Doc ID: 000624470011 Type: CRP
Recorded: 03/24/2008 at 11:29:07 AM
Fee Amt: $44.00 Page 1 of 11
Lenoir County, NC
Margaret Seymour Register of Deeds
BK 1537 PG 534-544

INDEXED

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

LENOIR COUNTY
SPO File Number 54-AF
After recording return to:
State Property Office (EEP)
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT, made this 22 day of February 2008, by and between the Housing Authority of the City of Kinston, Grantor, and the State of North Carolina, Grantee, whose mailing address is State of North Carolina 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

Mail To: Dept. of Administration
State Property Office
1321 MSC
Raleigh NC 27699-1321

11 pg
44.00

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, Grantor owns in fee simple certain real property situated, lying, and being in Kinston Township, Lenoir County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land containing 8.84 +/- acres (PIN Number 452511753324) and being conveyed to the Grantor by deed recorded in **Deed Book 190 at Pages 36 and 39** of the Lenoir County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of a portion of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

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, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a portion 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 tract of land as identified as **0.275** +/- acres as shown on a plat of survey entitled "Conservation Easement for NC Ecosystem Enhancement Program on the Property of the City of Kinston Housing Authority (MB 3,P 5)" dated 8-21-07, certified by F. Wade Davenport, PLS L3552, Atlantic Surveying P.A. Said Easement being more particularly described in "**Exhibit A**" attached hereto and incorporated herein by reference.

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contributes 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. To achieve these purposes, the following conditions and restrictions are set forth:

II. 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.

III. RESERVED USES AND RESTRICTED ACTIVITES

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. 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, including hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.
B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies, and observations.
C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area by the Grantor shall be limited to the extent necessary for the protection, well-being and safety of Grantor, and Grantor's property, and for the protection, well-being and safety of the general public, including property and the proper functioning of the Easement Area.
D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.
E. **Residential Use.** Residential use of the Easement Area is prohibited.
F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.
G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.
H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area.
I. **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, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.
J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.
K. **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 in the Easement Area.

L. **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. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.

N. **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.

O. **Utilities.** Through, over, under and across the Easement Area, the following conditions shall apply:

1) All existing utility easements and facilities are exempt from the requirements described below.
2) Pipeline and utility line construction will be minimized to the greatest extent practicable.
3) All disturbed facilities; features and vegetation will be restored to their original condition. Due to the environmental sensitivity of the Easement Area, disturbed and removed vegetation in access areas, staging areas, constructed areas, excluding the permanent utility easement, will be replaced with herbaceous species such that the Easement Area achieves a rapid recovery from the disturbance. The permanent utility easement will be re-vegetated with suitable grass vegetation.
4) Corridor and clearing width for crossings and parallel construction, if required,
will be limited to the minimum necessary to construct the needed facilities, subject to line size, equipment size and work zone. The temporary construction easements will be re-vegetated with native herbaceous species at the completion of construction.
5) Utility construction will minimize the disturbance of structures used for
grade control, habitat and bank stabilization. If disturbance occurs in order to provide service, the structure will be restored to its original condition.
6) Permanent utility easement corridors will be minimized to the greatest extent practicable and are normally limited to thirty (30) feet in width depending upon pipeline size and depth. Exceptions, at the sole discretion of the Grantor to this limit are allowed in the usual cases of work to be done on very deeply buried utilities.

7) Vegetative clearing and general construction disturbance will be minimized to the greatest extent practicable.
8) Crossings will be perpendicular whenever possible.
9) Crossings will be accomplished by drilling, boring and jacking methods where practicable. When crossings must be constructed using open trench excavation, temporary discharge of excavated or fill material will be minimized in both quantity and duration to the greatest extent practicable as determined by the Grantor.
10) Erosion control devices shall be utilized to contain all disturbed materials and will conform to State requirements. Crossing of the waterway, wetland or other water feature will be accomplished in a timely manner such that environmental and flooding impact is minimized.
11) Depth of underground construction shall be to a sufficient depth to avoid future exposure due to scouring wherever possible.
12) Utilities constructed parallel to stream corridors will be a minimum of twenty (20) feet horizontally from the top of stream bank unless explicit exception is granted. The area between the utility and 20 feet wide area from the top of stream bank shall remain undisturbed except at crossings.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter 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. These activities include planting of trees, shrubs and herbaceous vegetation except within permanent utility easements, 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. All grading and filling operations and use of heavy equipment in and across the permanent utility easements will require prior approval of the utility in order to ensure no damage is done to the utility facilities. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter 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.

See attached letter of intent dated November 16, 2006 from the North Carolina Ecosystem Enhancement Program is to be used as "**Exhibit B**" to this conservation easement when recorded. This letter addresses maintenance, expenses and responsibilities and is incorporated herein by reference.

Any areas of the Property damaged as a result of Grantee's activities will be restored, at the expense of the Grantee, as near as possible to the condition that existed prior to such damage.

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 to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include 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 easement rights granted herein do not include public access rights.

