WAKE COUNTY, NC 373
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
01/04/2005 AT 14:09:52

BOOK:011172 PAGE:01296 - 01308

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

WAKE COUNTY
SPO File Number 92-DG
Return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 4th day of January, 2005, by Triangle Land Conservancy, a North Carolina nonprofit corporation, ("**Grantor**"), whose mailing address is 1101 Haynes Street, Suite 205, NC 27604 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, 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, 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 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 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 Marks Creek Township, Wake County, North Carolina (the "**Protected Property**"), and being more particularly described as those two certain parcels of land containing approximately 31.54 acres, referenced as NCPIN 1772-15-2364 being 27.89 acres and NCPIN 1772-14-4414 being 3.65 acres, and being conveyed to the Grantor by deed as recorded in **Deed Book** 11172 **at Page** 1290 of the Wake 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 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 Mark's Creek, a tributary to the Neuse River.

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 tract of land as identified on a plat of survey entitled "Property Survey for The Trust for Public Land Marks Creek Township Wake County North Carolina" dated December 10, 2004, certified by Clyde T. Pearce and being more particularly described in Exhibit A attached hereto and by this reference incorporated herein.

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. 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 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.** 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 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, 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. **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.

G. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area except one environmental learning kiosk which may be constructed with the written permission of the Grantee.

H. **Existing Roads, Parking Areas, and Access Gates.** Grantor expressly reserves the right to maintain existing roads and stream crossings 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. One parking area is permitted within the Easement Area provided that the following conditions are met: 1) this parking area is located adjacent to existing roads within the existing electric utility easement; 2) no trees are removed to create this parking area; and 3) gravel or permanent herbaceous vegetation are utilized to stabilize the soil and minimize the potential for erosion occurring from this parking area. 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 or

stream crossings may not be constructed in the Easement Area without the written permission of the Grantee.

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 giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

J. **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.

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 stream crossings 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 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, 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 is not allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

M. **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.

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. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area, except as provided for in the paragraphs above, 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 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.

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. **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 ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) 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, their successors or assigns for any injury or change in the Easement Area caused by third parties, resulting from 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, their successors or assigns including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

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.

The remainder of this page is intentionally left blank.

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

Triangle Land Conservancy, a North Carolina
Non-Profit Corporation

By: _____
John R. McAdams, President

NORTH CAROLINA

COUNTY OF Durham

I, Emily Ander, a Notary Public of Orange County, North Carolina do hereby certify that John R. McAdams, Grantor, personally appeared before me this day and acknowledged that he is the President of Triangle Land Conservancy, a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed by its President.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 30th day of December, 2004.

_____
Notary Public

EMILY ANDER
NOTARY
★ ★ ★
PUBLIC
ORANGE COUNTY, N.C.

[Notary Seal]

My commission expires: 12/18/08

EXHIBIT A

Lying and being in the Marks Creek Township, County of Wake, State of North Carolina, and being more particularly described as follows:

