FILED
CHATHAM COUNTY
REBA G. THOMAS
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FILED	Jun 23, 2004
AT	02:57:18 pm
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STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

CHATHAM COUNTY

SPO File Number 19-P
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 15th day of June, 2004, by the Triangle Land Conservancy, a North Carolina nonprofit corporation, Grantor, whose mailing address is 1101 Haynes Street, Suite 205, NC 27604 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, 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, 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 within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating 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 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 have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land 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 has been 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 Oakland Township, Chatham County, North Carolina (the "Protected Property"), which were conveyed to the Grantor by deed recorded in Deed Book 1113 at Page 139, Deed Book 1113 at Page 140, Deed Book 1113 at Page 142 ~~and~~ Deed Book 1113 at Page 144 and Book 1113, Page 145 of the Chatham County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the Protected Property, thereby restricting and limiting the use 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 all 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 those tracts of land, which are incorporated herein by reference, illustrated as Tract A and Tract B on Plat Book 2004-183, Chatham County Registry, North Carolina, saving, excepting, and reserving from said conveyance that certain parcel of real property defined as the Tract B1, and being illustrated on said plat.

The purposes of this Conservation Easement are to preserve, maintain, restore, enhance, and create 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. To achieve these purposes, the following conditions and restrictions are set forth:

I. 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 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 hiking, birdwatching, hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used for management, maintenance, or stewardship purposes, or on existing roads. The term "existing roads" as used throughout this instrument shall mean those roads existing on the Protected Property at the time of the recording of this Conservation Easement. Hiking foot trails may be constructed to support the permitted recreational and educational uses of the Protected Property permitted by this Conservation Easement. Such trails must be constructed of a pervious surface and in accordance with best management practices to minimize soil erosion and water quality impacts, may not be more than six feet wide and shall be located in a manner acceptable to the Ecosystem Enhancement Program. Grantor reserves the right to construct a small bridge to cross over the stream in the future as part of a future trail system, subject to EEP approval.

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 is prohibited, except as necessary to control invasive and/or exotic species or to create, enhance, or maintain early successional vegetation in open, unforested areas present in the Easement Area as of the date of recording of this Conservation Easement, or as necessary to engage in the other uses of the Easement Area expressly permitted herein, including, but not limited to the construction of trails pursuant to above section II.A.

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, signs identifying the boundaries of the Easement Area and signs giving directions or prescribing 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, except as necessary to improve existing roads and dams in order to enhance their long-term stability and minimize erosion. Any grading will be done in such a way that disturbance of the riparian area (300 foot buffer of the water course) is kept to a minimum. Grantor will seek permission, on a case by case basis to remove any native vegetation for the purposes of grading or dam repair.

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, except as permitted by the forest management plan required by Paragraph P of this Article. Grantor reserves the right to restore the substrate of the streams in the Easement Area for the purpose of improving and enhancing water quality and to enhance the aquatic habitat for non-game fisheries and benthic communities.

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

N. **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.

O. **Existing Roads, Parking Areas, and Access Gates.** Grantor expressly reserves the right to maintain existing roads located in the Easement Area in order to minimize runoff and sedimentation and to maintain access to the interior of the Protected Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Protected Property. These roads shall not be paved or covered with asphalt, but gravel or permanent vegetation may be used to stabilize or cover the road surfaces. Two parking areas are permitted within the Easement Area provided that the following conditions are met: 1) these parking areas are located adjacent to existing roads; 2) no trees are removed to create these parking areas; and 3) gravel or permanent herbaceous vegetation are utilized to stabilize the soil and minimize the potential for erosion occurring from these parking areas. Existing access gates may be improved, replaced, or maintained and new access gates

may be constructed to control access to the Protected Property. New roads may not be constructed in the Easement Area without the written permission of the Grantee.

P. **Forest Management.** Grantor reserves the right to manage the forest for the purposes of water quality protection, wildlife habitat enhancement, forest health, and restoration after natural disasters including but not limited to fire, ice, hurricane, and storm damage provided that all forest management activities follow a forest management plan written by a registered North Carolina Forester following the North Carolina Division of Forest Resources Forest Stewardship Program Guidelines, subject to the approval of the grantee. Grantor may seek to restore the native White Pine forest community to the Easement Area. In such case that the restoration activity requires actions prohibited by this Conservation Easement, Grantor will work with and submit to Grantee a mutually agreeable restoration plan for approval, approval is not to be unreasonably withheld.

Q. **Reserved Property.** Plat Book 2004-183 recorded in Chatham County Registry, illustrates Tract B1. Tract B1 is not subject to the terms and restrictions of this Conservation Easement. Grantor reserves and maintains all rights subject to use of this portion of the Property. Tract B1 cannot be subdivided from the Protected Property.

III. GRANTEE RESERVED USES

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area, 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, 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 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 1619 Mail Services Center, Raleigh, NC 27699-1619.

IV. 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.

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 of 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, unless such transfer of an interest in the Protected Property is to Grantee or to an agency, division, department or authorized representative of Grantee.

VI. 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 those set forth of record, and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN TESTIMONY WHEREOF, the Grantor has caused this instrument to be executed the day and year first above written,

Triangle Land Conservancy, a North Carolina Non-Profit Corporation

By: Elizabeth H. Rooks
Elizabeth Rooks, President

NORTH CAROLINA

COUNTY OF Durham

I, J. Masten, a Notary Public in and for the Durham County, do hereby certify that Elizabeth Rooks personally appeared before me this day and acknowledged that she is the President of the Triangle Land Conservancy, a North Carolina Non-Profit Corporation, and that by the authority duly given as an act of the corporation, the foregoing instrument was signed in its name by its President.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 15th day of JUNE ~~January~~, 2004.

Notary Public

J. MASTEN NOTARY PUBLIC DURHAM COUNTY, N.C.

My commission expires:
2-26-2007

Chatham County, North Carolina
REBA G. THOMAS Register of Deeds
The foregoing certificate(s) of
J MASTEN

notary/notaries public
is/~~are~~ certified to be correct.
Vicky E. Scott
Assistant - Register of Deeds