The Grantee shall not engage in activities that result in elevation of the flood plain as defined on the date of this Conservation Easement.

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 27699-1652.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

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

IV. 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 (formerly the Wetlands Restoration 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.

V. QUIET ENJOYMENT

Grantor reserves all 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 easement herein granted; that the same are free from encumbrances except for rights of way and utility easements recorded in the Lenoir County Registry and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written,

Grantor: Housing Authority of the City of Kinston

Dal F. Wooten

Dal F. Wooten

_____, Chairman of Board

Attested by:

Rhonda Abbott

Rhonda Abbott, Secretary

NORTH CAROLINA

Lenoir COUNTY

I, Vivian B. Perry, Notary Public, certify that Rhonda Abbott, being personally known to me or identified by satisfactory evidence, personally came before me this day and acknowledged that she is the Secretary of Housing Authority of the City of Kinston, a corporation, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and official seal or stamp, this the 22 day of February, 2008.

Vivian B. Perry, Notary Public

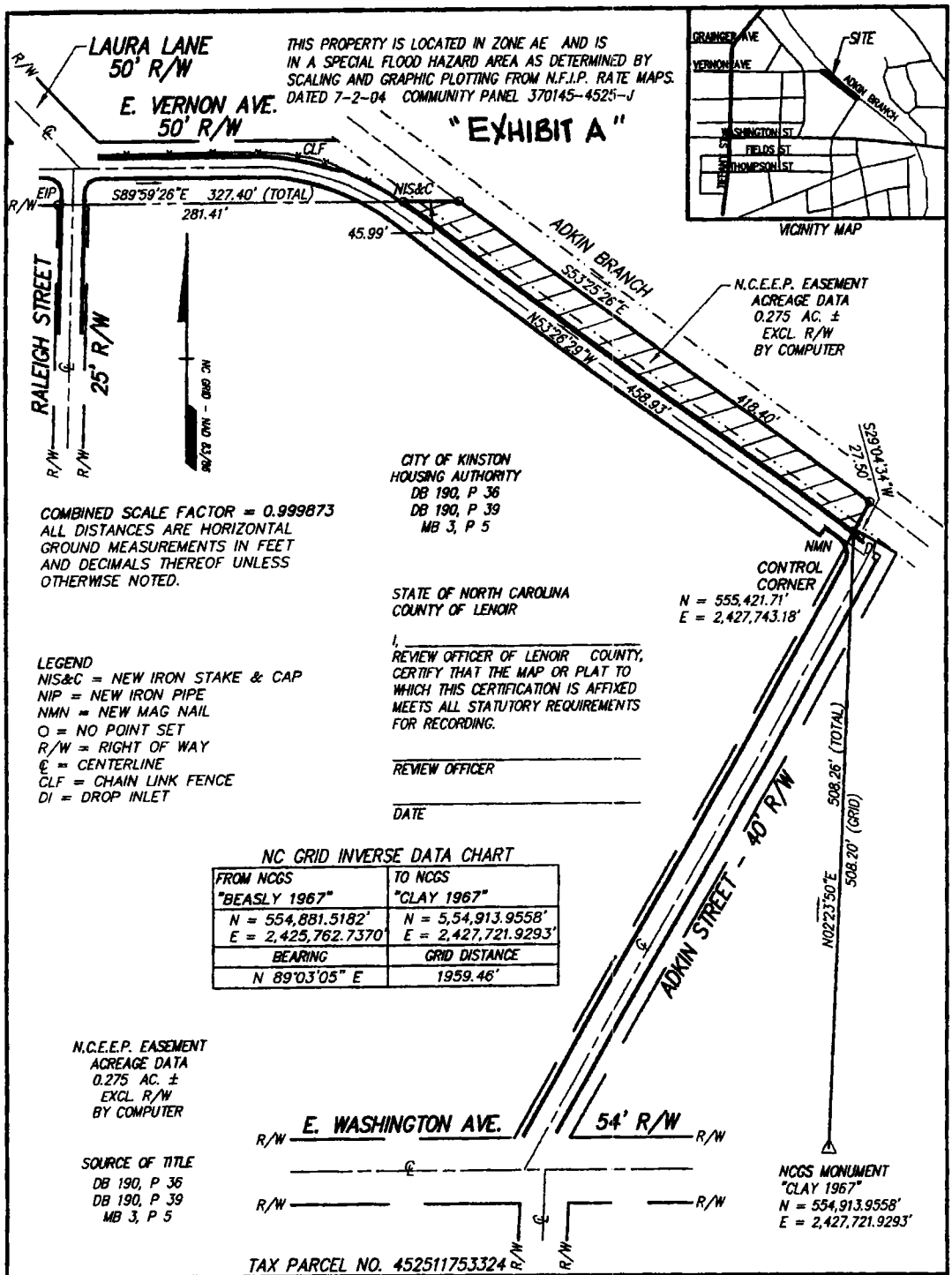
VIVIAN B. PERRY NOTARY PUBLIC ONSLOW COUNTY, N.C.