TRACT I

BEGINNING at a PK Nail in Centerline of Bridge in the 60 foot Public Right-of-Way of Turnipseed Road (SR 2507) and running along an eastern boundary of that property of Meadow Glen Subdivision Open Space as shown on map recorded in Book of Maps 1999 Page 1519 in the Wake County Public Registry, the following eight (8) courses and distances as follows: (1) N. 45-32-53 W. 180.09 feet to a point ; (2) N. 12-06-29 E. 55.35 feet to a point; (3) N. 25-42-58 W. 39.61 feet to a point; (4) N. 08-21-08 E. 248.08 feet to a point; (5) N. 65-33-30 E. 25.73 feet to a point; (6) N. 07-49-21 W. 37.61 feet to a point; (7) N. 43-01-03 E. 38.28 feet to a point; and (8) N. 09-44-04 W. 1066.04 feet to a point in a southwesterly corner of that property owned by A.I. Goodson (now or formerly) as described in that instrument recorded in Deed Book 3173 Page 436 in the aforesaid Public Registry; running thence along a southerly boundary of the aforesaid Goodson Property N. 88-57-48 E. 475.43 feet to an existing iron pipe located in a southwesterly corner of that property owned by George Pleasants (now or formerly) as described in that instrument recorded in Deed Book 3185 Page 985 in the aforesaid Public Registry, passing an existing iron pipe at 35.39 feet; running thence along a southerly boundary of the aforesaid Pleasants Property the following two (2) courses and distances: (1) N. 85-42-48 E. 575.00 feet to a new rebar; and (2) N. 48-45-00 E. 366.55 feet to a new rebar located in a westerly corner of that property owned by Della Medlin (now or formerly) as described in that instrument recorded in Deed Book 1712 Page 141 in the aforesaid Public Registry; running thence along a westerly boundary of the aforesaid Medlin Property the following four (4) courses and distances: (1) S. 02-29-02 W. 461.00 feet to a new iron pipe; (2) S. 36-29-02 W. 1030.00 feet to a new iron pipe; (3) S. 49-29-02 W. 350.00 feet to a new rebar; and (4) S. 04-29-02 W. 316.00 feet to a new rebar located in the boundary of that property owned by Lacy Edgerton (now or formerly) as described in that instrument recorded in Deed Book 2102 Page 647 in the aforesaid Public Registry; running thence S. 73-19-18 W. 174.56 feet to the PK Nail in Centerline of Bridge, the Point and Place of Beginning, containing 27.89 acres as shown on Survey for The Trust For Public Land dated December 10, 2004, prepared by Clyde T. Pearce, Williams-Pearce & Assoc., P.A. P.L.S. L-2481, reference to which survey is hereby made for a more particular description.

TRACT II

To Find the Point and Place of Beginning, begin at a PK Nail in Centerline of Bridge in the 60 foot Public Right-of-Way of Turnipseed Road (SR 2507) and running with a portion of the Public Right-of-Way of Turnipseed Road and along an western boundary of the property owned by Lacy Edgerton (now or formerly) as described in that instrument recorded in Deed Book 2102 Page 647 in the Wake County Public Registry N. 73-19-18 E. 174.56 feet to a new rebar, The POINT AND PLACE OF BEGINNING,

running thence from the Point and Place of Beginning along a southerly and southeasterly boundary of that property owned by Della Medlin (now or formerly) as described in that instrument recorded in Book 1712 Page 141 in the aforesaid Public Registry the following nine (9) courses and distances: (1) N. 48-29-02 E. 100.00 feet to a new rebar; (2) N. 23-59-02 E. 196.00 feet to a new rebar; (3) N. 02-14-02 E. 110.00 feet to a new rebar; (4) N. 32-29-02 E. 74.00 feet to a new iron pipe; (5) N. 55-29-02 E. 132.00 feet to a new iron pipe; (6) N. 57-29-02 E. 117.00 feet to a new iron pipe; (7) S. 74-30-58 E. 128.00 feet to a new iron pipe; (8) S. 81-00-58 E. 97.00 feet to a new iron pipe; and (9) S. 57-57-02 E. 181.11 feet to a new rebar located in a common corner of the aforesaid Edgerton Property and the aforesaid Medlin Property; running thence with a boundary of the aforesaid Edgerton Property S. 62-14-02 W. 880.00 feet to a new rebar, the Point and Place of Beginning, containing 3.65 acres as shown on a Survey for The Trust for Public Land, dated December 10, 2004, prepared by Clyde T. Pearce, Williams-Pearce & Assoc., P.A., P.L.S. L-2481, reference to which survey is hereby made for a more particular description.

TOGETHER WITH an easement twenty (20) feet in width from Della P. Medlin as shown and described on Access Easement Agreement recorded in Book 11160 Page 2508 in the Wake County Public Registry.

TOGETHER WITH an easement fifteen (15) feet in width from Jewell E. Best and husband T. Wayne Best and Ruth E. Best and husband Emmit J. Best, Heirs of Lacy Edgerton as shown and described on Access Easement Agreement recorded in Book 11160 Page 2501 in the Wake County Public Registry.