston County Registry; thus making a net balance due to the Grantor of $671,619.00.

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

ARTICLE I. DURATION OF EASEMENTS; ACCESS

A. Conservation Easement. This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the NCDOT or its successors and/or assigns against the Grantor(s), Grantors heirs, devisees, successors and assigns, lessees, agents and licensees.

B. Temporary Access Agreement. It is specifically understood by all parties to this document that a Temporary Access Agreement over the Property is to be executed between the Parties and, will be valid until the completion of the documentation of the wetland mitigation project within the Conservation Easement Area of said Property of the Grantor. The NCDOT and authorized representatives of the NCDOT shall have the right to access the Conservation Easement Area through the Property pursuant to the Temporary Access Agreement in order to conduct the mitigation activities, and shall have the right to place equipment and materials on the Property pursuant to the Temporary Access Agreement. Upon completion of the documentation period of said wetland mitigation project, as described in **Exhibit B**, the Wetland Mitigation Feasibility Study, the Temporary Access Agreement will dissolve.

C. Public Access. The easement rights granted herein do not include public access rights. However, the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

ARTICLE II. PROHIBITED, RESTRICTED AND RESERVED 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. Any rights not expressly reserved hereunder by the Grantor have been acquired by the NCDOT.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

1. 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 shall give its prior written consent or unless otherwise expressly permitted herein

2. Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited.

3. Silvicultural Use and Land Clearing. There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except in accordance with the Wetland Mitigation Feasibility Study, identified as **Exhibit B**, or upon written approval of the NCDOT. The gathering of firewood in the Conservation Easement
Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement. Removal of large live trees 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.

4. Hunting and Fishing. Grantor expressly reserves the right to hunt and fish on the Conservation Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal/trout habitat or other conservation values of the Conservation Easement Area.

5. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, 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.

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6. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other material, and no change in the topography of the land in any manner on the Conservation Easement Area nor shall there be any activities conducted on the Conservation Easement Area or on adjacent property if owned by the Grantor and his successors which would cause erosion or siltation on the Conservation Easement Area.

7. Industrial Use. Industrial activities in the Conservation Easement Area are prohibited.

8. Residential Use. Residential use of the Conservation Easement Area is prohibited.

9. Commercial Use. Commercial activities in the Conservation Easement Area are prohibited.

10. New Construction. There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area; provided, however, that the NCDOT expressly reserves the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing wetland functional values, including those described in the Wetland Mitigation Feasibility Study, **Exhibit B**, for the Conservation Easement Area.

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

12. Subdivision. In the event the burdened parcel is subdivided, it is understood that the rights and duties under this conservation easement run with the subdivided parcels and do not change.

13. Development Rights. No development rights which 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.

14. 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 (rights of way) located in the Conservation Easement Area or affecting the Conservation Easement, 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.

15. Water Quality and Drainage Pattern. 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, 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. The existence and maintenance of a water line running along the southern property line from an irrigation pond to Swift Creek is allowable. Grantor shall notify the NCDOT in writing of any alterations or activities associated with this water line conducted within the easement area and must have prior written approval from NCDOT or its representative. Any such activity should be in keeping with the intent of the Conservation Easement.

16. Grantor's Rights. The Grantor, for himself, his successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Conservation Easement Area; the right of ingress and egress to the Conservation Easement Area and all adjacent property of the Grantor; the right to continue such uses as exist as of the date of this grant not inconsistent with this Conservation Easement; and the right to sell, transfer, gift or otherwise convey the Conservation Easement Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the NCDOT in accordance with the provisions herein below.

17. NCDOT's Rights. The NCDOT reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or overall improve wetland functional values as described in the Wetland Mitigation Feasibility Study **(Exhibit B)** for the Conservation Easement Area, in order to mitigate for impacts to wetlands resulting from road construction. The NCDOT further reserves the right to monitor the wetland mitigation area in perpetuity.

ARTICLE III. ENFORCEMENT AND REMEDIES

Nothing contained herein shall be construed to entitle the Grantor to bring any action against NCDOT for any injury or change in the Property resulting from causes beyond the NCDOT's control, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by NCDOT under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Conservation Easement Area resulting from such causes, in accordance hereunder.

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The NCDOT has the right to prevent any action on or use of the Conservation Easement Area that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use. If the NCDOT determines that the Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, NCDOT shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Conservation Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from NCDOT, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, NCDOT may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of conservation values, and to require the preservation of the Conservation Easement Area to the condition that existed prior to any such injury. If the NCDOT, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Conservation Easement Area, the NCDOT may pursue its remedies without prior notice to the Grantor. NCDOT shall exercise reasonable efforts to notify the Grantor and shall, in any event, notify Grantor within two business days after action is taken to explain the action undertaken.