(OFFICIAL SEAL)

My commission expires: March 10, 2009

JSB\jar #3
079606-00106

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



STATE OF NORTH CAROLINA LENOIR COUNTY

I, F. WADE DAVENPORT, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION ; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+ ; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH STANDARDS OF PRACTICE AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 21ST DAY OF AUGUST, 2007.

SEAL L-3552 PROFESSIONAL LAND SURVEYOR F. WADE DAVENPORT

L - 3552

SURVEY FOR CONSERVATION EASEMENT FOR NC ECOSYSTEM ENHANCEMENT PROGRAM ON THE PROPERTY OF

OWNER: CITY OF KINSTON HOUSING AUTHORITY (MB 3, P 5)

KINSTON TOWNSHIP, LENOIR COUNTY

ATLANTIC SURVEYING, P.A.

111 S. QUEEN STREET
KINSTON, NC 28501
PHONE: (252) 527-6994
FAX: (252) 522-0139

DRAWN BY :	R.D.M.
SCALE :	1" = 100'
PROJ. NO. :	07156
DATE :	8-21-07

Ecosystem Enhancement PROGRAM

November 16, 2006

"EXHIBIT B"

Rhonda Abbott
Executive Director
Kinston Housing Authority
PO Box 697
Kinston, NC 28502-0697

Re: Adkin Branch Stream Restoration
Property: Wooten Courts Apartments, Washington Avenue, Kinston, NC

Dear Mrs. Abbott,

The purpose of this letter is to formalize the agreement between the Kinston Housing Authority and the North Carolina Ecosystem Enhancement Program (NCEEP) regarding the stream restoration on the Adkin Branch located on the Wooten Courts property in Lenoir County. This agreement is in addition to the Option Agreement, which sets out the general concept and conditions for NCEEP to purchase a conservation easement, but lacks the details that will be developed during the option period and the design of the project.

I believe this letter agreement will meet your requirements and address concerns that you expressed to NCEEP staff, namely Jeff Horton. Because the Option Agreement is only for the purpose of purchasing real property interests like a conservation easement, issues regarding construction, maintenance, and fencing are more appropriately considered in this letter agreement.

As you know, the NCEEP mission is to restore, enhance, preserve, and protect the wetlands, streams, and riparian areas in North Carolina. Before we can begin to work on a project, we must have the right to work on the properties, and that is usually granted to us first through an Option Agreement, when we can begin design work, and ultimately, a Conservation Easement, so that we can do the actual construction, restoration, and enhancement of the streams and stream banks.

The Option Agreement for the Conservation Easement is for a portion of your property, also called the parent Tract. We have to describe the Parent Tract in order to describe the portion that we will include in the conservation easement. We must also verify that you have clear title to the property; mortgages, leases, or other encumbrances to the title have to be resolved prior to the purchase of a conservation easement. We will pay for a survey of the area of your property to be included in the conservation easement and we will develop a drawing of the extent of the conservation easement, before any construction can begin on your property. This way we will ensure that the boundaries of our conservation easement meet with you approval.

For your property, the NCEEP agrees to the following:

1. The NCEEP will, if needed, install temporary construction fencing during the construction phase around the easement to prevent accidental access to the construction site.

2. The NCEEP will provide fencing to replace the existing chain link fence if it is damaged during the construction phase.

3. The NCEEP will work to safeguard the existing trees along the stream banks.

4. The NCEEP will pay for all title, survey, design, construction, inspection, and monitoring activities related to the project within the easement area.

5. The State shall indemnify and hold the Housing Authority of the City of Kinston harmless from any and all claims, demands, suits, expenses, costs, liabilities for any damage to property of personal injury as the result of or rising out of the State's activities granted under the Option Agreement and Conservation Easement.

The intent of the project is to create a naturally self-sustaining aquatic and riparian system with no long term need of maintenance. The restored stream system and vegetated areas included in the easement area will be subject to the provisions and restrictions of the conservation easement and the federal laws associated with the Clean Water Act that are applicable to the waters of the United States of America.

It is our hope that this letter establishes a clear understanding of our agreement and financial responsibilities related to the stream restoration project. If you are in agreement with what is stated in this letter, please sign both copies of this letter in the designated area below and return one copy in the included self addressed stamped envelope to Jeffrey Horton at the address shown on the first page of this letter. In addition, if you have any questions or additions to this letter, please contact Jeff at (919) 715-5837 or jeffrey.horton@ncmail.net, or Kristie Corson at (919) 715-1954 or kristie.corson@ncmail.net.

Sincerely,

Suzanne Klimek
Director of Operations

By my signature, I am in agreement with the items stipulated in this letter.

Rhonda Abbott

Date 11-20-06

Name/Title(print) Executive Director

cc: Kristie Corson-EEP Property Manager
Jeffrey Horton-EEP Property Specialist
Marion Patrick-State Property Office

(Exhibit B continued)