NCDOT's remedies shall be cumulative and shall be in addition to any other rights and remedies available to NCDOT at law or equity. Any cost incurred by NCDOT in enforcing the terms of this Conservation Easement against Grantor or its successors or assigns, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne by Grantor.

No failure on the part of the NCDOT to enforce any covenant or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of NCDOT to enforce the same in the event of a subsequent breach or default.

The Grantor reserves the right to take action against the NCDOT for use of the Conservation Easement Area in a way that is inconsistent with the purpose of this Conservation Easement. Any cost incurred by Grantor in enforcing the terms of this Conservation Easement against NCDOT or its successors or assigns, including, without limitation, costs of suit and attorney's fees, shall be borne by NCDOT.

ARTICLE IV. MISCELLANEOUS

A. Amendments. The NCDOT and Grantor may amend this Conservation Easement, only by a jointly executed written agreement, and provided that no amendment will be allowed that is inconsistent with the purposes stated herein, and provided that it is approved by the USACE.

B. Exhibits. The attached Exhibit A, Exhibit B, and Plat recorded in Plat Book 61, Page 316 of the Johnston County Registry are incorporated in and made a part of this instrument by reference. The parties acknowledge that the Wetland Mitigation Feasibility Study, developed by NCDOT and Kimley Horn (Exhibit B) dated November 2002, a copy of which is on file at the office of the NCDOT, and incorporated herein by reference describes the plan for mitigation activities in the Conservation Easement Area.

C. Title. The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement; that the Conservation Easement Area is free and clear of any and all encumbrances, except easement and leases of record or in effect by prescriptive rights as of the date hereto, and Grantors covenant that the NCDOT shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easement conveyed. The easement conveyed herein shall run with the land and must be made part of any transfer of title by the Grantors.

D. Notification. Except as otherwise provided herein, 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.

E. Entire Agreement. 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 said easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which is found to be invalid, shall not be affected thereby.

F. Recording. The NCDOT shall record this instrument and any amendment hereto in timely fashion in the Johnston County, North Carolina, Registry and may re-record it at any time as may be required to preserve its right under this Conservation Easement.

G. Costs and Liabilities. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fee, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish NCDOT with satisfactory evidence of payment upon request.

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H. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. □ 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

I. Conservation Purpose. The NCDOT, for themselves, and their successors and assigns agree that this Conservation Easement shall be held exclusively for conservation purposes. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however, that the NCDOT hereby covenants and agrees that in the event they transfer or assign this Conservation Easement they hold under, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) and section 2301 of the Internal Revenue Code, and the NCDOT 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

TO HAVE AND TO HOLD the aforesaid Conservation Easement unto the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, its successors and assigns, forever. The rights and obligations set forth herein shall inure to and be binding upon the Grantor and the NCDOT, their heirs, executors, administrators, assigns and successors in title or interest.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused this instrument to be signed in their respective names by authority duly given, the day and year first above written.

Michael Todd Moore
MICHAEL TODD MOORE

NORTH CAROLINA, Pitt COUNTY
I, a Notary Public of the County and State aforesaid, certify that Michael Todd Moore, single
GRANTORS, personally appeared before me this day and acknowledged the execution of the foregoing instrument.
Witness my hand and official stamp or seal, this the 27th day of March, 2003

My Commission Expires: 10-06-2006

Floyd W. Johnston, Jr.
Notary Public

ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY: Floyd W. Johnston Jr.

The foregoing Certificate(s) of _____
is/are certified to be correct. This instrument and this certificate are duly registered on the _____ day of _____, 20 _____ in Book _____, Page _____ at _____ o'clock _____ M.
_____ REGISTER OF DEEDS FOR _____ COUNTY
BY: _____ Deputy/Assistant - Register of Deeds

"EXHIBIT A"

The conservation easement area shown as Tract 2 containing 84.20 acres, being more particularly shown and described on a plat entitled "Land Division Plat for Michael Todd Moore" and being recorded in Plat Book 61 Page 316 of the Johnston County Registry.

"EXHIBIT B

The Wetland Mitigation Feasibility Study, otherwise known as the Moore Farm Site Study, TIP No. R-2552WM, State Project No. 8T311004, is on file at the office of the North Carolina Department of Transportation, the NCDOT Project Managers being Byron Moore and LeiLani Paugh and the Kimley Horn Project Manager being Norton Webster. This plan is incorporated herein by reference.